

Annual Report Fiscal Years 2008-2010

One Fordham Plaza
Fourth Floor
Bronx, NY 10458

718/741-8400
fax 718/741-3214

NEW YORK STATE
DIVISION OF
**HUMAN
RIGHTS**

WWW.DHR.STATE.NY.US

December 2010

DAVID A. PATERSON, GOVERNOR
GALEN D. KIRKLAND, COMMISSIONER

Message from the Commissioner

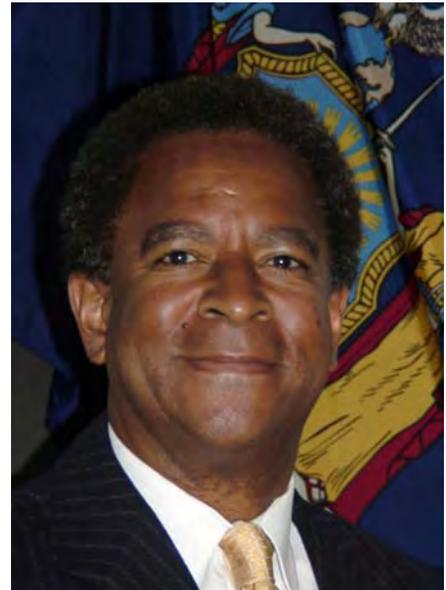
As the Commissioner of the New York State Division of Human Rights, it is my privilege to present to the Governor, the Legislature and the general public the 2008-2010 Annual Report.

Our commitment to fight discrimination in the Empire State is stronger than ever and in the past two years we have implemented crucial changes in our agency that have resulted in better service for all New Yorkers. You will get a more detailed account of these accomplishments in this report.

This past year was especially important for the Division because it marked the 65th Anniversary of our Human Rights Law, the first of its kind in the nation. Today our law has evolved to reflect the many changes in our society and remains one of the most comprehensive and progressive in the country.

I am incredibly proud of all we have accomplished in the last two years and look forward to what the upcoming year holds for our State. I hope that we will continue to build on what we have done so we can ensure that in the upcoming years New Yorkers can continue to enjoy all the protections afforded to them by our great law.

Galen D. Kirkland,
Commissioner



DHR HIGHLIGHTS 2008-2010

The Division of Human Rights is the chief agency enforcing the New York State Human Rights Law, enacted in 1945 as the first state civil rights statute in the nation. Initially called the Law Against Discrimination, it outlawed bias in the workplace on the bases of race, color and creed. The law has been periodically expanded by the legislature to protect more people in more places, most recently in November 2010 when domestic workers were granted protection, keeping New York State government on the forefront of the civil rights movement.

Let us start by acknowledging the debt owed to Gov. Thomas E. Dewey who signed the law and Henry C. Turner, who served as our first commissioner. Those men and the legislature enacted the anti-discrimination law in the wake of World War II, a time when the American psyche was raw from discoveries of the unprecedented hate crimes committed by Axis powers in Europe and Asia. Governor Dewey and the Legislature knew that Americans of color who helped liberate the Nazi concentration camps and Native American code speakers who helped defeat the forces of Tojo could not return from military service to a state where they could be legally considered as second class citizens.

Today New York State's governor is African American, a man with a severe disability that not too long ago might have been raised as a legitimate ground to prevent him from serving. The New York State Human Rights Law prohibits such discrimination and that is something of which all residents of the Empire State should be proud.

Among our most notable accomplishments over the past two years:

- **Crisis Response Unit:** The Division's rapid response group responded to a series of hate crimes from Long Island to Buffalo and worked to help communities develop and execute strategies to heal and to work toward preventing future outbreaks. Our activities included the development of the Unity Coalition which over two years has hosted events including a music revue in Patchogue featuring performances from various communities and an outdoor art installation that facilitated person to person dialogue relating to the hate crime murder of Marcelo Lucero; community meetings and an anti-hate crime video following the hate crime murder of Laetisha Greene, a transgender murder victim in Syracuse; helped develop the "Council of Elders" community dinner program in which folks from various communities in Staten Island meet, often for the first time, to frankly discuss the string of bias crimes targeting Mexicans and to develop and implement plans for preventing more violence, and outreach efforts in Peekskill after local resident Julio Serrano, an Ecuadorian immigrant, was assaulted by several black youth in May 2010.
- **Division-Initiated Actions:** The Division initiated proceedings against tax preparers H&R Block, Jackson Hewitt and Liberty Tax for discriminatorily selling refund anticipation loans ("RALs") in communities of color and to military personnel, adversely affecting them by reducing their refunds because of the high cost of these loans. Jackson Hewitt then sued the Division, claiming that the National Bank Act pre-empted the Division's jurisdiction under the Human Rights Law. This year, the

federal court rejected that claim, permitting the Division to go forward. *Jackson Hewitt Tax Service Inc. v. Kirkland*, No. 08 Civ. 8863 (JGK), 2010 WL 3398524 (S.D.N.Y. Aug. 26, 2010). Jackson Hewitt has appealed; but this tax season, like last year, it may not be offering RALs in New York. H&R Block refused to provide information about its marketing of RALs, forcing the Division to subpoena evidence. This year, the state court upheld the Division's subpoena and ruled that the Division was not pre-empted by federal law from proceeding with its case. *New York State Div. of Human Rights v. H&R Block Tax Servs., Inc.*, 71 A.D.3d 540, 879 N.Y.S.2d 75 (1st Dep't), *leave app. denied*, 15 N.Y.3d 702 (2010).

The Division brought an administrative complaint against the Town of Oyster Bay and developers for their housing programs that use residency preferences to permit and perpetuate residential racial segregation: the Town's Next Generation and Golden Age housing programs have residency preferences (for Oyster Bay residents and their children, who are overwhelmingly white) that prevent persons of color from any real opportunity to obtain this affordable housing and lock in the present racial composition of the Town. The Town sued the Division in state court to stop its case, arguing that Human Rights Law provisions were unconstitutional and the Division was discriminating against the Town. The court rejected these arguments, permitting the Division to go forward. *Town of Oyster Bay v. Kirkland*, Index No. 004392/2009 (S.Ct. Nassau Cty. 2010). The Division is now investigating the complaint to determine whether there is probable cause to have a public hearing and ruling on whether the housing program discriminates because of race and national origin.

- **Civil Rights Round Table:** The Division is a key member with our partners in federal anti-discrimination agencies including the Equal Employment Opportunity Commission, HUD, Assistant USA attorneys who run the civil rights divisions from the Southern and Eastern Districts, Department of Education, Department of Health and others for quarterly information sharing, policy development and strategy meetings. The New York Round Table, which started in 2008, has been recognized by the Department of Justice which is planning to replicate it in other major centers around the nation.
- **Cooperative Agreements:** The Division's conscientious execution of agreements to carry out civil rights investigations on behalf of the U.S. Equal Employment Opportunity Commission and the Department of Housing and Urban Development continued to reap increasing dividends: In 2008 those agencies paid New York State \$3.9 million as reimbursement for Division work; in 2010 the reimbursement has grown to \$4.7 million.
- **Teach-the-Teacher:** The Division brought together partners from the New York City Board of Education, law enforcement and community groups to develop anti-bias curriculum to assist teachers in integrating the requirements of the Human Rights Law as well as the need for civil and respectful behavior into their daily lesson plans. The program has been presented to teachers, administrators and counselors from all five boroughs of the city. Presentations are being scheduled for Long Island and Westchester in 2011.

- **Anti-Bullying Initiative:** Driven by community demand, the division's Teach the Teacher unit developed programs to address the problem of "bias based bullying" in schools and neighbors, especially focusing on the growing trend of so-called "cyber bullying" that is polluting our electronic airways. The program was featured at a recent symposium at Hofstra University sponsored by the Nassau County District Attorney that drew an overflow audience of 250 educators, community activists and parents. A second conference is tentatively scheduled for February on Long Island and plans are being developed to replicate the program state-wide.
- **School Based Initiative:** The Division joined with law enforcement, including the FBI's anti-gang task forces to present anti-bias, anti-violence presentations to students in high crime neighborhoods. The pilot program was developed in Newburgh and Hempstead and was designed to directly address students in classroom, rather than auditorium settings, on the dangers of gang violence. The programs stressed the "pyramid of hatred" that begins with perhaps thoughtless incivility and grows into the kind of teenage gang warfare that has turned some communities into battlegrounds.
- **Civil Rights Compliance Project:** The Division, under the umbrella of the Governor's Stimulus Oversight Panel directed by the State Inspector General, has developed a new program that will allow the state to measure civil rights compliance in large government funded construction projects involving tens of thousands of workers across the Empire State. The Division has identified methodology, currently being honed by CIO/OFT to examine the racial and gender makeup of contractor and subcontractor employment rolls. The system will facilitate comparison of regional workforce profiles with employee time cards to determine if contracts are benefiting all New Yorkers in a way that reflects the diverse make up of our various communities. The program is currently being beta tested. It is the first such tool in the nation.
- **Employment Best Practices:** The Division developed and distributed "Best Practice Templates" to every state agency that employs outside contractors and subcontractors with federal funds to assist in compliance with civil rights hiring and employment practices. The templates were developed by the Division as an outgrowth of the Governor's Stimulus Oversight Panel, after the Division team, including Commissioner Kirkland and First Deputy Burgos, held meetings with 19 state agencies, two public benefit corporations (Port Authority of New York and New Jersey; Metropolitan Authority of the State of New York), as well as the State Inspector General, Inspectors General for MTA and State Medicaid; Inspectors General for the U.S. Department of Education, Department of Housing and Urban Development; Federal Bureau of Investigation; and the Inspector General's Office of the New York City Housing Authority.
- **Case Processing:** Starting in 2008, the Division embarked on a strategy to process cases more quickly to better serve the public. That year, more than 5.6 % of our cases were more than two years old. As of the end of FY 2009/10 only 2 % were more than two years old. The Division accomplished this while continuing to process an ever increasing number of cases: handling 8,425 in FY 2008/09, up 33 percent from the

previous year. The rate of beneficial redress--that is cases that resulted in some benefit to the complainant--remained relatively steady at approximately one in five.

- **Mediation Program:** The Division has embarked on a systematic mediation process that will allow for speedier examination and resolution of cases. This initiative involves the use of volunteer mediators supervised by senior Division staff. This program is expected to save tens of thousands of dollars and save countless hours not only of state employee time but also that of complainants and respondents in a manner that will produce legal conclusions allowing for full redress and allowing all parties to return their focus to productive activities.
- **Multimedia Fair Housing Campaign:** In November of 2008 the Division launched a statewide multi-media campaign to raise awareness about housing discrimination. The campaign included 4,000 subway and 300 bus advertisements in New York City; 195 bus advertisements in Buffalo, Rochester, and Syracuse; 26 billboard ads throughout upstate New York; advertisements in numerous weekly publications around the state; and a statewide webcast. The theme of the campaign was "*for rent/for sale, unless...*" The advertisements listed various categories protected under the Fair Housing Act. These include: race, ethnicity, creed, religion, familial status, and disability, among others.
- **Professional Education Programs:** The Division held a number of professional education programs on various segments of the Human Rights Law. In September 2010 we recognized the 65th Anniversary of the Human Rights Law at a Symposium at John Jay College that included expert panel discussions on Disability Rights; Lesbian, Gay, Bisexual, and Transsexual ("LGBT") discrimination; and employment rights related to people with prior arrest and conviction records. In April 2010 we co-hosted with HUD a conference on housing rights at the historic lecture hall at the Bronx Zoo, and in October 2010 we hosted a symposium at New York Law School on domestic violence in the LGBT community. The Commissioner, First Deputy and Senior Staff have presented before various bar associations from Erie to Suffolk counties. Commissioner Kirkland and First Deputy Commissioner Burgos have published opinion pieces in Newsday, the Albany Times Union, Rochester Democrat and Chronicle, El Diario/La Prensa, and the Huffington Post.
- **Community Programs:** The Division participated in numerous community events related to the Human Rights Law and protected classes. For example, in July the Division participated in special surf camps at Long Beach for visually handicapped athletes, "Wounded Warriors" from the Iraq and Afghanistan conflicts, and teenagers with autism, in September we were represented at a volleyball tournament in Brentwood between local police and immigrant day laborers as part of the ongoing efforts following the Lucero murder; in October we had a special art exhibit opening featuring drawings from an international program called "Others Are Us" that has partnered intermediate school students in the Bronx with peers in Nicaragua; in December the Division participated in an ice hockey exhibition at the Nassau Veteran's Memorial Coliseum of the Long Island Blues, a team of young adults on the autism spectrum. We highlighted much of this work on the newly developed

Facebook page, a feature that is continually updated with legal, social and news events.

- **Governor's Hate Crimes Task Force:** Governor Paterson designated the Division of Human Rights as the leading agency for the Hate Crime Task Force, which was initiated with the purpose of developing strategies to prevent hate crimes and to increase awareness among New Yorkers so they can identify bias crimes and respond to them effectively. The Task Force submitted its recommendations to the Governor on June 30, 2009. The Education and Outreach Subcommittee endorsed three different hate crimes curricula for possible use in training for school administrators, teachers and students. The Training Committee created a hate crimes model policy for police officers, which captures best practices and includes applicable laws, response procedures, investigative steps, documentation, accusatory instrument preparation, reporting requirements, and community relations.

Organizational Structure and Functions

The Division of Human Rights is an agency within the Executive Department, and the Division's Commissioner reports to the Governor. Under the direction of the Commissioner, Honorable Galen D. Kirkland, the Division operates its main office located at One Fordham Plaza, Bronx, New York City.

In addition, the Division maintains regional offices at the following locations: Albany; Binghamton; three in Brooklyn, including the Office of Sexual Harassment Issues (OSHI); Buffalo; two on Long Island (Hempstead and Hauppauge); one in Manhattan; Peekskill; Rochester; and Syracuse.

The Commissioner manages the affairs of the agency through a senior management team, consisting of the First Deputy Commissioner, General Counsel, Chief Administrative Law Judge; and five Deputy Commissioners: Division-Initiated Investigations; Finance and Administration; Regional Affairs; Federal Programs; and External Relations. Also reporting to the Commissioner are: Director of EEO and Diversity, Director of Disability Rights, and Director of the Order Preparation Unit.

A brief description of these units is provided below:

- **Office of the General Counsel**

The General Counsel heads the Division's Legal Bureau and supervises the following units: Investigatory Review; Legal Opinions; Legislation Unit; Litigation and Appeals Unit; Compliance Investigation Unit; Legal Management Records Unit. The General Counsel provides direct legal assistance and advice to the Commissioner and other Division policy makers as to the interpretation of the Human Rights Law and other laws, including legal and procedural advice to the Administrative Law Judges and the Order Preparation Unit. The office provides legal advice to Division-Initiated Investigations and Complaints; and researches and drafts legislation and regulations affecting the Law.

- **Chief Administrative Law Judge**

Supervises the agency's full-time and part-time Administrative Law Judges (ALJs). ALJs conduct hearings on discrimination complaints referred after a probable cause determination; issue recommended orders after hearings; submit orders after settlement, after a request to discontinue, and for various Administrative Convenience Dismissals (ACD) reasons. The Director of the Division's Calendaring Unit also reports to the Chief Administrative Law Judge.

- **Deputy Commissioner for Division-Initiated Investigations and Complaints (DIIC)**

Pursuant to the HRL Section 296.6 (b), the Division can upon on its motion, test and investigate and make, sign and file complaints alleging violations of the HRL, and initiate

investigations and studies. The Deputy Commissioner for DIIC is responsible for identifying potentially high impact cases and designing investigative plans and strategies to implement the Division's objectives in bringing its own complaints.

- **Deputy Commissioner for Finance and Administration**

The DCFA serves as the Division's Chief Financial and Administrative Officer, and provides overall administrative leadership and support for the Division's activities and programs. The DCFA is responsible for overseeing the units comprising DHR's Bureau of Administration: Finance; Human Resources; Information Technology; Office Services; Regulatory Compliance and Internal Controls; Training and Staff Development.

- **Deputy Commissioner for Regional Affairs**

The Deputy Commissioner for Regional Affairs directs and supervises the activities of the Division's regional and satellite offices. The primary responsibility of the Division's regional offices is to process and investigate incoming complaints of discrimination. This office is involved in a number of activities, including: negotiating tasks and standards for union personnel, conducting a comprehensive review of all Division practices, policies and procedures affecting the regional offices, and creating strategic collaborative alliances with other entities to enable regional offices better serve their constituents.

- **Deputy Commissioner for External Relations**

The Deputy Commissioner for External Relations reports directly to the Commissioner and is charged with managing the public face of the Division. The External Relations duties include running crisis response teams to respond to hate crimes and related emergencies; developing community outreach programs to assist communities in development and implantation of grass roots solutions to civil rights issues; hosting public forums for professionals or community based experts and audience to deal with emerging issues. The office coordinates all external activities with the Executive Chamber to maintain consistency with the administration's vision.

The unit includes a media specialist who drafts and pitches op-eds to mainstream and social media (in English and Spanish), responds to media inquiries and tracks coverage of the Division's work as well as keeping relevant members of the Executive staff briefed on broader civil rights trends across the nation. The Deputy Commissioner serves as the primary liaison with federal, state and local government, including law enforcement, and is a member of the Civil Rights Roundtable with representatives of federal civil rights law enforcement agencies. The unit is also charged with maintaining the Division's website, updating with commissioner's orders, relevant changes in law and special messaging from the Executive Chamber. In addition the unit maintains the social media program including an interactive Facebook page.

- **Deputy Commissioner for Federal Programs**

The Bureau of Federal Programs is responsible for ensuring that federal funds are appropriately used to support the Division's mission each federal fiscal year (October 1-September 30). Currently, this funding is provided through contracts with the Federal Department of Housing and Urban Development (HUD) and the U.S. Equal Employment Opportunity Commission (EEOC). The DCFP is responsible for operations between the regional offices, HUD and EEOC on case processing, concurrent cases and TEAPOTS (HUD's case tracking system).

- **Other Executive Units reporting to the Commissioner**

The Director of the Office of Equal Opportunity and Diversity is the executive staff person serving as the point of contact for: staff reasonable accommodation requests; internal complaints; administration of affirmative action and diversity policies and programs in DHR; Employee Assistance Program (EAP), and compliance with the Americans with Disability Act (ADA) for the Division.

The Division's Director of Disability Rights is responsible for overseeing DHR's enforcement of the State Human Rights Law's prohibition against discrimination of persons based upon disability, both through individual complaints and Division-initiated investigations. The office is responsible for ensuring that DHR's offices and services are accessible to persons with disabilities and conducting periodic accessibility reviews; also advises the Commissioner on policy matters in the area of disability rights, including reasonable accommodation requests.

In the Order Preparation Unit (OPU), the Adjudication Counsel serves as legal counsel to advise and inform the Commissioner regarding proposed orders after hearings and orders after remittal from state court. This unit serves as an internal appeal unit; adjudication counsel review all ALJ proposed orders after hearing and any objections thereto and make recommendations to the Commissioner regarding whether to adopt the order as DHR's final order.

Agency's Budget and Finances

The State of New York operates on a fiscal year commencing each April 1, and ending the following March 31; thus, State Fiscal Year 2009-2010 began on April 1, 2009, and ended on the following March 31, 2010. Governor David A. Paterson submitted the SFY 2009-2010 Executive Budget in January of 2009 for consideration by the Legislature; the budget was enacted by the Legislature in April of 2009.

The Division's enacted budget for the current fiscal year provides for an all funds appropriation of \$ 23,029,000, consisting of \$ 14,788,000 in General Fund (State tax-levy) appropriations and \$8,241,000 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).

The enacted budget provided for a Division staffing level of 208 full-time equivalent (FTE) personnel; state funding supports 154 of these FTE positions while the balance (54) FTE are supported through the Division's Federal funding. In the last few years, Federal funds accounted for a larger proportion of the Division's total budget, in recognition of the Division's increased caseload.

The Division continues to recognize and meet the current economic and financial challenges facing New York State at this time, and will take the necessary steps to ensure that our agency's historic mission continues to be fulfilled.

DHR Complaint Process

The Executive Law prohibits discrimination in employment, housing, credit, places of public accommodations, volunteer firefighting, and non-sectarian educational institutions, based on age, creed, race, color, sex, sexual orientation, national origin, marital status, disability, military status, arrest record and conviction record, predisposing genetic characteristics, familial status, domestic violence victim status, and domestic worker status.

If an individual feels that he/she has been discriminated against, he/she can come to the Division and file a complaint. After a complaint is filed, the Division assigns an investigator who interviews the parties and witnesses, holds conferences where appropriate, reviews documents, and in certain cases, conducts site visits. After investigation, a Regional Director will determine whether or not probable cause exists to believe discrimination occurred. If the Division finds probable cause, a hearing is scheduled before an Administrative Law Judge.

The Division has the authority to award monetary damages, and/or order a respondent to cease engaging in prohibited conduct and/or implement an anti-discrimination policy to avoid future incidents of discrimination. The Division can also order specific relief, such as reinstatement in an employment termination case, or access to a housing accommodation that had been unlawfully denied.

The Human Rights Law also authorizes the Division of Human Rights to initiate its own investigations and complaints where there is an apparent pattern of illegal discrimination.

Amendments to the Law

- **Civil Fines and Penalties:** The Human Rights Law was amended in 2009 to provide that civil fines and penalties may be awarded in all cases of discrimination. Previously the award of civil fines and penalties was limited to cases of housing discrimination. This amendment was the result of a Division departmental proposal that was included and passed as an Article VII budget bill, as part of the annual state budget. Civil fines and penalties may be assessed by the Commissioner in a case brought before the Division, or by a judge in a case brought pursuant to the Human Rights Law in state court. HRL 297.4; 297.9. Civil fines and penalties may be assessed in an amount not to exceed \$50,000, to be paid to the state by a respondent found to have committed an unlawful discriminatory act, and not to exceed \$100,000 by a respondent found to have committed an unlawful discriminatory act which was willful, wanton or malicious. The amendment provides that in cases of employment discrimination, where an employer has fewer than 50 employees, civil fines and penalties assessed may be paid in installments, over a period not to exceed three years. The Division promulgated regulations relative to the procedures for paying fines and penalties in installments. 9 N.Y.C.R.R. 466.12.
- **Protections for Victims of Domestic Violence:** The Human Rights Law was amended, effective July 7, 2009 to provide protection from employment discrimination for victims of domestic violence. The Human Rights Law defines a domestic violence victim as an individual who is victim of an act which would constitute a family offense under N.Y.S. Family Court Act § 812. It is unlawful to discriminate against a domestic violence victim in hiring for a job, job advancement, requests for use of leave time, or other terms, conditions or privileges of employment. It is also unlawful for an employer to take any action in retaliation for filing a complaint of discrimination.
- **Human Rights Law 296.15** was amended in 2008 to provide that where an employer is sued for negligent hiring or retention of an employee, there shall be a rebuttable presumption in favor of excluding evidence of the employee's prior conviction where such employer has evaluated the factors set out on Art. 23-A of the Correction Law and made a reasonable, good faith assessment in favor of hiring or retaining the employee. Though this provision is in the Human Rights Law, the Division does not enforce it. The provision will be utilized by employers if they are sued for "negligent hiring" of a person with a criminal record. It is hoped that the protection offered to employers by this amendment will encourage employers to consider persons with prior criminal convictions fairly and within the bounds of the Human Rights Law and the Correction Law.

Commissioner's Orders Finding Discrimination

RACE

Leroy B. Flowers v. SSIS Special Services, Inc., Robert Ruvio, Individually
DHR. Case No. 10120506

The Commissioner determined that Respondent violated the Human Rights Law and that Complainant was entitled to damages for the mental anguish he suffered when Complainant's supervisor called him a derogatory racial epithet.

The Commissioner held that Respondent's actions deliberately made Complainant's working conditions so intolerable that a reasonable person in the same circumstance would be compelled to quit. Complainant was, therefore, constructively discharged. The Human Rights Law did not require that Complainant remain at work to find out if such conduct would become a regular practice.

AGE AND RACE

Bruce E. Munger, Jeffrey D. Block, Jerome L. Hall, Sandra McMaster, Luis Rodriguez, Dennis C. Mullen, and Janet M. Arnold v. Erie County Medical Center Corporation
DHR. Case Nos. 10120162, 10120165, 10120170, 10120178, 10120181, 10120182, 10120189

Seven laid off employees were awarded damages for lost wages and emotional distress after they successfully proved they were discriminated against due to their age and race. In total, Complainants were awarded \$89,177 in lost wages and \$45,000 for the mental anguish they each suffered.

The Commissioner found that Respondent abolished Complainants' positions due to discriminatory intent and the proof established that Respondent recommended abolishment of the positions in order to replace Complainants with young, white workers. When new positions were created, Complainants were denied interviews despite the fact that they met the minimum requirements for the newly established positions.

REASONABLE ACCOMMODATION AND DISABILITY

James M. Hazen v. Hill, Betts & Nash, LLP
DHR Case No. 10114676

The Commissioner awarded Complainant \$548,161 in lost wages and \$50,000 for the mental anguish he suffered as a result of Respondent's discrimination.

Complainant worked as an attorney with Respondent's law firm for approximately 17 years. In 2005 and 2006, Complainant suffered the symptoms of bipolar disorder. Respondent discriminated against Complainant when it failed to consider providing him a reasonable

accommodation, when it terminated his employment because of his disability and when it retaliated against him for having engaged in activity protected under the Human Rights Law.

Respondent had an obligation to consider Complainant's request for a reasonable amount of time to recover from the symptoms he was experiencing as a reasonable accommodation for his disability, but it refused to do so and instead terminated his employment. Further, Respondent made an ethics complaint against Complainant in retaliation for his having opposed discrimination.

AGE

Norman Parnass v. Ben Rottenstein Associates, Inc., Jack Jaffa
DHR Case. No. 10112745

Complainant alleged that Respondents harassed him and discriminated against him because of his age in an effort to force him from his job.

After Complainant complained about the discriminatory treatment, the harassment continued and Complainant was ultimately fired. Respondents could not provide a credible, legitimate, non-discriminatory reason for their actions.

Complainant was awarded \$15,000 for emotional distress damages and \$188,750.00 for lost wages.

SEXUAL ORIENTATION

Brian Mayock v. County of Onondaga
DHR Case. No. 10112441

The Commissioner awarded Complainant \$18,000 in lost wages and \$25,000 to compensate him for the mental anguish he suffered as a result of Respondent County of Onondaga Department of Probation's discriminatory conduct.

The Department of Probation penalized Complainant because of his sexual orientation when it refused to transfer him to positions where he would supervise others. While Respondent claimed it would not allow Complainant to supervise others because it had an obligation to protect the community, the Commissioner held that this was a subterfuge for discrimination. The New York Supreme Court, Appellate Division, Fourth Department, confirmed the Commissioner's determination, *County of Onondaga v. Mayock*, 910 N.Y.S.2d 628 (4th Dept. 2010).

NATIONAL ORIGIN

Gregorio Aquino v. AMB Industries Incorporated, an affiliate of Abmonesource, Inc.: ABM Jantitorial Services - Northeast Ortheast, Inc,
DHR Case No. 10122222

Complainant alleged that Respondents unlawfully terminated his employment because of his national origin. Respondents contended that Complainant's employment was terminated because he violated work rules and engaged in insubordinate and threatening behavior.

Complainant was awarded damages for lost wages in the amount of \$2,298.47 and \$20,000 for the mental anguish he suffered as a result of Respondent's discrimination.

DISABILITY

Shane A. Fuller v. Tosha Restaurants, LLC d/b/a Denny's
DHR Case No. 10116907

Complainant worked part-time as a dishwasher for Respondent restaurant. Complainant suffered from psoriasis and cellulitis which resulted in scarring on the back of his head, which became infected from the steam in the kitchen. The infection was not contagious. Respondent's owner terminated Complainant's position when he discovered the infections despite Respondent's own policy to require workers to cover open sores or be sent home until medically cleared. Respondent's owner admitted that he would not have hired Complainant had he known about his condition. The Commissioner held that Respondent discriminated against Complainant based on disability in violation of the Human Rights Law when it terminated his employment and awarded Complainant \$10,000.00 for the mental anguish he suffered, \$4,576.00 in lost wages and \$200.00 in out-of-pocket expenses. The Appellate Division, Third Department confirmed the Commissioner's order, *Tosha Restaurants, LLC v. New York State Div. of Human Rights*, 2010 N.Y. Slip Op. 09054 (3d Dept. 2010).

Court Decisions

All final orders of the Division are appealable to court, pursuant to Section 298 of the Human Rights Law, and the Division's Legal Bureau represents the Division in many such court actions each year. Appeals from Commissioner's Orders after Hearing are decided in the Appellate Divisions of the NYS Supreme Court. Following is a sample of decisions, one from each of New York's four Appellate Divisions.

Appellate Division, First Department

Noho Star, Inc. v. N.Y. State Div. of Human Rights, 72 A.D.3d 448, 897 N.Y.S.2d 629 (1st Dept. 2010)

Commissioner's order, finding that Complainant was terminated in retaliation for his having agreed to testify in a DHR proceeding, is confirmed. Employer terminated complainant within a day after it learned that he had agreed to be a witness; this can establish a causal connection. No basis exists to disturb the findings of credibility rejecting the testimony of petitioner's witnesses that they did not know that complainant had agreed to testify, and that the decision to terminate him had been made weeks earlier. Complainant had recently been promoted and there was no written documentation of any dissatisfaction with his work. Substantial evidence also supports the awards for emotional distress and back pay, and offsets in favor of petitioner were properly denied on a record that contains no evidence as to the amount of any unemployment benefits or other income received by complainant.

Appellate Division, Second Department

State Div. of Human Rights v. Koch, 60 A.D.3d 777, 875 N.Y.S.2d 180 (2d Dept. 2009)

The determination of the Commissioner was supported by substantial evidence that the Complainant was subjected to a hostile work environment and disparate treatment, and was constructively discharged, based on her sex. Substantial evidence further supported the determination that the owner and president of First Preferred was individually liable for the discrimination. The \$75,000 award of damages for mental anguish and humiliation was reasonably related to the discriminatory conduct.

Appellate Division, Third Department

N.Y. State Dept. of Corr. Svcs. v. N.Y. State Div. of Human Rights, 53 A.D.3d 823, 861 N.Y.S.2d 494 (3d Dept. 2008)

Although the HRL did not prohibit discrimination based on sexual orientation until January 2003, and the amendment applies prospectively only, the discriminatory conduct proven at the hearing was based upon Complainant's gender as well as her sexual orientation, and it continued until July 2003, well after the amendment's effective date. There was substantial evidence of a hostile environment, and that Respondent's supervisory personnel failed to properly process Humig's complaints. Respondent condoned the harassing conduct. Commissioner's Order was confirmed, with the exception that mental suffering award was reduced from \$850,000 to \$200,000.

Appellate Division, Fourth Department

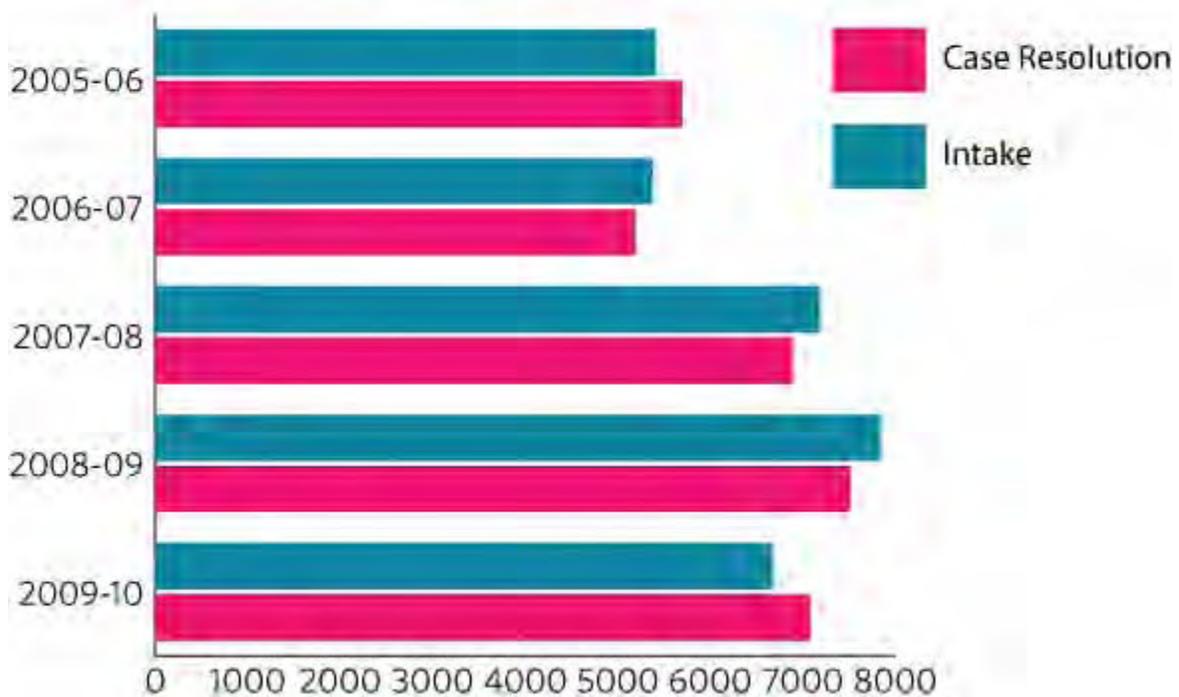
Wal-Mart Stores East, L.P. v. N.Y. State Div. of Human Rights, 71 A.D.3d 1452, 897 N.Y.S.2d 348 (4th Dept. 2010)

The record establishes that an employee of petitioner requested to check the backpack of the customer in question, an African-American woman, but he did not make similar requests of Caucasian customers. Further, there is substantial evidence, including the store's surveillance videos, establishing that the employee asked the customer for a receipt when she left the store but that he did not ask Caucasian customers for receipts. The store is liable for the action of its employee, because there is substantial evidence in the record establishing that it condoned its employee's actions by failing to discipline the employee. The Commissioner's order was confirmed, including an award of \$7,000 mental pain and suffering.

Division Operating Statistics

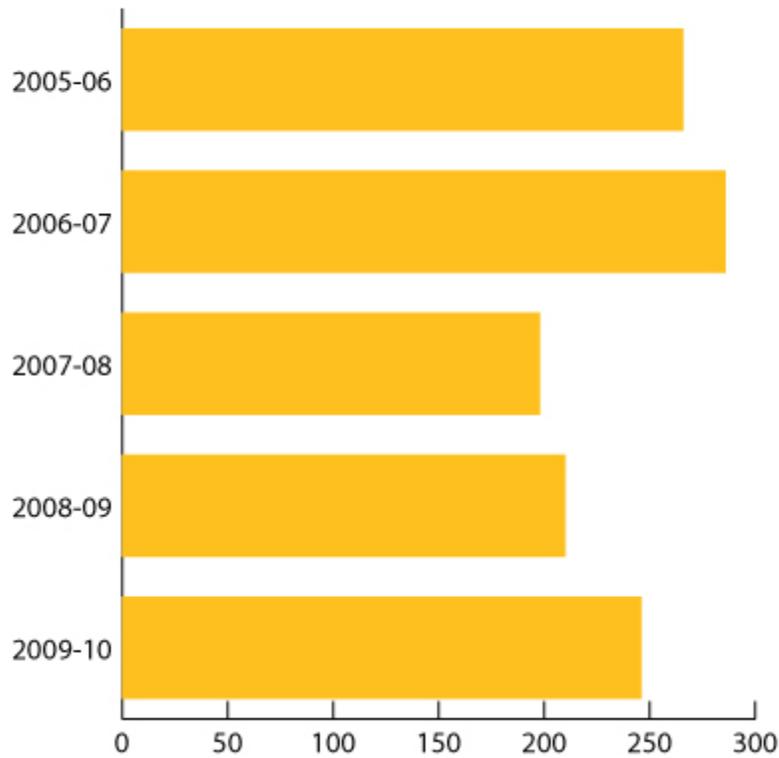
There were 7844 complaints filed with the Division in FY08-09, an increase of just over seven percent from FY07-08. During this same time period, the Division resolved 7514 complaints. In FY09-10, there were 6677 complaints filed with the Division, a decrease of just under fifteen percent. During this time period, the Division resolved 7080 complaints. (See Table 1A).

TABLE 1-A Intake v. Case Resolutions

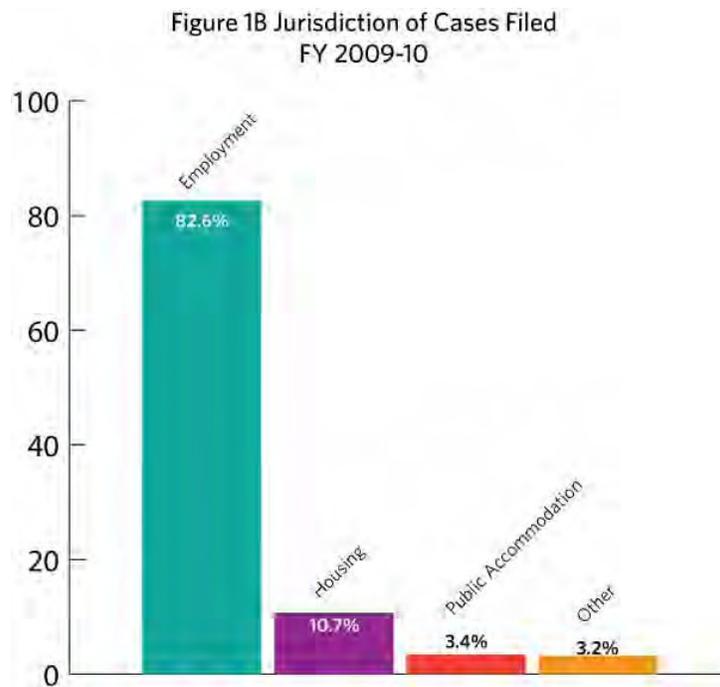
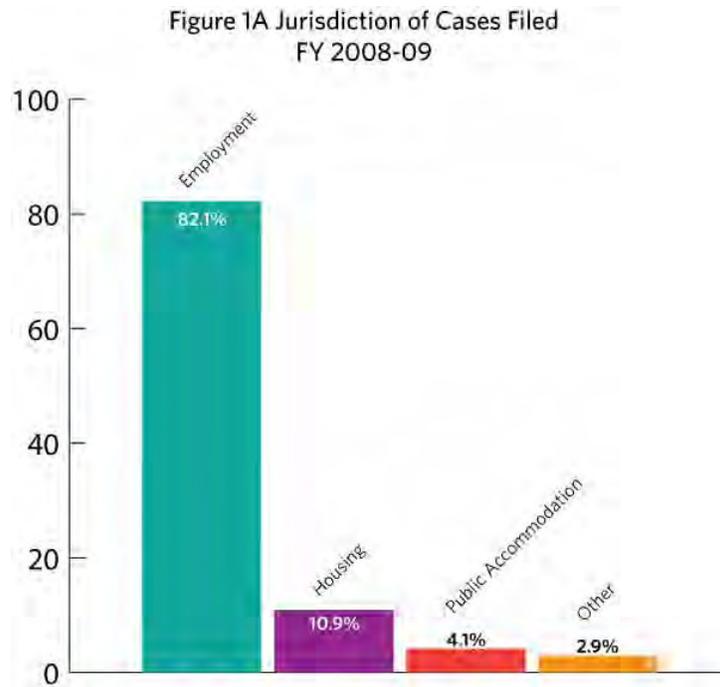


The median processing time increased slightly from just under 200 days in FY07-08, to 210 days in FY08-09. The processing time increased to 246 days in FY09-10. This means that 50% of the Division's cases were resolved in less than 246 days, and 50% took longer. (See Table 1B).

TABLE 1-B Median Processing Time in Days



In FY08-09 and FY09-10, the majority of complaints filed were in the area of Employment (82%), followed by Housing (11%), Public Accommodation (approximately 4%), with the sum of all other areas comprising 3% of all cases filed. (See Figures 1A & 1B).



The most frequently cited basis of complaints filed was Race/Color (35%), followed by Disability (31%) and Sex (23%). It is important to note that some complaints allege more than one basis; therefore, the total percentage of bases cited will be more than 100%. (See Figures 2A & 2B).

Figure 2A Bases of Cases Filed
FY 2008-09

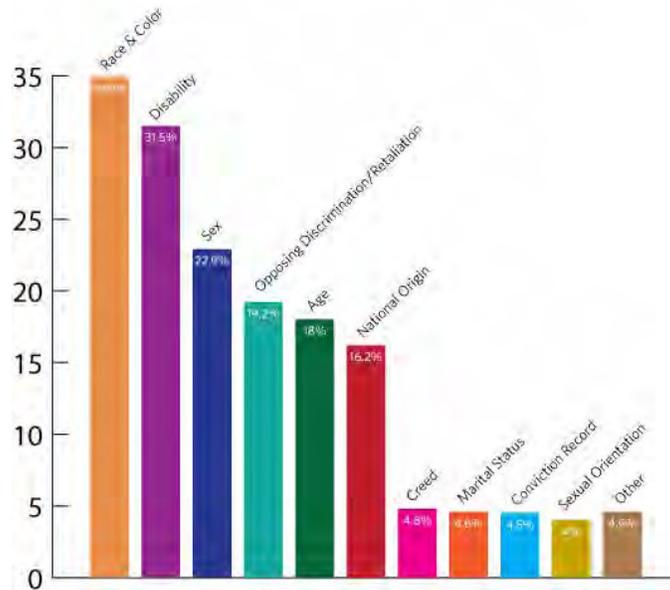
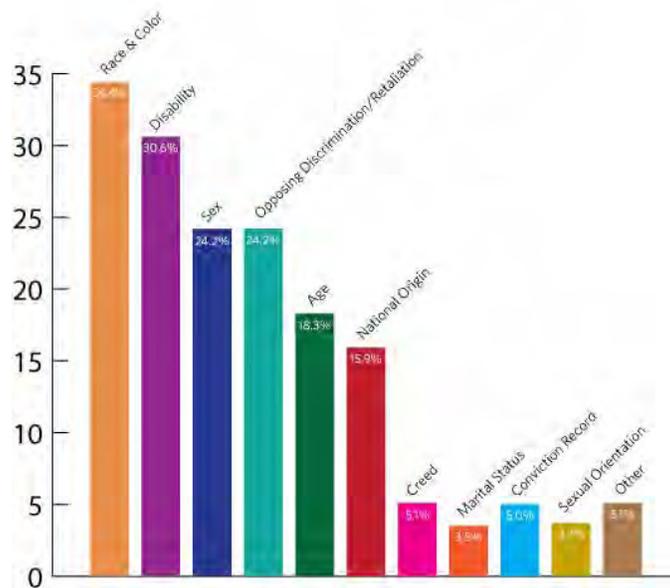
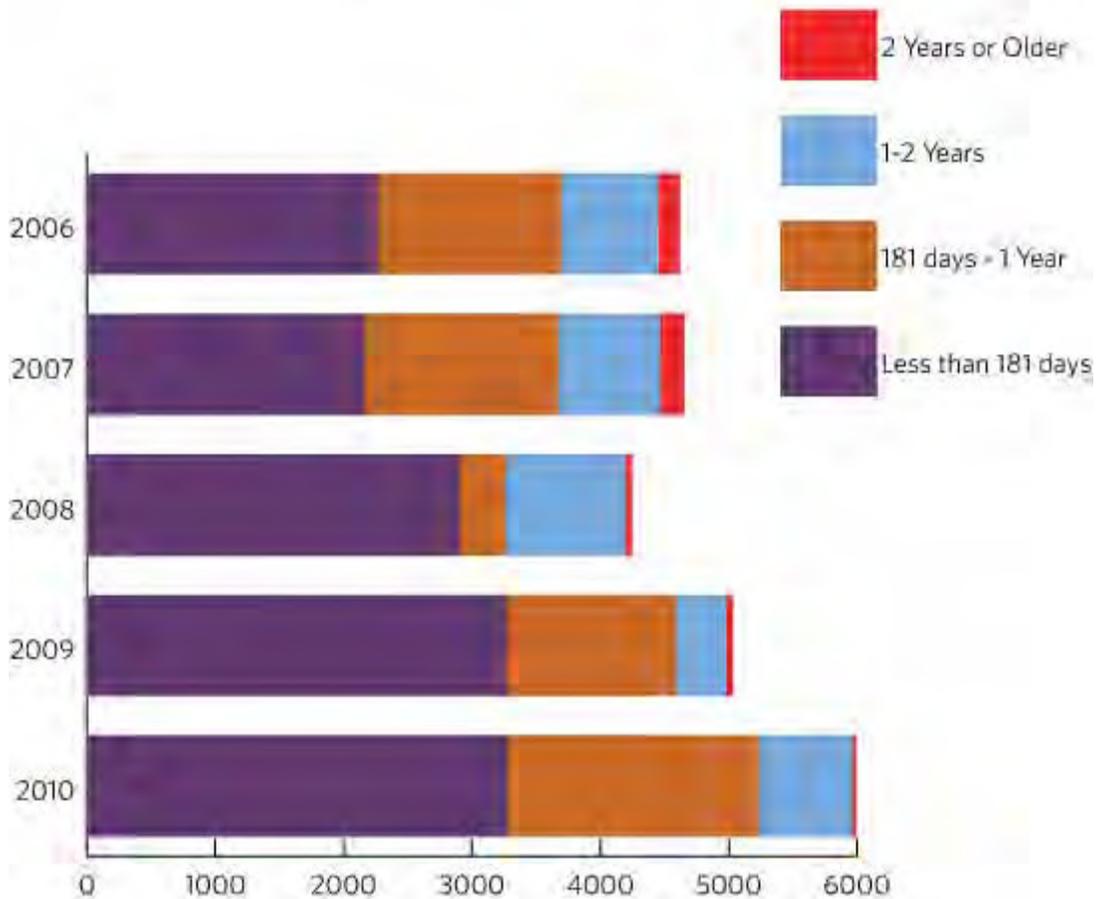


Figure 2B Bases of Cases Filed
FY 2009-10



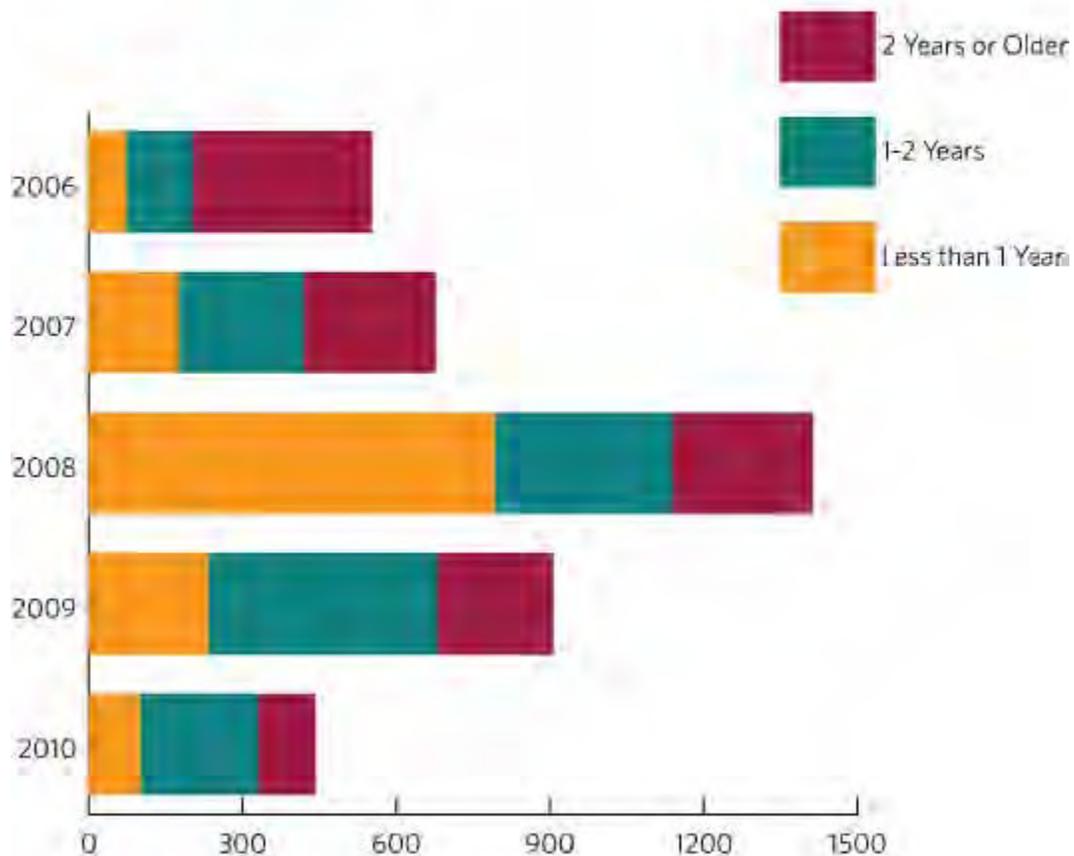
As of the end of FY08-09, 65% of cases under investigation were less than 181 days old, 26% were between 181 days and one year old; 8% were between one and two years old, and less than 1% were over two years old. At the end of FY09-10, 54% of cases under investigation were less than 181 days old, 33% were between 181 days and one year old; 12% were between one and two years old, and less than 1% were over two years old. (See Table 2A).

**TABLE 2-A Age of Investigations Caseload
(as of March 31)**



Of the cases in the Hearing Process that had received investigative determinations of Probable Cause, 26% were less than one year old, 49% were between one and two years old, and 25% were two years old or older as of the end of FY08-09. At the end of FY09-10, 23% were less one year old, 47% were between one and two years old, and 21% were two years old or older. (See Table 2B).

**TABLE 2-B Age of Hearings Caseload
(as of March 31)**



During FY08-09, the Division issued 7231 investigative determinations (see Figure 3A). Of these 62% were No Probable Cause, 13% were Dismissals and 12% were settlements. 13% were Probable Cause determinations, which resulted in those cases advancing to the hearing process. In FY09-10, the Division issued 6666 investigative determinations (see Figure 3B). Of these 60% were No Probable Cause, 16% were Dismissals, 15% were settlements, and 9% were Probable Cause determinations.

Figure 3A Investigation Outcomes
FY 2008-09

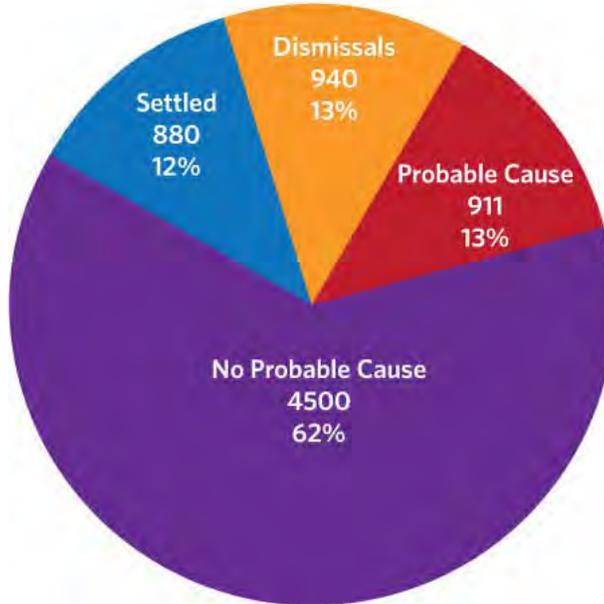
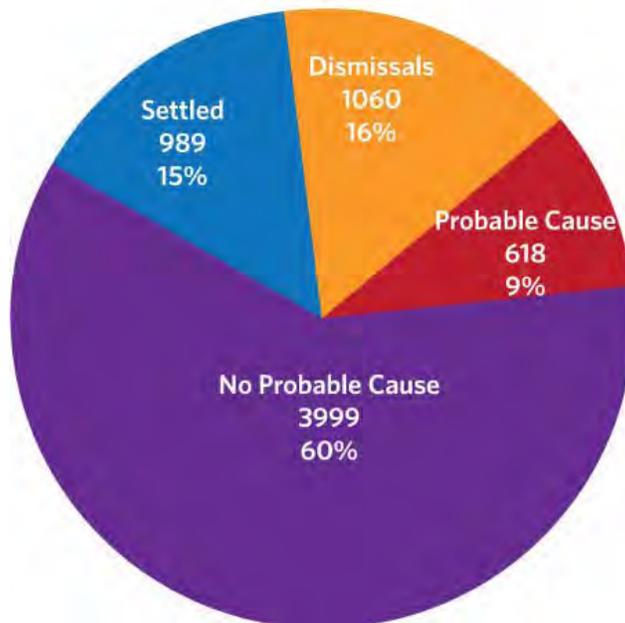


Figure 3B Investigation Outcomes
FY 2009-10



In FY08-09, the Commissioner issued 1197 Commissioner's Orders (see Figure 4A). 64% of these were settlements, and 11% were dismissals prior to the completion of the Hearing process. 23% of the 1197 Commissioner's Orders were dismissed after hearing, while 2% were sustained after hearing. During FY09-10, the Commissioner issued 1032 Commissioner's Orders (see Figure 4B). 62% of these were settlements, and 13% were dismissals prior to the completion of the Hearing process. 21% of the 1032 Commissioner's Orders were dismissed after hearing, while 5% were sustained after hearing.

Figure 4B Hearing Outcomes
FY 2009-10

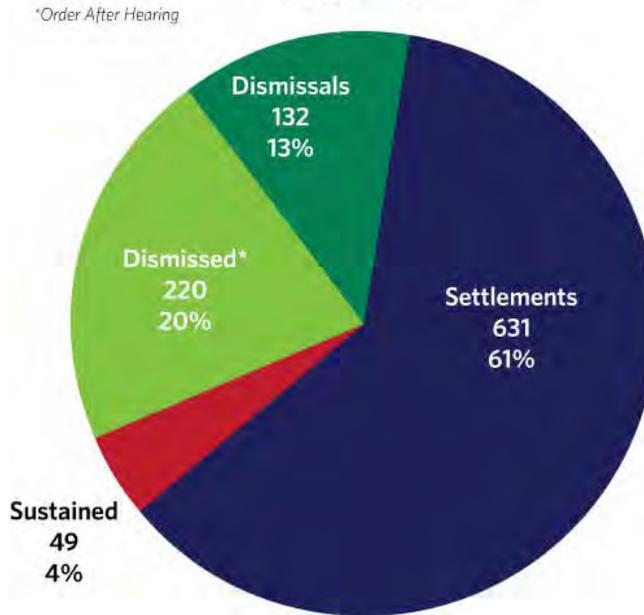
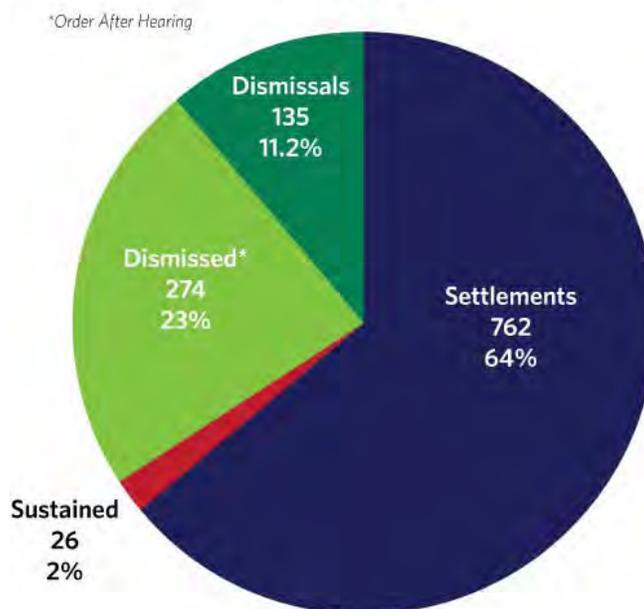


Figure 4A Hearing Outcomes
FY 2008-09



Outreach Activities



NYSDHR staff pose with one of the MTA bus ads from the Fair Housing Public Service Campaign, November 2008



A press conference in Patchogue, Long Island in response to the bias-related murder of Marcelo Lucero, November, 2008



A press conference at City Hall, NYC in response to the bias-related murder of Jose Sucuzhañay, December 2008



Commissioner Galen Kirkland speaking at the 75th Anniversary of the Apollo Theater, March 2009



An outreach event in Harlem, May 2009

Outreach Activities



"Raising the Curtain for Unity,"
a performance revue organized by the
Unity Coalition in Patchogue, Long Island
April, 2009



Commissioner Kirkland speaking at a
graduation ceremony, June, 2009



A Teach the Teacher conference
in Brooklyn, NYC, May, 2010



Commissioner Kirkland receives a proclamation
from the Bronx Borough President's Office.

"TO USE AND ENJOY"
FAIR HOUSING CONFERENCE
APRIL 2010



Panelist speaking to audience.

Outreach Activities

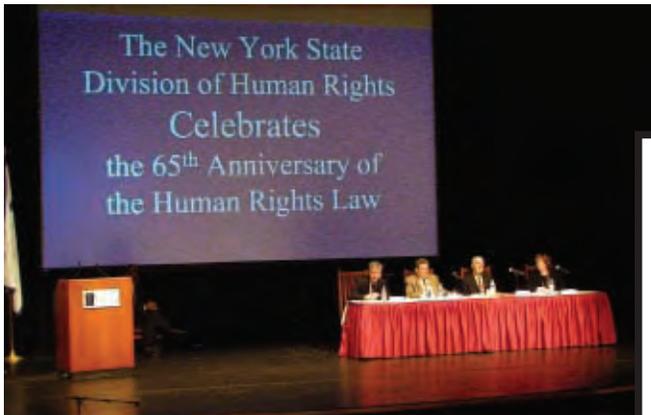


SURF FOR ALL JULY & AUGUST 2010

DHR sponsored an event to introduce the sport of surfing to children on the autism spectrum in July, and to visually impaired and blind children in August. The surfing clinic was hosted by Surf For All, a local charity that provides recreation programs for the disabled, including similar camp for U.S. Military veterans from the Wounded Warriors Program.



Outreach Activities



Panel on Disability Rights
"2010 Civil Rights Frontier" Symposium

65TH ANNIVERSARY OF THE
HUMAN RIGHTS LAW
SEPTEMBER 2010



Reception with John Jay College
President Jeremy Travis



IS 190 Student receives a
certificate from
the Commissioner



First Deputy Commissioner
Burgos speaks to the students

ADOPT-A-WALL
NOVEMBER 2010



Students from IS 190 view their work

EXECUTIVE STAFF

Galen D. Kirkland, Commissioner
Luis R. Burgos, Jr., First Deputy Commissioner

Caroline J. Downey, General Counsel
Julian R. Birnbaum, Deputy Commissioner for Division-Initiated Investigations
James E. Mulvaney, Deputy Commissioner for External Relations
Stephen R. Rolandi, Deputy Commissioner for Finance and Administration
Jyll D. Townes, Deputy Commissioner for Regional Affairs
Edward A. Watkins, Deputy Commissioner for Federal Programs
Christine Marbach Kellett, Chief Administrative Law Judge
Sharon A. Bourne-Clarke, Deputy General Counsel
Sharon Field, Director, Prosecutions Unit
Rockwell J. Chin, Director, Office of Equal Opportunity & Diversity
John P. Herrion, Director, Disability Rights
Ronald B. Brinn, Regional Director, Long Island
Julia B. Day, Regional Director, Rochester
Leon Dimaya, Regional Director, Lower Manhattan
Margaret Gormley-King, Regional Director, Peekskill
Tasha Moore, Regional Director, Buffalo
David Powell, Regional Director, Upper Manhattan
William LaMot, Director, Housing Investigations Unit
Joyce Yearwood-Drury, Director, Office of Sexual Harassment Issues
Trevor Usher, Director, Calendar Unit
Lawrence Wizman, Director, Regulatory Compliance and Internal Control
Peter Buchenholz, Adjudication Counsel
Matthew Menes, Adjudication Counsel

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

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 J. Downey

HEADQUARTERS

The Bronx One Fordham Plaza
Fourth Floor
Bronx, NY 10458

Office Number 718-741-8400

Toll Free Number (for Complaint Info)
888-392-3644

www.dhr.state.ny.us

REGIONAL OFFICES

Albany Empire State Plaza
Corning Tower
25TH Floor
P.O. Box 2049
Albany, NY 12220
TEL: 518-474-2705

Binghamton 44 Hawley Street
Room 603
Binghamton, NY 13901
TEL: 607-721-8467

REGIONAL OFFICES

Long Island (Nassau) 175 Fulton Avenue
Suite 404
Hempstead, NY 11550
TEL: 516-538-1360

Long Island (Suffolk) State Office Building
Suite 3A-15
Hauppauge, NY 11787
TEL: 631-952-6434

Manhattan (Lower) 55 Hanson Place
Room 1084
Brooklyn, NY 11217
TEL: 718-722-2385

Manhattan (Upper) State Office Building
163 West 125TH Street
Fourth Floor
New York, NY 10027
TEL: 212-961-8650

Peekskill 8 John Walsh Blvd.
Suite 204
Peekskill, NY 10566
TEL: 914-788-8050

Brooklyn 55 Hanson Place
Room 304
Brooklyn, NY 11217
TEL: 718-722-2856

Buffalo State Office Building
65 Court Street
Suite 506
Buffalo, NY 14202
TEL: 716-847-7632

Rochester One Monroe Square
259 Monroe Avenue
Suite 308
Rochester, NY 14607
TEL: 585-238-8250

Syracuse 333 East Washington Street
Room 543
Syracuse, NY 13202
TEL: 315-428-4633

Discrimination really hurts.

If you see it or experience it, call us. We're here.