

The Commonwealth of Massachusetts

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION
1 ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108, NOVEMBER 5, 1986.

The Honorable Michael J. Connolly, *Secretary of State*
State House, Boston, Massachusetts 02133

Dear Mr. Secretary:

In compliance with Section 33 of Chapter 30 of the General Laws, attached herewith is legislation submitted for filing by the Massachusetts Commission Against Discrimination.

In further compliance with the above section, I am pleased to submit a detailed explanation of the provisions of this legislation.

Thank you for your anticipated cooperation.

Very truly yours,

ALEX RODRIGUEZ,
Chairman.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Seven.

LEGISLATIVE RECOMMENDATIONS

1. AN ACT AUTHORIZING THE COMMISSION AGAINST DISCRIMINATION TO AWARD ATTORNEY'S FEES TO A PREVAILING PARTY.

Justification For Sponsoring Of Act

Pursuant to M. G. L. chapter 151B, §9, a complainant may remove a complaint to the superior or probate court for the county in which the alleged unlawful practice occurred. If the court finds for the petitioner it shall, in addition to any other relief and irrespective of the amount in controversy, award the petitioner reasonable attorney's fees and costs unless certain circumstances would render such an award unjust.

In 1976, the Supreme Judicial Court held that because there is no specific statutory grant to the MCAD of the power to grant counsel fee awards, the commission did not have authority to award such fees to a successful complainant. Nonetheless, the court noted, *Gratis Dictum*, that the statute posed an "incongruity" *Bournewood Hospital v. MCAD*, 358 N. E. 2d 235 (1976).

The commission strongly urges passage of a bill amending M. G. L. C. 151B, to empower the hearing commissioner to award reasonable attorney's fees in appropriate cases. Such an amendment would not only cure the "incongruity" in the statute, but also have strong public policy implications.

First, it would discourage forum shopping, see *Bournewood, Supra*.

Second, it would keep cases within the commission and thus comport with the broader purpose of any administrative hearing procedure — the decongestion of court dockets.

Third, it would comport with the broader purposes of the civil rights laws by allowing prevailing complainants, who have elected the commission as a forum, to realize their full out-of-pocket and emotional damages award.

Fourth, it would encourage the growth of a more active and competent complainant's bar by encouraging lawyers to entertain discrim-

ination cases at the administrative level and hence, develop an expertise in the area.

Fifth, it would enable the commission to apply its budget in a more cost effective manner as the private bar supplements its program, since presently complaints are represented by commission attorneys if not by private lawyers.

This bill would add no costs to the commission's operating expenses.

Attorney's fee awards are, as any other commission order, subject to judicial review.

Abuse of discretion or lack of substantial evidence justifying a reasonable award would be grounds for modification of the award order.

Proposed Act

AN ACT AUTHORIZING THE COMMISSION AGAINST DISCRIMINATION TO AWARD ATTORNEY'S FEES TO PRIVATE ATTORNEYS REPRESENTING COMPLAINANTS.

Section 1. Section 5 of Chapter 151B of the General Laws is hereby amended by inserting after the twenty-third sentence of the second paragraph the following sentence: — In any proceeding under this chapter the Commission in its discretion may allow the prevailing complainant a reasonable attorney's fee.

Section 2. Section 5 of Chapter 151B of the General Laws is hereby amended by omitting the final clause of the first sentence of the third paragraph.

2. AN ACT TO ALLOW THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION TO ASSESS COSTS AFTER A FINDING OF DISCRIMINATION.

Justification For Sponsoring The Act

The Massachusetts Commission Against Discrimination provides the petitioner a forum with representation of the highest quality and expertise in the field of discrimination. As a result, the commission must entertain and expend resources pertaining to the high cost of such quality litigation.

Petitioners who are either represented by private counsel or com-

mission counsel are furnished with expert testimony, competent preparation of their case as well as qualified hearing officers to hear their case within the agency. The costs associated by the petitioner or the commission in representing a petitioner are high. This enactment would affect that high cost by giving the commission discretion to assess such costs to a respondent who has been found liable for discrimination.

In addition to costs incurred by the prevailing party or the commission counsel representing said party, the commission must currently bear the high costs of conducting the hearings. Such costs include, but are not limited to, stenographic and transcript services. Assessing these costs to respondent would reduce the commission's cost and allow additional hearings to take place as well as allow for speedier resolution of complaints. As it stands now, the number of hearings that the commission may hold is limited due to budgetary restraints.

One of the purposes of the commission is to provide a speedy, effective forum to address complaints of discrimination. As a result of the high costs associated with this type of case, individuals are choosing the court system as an alternative due to the ability to recover their costs. This defeats the purpose of the commission. This enactment would reduce the caseload of the courts by eliminating unnecessary proceedings and thus hasten the delivery of justice. Additionally, the passage of a bill allowing the commission to assess costs after a finding of discrimination would promote the speedy and inexpensive resolution of complaints by discouraging parties from protracted litigation.

Proposed Act

AN ACT TO ALLOW THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION TO ASSESS COSTS AFTER A FINDING OF DISCRIMINATION.

Section 5 of chapter 151B of the General Laws, as last amended, is hereby further amended by adding the following paragraph: —

After a finding of discrimination made pursuant to this chapter, the commission may assess respondent the costs incurred by the prevailing party or where the commission has represented complainant, the costs incurred by the commission. In addition, the commissioner may assess respondent the costs incurred by the commission in conducting the public hearing. Funds obtained by the commission pursuant to this

provision shall be retained in the commission's account and may be expended without further appropriations by the general court. The balance of funds so collected shall be noted in the commission's yearly budget request.

The following is a list of the names of the persons who were members of the Board of Directors of the National Board of Fire Underwriters during the year 1917-1918.

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