

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6-8 PM, Tuesday, September 11, 2018

Panel Member attendance:

- Attorney General Appointments: Jessica Brown, Geoffrey Jones, Etan Nasreddin-Longo, Chief Don Stevens, Shela Linton
- Executive Director of VT Criminal Justice Training Council: absent
- Attorney General or designee: David Scherr
- Defender General or designee: Rebecca Turner
- Executive Director of State's Attorneys and Sheriffs Department or designee: absent
- Chief Superior Judge: absent
- Commissioner of Corrections or designee: Monica Weeber
- Commissioner of Public Safety or designee: Lt. Gary Scott
- Commissioner of Department of Children and Families or designee: Ken Schatz

Guest presenter: Karen Richards, Human Rights Commission Executive Director

Announcements

Pepper can't be here but has ideas on our assigned racial disparities readings that he would like to share at the next meeting.

Discussion with Karen Richards

Shela Linton: let's have a coming together exercise, we should all speak out about the situation with Representative Kiah Morris.

Each panel member speaks out, expressing frustration, sadness, hopes for action.

August minutes are approved without change.

Discussion with Karen Richards, Human Rights Commission Executive Director

Karen gives out handout with overview of HRC duties, responsibilities, statistics of HRC activity.

Karen goes through handout, which is attached to the end of these minutes.

Shela question: are the trainings ones that are requested of HRC, or are they ones that HRC affirmatively sets up.

Karen: both happen. Sometimes people ask, sometimes we do them for the purposes of education, sometimes we require them of people.

Karen: HRC ED job is not really doable by one human being. The charge is far bigger than the human resources available.

Karen recommendation: separate the legal counsel from ED. Have a separate director of litigation. Also have a separate director of education and outreach—this person would not only travel the state and do educational outreach, but could also do social media outreach and related outreach. ED would have more time to manage and direct, as well as have more resources for legislative research/outreach/education

Karen: we have adequate investigators to handle current caseload, but we would hopefully have more cases if there were more outreach and education. In total we would like 2-3 more positions.

Shela: are we sure that 2-3 is really all we need? Are we coming at this truly imagining everything we could do? Some of the communities that I work with do not feel like there is enough access to the HRC, for whatever reason—perhaps because of jurisdictional issues, perhaps because of lack of investigator time.

Don: are you definitely saying 2-3 as you've outlined?

Karen: perhaps I am still in state government budget thinking mode! But perhaps we could do a higher ask especially in the current environment with feds abandoning this work.

Jessica: also the state government has shown significant interest in this: two different panels dealing with these issues, including a paid position.

Rebecca: of the complaints that the HRC receives, what is the category that receives the most complaints?

Karen: Public accommodations receives the most complaints.

Rebecca: how do we get the reporting numbers up?

Karen: biggest problem is that a lot of people don't even know we exist. Robust education and outreach would help this a lot. If we do get a lot more cases we would definitely need more investigators.

Rebecca: is there a model that you see around the country as an ideal?

Karen: one possible model is the ACLU. They've added a lot of positions. Not all HRCs are the same, ours and Maine is the same with commissioners overseeing staff. Other HRCs commissioners are hearing officers who conduct admin hearings. We could have something that included an admin hearing. It may be more effective. In other states the attorney general's office is sometimes the prosecutor, and sometimes HRCs have in-house prosecutors.

Ken: the HRC can be the appropriate body to look at all state government complaints. Implicit bias might not fit neatly into your current system so it may require adding staff to focus on that. And at HRC could be a clearinghouse for the statewide complaint system.

Karen: the other body created by leg already is supposed to be working on the statewide bias issue.

Etan: we could still ask for it, ask for the moon.

Don: the clearinghouse idea, one that tracks the status of complaints everywhere in state government, could be useful.

Shela: For complaints against agencies I would like an independent entity holding the complaint and tracking it, an entity outside of the agency. A lot of people trying to follow through on complaints are the most oppressed individuals without the resources or time to follow a complaint through. How do we change the HRC in order to achieve the goals? We'll probably need legislation.

Karen: the jurisdiction issue may not be that bad. It's a low bar to acceptance. A prima facie case isn't hard to make: protected class, incident, some evidence that it is connected to protected class. One thing: only complainants need to notarize their documents, not respondent. This is an inequality that hurts complainants and advantages respondents. One big thing: there should be the ability to have some sort of restorative justice process so you don't necessarily need to have a complaint that requires court process.

Jessica: would you do that yourself or outsource?

Karen: it's not necessarily a huge shift, could likely be done within HRC. In speaking with people elsewhere who have done it: it mostly requires adding the tool to the toolbox that the HRC can offer.

Don: let's stay clear on our charge, we may be getting too into the weeds on HRC specifics. Can we give a broad recommendation on the clearinghouse idea and let legislature and HRC work it out.

Karen: all of this input will likely be politically helpful—it's more effective to have clear and specific support from another body.

Gary Scott: how do you envision the structure of being a clearinghouse, do you need resources for that?

Karen: I'd hesitate to create a system where complaints come in to the HRC, and then go back out again, that might be too many calls for complainants and an unhelpful burden on HRC. Instead could have agencies report to HRC.

Etan: we could ask for a new job and include a job description in our written report/request

Ken: let's think about what our charge is: how do we make complaints better heard? Perhaps there is not a need to outline specific job positions for HRC but we can give the charge and allow HRC to arrange itself as it best needs.

Don: also the data collection is important for highlighting where issues are, this helps justify the change.

Geoffrey Jones: Going to a specific agency is intimidating. We still need a place people can go that's not the agency itself, and the referral from HRC can carry some real weight if the person first got it to the HRC. So the HRC may be a good alternative place, let's not write off that possibility.

Shela: let's think about how we can make sure the HRC is a place that people feel heard. It would be great to make sure that the HRC is a place where people can go—it may not be the government agency itself that is the best place to go, and have someone there who can specifically help people through the process.

Rebecca: is there any HRC model like this where the HRC is a clearinghouse and who has someone who can assist a complainant?

Karen: I'm not sure but I'll check; this does speak to the challenge of the HRC, where it's both an enforcement agency and an educational agency.

Anne Schroeder (member of the public): Thanks to Etan and Karen for their time emailing. One way for this process to be more available is for organizations and agencies to include a link on their own websites pointing to the place to go for complaints.

Don: what about mandatory postings in offices, like other things that must be posted?

Etan: let me propose the way forward: I should write something and you all can tear it apart. Ideas so far: ken's and others' idea to help create an HRC clearinghouse, then an ombudsman to assist complainants, plus whatever HRC needs.

Shela: I would still love to hear from the community on this. I don't speak for everybody. Perhaps going back to HRC staff (below the ED level) to see what the needs really are. Also have community members give feedback on their HRC experience. If we're creating structures for people without those people it's not going to be as effective as it can be.

Ken: I'd like to add the restorative justice part of things into the HRC report.

Discussion of racial disparities report provided by Chief Stevens:

Gary Scott: VSP: a lot of what is recommended we are doing already. how do we get other agencies to pick these issues up in some way? VSP is working hard on this but we still need other agencies to pick up on this. These issues are made known to VSP applicants. VSP

supervisors are already tracking issues. We need more community outreach as well. We have been frustrated with response or lack thereof from other agencies on this.

Rebecca: looking at this from the defense attorney perspective: how is implicit bias possibly influencing how individual attorneys are working for their clients? Also we need training in terms of identifying substantive areas where we defense attys can do more effective, and just more, motion filings that will allow areas of law to better recognize bias issues. The recruitment of more attorneys of color is important but very difficult because of low pay, high cost of law school, etc.

VT is the only state in the country to have adopted this specific rule of conduct: Rule of professional conduct 8.4(g)—it is professional misconduct to engage in practice of law if a lawyer knows or should know it constitutes harassment of protected categories.

Monica: Many sections in the report have to do with DOC. In other states the DOC has a smaller set of responsibilities. We need to do better with diverse recruitment. We are working on doing graduated sanctions, especially to reduce reincarceration for people on FSU. We are doing lot with programming, as we must.

Gary Scott: we need to make sure we are capturing as much data as we can to help us get the best understanding.

Monica: CRG is working on a report about where people of color go into the system and what happens, looking across the system.

Don: DOC is doing well in terms of spiritual resources.

New Business:

We need to have discussion about time and location of meetings. We will do so at the next meeting.

Meeting adjourned.

MEMO

TO: Racial Disparities in the Criminal & Juvenile Justice Advisory Panel
FROM: Karen Richards, Executive Director
DATE: September 11, 2018
RE: 2018 HRC Statistics

Thank you for the opportunity to address the panel for a second time. I thought it might be helpful for context to provide some statistical information on the HRC's work, including some comparative data from prior years just to put our conversation in context.

I very much appreciate the Panel's interest in our work and the fact that your report will focus on how to improve the HRC's processes, both through additional staffing and recommendations for improvements.

We strive to provide a complaint filing process that is accessible and timely and for a complaint investigation process that is impartial, timely conducted and, in the case of a settlement, adequately promotes both the interests of the aggrieved party and the Commission's interest in relief that helps to reduce and/or eliminate discrimination.

JURISDICTION

The Vermont Human Rights Commission has jurisdiction over the following areas (federal categories in **bold**):

HOUSING	PUBLIC ACCOMMODATIONS	STATE GOV'T EMPLOYMENT
Race	Race	Race
Color	Color	Color
National Origin	National Origin	National Origin
Religion	Religion	Religion
Sex	Sex	Sex
Disability	Disability	Disability
Sexual Orientation	Sexual Orientation	Sexual Orientation
Gender Identity	Gender Identity	Gender Identity
Marital Status	Marital Status	
Age		Age
Minor Children		
Public Assistance		
	Breastfeeding	Breastfeeding
		HIV blood test
		Workers' Compensation
		Ancestry
		Place of birth
		Credit history
		Pregnancy Accommodation
		Crime Victim
		Family/Medical Leave

CALLS AND REFERRALS

Phone Contacts

In FY18, the VHRC received 826 calls for assistance from the general public. The vast majority of these calls do not result in formal complaints. Many of the calls are individuals seeking assistance for issues beyond VHRC's jurisdiction. Those are referred to other appropriate organizations. Other calls require a VHRC staff person to answer basic questions regarding Vermont's various anti-discrimination laws. VHRC does not provide legal counsel or advice. Some of the calls result in informal cases¹ and others in formal complaints. In FY18, there were seven (7) informal cases and sixty-two (62) formal complaints accepted for processing. Between July 1, 2017 and June 30, 2018, we logged in 826 calls.

July – Sept. 2017 = 195
 Oct. -Dec. 2017 = 219
 Jan. – Mar. 2018= 261
 Apr. – June 2018 = 151
 Total to date for FY18 = 826

In comparison in FY17, we had logged 1037 calls.

¹ An "informal case" is a situation, (often an accessibility issue), that can be resolved easily and does not require a full investigation.

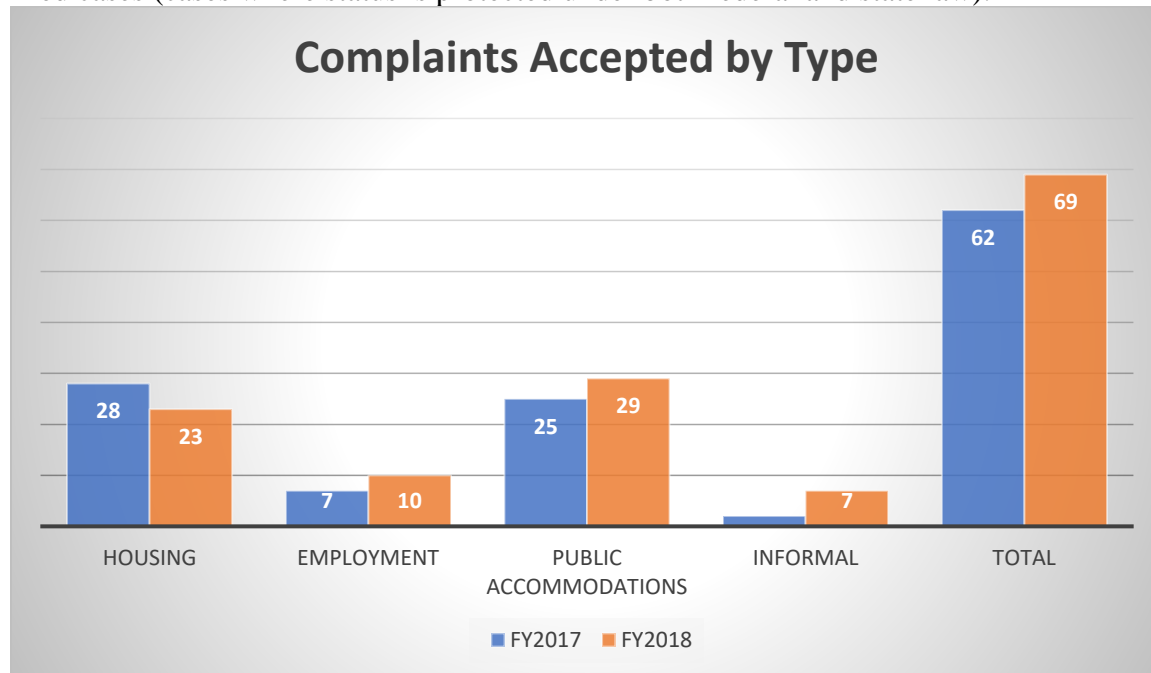
July –Sept. 2016 = 268
 Oct. –Dec. 2016 = 233
 Jan. – Mar. 2017= 291
 Apr. – June 2017 = 241
 Total to date for FY16 =1037

The primary referral sources are the Attorney General’s Office for private employment discrimination complaints, Vermont Legal Aid for landlord/ tenant or other legal matters, law enforcement for criminal complaints, and other non-profit service providers.

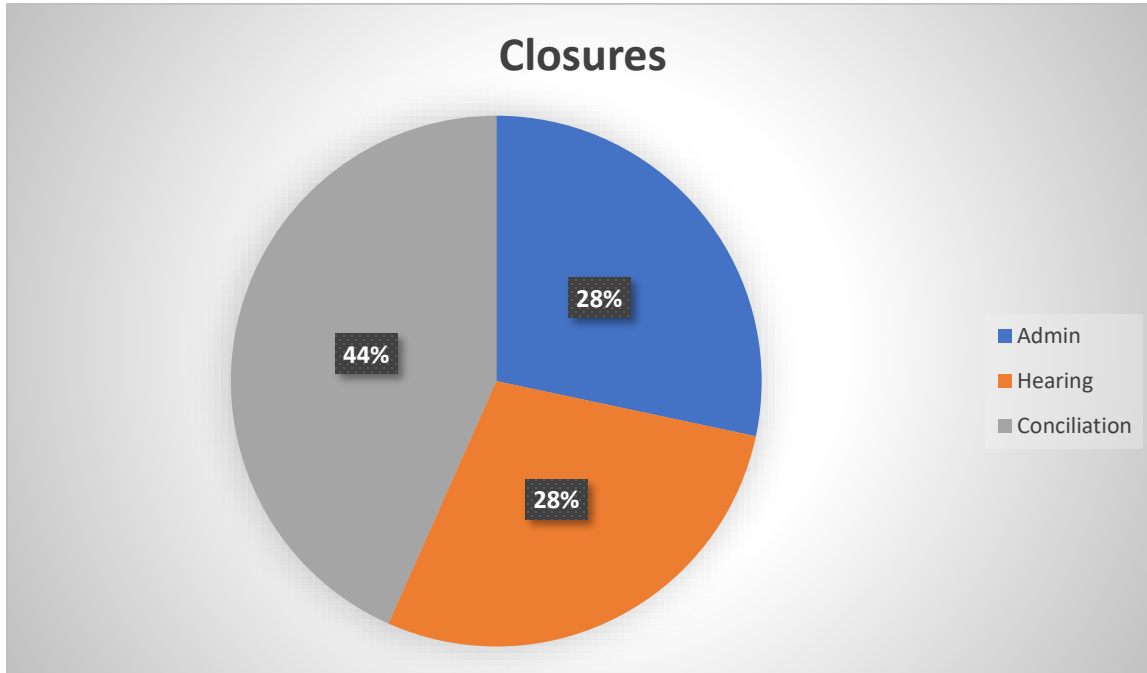
WEBSITE ANALYSIS (July 1, 2017-June 30, 2018) This is our first full year of tracking website access. During the fiscal year there were a total of 9,484 sessions with 6,525 users, with 23,602 pageviews and an average of 2.49 pages viewed per session. Returning visitors equaled 15.4% with 84.6% new visitors to the HRC website. Interestingly the website had visitors from other countries including the Philippines (67 visits), India (185 visits), China (53 visits), South Africa (34 visits), Canada (45 visits) France (143 visits), United Kingdom (31 visits), Pakistan (19 visits) and Bangladesh (16 visits). The most popular pages are: About us; How to file; Resources; and HRC Commission news.

STATISTICS (July 1, 2017- June 30, 2018)

Complaints Accepted- A comparison of cases accepted through the end of the 2017 and 2018 fiscal years shows that with the exception of housing (with 2 fewer cases), the number of cases accepted increased during this fiscal year. The total has increased by 7 from 62 to 69 accepted cases including 23 housing, 29 public accommodations, 10 employment, and 7 informal cases. Despite the slight decrease in housing cases, we met our HUD performance standard of 20 dual-filed cases (cases where status is protected under both federal and state law).

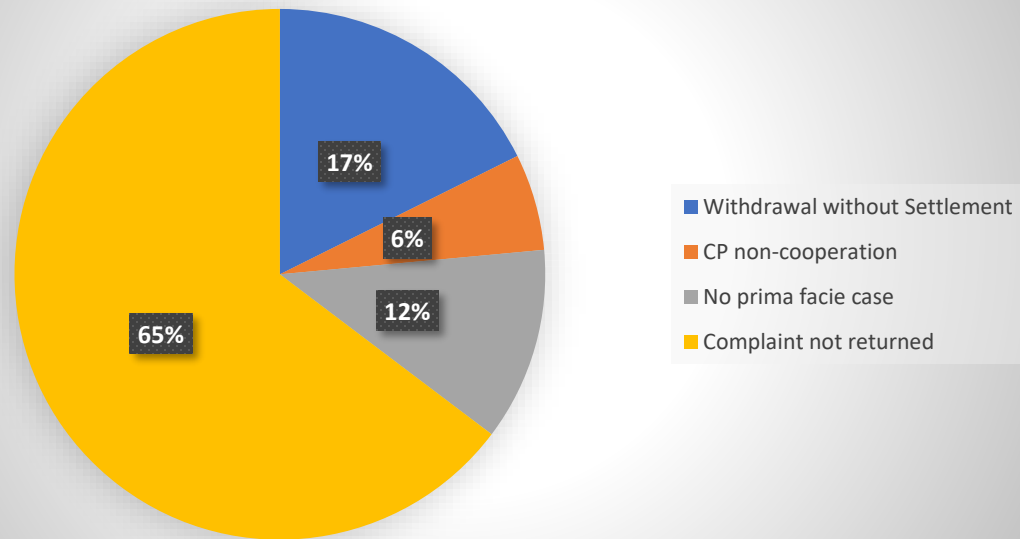


Disposition of Closed Cases- Cases are disposed of by hearing, conciliation or administrative closure. This chart shows the breakdown of closure reasons by percentage. Most cases, 72%, either went to hearing or were settled either pre or post cause. Twenty-six (26) cases were conciliated; seventeen (17) went to a hearing (see chart below for breakdown of reasonable and no reasonable grounds findings); and 28% (17 cases) were administratively dismissed. The next chart shows the reasons for administrative dismissal.



Administrative Dismissals- Administrative closure or dismissal occurs for a number of reasons once a complaint has been filed or for failure to return the complaint for processing in the first instance. Administrative closures also include cases that are withdrawn by the complainant without settlement. Eleven (11) cases were not returned for processing; three (3) cases were withdrawn without settlement; two (2) cases were dismissed due to lack of a *prima facie* case; and one case was dismissed for failure of the complaining party to cooperate with the investigation.

Administrative Dismissals



COMPLAINTS BROUGHT BEFORE THE COMMISSION FOR HEARING

In FY18, the Commission heard 17 cases but made 18 findings, (including 1 split finding-RG and NRG in a housing case), compared to 12 cases in FY17. Of the cases heard, the Commission found no reasonable grounds in ten (10) cases and reasonable grounds in seven (7) cases. The breakdown by case type is as follows:

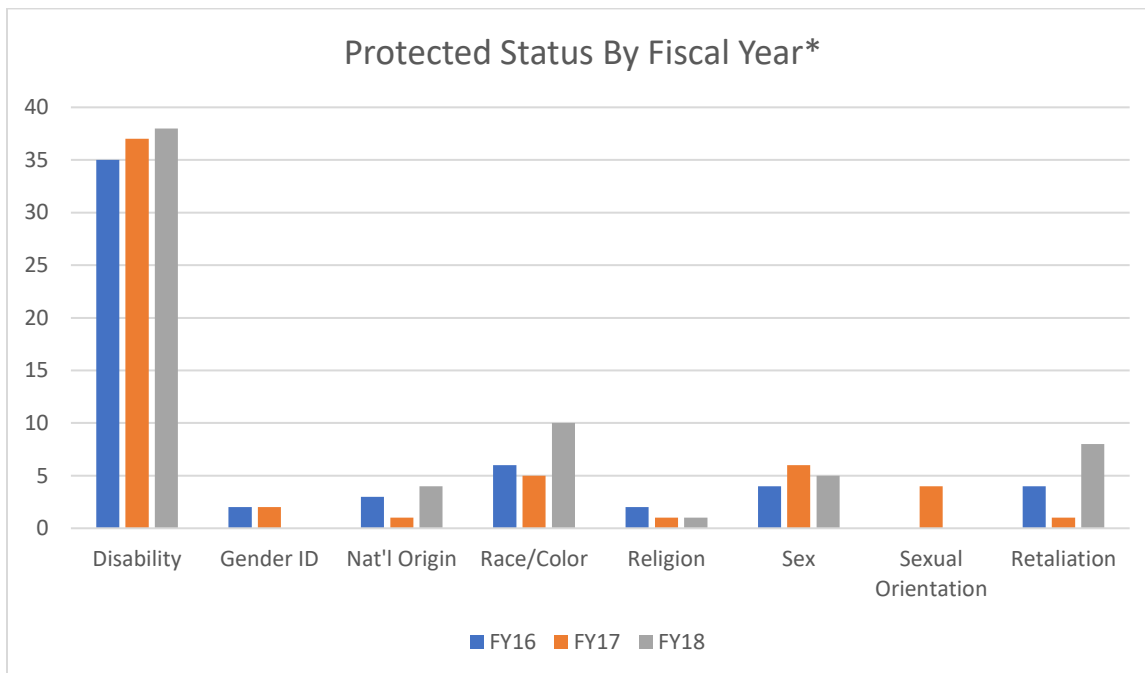
Outcome	Employment	Housing	Public Accommodations	Totals
Reasonable Grounds	1	3	3	7
No Reasonable Grounds	2	5	3	10

Protected Categories by Type of Complaint/Case FY18

Protected Category	Housing	PA	Employment	Total²
Age	1	n/a	0	1
Breastfeeding	n/a	0	0	0
Disability	15	19	4	38
Gender ID	0	0	0	0
National Origin	1	3	0	4

² Totals will not equal the number of actual complaints because many cases allege discrimination based on more than one protected category.

Race/Color	1	7	2	10
Retaliation	5	1	2	8
Religion	1	0	0	1
Sex	1	2	2	5
Minor Children	2	n/a	n/a	2
Public Assistance	0	n/a	n/a	0
Marital Status	0	0	n/a	0
Family/Parental Leave	n/a	2	n/a	2
Workers Comp	n/a	n/a	0	0
Sexual Orientation	0	0	0	0



While disability-related cases have remained relatively stable over the last several years, race and national origin cases rose significantly during the last fiscal year. Twice as many cases were filed in each category. This appears to be reflective of a national and state trend towards more openly expressed animus against both people of color and immigrant populations.

RELIEF OBTAINED IN CASES FOR FY18

Type of Case	\$ Relief for CP	Non-\$ for CP	Public Interest
Public Accommodation	\$302,443	Apology (2) Issuance of library card Provision of coffee maker, grinder and coffee Reinstatement to training program Accessible parking signage brought into compliance (5)	Contract with tele-phonic interpreter service Training (6) Adoption or revision of polic(ies) (6) Notice to customer (2) Posting of rights (2) Data collection and reporting Monitoring by HRC/DOJ

Housing	\$32,635	Waiver of notice of sale CP moved to top of waitlist Allowed CP to use candles for religious reasons Installation of grab bars and wall switch for bedroom Resolution of eviction (3) Letter provided to CP acknowledging faulty criminal background check	Fair Housing Trainings (6) Policy changes (2) Publication of fair housing ads Notice to tenants Publication of non-discrimination language in future advertisements Notice of House Rules posted Lease changed to advise tenants of right to request a reasonable accommodation
Employment	\$76,556	State made retro contributions to retirement New position and 40 hours paid leave time Written reprimand removed from file Supervisory training for managers	Training re implicit bias, bystander responsibilities, etc. Policy changes Dissemination of anti-discrimination policy and sign off Protocol re reassignments for safety
Total	\$411,078	n/a	n/a

OUTREACH AND TRAINING

During the fiscal year, the VHRC trained a total of 874 people.

Type	Number of events	Number trained
Housing	7	197
PA	16	411
Employment	2	56
Implicit Bias	12	210
Totals	37	874

For the 2018 fiscal year, HRC staff conducted thirty-seven (37) training events. Entities trained included employees and managers of the State, law enforcement, community members, victims' advocates, private employees, housing providers, individual landlords, private and non-profit attorneys, and service providers. Much of the public accommodations training was related to conciliation agreements requiring training for employees.

SUMMARY OF REASONABLE GROUNDS CASES

After the Commission finds reasonable grounds to believe that discrimination occurred, the executive director makes attempts to resolve the matter either informally or through formal mediation. If these attempts are unsuccessful, the Commissioners can authorize the filing of suit. While this is discretionary in non-housing cases, HUD requires the HRC to file suit in any reasonable grounds housing case if it cannot be resolved.

Employment

Francois v. Department of Mental Health, E17-0002- Complainant, a person of color, alleged that she was subjected to harassment based on her race and color by other employees and placed in unsafe positions by managers at the Vermont Psychiatric Care Hospital (VPCH). The case settled with relief for Ms. Francois in the form of paid leave, re-employment rights and the right to return to her position as well as public interest relief for the Commission. Part of the public interest relief included publication of the State's anti-discrimination policy to all employees, direction to supervisors about allowing for staffing changes when employees felt unsafe and training through an outside provider on implicit bias, bystander responsibilities and other ways of changing culture in the workplace.

Housing

Tenant v. Macy, HV17-0011, Complainant, an individual with disabilities alleged that he was retaliated against after asserting his fair housing rights. The case settled after the HRC finding with complainant receiving \$2000 and public interest relief for the Commission including advertisements for the units to include an anti-discrimination statement, posting of house rules, and training for the respondent on implicit bias and fair housing laws.

Tenants v. Co-Tenant, HV17-0028- Complainants, women in a same sex relationship, alleged that their neighbor harassed, intimidated and threatened them based on their protected status. The case settled with an apology and training for the respondent.

Tenant v. Churchill Realty, HV18-0003- Complainant, an individual with a disability alleged that his landlord discriminated against him based on his disability by refusing to renew his lease. Settlement negotiations are under way.

Public Accommodations

Nolan v. WESCO d/b/a Capital Deli, PA17-0002- Complainant, an individual with a disability alleged that he was told to remove his service animal from the premises. The case settled with \$500 to complainant, a \$250 donation to the ASPCA and public interest relief requiring revision of respondent's service animal policy and employee sign off on its review, posting of the two questions employees are permitted to ask at the register in every store, and training for all of respondent's employees on service animals in places of public accommodation.

Minor v. AIR Development d/b/a Apple Island Resort, PA17-0003- Complainant, an individual with a mobility impairment filed a complaint alleging that the common areas of the resort (office, store and clubhouse) lacked appropriate accessible signage and that the resort would not allow individuals an accommodation to drive and park golf carts at the clubhouse in order to avoid pushing a wheelchair up a 150 foot walkway. The case settled with placement of proper signage and an agreement to allow the complainant and anyone else with a mobility impairment to park a golf cart next to the clubhouse. Public interest relief included development of a Reasonable Accommodations Policy that was disseminated to all employees and signed off on, as well as posted in the office. All employees also received training from HRC on requirements of the ADA, including accessibility, reasonable accommodations and service animals.

W.M. v. Department of Corrections, PA16-0018- Complainant an individual with a mental impairment was ordered by the court into a psychiatric hospital bed after being determined to be a danger to herself or others. Because there were no beds available and she had pending criminal charges, she was sent to a correctional facility as a delayed placement person. While incarcerated, she was subjected to multiple uses of force for behaviors that were not within her control at the time. Complainant received \$65,000 in damages.

LITIGATION

Human Rights Commission (C.S.) v. Department of Corrections, Docket No. 743-12-16 Wncv. C.S., an individual with mental impairments alleged that he was kept continuously in segregation for 2.4 years while incarcerated at Southern State Correctional Facility and was deprived of his right to be in a more integrated setting, denied access to programs and services not available to inmates in segregation and denied reasonable accommodations that would have allowed access to programming and more out-of-cell time. The case settled with Complainant receiving money damages of \$27,500 and public interest relief that requires the DOC to develop directives related to minimum out-of-cell time, track of out-of-cell time in one place (rather than three places as is current practice), direct to casework staff to review and share any relevant evaluations with medical providers, and in the event of a disciplinary rule violation, determine whether a mental health condition contributed to the behavior.

Fortin v. Hayes Hospitality Operations d/b/a Grey Fox Inn, Docket No. 661-11-17- Complainant alleged that she and her husband were refused a room at the Grey Fox Inn in Stowe upon disclosing that she was traveling with a service animal. At around the same time suit was filed, the Inn was sold at a loss and there were no assets to pay any judgment. The matter was voluntarily dismissed with an order from the court for defendant to reimburse the Commission for its costs of service in the amount of \$170.43. Interest will accrue on this amount at 12% per year.