

# MAINE STATE LEGISLATURE

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# Maine Human Rights Commission



## 2017 Annual Report

*July 1, 2016 - June 30, 2017*

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# Maine Human Rights Commission

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October 25, 2017

The Honorable Paul LePage, Governor  
The Honorable Michael D. Thibodeau, President of the Maine Senate  
The Honorable Sara Gideon, Speaker of the Maine House of Representatives  
State House, Augusta, Maine 04333

Dear Governor LePage, President Thibodeau and Speaker Gideon:

On behalf of the Commissioners and staff of the Maine Human Rights Commission (“Commission”), we are pleased to present you with the 2017 Annual Report of the Commission. As you will see from the following, the Commission continues to uphold its statutory charge to enforce Maine’s anti-discrimination laws. A few highlights are as follows:

- The number of new complaints filed in Fiscal Year 2017 increased by 12.4% from the year (from 611 to 687).
- Of new complaints filed, 69.4% were based on employment, 14.8% were based on housing, 15.1% were based on public accommodations, and 0.7% were based on education.
- With respect to type of allegation, *disability discrimination* represented 28.4% of complaints filed (an increase from last year’s 25.2%). *Retaliation* complaints increased from 19.1% to 26.8% of complaints filed, with whistleblower retaliation complaints decreasing from 18.9% to 9.5%. *Sex discrimination* complaints decreased from 15.1% to 14.1%; sexual harassment is alleged in 39% of sex discrimination complaints. *Race/color/national origin/ancestry* complaints constituted 10.5% of complaints filed, an increase from 9.6% last year. *Age* complaints comprised 7.6%, and *sexual orientation* complaints were 1.1%, of complaints filed.
- Of the 228 cases in which Commission staff completed Investigator’s Reports, 70.6% (161 cases) were uncontested. Commissioners heard argument in 67 of the 228 cases.
- In 31 of the 228 cases determined by the Commission after an Investigator’s Report, the Commissioners found “reasonable grounds” to believe discrimination occurred, a rate of 13.6% (an increase from the prior year’s 11.2%). In these 228 cases decided by Commissioners, there were 1697 distinct *claims* of discrimination made; of these claims, Commissioners found “reasonable grounds” in 150 claims. The reasonable grounds rate for Commission *claims* was 8.8%.
- At the end of FY 2017, 798 cases remained pending, a 9.9% increase in pending cases from the prior year.
- Commission staff delivered or participated in or delivered more than 38 training forums during FY 2017.

The Commission continues to promote diversity and tolerance, and to work to eliminate unlawful discrimination for all citizens of and visitors to Maine. We hope this report is of assistance, as our agency seeks to work closely with the Executive and Legislative branches as we jointly assure the citizens of Maine the protections afforded under the Maine Human Rights Act.

Sincerely,

Arnold Clark  
Chairman of Maine Human Rights Commission

## ORIGIN, JURISDICTION AND MEMBERS OF THE COMMISSION

Established in 1971, the Commission is the quasi-independent state agency charged with responsibility of enforcing Maine’s anti-discrimination laws. Those laws, which are encompassed in the Maine Human Rights Act (“the MHRA”), are located in Title 5 of the Maine Revised Statutes, Sections 4551-4636.

Section 4566 of the MHRA outlines the powers and duties of the Commission; they include the following:

- to investigate all conditions and practices within the state which allegedly detract from the enjoyment, by each inhabitant of the state, of full human rights and personal dignity;
- to investigate all forms of invidious discrimination, whether carried out legally or illegally, and whether by public agencies or private persons; and
- to recommend measures calculated to promote full enjoyment of human rights and personal dignity.

The Commission has jurisdiction over allegations of discrimination in the following areas:

### AREAS OF JURISDICTION

JURISDICTIONAL BASIS	EMPLOYMENT	HOUSING	ACCESS TO PUBLIC ACCOMMODATION	CREDIT EXTENSION	EDUCATION
Age	X	N/A	N/A	X	N/A
Ancestry	X	X	X	X	N/A
Children (lodging only)	N/A	N/A	X	N/A	N/A
Color	X	X	X	X	N/A
Familial Status	N/A	X	N/A	N/A	N/A
Genetic Information	X	N/A	N/A	N/A	N/A
Marital Status	N/A	N/A	N/A	X	N/A
Mental disability	X	X	X	N/A	X
National Origin	X	X	X	X	X
Physical disability	X	X	X	N/A	X
Race	X	X	X	X	X
Receipt of Public Assistance	N/A	X	N/A	N/A	N/A
Religion	X	X	X	X	N/A
Retaliation	X	X	X	X	X
Sex	X	X	X	X	X
Sexual Orientation	X	X	X	X	X
Whistleblower Retaliation	X	N/A	N/A	N/A	N/A
Workers’ Comp Retaliation	X	N/A	N/A	N/A	N/A

Below is a timeline of some of the most significant additions to the Maine Human Rights Act.

- 1972 Race, Color, National Origin, Ancestry, Religion, Age
- 1973 Sex, Marital Status (Credit)
- 1974 Physical Disability
- 1975 Mental Disability, Source of Income (Housing)
- 1979 Pregnancy
- 1981 Familial Status (Housing)
- 1987 Workers’ Comp Retaliation (Employment)
- 1988 Whistleblowers’ Retaliation (Employment)
- 1998 Genetic Information
- 2005 Sexual Orientation

The MHRA provides that the Commission “or its delegated commissioner or investigator shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred.” 5 M.R.S. § 4612(1)(B). Accordingly, the Commission conducts investigations of complaints of unlawful discrimination in employment, housing, education, access to public accommodations, extension of credit, genetic non-discrimination, and offensive names; it also investigates complaints of retaliation under the Maine Whistleblowers’ Protection Act.

As required by the MHRA, the Commission provides an opportunity for parties to a complaint to try to resolve the dispute by agreement prior to a determination of whether there are reasonable grounds to believe that unlawful discrimination has occurred. 5 M.R.S. § 4612(1)(A). The MHRA authorizes the Commission to pursue remedies for unlawful discrimination in court when necessary to enforce the MHRA. The Commission also has “the further duty to recommend measures calculated to promote the full enjoyment of human rights and personal dignity by all the inhabitants of this State”, 5 M.R.S. § 4566, and occasionally is called upon to present information to the Maine Legislature about proposed statutes and rules under consideration that might affect human rights in the State.

Commission policy is formulated by five Commissioners appointed by a Governor for staggered five year terms; the MHRA ensures that the Commission is not political in nature, with requirement that no more than three Commissioners may be from any political party. Commissioners make final determinations on all discrimination complaints investigated by Commission staff that are not otherwise resolved administratively or settled. A Governor designates the Chair of the Commission from among its members.

## **STAFFING**

The Commission appoints an Executive Director. The Executive Director in turn has the authority to appoint and supervise the Commission’s staff. The Commission has four major divisions:

### ***Investigation***

Investigators are responsible for intake processing and case investigation; this represents a shift, as previously the Commission’s one Intake Officer processed intakes. Because persons submitting new intakes often waited from two to six months to receive draft complaints, in FY2016 the agency made the difficult decision to assign intake to investigators, who take turns as “intake officer of the day”; this did reduce the historically long wait for draft complaints. Commission investigators continue to perform their main functions: conducting fact-finding as to whether allegations of discrimination are at least as likely as not to be substantiated, and writing Investigator’s Reports that analyze facts and apply legal principles to recommend specific findings to the Commission. We currently have six full-time investigator positions, but in FY2017 there was tremendous turnover in these positions. We currently have five investigator positions filled, and the continuing staff shortage remains challenging.

### ***Compliance***

The Commission answers questions from the public about MHRA compliance, and offers parties dispute resolution. Our one paralegal and the Executive Director work on conciliation agreements after Commission findings of reasonable grounds. The Executive Director directs the Commission’s Third Party Neutral Mediation Program, and monitors compliance in pre-determination settlement agreements facilitated by mediators or investigators. The Executive Director and Commission Counsel also are involved in the public education efforts of the Commission.

### ***Legal***

This Division is responsible for litigation on behalf of the Commission (and the public interest) and providing legal advice to the staff and Commission. The Commission Counsel reviews all Investigator’s Reports for legal sufficiency, provides legal opinions to the Executive Director or Commission, drafts legislation and proposed regulations, litigates cases, and advises the Executive Director on contract matters involving governmental agencies and private parties. We have one Commission Counsel and one full-time paralegal, who also assists with compliance.

### ***Administration***

The Administration Division is responsible for the effective operation of the office. Responsibilities include all personnel functions along with budget and other fiscal duties. Support is provided to other Divisions. This would

include our Executive Director, two Office Associates, and a Public Service Manager II responsible for information technology, human resources, financial and budgetary matters.

**PROCESS**

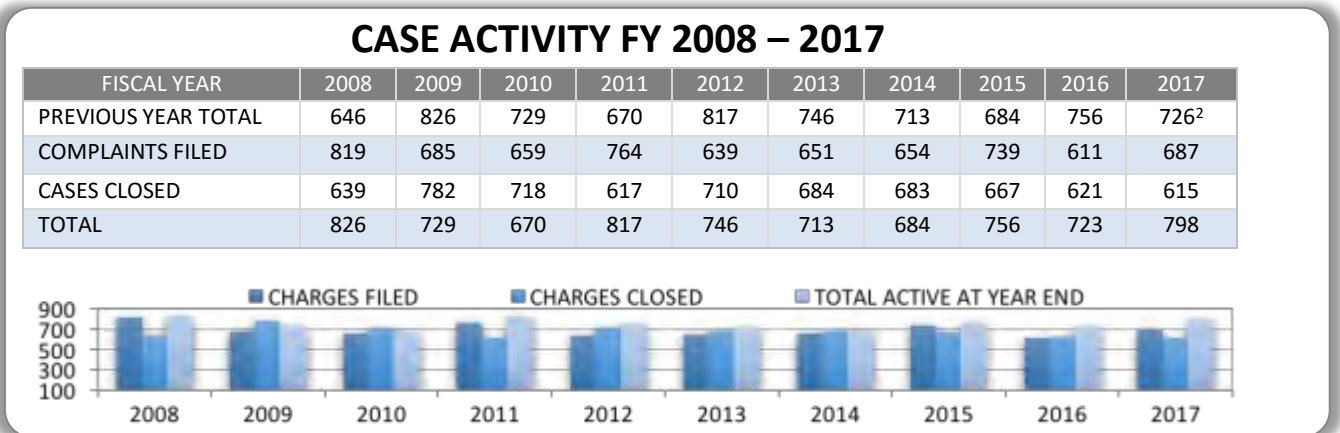
The Commission receives either an intake submission (which it drafts into a complaint to assist complainant, if jurisdiction exists under the MHRA) or a complaint. Complaints must be received within 300 days of the alleged discrimination for a complaint to be timely. The Commission notifies the respondent of the complaint and receives its answer to the complaint, which the Commission then shares with the complainant in order to get his/her reply supporting the complaint. At that point, a complaint may be administratively dismissed for certain reasons, withdrawn by the complainant, or resolved by the parties, or the complainant may elect to proceed directly to court. If none of these occur, the case is assigned to an investigator for a preliminary investigation and the investigator prepares a written report outlining the claims made, applicable laws, and recommended findings on each claim as to whether there are “reasonable grounds” to believe discrimination violating the MHRA occurred. The Commission staff provides reports with recommendations to Commissioners for decision at public meetings.

**BUDGET**

The Maine Human Rights Commission’s Fiscal Year 2017 revised budget appropriation was \$1,338,464. Approximately \$1,027,215 (76.75 %) of the agency’s total budget was allocated to fixed personal service costs such as salaries and benefits. This is due to the highly personnel-intensive nature of the Commission’s work in investigating, resolving, and litigating complaints. \$311,249 (23.25%) of the Commission’s budget was allocated to “all other” operating expenditures to support program activities. Of the total Commission budget, approximately \$579,014 (43.26%) were anticipated revenues from federal worksharing agreements with the U.S. Equal Employment Opportunity Commission and the U.S. Department of Housing & Urban Development.

**CASE ACTIVITY**

As in past years, the Commission continued to devote the majority of its resources to the processing of complaints of discrimination filed with it. During Fiscal Year 2017, 687 new complaints were filed,<sup>1</sup> which represents an increase from the previous year. A total of 2,927 claims were named in these complaints, representing complex investigations in many cases; this issue is discussed further on the next page of this Report. The Commission closed 615 cases in the same time period. The pending inventory of cases has increased by 10.4 % since Fiscal Year 2016.



<sup>1</sup> The data presented in this report may not include all decisions actually made in the time period, as the data collection relies on a computerized case system that presents data given certain defined parameters. Cases in which the Commissioners find reasonable grounds to believe discrimination occurred continue through a conciliation process and therefore may not be closed and reported within the same year the Commission decision occurred. The figures cited in this report represent cases considered by the Commission and closed in Fiscal Year 2017.

<sup>2</sup> After updating inventory data, the ending inventory was adjusted up from 723 to 726 cases active at the beginning of the 2017 Fiscal Year due to coding discrepancies.

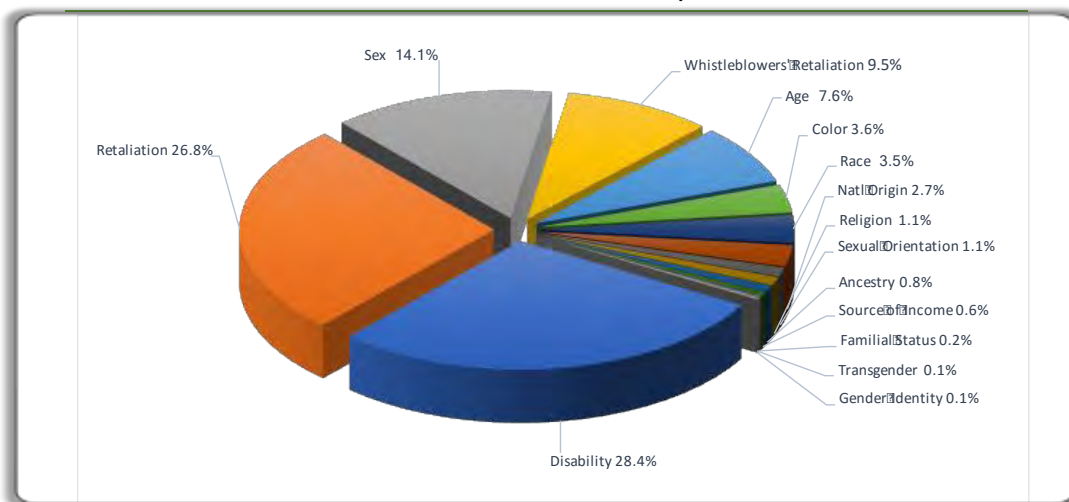
**TYPES OF COMPLAINTS**

In Fiscal Year 2017, 687 new complaints were filed with the Commission. Very often, a single complaint will contain multiple distinct allegations of discrimination, or “claims”, that require different factual and legal analysis. These more complex investigations require substantially increased staff and Commission work. For that reason, we have begun tracking outcomes by “claims” decided in addition to “cases closed”, so as to more accurately reflect the nature and depth of our work and resources required.

As usual, the vast majority of complaints in FY2017 (69.4%) alleged employment discrimination. Also as usual, disability was the protected class most often invoked in complaints (28.4%). The second and third largest numbers of complaints filed were based on retaliation for asserting rights protected by the Act, (26.8%) and sex (14.1%). It is disappointing to note that sexual harassment was alleged in 39% of sex discrimination filings (in 48 out of 123 cases). These top three bases for complaints collectively comprised 69.3% of the complaints filed. The fourth largest number of complaints filed was based on whistleblower retaliation (9.5%). Complaints alleging age discrimination were the 5th largest categories of complaints (7.6%), followed by color (3.6%), race (3.5%), national origin (2.7%), sexual orientation (by statute can include gender identity and expression) (1.1%), religion (1.1%), ancestry (0.8%), source of income (0.6%), familial status (0.2%), transgender (0.1%), and gender identity (0.1%).

**BASIS OF CLAIMS FILED SUMMARY FY 2017**

BASIS	# ISSUES ALLEGED	%
<b>Disability</b>	830	<b>28.4%</b>
<b>Retaliation</b>	783	<b>26.8%</b>
<b>Sex</b>	414	<b>14.1%</b>
<b>Whistleblowers' Retaliation</b>	278	<b>9.5%</b>
<b>Age</b>	221	<b>7.6%</b>
<b>Color</b>	104	<b>3.6%</b>
<b>Race</b>	102	<b>3.5%</b>
<b>Natl Origin</b>	79	<b>2.7%</b>
<b>Sexual Orientation</b>	33	<b>1.1%</b>
<b>Religion</b>	31	<b>1.1%</b>
<b>Ancestry</b>	23	<b>0.8%</b>
<b>Source of Income</b>	18	<b>0.6%</b>
<b>Familial Status</b>	6	<b>0.2%</b>
<b>Transgender</b>	3	<b>0.1%</b>
<b>Gender Identity</b>	2	<b>0.1%</b>
<b>TOTAL</b>	<b>2,927</b>	





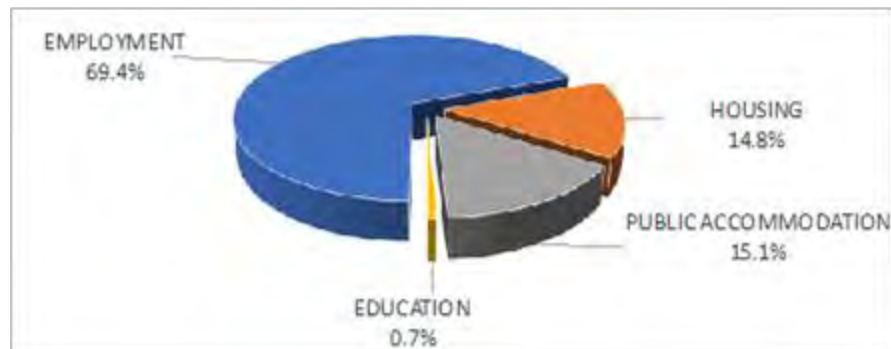
### CLAIMS FILED BY BASIS FY 2008 - 2017<sup>3</sup>

BASES	FISCAL YEAR:	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
DISABILITY		467	450	438	450	445	448	581	670	711	830
RETALIATION		147	56	96	109	158	137	245	228	538	783
SEX		196	149	147	152	155	159	153	171	427	414
WHISTLEBLOWER RETALIATION		201	180	197	235	261	200	240	268	532	278
AGE		97	60	75	109	83	93	107	89	264	221
RACE / COLOR		113	123	101	132	77	99	114	135	162	206
ANCESTRY / NATIONAL ORIGIN		106	51	35	51	32	51	60	57	71	102
SEXUAL ORIENTATION		32	19	50	45	25	35	26	28	34	33
RELIGION		25	15	20	23	13	13	20	21	40	31
SOURCE OF INCOME (Housing)		9	10	10	10	2	11	4	4	5	18
FAMILIAL STATUS (Housing)		6	19	22	21	21	20	12	9	23	6
TRANSGENDER		-	-	-	-	-	-	1	1	-	3
GENDER IDENTITY		-	-	-	-	-	-	2	5	11	2
EQUAL PAY		-	-	-	-	-	-	2	1	3	-
WORKERS' COMP RETALIATION		-	-	-	-	-	-	-	-	-	-
GENETIC INFORMATION		-	-	-	-	-	-	-	-	-	-
<b>TOTALS</b>		<b>1,399</b>	<b>1,132</b>	<b>1,191</b>	<b>1,337</b>	<b>1,272</b>	<b>1,266</b>	<b>1,567</b>	<b>1,687</b>	<b>2,821</b>	<b>2,927</b>

### COMPLAINTS FILED BY JURISDICTION FY 2008 – 2017

JURISDICTION	FISCAL YEAR:	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
EMPLOYMENT		604	653	492	618	528	483	518	548	480	482
HOUSING		59	122	113	78	74	104	73	92	60	103
PUBLIC ACCOMMODATION		142	64	52	72	37	64	63	98	71	105
EDUCATION		11	10	9	4	4	3	3	8	5	5
CREDIT EXTENSION		1	-	-	-	-	-	-	2	2	-
OFFENSIVE NAMES		2	-	-	-	-	-	-	-	-	-
<b>TOTALS</b>		<b>819</b>	<b>849</b>	<b>666</b>	<b>772</b>	<b>643</b>	<b>654</b>	<b>656</b>	<b>748</b>	<b>618</b>	<b>695</b>

**AREA OF JURISDICTION CHART  
FISCAL YEAR 2017**



<sup>3</sup> This is the third annual report that has reflected gender identity, equal pay and transgender status as distinct bases. The lack of data regarding these bases in years prior does not indicate that there were no complaints related to these bases in the past; our reporting simply has not separated out those bases in the past.

## **CASES CLOSED**

The Commission closed 615 complaints of discrimination during Fiscal Year 2017.<sup>4</sup> How a case closes *can* (but does not always) indicate whether the case had “merit”. Merit closures are cases resolved in such a fashion as to indicate that there was some merit to the claims, such as when (a) the Commission made a determination that there were reasonable grounds to believe unlawful discrimination occurred, or (b) the complainant received some benefit from the respondent prior to a Commission vote on whether discrimination occurred, either by settlement agreement or with withdrawal of complaint, or (c) a complainant requests to proceed directly to court before the investigation is complete (a “right-to-sue” closure). Non-merit closures may occur when the Executive Director administratively dismisses a complaint before a determination, if a complainant wishes no longer to proceed with the complaint but does not receive any benefits to withdraw the complaint, or upon a Commission finding that there were no reasonable grounds to believe discrimination occurred.

It is worth noting that the MHRA itself provides only for two statutory results in cases: a finding of “reasonable grounds” or a finding of “no reasonable grounds”. Since cases that are withdrawn related to settlement or which end via a right-to-sue letter are not “reasonable grounds” findings, they actually are dismissed pursuant to the Act as “no reasonable grounds” findings. This can leave our statistics on “reasonable grounds” rates to be less than fully informative, which is why we attempt to look more deeply at merit versus non-merit closures here.

### ***BEFORE Commission Determination***

#### Merit closures (267)

During Fiscal Year 2017, there were 267 closures that indicated cases had merit – settlement agreements, withdrawals where a complainant indicated he/she received a benefit from respondent, or right-to-sue letters indicating the complainant intended to proceed directly to court.

- *Settlements.* The Commission encourages voluntary settlement and works with the parties to achieve a resolution that is mutually acceptable. Cases may be resolved at any time while they are before the Commission by means of a settlement; a pre-determination agreement can be one which the parties work out on their own (usually resulting in a request by complainant to withdraw the complaint) or one which a Commission investigator or neutral mediator facilitated (usually resulting in a settlement agreement shared with the Commission). During FY2017, 131 cases resolved via settlement agreement or withdrawal of complaint with benefits before the Commission issued a determination; complainants obtained \$1,650,088 in monetary relief in merit closures.
  - Our Third Party Neutral Mediation Program, available for a small fee, is very successful in resolving claims; in FY2017, our skilled mediators facilitated settlement in 35 out of 57 cases mediated.<sup>5</sup> In addition to monetary awards, settlements often include non-monetary, equitable relief such as an offer of a job or housing unit, modifications providing accessibility, reinstatement, cleared personnel records, policy changes, recommendation letters, and non-retaliation provisions.
- *“Right-to-Sue” letters.* If the Commission has not completed its investigation within 180 days of a complaint’s filing, a complainant may request that the Commission issue him/her a right-to-sue letter, which terminates the Commission’s investigation and authorizes the complainant to proceed to court with Act remedies intact. Complainants requested 136 right-to-sue letters in Fiscal Year 2017.

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<sup>4</sup> As noted above, data presented in this report may not include all decisions actually made in the time period, as the data collection relies on a computerized case system that presents data given certain defined parameters. There were additional case closures that occurred in the 2017 Fiscal Year but which were not counted in as closures in our computer system for technical reasons.

<sup>5</sup> The Commission’s FY2017 mediation budget (which is entirely self-funded) was \$34,000. In FY 2017, parties paid \$25,900 in fees (\$200 by each party in a case) to pay mediators to perform 54.5 mediations. Of the \$25,900 in fees collected, \$22,622.50 (87.5 %) was paid to mediators (a set fee of \$350/case). The remaining balance of fees collected (\$3,237.50 or 12.5%) was reserved to pay the State of Maine’s mandatory tax on all funds collected/administered in state agency accounts (\$2,123.80 or 8.2% of the mediation funds collected) and to fund mediations for indigent parties and/or to pay for interpreter services required in mediations (\$1113.70, or 4.3% of mediation funds collected).

### Non-merit closures (132)

During Fiscal Year 2017, there were 132 cases closed via non-merit closures – administrative dismissals, or withdrawals of claims – before the Commission issued any determination.

- *Administrative Dismissals.* The Commission’s Executive Director has authority to dismiss a complaint where a complainant has failed to substantiate a claim of discrimination, the Commission lacks jurisdiction, the complaint is untimely, a complainant fails to cooperate, or a respondent declares bankruptcy. See Commission Procedural Rule, 94-348 Code of Maine Regulations Ch. 2, § 2.02(H). During Fiscal Year 2017, the Executive Director dismissed 101 cases: 27 for lack of jurisdiction; 42 due to complainant’s failure to cooperate with the investigation; 21 for failure to respond; and 11 additional cases for other reasons such as failure to substantiate a claim.
- *Withdrawals.* At any time before the Commission issues a report summarizing its investigation, a complainant may choose to withdraw a complaint of discrimination. After a report has been issued, the Commission may allow a complaint to be withdrawn. Withdrawals most often occur when complainants, after reviewing the respondents’ written answers to the complaint or hearing the facts presented by respondents at a conference, decide that they do not wish the Commission to continue processing their case any longer. Complainants withdrew 31 complaints during Fiscal Year 2017.

### **AFTER Commissioner Determinations**

If a case is not settled, withdrawn, ended via right-to-sue letter, or administratively dismissed, a report prepared by an Investigator recommends a finding as to whether reasonable grounds exist to believe that unlawful discrimination occurred. The Commission sets these reports for public hearing. If neither party submits a written objection to the recommended findings, the Commission places the report on its Consent Agenda and then at public hearing votes to adopt the recommendations in all Consent Agenda reports without argument on those cases. If one party does submit a written objection to the recommendations, the Commission hears oral argument on the case at a public meeting and then votes on each recommendation.

In FY2017, Commissioners received and voted on 228 cases which contained 1,697 distinct disputed *claims* of discrimination.<sup>6</sup> Before looking into this data in closer detail, it is worth noting that not every claim of discrimination leads to a distinct determination by the Commission – many claims are grouped together (or subsumed) in one determination. In the final analysis, the Commission found reasonable grounds to believe discrimination occurred in 31 cases (or 150 of the total 1,697 claims voted on); this equates to a reasonable grounds rate of 13.6% of cases voted on or 8.8% of claims voted on. The disparity between these two rates is because 6 of the 228 cases voted on contained a split finding - one claim in the case led to a finding of reasonable grounds but another claim in the case led to a finding of no reasonable grounds.

- Uncontested recommendations (161). A majority of recommended determinations by Commission staff were not contested by the parties in FY2017. In 161<sup>7</sup> (70.6%) of the 228 cases voted on (containing 1,189 claims), neither party contested the recommended decisions; these cases appeared on the Commission’s Consent Agenda. For uncontested cases listed on our Consent Agenda, Commissioners found reasonable grounds to believe discrimination occurred in 10 cases (48 claims) and no reasonable grounds findings in 153 cases (1,141 claims).
- Contested recommendations (67). In 67 of the 228 (29.4%) cases voted on by Commissioners, one party contested the recommended decision. These 67 contested cases (containing 508 claims) were scheduled for hearing. After our hearings ended, Commissioners found no reasonable grounds to believe that

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<sup>6</sup> The more detailed measures of the Commission’s reasonable-grounds rate are provided analysis based on the outcome of each claim alleged.

<sup>7</sup> Two cases resulted in a split finding vote of both reasonable grounds and no reasonable grounds.

discrimination occurred in 50 contested cases (406 claims), and reasonable grounds to believe that discrimination occurred in 21 contested cases<sup>8</sup> (102 claims).

Merit cases not closed at this juncture: 31

Non-merit closures: 197

### ***Post-Reasonable-Grounds Conciliations***

The MHRA requires the Commission to undertake formal conciliation efforts in all reasonable-grounds cases in which it is determined that reasonable grounds exist to believe that unlawful discrimination has occurred. After a Commission reasonable-grounds finding, a merit closure can occur by negotiated agreement, either with or without Commission participation. If the parties reach resolution and the Commission also reaches agreement on public interest relief, this is a formal agreement by the Commission, complainant and respondent; terms are monitored by the Commission's Compliance Division. If the parties reach a resolution of a post-reasonable grounds case, but do not include the Commission in the agreement, the Commission determines whether to pursue relief in the public interest on its own. During Fiscal Year 2017, there were thirty-one (31) cases closed with reasonable grounds determinations; of those, four (4) resulted in successful conciliation agreements with public interest and private relief. The monetary value of these conciliations was \$8,000. Significant non-monetary relief in the form of improved policies and training, postings, and monitoring also was achieved through conciliation agreements.

## **LITIGATION**

The Act authorizes the Commission to file a lawsuit in court in the name of the Commission, for the use of the complainant, in cases where reasonable grounds are found to believe that unlawful discrimination has occurred, and where conciliation has failed. The Commission Counsel makes recommendations to the Commission in each post-reasonable grounds case in which conciliation has failed, to assist the Commission in deciding whether to file a lawsuit in each of the cases. Where the Commission decides to file a lawsuit, Commission Counsel directs these legal efforts and represents the Commission.

During Fiscal Year 2017, Commission Counsel filed one new court complaint and one amicus curiae brief on behalf of the Commission, and continued litigation of nine cases that were pending when the 2017 Fiscal Year started. Six litigated cases resolved during the 2017 Fiscal Year, with five resolving through settlement and one ending only after a four-day trial; in the case that went to trial, the Commission and complainant prevailed in proving housing discrimination based on race. At the end of Fiscal Year 2017, there were four cases pending in court in which the Commission was a party.

## **CASES WITH MERIT, AND REASONABLE-GROUNDS RATES**

The Commission frequently is asked to consider how many of the complaints filed here are complaints that are valid (e.g. have merit) versus those complaints which might have been filed for non-meritorious reasons. Because so many cases close without actual Commissioner determinations, this can be difficult to discern. To that end, it is valuable to review how many FY2017 closures the Commission considers to be merit closures, with something of benefit flowing to the complainant. Closures in this category would include 131 pre-determination settlements (or withdrawals with benefits to the complainant), 136 right-to-sue letters, and 31 reasonable-grounds case votes. Totalling 236, these represent 34.4% of the 687 cases closed in FY2017.

That rate of merit closures is important to keep in mind when one considers the overall findings in Commission closures. Given the 687 cases the Commission closed in FY2017, and the fact that there were reasonable-grounds

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<sup>8</sup> Four cases had split reasonable grounds and no reasonable grounds findings.

findings in 31 cases, the Commission's reasonable-grounds rate for all cases closed in the year was 4.5%. This could be interpreted to mean that 95.5% of cases closed in FY2017 closed in the respondent's favor, but that would not be truly accurate, as so many cases which technically had to be closed with a "no reasonable grounds" finding actually resulted in benefits flowing to complainants via settlement agreements and right-to-sue letters.

A more relevant statistic that reflects the Commission's actual rate of finding reasonable-grounds (or not) in cases is to look at cases decided after full pleading and argument: cases in which an Investigator's Report was issued. In FY2017, the Commission's overall rate of finding reasonable grounds to believe discrimination occurred in cases where an Investigator's Report was issued was 13.6% for cases (8.8% of claims).

It is significant to note that over two-thirds of cases with Investigator's Reports (161 of 228 cases, or 70.6%) were not contested. When recommended decisions were contested, the reasonable-grounds rate was 31.3% for cases (21 of 67) and 20.1% for claims (102 of 506).

Viewed conversely, this means that in Fiscal Year 2017, a respondent in a fully contested Commission matter decided on its merits stood a 68.7% chance of prevailing in the case<sup>9</sup>, and stood a 79.9% chance of defeating any given Commission claim.<sup>10</sup>

## **CONCLUSION**

This Annual Report has outlined the Commission's activities for FY2017, including: investigating 687 new complaints (with 2,927 distinct claims of discrimination); continuing investigative work on 726 complaints pending from the 2016 Fiscal Year; closing 615 cases; participating in/delivering 38 trainings; and providing testimony at the Maine Legislature. Given all of this, and our extremely small staff of 13, the sheer volume of the Commission's work in FY2017 was staggering (and accomplished with very limited resources). Each Commissioner and staff member at the agency feels responsible to the public to enforce the Act in Maine in the manner in which that law was written and intended. We appreciate the opportunity to have done that in the 2017 Fiscal Year, and look forward to doing so in the next.

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<sup>9</sup> 50 out of 67 cases contested were reasonable grounds cases.

<sup>10</sup> 406 of 508 total contested reasonable grounds claims were identified in the 50 no reasonable grounds contested cases.