



**Division of
Human Rights**

ANNUAL REPORT

FY2016-17

Annual Report FY2016-2017

A Message from the New York State Division of Human Rights

The New York State Division of Human Rights (“the Division”) is honored to present to Governor Andrew M. Cuomo, the Legislature, and the people of New York its Annual Report for Fiscal Year 2016-2017.

The Division of Human Rights is the agency in charge of enforcing the New York State Human Rights Law. The law ensures equal opportunity in employment, housing, credit, places of public accommodation, volunteer firefighting, and non-sectarian educational institutions.

The mission was important when the law was enacted in 1945, and it is even more important now, 72 years later.

The Division of Human Rights enforces this law through, among other things, the investigation, hearing, and resolution of complaints filed by individuals against alleged discriminators; the creation of studies, programs, and campaigns designed to inform and educate the public on the effects of discrimination and their rights and obligations under the law; and the development of human rights policies and proposed legislation for the State.

Each year, the Division makes every effort to continue protecting citizens from discrimination and ensuring that its operations are carried out efficiently and effectively. In addition, the Division continues to be actively engaged in dealing with hate crimes.

The Division will continue to take the necessary steps to fulfill the agency’s mission and fulfill the Human Rights Law’s mandate that “every individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the state.”

History

The present New York State Division of Human Rights can trace its history back to the State War Council of the State of New York Temporary Committee on Discrimination in Employment, created in 1942. One of the main accomplishments of the Committee was the passage of the 1945 Ives-Quinn Anti-Discrimination Bill. Signed on March 12, 1945 by Governor Thomas E. Dewey, the law effectively made New York the first state in the nation to enact legislation prohibiting discrimination in employment based on race, creed, color, and national origin. In doing so, New York also became the first state to establish a permanent agency to enforce such legislation, the State Commission Against Discrimination (SCAD). Federal institutions were not introduced until nearly 17 years later.

In 1968, the Ives-Quinn Anti-Discrimination Law was renamed the Human Rights Law, and the State Commission Against Discrimination was renamed the New York State Division of Human Rights.

In its inception, SCAD had jurisdiction only over employment issues and dealt strictly with discrimination based on race, color, creed, and national origin.

In subsequent years, the Law was expanded to stay current with the changing culture and needs of New Yorkers.

For example, in 1974, the Law was broadened to protect people with disabilities; in 1991, the Law was amended to protect families in the area of housing; in 1997, the Law was changed to include an express provision requiring reasonable accommodations in employment for persons with disabilities; in 2002, the Law was amended to protect both religious practices and religious observances; in 2003, the Sexual Orientation Non-Discrimination Act was passed to include sexual orientation among the protected traits/characteristics; and in 2003, the Law was extended to encompass military status.

In 2009, the Law was amended to provide protections for domestic violence victims from employment discrimination, and in 2011, it was amended to protect domestic workers from sexual harassment and discrimination based on gender, race, religion or national origin.

In 2014, the Law was amended to include protections for unpaid interns from harassment and other forms of unlawful discrimination in the workplace.

In 2015, the Law was amended to expand the definition of “employer” in sexual harassment cases to cover all employers within New York, so that an employee of any business can file a workplace sexual harassment complaint. Additionally, the Law was amended to prohibit employers, employment agencies, licensing agencies, or labor organizations from discriminating against workers based on their familial status. The Law was also amended to clarify that employers must perform a reasonable accommodation analysis for pregnant employees.

In 2016, the Division adopted regulations to prohibit harassment and discrimination on the basis of gender identity, transgender status or gender dysphoria. The regulations confirm that the agency will continue to accept and process Human Rights Law complaints alleging discrimination because of gender identity, under the protected categories of both sex and disability.

Complaint Process

Filing a Complaint

If an individual feels he or she has been the victim of illegal discriminatory behavior, a complaint can be filed at any of our 12 offices throughout the state within one year of the date the last discriminatory incident occurred. Complaints can be filed in person at any of our offices, or a complaint form can be downloaded from the Division's website at www.dhr.ny.gov, completed as instructed, signed before a notary public and mailed to our offices. Complaint forms can also be obtained upon request at any Division office.

The Investigation

Once a complaint is filed, an investigator will be assigned to investigate the complaint. This may be done through, among other methods, written correspondence, telephone interviews, and visits to the site where the alleged discrimination took place. Based on the evidence collected during the investigation, a determination will be made as to whether there is Probable Cause that unlawful discrimination occurred. A determination of No Probable Cause will result in the dismissal of the case. If the Division determines there is Probable Cause that illegal discrimination took place, the case will advance to the Hearing Process.

The Administrative Hearing

An Administrative Law Judge will conduct a Hearing based on the allegations in the complaint. During the Hearing, both sides will be able to present evidence to support their positions. The Division will provide an attorney free of charge to present the case in support of the complaint. Complainants may also bring their own attorneys.

Resolution

Based on the evidence presented at the Hearing, the Administrative Law Judge will issue a recommended order advising the parties and the Commissioner how he or she believes the case should be resolved. The Commissioner will review the allegations, evidence, and the recommended order and will issue a final Commissioner's Order. If the ruling is in favor of the complainant, the Order will specify a remedy. In housing cases, remedies may include a change of policy or practice, provision of services, compensation for emotional distress, punitive damages, and/or civil fines and penalties, among others. In employment cases, remedies may include change in policies and practice, back pay with interest or benefits lost due to the discriminatory practice, and/or compensation for emotional distress.

Appeals

Any final order of the Division can be appealed to the New York State Supreme Court within 60 days after it is issued. Appeals from Commissioner's Orders after hearing are transferred to the Appellate Division for disposition.

Budget and Finances

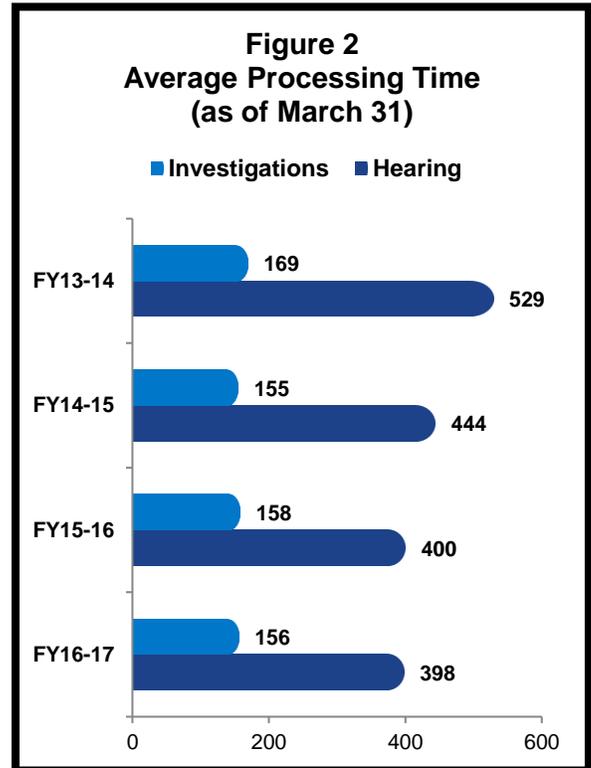
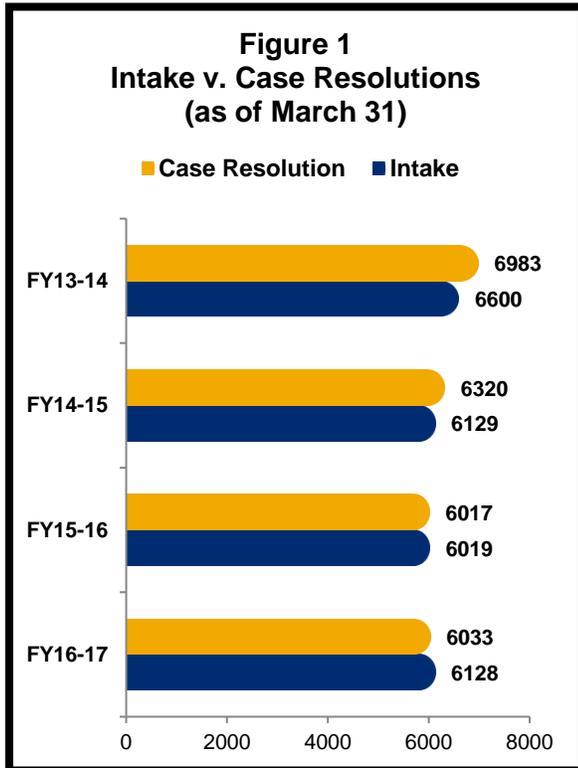
The State of New York operates on a fiscal year commencing each April 1, and ending the following March 31. The Governor submitted the SFY 2016-2017 Executive Budget in January 2016 for consideration by the Legislature. This year's budget was enacted by the Legislature in March 2016.

The Division's enacted budget for the 2016-17 fiscal year provided for an all funds appropriation of \$18,010,000, consisting of \$12,010,000 in General Fund (State tax-levy) appropriations and \$6,000,000 in Special Revenue Funds, which are monies provided by the federal government for the Division's program contracts with the U.S. Department of Housing and Urban Development (HUD) and the Equal Employment Opportunity Commission (EEOC).

Division Operating Statistics

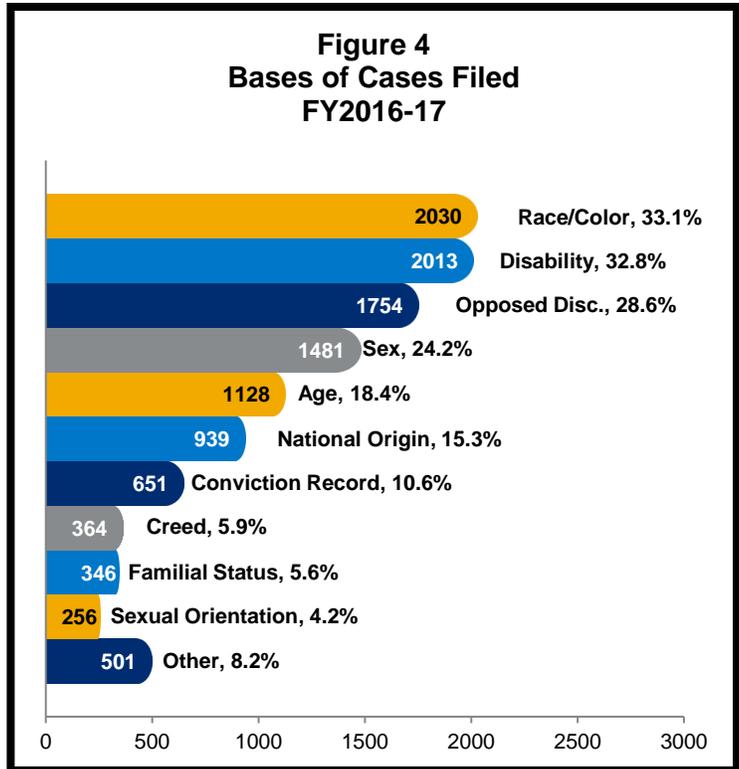
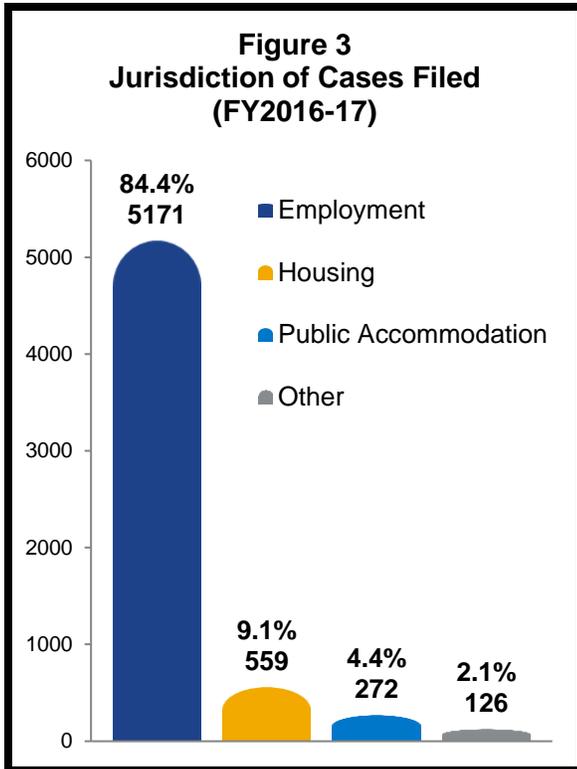
There were 6,128 complaints filed with the Division in FY2016-17. During this same period, the Division resolved 6,033 complaints (see Figure 1).

The average processing time for complaints through the investigation process for FY2016-17 was 156 days. The average processing time for cases through the Hearing Process for FY2016-17 was 398 days (see Figure 2).



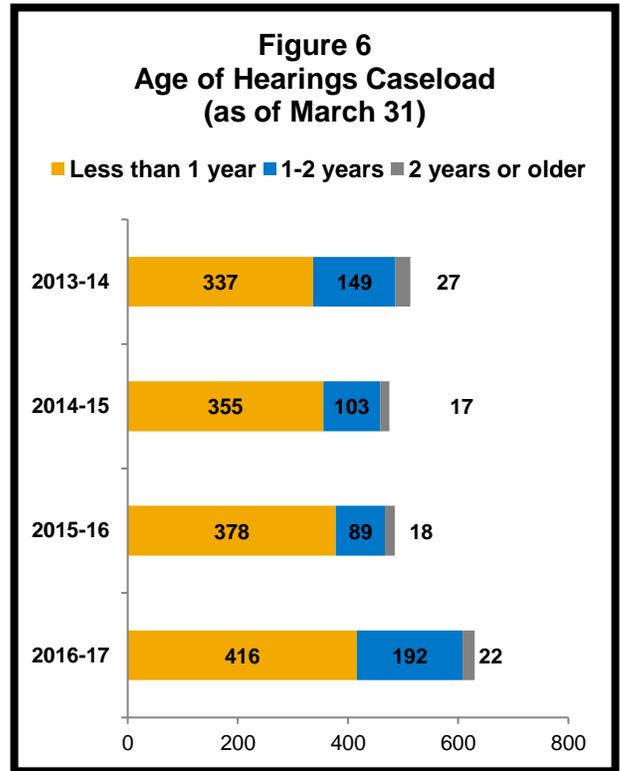
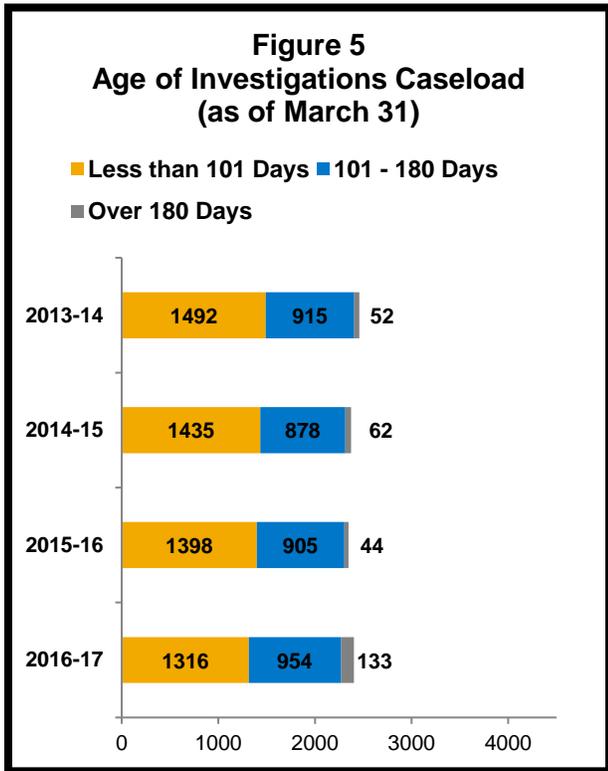
In FY2016-17, the majority of complaints filed were in the area of Employment (approximately 84.4%), followed by Housing (approximately 9.1%), Public Accommodation (approximately 4.4%), with the sum of all other areas comprising approximately 2.1% of all cases filed (see Figure 3).

The most frequently cited basis of complaints filed in FY2016-17 was Race/Color (33.1%), followed by Disability (32.8%), and Opposed Discrimination/Retaliation (28.6%). It is important to note some complaints allege more than one basis; therefore, the total percentage of bases cited will be more than 100% (see Figure 4).



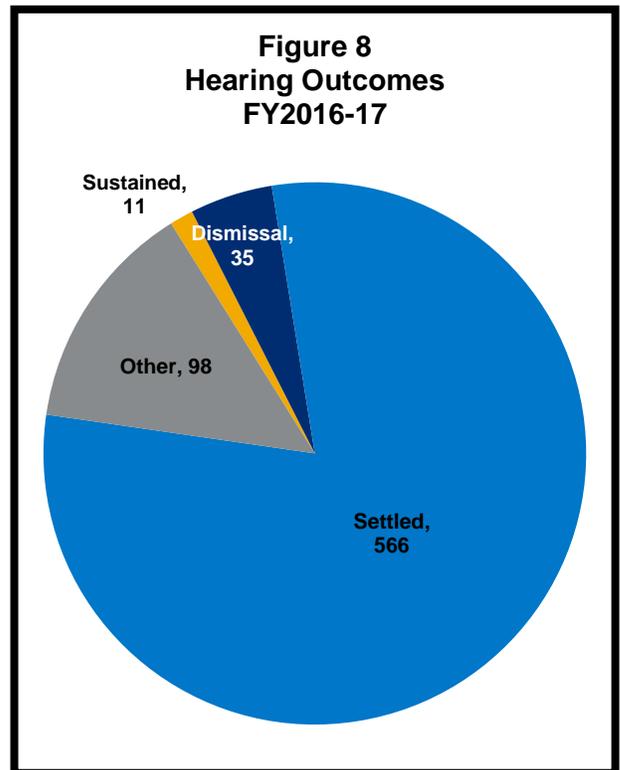
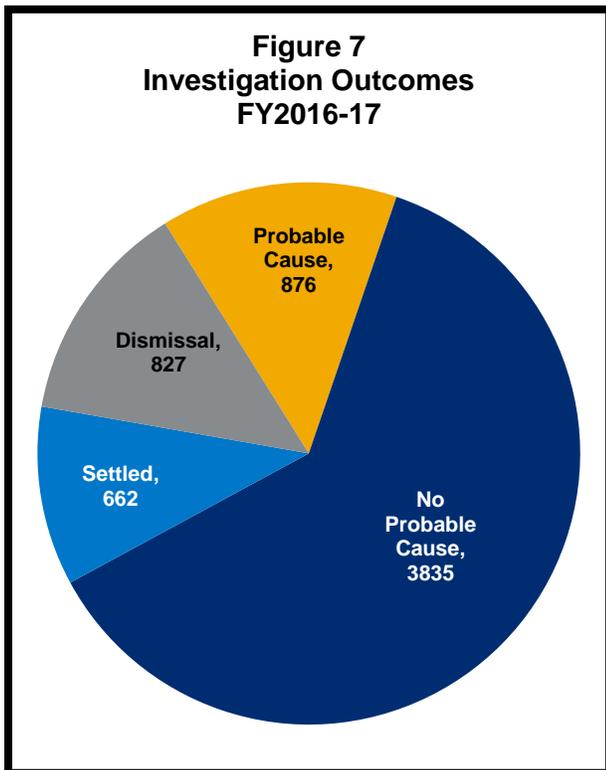
As of the end of FY2016-17, 54.8% of cases under investigation were less than 101 days old, 39.7% were between 101 days and 180 days old, and 5.5% were over 180 days old (see Figure 5).

Of the cases in the Hearing Process that received investigative determinations of Probable Cause, 66.0% were less than one year old, 30.5% were between one and two years old, and 3.5% were two years old or older at the end of FY2016-17 (see Figure 6).



During FY2016-17, the Division issued 6,200 investigative determinations (see Figure 7). Of these, 61.9% were No Probable Cause, 13.3% were Dismissals and 10.7% were settlements; 14.1% were Probable Cause determinations, which resulted in those cases advancing to the hearing process.

In FY2016-17, the Commissioner issued 709 Commissioner's Orders (see Figure 8). Of these, 79.9% were settlements. An additional 13.8% of commissioner's orders were dismissals prior to the completion of the Hearing Process, generally at the request of complainants who wished to proceed in federal or state court. 4.9% were dismissed after Hearing, while 1.4% were sustained after Hearing.



Commissioner's Orders

The following is a sampling of cases adjudicated during FY2016-17. All orders can be found on the Division's website at www.dhr.ny.gov.

Disability

10157991 Kevin C. Benjamin v. Consolidated Edison Company of New York, Inc.

The complainant, an electrical technician for a utility company, was found to have been discriminated against and terminated due to his disability, despite being able to effectively perform his job.

The Division ordered the technician to be reinstated, awarded him \$375,000 in lost wages and emotional suffering damages, and fined the respondent \$50,000 as a civil penalty payable to the State of New York.

Sex, Disability

10168512 Tina Louise Owens v. City of Salamanca

The complainant, a police officer, was discriminated against and faced adverse action based on her sex. Additionally, after returning from a disability leave, she was placed on light duty at a lower rate of pay, despite being medically cleared to resume full duties.

Complainant was awarded \$10,154 in lost wages and emotional suffering damages, and the respondent was ordered to pay \$10,000 in civil fines and penalty to the State of New York for violating the Human Rights Law.

Sexual Harassment

10172360 Donna Bertuccio Quinn v. OZ Trucking and Rigging Corp.; Paul T. Ousey

The complainant, a dispatcher and office clerk, was subjected to severe and pervasive sexual harassment, which created a hostile work environment.

Complainant was awarded \$7,500 for mental anguish and the respondent was ordered to pay \$10,000 in civil fines and penalty to the State of New York for violating the Human Rights Law. Case is on appeal in the Appellate Division, Second Department.

Notable Court Decisions in which the Division was a Party

Familial Status

10170305 Housing Opportunities Made Equal, Inc. (H.O.M.E.) v. Kate Li

Li v. New York State Div. of Human Rights,

147 A.D.3d 1321, 46 N.Y.S.3d 345 (4th Dept. 2017)

The Commissioner's Final Order found that the respondent refused to rent to families with children. The Division's order for \$8,000 in punitive damages and \$3,396.50 in economic loss to the complainant, \$3,000 in civil fines, and interest on the awards was confirmed by the Appellate Division, Fourth Department.

Sexual Harassment

10139300, 10137659 Carmen Hernandez v. Team Taco Mexico, Corp; David Orduna as Aider and Abettor

New York State Div. of Human Rights v. Team Taco Mexico, Corp.

140 A.D.3d 965, 33 N.Y.S.3d 452 (2d Dept. 2016)

The Commissioner's Final Order, which found that the complainant had faced sexual harassment and was constructively discharged due to that harassment, was confirmed. The Division's order for \$47,368.74 in back wages, \$50,000 in compensatory damages for mental anguish and humiliation, \$75,000 in civil fines, and interest on the awards was also confirmed by the Appellate Division, Second Department.

Division-Initiated Investigations

The following Division-Initiated Investigations were resolved in FY2016-17 or are under way:

Arrest and Conviction Discrimination in Employment: The Division has completed its investigation into the hiring of persons with criminal records within the security guard, retail, building services, and telecommunications industries. Four complaints were filed and settled against security guard companies.

Accessibility of Medical Services: The Division has completed its investigation into failures by certain categories of medical service providers to accommodate patients with mobility impairments. Three complaints were filed and resolved through conciliation. The Division is currently conducting compliance reviews of the settlements.

Fair Housing Testing Program: As a result of the state's fair housing testing program, three complaints were filed with the Division. The first complaint was filed against a housing provider for positive testing results involving the denial of service animals in the Westchester area. The second was against a housing provider for positive testing results involving the failure to rent based on race in the Syracuse area. The third complaint was filed against a housing provider

for positive testing results involving denial of emotional support animals in the Buffalo area. A determination of probable cause was issued in the latter complaint. The other two cases remain under investigation.

Hate Crimes in Upstate New York: In cooperation with the New York State Police, the Division conducted investigations and outreach in Wellsville, NY and Geneseo, NY concerning hate crime vandalism.

Outreach and Education

During FY2016-17, the External Relations unit executed two statewide initiatives.

- In November 2016, Governor Andrew M. Cuomo announced several measures in response to a surge in incidents of discrimination, bias-motivated threats, harassment and violence throughout the state, including the launch of toll-free telephone and text message lines staffed by the Division to report such incidents. As of the end of FY2016-17, the Division received 3,817 calls and 27 texts. 132 incidents were referred to the New York State Police.
- The Division has taken part in a multi-agency initiative to educate immigrants on the labor, wage and anti-discrimination protections afforded them under New York State Law. Seven educational events were presented at locations across the state such as Amityville, East Green Bush, Geneva, and Manhattan.
- The Division also hosted fair housing town halls in Brooklyn, Buffalo, Central Islip, and Rochester to educate members of the public on their rights.

New York State Commission Against Discrimination

1945 Henry C. Turner, Chairman
Charles Garside, Chairman
Edward W. Edwards, Chairman
Ward Arbury, Chairman

1955 Charles Abrams, Chairman

1959 Elmer A. Carter, Chairman

1961 Ogden Reid, Chairman

New York State Commission for Human Rights

1962 George Fowler, Chairman

1967 Robert J. Mangum, Chairman

New York State Division of Human Rights

1970 Jack M. Sable, Commissioner

1975 Werner Kramarsky, Commissioner

1982 Robert Shaw, Acting Commissioner

1983 H. Carl McCall, Commissioner

1984 Douglas H. White, Commissioner

1990 Margarita Rosa, Commissioner

1995 Edward Mercado, Commissioner

1999 Jerome H. Blue, Commissioner

2000 Evonne W. Jennings Tolbert, Commissioner

2003 Michelle Cheney Donaldson, Commissioner

2007 Kumiki Gibson, Commissioner

2008 Galen D. Kirkland, Commissioner

2013 Helen Diane Foster, Commissioner

General Counsels

1945 Henry Spitz

1975 Beverly Gross

1977 Ann Thatcher Anderson

1983 Roberto Albertorio

1985 Margarita Rosa

1988 Lawrence Kunin

1999 Gina M. Lopez

2007 Caroline Downey