

**OVERVIEW
HUMAN RIGHTS
COMMISSION,
OFFICE OF
PUBLIC
ADVOCACY,
PUBLIC DEF.
AGENCY,
1/11/05**



Paula M. Haley
EXECUTIVE DIRECTOR

Alaska State Commission for Human Rights

(907) 276-7474 (VOICE)
EXTENSION 241

800 A Street, Suite 204
Anchorage, AK 99501-3669

(907) 276-3177 (TTY)
(907) 278-8588 (FAX)

**Toll-Free Complaint Hot Line
(800) 478-4692**

**Human Rights
Commission**

STATE OF ALASKA
800 A Street, Suite 204
Anchorage, AK 99501-3669
(907) 274-4692

**TTY/TDD (Hearing Impaired)
Toll-Free Hot Line
(800) 478-3177**

ALASKA STATE COMMISSION FOR HUMAN RIGHTS
800 A Street, Suite 204
Anchorage, AK 99501-3669

**Alaska
State
Commission for
Human
Rights**

COMMISSIONERS

RUTH BENSON, FAIRBANKS
LISA FITZPATRICK, ANCHORAGE
LESTER C. LUNCFORD, WHITTIER
GRACE E. MERKES, STERLING
BOB SAWYER, FAIRBANKS
KATHY WUSTHOFF, ANCHORAGE

ALASKA HUMAN RIGHTS LAW

(A.S. 18.80.010 et seq.) makes it unlawful to discriminate in

- ◆ EMPLOYMENT
- ◆ PLACES OF PUBLIC ACCOMMODATION
- ◆ SALE OR RENTAL OF REAL PROPERTY
- ◆ FINANCING AND CREDIT
- ◆ PRACTICES BY THE STATE OR ITS POLITICAL SUBDIVISIONS

because of

- ◆ RACE
- ◆ RELIGION
- ◆ COLOR
- ◆ NATIONAL ORIGIN
- ◆ SEX
- ◆ PHYSICAL/MENTAL DISABILITY

and in some instances because of

- ◆ AGE
- ◆ MARITAL STATUS
- ◆ CHANGES IN MARITAL STATUS
- ◆ PREGNANCY
- ◆ PARENTHOOD

WHAT IS THE HUMAN RIGHTS COMMISSION?

The Alaska State Commission for Human Rights is the State agency which enforces the Alaska Human Rights Law. The Commission consists of seven persons appointed by the Governor and confirmed by the Legislature. The Commission employs a staff and maintains an office in Anchorage. The Commission has statewide powers and accepts complaints from all regions of the state.

WHAT DOES THE HUMAN RIGHTS COMMISSION DO?

The Commission staff

Accepts complaints of discrimination from persons alleging violations of Alaska Human Rights Law;

Investigates complaints in a fair and impartial manner;

Attempts early settlement of complaints whenever possible;

Dismisses complaints when no violation of Alaska Human Rights Law has occurred;

Conciliates complaints when Alaska Human Rights Law has been violated;

Gives technical assistance and advice on Alaska Human Rights Law; and

Conducts workshops and training for employers, unions, landlords, businesses, and others who must comply with the Alaska Human Rights Law.

The Commissioners

Hold public hearings to consider cases where conciliation efforts have failed;

Issue decisions applying Human Rights Law to individual or class action cases;

Order back-pay, reinstatement, or other appropriate relief to complainants.

Order the elimination of discriminatory practices; and

Enforce Commission decisions and orders in the Alaska courts.

HOW CAN THE COMMISSION HELP YOU?

If you believe that you have experienced discrimination, you may contact the Commission. The Commission staff will advise you of your rights under Alaska Human Rights Law and when appropriate assist you to file a complaint.

If you need advice about your responsibilities under the Alaska Human Rights Law, the Commission staff can provide information.

*In addition to
investigating complaints
of discrimination in*

HOUSING,

*The Commission also
investigates complaints in:*

- *Employment*
- *Places of Public
Accommodation*
- *Financing and Credit*
- *Practices of the State or
Its Political Subdivisions*

*Everyone deserves
a place to live.*



*If you've been denied
a place to live
because of discrimination,*

Call the

*Alaska State Commission
for Human Rights*

Toll Free 800/478-4692

*TTY/TTD
Hearing Impaired 800/478-3177*

In Anchorage 274-4692

Funded by a grant from the U S Department
of Housing and Urban Development

ALASKA STATE COMMISSION
FOR HUMAN RIGHTS
800 A STREET, SUITE 202
ANCHORAGE, ALASKA 99501

*It is unlawful
for someone to
deny you housing
because of your:*

Race
Religion
Color
National Origin
Sex
Physical Disability
Mental Disability
Marital Status
Change in Marital Status
Pregnancy
Parenthood
Age
Familial Status

*Signs of
possible discrimination:*

- The sign says "vacancy" and the manager says "It's rented."
- You are told it will cost one amount for rent or deposit, and another person is told a different amount.
- The sales agent only shows you houses for sale in one area of town.
- The bank won't give you an application for a loan, or sets your interest rate higher.
- You are told, "You wouldn't like it here," or "There's no place for children to play."

*If you believe
you have been hurt
by discrimination,*

Call

the Commission Staff:

Toll Free 800/478-4692
TTY/TTD 800/478-3177
In Anchorage 274-4692

The Staff will:

- Explain the law against discrimination.
- Assist you in filing a complaint with the Commission and/or contacting the Fair Housing Assistance Program, U.S. Department of Housing and Urban Development.
- Investigate any complaint you file with the Commission.

*This brochure is available in
alternate formats upon request.*

**Toll-free in Alaska
(800) 478-4692**

**Alaska State
Commission for Human
Rights**

**800 A Street, Suite 204
Anchorage, AK 99501-3669
(907) 274-4692 (voice)
(907) 276-3177 (TTY)**

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(800) 478-3177**

**Alaska State Commission for Human Rights
800 A Street, Suite 204
Anchorage, AK 99501-3669**

Mediation:

an alternative to
investigation

**Alaska State Commission
for Human Rights**

WHAT IS MEDIATION?

Mediation is a free and entirely voluntary process to help parties resolve their differences and reach a mutually acceptable agreement that results in dismissal of the complaint.

Mediation is an impartial process that affords both parties an equal voice in whether and how a complaint will be resolved. A mediation can be scheduled quickly.

Parties exchange information and work together with the neutral mediator to try to resolve the complaint, but it is the parties – the stakeholders – who decide the settlement terms.

Mediation is confidential. The parties and mediator agree not to reveal information disclosed during the mediation process.

If parties reach a settlement, the Commission will dismiss the complaint. If no settlement is reached, the case will be transferred for a full and impartial investigation.

WHY MEDIATE?

Mediation...

- ◆ Is a positive and efficient alternative to investigation
- ◆ Affords parties the opportunity to resolve their differences quickly
- ◆ Is a fair and impartial process
- ◆ Avoids the need for an investigation
- ◆ Is voluntary and free of charge
- ◆ Does not affect the right to a full investigation if parties do not reach a settlement
- ◆ Is confidential
- ◆ Reduces costs

HOW CAN I LEARN

MORE ABOUT MEDIATION AT THE COMMISSION?

For more information please contact Mary Southard at the:

ALASKA STATE COMMISSION
FOR HUMAN RIGHTS
800 A STREET, SUITE 204
ANCHORAGE AK 99501-3669

TELEPHONE:

In Anchorage:
(907) 274-4692 Ext. 247
Outside Anchorage:
(800) 478-4692 Ext. 247

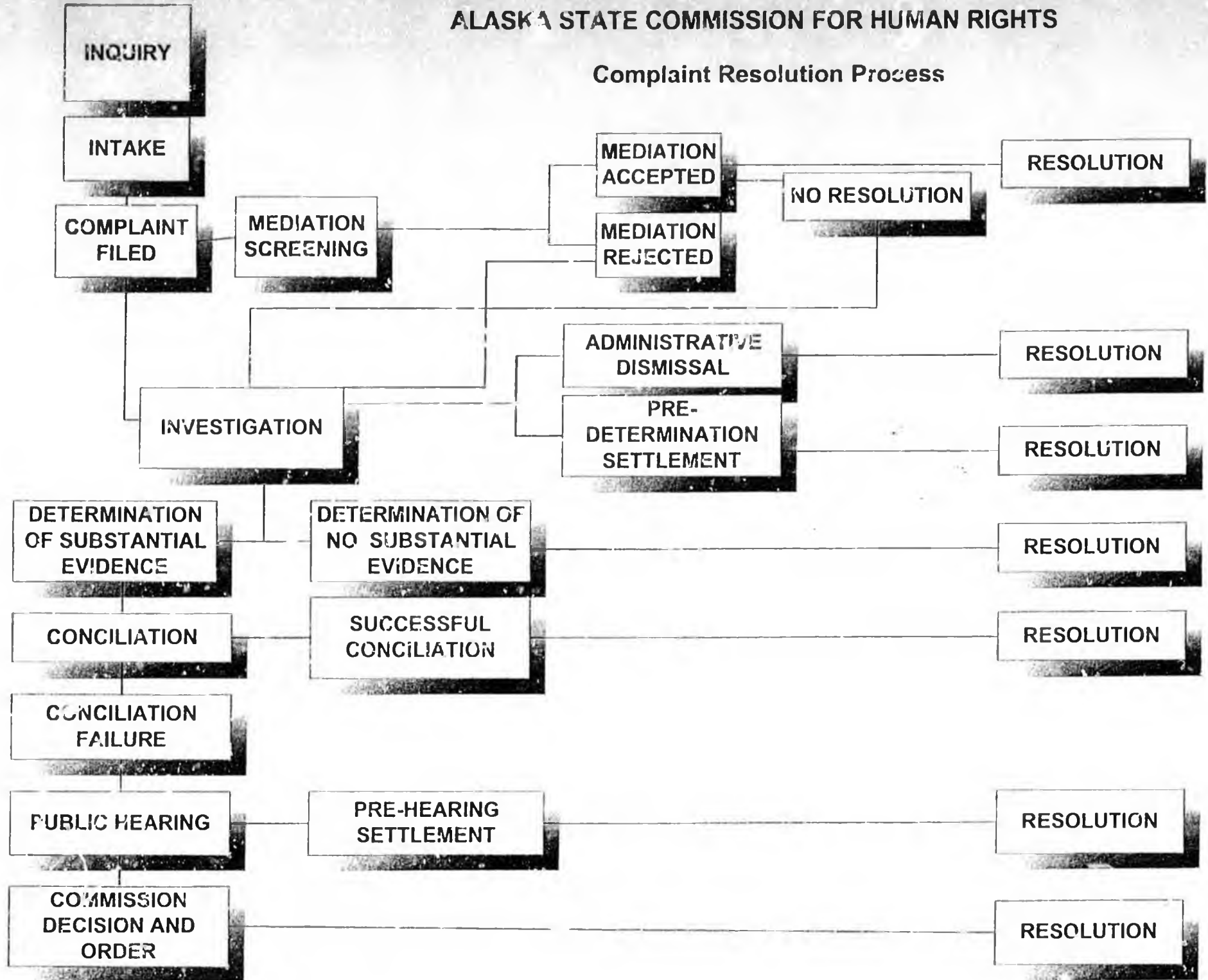
FAX: (907) 278-8588

TTY/TDD LINE ONLY:

In Anchorage: (907) 276-3177
Outside Anchorage:
(800) 478-3177

ALASKA STATE COMMISSION FOR HUMAN RIGHTS

Complaint Resolution Process



Alaska State Commission for Human Rights

2003 Annual Report

February 6, 2004

STATE OF ALASKA
HUMAN RIGHTS COMMISSION

The Honorable Frank Murkowski, Governor of Alaska
The Honorable, Gene Therriault, President, Alaska Senate
The Honorable, Pete Kott, Speaker, Alaska House of Representatives

On behalf of the Commission I respectfully submit the 2003 Annual Report of the Alaska State Commission for Human Rights.

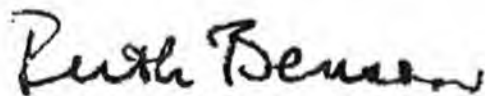
In June 2003, the Commission celebrated its 40th Anniversary as Alaska's civil rights enforcement agency. The celebration included remarks from Lieutenant Governor Loren Leman, U. S. Representative Don Young, and past and current Commissioners. Cari M. Dominguez, Chair of the U.S. Equal Employment Opportunity Commission, traveled to Alaska to attend the event and gave the keynote speech. Ms. Dominguez brought greetings and a letter from President George W. Bush, commending Alaska's efforts to advance equality and foster diversity. The Willard L. Bowman Elementary School Choir opened the event with song.

In 2002, when 56% more Alaskans filed complaints of discrimination with the agency, the Commission's inventory increased dramatically. Complaint filings returned to prior year levels in 2003, and the hard work of staff resulted in a 6% decrease to the Commission's inventory. The Commission saw a 5% increase in employment cases alleging failure to hire due to discrimination in 2003 and an 8% increase in race based complaints.

The businesses against whom complaints of discrimination were filed and the Alaskans bringing claims to the Commission continued to utilize the mediation program. In those instances where the parties agreed to mediation, 81% closed with a voluntary settlement. Participants continue to express appreciation for the opportunity to address their concerns through mediation even when efforts to resolve the complaint are not successful.

Many businesses still contact the Commission requesting educational presentations. While the Commission would like to conduct more training to help prevent discrimination, the agency must turn away most requests for these presentations in order to focus on the complaints of discrimination filed by Alaskans.

The Commission will continue its commitment to fair enforcement of Alaska's human rights law. The Commissioners ask for your continued support of our efforts to prevent and eliminate discrimination in Alaska.



Ruth G. Benson
Chairperson

COMMISSIONERS

RUTH G. BENSON, Fairbanks

LISA M. FITZPATRICK, Anchorage

MARTHA L. GORE, Anchorage

LESTER C. LUNCEFORD, Whittier

GRACE E. MERKES, Sterling

ROBERT B. SAWYER, JR., Fairbanks

KATHY K. WISTHOFF, Anchorage

COMMISSION STAFF

Paula M. Haley, Executive Director

Stephen Koteff, Chief of Enforcement

Kelly Fisher, Human Rights Advocate

Jill Dean, Human Rights Attorney

Sharon O. Avery, Administrative Officer

Lucinda G. Bay, Clerk IV

M. Anne Keene, Docket Officer

Lisa P. Rode, Law Office Assistant

Margaret A. Taylor, Commission Secretary

Evelyn P. Abello, Investigations Director

Donald Miller, Investigations Director

Erin Collins, Investigator

Nanette Gay, Investigator

Brenda Page, Investigator

Ann Pence, Investigator

Mary Southard, Mediator

ALASKA STATE COMMISSION FOR HUMAN RIGHTS

800 A Street, Suite 204
Anchorage, Alaska 99501-3669

ANCHORAGE AREA

1-907-274-4692

TTY/TDD (Hearing Impaired)

1-907-276-3177

STATE-WIDE TOLL-FREE COMPLAINT LINE

1-800-478-4692

STATE-WIDE TTY/TDD TOLL-FREE COMPLAINT LINE

1-800-478-3177

FOR ADDITIONAL COPIES OF THIS REPORT, INFORMATION REGARDING ALASKA'S HUMAN RIGHTS LAW, OR TO FILE A COMPLAINT, PLEASE CONTACT THE COMMISSION AT THE ADDRESS OR PHONE NUMBERS ABOVE.

PUBLIC HEARING CASES

Note: In all of the following public hearing cases, unless otherwise noted, the Commission staff found that substantial evidence existed to support the complainants' allegations.



In *Acuna v. North Slope Borough*, complainant alleged that she was discriminated against on the basis of her race, Asian, and national origin, Filipino, when she applied for a position as a payroll specialist with the North Slope Borough. Complainant alleged that the Borough refused to hire her in accordance with its ordinance which requires employment preferences for Native Americans. Commission staff found substantial evidence that the Borough's employment preference violates the Human Rights Law. A public hearing scheduled to begin on June 13, 2000, was continued pending a decision by the Ninth Circuit Court of Appeals in *Malabed v. North Slope Borough*, which involved a challenge to the ordinance brought in federal court. On July 8, 2003, the Ninth Circuit ruled that the ordinance was invalid under state law. The parties are now discussing a settlement of the case.

In *Beegan v. State of Alaska, Department of Transportation & Public Facilities, Anchorage International Airport*, complainant filed five separate complaints alleging that respondent failed to hire him because of his age and in retaliation for having filed complaints of age discrimination. Commission staff found substantial evidence that Mr. Beegan was retaliated against four separate times after filing his first complaint, but no substantial evidence to support Mr. Beegan's first complaint of age discrimination. Mr. Beegan appealed the no substantial evidence determination to the Superior Court, which remanded the case to the Commission with instructions to make a substantial evidence finding. After conciliation failure, a public hearing was held July 14-18, 2003. On October 3, 2003, the hearing examiner issued a recommended order that the complaint be dismissed. At the end of 2003 a final order from the Commission was pending.

In *Behre v. The Hertz Corporation*, complainant alleged that respondent failed to accommodate his known mental disability and terminated his employment because of his disability and in retaliation for supporting a co-worker's complaint about discrimination.

ONLY YOUNG'UNS NEED APPLY

A 54-year-old transportation industry worker filed a complaint alleging that his employer denied him a transfer to a seasonal position because of his age and selected younger applicants instead. The employer asserted that it did not select the complainant because of an unfavorable reference from a supervisor in another part of the company. Commission staff's investigation showed that the supervisor questioned the benefits to the employer of investing in a new employee who was three years from retirement. Commission staff found substantial evidence of age discrimination. Staff found, however, that complainant had mitigated his damages by taking another job in the company with higher pay and was therefore ineligible for monetary relief. The employer and the Commission conciliated the case and the employer agreed to adopt specific policies prohibiting discrimination.

FENDING OFF THE BOSS

A financial specialist alleged that she was sexually harassed by her boss when he asked her to share a hotel room with him during a business trip, made sexual comments to her, and entered her room uninvited. The specialist also alleged that she complained to her boss's supervisors but they failed to take any action. The parties agreed to mediation and reached a settlement. The employer agreed to pay the specialist \$5,872, to provide sexual harassment training to its staff and managers, and to enforce its sexual harassment policy.

Commission staff did not find substantial evidence that respondent retaliated against complainant. Commission staff found, however, that substantial evidence supported complainant's allegation that respondent discriminated against him because of his mental disability. A public hearing is scheduled for May 24-27, 2004.

In *Eaton v. Northwest Airlines*, complainant alleged that respondent discriminated against her on the basis of her physical disability, quadriplegia, when respondent refused to provide her with a bulkhead seat, causing her severe pain due to the restrictions of her assigned seat. A public hearing scheduled for November 18-19, 2002, was continued pending a settlement agreement.

In *Faria v. Federal Express Corporation*, complainant alleged that respondent subjected him to different terms and conditions and terminated his employment because of his race, Pacific Islander, and national origin, Hawaiian. As of December 31, 2003, a public hearing had not been scheduled.

In *Graham v. Jacobs Engineering Group, Inc.*, complainant alleged that respondent retaliated against her for filing a prior complaint of discrimination with the Commission when it terminated her employment. As of December 31, 2003, a public hearing had not been scheduled.

In *Klutcharch v. Snug Harbor Seafoods, Inc.*, complainant alleged that respondent discriminated against him because of his age when it terminated his employment. Commission staff did not find substantial evidence to support complainant's allegations, but did find substantial evidence that respondent was eliciting disability-related information from job applicants. As of December 31, 2003, a public hearing had not been scheduled.

In *McCaslin v. Nana Management Services, Inc.*, complainant alleged that respondent discriminated against her on the basis of her sex and race when it failed to take corrective action after she reported being sexually harassed by a coworker. Commission staff found no substantial evidence of race discrimination or sexual harassment, but did find substantial evidence that respondent treated complainant differently because of her sex when it disciplined her more harshly than her male coworker. The parties reached a settlement in

A PLACE TO SAW LOGS

A female cook who worked at a remote logging camp alleged that her employer discriminated against her based on her sex when she was terminated because the camp would not provide her housing. Investigation by Commission staff found that the employer only provided housing for single women who held certain management or supervisory positions, and that it furnished housing to all male employees regardless of the job they held. Staff issued a determination of substantial evidence of sex discrimination and executed a conciliation agreement in which the employer agreed to pay the cook \$20,601 and to develop and distribute a statement of corporate policy reflecting the employer's opposition to discrimination and retaliatory practices.

DOGGONE UNFAIR

A sight-impaired man alleged that a convenience store discriminated against him on the basis of his physical disability when a clerk denied him access to the store with his service dog. He further alleged that after the clerk relented and allowed him to enter the store, the clerk continued to harass him about his dog. The parties agreed to mediation and reached a settlement in which the storeowner agreed to receive training in disability law and to post a sign stating that service animals were permitted in the store.

which respondent agreed to train its managers and supervisors on the provisions of the Human Rights Law and expunge documents from complainant's personnel file related to her complaint of sexual harassment. The Commission approved the settlement on July 9, 2003.

In *McRae v. Alaska Vocational and Technical Center*, complainant alleged that respondent subjected her to a hostile work environment and that she was forced to leave her employment because of the hostile work environment. The Commission has scheduled a public hearing for March 15-19, 2004.

In *Owens v. The Estelle Group*, complainant alleged that respondent discriminated against him on the basis of his disability, paraplegia, because a retail store owned by respondent is not accessible to persons who use wheelchairs for mobility. Respondent has complied with the terms of a proposed settlement agreement and installed a ramp for access to its facility. A settlement is pending in this case.

In *Perkins v. Doyon Universal Services, Inc.*, complainant alleged that respondent failed to hire him as a kennel technician because of his race, Black. Complainant alleged that despite his prior experience respondent hired someone who was less qualified for the position. As of December 31, 2003, a public hearing had not been scheduled.

In *Reider v. Alaska Job Corps Center*, complainant alleged that respondent discriminated against him on the basis of his physical disability, back problems, and mental disability, post-traumatic stress disorder. Complainant alleged he was terminated from his position as an alcohol and drug abuse counselor after he asked to take family medical leave as an accommodation for his disabilities. A public hearing scheduled for February 24-28, 2003, was continued pending settlement discussions between the parties. The parties reached a settlement in which respondent agreed to pay \$50,000 to complainant and train its employees in the laws prohibiting discrimination based on disability. The settlement was approved by the Commission on May 29, 2003.

In *Rescober v. Department of Natural Resources, Division of Mining, Land, and Water*, complainant alleged that respondent failed to promote him based on his sex, race, and national origin. Commission staff found that complainant's allegations were not

SO FAR AWAY

An aircraft mechanic alleged that his employer discriminated against him because of his age, 63, when it laid him off and forced him to transfer to another job 1,000 miles away. His employer asserted that it laid him off because he had less seniority than his coworker. The parties reached a settlement which returned the mechanic to his home station and compensated him for income he had lost and expenses he incurred while working away from home.

TOO OLD FOR WINGS

A 50-year-old woman with over 20 years of experience as a customer service agent filed a complaint alleging that an airline refused to offer her a position as a customer service agent because of her age. Investigation showed that despite the woman's qualifications and successful completion of four separate screening interviews, the airline rejected her and offered positions to younger applicants. The airline agreed to conciliate the case, provide complainant with back pay, and undertake measures to address the Commission's public policy against discrimination. The complainant declined to accept the proposal. However, the Commission closed the case when it reached a separate agreement with the airline.

supported by substantial evidence. Complainant appealed the decision to the superior court. The superior court found substantial evidence of discrimination and remanded the case for a hearing. A public hearing is scheduled for April 21-29, 2004.

In *Shelton v. Anderson Apartments, LLC*, complainant alleged that respondent failed to hire him as a maintenance worker because it perceived him to be a person with a physical disability. Complainant alleged that respondent believed the job would be too stressful for him because he had been treated for a heart condition. As of December 31, 2003, a public hearing had not been scheduled.

In *Taheri v. Evergreen International Aviation, Inc.*, complainant filed two complaints alleging that respondent subjected him to different terms and conditions, failed to promote him, and ultimately terminated him because of his race (Asian), his national origin (Iranian), his religion (Muslim), and his age (48). Commission staff did not find substantial evidence that complainant was subjected to different terms and conditions of employment. Commission staff did find substantial evidence that respondent discriminated against complainant when it failed to promote him, and that it retaliated against him for filing a complaint of discrimination when it terminated his employment. As of December 31, 2003, a public hearing had not been scheduled.

In *Thiel v. Kachemak Port Services, Inc.*, complainant alleged that respondent discriminated against her on the basis of her sex when she was subjected to sexual harassment by respondent's vice-president. Complainant further alleged that she was terminated in retaliation for reporting the harassment to her supervisor. After a public hearing held August 4-7, 2003, the hearing examiner recommended that the complaint be dismissed. At the end of 2003, a final order from the Commission was pending.

In *Tiernan v. Pyramid Printing*, complainant alleged that respondent discriminated against her on the basis of her sex when she was subjected to sexual harassment by her supervisor and that her working conditions became so intolerable that she was forced to quit. The Commission held a public hearing on August 19-23, 2002. The hearing examiner issued a recommended decision finding that complainant was subjected to sexual harassment and

PREGNANCY HALTS HIRE

A job applicant alleged that a prospective employer discriminated against her when she revealed that she was pregnant. The applicant stated that she was hired for an intake position during a telephone interview with one of respondent's supervisors, and that she was to begin the job in two months after completing training. While later discussing the training schedule, the applicant informed the supervisor that she was pregnant. The following day the employer told the applicant the job offer was rescinded. The mediation program facilitated a predetermination settlement in which the employer paid the applicant \$2,459 and agreed to provide training to its hiring personnel regarding discrimination laws.

BACK TO SCHOOL

A father alleged that his son's school was disciplining him unfairly because of his race, Asian, and national origin, Japanese American. The father alleged that his son, who had no prior record of misconduct, had twice been harassed and assaulted by two white students, one of whom had a history of aggressive behavior, and that all three students were given similar discipline after each incident. The parties agreed to mediation and reached a settlement in which the school agreed to meet with the student's parents regarding safety and discipline, to remove the son's disciplinary records, and to discipline all students in a fair manner.

directing respondent to pay complainant back pay damages in the amount of \$50,972 and attend sexual harassment training. The Commission issued a final order on October 1, 2003, adopting the hearing examiner's decision.

In *Williams v. Players Choice Bingo and Pulltabs*, complainant alleged that she was subjected to sexual harassment by respondent's manager. A public hearing scheduled for May 5-8, 2002, was continued pending a settlement discussions. The parties reached a settlement in which respondent agreed to provide six hours of training for its managers and supervisors in anti-discrimination laws, with special emphasis on laws prohibiting sexual harassment in the workplace. The Commission approved the settlement agreement on July 29, 2003.

In *Wynne v. State of Alaska, Department of Administration, Division of Alaska Longevity Programs, Fairbanks Pioneers' Home*, complainant alleged that respondent discriminated against her on the basis of her physical and mental disabilities when she was terminated from her position as a Certified Nurse Aid. A public hearing scheduled to begin September 8, 2003, was continued pending settlement discussions. The parties reached an agreement in which respondent agreed to pay \$36,000 to complainant and to provide training to its employees regarding the requirements of the Human Rights Law. The Commission approved the agreement on December 29, 2003.

WILLING AND CAPABLE

A sales advisor who performed demonstrations of products in retail stores alleged that his employer discriminated against him based on his sex and physical disability. The sales advisor complained that his supervisor made derogatory comments about his disability because he was missing three fingers on one of his hands. He alleged that although he was fully able to perform his job without an accommodation, he was not given the opportunity to do so and was given fewer assignments than his coworkers. He stated that his supervisor refused to allow him to perform a demonstration and sent him home because she was afraid that he might cut his remaining fingers or otherwise injure himself. Investigation by Commission staff showed that the sales advisor was not discriminated against because of his sex, but found substantial evidence that he was denied work opportunities because of unrealistic concerns about his disability. The employer offered to provide the sales advisor with the wages he lost, and signed a conciliation agreement in which it agreed to develop and distribute a corporate policy reflecting its opposition to discrimination and retaliatory practices.

HARASSMENT FOR RENT

A woman employed as a leasing consultant for an apartment complex where she also lived alleged that she was discriminated against based on her sex and age. She alleged that her supervisor made offensive and sexually explicit comments to her, verbally harassed her, and physically assaulted her. She also alleged that her employer retaliated against her for complaining about the supervisor's conduct when her employer terminated her employment and attempted to evict her from her apartment. The parties entered into a settlement agreement in which the employer agreed to pay the consultant \$9,250 and to provide her with a written apology, and the consultant agreed to withdraw her complaint with the Commission.

MAKING WAY

A woman with a physical disability alleged that she was denied access to a retail store because she was unable to climb the flight of steep stairs that led to the store's front entrance. She alleged that she asked the store manager to allow her to use the store's back entrance on the ground level and that she was told to use the stairs or shop elsewhere. The mediation program facilitated a predetermination settlement in which the store's owner agreed to provide the woman with an escort through the back entrance when she called in advance.

LITIGATION



In **Jenkins-Welch v. Alaska State Commission for Human Rights**, staff closed complainant's case pursuant to its governing statutes when it was discovered that complainant had filed a similar action in court. Complainant appealed the closing order to superior court. On February 28, 2002, the superior court affirmed the Commission's decision to close complainant's case. Complainant has appealed the superior court's decision to the Alaska Supreme Court. On December 31, 2003, the Alaska Supreme Court affirmed the Commission's decision to close the case.

In **Raad v. Fairbanks North Star Borough School District**, complainant alleged that she was discriminated against by respondent when it failed to hire her on the basis of her race, national origin, and religion. Complainant further alleged that she was retaliated against by respondent for filing the discrimination complaint. After a public hearing, the Commission issued an order dismissing the complaint. Complainant appealed the Commission's order to superior court. On June 24, 2002, the superior court affirmed the Commission's decision. Complainant has appealed the superior court's decision to the Alaska Supreme Court. As of December 31, 2003, a decision is pending with the court.

In **Rescober v. State of Alaska, Department of Natural Resources and the Alaska State Commission for Human Rights**, complainant alleged that respondent failed to promote him based on his sex, race, and national origin. Staff investigated and issued a finding that complainant's allegations were not supported by substantial evidence. The Commission denied complainant's reconsideration request and on December 17, 2001, complainant appealed the decision to the superior court. On January 13, 2003, the superior court remanded the case back to the Commission for further proceedings in accordance with AS 18.80.110 - .220.

RETALIATION REMEDIED

An administrative assistant complained that her employer discriminated against her because of her race, Alaska Native, and retaliated against her for opposing discrimination. She alleged that a supervisor had subjected her to racially derogatory comments and that she was given a "below acceptable" rating on her performance evaluation after she complained about the supervisor's behavior. The assistant further alleged that she was singled out and targeted when her supervisor publicly announced the investigation into her complaints. Commission staff found substantial evidence to support the allegations. The employer agreed to conciliate the case and to provide training to its managers and supervisors in the laws prohibiting discrimination in the workplace.

GENERATION GAP

A job applicant alleged that his prospective employer refused to hire him for a sales position because of his age, 48. The applicant stated that after his second job interview, the interviewer told him he was too old for the job and that employer was interested in hiring college students, "the younger generation." The mediation program facilitated a predetermination settlement agreement between the parties. The employer agreed to pay the applicant \$500 and to refrain from evaluating prospective employees on the basis of age.

In **Thomas v. Anchorage Equal Rights Commission**, plaintiffs have sued the Municipality of Anchorage, Anchorage Equal Rights Commission, and Paula M. Haley, in her official capacity as the Commission's Executive Director, in state court. Plaintiffs are seeking a declaratory judgment reversing the Alaska Supreme Court's decision in *Swanner v. Anchorage Equal Rights Commission*, 874 P.2d 274 (1994), which held that a landlord is not entitled to a religious exemption to the provisions of the Human Rights Law which prohibit housing discrimination based on marital status. On October 31, 2002, the superior court entered Final Judgment upholding the law. Plaintiffs have appealed the superior court's decision to the Alaska Supreme Court. As of December 31, 2003, a decision is pending with the court.

In **Rosa v. Rainproof Roofing**, complainant alleged that respondent discriminated against him by refusing to rehire him because of his race. On November 27, 2001, staff found complainant's allegations were not supported by substantial evidence. Complainant appealed the Commission's decision to the superior court. On May 16, 2003, the superior court affirmed the Commission's decision to close the case.

In **Dorsey v. Office Products Services**, complainant alleged that respondent retaliated against her by unlawfully terminating her employment because she had complained of sex discrimination. Commission staff found that complainant's claim was supported by substantial evidence. A public hearing was held in Anchorage on April 16-18 and May 21-22, 2002. On October 2, 2002, the Commission issued a decision in favor of complainant and ordered respondent to pay complainant the sum of \$143,297, to refrain from any discriminatory or retaliatory practices, and to provide training to its employees regarding the requirements of AS 18.80. On October 29, 2002, respondent appealed the Commission's Final Order to the superior court. On July 15, 2003, the respondent agreed to pay the complainant \$80,000 as a full and final settlement of the case.

ALL THINGS BEING EQUAL

A female engineering firm employee alleged that she was treated differently because of her sex when she was disciplined more harshly than a male coworker after they both were accused of sexual harassment. She also alleged that she was paid less than two male employees who performed the same work as she did. The Commission's investigation did not find substantial evidence that the complainant was treated differently with respect to pay, but found substantial evidence that she was disciplined more severely for similar violations of the company's sexual harassment policy. The employer agreed to conciliate the case and to develop and disseminate a sexual harassment policy which emphasized consistent and equal treatment of all employees. The employer also agreed to provide training to its owners, managers, and supervisors in the proper enforcement of its anti-discrimination policies.

BUT IT IS AVAILABLE

A Black woman who tried to rent an apartment alleged that the building owner refused to show it to her and told her it was rented. She alleged that after she was told the apartment was unavailable, the owner showed the apartment to a Caucasian woman and gave the woman a rental application. The Commission's mediation program facilitated a predetermination settlement between the parties in which the building owner agreed to pay the applicant \$1,000 and to provide her with a written apology.

2003 CASE PROCESSING STATISTICS

ANALYSIS OF FILINGS BY COMPLAINANT'S SEX

Female	161
Male	136
Total Filings	297

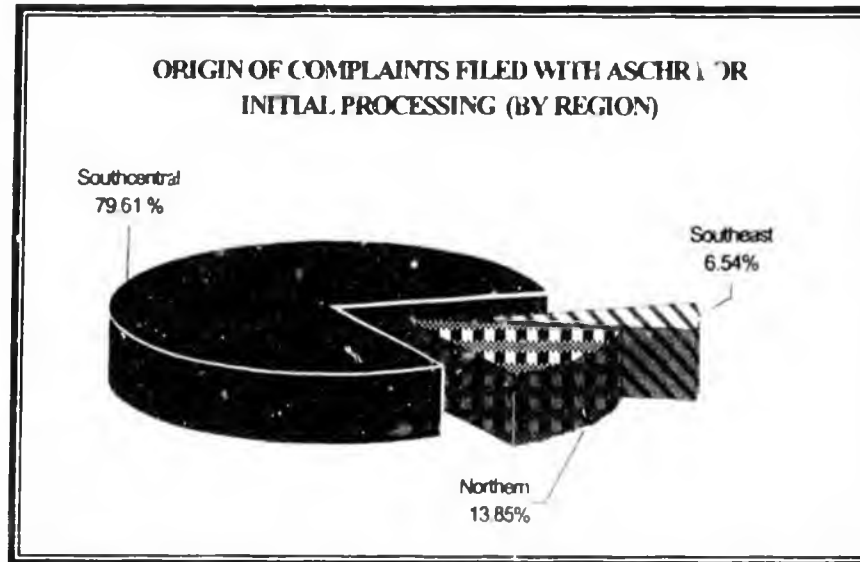
ANALYSIS OF FILINGS BY COMPLAINANT'S RACE

Caucasian	126
Black	81
Alaska Native	23
Asian	20
Unknown	19
Hispanic	17
American Indian	6
Other	5
Total Filings	297

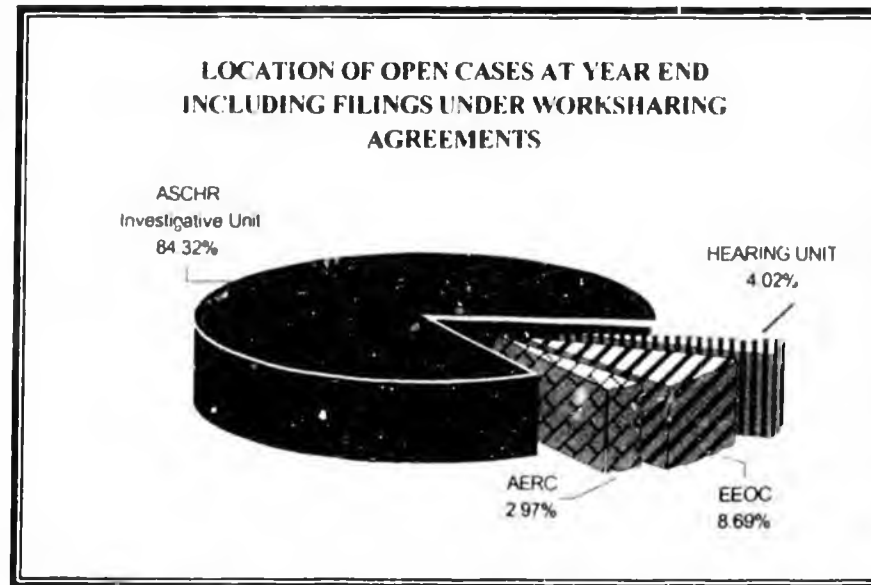
ANALYSIS OF FILINGS BY TYPE

Employment	263
Public Accommodation	14
Housing	9
Government Practices	8
Coercion	0
Multiple	3
Total Filings	297

ORIGIN OF COMPLAINTS FILED WITH ASCHR FOR INITIAL PROCESSING (BY REGION)



LOCATION OF OPEN CASES AT YEAR END INCLUDING FILINGS UNDER WORKSHARING AGREEMENTS



ANALYSIS OF FILINGS BY BASIS

Basis	Single Basis Complaint	Multiple Basis Complaint
Race/Color	67	54
Physical Disability	34	14
Sex	29	54
Age	18	28
Retaliation for Filing	9	7
Mental Disability	8	10
Pregnancy	8	6
Religion	5	3
Retaliation	4	35
National Origin	4	22
Parenthood	3	3
Marital Status	1	2
Multiple Bases	107	---
Total Filings	297	238

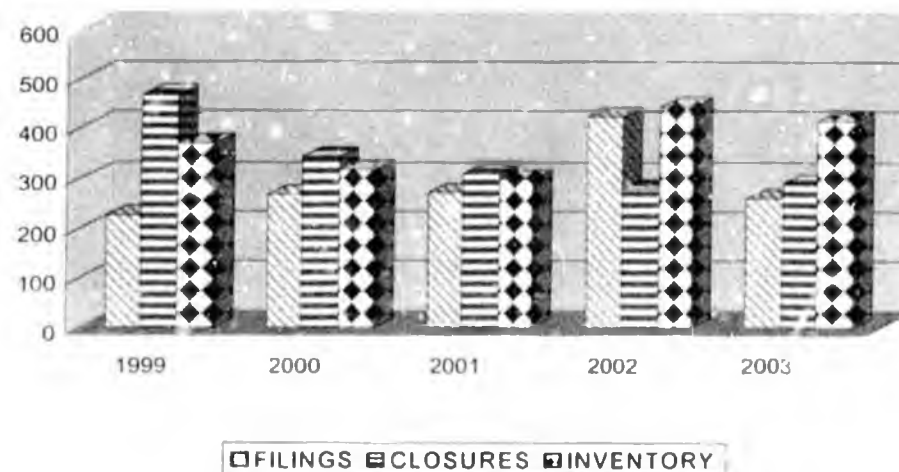
ANALYSIS OF FILINGS BY ISSUE

Issue	Single Issue Complaint	Multiple Issue Complaint
Discharge	80	78
Terms & Conditions	47	63
Failure to Hire	36	8
Denied Service	16	1
Failure to Promote	6	6
Sexual Harassment	4	21
Pay Equity	4	9
Harassment	3	14
Eviction	2	2
Demotion	1	6
Failure to Rent	1	0
Other	0	1
Multiple Issue	97	---
Total Filings	297	209

ANALYSIS OF 2003 CLOSURES

REASON FOR CLOSURE	NUMBER OF CLOSURES	PERCENTAGE OF TOTAL
MEDIATION:	39	11.08%
Mediation - Successful Settlement	20	5.68%
Mediation - Complaint Withdrawn with Successful Settlement	11	3.13%
Mediation - Predetermination Settlement (PDS)	8	2.27%
ADMINISTRATIVE:	36	10.23%
Complaint Withdrawn	6	1.71%
Lack of Jurisdiction	12	3.40%
Complainant Not Available	4	1.14%
Failure of Complainant to Proceed	5	1.42%
Complainant to Court	4	1.14%
Administrative Dismissal	3	.85%
Tribal Sovereign Immunity	2	.57%
NOT SUBSTANTIAL EVIDENCE	244	69.32%
CONCILIATION/SETTLEMENT:	27	7.66%
Complaint Withdrawn with Successful Settlement	8	2.27%
Predetermination Settlement (PDS)	1	.28%
Substantial Evidence/ Conciliation Agreement	18	5.11%
HEARING:	6	1.71%
Decision for Complainant	2	.57%
Pre-Hearing Settlement	4	1.14%
TOTAL 2003 CLOSURES	352	100%

FILINGS, CLOSURES, AND YEAR END INVENTORY OF CASES PROCESSED BY ASCHR



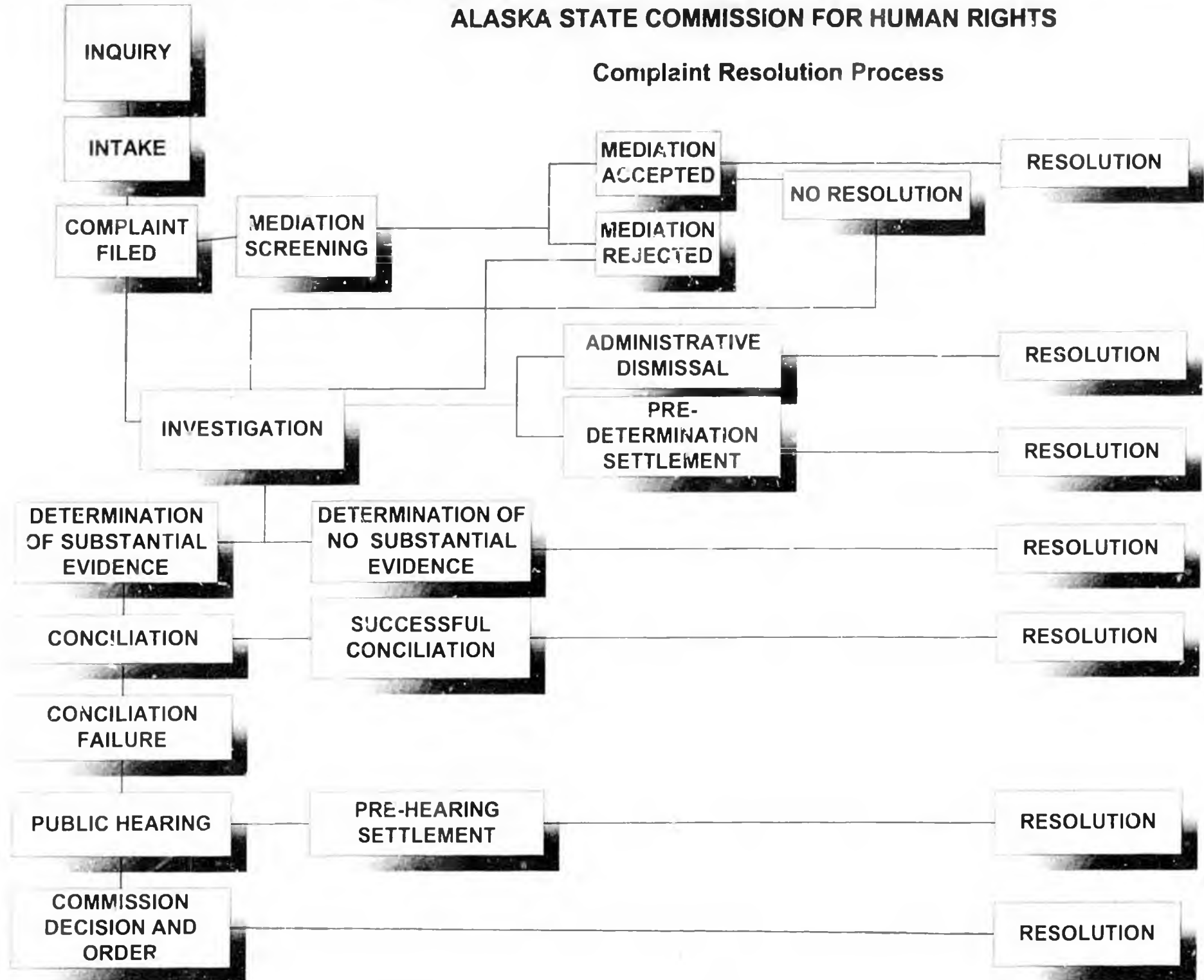
SUMMARY OF CLOSURES

CATEGORY OF CLOSURE	2001		2002		Detail of 2003 Closures					
	No.	%	No.	%	ASCHR		EEOC		AERC	
					No.	%	No.	%	No.	%
Mediation	34	10.0	50	14.3	39	11.1	0	0	--	--
Administrative	31	9.1	46	13.2	32	9.1	3	.8	1	.3
Not Substantial Evidence	220	64.5	206	59.0	196	55.7	20	5.7	28	8.0
Conciliation/Settlement	46	13.5	29	8.3	20	5.7	4	1.1	3	.8
Hearing	10	2.9	18	5.2	5	1.4	0	0	1	.3
					292 ¹		27		33	
TOTAL CLOSURES	341		349		352					

¹ This number does not include completed investigations of 18 cases which are still in conciliation or were transferred to the Hearing Unit in 2003.

ALASKA STATE COMMISSION FOR HUMAN RIGHTS

Complaint Resolution Process





STATE OF ALASKA

Frank Murkowski, Governor

900 W. 5th Ave., Suite 525
Anchorage, Alaska 99501
(907) 269-3500 Telephone
(907) 269-3535 Facsimile

DEPARTMENT OF ADMINISTRATION OFFICE OF PUBLIC ADVOCACY

Office of Public Advocacy: Agency Overview

Mission: To provide legal advocacy and guardian services to vulnerable Alaskans.

Core Functions: Advocate for abused and neglected children in Child-In-Need-of-Aid cases.

Provide guardian and conservator services to Alaskans who are mentally incapable of managing their own affairs.

Represent Public Defender clients where the Public Defender has a conflict – children in juvenile delinquency proceedings; parents in CINA cases, and criminal defendants

Detail Narrative:

The Office of Public Advocacy (OPA) provides legal advocacy and guardianship services to vulnerable Alaskans. Within this general mission, OPA has three distinct and separate core functions: child advocacy in Child in Need of Aid (CINA) proceedings; guardian and conservatorship services for incapacitated adults; and representation of Public Defender clients where the agency has a conflict -- parents in Child-in-need-of-aid cases, juveniles in delinquency proceedings, and criminal defendants. (In addition, OPA statutorily inherits a number of other responsibilities that are corollary to these functions). OPA has a professional staff of 64 and support staff of 17.¹

The Child Advocacy divisions contain the largest allocation of OPA staff. Guardian ad Litem (GAL) are appointed in all Child in Need of Aid cases. This is required by court rule, and federal and state law. The GAL is charged with providing a neutral voice to the court in advocating for the best interests of children in state custody. A full time GAL carries a caseload of approximately 85-90 children. OPA has twenty-one professional staff advocating for children – 17 in Anchorage, 3 in Fairbanks, and 1 in Juneau. OPA also contracts with independent GALs for geographical areas not served by OPA staff and in cases where OPA staff has a conflict of

¹ OPA also contracts with numerous vendors to provide services in geographical areas not covered by staff or where OPA staff have a conflict. Approximately sixty percent of OPA's budget is for contractual services, though efforts are being made to reduce these costs by transferring coverage to staff, where costs are lower per case.

interest. OPA also utilizes a federally sponsored volunteer program named Court Appointed Special Advocates, or CASAs. CASAs work with the GALs on a volunteer basis to expand OPA's resources. They, like GALs, meet with the children they represent, parents, family members, teachers, treatment providers, and others involved in the child's life to better formulate recommendations to the court on what's best for the child. In 2004, OPA had 214 CASAs who volunteered on behalf of 459 abused and neglected children.

In addition, attorneys on the child advocacy staff also represent children in juvenile delinquency proceedings where the public defender agency has a conflict.² Finally, GALs get appointed in particularly difficult custody battles where a court-appointed custody investigator is insufficient. In difficult or nasty custody battles, the court appoints a GAL to represent the child's best interests in determining the custody arrangement.

OPA's next largest commitment of staff is within the public guardian divisions. OPA is appointed to provide guardianship and conservatorship services to incapacitated adults – those with mental illnesses, dementia, brain injuries, and developmental disabilities. As Guardians and Conservators, OPA staff manage their finances by applying for the benefits they are entitled to, receiving the benefits for them and paying their rent, utility, food, medical, and other bills. As guardians, these staff members face the heavy responsibility of making housing, legal, and medical decisions for their clients. Most petitions for guardianships are filed by family members, friends, Adult Protective Services, and sometimes hospitals. OPA is an appointment of last resort. The court is instructed to first look to spouses, family, and private organizations. Twenty percent of guardianships and conservatorships created by the probate court are assigned to OPA. The average caseload for an OPA public guardian is approximately 65 cases. OPA has 14 public guardians; 10 in Anchorage, 2 in Fairbanks, and 2 in Juneau.

The Public Guardian division of the Office of Public Advocacy is also mandated to provide information and referrals to the public regarding guardianship and conservators to assist family members dealing with such issues. We also assist them in preparing guardianship and conservatorship plans and reports. This function is fulfilled by offering monthly classes in the Anchorage office, and by providing information (including court forms) on OPA's website, as well as by sending materials to all court locations and librarians on what guardianship and conservatorships entail, and how to petition for one.

Finally, OPA is also statutorily obligated to provide representation to the subjects of petitions for guardianships (respondent representation), and visitor services in each case.³ Most respondent representation services are contracted out, though cases are kept in-house if it is clear OPA will not be appointed guardian, thus precluding any conflict of interest. All visitor services are contracted out.

² The civil section is also statutorily responsible to provide representation in custody proceedings where one party is represented by a public attorney, interpreted by the Alaska Supreme Court to include cases in which Alaska Legal Services represents a parent.

³ Court Visitors are charged with providing a neutral voice to the court regarding the circumstances requiring the guardianship, whether a guardianship should be approved, and who should be appointed guardian. They conduct interviews and file a written report containing recommendations with the court.

OPA is statutorily responsible for providing representation for parents in Child-in-need-of-aid cases where the Public Defender Agency has a conflict. (That is where the public defender represents a parent, OPA gets the remaining parents). In the past, parental representation has primarily been contracted out, as OPA could not represent the children and parents interests in a CINA proceeding at the same time. Recently, OPA created a new section – the Anchorage Adult and Juvenile Representation Section -- to provide parental representation at a lower cost than the utilization of contractors. Each attorney will have approximately 65 cases. While this section will primarily provide parental representation to parents in Child-in-Need-of-Aid cases, it will also provide representation to minors in juvenile delinquency matters and representation to some criminal defendants. The creation of this section is a further effort to provide service OPA is statutorily obligated to provide at a lower cost. OPA has 4 attorneys in this section in Anchorage.

Finally, OPA provides representation to criminal defendants where the Public Defender Agency has a conflict. This is OPA's smallest section. OPA has 5 criminal attorneys in Anchorage, 3 in Palmer (including a traveling unclassified and class A felony attorney), 3 in Fairbanks and 2 in Bethel. The attorneys in Bethel, Fairbanks, and Palmer office also provide representation in civil matters (CINA and Guardianship proceedings). Where OPA staff have a conflict, criminal cases are contracted out.

OPA has recently established each office as a separate law firm, as well as instituted an ethical wall between the Anchorage criminal and civil sections, so as to keep more cases in house. As separate "law firms", conflicts of interest are not imputed to all attorneys at OPA, thus lessening OPA's reliance on contract attorneys. The implementation of the "separate firm" concept has resulted in significant savings: In FY '04 OPA spent almost \$400,000 less than it did in FY '03.

Accomplishments

Opened Palmer, Bethel, and Anchorage Adult & Juvenile Representation Offices, enabling OPA to retain more cases in-house where cost per case is less expensive than contracting cases out;

Established offices as separate law firms, including Anchorage Civil and Criminal, to reduce conflicts, allowing OPA to keep more cases in-house;

Establish procedures to re-evaluate conflicts post trial to see if the Public Defender Agency can take the case back;

Closely scrutinize contractors monthly invoices to ensure billings is appropriate;

Established pre-authorization procedures for any staff or contractor travel, and investigation or expert requests;

Audited fees charged in public guardian section to more fairly and consistently collect fees (fees collected in FY '03 were \$260,947; fees in FY '04 were \$479,125;

Helped achieve passage of legislation to regulate private guardians/conservators which

should help encourage use of private organizations and development of industry;

Ongoing Projects:

Evaluate case loads in Fairbanks, Kenai, Nome, and Juneau to see if new office would be more cost-effective than continued level of use of contractors;
Implement new case management system that will enable more accurate case statistics for case assignment and individual workload monitoring, and allow OPA to determine average costs for case types to more closely monitor contractors;

Ensure adequate support staffing levels for professional staff to allow better time utilization for front line client advocacy.

HOUSE CS FOR CS FOR SENATE BILL NO. 354(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 5/9/04

Referred: Judiciary

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to complaints filed with, and investigations, hearings, and orders of,
2 the State Commission for Human Rights; and making conforming amendments."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 18.80.100 is amended to read:

5 **Sec. 18.80.100. Complaint; time limitations.** A person who is aggrieved by
6 a [ANY] discriminatory **practice** [CONDUCT] prohibited by this chapter may sign
7 and file with the commission a written, verified complaint stating the name and
8 address of the person alleged to have engaged in the discriminatory **practice**
9 [CONDUCT], and the particulars of the discrimination. **A complainant may**
10 **withdraw the complaint at any time before the service of an accusation under**
11 **AS 18.80.120. A withdrawal must be signed by the complainant and be in**
12 **writing. A withdrawal does not limit the discretion of the executive director**
13 **provided in (b) of this section** [THE EXECUTIVE DIRECTOR MAY FILE A
14 COMPLAINT IN LIKE MANNER WHEN AN ALLEGED DISCRIMINATION

1 COMES TO THE ATTENTION OF THE DIRECTOR].

2 * Sec. 2. AS 18.80.100 is amended by adding new subsections to read:

3 (b) The executive director may file a complaint in the manner provided in (a)
4 of this section when a discriminatory practice comes to the attention of the executive
5 director.

6 (c) A complaint may be filed not later than 180 days after the alleged
7 discriminatory practice or, for a continuing discriminatory practice, not later than 180
8 days after the alleged discriminatory practice stopped.

9 * Sec. 3. AS 18.80.110 is amended to read:

10 **Sec. 18.80.110. Investigation and conciliation.** The executive director or a
11 member of the commission's staff designated by the executive director shall
12 informally investigate the matters set out in a filed complaint, promptly and
13 impartially. If the investigator determines that there is [THE ALLEGATIONS ARE
14 SUPPORTED BY] substantial evidence of a discriminatory practice under this
15 chapter, the investigator shall immediately try to eliminate or remedy the
16 discriminatory practice through an agreement reached [DISCRIMINATION
17 COMPLAINED OF.] by conference, conciliation, and persuasion. If an agreement is
18 reached, it must be reduced to writing and signed by the complainant, executive
19 director, and respondent. The agreement is binding and enforceable under this
20 chapter as an order of the commission. Any agreement reached under this
21 section may include the compromise of damages authorized under this chapter.

22 * Sec. 4. AS 18.80 is amended by adding a new section to read:

23 **Sec. 18.80.112. Dismissal of complaint without prejudice.** (a) At any time
24 before the issuance of an accusation under AS 18.80.120, the executive director may
25 dismiss without prejudice a complaint if the executive director determines, and the
26 commission concurs, that

27 (1) the complainant's objection to a proposed conciliation agreement is
28 unreasonable;

29 (2) the complainant is unavailable or unwilling to participate in a
30 hearing;

31 (3) relief is precluded by the absence of the person alleged to have

1 engaged in the discriminatory practice;

2 (4) the person aggrieved by the discriminatory practice has initiated or
3 wants to initiate an action or proceeding in another forum based on the same facts;

4 (5) a hearing will not represent the best use of commission resources;

5 (6) a hearing will not advance the purposes stated in AS 18.80.200; or

6 (7) the probability of success of the complaint on the merits is low.

7 (b) Dismissal under this section does not prevent a complainant from

8 (1) initiating an action or proceeding in another forum; or

9 (2) filing a new complaint under AS 18.80.100 that resolves the
10 grounds for the dismissal under (a) of this section.

11 * **Sec. 5.** AS 18.80.120 is repealed and reenacted to read:

12 **Sec. 18.80.120. Hearing.** (a) If informal efforts under AS 18.80.110 to
13 eliminate or remedy the alleged discriminatory practice are unsuccessful and the
14 executive director determines, in the executive director's discretion, to refer the
15 complaint for hearing, the executive director shall issue an accusation based on the
16 investigator's determination of substantial evidence and serve the person charged in
17 the accusation and the complainant with notice of the referral and a copy of the
18 accusation. The executive director's decision to refer the complaint to hearing is not
19 reviewable by the commission under this chapter. The location of the hearing is the
20 commission office unless the commission designates another location. The executive
21 director, or the executive director's designee, presents the case in support of the
22 accusation before the commission. The complainant may be represented by counsel,
23 at the complainant's discretion. The person charged in the accusation may file a
24 written answer and may appear at the hearing, with or without counsel, and submit
25 evidence.

26 (b) The commission shall follow the procedures in AS 44.62.330 - 44.62.630
27 (Administrative Procedure Act) except as otherwise provided in this chapter.

28 (c) An accusation may be reasonably and fairly amended by the commission.
29 An amendment to name a different discriminatory practice must be supported by
30 substantial evidence, and the discriminatory practice must be referred for conciliation
31 as provided in AS 18.80.110, before a hearing may proceed.

1 (d) In a hearing on an accusation, each element of an accusation or defense
2 must be proven by a preponderance of the evidence.

3 (e) At any time after the issuance of an accusation, the executive director or
4 the person charged in the accusation may petition for a summary decision on the
5 accusation. The commission shall grant a petition if the record shows that there is no
6 genuine issue of material fact and the petitioner is entitled to an order under
7 AS 18.80.130 as a matter of law.

8 * Sec. 6. AS 18.80.130(c) is amended to read:

9 (c) If the commission finds that a person charged in an accusation
10 [AGAINST WHOM A COMPLAINT WAS FILED] has not engaged in the
11 discriminatory practice [CONDUCT] alleged in the accusation [COMPLAINT], it
12 shall issue and cause to be served on the complainant an order dismissing the
13 complaint.

14 * Sec. 7. AS 18.80.130 is amended by adding a new subsection to read:

15 (f) The interest rate for an award under this section is determined in the
16 manner provided in AS 09.30.070.

17 * Sec. 8. AS 18.80.140 is amended to read:

18 **Sec. 18.80.140. Effect of compliance with order.** Immediate and continuing
19 compliance with all the terms of a commission order is a bar to criminal prosecution
20 for the particular instances of discriminatory practice [CONDUCT] described in the
21 accusation issued under AS 18.80.120 [FILED BEFORE THE COMMISSION].

22 * Sec. 9. AS 18.80.270 is amended to read:

23 **Sec. 18.80.270. Penalty.** A person, employer, labor organization, or
24 employment agency, who or that wilfully engages in an unlawful discriminatory
25 practice [CONDUCT] prohibited by this chapter, or wilfully resists, prevents,
26 impedes, or interferes with the commission or any of its authorized representatives in
27 the performance of duty under this chapter, or who or that wilfully violates an order of
28 the commission, is guilty of a misdemeanor and, upon conviction by a court of
29 competent jurisdiction, is punishable by a fine of not more than \$500, or by
30 imprisonment in a jail for not more than 30 days, or by both.

31 * Sec. 10. AS 18.80.300 is amended by adding a new paragraph to read:

1 (17) "complainant" means a person who is aggrieved by a
2 discriminatory practice prohibited by this chapter and who has filed a complaint as
3 provided in AS 18.80.100.

4 * **Sec. 11.** AS 44.62.330(a) is amended by adding a new paragraph to read:

5 (61) State Commission for Human Rights, where procedures are not
6 otherwise expressly provided in AS 18.80.

7 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 **APPLICABILITY.** This Act applies to all complaints filed on or after the effective
10 date of secs. 1 - 11 of this Act.

11 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 **TRANSITION: REGULATIONS.** The State Commission for Human Rights may
14 proceed to adopt regulations necessary to implement the changes made by this Act. The
15 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
16 effective date of the statutory change.

SENATE BILL NO. 354

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/27/04

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to complaints filed with, and investigations, hearings, and orders of,
2 the State Commission for Human Rights; making conforming amendments; and
3 providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. AS 18.80.100 is amended to read:

6 **Sec. 18.80.100. Complaint; time limitations.** A person who is aggrieved by
7 a [ANY] discriminatory **practice** [CONDUCT] prohibited by this chapter may sign
8 and file with the commission a written, verified complaint stating the name and
9 address of the person alleged to have engaged in **the** discriminatory **practice**
10 [CONDUCT], and the particulars of the discrimination. **A complainant may**
11 withdraw the complaint at any time before the service of an accusation under
12 AS 18.80.120. A withdrawal must be signed by the complainant and be in
13 writing. A withdrawal does not limit the discretion of the executive director
14 provided in (b) of this section. [THE EXECUTIVE DIRECTOR MAY FILE A

1 COMPLAINT IN LIKE MANNER WHEN AN ALLEGED DISCRIMINATION
2 COMES TO THE ATTENTION OF THE DIRECTOR.]

3 * Sec. 2. AS 18.80.100 is amended by adding new subsections to read:

4 (b) The executive director may file a complaint in the manner provided in (a)
5 of this section when a discriminatory practice comes to the attention of the executive
6 director.

7 (c) A complaint may be filed no later than 180 days after the alleged
8 discriminatory practice or, for a continuing discriminatory practice, no later than 180
9 days after the alleged discriminatory practice stopped.

10 * Sec. 3. AS 18.80.110 is amended to read:

11 **Sec. 18.80.110. Investigation and conciliation.** The executive director or a
12 member of the commission's staff designated by the executive director shall
13 informally investigate the matters set out in a filed complaint, promptly and
14 impartially. If the investigator determines that there is [THE ALLEGATIONS ARE
15 SUPPORTED BY] substantial evidence of a discriminatory practice under this
16 chapter, the investigator shall immediately try to eliminate or remedy the
17 discriminatory practice through an agreement reached [DISCRIMINATION
18 COMPLAINED OF,] by conference, conciliation, and persuasion. If an agreement is
19 reached, it must be reduced to writing and signed by the complainant, executive
20 director, and respondent. The agreement is binding and enforceable under this
21 chapter as an order of the commission. Any agreement reached under this
22 section may include the compromise of damages authorized under this chapter.

23 * Sec. 4. AS 18.80 is amended by adding a new section to read:

24 **Sec. 18.80.112. Dismissal for administrative convenience.** (a) At any time
25 before the issuance of an accusation under AS 18.80.120, the executive director may
26 dismiss without prejudice a complaint for administrative convenience if the executive
27 director determines, in the executive director's discretion, that the complainant's
28 objection to a proposed conciliation agreement is unreasonable; the complainant is
29 unavailable or unwilling to participate in a hearing; relief is precluded by the absence
30 of the person alleged to have engaged in the discriminatory practice; a hearing will not
31 benefit the complainant; the person aggrieved by the discriminatory practice has

1 initiated or wants to initiate an action or proceeding in another forum based on the
 2 same facts; a hearing will not represent the best use of commission resources; a
 3 hearing will not advance the purposes stated in AS 18.80.200; the probability of
 4 success of the complaint on the merits is low; or proceeding to a hearing will not serve
 5 the public interest.

6 (b) Dismissal under this section does not prevent a complainant from

7 (1) initiating an action or proceeding in another forum; or

8 (2) filing a new complaint under AS 18.80.100 that resolves the
 9 grounds for the dismissal under (a) of this section.

10 * **Sec. 5.** AS 18.80.120 is repealed and reenacted to read:

11 **Sec. 18.80.120. Hearing.** (a) If informal efforts under AS 18.80.110 to
 12 eliminate or remedy the alleged discriminatory practice are unsuccessful and the
 13 executive director determines, in the executive director's discretion, to refer the
 14 complaint for hearing, the executive director shall issue an accusation based on the
 15 investigator's determination of substantial evidence and serve the person charged in
 16 the accusation and the complainant with notice of the referral and a copy of the
 17 accusation. The executive director's decision to refer the complaint to hearing is not
 18 reviewable by the commission under this chapter. The location of the hearing is the
 19 commission office unless the commission designates another location. The executive
 20 director, or the executive director's designee, presents the case in support of the
 21 accusation before the commission. The person charged in the accusation may file a
 22 written answer and may appear at the hearing, with or without counsel, and submit
 23 evidence.

24 (b) The commission shall follow the procedures in the Administrative
 25 Procedure Act, AS 44.62.330 - 44.62.630, except as otherwise provided in this
 26 chapter.

27 (c) An accusation may be amended by the commission only upon a showing
 28 of good cause. An amendment to name a different discriminatory practice must be
 29 supported by substantial evidence, and the discriminatory practice must be referred for
 30 conciliation as provided in AS 18.80.110, before a hearing may proceed.

31 (d) In a hearing on an accusation, each element of an accusation or defense

1 must be proven by a preponderance of the evidence.

2 (e) At any time after the issuance of an accusation, the executive director or
3 the person charged in the accusation may petition for a summary decision on the
4 accusation. The commission shall grant a petition if the record shows that there is no
5 genuine issue of material fact and the petitioner is entitled to an order under
6 AS 18.80.130 as a matter of law.

7 * Sec. 5. AS 18.80.130(a) is amended to read:

8 (a) At the completion of the hearing or after consideration of a petition for
9 summary decision under AS 18.80.120(e), if the commission finds that a person
10 charged in an accusation [AGAINST WHOM A COMPLAINT WAS FILED] has
11 engaged in the discriminatory practice [CONDUCT] alleged in the accusation
12 [COMPLAINT], it shall order the person to refrain from engaging in the
13 discriminatory practice [CONDUCT]. The order must include findings of fact, and
14 may prescribe conditions on [THE ACCUSED'S] future conduct relevant to the type
15 of discriminatory practice [DISCRIMINATION]. The commission may not order
16 an award of noneconomic or punitive damages in any case. In a case involving a
17 discriminatory practice [DISCRIMINATION] in

18 (1) employment, the commission may order one or more of the
19 following: the training of an employer, labor organization, or employment
20 agency, and its employees, concerning discriminatory practices; [ANY
21 APPROPRIATE RELIEF, INCLUDING BUT NOT LIMITED TO,] the hiring,
22 reinstatement or upgrading of an employee with or without back pay; the payment of
23 front pay for a period of not more than two years if hiring, reinstatement, or
24 upgrading of an employee is inappropriate because no vacancy exists, the
25 employer's discriminatory practice rendered the employee incapable of returning
26 to work, or the relationship between the employer and employee has so
27 deteriorated as to make working conditions intolerable; [,] restoration to
28 membership in a labor organization; [,] or admission to or participation in an
29 apprenticeship training program, on-the-job training program, or other retraining
30 program; however, an order for back pay or front pay must be reduced by the
31 amount the employee could have earned or could earn by making reasonable and

1 diligent efforts to obtain similar employment;

2 (2) housing, the commission may order the sale, lease, or rental of the
3 housing accommodation to the aggrieved person if it is still available, or the sale,
4 lease, or rental of a like accommodation owned by the person charged in the
5 accusation [AGAINST WHOM THE COMPLAINT WAS FILED] if one is still
6 available, or the sale, lease, or rental of the next vacancy in a like accommodation,
7 owned by the person charged in the accusation [AGAINST WHOM THE
8 COMPLAINT WAS FILED]; the commission may award actual damages which shall
9 include[, BUT NOT BE LIMITED TO,] the expenses incurred by the complainant for
10 obtaining alternative housing or space; for storage of goods and effects; for moving
11 and for other costs actually incurred as a result of the unlawful practice or violation.

12 * Sec. 7. AS 18.80.130(c) is amended to read:

13 (c) If the commission finds that a person charged in an accusation
14 [AGAINST WHOM A COMPLAINT WAS FILED] has not engaged in the
15 discriminatory practice [CONDUCT] alleged in the accusation [COMPLAINT], it
16 shall issue and cause to be served on the complainant an order dismissing the
17 complaint.

18 * Sec. 8. AS 18.80.130 is amended by adding a new subsection to read:

19 (f) The interest rate for an award under this section is determined in the
20 manner provided in AS 09.30.070

21 * Sec. 9. AS 18.80.140 is amended to read:

22 **Sec. 18.80.140. Effect of compliance with order.** Immediate and continuing
23 compliance with all the terms of a commission order is a bar to criminal prosecution
24 for the particular instances of discriminatory practice [CONDUCT] described in the
25 accusation issued under AS 18.80.120 [FILED BEFORE THE COMMISSION].

26 * Sec. 10. AS 18.80.270 is amended to read:

27 **Sec. 18.80.270. Penalty.** A person, employer, labor organization, or
28 employment agency, who or that wilfully engages in an unlawful discriminatory
29 practice [CONDUCT] prohibited by this chapter, or wilfully resists, prevents,
30 impedes, or interferes with the commission or any of its authorized representatives in
31 the performance of duty under this chapter, or who or that wilfully violates an order of

1 the commission, is guilty of a misdemeanor and upon conviction by a court of
2 competent jurisdiction is punishable by a fine of not more than \$500, or by
3 imprisonment in a jail for not more than 30 days, or by both.

4 * Sec. 11. AS 18.80.300 is amended by adding a new paragraph to read:

5 (17) "complainant" means a person who is aggrieved by a
6 discriminatory practice prohibited by this chapter and who has filed a complaint as
7 provided in AS 18.80.100.

8 * Sec. 12. AS 44.62.330(a) is amended by adding a new paragraph to read:

9 (61) State Commission for Human Rights, where procedures are not
10 otherwise expressly provided in AS 18.80.

11 * Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 APPLICABILITY. This Act applies to all complaints filed on or after the effective
14 date of secs. 1 - 12 of this Act.

15 * Sec. 14. The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 TRANSITION: REGULATIONS. The State Commission for Human Rights may
18 proceed to adopt regulations necessary to implement the changes made by this Act. The
19 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
20 effective date of the statutory change.

21 * Sec. 15. Section 14 of this Act takes effect immediately under AS 01.10.070(c).

22 * Sec. 16. Except as provided in sec. 15 of this Act, this Act takes effect July 1, 2004.



STATE OF ASKA

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DEPARTMENT OF ADMINISTRATION OFFICE OF PUBLIC ADVOCACY

Office of Public Advocacy: Agency Overview

Mission: To provide legal advocacy and guardian services to vulnerable Alaskans.

Core Functions: Advocate for abused and neglected children in Child-In-Need-of-Aid cases.

Provide guardian and conservator services to Alaskans who are mentally incapable of managing their own affairs.

Represent Public Defender clients where the Public Defender has a conflict – children in juvenile delinquency proceedings; parents in CINA cases, and criminal defendants

Detail Narrative:

The Office of Public Advocacy (OPA) provides legal advocacy and guardianship services to vulnerable Alaskans. Within this general mission, OPA has three distinct and separate core functions: child advocacy in Child in Need of Aid (CINA) proceedings; guardian and conservatorship services for incapacitated adults; and representation of Public Defender clients where the agency has a conflict -- parents in Child-in-need-of-aid cases, juveniles in delinquency proceedings, and criminal defendants. (In addition, OPA statutorily inherits a number of other responsibilities that are corollary to these functions) OPA has a professional staff of 64 and support staff of 17.¹

The Child Advocacy divisions contain the largest allocation of OPA staff. Guardian ad Litem (GAL) are appointed in all Child in Need of Aid cases. This is required by court rule, and federal and state law. The GAL is charged with providing a neutral voice to the court in advocating for the best interests of children in state custody. A full time GAL carries a caseload of approximately 85-90 children. OPA has twenty-one professional staff advocating for children – 17 in Anchorage, 3 in Fairbanks, and 1 in Juneau. OPA also contracts with independent GALs for geographical areas not served by OPA staff and in cases where OPA staff has a conflict of

¹ OPA also contracts with numerous vendors to provide services in geographical areas not covered by staff or where OPA staff have a conflict. Approximately sixty percent of OPA's budget is for contractual services, though efforts are being made to reduce these costs by transferring coverage to staff, where costs are lower per case.

interest. OPA also utilizes a federally sponsored volunteer program named Court Appointed Special Advocates, or CASAs. CASAs work with the GALs on a volunteer basis to expand OPA's resources. They, like GALs, meet with the children they represent, parents, family members, teachers, treatment providers, and others involved in the child's life to better formulate recommendations to the court on what's best for the child. In 2004, OPA had 214 CASAs who volunteered on behalf of 459 abused and neglected children.

In addition, attorneys on the child advocacy staff also represent children in juvenile delinquency proceedings where the public defender agency has a conflict.² Finally, GALs get appointed in particularly difficult custody battles where a court-appointed custody investigator is insufficient. In difficult or nasty custody battles, the court appoints a GAL to represent the child's best interests in determining the custody arrangement.

OPA's next largest commitment of staff is within the public guardian divisions. OPA is appointed to provide guardianship and conservatorship services to incapacitated adults – those with mental illnesses, dementia, brain injuries, and developmental disabilities. As Guardians and Conservators, OPA staff manage their finances by applying for the benefits they are entitled to, receiving the benefits for them and paying their rent, utility, food, medical, and other bills. As guardians, these staff members face the heavy responsibility of making housing, legal, and medical decisions for their clients. Most petitions for guardianships are filed by family members, friends, Adult Protective Services, and sometimes hospitals. OPA is an appointment of last resort. The court is instructed to first look to spouses, family, and private organizations. Twenty percent of guardianships and conservatorships created by the probate court are assigned to OPA. The average caseload for an OPA public guardian is approximately 65 cases. OPA has 14 public guardians: 10 in Anchorage, 2 in Fairbanks, and 2 in Juneau.

The Public Guardian division of the Office of Public Advocacy is also mandated to provide information and referrals to the public regarding guardianship and conservators to assist family members dealing with such issues. We also assist them in preparing guardianship and conservatorship plans and reports. This function is fulfilled by offering monthly classes in the Anchorage office, and by providing information (including court forms) on OPA's website, as well as by sending materials to all court locations and librarians on what guardianship and conservatorships entail, and how to petition for one.

Finally, OPA is also statutorily obligated to provide representation to the subjects of petitions for guardianships (respondent representation), and visitor services in each case.³ Most respondent representation services are contracted out, though cases are kept in-house if it is clear OPA will not be appointed guardian, thus precluding any conflict of interest. All visitor services are contracted out.

² The civil section is also statutorily responsible to provide representation in custody proceedings where one party is represented by a public attorney, interpreted by the Alaska Supreme Court to include cases in which Alaska Legal Services represents a parent.

³ Court Visitors are charged with providing a neutral voice to the court regarding the circumstances requiring the guardianship, whether a guardianship should be approved, and who should be appointed guardian. They conduct interviews and file a written report containing recommendations with the court.

OPA is statutorily responsible for providing representation for parents in Child-in-need-of-aid cases where the Public Defender Agency has a conflict. (That is where the public defender represents a parent, OPA gets the remaining parents). In the past, parental representation has primarily been contracted out, as OPA could not represent the children and parents interests in a CINA proceeding at the same time. Recently, OPA created a new section -- the Anchorage Adult and Juvenile Representation Section -- to provide parental representation at a lower cost than the utilization of contractors. Each attorney will have approximately 65 cases. While this section will primarily provide parental representation to parents in Child-in-Need-of-Aid cases, it will also provide representation to minors in juvenile delinquency matters and representation to some criminal defendants. The creation of this section is a further effort to provide service OPA is statutorily obligated to provide at a lower cost. OPA has 4 attorneys in this section in Anchorage.

Finally, OPA provides representation to criminal defendants where the Public Defender Agency has a conflict. This is OPA's smallest section. OPA has 5 criminal attorneys in Anchorage, 3 in Palmer (including a traveling unclassified and class A felony attorney), 3 in Fairbanks and 2 in Bethel. The attorneys in Bethel, Fairbanks, and Palmer office also provide representation in civil matters (CINA and Guardianship proceedings). Where OPA staff have a conflict, criminal cases are contracted out.

OPA has recently established each office as a separate law firm, as well as instituted an ethical wall between the Anchorage criminal and civil sections, so as to keep more cases in house. As separate "law firms", conflicts of interest are not imputed to all attorneys at OPA, thus lessening OPA's reliance on contract attorneys. The implementation of the "separate firm" concept has resulted in significant savings: In FY '04 OPA spent almost \$400,000 less than it did in FY '03.

Accomplishments

Opened Palmer, Bethel, and Anchorage Adult & Juvenile Representation Offices, enabling OPA to retain more cases in-house where cost per case is less expensive than contracting cases out;

Established offices as separate law firms, including Anchorage Civil and Criminal, to reduce conflicts, allowing OPA to keep more cases in-house;

Establish procedures to re-evaluate conflicts post trial to see if the Public Defender Agency can take the case back;

Closely scrutinize contractors monthly invoices to ensure billings is appropriate;

Established pre-authorization procedures for any staff or contractor travel, and investigation or expert requests;

Audited fees charged in public guardian section to more fairly and consistently collect fees (fees collected in FY '03 were \$260,947; fees in FY '04 were \$479,125).

Helped achieve passage of legislation to regulate private guardians/conservators which

should help encourage use of private organizations and development of industry;

Ongoing Projects:

Evaluate case loads in Fairbanks, Kenai, Nome, and Juneau to see if new office would be more cost-effective than continued level of use of contractors;
Implement new case management system that will enable more accurate case statistics for case assignment and individual workload monitoring, and allow OPA to determine average costs for case types to more closely monitor contractors;

Ensure adequate support staffing levels for professional staff to allow better time utilization for front line client advocacy.