

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

Boston, MA



Worcester, MA



Springfield, MA



New Bedford, MA



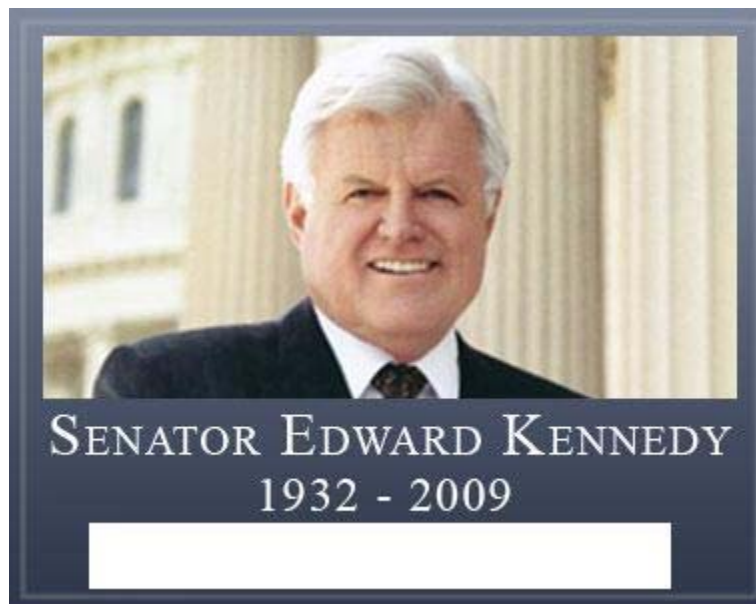
2009 ANNUAL REPORT



Deval L. Patrick, *Governor*
Tim Murray, *Lieutenant Governor*

Chairman Malcolm S. Medley
Commissioner Martin S. Ebel
Commissioner Sunila Thomas-George

MCAD PAYS TRIBUTE TO SENATOR TED KENNEDY



“THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION MOURNS THE PASSING OF SENATOR EDWARD KENNEDY. FROM THE VERY BEGINNING OF HIS SERVICE TO OUR NATION, SENATOR KENNEDY WAS A TIRELESS CHAMPION FOR CIVIL RIGHTS, AND HIS COMMITMENT TO THIS WORK CONTINUED THROUGHOUT HIS CAREER. HIS EXAMPLE OF SERVICE TO OTHERS WAS BASED ON THE PRINCIPLES OF FAIRNESS, TOLERANCE, AND INCLUSION. HE WILL BE DEEPLY MISSED BY US ALL.”

Press Statement by the Commission
August 26, 2009

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MESSAGE FROM THE COMMISSIONERS



MARTIN S. EBEL
COMMISSIONER



MALCOLM S. MEDLEY
CHAIRMAN AND COMMISSIONER



SUNILA THOMAS-GEORGE
COMMISSIONER

To: Governor Deval Patrick
Lieutenant Governor Timothy Murray
Members of the General Court
Citizens of the Commonwealth

In accordance with Chapter 151B, § 3(10) of the Massachusetts General Laws, we are pleased to present the Massachusetts Commission Against Discrimination (“MCAD”) 2009 annual report.

2009 has been an extraordinary year for civil rights enforcement. As the Commonwealth’s statutorily mandated civil rights law enforcement organization, we view the Commission as an important contributor to the delivery of justice to our fellow citizens, and to the success and image of our state.

Like so many other organizations, the MCAD was challenged in 2009 by a global financial crisis which played a significant role in defining our year. Reduced funding significantly affected the MCAD’s ability to fully implement its strategic plans. We were challenged also by a continuously changing operational environment, highlighted by mid-year spending reductions, employee furloughs, staff reduction, hiring freezes, rapidly evolving law, and even our Chief of Enforcement’s call to a full year of active military service.

Yet, at no time has the MCAD’s role been more important. Changing dynamics in employment, housing, and lending, as well as the expanding scope of civil rights protection, presented both challenges and opportunities for civil rights enforcement. We are proud of, and extremely grateful for, the efforts of our staff, volunteers, interns, and partners. We are thankful for the Governor’s leadership and for the support of the Legislature. Our 2009 accomplishment was truly a team effort.

In 2009 the MCAD continued to implement strategic changes, both within and outside the organization, to meet the general mission of *eradicating discrimination*. We continued to focus on our enforcement, prosecution, and adjudication activities. Indeed, 2009 was highlighted by our continued effort to review and close older cases. Our system of periodic triage resulted in an almost ten year low of cases older than three years old in our inventory. Simultaneously, we applied a more streamlined and efficient approach to processing our newer cases. As a result, the average age of cases closed in 2009 was significantly less than eighteen months - a goal that we established in July 2008.

Our enforcement efforts have also been bolstered by our operational expansion into the South Shore region. We are extremely pleased that we were able to fulfill both a statutory requirement and an operational need by opening a full service office in New Bedford Massachusetts. We are grateful to the many folks who made that possible, especially Chancellor McCormack and her staff at the University of Massachusetts, Dartmouth.

Starting in 2008, the MCAD commenced an evolution towards more systemic and broad-based enforcement. That vision took full form in 2009. The MCAD has enhanced and increased its affirmative enforcement activity which, by the end of 2009, included five ongoing systemic reviews, three Commission Initiated Complaints (CIC), and several matters under consideration for Systemic Enforcement Activity (SEA). Similarly, through our Paired-Testing program we have conducted over one hundred fifty tests and generated two Commission Initiated Complaints, with additional CICs to follow.

In recognition of the severity of predatory lending and discriminatory lending in the Commonwealth, the MCAD established a dedicated and specially trained investigator to handle such cases. To date the investigator has handled over 50 such cases and has settled or otherwise resolved a significant amount.

In addition to our enforcement activities, in 2009 we expanded our outreach and education functions. We created the role of an ombudsman and press liaison to assist users, direct services, resolve issues related to a party's interaction with the MCAD, and respond to press inquiries. Additionally, we continued our customer service training for staff. Included in this year's training was a program on transgender sensitivity for MCAD staff. Our outreach effort has also involved public service announcements, a revamped and significantly more informative MCAD website which, among other things, contains all hearing and Full Commission decisions, news and information.

Our expanded outreach efforts also signaled a shift in focus. In 2009 MCAD leadership held several meetings with community representatives, civil rights advocacy leaders, elected officials, business leaders and others to inform them of the MCAD's renewed efforts and to gain a better understanding of the issues of discrimination within their scope of concern. These efforts have resulted in an increased number of groups seeking affirmative involvement by the MCAD. Indeed, the MCAD is once again enjoying the support of groups beyond the traditional groups of lawyers and advocates. The MCAD has reconnected with the **people** it serves.

One specific highlight of our partnership efforts involves our meetings with most of the Human Rights Commissions across the Commonwealth. Consequently, the MCAD created, and invite our HRC partners to attend, a specifically designed training program to assist them with their own enforcement and resolution of civil rights matters within their communities.

The MCAD also had significant accomplishments in our legal work. In 2009 the Commission took diligent steps to focus the agency on local and national cases, legislation, policies and trends that affect the MCAD and the work we perform. These steps included:

- Significant litigation in cases seeking to use ERISA Pre-emption as grounds to limit a complainant's right to pursue civil rights protection under state law; and cases seeking to use pre-dispute arbitration provisions as grounds to limit a complainant's right to pursue MCAD claims;
- Assembling a workgroup to study and draft revisions to the Massachusetts Maternity Leave Act (MMLA). The MCAD submitted that recommendation to the Governor's Office;
- Reviewing and offering direct input into the Office of Public Safety draft of CORI revisions which led to important adjustments regarding enforcement and penalties under the revision;
- Meeting with representative from the transgender community and inviting testimony regarding a proposed bill to provide clearer civil rights protections to transgendered persons;
- Meeting with and inviting testimony from proponents of the Equal Pay Amendment; and
- Meeting with and inviting testimony from proponents of a Bill to Restore Civil Rights.

We have also continued our efforts to make the MCAD as user friendly as possible. Our technological improvements include the development of the agency's first on-line filing system which will be unveiled the summer of 2009 for Housing cases, and a foreign language line whereby investigators can obtain translation services when working with non-English speakers. Additionally, we commenced a comprehensive overhaul of the agency's Case Management System which will facilitate better management of data and more efficient case processing. The overhaul will also improve our reporting capabilities.

In addition to our technological improvements, we added some human elements to improving the MCAD experience. The Commission has established a full functioning Clerk's Office which handles all pre and post dispositions filings, scheduling, and record keeping. This effort will not only increase efficiency but will also facilitate administrative accountability. We have also streamlined the Public Records Request process – All public records requests are now being directed to one fully trained person who is now a member of the Commission Clerk office. Requests are being met in a timely manner.

Looking Ahead

Some of the work carried out in the past year will come to full fruition in 2010 and 2011. Of note, in 2010 we will implement an overhaul of our enforcement department which will include updated investigative processes, better use of investigative tools, closer review and monitoring, and improved accountability standards. The reorganization plans are complete and the reorganization will be implemented after July 31, 2010.

The MCAD also has plans underway to improve our delivery of training, education, outreach and research by creating a Civil Rights Training Center. A proposal has been drafted for the project and we will consider establishing a relationship with a law school to provide a clinical component and with a research university to provide a research and data compilation assistance.

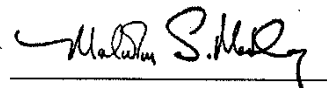
We anticipate that the top to bottom review of MCAD regulations and internal policies that were commenced in 2009, and which is now about 50% complete, will be completed by early 2011.

There are many good things about the work we are doing and the general direction in which this agency is headed. Yet, there is much more that we could, and should, be doing. Indeed, we are grateful for the many wonderful suggestions, advice, and constructive criticism that we have received from so many people. We have questioned some of the input, as must be expected, but have appreciated them all. Each and every suggestion has been incorporated into our strategy deliberations. Some suggestions have already been implemented. Some are yet to be incorporated into our plans. Some, unfortunately, do not meet the current organizational needs of the agency or are impractical for the agency at this time. However, we welcome your continued expressions of interest in our mission and we have created an ombudsperson just for that purpose.


Finally, we must express how grateful we are for the opportunity to have an impact on civil rights in the Commonwealth and in improving the climate of respect and equality among its citizens.

It is our pleasure to submit this annual report. There is much work left to do and we look forward to the days ahead.

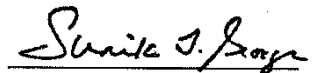
Respectfully submitted,



Malcolm S. Medley
Chairman



Martin S. Ebel
Commissioner



Sunila Thomas-George
Commissioner

Mission of the Massachusetts Commission Against Discrimination

The Commission's mission is to eliminate unlawful discrimination, as required by statute, and to protect and advance the civil rights of the people of the Commonwealth through law enforcement, education, outreach, and training.

The MCAD's duties are:

To investigate complaints alleging that anyone in the Commonwealth is or has been deprived of his/her civil rights, or otherwise discriminated against in the areas of housing, employment, public accommodations, admission into an educational institution, on the basis of criminal record, maternity status of a female parent, and issues involving the Commonwealth's lead paint statute;

To adjudicate complaints after a finding of probable cause that anyone in the Commonwealth is or has been deprived of his/her civil rights or otherwise has been a victim of discrimination;

To assist parties in reaching resolution of any dispute where it is alleged that anyone in the Commonwealth is or has been deprived of his/her civil rights, or otherwise has been a victim of discrimination, if such resolution meets the public interest;

To study and collect information relating to discrimination within the Commonwealth;

To analyze laws and policies of the Commonwealth and its subdivisions with respect to discrimination;

To serve as a conduit and clearinghouse for information regarding discrimination within the Commonwealth;

To submit reports, findings, and recommendations to the Governor and the Legislature of the Commonwealth;

To train, educate and otherwise conduct outreach to individuals, businesses, organizations, communities, governmental entities, and others regarding civil rights laws and matters of civil right law enforcement, and to discourage discrimination.

ORGANIZATION OVERVIEW

The Massachusetts Commission Against Discrimination is an independent agency of the Commonwealth of Massachusetts and is comprised of three Commissioners, appointed by the Governor of Massachusetts. The Governor also designates one such Commissioner to serve as Chairman of the Commission.

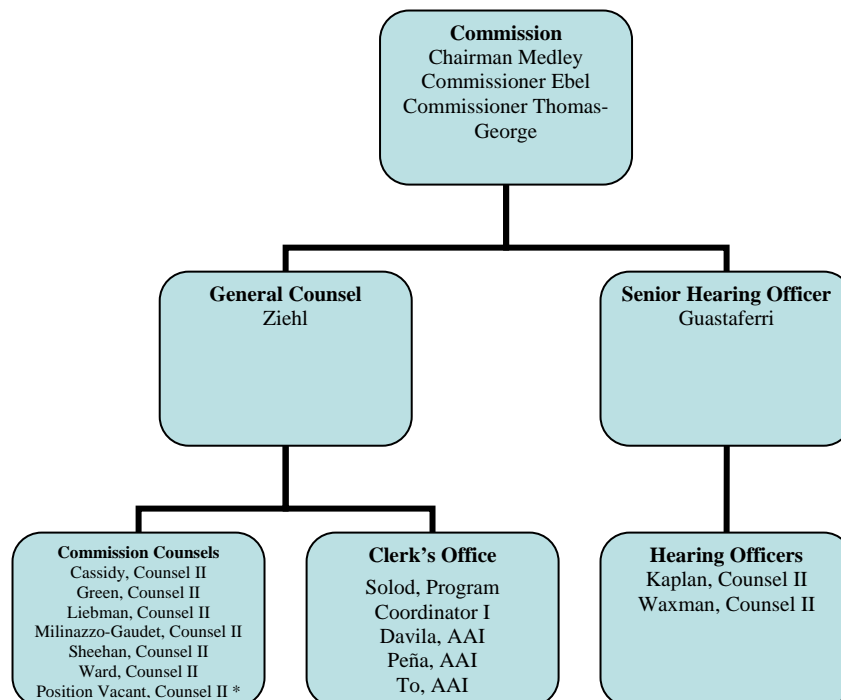
Commissioners serve appointed overlapping terms of three years. The Commissioners perform duties related to the administration of the agency and the substantive determination of matters before the Commission. The Commission also holds monthly public Commissioners Meetings. The Commission, either sitting as a full Commission, as a single Commissioner, or through a

designee, convenes to conduct public hearings, conferences, and conciliations.

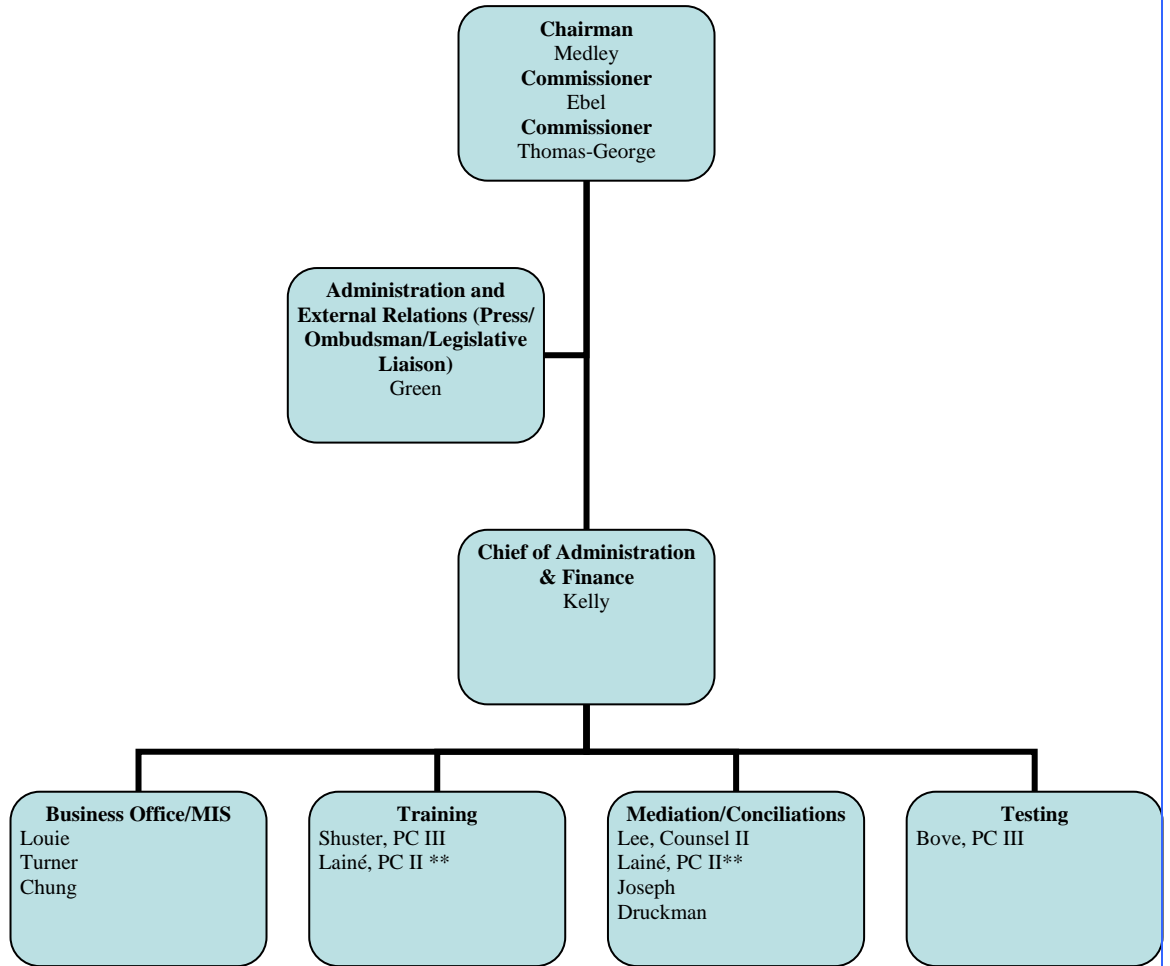
The Commission's work is supported by managers, directors, attorneys, hearing officers, mediators, conciliators, investigators, IT professionals, and administrative staff. The agency is divided into three departments (Legal, Administration and Finance, and Enforcement) and has a unit of designated Hearing Officers who operate independently of the departments.

The Governor also appoints an Advisory Board to review and report on policies and matters that impact the work of the Commission.

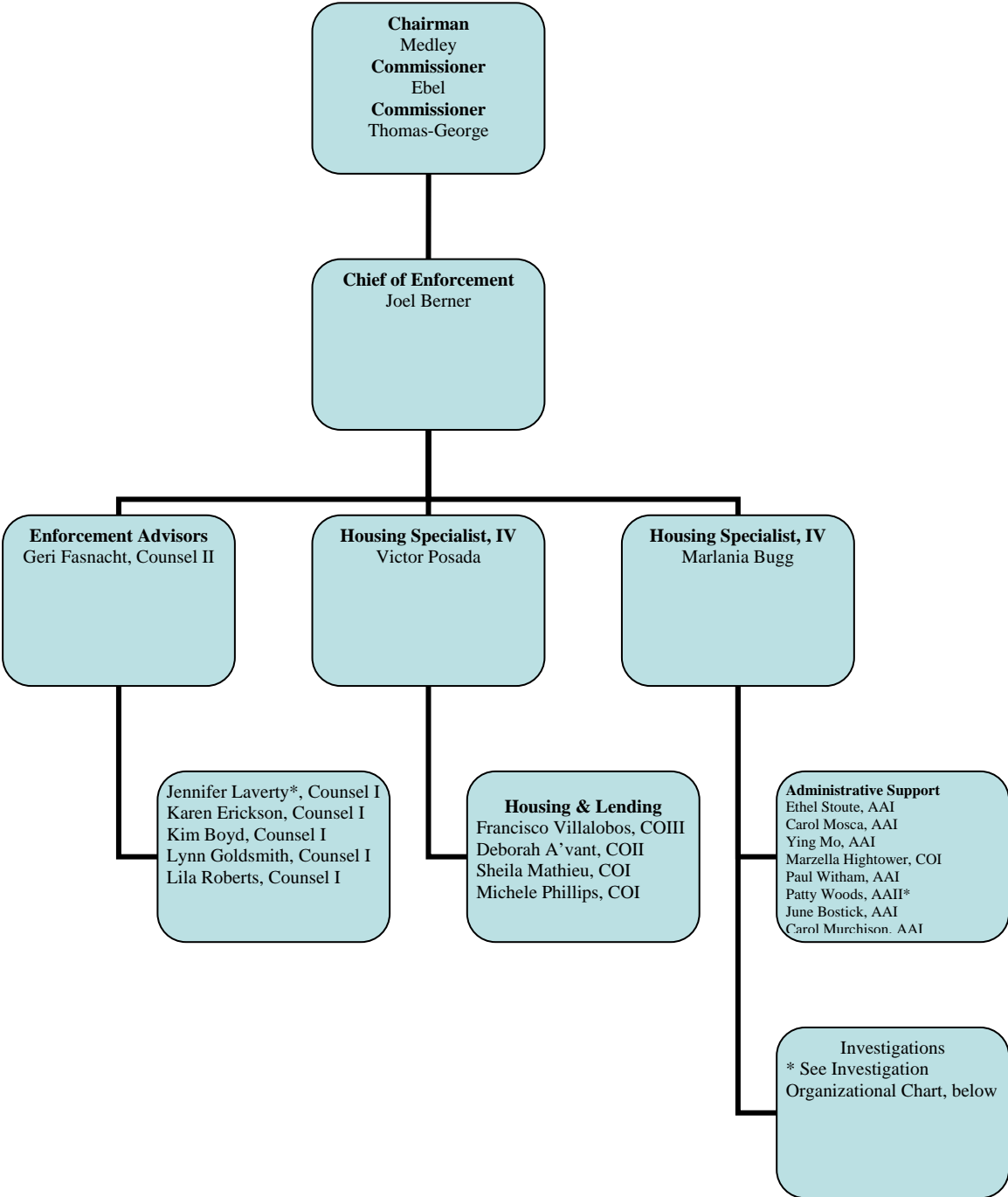
THE LEGAL DEPARTMENT

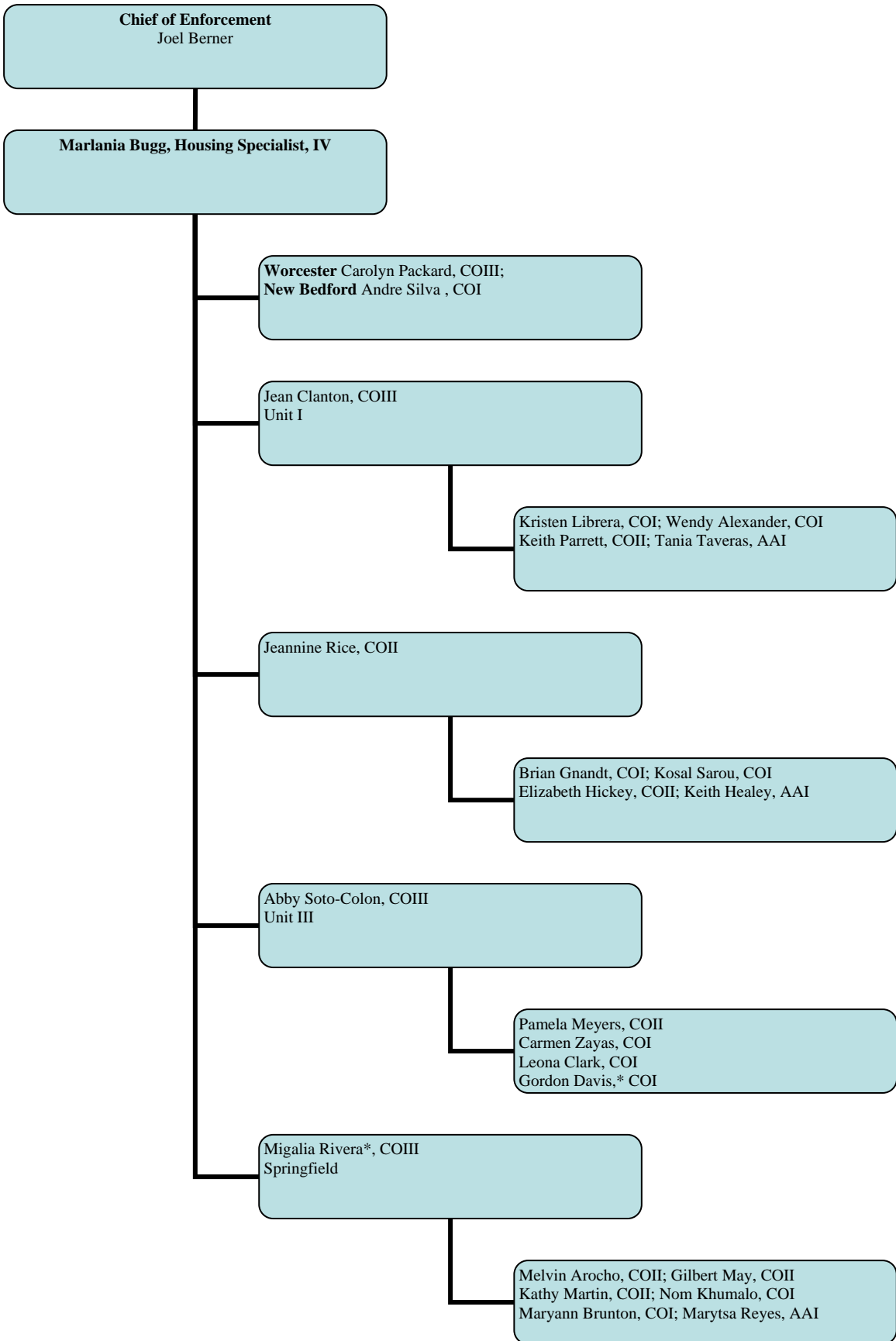


THE ADMINISTRATION AND FINANCE DEPARTMENT



THE ENFORCEMENT DEPARTMENT





THE ADVISORY BOARD

The Advisory Board is comprised of members appointed by the Governor. By statute, the Advisory Board's members represent a cross section of the community, including community groups, civil rights organizations, business leaders, and members of the academic community. Among its duties, the Board is tasked with advising the commission and the Governor on matters of policy affecting the commission, and reviewing the implementation of the commission's programs and policies.

The current MCAD Advisory Board members are:

Thomas Gallitano
(Chair)

Tani Sapirstein
(Vice-Chair)

Albert M. Toney III
(Vice-Chair)

Members

Margarita E. Alago
Bonnie Brodner
Nadine Cohen
Remona L. Davis
Jacqueline P. Fields
Gail Goolkasian
Jeffrey L. Hirsch
Kimberly Y. Jones
Anne L. Josephson
Christopher Kauders
Steven S. Locke

Jonathan Mannina
Fran Manocchio
Roger Michel
Kara Fitch Mitchell
William Moran
Habib Rahman
Lucinda Rivera
Thomas L. Saltonstall
Nancy Shilepsky
Rabbi Jeffrey A. Summit

OUTREACH AND EDUCATION

MCAD is proud of its legacy as the second oldest civil rights law enforcement agency in the nation. That legacy also includes the MCAD's consistent efforts to fulfill the statutorily mandated responsibilities to enforce the laws of the Commonwealth and provide outreach and education to its citizens. The MCAD has refocused its efforts to provide education and outreach, and to establish working relationships with other organizations in the mission for fairness and equality.

Internship Program

We have also obtained extremely competent assistance by revamping our internship program which now boasts one of the most organized, productive, and sought after public interest internship for students entering their second year of law school. The program also provides year round part-time internships for undergraduate college students, and continues to train and use students to conduct education and outreach through our S.E.E.D. program.

Broadcast and Press

The year 2009 featured important steps to raise awareness of the MCAD with the general public by using broadcast media. MCAD produced a 30-second video public service announcement (PSA) which was distributed for broadcast to local ABC, CBS,

and NBC affiliates, focusing on areas where agency offices are located.

30-second audio PSAs were produced in English, Spanish, Portuguese, Haitian Creole, Cantonese, and Mandarin Chinese. These audio PSAs have been distributed and are being broadcast on radio stations in Boston and southeastern and central Massachusetts.

Website

The MCAD website continues to be a vital part of our outreach efforts and an important reference tool for individuals and legal professionals. It is frequently updated with MCAD decisions, events, press releases, interviews, articles, along with schedules of hearings and public meetings. Our role as the Commonwealth's civil rights law enforcement agency is also underscored with a weekly feature entitled, "This Week in Civil Rights History."

Customer Service

Our delivery of excellent customer service was recognized in an article published in the Spring 2009 issue of *CommonWealth* magazine. The article tested the responsiveness of over 100 state agencies and political officials by utilizing the email contact links on their websites. MCAD was included among only 7 agencies listed as "bright spots," for responding to questions quickly and comprehensively.

INTERNATIONAL HUMAN RIGHTS DAY PROCLAMATION BY THE GOVERNOR

The Commission is honored that Governor Deval Patrick joined us in recognizing International Human Rights Day by issuing the following proclamation.

Commonwealth of Massachusetts



A Proclamation

His Excellency Governor Deval L. Patrick

Whereas The General Assembly of the United Nations approved the Universal Declaration of Human Rights on December 10, 1948, declaring that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world"; and

Whereas The United States played a pivotal role in the creation of the Universal Declaration; and

Whereas The basic human rights addressed in the Universal Declaration include economic, social, and cultural rights, as well as civil and political rights, all considered to be equally important in fostering human dignity and freedom; and

Whereas The Universal Declaration calls for all people and governments at all levels to promote and respect the rights that it recognizes, and provides a standard of achievement for governments throughout the world; and

Whereas Each year on December 10, the international community commemorates this event and re-commits itself to the broader achievement of human rights and lowering barriers to full public participation; and

Whereas The Commonwealth of Massachusetts and the Massachusetts Commission Against Discrimination are proud of their commitment to guarantee civil and human rights for all its residents,

Now, Therefore, I, Deval L. Patrick, Governor of the Commonwealth of Massachusetts, do hereby proclaim December 10th, 2009, to be

HUMAN RIGHTS DAY

And urge all the citizens of the Commonwealth to take cognizance of this event and participate fittingly in its observance.

Given at the Executive Chamber in Boston, this tenth day of December, in the year two thousand and nine, and of the Independence of the United States of America, the two hundred and thirty-third.

By His Excellency


DEVAL I. PATRICK
GOVERNOR OF THE COMMONWEALTH


WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH



God Save the Commonwealth of Massachusetts

MCAD RECOGNIZES INTERNATIONAL HUMAN RIGHTS DAY

(Bay State Banner op-ed by Chairman Malcolm Medley)

On December 10, 2009, the world will celebrate International Human Rights Day. Sixty-one years ago, the nations of the world came together in San Francisco to proclaim that every individual, no matter where he or she lives, has and is entitled to fundamental rights. The Universal Declaration of Human Rights includes, among others, the right to be free from racial discrimination, the right to think and express oneself in a chosen manner, and the right to fair working conditions. The United States helped to draft the declaration, led the movement to gain passage, and served as host to its ratification. Yet, today, many people in this country appear to accept human rights campaigns as merely writing letters to faraway lands, rather than working to protect the fundamental rights of their neighbors, families, friends, colleagues and others within driving, even walking distance, of their own homes.

Admirably, the truth is that many of us have been working to promote and protect human rights for years, in our communities and across this nation. These efforts reflect broad public support for human rights. In fact, recent polling shows that over eighty percent of Americans agree that “every person has basic rights regardless of whether their government recognizes those rights or not.”

For over sixty-five years, the Massachusetts Commission Against Discrimination (MCAD) has recognized that the dignity of people, and the protection of civil rights, fall squarely within the scope of protecting human rights at home. Men and women of

all races, age, religion, national origins, and abilities have reached out to us to resolve their claims of discrimination. MCAD has partnered with human rights commissions across the Commonwealth to hear and resolve issues of inequality and discrimination. MCAD outreach efforts have included training human rights representatives to investigate and resolve conflict. MCAD has dispatched civil rights workers to communities across the Commonwealth to educate people about their civil rights, and we have opened offices in the four corners of this state. Just last year, the MCAD resolved over four thousand claims of discrimination. Yet these efforts do not stand alone; in fact they are part of a growing national movement to bring human rights home.

A number of state and local governments use human rights standards to promote equality, dignity, fairness and opportunity in their communities. Chicago has adopted a resolution advancing policies that comply with the international treaty that protects children’s rights. Seattle is working to promote economic and social rights, and San Francisco has officially incorporated the language of treaties written to end sexual and racial discrimination. Just last month, the Eugene, Oregon city council unanimously approved an ordinance affirming the human rights of people in mental health treatment, offering them more choice in their treatment and care. Within our own Commonwealth we have led the way to create marriage equality, and continue to recognize unreasonable employment limitations because of a criminal record as a civil rights issue.

These local initiatives reflect the belief that protecting human rights begins at home. In our community, we can use a human rights framework to address immigration reform, as the Governor has with the

Commonwealth's New Americans Agenda Initiative, and to end the cycle of crime and poverty that has plagued our cities for far too long.

Eleanor Roosevelt, one of the founders of the human rights movement, understood that human rights not only begin at home, but are fundamental to how we function as a community and a country. She said that these rights occupy "the world of the individual person: the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination." When we protect the rights

of people in Massachusetts we are carrying on the mission and the message behind America's participation in the drafting of the Universal Declaration.

International Human Rights Day is an opportunity to re-dedicate ourselves to further the goal of equality and fairness for all people in Massachusetts, The United States, and the entire world.

We ask you take a moment on December 10th to consider the importance of human rights to your country, your city, and your neighborhood, and to join in the celebration of International Human Rights Day.

LAKEVILLE UNITY RALLY SPEECH BY CHAIRMAN MEDLEY

(Presented at Unity Rally held by Lakeville residents in response to a racial incident in their community)

I am pleased that I can be here today to represent the Administration, and to share the hope and faith that we have in the people of this Commonwealth and in communities like Lakeville; the hope and faith that we will understand and display a spirit of caring and respect for each other, regardless of our skin color, our gender, where we are from, our religion, or any of the other characteristics which are of such value and meaning to us individually, but which differentiates us in such remarkably insignificant ways. My message today is not one of doubt or fear about the future of this town, but one of confidence. Confidence that that the good within us, individually and collectively, will outweigh and out number the few who continue to spread the disease of hate and ignorance in our midst.

We must recognize that we are far enough into our social development as a country to bypass the notion that this wonderful nation is owned by members of any particular group and that, by virtue of their ownership, they get the option of making the decision to “accept” others. Or that, by virtue of holding the only acceptable values, beliefs and customs, they get to be benevolent in their decision to “tolerate” others. Indeed acceptance and tolerance, when used to describe the relationship between people of good heart and people who display the type of behavior that do no harm in our society, could easily be replaced by one word – “Respect.” So, let me make this clear. In this Commonwealth, and in this country, we all belong and we must respect each other. Hatred and bigotry is unacceptable and will not be tolerated.

Yet some would question whether a gathering such as this is still needed today. Indeed, I am frequently asked whether this nation has achieved post-racial status. The question is usually framed around whether there is a need for an agency like the Massachusetts Commission Against Discrimination. My consistent answer to that question is “yes”; and the incident which brings us here today clearly supports that answer. Yet I would be remiss if I failed to acknowledge the great strides we have made in this nation towards equality and fairness. We see it everyday; and we must praise the achievements and sing the songs of accomplishments as loudly and as boldly as we must make the call to action and raise

the flag of warning when we experience the symptom of hatred and bigotry.

Certainly, we are fortunate to live in this country; we are fortunate to live in this state. We live in a system of government and under socially acceptable principles that encourage differences of opinion and the right to voice those differences. Our democracy dictates that we will frequently have differences of opinion and conflicting conclusions that are sometimes voiced; sometimes resolved; and sometimes left unresolved. Frequently, these differences of opinion are rooted in our values, our politics, even our religion. Sometimes, they are based upon our personal experiences. Yes, you may have a right to express that opinion. But we all must be aware that expressions of hatred, disrespect and exclusion are not acceptable. We, the good people of this Commonwealth, will oppose and fight hatred and bigotry wherever we find it. We, the Commission Against Discrimination will investigate and punish those who discriminate in the areas we enforce. The criminal law enforcement arm of our government will investigate incidents involving criminal behavior; and the judicial system will not look the other way.

And know, my friends, that you too have a role. As you have done here this evening, you must always stand against hatred and bigotry. Stand and let others know that hatred and bigotry is unacceptable in the jokes and comments that we make. See the human face and the hurt behind each offensive joke or comment. Stand and let others know that hatred and bigotry is unacceptable in the decisions we make. Feel the pain of those who try as hard as you do but who are excluded because of their skin color, their religion or other features of their existence. Stand and let others know that you stand with friends who may not look like you, but who are welcomed in your homes and into your lives.

Finally, let me charge you with this comment. Your work is needed now. Your diligence today must be greater than ever. If hatred and prejudice can be directed to the President of the United States, the leader of this country, then none of us are insulated from such prejudice. We have to stand together.

Thank you.

MCAD IS BACK IN NEW BEDFORD

By **DON CUDDY**

July 28, 2009 12:00 AM

(Reprinted from SouthCoast Today.com)

NEW BEDFORD — The Massachusetts Commission Against Discrimination opened an office in the heart of downtown New Bedford on Wednesday, with a formal ceremony in its new space on the fifth floor of the UMass Dartmouth building at 800 Purchase St.

"This is an important day for us," commission Chairman Malcolm Medley said. "Opening this office shows a commitment from the administration and the Legislature to ensure that civil rights issues are addressed throughout the Commonwealth and are on the front burner even when they are not on the front page."

Based in Boston, MCAD was founded in Massachusetts 65 years ago and maintains satellite offices in Springfield and Worcester.

"Massachusetts was the second state in the country, after New York, to form an agency to fight discrimination," Medley said.

The morning ceremony was attended by city and state officials or their representatives.

Despite the passage of time, the need for such a commission has in no way diminished, said Sen. Mark C.W. Montigny, D-New Bedford.

"I'm not going to venture into the debate between law enforcement, the president and the scholar ... but the fact that discrimination exists every day in this society at the level it does is what deserves and needs debate. I'm troubled by questions such as 'Is this office necessary?'" he said.

An office in New Bedford was closed "years ago," according to the commission, despite a state law requiring an MCAD presence here.

"Getting this space from UMass was critical because the firewalls required for data protection would have made the cost of renting private space prohibitive," Springfield commissioner Martin Ebel said.

The new office, with panoramic views of the waterfront, is also equipped with high-definition video conferencing capability.

No one was happier about MCAD's return than compliance officer Andre Silva, a city resident who has been commuting to the Boston office. He will staff the local office along with Deborah Avante of Fall River, a specialist in real estate and predatory lending practices.

"We investigate all types of discrimination whether its based on age, race, color, disability, in the work place or housing. Anybody living on the SouthCoast who wants to file a complaint or ask questions can come here," Silva said.

The office will be open from 8.45 a.m. until 5 p.m. on weekdays. Call (508) 990-2390.

General Counsel's Report

Legal Unit Overview

The MCAD's Legal Unit is responsible for enforcing the state's anti-discrimination laws, including the Fair Employment, Fair Education and Fair Housing Practices Acts, as well as the Maternity Leave and Public Accommodations laws, on behalf of the Commission. The Legal Unit's responsibilities are consistent with the Legislative mandate under Chapter 151B, that the Commission eradicate discrimination in the Commonwealth. Whenever an Investigating Commissioner determines that a complaint filed by a *pro se* Complainant is supported by probable cause, it is the General Counsel's responsibility to assign a Commission Counsel to participate in the statutorily-mandated conciliation process under G.L. c. 151B, § 5, and to prepare and prosecute the case in the public interest. The Legal Unit also defends all final decisions of the Commission when a party seeks judicial review in the Superior Court pursuant to G.L. c. 30A, § 14(7), and, thereafter, in the State's appellate courts, if necessary. The Legal Unit's attorneys also defend challenges to the Commission's jurisdiction in both State and Federal court, file enforcement actions against Respondents who refuse to comply with the Commission's final orders, and submits briefs of Amicus Curiae on important issues arising under the anti-discrimination laws that are raised in private litigation after a

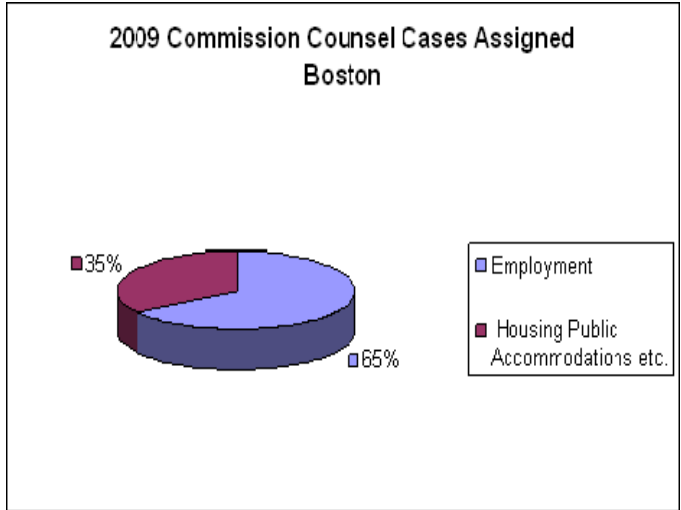
Complaint has been removed from the MCAD and filed in court pursuant to G.L. c. 151B, § 9.

The Legal Unit is comprised of the General Counsel Office and the Clerks Office. The Legal Unit's Commission Counsels are Beverly Ward, Simone Liebman, Wendy Cassidy, William Green, Lynn Milinazzo-Gaudet and Caitlin Sheehan. The Clerks Office consists of Myrna Solod, Clerk of the Commission; Yudelka Pena, Hearings Clerk; Vanessa Davila, Conciliations Clerk; Nancy To, Appeals Clerk; Keith Parrett and Tania Taveras, Enforcement Clerks. Catherine Ziehl is the Commission's General Counsel.

The Report for the Hearings Unit will also be included under the Report of the General Counsel's Office for purposes of this Annual Report only. The Hearings Unit is a separate and distinct entity for operational purposes at the MCAD. The Commission's Hearing Officers are Eugenia Guastaferrri, Betty Waxman and Judy Kaplan.

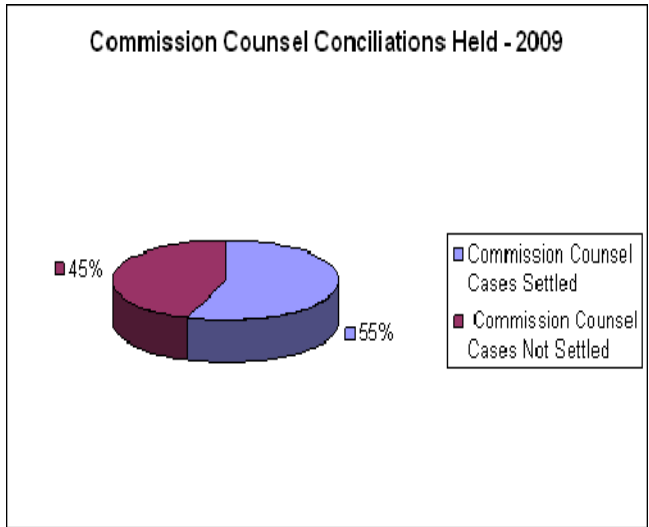
Assignment of *Pro se* Cases to Commission Counsel

In 2009, the Legal Unit was assigned over 170 post-probable cause cases filed at the Commission by *pro se* Complainants. The majority (112) were cases alleging a violation of the Fair Employment Practices Act.



Commission Counsel Cases Assigned 2009

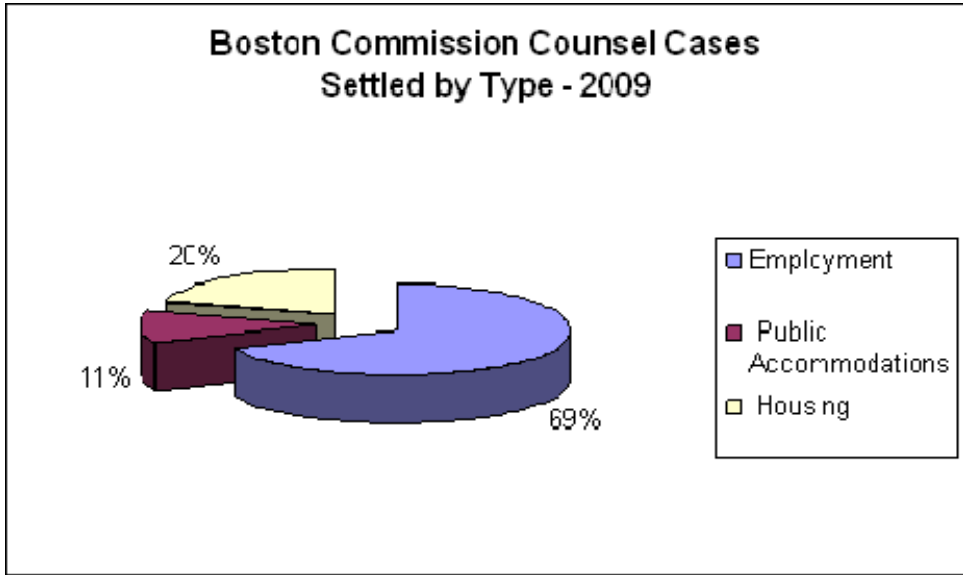
Conciliations: Commission Counsel participated in eight-three conciliations in 2009, involving *pro se* Complainants. Of these cases, forty-six settled.



Commission Counsel Conciliations held

Settlements: Commission Counsel settled an additional thirty-seven cases that had previously failed conciliation and were either certified to public hearing or in pre-certification discovery, for a total of seventy-nine settlements on behalf of *pro se* Complainants in 2009.

Boston Commission Counsel Cases Settled by Type - 2009



Commission Counsel Cases Settled by Type

Damage Awards and Equitable Relief:

Over \$1,500,000 was obtained in monetary damages for *pro se* Complainants for lost wages, emotional distress or other compensable injury. In addition, over one-third of the seventy-nine settlements contained equitable relief, defined for purpose of this report as “make-whole” provisions (such as reinstatement of Complainant to a position or awarding a promotion) and settlement terms directed at preventing future violations of the anti-discrimination laws (e.g. mandatory training, policy development, monitoring).¹ When mandatory training is a term of a settlement agreement, the Commission’s Training Unit, or a trainer certified through the MCAD “Train the Trainer” program, conducts the training.

Noteworthy Settlements of 2009:

Some noteworthy cases settled on behalf of *pro se* Complainants and the Commission, are set forth below.

Employment Discrimination: A former employee filed a retaliation claim against a **weight loss business** after she was discharged for complaining about her supervisor’s use of ethnic and disability-related slurs. The Complaint was settled for \$35,000, and the Company was required to conduct anti-discrimination training for management staff in each of its Massachusetts stores.

¹ Commission Counsel enforce the anti-discrimination laws and act in the public interest in all cases assigned to them, and, under c. 151B, § 5, seek monetary damages for *pro se* Complainants as well as equitable relief directed at preventing future violations of the anti-discrimination laws.

Public Accommodation Discrimination: A blind passenger filed a discrimination complaint under the Public Accommodations Act against a **transportation service provider**, a contractor with the Massachusetts Bay Transportation Authority’s **THE RIDE**, alleging that she was sexually harassed while she took THE RIDE from her home to church. The settlement required the contractor to provide anti-discrimination training to all THE RIDE drivers -- approximately two hundred and thirty-one employees, and MCAD review of its training program and related policies.

Housing Discrimination: A mother with young children filed a housing discrimination complaint claiming that a landlord refused to rent an apartment to her on the basis of her **familial status** and the possible existence in the apartment of **lead paint**, in violation of Chapters 151B § 4 (11) and 111, § 199A. Under the Lead Paint law, a landlord must delead an apartment when a child under the age of six will reside there. The case settled for \$6,500 in monetary damages to the complainant and affirmative relief requiring that the property be inspected for the presence of lead paint and delead if lead paint is found. The landlord was also required to undergo Fair Housing training.

Reasonable Accommodation of Disability
A settlement was reached with a Cooperative’s Board of Directors following a disabled owner’s claim that she was denied equal access to the Co-ops facilities and limited in the areas she could go with her service animal. The settlement included a requirement that the property manager and Board of Directors adopt and disseminate a comprehensive reasonable accommodation policy to all residents and undergo Fair Housing training. The Complainant also received a monetary award.

Judicial Review of the Commission's Final Decisions

The Legal Unit successfully defended important final decisions of the Commission in Court, when judicial review was sought pursuant to G.L. c. 30A, § 14(7). In 2009, the Commission achieved the following significant legal victories.

Augis Corp. v. MCAD & another, 75 Mass. App. Ct. 398 (2009).

The Appeals Court affirmed the Full Commission's conclusion that a supervisor's single use of a "powerfully offensive" racist comment to an employee constituted racial harassment. The Court stated that the epithet "inflicts cruel injury by its very utterance," and affirmed the Commission's award of \$10,000 in emotional distress damages.

City of Boston v. MCAD & another, 74 Mass. App. Ct. 1120 (2009).

The Appeals Court reinstated the MCAD Hearing Officers' award of \$195,000 in emotional distress damages to a disabled Boston school teacher following the Superior Court's decision to reduce the award to \$50,000. The award was based on repeated instances of discrimination conduct or statements and failure of Boston School officials to engage in an interactive dialogue or reasonably accommodate the teacher's impairment. The Appeals Court stated that a judge is barred from "mak[ing] credibility evaluations or different choices about how the evidence adds up," and instead, must give due weight to the experience, technical competence, and specialized knowledge of the MCAD and the "discretionary authority conferred" on the agency by the Legislature. The Court stated further that in this case, the judge had overstepped her bounds when she

"substitute[d] her valuation of the harm for that of the [MCAD] hearing officer." (Rule 1:28 decision).

La Reine Boutique v. MCAD & Another, No. 08-P-0621.

The Appeals Court affirmed the Hearing Officer's finding that a bridal boutique engaged in racial discrimination in a place of public accommodation by subjecting an African American female customer to disparate treatment, harassment and denial of service based upon her race/color. The Court also affirmed the award of \$8,000 dollars in emotional distress damages. (Rule 1.28 decision issued March 16, 2009)

Trans-Lease Group, Inc. v. MCAD & Another, No. 07-P-1811.

The Appeals Court confirmed the Hearing Officer's decision that Trans-Lease had discriminated against a professional truck driver who wore a below-the-knee prosthesis when it refused to rehire him because of its perceived belief that the disability likely increased the risk of an accident or on-the-job injury. The Complainant had driven trucks for over 25 years without incident. Upon learning that Complainant had prosthesis, Trans-Lease told him he must obtain a DOT waiver to drive commercial trucks, and Complainant left his job with the understanding that he would be rehired once the waiver was obtained – a promise that was unfulfilled. The Hearing Officer awarded \$84,591 in back pay, a \$10,000 civil penalty and ordered annual EEO training. (Rule 1.28 decision issued January 16, 2009)

Univ. of Mass., Boston v. MCAD & another, 73 Mass. App. Ct. 1112 (2008).

The Appeals Court upheld the Commission's finding of liability and award of damages in a case filed by an UMass

campus police officer against the University for race discrimination. The Hearing officer concluded that there existed a pattern of lenient discipline for non-minority officers as compared to more severe and unwarranted discipline imposed on the

Complainant, an African-American officer, for similar conduct. The Appeals Court affirmed the Commission's award of \$170,834 in back pay, \$100,000 in emotional distress damages, and attorney's fees.

Other Court Actions

Attempts to Compel Arbitration

In 2009, the Commission faced several court challenges under state and federal arbitration laws seeking to enforce private pre-dispute arbitration agreements signed by employees as a condition of employment. The challenge purported to limit the Commission's jurisdiction under Section 5 of G.L. c. 151B to investigate, prosecute, adjudicate or enforce provisions of the Commonwealth's anti-discrimination law.

In **Mass. Bar Association v. Wellington**, 2009-P-2137, the Commission intervened in a court action and successfully prevented the Massachusetts Bar Association (MBA) from obtaining an order compelling its former director to arbitrate her discrimination claims and to withdraw her complaint from the MCAD. The MBA has appealed this decision. The Commission has sought to, or has intervened, in other similar court actions, including **Joule, Inc. et. al. v. Simmons** and **Lia Northampton, Inc. v. Mantha**.

ERISA Pre-emption

The Commission also faced a challenge to its jurisdiction to investigate or adjudicate a claim of disability discrimination arising from an insurance company's denial of certain short-term disability benefits on the basis of ERISA pre-emption. The MCAD Complainant had alleged that her short term disability plan treated hospitalizations for mental health differently and less generously than for physical health, allegedly in violation of state and federal law. The First Circuit reversed the District Court's decision to enjoin the Commission from proceeding on the Complaint in **Colonial Life & Acc. Insur. Company et al. v.**

Malcolm S. Medley, et al., 572 F.3d 22 (1st Cir. 2009), and concluded that under the Younger abstention doctrine, the federal court must decline jurisdiction and allow the Commission, consistent with principles of comity, to decide whether ERISA pre-emption was applicable, especially where the Commission proceedings were ongoing, facts were in dispute and an important state interest in prohibiting employment discrimination was implicated.²

Briefs of Amicus Curiae

The Commission filed several Briefs of Amicus Curiae on issues of importance to its enforcement efforts and interpretations of G.L. c. 151B and other anti-discrimination statutes. A noteworthy decision of significant importance was issued by the Supreme Judicial Court in **Everett v. The 357 Corp.**, 453 Mass. 585 (2009). This case cleared up any ambiguity that existed about the importance to the MCAD's administrative scheme of administrative filing, as set forth in Chapter 151B. The Court stated that all complaints of discrimination **must** be filed at the Commission and the failure of a victim of discrimination to do so deprives the superior court of jurisdiction to entertain a claim of discrimination. The Court stated further that administrative filing provides the MCAD with the opportunity to investigate a complaint and, in the 90 days before a complaint can be withdrawn and filed as a civil action, to "determine whether the public interest in enforcing antidiscrimination laws would be served by bringing a civil administrative proceeding under G.L. c. 151B, §5."

Additionally, in 2009, the Commission filed a brief in the First Circuit in **Martino v.**

² The Attorney General's Office defended the Commission in this Federal Court action.

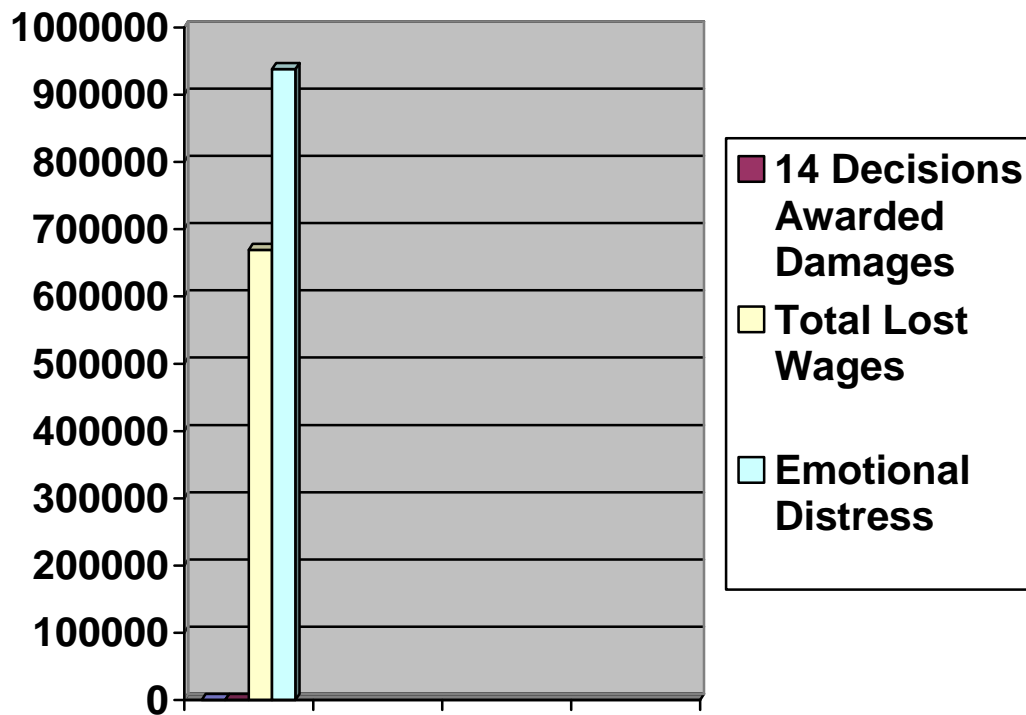
Forward Air, Inc., 09-1663, in order to alert the Federal Appeals Court of the Commission's interpretation of G. L. c. 151B, § 4(16), a provision which prohibits an employer from making inquiries about a job applicant's health history and/or disability status prior to making a conditional offer of employment. The Commission argued that this provision

creates a cause of action separate and distinct from a claim of discrimination based on disability. Forward Air, Inc., had obtained detailed workers' compensation information from a third-party information aggregator, Employ.com, Inc., about the complainant prior to any job offer. This decision is pending.

HEARINGS UNIT REPORT

In 2009, there were 103 pre-hearing conferences scheduled of which 80 were held. Of the 80 Pre-Hearing Conferences held 10 cases settled and 55 were scheduled for public hearing. Of the 55 scheduled cases, public hearings were held on 25 complaints and 20 cases were settled after the hearing was scheduled.

Twenty four decisions were issued by the Commission's Hearing Officers. The Full Commission entered final decisions in 7 cases following a respondent or complainant's appeal of the Hearing Officer's decision. Damages were awarded in 14 decisions. An aggregate total of \$669,197 was awarded for lost income and \$938,000 for emotional distress damages.



<u>Amount of 2009 Damage Awards</u>	<u>Lost Income</u>	<u>Emotional Distress</u>
Aggregate:	\$669,197	\$938,000
By case:		
Sawyer v. Wimpy's Restaurant	\$ 10,469	\$ 30,000
Baker v. Plymouth County Sheriff	\$ 39,196	\$ 75,000
Jackson v. Mass. DTA	-0-	\$ 50,000
Johnson v. Lojek, et al.	-0-	\$ 50,000
Low v. Costco Wholesale Corp.	N/A	\$ 8,000
Dietz v. Beverly Hospital	-0-	\$ 40,000
St. Marie v. ISO New England	\$ 4,493 + Pension losses \$330,693 Living expenses \$ 88,045	\$200,000
Brennan v. Hong	N/A (Civil penalty of \$ 10,000)	\$ 15,000
DiOrio v. Willowbend County Club	\$ 62,000 (Plus Front pay & commissions)	\$200,000
		\$ 50,000
Doble v. Engineered Materials Solutions	\$ 5,812	
DeLara v. DaSilva d/b/a Samba Cleaning	\$ 14,700	\$150,000
Cook v. Miskel	\$ 51,765	-0-
Sobocinski v. UPS	\$ 24,000	\$ 50,000
Model v. Owen O'Leary's Inc.	-0-	\$ 20,000

Two Year Damage Awards Summary

2008 Total Decisions issued:

22 Decisions Issued
13 for Complainant (59%)
9 for Respondent (41%)

Emotional distress damages:

Highest Award (2 awards)	\$200K (each)
1 award for	\$100K
10 awards	\$ 25K and \$75K range (with most falling in \$25K to \$40K range) (Includes 1 Housing Case in the amount of \$50k)

Back pay:	Highest Award	\$371K
	2 awards in range of	\$120K to \$123K
	10 awards	\$ 20K or less

2009 Total Decisions issued:

25 Decisions Issued
13 for Complainant (52%)
12 for Respondent (48%)

Emotional distress damages:

Highest Award (2 awards)	\$200K (each)
1 award for	\$150K
1 award for	\$ 75K
4 awards for	\$ 50K
5 remaining awards: 8K (Pub. Accm.), 15K (Housing), 20K, 30K, 40K	

Back pay/Lost Income:	Highest Award	\$336K
	Second highest	\$ 62K + commissions
	1 award for	\$ 52K
	1 award for	\$ 39K
	Remainder	\$ 15K or less

In addition to awarding lost wage and emotional distress damages, the Hearing Officers and/or Full Commission issued cease and desist orders in each case and equitable relief including, reinstatement orders, mandatory anti-discrimination

training and policy revisions and assessed civil penalties where appropriate. For example, in **Gracia v. Northeastern University**, the Hearing Officer ordered the University to immediately rescind its discriminatory policy of automatically

terminating employees who have been out on leave of absence for six months, the maximum amount of time allowed on account of a disability, and to adopt a new written medical leave policy which allows greater leave flexibility as a reasonable accommodation. Other significant decisions in 2009 include the following:

Kilroy v. Mass. Highway Dept. & McGilvray,
31 MDLR 83 (Full Commission)

The Full Commission upheld the decision of a hearing officer that a Mass Highway Dept. employee was subjected to a hostile work environment, denied an accommodation to his disability and constructively discharged when he was harassed and bullied into retirement by a supervisor, who placed harassing phone calls to him, engaged in humiliating physical conduct with him, berated him in public, and threatened other employees with retaliation if they socialized with Complainant. The Full Commission affirmed a substantial award of back pay to the Complainant in the amount of \$120,439, an award for emotional distress in the amount of \$30,000, and awarded attorneys fees of \$38,983 plus costs.

Millet v. Lutco, 31 MDLR 97 (Full Commission)

In the Commission's first post-hearing decision involving discrimination against a transgender individual, the Full Commission affirmed the decision of a hearing officer that Lutco was not liable for conduct and speech directed at the employee's transgender status. The Full Commission agreed that the evidence failed to demonstrate a sufficiently pervasive hostile environment based on abuse or disparate treatment of the Complainant, and agreed that Complainant's demotion, reduced work hours and subsequent lay-off were the result of deteriorating performance, vocal criticism of co-workers and the failure to timely complete two audits she had been

hired to supervise and not discriminatory retaliation.

MCAD and Another v. ISO New England, Inc., 31 MDLR 123

This decision addressed the damages portion of a bifurcated case -- including alleged pension losses and the cost of maintaining a separate residence -- presented through economic experts. ISO New England was previously found to have retaliated against Complainant by firing him for filing a charge of age discrimination. The Hearing Officer, relying on expert testimony, concluded that Complainant's earnings would have increased by 4.1% yearly had he not been terminated, that he would have retired at age sixty, that the present value of his pension losses should be discounted by a nominal discount rate of 5.7% annually based on the average rate of return on long-term treasury bills between 1920 and 2007, and that Complainant's life expectancy should be considered 78.3 years, for a total of \$330,693 for projected pension losses. Additionally, the Hearing Officer accepted Complainant's argument that he was forced to move to California to find comparable employment and to maintain a second residence, apart from his wife, and awarded \$88,045 for additional living expenses. The Hearing Officer refused to award front pay after concluding that Complainant voluntarily left a higher paying job for a lower paying job. She awarded \$4,493 for back pay, and \$200,000 in emotional distress damages.

MCAD & Another v. Willowbend Country Club Inc., 32 MDLR 34

An MCAD Hearing Officer found that the fifty-nine year old head of real estate sales for this exclusive Country Club on Cape Cod was the victim of age discrimination when she was laid-off -- along with twelve other employees, ten of whom were over fifty

years old -- even though she was Willowbends' most successful real estate broker. The Hearing Officer also found that Willowbend retaliated against her when it thereafter prevented her from using its facilities as a guest. The finding of discriminatory animus was based on evidence that around the time of the layoff of the older workers, management expressed the need to bring in "younger blood" and other ageist sentiments. The Hearing Officer awarded front pay in the amount of \$62,000.00 per year plus additional yearly compensation equivalent to one-half of Complainant's 2005 commissions from the public hearing date until Complainant reaches her 65th birthday and back pay in the amount of her annual salary (\$62,000) plus commissions at one-half of the 2005 rate. Complainant was also awarded \$200,000 in emotional distress damages.

MCAD & Another v. Engineered Materials Solutions, 31 MDLR 133

An MCAD Hearing Officer found that Engineered Materials Solution ("EMS") discriminated against a thirty-year employee who worked at its manufacturing plant when it eliminated his job and transferred him from an eight-hour per day position that allowed him to sit and stand during the day, thus accommodating his disability, to a job and a schedule that it knew he could not do because of severe arthritis in both knees. The employee was falsely told that no other job was available and forced to resign. Moreover, EMS refused to consider allowing him to return to work with an accommodation after his physician clarified his limitations. The Hearing Officer concluded that EMS was on notice of the employee's limitations due to severe arthritis sufficient to trigger its obligation to engage in the "interactive process" in order to determine whether it could reasonably accommodate his

handicap and its failure to engage in the that process and explore possible options caused the employee to be constructively discharged on account of his disability. The hearing office awarded the employee damages for emotional distress in the amount of \$50,000.00 and back pay for a short period of time until he had knee replacement surgery, at which time he learned he had a heart condition and was unable to work.

MCAD & Another v. Lojek Corporation, et al, 31 MDLR 74

An MCAD Hearing Officer found that Complainant, who is African-American, was subjected to a racially hostile work environment over several months while employed as a laborer for contractor, Lojek Corporation. A carpenter on the work site made racially offensive comments, referring to Complainant as a "coon" and "boy," and stating that he and other workers would have to "nigger-rig" a bracket. When Complainant complained about this conduct, Lojek moved him to another site. Following an argument with a co-worker, he was instructed to leave the new work site and contact the owner, who then refused to accept his call. The Hearing Officer concluded that the Lojek was liable for a racially hostile work environment, that the decision to transfer him to a different worksite was partially motivated by the need for more laborers at the new site and, in fact, the alleged harasser was transferred there one week later. The Hearing Officer found that the Complainant was also subjected to retaliatory discharge when the owner refused to take his call, thereby effectively terminating his employment. Complainant was awarded \$50,000.00 in damages for emotional distress and Respondent was ordered to undergo training of its workforce. The individually named harasser and supervisors were also found individually liable pursuant to G.L. c.

151B § 4(4A) for interfering with Complainant's right to work in an environment free of racial harassment.

MCAD & Another v. Samba Cleaning and DaSilva

An MCAD Hearing Officer found that Complainant was the victim of both quid pro quo and hostile work environment sexual harassment after she was sexually assaulted by the owner of the cleaning company for which she worked and ultimately terminated from her

employment. The Hearing Officer credited the employee's allegations of sexual assault, repeated sexual touching and comments, requests for sexual favors and otherwise inappropriate sexual behavior by her supervisor, the owner of the cleaning company, and concluded that she was terminated for her refusal to submit to the requests for sexual favors, and not for insubordinate behavior or poor performance. The Complainant was awarded \$14,700 in back pay and \$150,000 in damages for emotional distress.

ADMINISTRATION AND FINANCE REPORT

TESTING PROGRAM

In 1992, the MCAD became the first public agency in the nation to use testing in employment cases. The purpose of a testing program is to identify barriers that contribute to discrimination in employment, housing, credit, mortgages, education, and in public accommodations or establishments. The program also seeks to explore strategies to improve the litigation of discrimination claims, and enhance public awareness of discrimination. The Testing Program is designed to test, gather data, and make recommendations to initiate claims against persons in Massachusetts that engage in discriminatory practices.



EEOC INITIATIVE

Paired Testing, as it is called, is a technique whereby two or more similarly situated job seekers matched in credentials – qualifications, income, appearance – except for an immutable characteristic such as race, sex, and age - apply for similar positions and the employers' responses are analyzed to determine whether the employer engaged in discriminatory treatment of members of the protected class. This process may assist victims of covert forms of discrimination as well as highlight pervasive unlawful employment practices.

The agency continues to conduct testing in the areas of housing and public accommodations. In 2008 the MCAD reintroduced a six-week testing project in which it tested approximately forty employers in the retail and restaurant industries for age discrimination. As a result of the testing, the MCAD issued two

complaints that were resolved with the employers agreeing to pay monetary compensation and implement effective anti-discrimination initiatives.

In 2009, the MCAD's testing project successfully evolved into a stand-alone MCAD testing program and began full fledged testing for discriminatory hiring and placement practices in three industries. The program used testers that were recruited at the end of 2008 and during 2009. This program involves gathering hiring data via the testers. Once the data is analyzed, the MCAD assesses whether the tests reveal discriminatory hiring or placement patterns and/or whether further testing is warranted. If discriminatory hiring patterns exist, the MCAD publicizes the results and prosecutes the responsible parties. In the last quarter of 2009 the MCAD began the process of initiating complaints based on testing evidence. Additionally the MCAD used testing to determine the accuracy of employment discrimination complaints alleged by individual complainants.

In addition to employment discrimination, testing was also used in public accommodation cases to verify discrimination complaints and to monitor compliance with existing settlements.

All together the MCAD initiated and/or performed targeted testing investigations of 40 employers, employment agencies, and public accommodation providers in 2009. Of these, significant evidence of discriminatory practices were found against 13 employers. Many of these cases have continued into 2010 including one case in which a Commission-Initiated Complaint has been issued, one case which has been referred to the Commissioners for issuance

of a complaint, two cases where testing evidence has been used to verify a existing complaint, and one case where testing evidence was used to verify compliance with an existing settlement.

A testing program of this type seeks to promote the goal of equal access to employment, housing, credit lenders, mortgages, education, and public accommodations or establishments, and permits a more responsive approach to systemic discrimination.

**MANDATED CONCILIATION
AND VOLUNTARY MEDIATION
PROGRAMS**

For the second year in a row, the Conciliations Division has managed significant increases in its caseload. In 2008, the Division scheduled 200 more cases than in the previous year; in 2009, the Division scheduled over 100 more than in 2008. Agency wide, the Division scheduled almost 700 cases. Of those cases, less than 160 advanced to the Hearings Unit.

The number of represented cases in the Early Stage voluntary mediation program remains about a consistent 15%. It is our

goal to encourage greater participation for quicker resolutions.

The MCAD distributes User Surveys after each conciliation and mediation session. Parties are requested to mail or hand their response to us anonymously. According to the 2009 User Survey, 87.4% rated the MCAD ADR programs as “Very Good” or “Excellent.” 12% rated the programs “Somewhat Good.” Less than 1% (.6%) rated the program “Poor” or “Fair”

SUMMARY OF ADR SETTLEMENT RATES BY MONTH

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Early Mediation Program												
Parties contacted	54	50	58	56	76		58	75	38	76	36	26
Mediations scheduled	11	16	16	15	11	17	10	8	12	29	10	20
Mediations held	9	14	15	15	11	15	8	8	11	27	10	18
Mediations settled	5	6	11	8	5	5	3	4	8	15	8	7
Settlement rate	56%	43%	73%	53%	45%	33%	38%	50%	73%	56%	80%	39%
Statistics for MCAD Mandated Conciliation												
Cases scheduled	54	46	52	60	39	46	62	56	70	84	44	50
Cases held	26	34	31	30	14	33	37	24	39	37	25	26
Cases settled	12	10	16	15	9	28	26	14	16	21	14	16
Settlement rate	46%	29%	52%	50%	64%	85%	70%	58%	41%	57%	56%	62%

TRAINING PROGRAM

During 2009, the MCAD training unit and other MCAD staff conducted 110 external employment and housing discrimination prevention training sessions and presentations. Our audiences included human resources professionals, supervisors and managers, line staff, landlords, and realtors. The sessions ranged from two hours to four days in length.

The MCAD outreach program, "Spreading Education to End Discrimination," or "S.E.E.D" has continued to expand this year. This calendar year, the S.E.E.D. program completed a record 113 presentations reaching 2,351 individuals in a variety of settings, including students at the City of Boston Public School's *Social Justice Academy*. Spring, summer, and fall interns participated in intensive training, established contacts at organizations that serve populations likely to experience discrimination, and scheduled and conducted free presentations on discrimination in employment, housing and public accommodations in English, Spanish, or Haitian Creole. This year for the first time, we expanded the program into western Massachusetts with outreach interns reporting to the Springfield office.

Since 1999, the Commission has held an annual employment Discrimination Prevention course, including two train-the-trainer modules and two human resources practitioner modules. This year, we added a third human resources practitioner course, a three-day module on "Responding to Accommodation Requests." The module includes a half-day practicum in which course participants interview individuals with disabilities with mock accommodation requests, meet with their fictitious supervisors, and propose accommodations. The

The training unit also designed, facilitated and/or managed numerous internal training sessions for the Commission's staff this year, including three- to four-day initial training for new employees and interns in January, June, and September. Other 2009 internal training programs included sessions on customer service, disposition writing, viewings and discussions of the film, "Traces of the Trade," and a brown bag lunch series held monthly during the spring and fall, and weekly during the summer.

The MCAD's internship program has continued to grow in size and scope, with a record number of undergraduate, law student, and attorney volunteers working at the Commission during 2009. Volunteers now work in six primary positions: prosecution, enforcement, intake, outreach, testing, and administration. It has become customary for the Boston office to host up to thirty summer interns, and fifteen to twenty-five during the fall and spring semesters.

By the end of 2009, the training unit monitored compliance of 277 cases in which the hearing decision or settlement included a training requirement. The MCAD has closed 243 of those cases which successfully complied with training provisions or, occasionally, because the employer no longer exists.

The training unit also designed and presented two training sessions to Human Rights Commissions (HRC) from across the Commonwealth. Those sessions were designed to assist the HRC in identifying, investigating and resolving discrimination issues that occur within their localities. The MCAD is pleased that most HRCs were represented at this training.

MCAD BUDGET AND FUNDING REPORT
Fiscal Year 2009
July 1, 2008 – June 30, 2009

Budgetary Direct Appropriation:

0940-0100	State Appropriation	\$2,563,857
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Retained Revenues:

0940-0101	HUD and EEOC Revenues for Closing Cases Private Sector and State Agency Trainings Fees from Public Record Requests & Copying	\$1,930,054*
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Training:

0940-0102	Train the Trainer	\$ 70,000
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	Total	\$4,563,911
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Revenues Collected:

HUD		\$ 674,375
EEOC		\$1,078,200
Training: Train the Trainer		\$ 73,195
State Agency Trainings		\$ 24,805
Private Sector Trainings		\$ 82,628
Attorney Fees		\$ 11,965
Fees from Public Record Requests & Copying		\$ 10,923

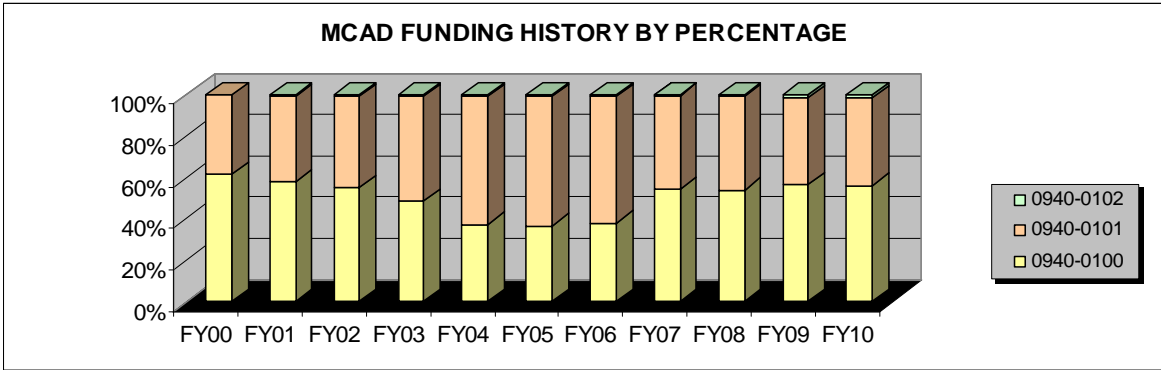
	Total	\$1,956,091
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MCAD Operating Budget:

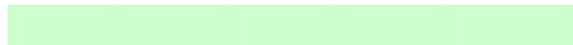
State Appropriation		\$2,563,857
Retained Revenues		\$1,956,091

	Total	\$4,519,948
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***This retained revenue account allows the MCAD to retain and spend revenues from HUD, EEOC, private sector and state agency trainings, as well as fees from public record requests and copying. The account is capped at \$1,930,054; allowing the MCAD to retain and spend only up to said amount. Any revenues received in excess of that amount are deposited in the general fund. The MCAD cannot spend more than the monies it receives.**



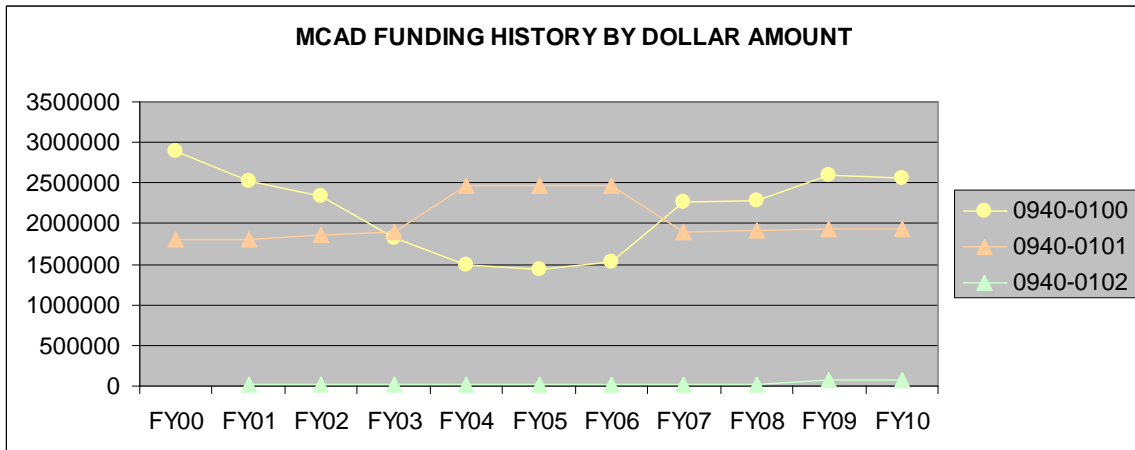
0940-0102 = Train The Trainer



0940-0101 = Retained Revenue



0940-0100 = State Appropriation



ENFORCEMENT REPORT

The Enforcement Department had a productive year processing and investigating cases despite significant personnel changes and staff reductions. Enforcement supervisor Carolyn Packard transferred to the Worcester office. We also said goodbye to three investigators; Wendy Alexander, Marcia Shannon and Kosal Sarou who all left to pursue other opportunities. In June of this year, MCAD Chief of Enforcement, Joel Berner, was called away to active military duty in Virginia.

Case Processing

The MCAD Enforcement Department processed over 3,300 new complaint filings during 2009. There were over 3,000 cases resolved, investigated, or adjudicated. Of the cases investigated, 490 (21%) resulted in a Probable Cause finding.

In 2009, the Commission's Enforcement Division was comprised of 19 investigators, 6 supervisors, 6 attorney advisors and 3 administrative assistants. Each investigator maintained an average caseload of over 240 cases. The Boston office processed and investigated an average of 175 new complaints each month. The Springfield office processed and investigated an average of 40 new cases per month. The Springfield office continues to be an important resource for the central and western Massachusetts communities. The Worcester office has now completed its first full year as a fully operational office for intake, information calls and investigations. An average of 22 new complaints were filed there each month. The New Bedford office, in its first six months of operation, took an average of 20 new complaints each month through our intake process.

Noteworthy Accomplishments

Our 2009 accomplishments include the opening of our New Bedford office in July. For the first time in over two decades, the MCAD has four operating offices. With the New Bedford office in place, residents of southeastern Massachusetts can receive MCAD services closer to home. Along with our Worcester office, which opened in December 2007, these offices have fulfilled our statutory mandate by providing more access to our resources and increasing our visibility statewide.

Innovations, including improved intake tools, a more organized approach to case management, and an expanded investigative review role by attorney advisors have resulted in more thorough investigations, more accurate cause determinations and greater efficiency. A review of case closures during 2009 shows that most closed cases remained in the Enforcement Department for significantly less than eighteen months. (See aged statistics to follow). This represents a significant improvement over past years.

In 2009 the MCAD also implemented a linguistic translator telephone line to assist complainants who are unable to communicate in English. The MCAD has always provided interpreter services for non-English speakers during the public hearing process. Additionally, MCAD bilingual staff members are available to assist with some of the more prevalent non-English languages. In response to concerns raised by members of the Massachusetts Employment Lawyers Association, the MCAD contracted to provide the linguistic interpreter services at intake for all other non-English speakers.

Enforcement Training

The MCAD staff continued to hone their investigative skills by participating in both internal and external trainings sessions. This year began with the highly effective in-house training sessions on “Advanced Customer Service” and “Disposition Writing” for all enforcement staff.

Enforcement Advisor Supervisor Geri Fasnacht and the MCAD Training Unit conducted intensive three- and four-day trainings for all new interns. In January, June and September of this year, our training unit organized a series of internal informational brown bag lunches for staff and interns. The enforcement staff continues to assist the training unit with Springfield investigator Maryanne Brunton and Boston housing supervisor Victor Posada conducting many of the external enforcement trainings.

The housing unit staff Sheila Mathieu and Michelle Phillips attended the Housing and Urban Development (HUD) Annual training in Washington, DC. In October, the enforcement advisors attended the Equal Employment Opportunity Commission (EEOC) Regional Conference held this year in Boston. The enforcement attorneys also attended the Massachusetts Continuing Legal Education (MCLE) Annual Employment and Labor Law Conference in December.

Interns

The enforcement advisors continue to interview, select, train, and supervise new interns throughout the year. This year’s internship program attracted over sixty highly skilled students from undergraduate, graduate, and law schools across the Commonwealth and the country including students from Boston College, Boston University, Brandeis University, Bunker Hill Community College, Harvard University, New England School of Law, Northeastern University, Suffolk University, the University of Massachusetts and Western New England College School of Law. All interns receive hands-on experience assisting investigators with administrative tasks, conducting case intake and investigations, and work directly with Enforcement advisor attorneys on motions, writing investigative dispositions, and conducting legal research.

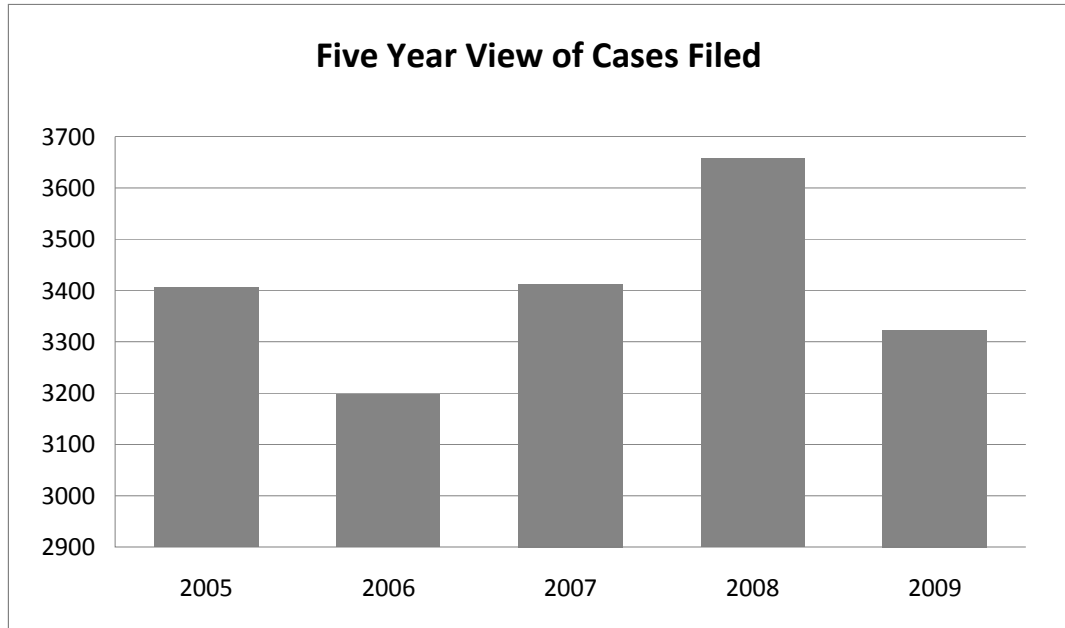
The George Napolitano Scholarship, awarded each year to a student who shows both academic achievement and a dedication to work in public service, was awarded this year to Anthony Wilson from Suffolk University Law School.

Award Winners

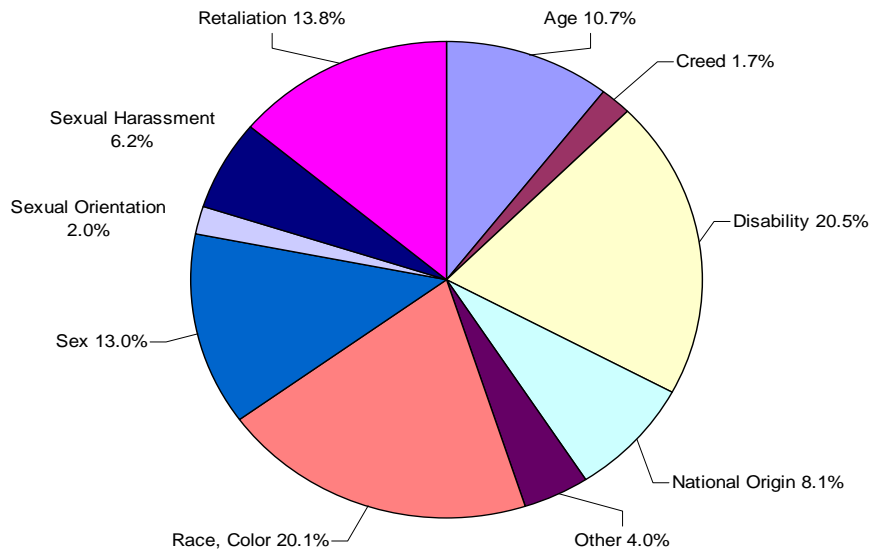
The Commonwealth’s 2009 Citation for Outstanding Performance Award were awarded to three members of Enforcement: June Bostick, Keith Healey, and Paul Witham.

2009 PERFORMANCE STATISTICS

Number of Case Filed in 2009: 3,323



Categories of Complaints Filed by Protected Class

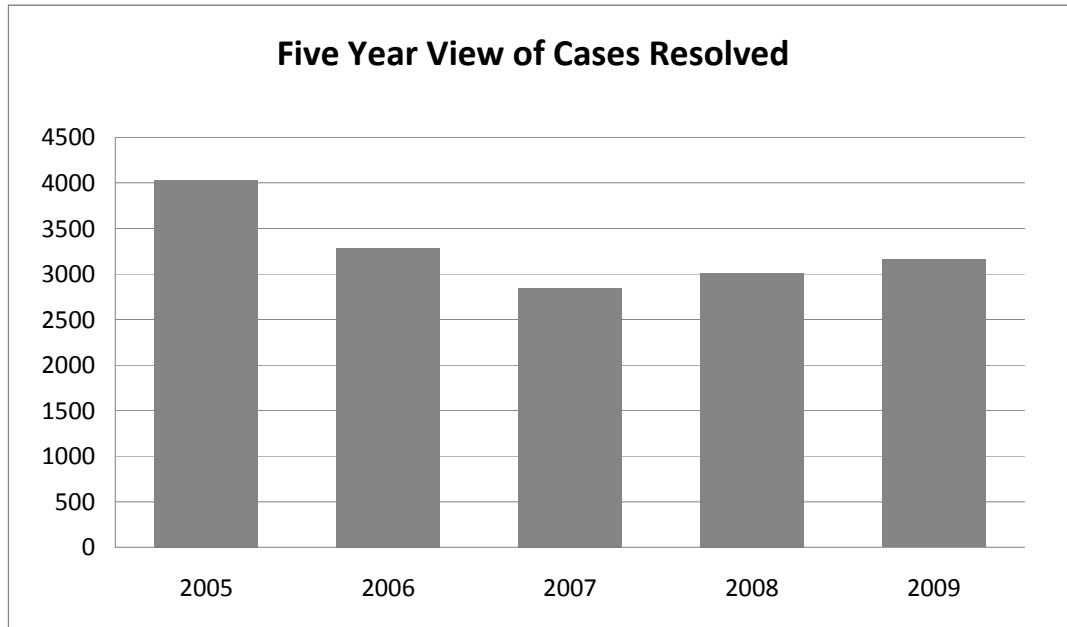


Race 20.1% (1,116)
Retaliation 13.8% (766)

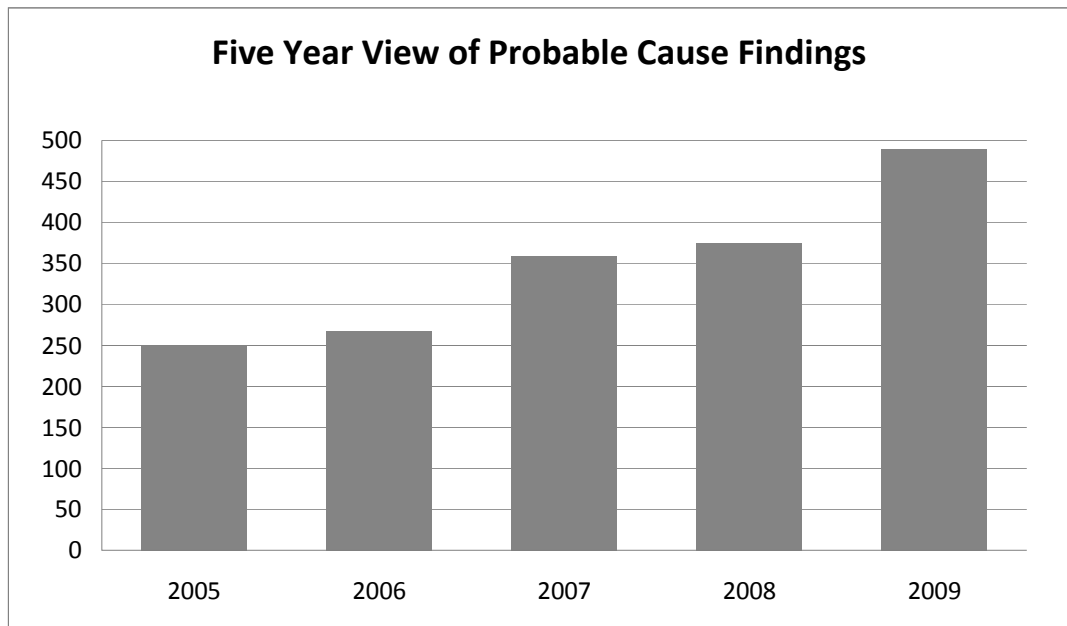
Disability 20.5% (1,140)
Age 10.7% (593)

Sex 13.0% (721)
National Origin 8.1% (451)

Number of Cases Resolved in 2009: 3,160



Number of Probable Cause Findings in 2009: 490



Average Age of Cases Closed in 2009

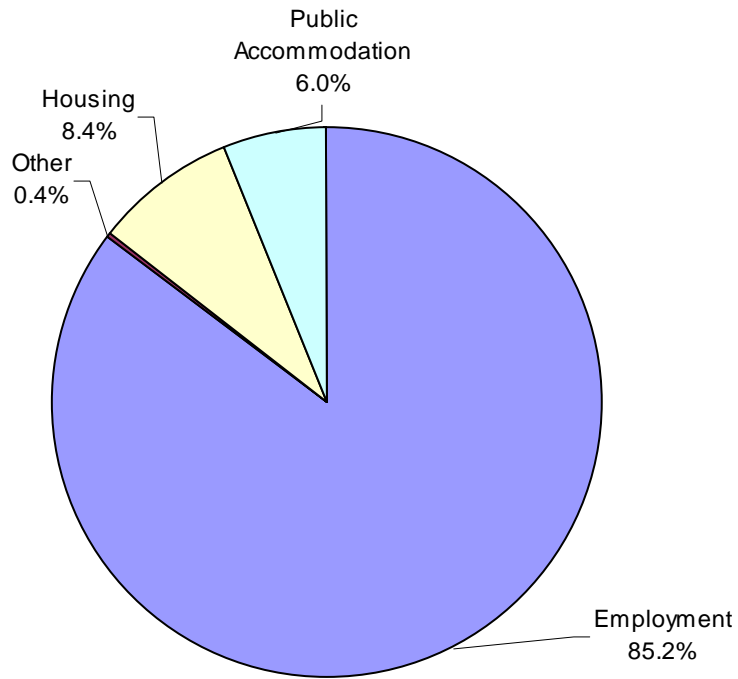
Average Age of Non Probable Cause Cases: 478 days (15.9 Months)

These cases includes approximately 49 cases that have been completed for several years but which were not previously recorded as “closed” in the Agency’s Case Management System.

Average Age of Cases excluding cases that were Dual Filed with EEOC where EEOC conducted the investigation: 378 days (12.6 Months)

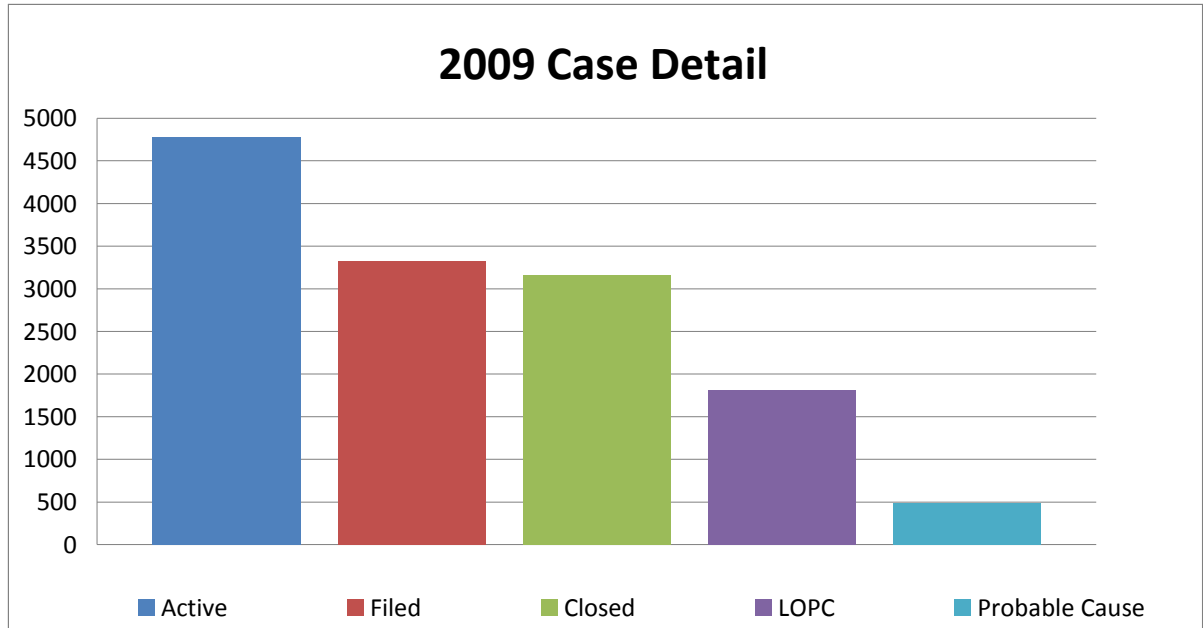
Average Age of Probable Cause Cases: 572 days (19 Months)

Complaints by Type



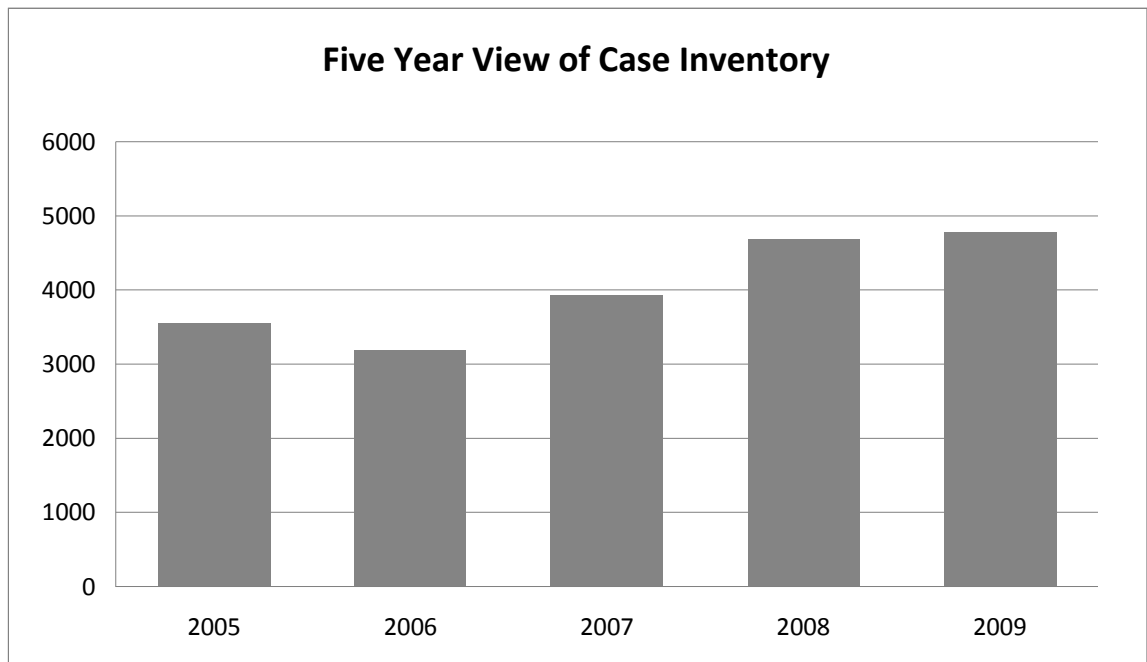
Employment 85.2% (2,832)
Public Accommodation 6 % (199)

Housing 8.4% (280)
Other: 4 % (9)

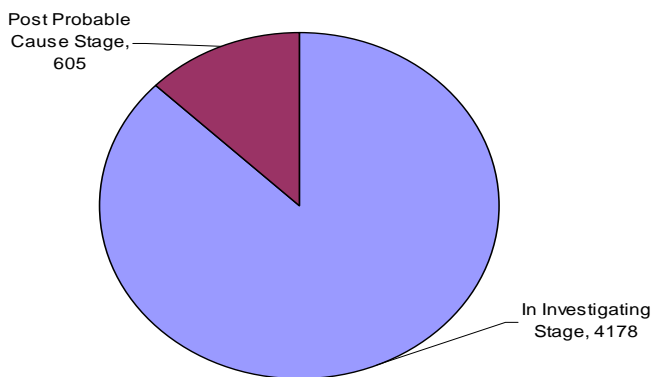


Active 4,783 | Filed 3,323 | Closed 3,160 | LOPC 1,817 | PC 490

Case Inventory: 4,783

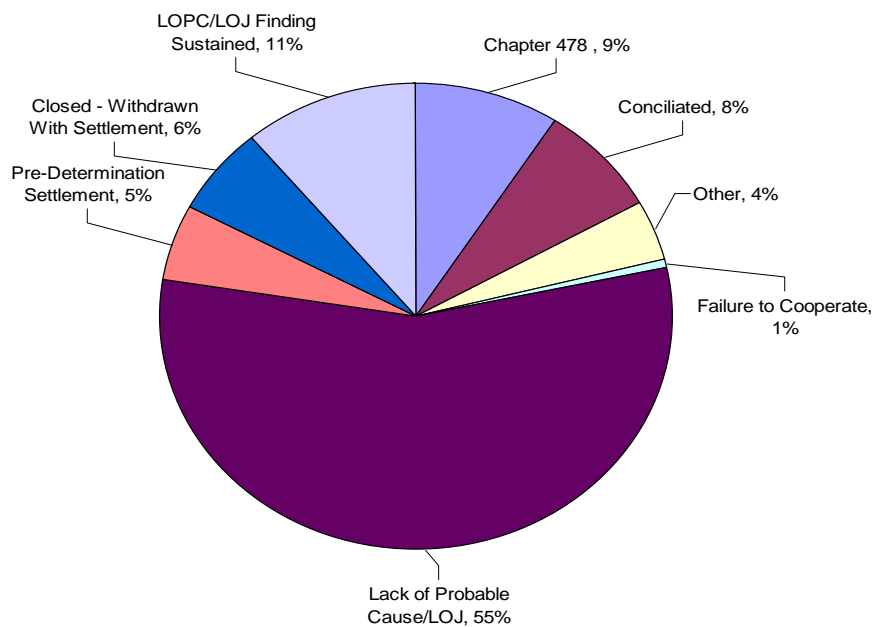


Stages of Inventory



Post Probable Cause: 605
 Under investigation: 4,178

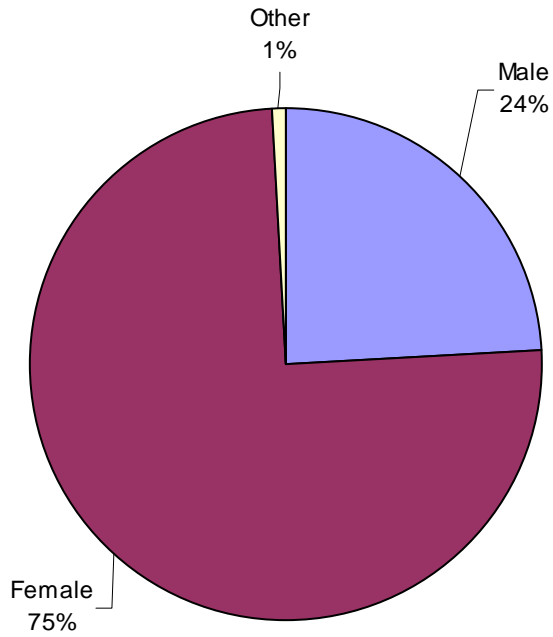
Disposition before Public Hearing



LOPC/LOJ Sustained 11% (382)
 Conciliated 7% (259)
 Lack of Probable Cause/LOJ 55% (1,920)
 Pre-Determination Settlement 5% (175)

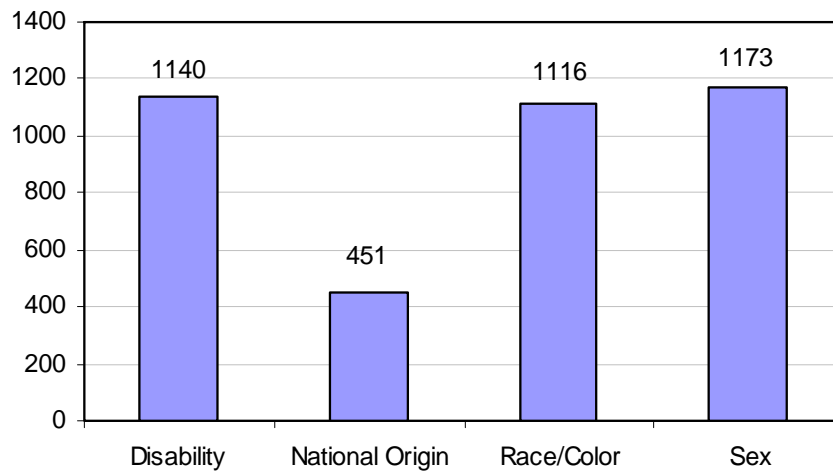
Chapter 478 9% (311)
 Withdrawn w/ Settlement 6% (219)
 Failure to Cooperate: 1% (18)
 Other 4% (141)

Complaints with Basis of Sex

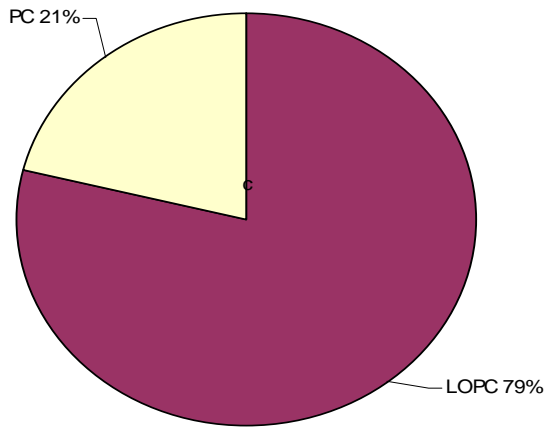


Female 77% (725) | Male 22% (204) | Other 1% (6)

Complaints Filed in 2009

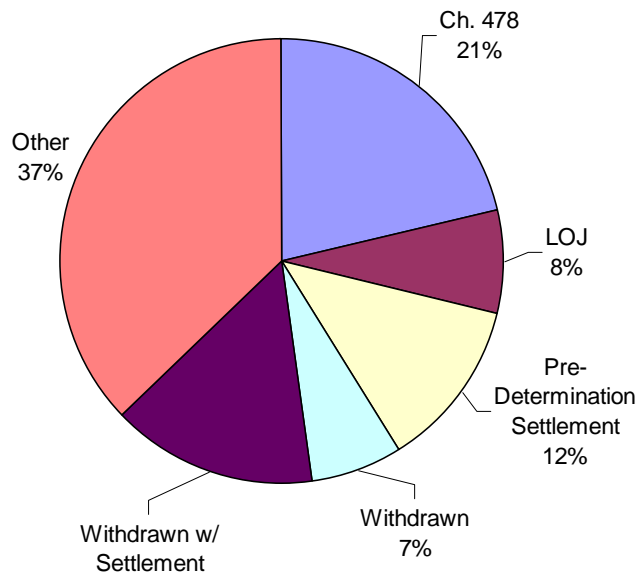


Substantive Resolutions 2009



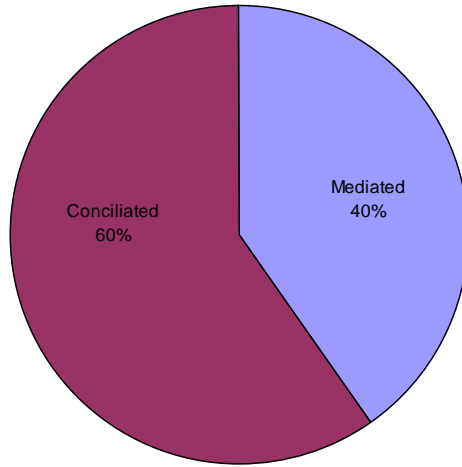
LOPC 1,817 | PC 375

Administrative Resolution 2009



Chapter 478 310 | LOJ 109 | Pre-Determination Settlement 175
 Withdrawn 96 | Withdrawn w/ Settlement 218 | Other 537

Mediations/Conciliations



Mediated 175 | Conciliated 259

2009 STAFF

**Chairman Malcolm S. Medley
Commissioner Martin S. Ebel
Commissioner Sunila Thomas-George**

Wendy Alexander
Melvin Arocho
Deb A'Vant
Joel Berner
June Bostick
Eric Bove
Maryann Brunton
Kimberly Boyd
Marlania Bugg
Wendy Cassidy
Jean Clanton
Deborah Clarke
Leona Clark
Ellen Pinkos Cobb
Vanessa Davila
Gordon Davis
Eleanor Druckman
Karen Erickson
Geri Fasnacht
Brian Gnandt
Lynn Goldsmith
Barbara Green
William Green
Eugenia Guastaferrri
Keith Healey
Elizabeth Hickey
Marzella Hightower
Maria Joseph
Judith Kaplan
Theresa Kelly
Nomxolisi Khumalo
Johny Lainé
Jennifer Laverty
Shirley Lee
Simone Liebman

Kristen Librera
Melanie Louie
Katherine Martin
Sheila Mathieu
Gilbert May
Lynn Milinazzo-Gaudet
Ying Mo
Carol Mosca
Carol Murchison
Pamela Myers
Carolyn Packard
Keith Parrett
Yudelka Peña
Michelle Phillips
Victor Posada
Marytsa Reyes
Jeannine Rice
Migdalia Rivera
Kosal Sarou
Marcia Shannon
Caitlin Sheehan
Rebecca Shuster
Andre Silva
Myrna Solod
Abigail Soto-Colon
Ethel Stoute
Tania Taveras
Nancy To
Francisco Villalobos
Beverly Ward
Betty Waxman
Paul Witham
Patty Woods
Carmen Zayas
Catherine Ziehl

