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**Report to the Joint Standing Committee on Judiciary of the
Maine State Legislature by the Maine Human Rights Commission
Regarding Chapter 178, 124th Legislature, Resolve, Directing the
Maine Human Rights Commission to Report on Improvements**

February 1, 2011

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Pursuant to Resolve, Chapter 178, 124th Legislature (hereinafter “the Resolve”), the Maine Human Rights Commission (“the Commission”) offers this report to the Joint Standing Committee on Judiciary. The Resolve directs the Commission to report to the Judiciary Committee by February 1, 2011, “concerning case processing revisions, planned case processing revisions and recommendations for legislative action, all to reduce the time for investigating complaints.”

I. BACKGROUND

The Commission is the State agency charged with enforcing the Maine Human Rights Act, 5 M.R.S.A. §§ 4551 et seq. (“the Act”). Consisting of five Commissioners of diverse political parties and their staff, the Commission has the duty of investigating, conciliating, and at times litigating discrimination cases under the Act. It is also charged with promulgating rules and regulations to effectuate the Act and with making recommendations for further legislation or executive action concerning infringements on human rights or personal dignity in Maine. 5 M.R.S.A. § 4566(7), (11).

During the 124th Maine Legislature, a bill was introduced, LD 1537, “An Act to Amend the Statute of Limitations Under the Maine Human Rights Act,” which would have reduced the amount of time that the Commission is afforded to investigate complaints of discrimination from two years to one year. The Commission offered testimony neither for nor against LD 1537, but it estimated that the shortened time period to investigate complaints would require the addition of another three investigators, one staff attorney, and one support position. Otherwise, the Commission would have been unable to properly investigate and conciliate complaints. The Resolve, to which the

Commission agreed, directed the Commission to explore other ways of reducing the amount of time the Commission takes to investigate complaints.

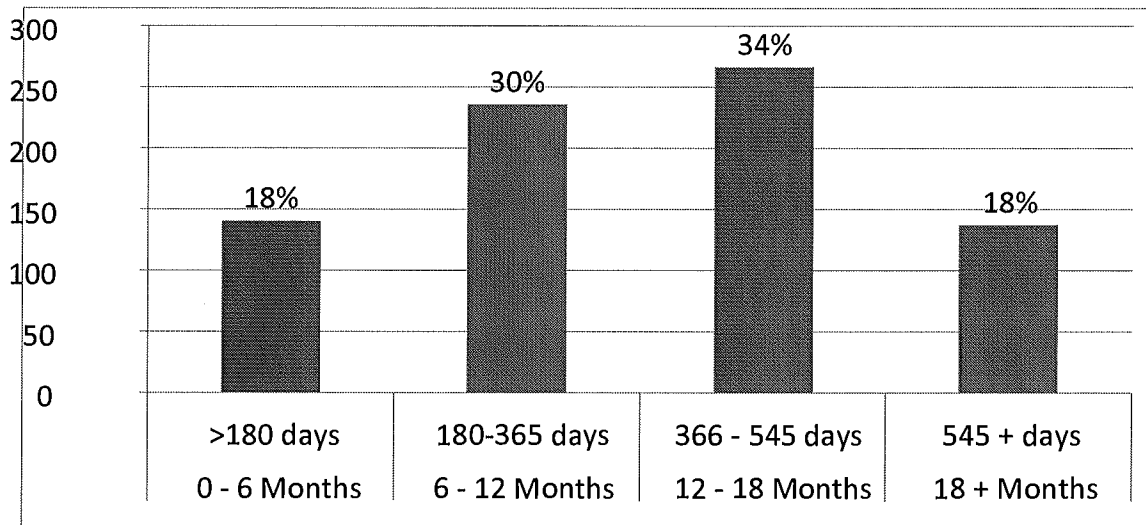
The amount of time for case processing had already recently been revised. Public Law 235, 124th Maine Legislature, placed a limit of two years on the length of the Commission's investigations. Previously, complaints had to be filed in court within two years of the date of discrimination, and there was no limit on the length of the Commission's investigations. Accordingly, the Commission used the two-year court statute of limitations as an outer limit for the completion of investigations. For example, if a complaint were filed with the Commission six months after the date of discrimination, the Commission had eighteen months to complete its investigation.

PL 235 was introduced because the Commission was having difficulty completing several of its investigations sufficiently in advance of the court statute of limitations, which put undue pressure on some complainants to file in court and on the conciliation process after a reasonable grounds finding. The Commission testified in support of the two-year limitation for investigating complaints. PL 235 received the unanimous support of this Committee, was enacted by the 124th Legislature on the Consent Calendar, and was signed by the Governor on June 2, 2009.

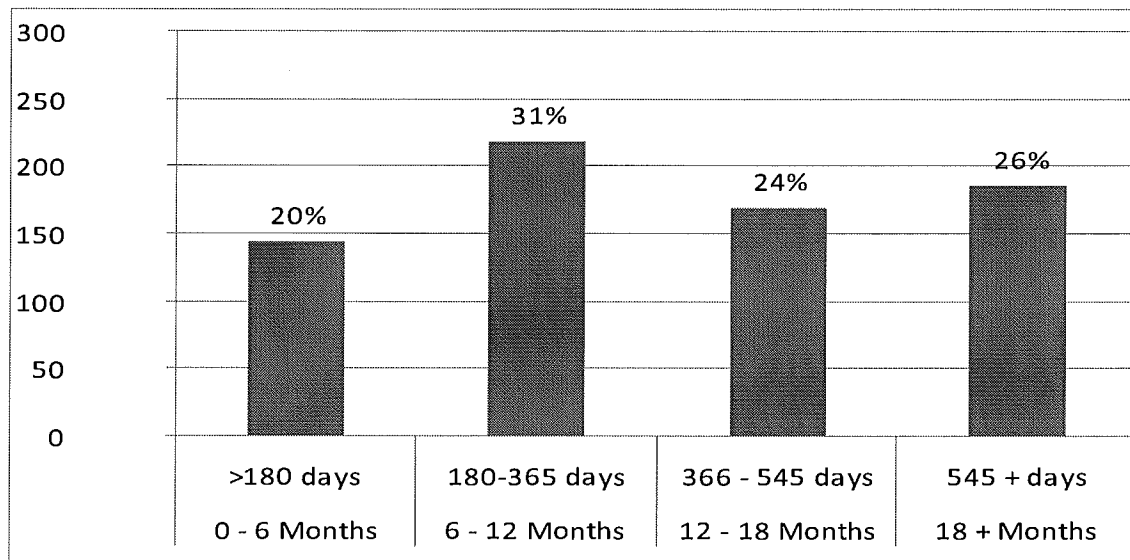
Historically, the average time that the Commission takes to investigate a complaint is approximately one year. About one-third of the complaints filed with the Commission are administratively dismissed earlier than one year for reasons such as failure to state a claim, failure to cooperate, or through a "right-to-sue" letter that is issued after a complaint is pending for more than 180 days. Accordingly, for cases that are not administratively dismissed, investigations often take considerably longer than one

year to complete. The following charts depict the amount of time complaints closed in fiscal years 2009 and 2010 were pending before the Commission:

Fiscal Year 2009 (July 1, 2008 – June 30, 2009):



Fiscal Year 2010 (July 1, 2009 – June 30, 2010):



Complainants are not required to wait more than 180 days for the Commission to complete its investigation before they may proceed to court. They have the right to opt out of the Commission's investigation after 180 days by requesting a right-to-sue letter.

This option predates the revisions made by PL 235. Nevertheless, many complainants prefer to have the Commission complete its investigation rather than their requesting a right-to-sue letter. Respondents also benefit from the Commission completing its investigation because it increases the chances of settlement. Of the 718 complaints that were closed in fiscal year 2010, 107 requested right-to-sue letters.

II. PRIOR EFFORTS TO REDUCE PROCESSING TIME

We have a staff of twelve, consisting of an Executive Director, one attorney, a Compliance Officer, four Investigators, a Chief Investigator (which position is currently vacant), an Intake Officer, three support positions, and one paralegal (on a contract basis). There are typically between 600 and 800 new discrimination complaints filed with the Commission every year. Historically, investigators have been expected to carry a caseload of between 80 and 100 cases. Between 250 and 300 complaints typically come before the Commissioners themselves for decision each year, and each such case requires that an Investigator's Report be prepared. A copy of the Commission's 2010 Annual Report is attached, which further reflects the nature of the Commission's case processing activities.

As the Annual Report shows, complaints before the Commission are resolved in basically three ways: approximately one-third are administratively dismissed, one-third are settled or conciliated, and one-third receive a determination by the Commission of reasonable grounds or no reasonable grounds to believe that unlawful discrimination occurred. We believe that this is an effective ratio for resolving complaints. This can only be achieved, however, if the Commission conducts investigations that provide the parties with a meaningful opportunity to assess the merits of the complaints. This

requires the Commission to conduct investigations that—although preliminary and informal compared with a court proceeding—are thorough enough to identify the primary factual and legal disputes and convey those findings to the parties.

The Commission has worked diligently for many years to shorten the length of its investigations. These efforts have included implementing an expedited process for relatively straightforward investigations; retaining a former, experienced investigator on a contract basis for a limited term as resources have allowed (while resources allowed); conducting fact-finding conferences only when a detailed review renders one necessary; collaborating with other state human rights commissions on efficient investigative techniques; administratively dismissing cases early in the process for failure to substantiate; and we have experimented with different ways of referring cases out for mediation.

III. ADDITIONAL EFFORTS TO REDUCE PROCESSING TIME

Over the past year, the Commission has explored various additional options for reducing case processing time while maintaining roughly the same ratio of settlements, Commissioner decisions, and dismissals. We have sought feedback from attorneys who practice regularly before the Commission and from the general public. On January 6, 2011, we held an open meeting to discuss case processing efficiencies. Three weeks prior to the meeting, a notice was posted on the Commission's website and email notifications were sent to over 200 attorneys who practice before the Commission. Members of the public and attorneys were invited to submit written comments. Although only five individuals—all of whom were attorneys—attended the meeting, and the Commission received only two email submissions, the discussion and suggestions were

helpful. Copies of the email submissions are attached. The feedback we received has been supportive of our approach to reducing case processing time.

In order to reduce case processing time without increasing staffing levels, in addition to the strategies outlined above, the Commission has implemented or is in the process of implementing the following:

- Restructuring to increase the hours of the Compliance Officer;
- Revising the role of the Chief Investigator;
- Utilizing Law school externs;
- Continued use of Issues and Resolution conferences;
- Identifying “red dot” cases; and
- Shortening Investigators’ Reports in some cases.

Restructuring to increase the hours of the Compliance Officer.

One of the core roles of the Commission is to resolve complaints informally so that they are not filed in court. All staff at the Commission work toward this goal, but the person primarily responsible for settling cases, by conducting pre-determination settlement discussions, mediations, and post-finding conciliations, is the Compliance Officer. In the past, we have had only a part-time (26 hours per week) Compliance Officer, who is also responsible for performing such important functions as educating the public concerning their rights and responsibilities under the Act and issuing advisory rulings to entities subject to the Act.

In order to create more time for our Compliance Officer to conduct settlement discussions and mediations, without an increase in the overall Commission budget, we are in the process of exchanging the part-time nature of the Compliance Officer position

with the full-time nature of the equally compensated Chief Investigator position. We have been able to do this through the retirement of our long-standing Compliance Officer and the desire of our existing Chief Investigator to assume the Compliance Officer duties. Our request is currently pending before the Bureau of the Budget. If our request is approved, we will have a full-time Compliance Officer and a part-time Chief Investigator (after the position is advertised and filled).

Revising the role of the Chief Investigator. In the past, the Chief Investigator has acted as both an Investigator and the Chief Investigator. Investigators, including the Chief Investigator, have been expected to maintain a caseload in excess of 80 cases. Investigators give each case assigned to them individualized attention, which may include reviewing written materials collected during the initial stages of the investigation, maintaining ongoing contact with the parties, obtaining follow-up information, conducting interviews, conducting Issues and Resolution and Fact-finding conferences, engaging the parties in settlement discussions, and writing Investigator's Reports. In the past, these functions have consumed an inordinate amount of the Chief Investigator's time.

Accordingly, we have revised the Chief Investigator role to no longer perform the typical responsibilities of an Investigator. The Chief Investigator will now be primarily responsible for the monitoring of all of the complaints filed with the Commission prior to them being assigned to an Investigator, as well as supervising the Investigators' work.

The Chief Investigator will conduct a preliminary review of each complaint after it comes in to ensure that it states a valid claim under the Act. As a part of this review, he or she may ask for follow-up information from the complainant or respondent that

address preliminary coverage issues, such as whether the complaint is timely or complainant is in a protected class. For example, before continuing with a general investigation, the Chief Investigator may decide to determine whether complainant has engaged in protected activity under the Whistleblowers' Protection Act or has a protected disability. If appropriate, the Chief Investigator will request that the case be administratively dismissed by the Executive Director at this early stage of the investigation.

Also during the preliminary review, the Chief Investigator will determine the scope of the investigation. In the past, after complaints are received, they are routinely sent to respondents with a standardized list of questions tailored to the type of discrimination alleged (e.g., sexual harassment). These questions have addressed most aspects of a typical claim that is alleged. Once respondent's answers are received, those are routinely sent to complainant, together with a request that complainant provide rebuttal information. When all of the written material is received, it often takes several months before a case is assigned to an Investigator due to the volume of the Investigators' caseloads. The cases usually receive individualized attention only after being assigned to an Investigator.

With the new role of the Chief Investigator, he or she will still usually prepare standardized questions to go to respondent along with the complaint. By giving the cases earlier, individualized attention, however, the Chief Investigator will be able to ask a shorter number of questions that are tailored to a narrower issue when appropriate, such as, for example, whether complainant was an "employee" under the Act or whether complainant complied with respondent's sexual harassment reporting policy. If these

preliminary questions indicate that the case lacks merit, the Chief Investigator will prepare a short Investigator's Report with a "no reasonable grounds" recommendation to the Commissioners.

In terms of ongoing monitoring, the Chief Investigator will keep track of the cases before they are assigned to determine whether issues have arisen that would make a particular case ready for an early disposition, either by settlement, dismissal, or an Investigator's Report. Some cases may be subject to administrative dismissal by the Executive Director for reasons such as a failure to substantiate or failure to cooperate with the investigation. Others may be straightforward and amenable to a short Investigator's Report written by the Chief Investigator. Some cases may warrant being immediately assigned to an Investigator for a more comprehensive follow-up on an issue that could be dispositive. At any point, the Chief Investigator may assign the complaint to the Compliance Officer for settlement discussions or mediation if settlement appears reasonably likely.

By having one person maintain ongoing responsibility for the complaints in this fashion, more cases will be resolved before they would otherwise have been assigned to an Investigator, thus shortening the length of the investigations in those cases and giving the Investigators more time to work on the cases that require more attention.

Utilizing Law school externs. The Commission has also started to participate in the Externship Program at the University of Maine School of Law. Through the program, second and third-year law students are assigned to work 18 hours per week for a semester in governmental and non-profit positions under the supervision of an attorney. The extern is unpaid but receives six credit hours at the Law School. We

welcomed our first extern this past fall. Our extern worked successfully as an Investigator, performed complaint intakes, and assisted our Commission Counsel in litigation activities. The experience was very positive, and we expect to continue to participate in this program in the future.

Continued use of Issues and Resolution conferences. We have continued to use Issues and Resolution conferences to more quickly resolve complaints. During an Issues and Resolution conference, the parties come to the Commission for a face-to-face meeting early in the process. Each side makes short (10 minute) presentations articulating the nature of the claim or defense and the parties are assisted in exploring settlement. The conferences are scheduled for less than one hour, which is contrasted with a Fact-finding conference, in which the assigned Investigator invites various witnesses and schedules a half or a whole day to conduct the conference. We have found IR conferences to be an effective tool to resolve complaints efficiently.

Identifying “red dot” cases. The use of “red dot” cases is also a tool that the Commission has used to shorten the length of investigations in certain cases. When the complaints are screened, they are reviewed to determine whether they involve issues that warrant an accelerated investigation, such as complaints alleging ongoing retaliation, ongoing sexual harassment, or an ongoing failure to accommodate a disability. These cases are marked with a “red dot” and are given priority at each stage of the investigation.

Shortening Investigator’s Reports in some cases. We have also made a commitment to shorten the length of Investigator’s Reports in some cases. Investigator’s Reports are often very detailed and involve a thorough analysis of the facts in relation to the applicable law. With 250 to 300 cases going to the Commissioners for

decision each year, the Investigators are each responsible for writing approximately 60 reports per year. Writing the reports takes a significant amount of the Investigators' time. We believe that as many as one-third of the Investigator's Reports, which are often between ten and twenty pages, can be shortened significantly length. Given the need to resolve cases within the allotted time, and the revision of the Chief Investigator's role, it will be impossible to maintain the current level of detail in all reports going forward. We are mindful that less analysis may decrease the parties' understanding of the strengths and weaknesses in their cases. Our goal will be to carefully select cases for shortened reports, so that we can continue to provide sufficient analysis to assist the parties toward resolution.

IV. RECOMMENDATIONS FOR LEGISLATIVE ACTION

We believe that the above efforts will reduce the amount of time that the Commission takes to investigate Complaints. In the end, the best way to resolve discrimination complaints is to give them individualized attention. There is a direct correlation between the amount of time the Commission spends on its cases and the likelihood that those cases will be resolved.

The biggest challenge facing the Commission in meeting its objectives, however, is that it is chronically understaffed given the amount of work before it. Recently, we went from having four full-time support positions to three. This has created a backlog of new complaints waiting to be entered into our system. It has also meant that the Investigators have virtually no administrative support to do their jobs, although they had very little previously. The addition of two administrative support positions—one to take us to the previous level and one to assist the Investigators—is therefore necessary.

Again, the new position of Chief Investigator will be only a 26-hour per week position, when it should be full-time for the assigned tasks to be completed. Increasing the Chief Investigator's hours to full time is therefore important. Moreover, the addition of two investigators would greatly reduce the time that it takes to resolve complaints.

In light of the current statewide budget crisis, we realize that it is unlikely that these staffing increases will be approved. We would be remiss, however, if we did not recommend their implementation as an important way to reduce the time for processing complaints.

Maine Human Rights Commission



2010 Annual Report

July 1, 2009 - June 30, 2010

TABLE OF CONTENTS

Letter of Transmittal	3
The Commission.....	5
Staffing & Budget.....	7
Case Activity.....	7
Charges Filed.....	7
Charges Closed.....	10
Merit Closures.....	10
Administrative Dismissals.....	10
Non-Merit Closures.....	11
Commissioner Determinations.....	11
Litigation.....	12



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John P. Gause
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A LETTER FROM THE CHAIRMAN

January 10, 2011

The Honorable Paul LePage, Governor
The Honorable Kevin L. Raye, Senate President
The Honorable Robert W. Nutting, Speaker
State House
Augusta ME 04333

Dear Governor LePage, President Raye and Speaker Nutting:

On behalf of myself, my fellow Commissioners, and staff of the Maine Human Rights Commission, we are pleased to present you with the 2010 Annual Report of the Maine Human Rights Commission. In 2010 we welcomed Commissioner Thompson to a position that had been vacant for a several months. As you can see by the following, we are up-holding the charge of the Commission, and handling the challenges to enforce Maine's anti-discrimination laws. The Annual Report provides data concerning the Commission fulfilling our collective responsibilities. A few highlights are as follows:

- The number of new charges that were filed decreased 3.8% from the previous year to 659.
- Employment charges comprised the largest category of complaints filed. 73.9% of charges filed were employment charges; 7.8% were public accommodation charges; Housing charges increased from the prior year; 17% were housing charges. Education charges comprised 1.4% of the overall total.
- Disability charge allegations comprised the largest number of allegations filed, with the number decreasing slightly from the previous year (from 450 to 438); the percentage of the total number of allegations filed decreased slightly from 40% to 37%.
- Sex discrimination charge allegations remained about the same (147), and the percentage was 12% of the total charges filed.
- The number of sex discrimination allegations that were sexual harassment claims remained about the same (71), which was 48% of the total sex discrimination allegations.
- Whistleblower allegations increased in number (197 allegations) and in percentage of total allegations (16.5% of total). Whistleblower allegations continue to exceed sex discrimination allegations.
- Disability, sex, and whistleblower allegations were named in 66% of the new allegations filed. Race/color, ancestry/national origin, age, retaliation & sexual orientation collectively comprised 30% of the total. All other categories comprised the remaining 4%.
- Sexual orientation allegations comprised 4% of the total.
- The number of charges closed decreased by nearly 8% from the previous year.

- 274 cases were listed on Commission agendas. 46% were uncontested and listed on the consent agenda. Commissioners heard argument in 147 cases. Reasonable grounds were found in 17% of the cases.
- At the end of FY 2010, 670 cases were pending in our inventory. The number of pending cases decreased from the previous year (from 729 to 670).

In addition to the above, the staff and Commissioners have participated in more than 15 training forums during this time period both providing and receiving the newest information pertinent to our arena.

On behalf of my fellow Commissioners, we pledge our continued commitment to the promotion of diversity, tolerance, and to ensuring basic human rights for all Maine citizens and visitors to our wonderful State. We certainly look forward to the continuing relationship with the Executive and Legislative branches to assure the citizens of Maine the basic protections afforded under the Maine Human Rights Act.

Sincerely,



Paul K. Vestal
Chairman of Maine Human Rights Commission

THE COMMISSION

The Maine Human Rights Commission is the State agency charged with the responsibility of enforcing Maine's anti-discrimination laws. The Commission investigates complaints of unlawful discrimination in employment, housing, education, access to public accommodations, extension of credit, and offensive names. The Commission attempts to resolve complaints of discrimination to the mutual satisfaction of those who are involved. The Maine Human Rights Act authorizes the Commission to pursue remedies for unlawful discrimination in Court when necessary to enforce the Act.

The Commission was established in 1971 and has jurisdiction over allegations of discrimination in the following areas:

AREAS OF JURISDICTION

EMPLOYMENT	HOUSING	ACCESS TO PUBLIC ACCOMMODATION	CREDIT EXTENSION	EDUCATION
Race	Race	Race	Race	Race
Color	Color	Color	Color	--
Sex	Sex	Sex	Sex	Sex
Sexual Orientation	Sexual Orientation	Sexual Orientation	Sexual Orientation	Sexual Orientation
Physical disability	Physical disability	Physical disability	--	Physical disability
Mental disability	Mental disability	Mental disability	--	Mental disability
National Origin	National Origin	National Origin	National Origin	National Origin
Ancestry	Ancestry	Ancestry	Ancestry	--
Religion	Religion	Religion	Religion	--
Age	--	--	Age	--
Workers' Comp Retaliation	Receipt of public assistance	Children (lodging only)	Marital Status	--
Whistleblower Retaliation	Familial Status	--	--	--
Genetic Information	--	--	--	--

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

Commission policy is formulated by five Commissioners appointed by the Governor for staggered five year terms. Commissioners make the final finding on all charges of discrimination investigated by the Commission staff and not settled or administratively dismissed. The Governor designates the Chair of the Commission from among its members.

Section 4566 of the Maine Human Rights Act outlines the powers and duties of the Commission. These 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;
- to recommend measures calculated to promote full enjoyment of human rights and personal dignity.

STAFFING AND BUDGET

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**

The Investigation Division is responsible for all aspects of case processing from determining whether or not allegations are legally sufficient to constitute a charge of discrimination within the jurisdiction of the Maine Human Rights Act, to issuing Investigator's Reports which analyze facts and apply the law of discrimination and relevant Court decisions and recommending specific findings to the Commission.

- **Compliance**

The Compliance Division is responsible for all settlement efforts of the agency. The Division has direct responsibility for negotiating conciliation agreements after findings of reasonable grounds and conducting both written and on-site monitoring of such agreements to ensure that terms are met. The Compliance Officer sets overall negotiation strategy, reviews and monitors pre-determination settlement agreements. This Division also provides technical assistance to employers in reviewing Affirmative Action Plans and personnel policies and is involved in the public education efforts of the Commission.

- **Legal**

This division is responsible for litigation activity as well as providing legal advice to the staff and Commission. The Commission Counsel reviews the Investigator's Reports for legal sufficiency, provides legal opinions, drafts legislation and proposed regulations, litigates cases, and advises the Executive Director on contract matters involving governmental agencies and private parties.

- **Administration**

The Administration Division is the division 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.

BUDGET

The Maine Human Rights Commission's fiscal year 2010 budget appropriation was \$943,195 including \$428,855 in federal funds from the Equal Employment Opportunity Commission and the U.S. Dept. of Housing & Urban Development.

Approximately 83% of the agency's budget was allocated to fixed 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 charges.

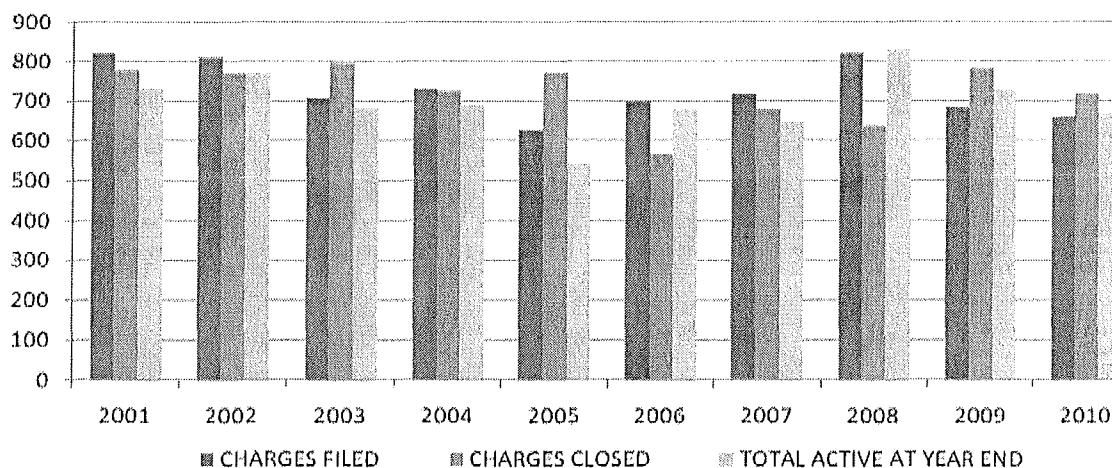
CASE ACTIVITY

During the last fiscal year, six hundred fifty-nine (659) new charges were filed, which represents a decrease from the previous year. A total of 1,191 bases were named in these charges, representing more complex investigations in many cases. Seven hundred and eighteen (718) cases were closed during the same time period. The pending inventory of cases has decreased by 8% since last fiscal year.

CASE ACTIVITY FY 2001 – 2010

FISCAL YEAR	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
PREVIOUS YEAR TOTAL	689	732	771	683	688	544	679	646	826	729
CHARGES FILED	819	808	708	731	628	700	718	819	849	659
CHARGES CLOSED	776	769	796	726	772	565	678	639	782	718
TOTAL ACTIVE AT YEAR END	732	771	683	688	544	679	646	826	893 ¹	670

CASE ACTIVITY CHART



CHARGES FILED

¹ The FY 2009 Annual Report indicated that 849 charges were filed, this number was reported in error. The correct number of charges filed in FY 2009 is 685. The correction reduces the total number of active charges at FY 2009 year end from 893 to 729. The Case Activity Chart has been updated to reflect the 2009 revision.

As in past years, the Commission continued to devote the majority of its resources to the processing of charges of discrimination filed with it.

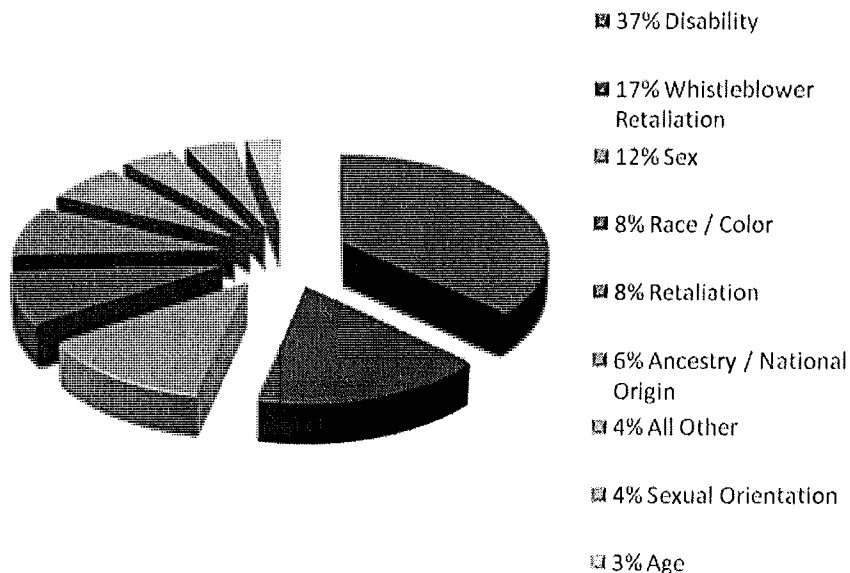
- 659 new charges were filed.
- Nearly 73% of these new charges alleged discrimination in employment.
- The largest number of complaints filed were on the basis of disability (37%).
- The second and third largest numbers of complaints filed were based on whistleblower retaliation 17% and sex 12%.
- Disability, whistleblower, and sex comprised 66% of the complaints filed.
- Race/color was the 4th largest category of complaints (8%), followed by
 - Retaliation (8%)
 - Ancestry/National Origin (6%)
 - Sexual Orientation (4%)
 - Age (3%)

Of the sex discrimination complaints filed, seventy-one (71) alleged sexual harassment. This number comprised 48% of the total of sex discrimination complaints.

BASIS OF CHARGES SUMMARY FISCAL YEAR 2010

BASIS	# ALLEGATIONS
Disability	438
Whistleblower Retaliation	197
Sex	147
Race / Color	101
Retaliation	96
Ancestry / National Origin	75
All Other	52
Sexual Orientation	50
Age	35
TOTAL ALLEGATIONS	1191

Basis of Charges FY 2010

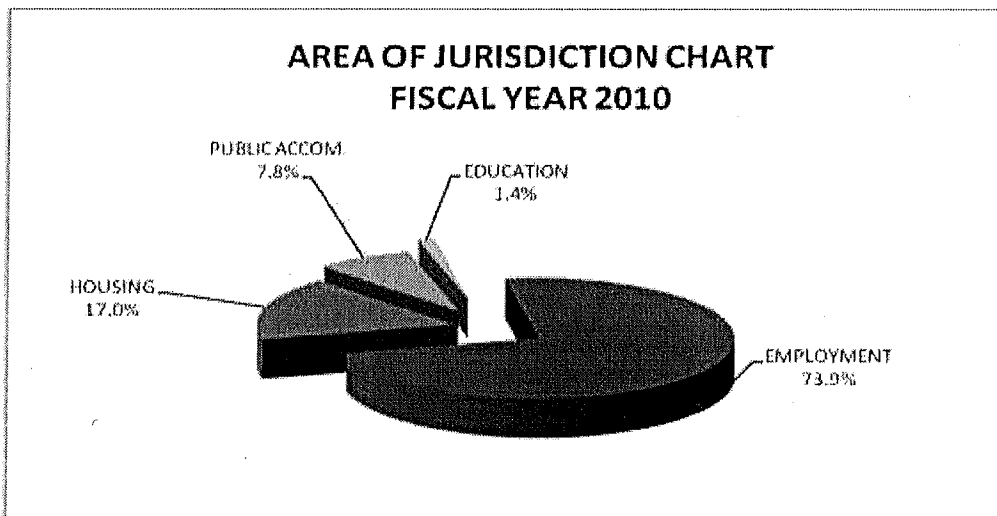


BASES OF CHARGES FILED FISCAL YEARS 2001 -2010

BASES	FY:	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
RACE / COLOR		73	97	82	64	60	64	88	113	123	101
SEX		316	296	262	258	201	236	207	196	149	147
PHYSICAL DISABILITY		267	223	203	202	201	201	244	370	338	307
MENTAL DISABILITY		81	97	117	104	80	107	102	97	112	131
RELIGION		14	17	13	18	15	10	16	25	15	20
AGE		95	117	82	95	75	66	94	97	60	75
ANCESTRY / NATIONAL ORIGIN		29	54	42	38	43	40	43	106	51	35
MARITAL STATUS (Credit only)		0	1	0	0	0	0	0	0	0	0
SOURCE OF INCOME (Housing)		4	3	7	15	10	16	8	9	10	10
FAMILIAL STATUS (Housing)		5	6	14	6	14	19	13	6	19	22
WHISTLEBLOWER RETALIATION		126	155	151	167	138	143	147	201	180	197
WORKERS' COMP RETALIATION		5	2	5	2	4	1	3	0	0	0
RETALIATION		95	82	91	72	68	98	98	147	56	96
SEXUAL ORIENTATION		N/A	N/A	N/A	N/A	N/A	13	33	32	19	50
GENETIC INFORMATION		0	0	0	0	0	0	1	0	0	0
TOTAL ALLEGATIONS		1110	1150	1069	1041	909	1014	1097	1394	1132	1191

**SUMMARY OF AREAS OF JURISDICTION IN CHARGES FILED
FISCAL YEARS 2001 – 2010**

FISCAL YEAR	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
EMPLOYMENT	617.0	680.0	590.0	613.0	515.5	502.5	544.0	604.0	653.0	492.0
HOUSING	69.5	14.0	53.0	69.0	75.0	136.0	114.0	59.0	122.0	113.0
PUBLIC ACCOM.	109.0	94.0	58.0	42.5	34.0	49.0	53.5	142.0	64.0	52.0
EDUCATION	23.5	20.0	7.0	6.5	3.50	11.5	5.5	11.0	10.0	9.0
CREDIT EXTENSION	0.0	0.0	0.0	0.0	0.0	1.0	1.0	1.0	0.0	0.0
OFFENSIVE NAMES	0.0	0.0	0.0	0.0	0.0	0.0	0	2.0	0.0	0.0
TOTALS	819.0	808.0	708.0	731.0	628.0	700.0	718.0	819.0	849.0	666.0



CHARGES CLOSED

Seven hundred and eighteen (718) charges of discrimination were investigated and closed during the last fiscal year.

- **Merit Closures**

Merit closures are closures in which either a determination was made that there were reasonable grounds to believe that unlawful discrimination had occurred, or cases in which the Complainant received some benefit from the Respondent prior to a determination on the merits of the complaint. Merit closures include reasonable grounds determinations, with successful and unsuccessful conciliations; pre-determination settlements; and withdrawals with settlement.

During the last fiscal year, there were two hundred and forty-four (244) cases closed which were reasonable grounds cases or cases that provided benefits to complainants.

The Commission encourages voluntary settlement and is willing to work with the parties to achieve a resolution that is acceptable. Cases may be resolved at any time while they are before the Commission by means of a settlement. Settlements can take two forms: 1) a **negotiated settlement agreement**, and 2) a **withdrawal with settlement**. Settlement agreements are formal documents prepared by the Commission, signed by both parties and a representative of the Commission. Terms are monitored by the Commission's Compliance Division.

Some parties reach settlements independent of the Commission, and the Complainant chooses to withdraw his or her charge. A withdrawal with settlement may contain all of the terms found in a settlement agreement, but there is no agreement to which the Commission is a party. The Commission does not monitor a withdrawal with settlement.

During the last fiscal year, one hundred and ninety-seven (197) cases were settled prior to a finding by the Commission. The monetary value of these settlements amounted to \$1,600,991 for Complainants. It should be noted that in addition to monetary awards, settlements typically include provisions that may include the offer of a job or housing unit, modifications providing accessibility, reinstatement, attorney's fees, cleared personnel records, policy modifications, letters of recommendation, and non-retaliation provisions.

Also during this time period there were eight (8) successful conciliations of the forty-seven (47) reasonable grounds determinations. The Maine Human Rights Act requires the Commission to undertake formal conciliation efforts in all cases in which it is determined that reasonable grounds exist to believe that unlawful discrimination has occurred. The monetary value of these conciliations was \$124,000. Total monetary relief for merit closures was \$1,724,991.

- **Administrative Dismissals**

Cases can be administratively dismissed for several reasons prior to a Commission determination. Complainants may choose to **withdraw** their charge of discrimination. Withdrawals most often occur when Complainants, after hearing the facts presented by Respondents at a fact finding conference, or reviewing the Respondents' written answers to the charge, decide that they do not wish the Commission to continue processing their case any longer. Forty (40) charges were withdrawn during the last year.

Complainants may also obtain **Right To Sue** letters from the Commission after 180 days from the filing of a charge. If the Commission issues a Right To Sue letter, the case is closed and the

Complainant can file a lawsuit in court. One hundred and seven (107) Right to Sue letters were issued in the last fiscal year.

Other cases are **administratively dismissed** by the Executive Director for such reasons as lack of jurisdiction, failure by the Complainant to cooperate with the investigation, or failure by the Complainant to substantiate a complaint. One hundred (100) cases were closed during the last year for such reasons.

WITHDRAWALS AND DISMISSALS FISCAL YEAR 2010

TYPE	NUMBER
CHARGE WITHDRAWN	40
RIGHT TO SUE	107
FAILURE TO COOPERATE/PROCEED	69
NO JURISDICTION	7
OTHER	24
TOTAL	247

- **Non merit closures**

In addition to cases closed finding reasonable grounds and/or providing some remedy to the Complainant, and cases administratively dismissed, two hundred and twenty-seven (227) cases were dismissed after a finding that no reasonable grounds existed to believe that unlawful discrimination had occurred.

- **Commissioner determinations**

If a case cannot be settled, the Complainant does not withdraw, or the matter is not administratively dismissed, a report is prepared by the Investigator assigned to the complaint and a recommendation is made to the Commission as to whether reasonable grounds exist to believe that unlawful discrimination occurred.

Two hundred and seventy-four (274) cases came before the Commission in fiscal year 2010 for a determination. One hundred and twenty-seven (127) cases had no written objection to the Investigator's recommendation, and were placed on the Commission's Consent Agenda. In those cases, Commissioners adopted the recommendation of the Investigator without argument. The Commission found reasonable grounds to believe that unlawful discrimination had occurred in forty-seven (47) cases, which was 17% of the cases they considered. The Commission found no reasonable grounds to believe that unlawful discrimination occurred in two hundred and twenty-seven (227) cases. Not all cases in which the Commission makes determinations are closed within the same fiscal year. Cases in which the Commissioners find reasonable grounds continue through a conciliation process. The above figures represent cases considered by the Commission in fiscal year 2010. The figures following represent cases actually closed during fiscal year 2010.

SUMMARY OF CASE CLOSURES FOR FY 2010:

CASES CLOSED FY 10	MERIT CLOSURES: 34%			NO RG DETERMINATIONS 32%	WITHDRAWLS & DISMISSALS 34%
	SETTLEMENTS	SUCCESSFUL CONCILIATIONS	UNSUCCESSFUL CONCILIATIONS		
718	197	8	39	227	247

LITIGATION

The Maine Human Rights Act authorizes the Commission to file a lawsuit in Superior 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 directs the legal efforts and represents the Commission.

During Fiscal Year 2010, the Commission directed Counsel to file complaints in thirteen cases on behalf of the Commission. Five cases were resolved that had been referred to Counsel for litigation or amicus filings. The Commission was a party in eighteen court cases throughout the year. At the end of Fiscal Year 2010, there were thirteen cases pending in court in which the Commission was a party.

Gause, John P

From: REBECCA WEBBER [rwebber@lcwlaw.com]

Sent: Tuesday, January 04, 2011 4:17 PM

To: Gause, John P

Subject: ideas for MHRC

1. Require that the complainant make a settlement demand to the respondent within 10/20/30 days after their reply to the respondent's answers. Respondent must respond within a certain time. Settlement demands are required in the courts so no one feels like they will look weak starting things off.
2. Have more guidance on the web and to mail out on "wrongful discharge" and "harassment" in Maine. Many people just don't understand how yelling at someone can be legal, or using sexual language can be legal, or being a bad or unfair manager can be legal. It would help sort out the non claims from the claims earlier on by preventing some from even being filed.
3. Have the investigators be more assertive about giving some feedback on problems with a case that the client hears so maybe the case settles. Barb Lelli is good at this. Many others are more passive, just transmitting offers back and forth, I think because there is concern about overstepping bounds.
4. Charge something for filing a complaint (even if just \$5) that goes to help the Commission budget. People are more committed to working out things they have a stake in.
5. Have a much more detailed intake form, requiring information that will result in a long chronology and a list of when reports were made to management, etc. Like a court, require that it be typed up to be submitted. Don't retype; just staple to the form and get it out.
6. If there were money for this, have someone who can sweep through the complaints and follow up on ones that should be gotten rid of early on where it is clear the person just doesn't understand that discrimination is. And/or have that person send questions that must be answered: you say you were harassed on June 5 --- what exactly happened and how is it tied to any of the categories listed in the Maine Human Rights Act? Or, you say you were fired for something you didn't do; what do you think the REAL reason was? Or, you were asked to provide X documents but I do not see those in the file; please forward those shortly.
7. Require mediation sessions or face to face meetings to talk about resolution, at least in some number of cases.
8. At some point early on in the process, particularly with pro ses, provide a more in depth legal description of what they will have to prove, with examples, and perhaps samples of investigator reports. Make sure they understand the limitations on damages (I was in an issues and resolution conference lately and the person on the other side was suing an individual and was asking for 500k; the investigator did not feel comfortable telling this person that there are zero comps and punis for those with less than 15 employees; the problem was that this person was envisioning a huge pot of gold in the future and so the case did not resolve).
9. The Commission's greater use of email is awesome. I like the I&R conferences ok but think they are awkward. Just plain mediation would be better. At the same time, it is the Commission trying to be creative to get the work done and that is great.
10. Any way to refer cases to lawyer mediators who must do mediation at a certain cut rate? The cost is the big barrier.

No need to answer any of the questions embedded in these. If I think of something else, I'll let you know. Good to talk to you!

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Gause, John P

From: Poulin, Michael R. [mpoulin@3200.com]
Sent: Tuesday, December 14, 2010 1:57 PM
To: Gause, John P
Subject: RE: Commission Case Processing

John,

I regret that I will be unable to attend the meeting on January 6. I will be in depositions in one of those cases that was dismissed with a right to sue letter. If I had been able to attend, I would have pointed out that in my 27 years of representing clients before the Commission, its investigative process has generally worked very effectively to identify and resolve cases with merit and to dispose of those without. Unfortunately, since the change in law that allows right to sue letters, certain plaintiffs' counsel have developed a consistent practice of filing complaints with the Commission with no intention of allowing those complaints to be fully investigated, but rather intending to request a right to sue letter as soon as they have obtained some "free discovery" from the respondent and the 180 days has expired. This has significantly reduced the effectiveness of the process.

Mike

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From: Gause, John P [mailto:John.P.Gause@maine.gov]
Sent: Tuesday, December 14, 2010 1:13 PM
To: Miller, Edward; Mittel, Robert; Moon, Richard; Moss, Philip; Nadeau, Gisele; Nale, Thomas; Nofsinger, Jodi; Nugent, William; O'Brien, Timothy; Ociepa, Sean; Olivier, Elizabeth; Olson, Richard; O'Meara, Richard; Paradie, Verne; Paterson, John; Payne, Clare; Peard, Patricia; psk@kelleyleger.com; Peters, Jeffrey; Peterson, Steven; Pettis, Philip; Pickle, Elisabeth; Potz, Kendra; Poulin, Michael R.; Pratt, Jr., S. Mason; Pringle, Harry; Pross, James ; Rabasco, Jr., Edward; Rachin, Leah; Rand, Katherine; Randall, Chet; Reben, Howard; Rice, Peter; Richards, Michael; Ridge, Martin; Ringer, Robert; Robinson, Randy; Rose, Daniel; Roy, Peter; Rush, Daniel; Sawyer, Lawrence; Schneider, Jr., Ronald; Schroeter, Peter; Schwellenbach, James; Shankman, Neil; Shapiro, Jonathan; Sheils, William; Smith, Bruce; Smith, Elizabeth; Smith, Stephen; Smith, Jr., Kaighn; Solman, Richard; Stevens, Daniel; Stevens, Graydon; Stolt, Robert; Storey, Anne-Marie; Stouder, Elizabeth; Strock, David; Tarasevich, Matthew; Taylor, Adam; Thibeault, Paul; Thistle, Dale; Thompson, Peter; Thornton, Judith; Tinkle, Marshall; Tracy, Sarah; True, Kim; Uhl, Eric; Van Baars, David; Vickerson, William; Watson, Thomas; Webber, Curtis; Webber, Rebecca; Webbert, David; Welch, Thomas; Winger, Lawrence; Wingling, Rick; Wolf, Karen; Wolfram, Karen; Young, Jeffrey; Zmistowski, Thad; acarney@ptla.org
Subject: Commission Case Processing

The Commission was asked by the 124th Legislature to evaluate ways of reducing the time for investigating complaints. The Resolve, attached, asks the Commission to report back to the Legislature's Judiciary Committee by February 1, 2011 "concerning case processing revisions,

planned case processing revisions and recommendations for legislative action, all to reduce the time for investigating complaints. The report must include the estimated costs of the revisions and the recommendations." The Resolve was agreed to by the Commission in response to a bill (LD 1537) that would have shortened the length of the Commission's investigations to a maximum of one year. I am also attaching a copy of the Commission's testimony with respect to LD 1537.

Over the past year, the Commission has continued to explore various ways to investigate cases more expeditiously. Recent attempts that you may be aware of are the utilization of Issues and Resolution Conferences, the involvement of a law school extern as an Investigator, and more aggressive initial screening of complaints.

Please accept this invitation to participate in an open meeting here at the Commission's new location, 19 Union Street, on Thursday, January 6, 2011, at 9:00 AM, to discuss these efforts and your ideas for ways that the Commission process can be moved along more quickly. The meeting will take place in the large conference room downstairs, where the future monthly Commission meetings will be held. I hope to see you on January 6th.

John

John P. Gause
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