

**STATE OF NEW HAMPSHIRE
NEW HAMPSHIRE COMMISSION
FOR HUMAN RIGHTS**

**PERFORMANCE AUDIT REPORT
FEBRUARY 2025**



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To The Fiscal Committee Of The General Court:

The purpose of this audit was to determine whether the New Hampshire Commission for Human Rights efficiently and effectively enforced laws against discrimination when receiving, investigating, and making findings on complaints during State fiscal years 2020 through 2023. The audit was to address the recommendation made to you by the joint Legislative Performance Audit and Oversight Committee. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Office of Legislative Budget Assistant
Office of Legislative Budget Assistant

February 2025

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**STATE OF NEW HAMPSHIRE
NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS**

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ABBREVIATIONS

APA	Administrative Procedure Act
ARC	Agency Records Center
Commission	New Hampshire Commission For Human Rights
DoIT	Department Of Information Technology
EEOC	Equal Employment Opportunity Commission
FFY	Federal Fiscal Year
LBA	Legislative Budget Assistant
NJWA	No Jurisdiction – Waived
SFY	State Fiscal Year

STATE OF NEW HAMPSHIRE
NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS

EXECUTIVE SUMMARY

The New Hampshire Commission for Human Rights (Commission) was responsible for eliminating and preventing discrimination in employment, places of public accommodation, housing, and public education. We found the Commission was inefficient and ineffective in investigating complaints and closing cases in a timely manner. During the audit, the Commission cited longstanding issues that went beyond the scope of this audit, including, but not limited to:

- case backlogs from as early as 1984, in which 237 cases were in backlog status, compared to 259 cases in June 2023;
- understaffing as noted in our 1987 financial audit report; and
- investigators taking on non-investigatory administrative tasks, similar to what we reported in Observation No. 15 of this report.

Because the Commission had no established methods for measuring its effectiveness, we assessed its effectiveness by looking at the totality of its operations, including, but not limited to, its timeliness in investigating and closing cases. The Commission's effectiveness was negatively impacted by:

- expired administrative rules,
- inadequate investigator and commissioner training,
- prematurely dismissing cases contrary to statute, and
- inadequate procedures for conducting interviews and investigations.

The Commission also experienced staff turnover, requests for extensions, and other delays from parties appearing before the Commission. The Commission could use the results of this audit to clarify and establish comprehensive administrative rules. This would require taking swift remedial action to resolve deficiencies to effectively pursue the Commission's statutory responsibility of eliminating and preventing discrimination in the State.

Investigations Not Completed Timely

Investigating cases of alleged discrimination was the Commission's primary function. It took an average of approximately 1.5 years to assign an investigator to a case once the case was filed at the Commission. We acknowledge the Commission experienced staff turnover during the audit period and the COVID-19 pandemic may have also been a factor. However, we found several weaknesses or inefficiencies in the Commission's investigation process that likely contributed to further delays. We also found critical investigatory terms such as "probable cause," "sufficiency of evidence," and "reasonable belief" had not been defined in statute or expired administrative rules, and policies which may have caused confusion and led to additional inefficiencies.

The Commission did not provide its investigators with adequate training or tools. Training new investigators consisted primarily of using an outdated and deficient *Investigator Manual*. We found investigatory work suffered when investigators were given managerial responsibilities

unrelated to investigating cases, such as reviewing work performed by other investigators and redesigning the Commission's website.

Investigation Delays Had Negative Consequences

Our review of 228 cases closed during State fiscal year 2023 found the Commission took an average of 840 days (2.3 years) to close a case. We found 62 of 228 cases (27.2 percent) reviewed were closed *after* the three-year statute of limitations that would have allowed complainants to have their cases heard in Superior Court.

Absence Of Basic Management Controls

We found the Commission did not perform necessary management control responsibilities such as developing a strategic plan; defining objectives; developing performance measures; identifying, analyzing, and responding to operational risks; and resolving prior audit findings. As a result, there was an increased risk the Commission would not achieve its objectives.

The Commission's policies and procedures – comprised primarily of an *Investigator Manual* and *Commissioner Training Manual* – were deficient. The manuals were disorganized, contained typographical errors, referenced nonexistent statutes, and cited court rulings that were outdated. Additionally, the manuals contained confidential, personally identifiable information from prior cases handled by the Commission.

Reliable Program Data Not Available For Decision-Making Purposes

The Commission did not have an automated information system from which we could extract case processing performance information. Case data maintained manually in spreadsheets by Commission staff and reported to Commissioners, the Legislature, and the public were inaccurate or undefined. A more efficient and effective case management system could have resolved the Commission's recordkeeping challenges. The system used by the Commission was owned by the Equal Employment Opportunity Commission (EEOC). The Commission could not access the data in the EEOC system to track performance measures such as case processing time.

Continued Noncompliance

Compliance issues from our 2019 financial audit report remained unresolved. We found several areas of noncompliance with statutes and EEOC guidance. First, the Commission's administrative rules expired in 2015 and had not been readopted. Second, the Commission had not filed its biennial report during the audit period as required by statute. Third, mandatory statements of financial interests had not been filed correctly by some Commission members and were not completed at all by others. Fourth, reconciliations of the Commission's records with the federal database were not completed during the audit period as required. The status of prior audit observations can be found in Appendix D.

**STATE OF NEW HAMPSHIRE
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RECOMMENDATION SUMMARY

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
1	17	No	Process cases timely by tracking dates of important milestones, developing administrative rules to establish deadlines for amendments and extensions, and evaluating the costs and benefits of differing methods of tracking cases.	Concur
2	20	No	Develop a system of internal controls; agree on commissioners' responsibilities; and update policies, procedures, and manuals.	Concur
3	21	No	Develop policies and procedures for recording accurate data reflecting precise dates of case events and consistent closure codes, develop quality control policies and procedures to ensure data accuracy, update the <i>Investigator Manual</i> to reflect all codes in use, and consider implementing a case management system that can accurately record and report case events.	Concur
4	23	No	<p>Complete the 2024/2025 State information technology plan and identify the need and available funding for a case management system, complete documentation required by the Department of Information Technology to identify requirements, and consider defining "verified" in administrative rules to mirror provisions of RSA 641:3 to allow complaints to be submitted electronically.</p> <p>Enhance existing spreadsheets to capture and report on caseload statistics.</p>	Concur
5	24	No	Engage in strategic planning to link the Commission's mission to defined, measurable objectives.	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
6	25	No	Establish periodic, formal written risk assessments.	Concur
7	26	No	Institute a comprehensive performance measurement system and choose performance measures based on available data.	Concur
8	27	No	Perform a thorough review and revision of existing policies and procedures supporting Commission operations, develop and implement policies and procedures to support all significant Commission operations, periodically review case law and statutes to ensure policies and procedures are kept current, ensure investigators and commissioners receive periodic training, and organize policies and procedures in a logical manner.	Concur
9	29	No	Remove all personal information and case details from instructional manuals.	Concur
10	30	Yes	The Legislature may wish to clarify whether commissioners should be involved in the conciliation process due to the potential for conflicts of interest. Commission management should consider removing the assistant director from investigative oversight responsibilities, revise manuals to reflect conciliation practices authorized by statute, and consider seeking a part-time mediator.	Concur
11	32	No	Develop written policies and procedures to track and report progress in resolving audit findings, resolve audit findings in a timely manner, and timely submit required reports to TransparentNH pursuant to Executive Order 2014-03.	Concur
12	36	No	Define key legal concepts in administrative rules and develop policies and procedures describing how these concepts should be used in investigations.	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
13	37	Yes	Review and determine to what extent, if any, a prima facie analysis should be used to determine jurisdiction. If it is determined useful to screen cases, Commission management should seek legislation to amend RSA 354-A:21, II(a) to allow jurisdictional screening and specify who should be responsible for making jurisdictional determinations. At a minimum, the Commission's administrative rules should disclose its screening practices. Until then, all complaints filed with the Commission should go to a commissioner for investigation.	Concur In Part
14	38	No	Provide more guidance to investigators and transparency to the public by reviewing the current investigation process and adopting relevant administrative rules and policy, review with legal counsel standards necessary for determining "probable cause," and ensure investigators are provided adequate guidance.	Concur
15	41	No	Assign investigators only to work that is directly related to investigations.	Concur
16	42	No	Develop and implement a training curriculum for new hires, evaluate existing instructional manuals, and document training provided.	Concur
17	43	No	Adopt administrative rules defining minimum individuals required to be interviewed, alternatives to interviews such as written statements or affidavits, and a requirement that investigative reports articulate why some witnesses were not interviewed. Develop policies and procedures to guide investigators on conducting interviews with all relevant parties to a case.	Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
18	45	No	Seek approval to create a supervisory investigator position to oversee the work of investigators and provide adequate, continuous supervision.	Concur
19	47	No	Review email practices with an appreciation for the sensitivity of the messages, write an encrypted email policy on transmitting sensitive information, and implement the policy to better protect confidential information.	Concur
20	49	No	Immediately prioritize, complete, and present draft rules to the Joint Legislative Committee on Administrative Rules.	Concur
21	50	No	Charge only statutorily authorized fees and adopt them in administrative rules. Document how the Commission determines reasonable fees, periodically analyze the cost of providing services, and publish the fee schedule on the Commission’s website to ensure transparency.	Concur
22	52	No	Adopt administrative rules to enable the use of forms the Commission created.	Concur
23	52	No	Establish written policies and procedures for timely submission of statements of financial interests, inform and educate commissioners in completing the form correctly, and only allow commissioners to serve in their appointed capacity with proof that forms were timely filed.	Concur
24	53	No	Ensure the required biennial report is written and submitted to the Governor and Council.	Concur
25	54	No	Establish formal policies and procedures for periodic reconciliation of Commission records to the federal database. Procedures should include effective management review and approval controls over the reconciliation process. When reconciliations cannot be performed, implement mitigating controls to ensure data are accurate and complete.	Concur

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BACKGROUND

RSA 354-A:1 prohibited discrimination based on protected classes or characteristics. Protected characteristics were attributes which could not be used as a reason for discrimination. The New Hampshire Commission for Human Rights (Commission) was founded to eliminate and prevent discrimination in employment, public accommodations, housing, and public education because of age, sex, gender identity, race, creed, color, marital status, familial status, physical or mental disability, national origin, and sexual orientation. The Commission was tasked with receiving, investigating, and making findings upon complaints alleging violations of discrimination laws. Persons aggrieved by discriminatory practices could seek relief through the Commission's complaint process. The Attorney General or one of the commissioners could also sign and file a complaint. The Commission could hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of persons under oath, and require the production of any books or papers relating to any matter under investigation, or in question, before the Commission.

State laws were broader and more inclusive than federal laws and, as a result, federal laws were not analyzed in this report. RSA 354-B concerns a different class of civil rights act violations, which were enforced by the Department of Justice and were not reviewed during our audit.

Employment Discrimination

RSA 354-A:7 protected individuals from employment discrimination. Unlawful discriminatory employment practices included:

- refusing to hire, employ, bar, or discharge an individual of a protected class;
- discriminating via compensation, terms, conditions, or privileges of employment unless based upon a bona fide occupational qualification;¹
- printing and circulating any statement, advertisement or publication, or use of any application for employment, inquiry or record which expresses any limitation, specification, discrimination, or intent for discrimination;
- requiring an employee to retire upon or before reaching a specified age or after completion of a specified number of years of service;²
- harassment based on sex including unwelcome sexual advances, requests for sexual favors, or use of sexual conduct as a term or condition, basis for employment, or causes interference with one's work;
- refusing to provide reasonable accommodations for known physical or mental limitations, unless they can be demonstrated to cause undue hardships for the employer; or
- denying employment opportunities, compensation, terms, conditions, or privileges because of a reasonable accommodation.

¹ Bona fide occupational qualification was not defined in statute.

² Statute exempted those elected or appointed for a specified term and those required to retire pursuant to Article 78 of the New Hampshire Constitution.

Public Accommodation Discrimination

RSA 354-A:16 and RSA 354-A:17 protected individuals from discrimination in public accommodations. Unlawful public accommodation discriminatory practices included:

- directly or indirectly refusing, withholding, or denying of any accommodations, advantages, facilities or privileges thereof based on protected classes or characteristics;
- directly or indirectly notifying that any accommodations, advantages, facilities and privileges will be refused, withheld from or denied to any person based on protected classes or characteristics; or
- the patronage of an individual who was a member of a protected class being unwelcome, objectionable or acceptable, desired or solicited.

State law provided an exemption for religious institutions or organizations, including those controlled by religious organizations, from limiting admissions or giving preference to members of the same religion.

Housing Discrimination

RSA 354-A also protected individuals based on their classes or characteristics from housing discrimination. Unlawful discriminatory practices involving real estate transactions included:

- refusing to engage in a real estate transaction or refusing to make the transaction available;
- altering the terms, conditions, or privileges of the transaction;
- refusing to receive or failing to transmit a good faith offer;
- refusing to enter negotiations;
- misrepresenting property availability, failing to notify of a listing, or preventing property inspection;
- creating or publishing information with respect to the sale or rental of a dwelling or commercial structure that indicates any preference, limitation, or discrimination based on protected classes;
- utilizing a listing of property knowing discriminatory practices were intended;
- blockbusting;³ or
- restrictions on real property conveyance.

Additionally, State law prohibited coercion, intimidation, threatening, or interfering with any person in the exercise or enjoyment of their statutorily protected or granted rights.

State law established nine exemptions from discriminatory practices involving real estate transactions:

³ Blockbusting was defined by statute as consisting of various actions taken because of perceived loss of value due to race, color, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, marital status, familial status, disability, or acquired immune deficiency syndrome.

- private sales of single-family homes if certain conditions were met;
- rentals of housing accommodations for not more than four families living independently of each other;
- reasonable local, State, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling;
- rentals of a room or rooms in a private home by an owner if his or her family resided therein;
- a religious organization, association, society, or nonprofit institution from limiting the sale, rental, or occupancy of a dwelling to persons of the same religion;
- conduct against a person because of a court conviction for the illegal manufacture or distribution of a controlled substance;
- persons engaged in the business of furnishing appraisals of real estate;
- no provision of RSA 354-A:15 regarding familial status applies to housing for older persons; and
- inquiry into or the use of an arrest record if the use was authorized by State or federal law.

Public Education Discrimination

Discrimination in public education was prohibited by RSA 193:38, RSA 354-A:27, and RSA 354-A:29. Discriminatory practices encompassed exclusion from participation in, denial of the benefits of, or subjection to discrimination in public schools.

Other statutes also prohibited government programs from “teaching discrimination” to students via public employers. This prevented students from being taught, based on protected classes and characteristics that:

- people of one protected characteristic were inherently superior or inferior to people of another;
- an individual, based on a protected characteristic, was inherently racist, sexist, or oppressive;
- an individual should be discriminated against or receive adverse treatment because he or she was a member of a protected class; or
- members of one protected class cannot and should not attempt to treat others without regard to their protected characteristics.

Someone claiming to be aggrieved by a discriminatory practice could either file a civil action in Superior Court or a complaint with the Commission, or the Attorney General could file suit or file a complaint with the Commission. The teaching “divisive concepts” provision, however, was ruled unconstitutional on May 28, 2024 by the United States District Court for the District of New Hampshire.

Equal Employment Opportunity Commission Role

The Commission was under contract with the federal Equal Employment Opportunity Commission (EEOC) to complete a certain number of cases each year. The contract was called a Fair Employment Practice Agency Worksharing Agreement. The Worksharing Agreement was a result of an overlap in jurisdiction between the EEOC and the Fair Employment Practice Agency, and was designed to allow a complainant to simultaneously seek redress under both state and federal laws. This practice, known as dual filing, automatically filed charges with the primary entity and its counterpart. For example, if a complainant filed a charge with the Commission and wanted to seek reparations for alleged employment discrimination under both RSA 354-A and the federal *Americans with Disabilities Act*, the charge would be dual filed with both the EEOC and the Commission while physically only filing documentation with one entity. Dual filing helped prevent duplicate charges in the processing of allegations. Under the contract, the EEOC paid the Commission \$100 for each case intake and \$830 for each closed case.

The EEOC was only focused on employment discrimination whereas the Commission reviewed complaints related to housing, public accommodations, public education, and employment. The EEOC is the owner of the computer system, known as the Agency Records Center (ARC), used by the Commission.

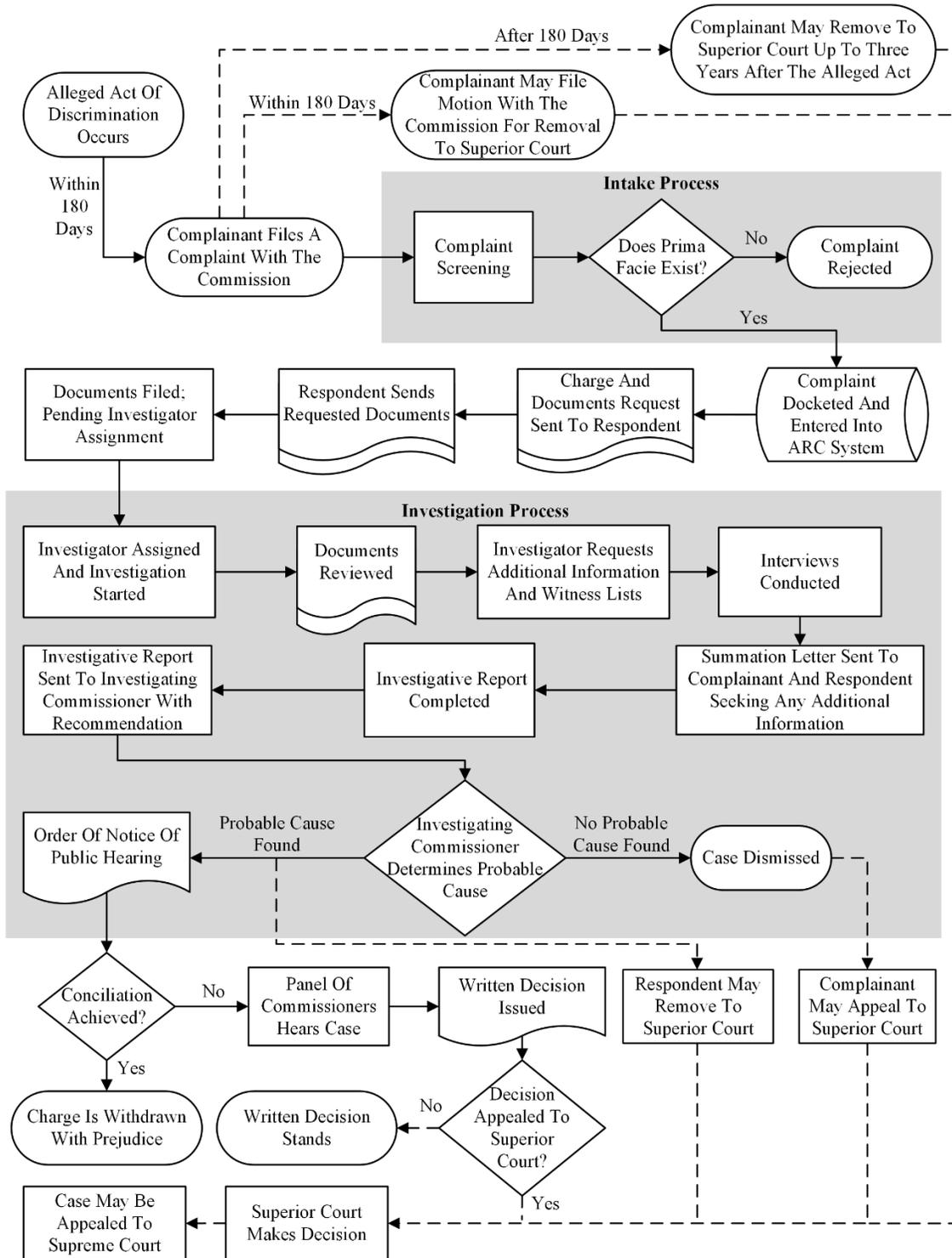
Case Filing Process

The process started when a complainant called with an inquiry or filed a charge of discrimination with the Commission's intake coordinator (Figure 1). If an inquiry, the complainant provided details of the alleged discrimination, and the Commission assessed it using a *prima facie* standard – which means “on its face” – to establish whether the charge fell within the Commission's jurisdiction. If *prima facie* was not met, the complaint was rejected. If *prima facie* was met, the complaint was docketed and entered into the ARC. If the complainant was *pro se* – meaning they represented themselves – Commission staff would work with the complainant to develop a written charge of discrimination. If represented by an attorney, the Commission would still assess the complaint using the *prima facie* standard and, if it appeared the complaint fit within its criteria, the Commission would accept and docket the charge. Either party could amend charges or file motions at any point during the process.

Once docketed, the charge was sent to the entity against whom the charge was made, known as the respondent. The intake coordinator sent a request for information to the respondent as well as a request for a response to the charge. Once these documents were received by the Commission, the case was placed in a “pending” status until an investigator could be assigned. Investigator assignment was on a rolling basis, meaning the case that had been pending the longest was assigned to the next available investigator.

Figure 1

Commission Case Process



Source: LBA analysis of RSA 354-A:21 and interviews.

Once an investigator was assigned, the investigation commenced. The complainant could withdraw the charge at any time leading to the dismissal of the case. At any point following 180 days after the initial filing of the complaint, or sooner if assented to by the Commission, the case could be moved to Superior Court by the charging party, or the charge could be settled either privately or via the Commission's mediation program. Statute required the Commission to "encourage the parties to resolve their differences through settlement negotiations," which could occur at any time prior to a determination of probable cause. If the charge remained with the Commission, the case was assigned to an investigator who could request additional information and witness lists from both parties.

Once all documents were received and reviewed, and interviews conducted, a summation letter was sent to both the complainant and the respondent with an invitation to supply any additional relevant information. The investigator prepared an investigative report and made a recommendation to the investigating commissioner assigned to the case. The recommendation was either one of probable cause or no probable cause for each charge.

If the investigating commissioner found there was no probable cause, the case was dismissed. If the case was dismissed, the complainant had the right to appeal to Superior Court, which could reverse the probable cause finding or remand to the Commission for further investigation. If probable cause was found by the investigating commissioner, an Order of Notice of Public Hearing was issued. At any point between the probable cause finding and the start of the public hearing, the respondent could remove for a *de novo* jury trial in the Superior Court. At this stage in the process, the responding party could remove the case to Superior Court. The parties were given an opportunity for conciliation. If conciliation was achieved, the case was withdrawn. If conciliation could not be achieved, the case moved forward to a public hearing before a panel of three commissioners, excluding the investigating commissioner assigned to the case. Once heard by the three empaneled commissioners, a written decision was issued. The decision could be appealed to the Supreme Court.

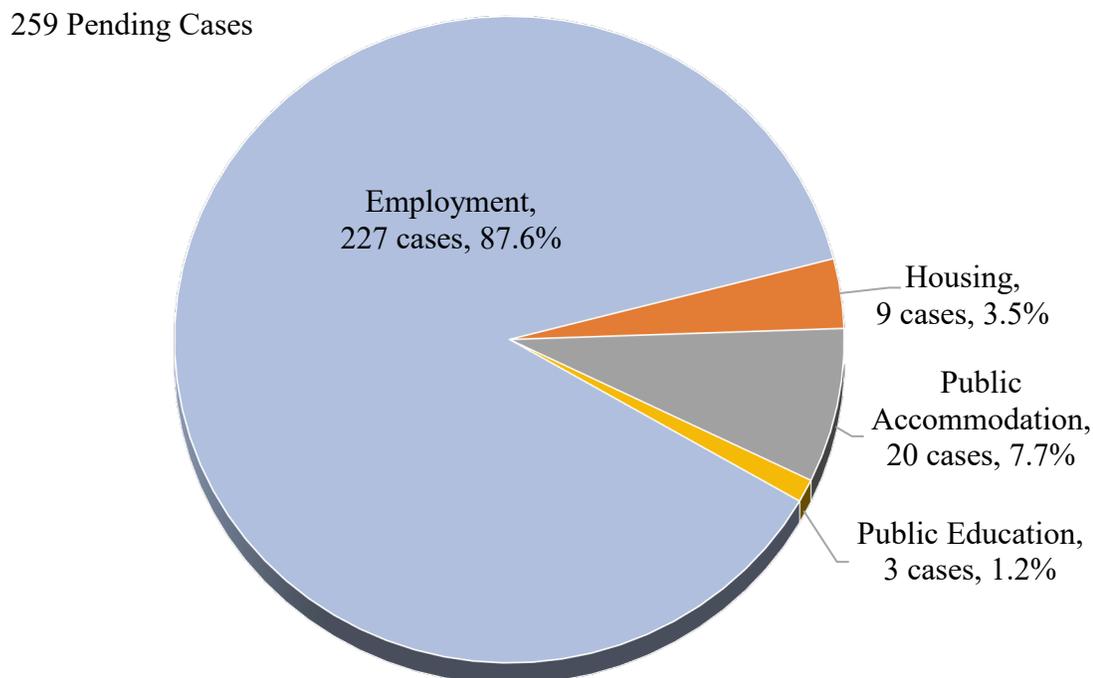
The executive director reported making changes to case processing in February 2022 to reduce the time it took to process cases. Changes included: empowering staff to pursue cases in closer alignment with statutes and expired rules, reducing the standard caseload from 50 cases per investigator to 25 cases per investigator, reducing the length of investigative reports, encouraging mediation, and developing tool kits for pro se complainants at the onset of the process.

Backlog And Case Type Distribution

Figure 2 shows a breakdown of pending cases by discrimination type. As of June 30, 2023, there was a backlog of 259 cases with the oldest case filed in January 2022. A case was backlogged, or pending, if a charge had been received but not assigned to an investigator. Investigator turnover was reportedly one reason for the backlog because, as investigators left, their cases were redistributed among remaining investigators. Out of the 259 cases pending, 227 cases were for employment discrimination, which was the most common case type, comprising 87.6 percent of the total backlog.

Figure 2

Pending Cases By Discrimination Type, As Of June 30, 2023



Source: LBA analysis of Commission Pending File spreadsheet as of June 30, 2023.

Cases Closed

Cases closed during State fiscal year (SFY) 2023 showed similar patterns to the cases pending. Of the 233 cases closed during SFY 2023 that we reviewed, 207 (88.8 percent) were employment cases, while 13 were public accommodation cases (5.6 percent). Housing consisted of 11 (4.7 percent) of the total cases closed and public education accounted for two (0.9 percent) of the cases closed during SFY 2023.

Expenditures And Staffing

Table 1 shows Commission revenues and expenditures for SFYs 2020 through 2023. Federal funds accounted for the majority of the Commission's General Fund revenues. During the audit period, total revenues were approximately \$717,000 while expenditures were approximately \$3.1 million, for a cost to the General Fund of approximately \$2.4 million. In SFY 2023, the Commission spent approximately \$882,000, of which approximately \$776,000 (88.0 percent) was for salaries and benefits.

As of February 2025, the Commission had 21 authorized positions, 12 of which were vacant. The remaining nine positions were filled by six investigators, one administrative assistant,⁴ one acting assistant director, and one executive director. Of the 21 authorized positions, six were added by the Legislature in SFY 2024.

Table 1

**Commission Revenues And Expenditures,
SFYs 2020 – 2023**

	State Fiscal Year				Total
	2020	2021	2022	2023	
Revenues					
Federal Funds	\$ 162,369	\$ 163,695	\$ 173,170	\$ 204,900	\$ 704,134
Agency Income	6,499	2,381	(2,478)	4,500	10,902
Private Local Funds	-	-	-	2,000	2,000
Total Revenues	168,868	166,076	170,692	211,400	717,036
Expenditures					
Salaries And Benefits	598,689	588,013	710,198	775,695	2,672,595
Current Expenses	10,993	11,959	12,551	12,705	48,208
Rents	47,978	50,272	50,724	50,724	199,698
Transfers To Other					
State Agencies	15,900	8,977	12,692	12,942	50,511
Equipment And					
Telecommunications	10,032	12,091	23,216	9,632	54,971
Indirect Costs And					
Audit Fund Set Aside	4,156	2,336	6,295	5,448	18,235
Books/Periodicals	1,664	1,410	3,933	3,369	10,376
Travel	3,506	544	2,581	518	7,149
Contracts	2,105	4,445	8,702	8,930	24,182
Other	2,463	157	110	2,035	4,765
Total Expenditures	697,486	680,204	831,002	881,998	3,090,690
Excess (Deficiency) Of Revenues Over (Under) Expenditures¹	\$(528,618)	\$(514,128)	\$(660,310)	\$(670,598)	\$(2,373,654)

Note: ¹Deficiencies were charged to the State's General Fund.

Source: LBA analysis of NH FIRST Statements of Appropriation.

⁴ The administrative assistant position was unfunded for SFYs 2022 and 2023.

Commission Management

The Commission consisted of seven voting members appointed by the Governor with consent of the Executive Council. The Governor designated one commissioner as chair to serve as the chief executive officer of the Commission with the statutory responsibility of promoting “the efficient transaction of its business and the orderly handling of complaints and other matters before the commission.” The Commission delegated several management responsibilities to the executive director, but retained the overall responsibility of overseeing and guiding the Commission.

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MANAGEMENT CONTROL

Management was tasked with ensuring its organization achieves its mission and develops internal controls – such as the plans, policies, procedures, strategies, reports, and organizational structure – to facilitate efficient and effective operations. To be efficient, management executes these functions in ways that expend the least amount of State resources. To be effective, management integrates these functions in ways that ensure compliance with legal requirements and best safeguard assets.

We found the New Hampshire Commission for Human Rights (Commission) lacked strategic plans, risk assessments, comprehensive policies and procedures, and performance measures to measure progress toward identified goals. Without these foundational management documents, the Commission risked losing sight of its mission. As a result, it took an excessive amount of time to process and investigate discrimination cases, jeopardizing the efficiency and effectiveness of the Commission.

Observation No. 1

Ensure Cases Are Processed Timely

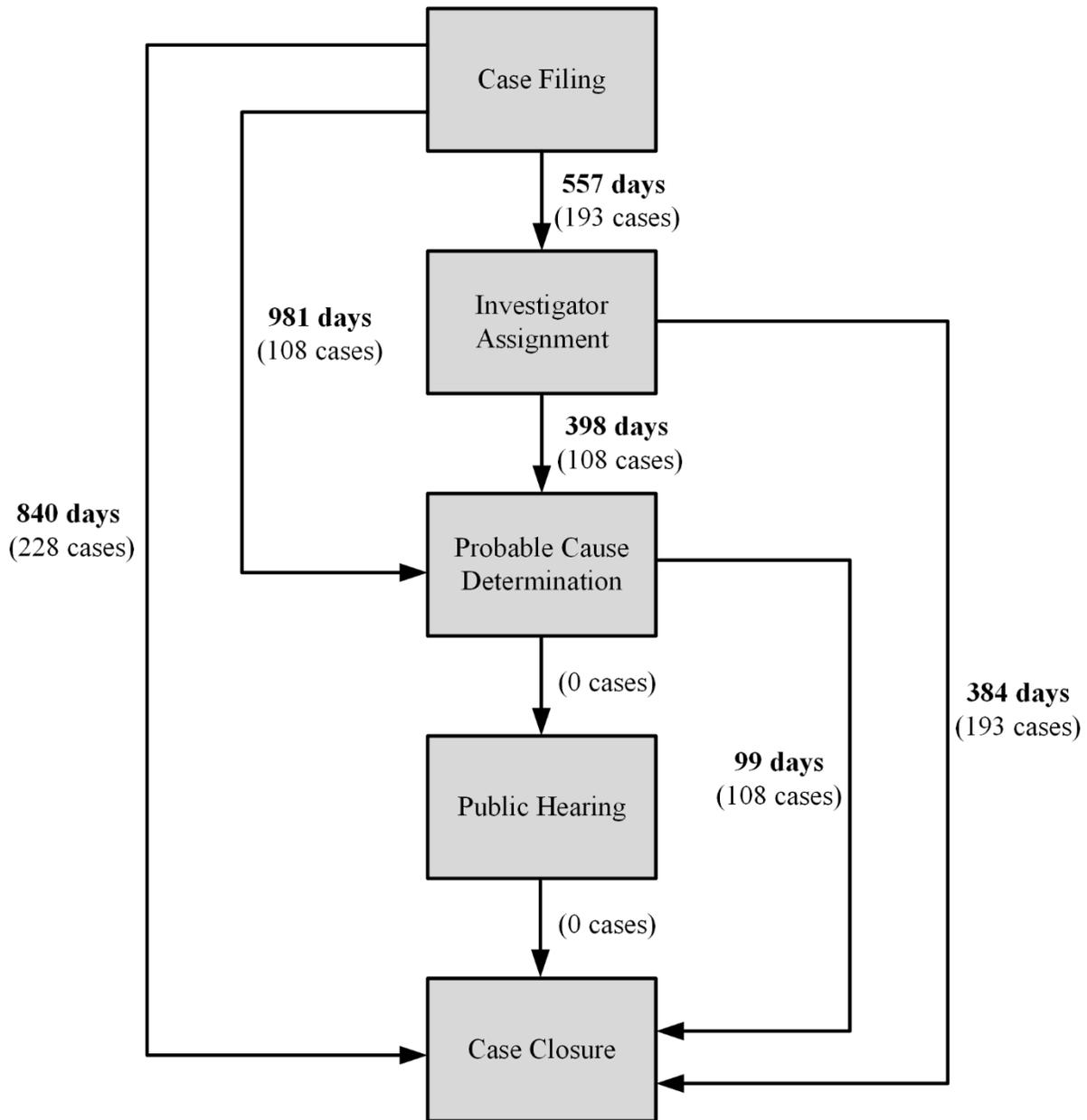
Discrimination cases were not processed timely by the Commission. While some contributing factors were beyond its control, we found the average time it took the Commission to close a case was 110 days past the two-year statutory deadline. In total, it took 840 days (2.3 years) to close a case during State fiscal year (SFY) 2023. It took an average of 557 days (1.5 years) for a case to be assigned to an investigator. Subsequent investigation took an average of 398 days.

Aside from Commission staffing levels, factors delaying timely case completion were largely uncontrolled complaint amendments and deadline extensions. Complainants could amend their complaints at any time prior to the date scheduled for the pre-hearing conference, triggering more investigative time to pursue additional allegations. Complainants and respondents also frequently asked for, and received, extensions to filing deadlines, delaying progress towards resolution. There were no administrative rules limiting the time in which complaints could be amended or limitations on extensions.

Because the Commission did not have an information system that could record dates of case events such as date filed, date investigator assigned, and date probable cause determined, we conducted a file review of the cases closed during SFY 2023 to determine how long each phase of the process took. Of the 228 cases reviewed, no cases went to a public hearing. Figure 3 shows the average length of time it took to accomplish each phase noted.

Figure 3

Average Case Processing Times For Complaints Closed In SFY 2023



Note: Our review of cases closed during SFY 2023 identified 228 cases with data sufficient to calculate the number of elapsed days for one or more steps in the case process. Cases could be closed at any time after they were filed, effectively ending the remaining steps in the process. As a result, the average total number of days to closure (840 days) is less than the case processing time for a subset of those cases during part of the process (981 days).

Source: LBA analysis of Commission case files.

State statute required “prompt investigation” after case filing. However, “prompt investigation” was not defined by statute. While statute did not set timelines for completing each of the phases, it required case closure or commencement of adjudicative proceedings within two years, or 730 days of case filing.⁵ Regardless, the Commission did not track the number of elapsed days between different case phases. We examined the Commission’s log of closed cases and found the only date tracked by the Commission was that of case closure.

Problems Encountered By Lengthy Investigations

We found three cases during our file review where the charging party passed away before their case was resolved by the Commission, resulting in dismissal of the cases. Another effect of delayed investigator assignment and investigations was the inability to locate some witnesses. Additionally, the statute of limitations for removal of a complaint to court was three years after the last known date of discrimination; meaning, if a case were to be removed to court, it would need to be filed with the court within the three-year statute of limitations. From the date of filing to the date of closure, we found that 62 of the 228 (27.2 percent) cases closed during SFY 2023 that we reviewed took more than three years. The effect of the Commission taking more than three years to resolve a case meant that a charging party was no longer able to bring a case to court.

Recommendations:

We recommend Commission management ensure cases are processed timely by tracking dates of important milestones for each case.

We also recommend Commission management develop administrative rules to establish deadlines for amendments and extensions.

Commission management should also evaluate the costs and benefits of differing methods of tracking dates of case events, such as using spreadsheets versus purchasing an off-the-shelf or a customized software program, to efficiently track case milestones.

Auditee Response:

The Commission concurs with the audit’s recommendations.

Regarding the first and third recommendations, the Commission has recently contracted with an outside vendor to implement an electronic case management system, which will better enable it to track records and produce reports of its work. The contracting process was only recently completed, and the Commission anticipates having the case management system operational and

⁵ The Commission filed an Amicus Curiae brief in the Petition of Annalee Dolls, LLC (2023-319) with the New Hampshire Supreme Court, and presented oral argument, stating the 24-month case closure or commencement of adjudicative proceedings requirement in RSA 354-A:21, IV was a “target” rather than a firm deadline. After oral arguments, the Supreme Court dismissed the case on August 28, 2024, because it had been “improvidently accepted” by the Supreme Court.

in use for new cases within the next six months. Regarding the second recommendation, the Commission has taken steps to expedite the investigation process and can incorporate those recommendations into its formal rules. The recommendations include time limitations for certain responses and deadlines for certain motions, among other considerations. The Commission anticipates that the rulemaking process may take longer but anticipates completing the process within eighteen to twenty-four months.

The Commission also wishes to emphasize that it always aspires to process cases as efficiently and effectively as possible, but, as the audit recognizes, a backlog of cases has persisted for decades, and staffing issues only exacerbated case processing delays. Setting aside issues of staff turnover that have recently plagued all state agencies, in fiscal year 2012, the Commission, while already managing a backlog of cases, had a third of its staff cut. Its staffing was only restored in fiscal year 2020. Fortunately, its staffing was increased in fiscal year 2024. With increased staff and adoption of many of the audit's recommendations, the Commission hopes that it will be able to clear or reduce the backlog of cases to ensure more timely processing of cases.

Observation No. 2

Clarify Oversight Responsibilities Of Commissioners

There was uncertainty throughout the Commission about oversight responsibilities and who was responsible for ensuring oversight was properly executed. Commissioners were responsible for establishing internal controls for efficient and effective operations. Guidance provided to commissioners via the *Commissioner Training Manual* contained basic information about the role of the commissioners but did not convey their responsibility to oversee the agency's operations. The law and expired rules were mostly silent on the management of non-investigatory operations. We interviewed six of the seven commissioners and found they had varying degrees of understanding about their responsibilities for overseeing Commission operations. For example, four of the six commissioners saw their role as making judgments on cases and were unfamiliar with their ministerial responsibilities. Another commissioner stated commissioners were also responsible for overseeing operations.

Oversight Practices

A 2023 Massachusetts Office of Inspector General publication titled *How to be an Effective Member of a Public Board or Commission* provided an example of practical guidance that indicated public commissioners should:

- be informed of the purpose and operations of the organization, including the laws adhered to;
- be an active participant in organization practices;
- be aware of the Commission's financial state, reviewing financial statements and its annual budget;
- conduct regular public meetings and annually report operations to the public;

- actively oversee the director of the organization, including conducting performance evaluations;
- have internal controls in place; and
- have well-established roles for those on the Commission.

These practices were examples which could help the commissioners better understand the system of internal controls that should be instituted to provide stronger oversight of Commission operations.

Recommendations:

We recommend the chair and commissioners:

- **develop a system of internal controls for the Commission;**
- **agree on commissioners' responsibilities to promote the efficient transaction of its business and the orderly handling of complaints and other matters before the Commission; and**
- **update policies, procedures, and manuals to structure operational and oversight responsibilities among staff, management, and commissioners.**

Auditee Response:

The Commission concurs with the audit's recommendations.

The Commission plans to work with the Executive Director and other senior management to develop internal controls, define the responsibilities of the Commission and commissioners vis-à-vis that of the Executive Director and staff, and work to identify internal controls, policies, procedures, and other materials that require updating or attention. Ultimately, the Commission views the role of the commissioners as that of a Board of Directors: charged with oversight of the agency and the Executive Director and ensuring that the agency actively works towards its goals. But, as volunteers, the commissioners lack the capacity to directly manage the day-to-day operations of the agency, which it delegates to the Executive Director and staff.

Since the audit's findings were first discussed with the Commission, the commissioners have been in conversation with the Executive Director and Acting Executive Director around areas for improvement at the Commission and anticipate continuing to be involved going forward. Observation No. 2 reflects an ongoing commitment of oversight to which the Commission cannot attach a set timeframe for completion.

Observation No. 3

Ensure Case Data Are Accurate

Commission caseload data were inaccurate. During our file review of 233 cases under the Commission's jurisdiction that were closed during SFY 2023, we compared information kept on

Commission-prepared spreadsheets to information contained in the case files. We found the following:

- Case closure codes on the spreadsheets did not always match the codes found in the case files. We found 85 of the 233 cases closed (36.5 percent) on the spreadsheets had different closure codes than the case files reviewed.
- Some closure codes used by the Commission were undefined in the *Investigator Manual*. We found that, in 59 of the 233 cases (25.3 percent), the closure codes utilized in the Commission's spreadsheets did not appear in the manual.

Commission management relied on inaccurate data from the spreadsheets to report to its commissioners, the Legislature, and the public. Management was responsible for designing its information system to achieve its information requirements and organizational objectives. The Commission lacked a quality control process to ensure data maintained in the spreadsheets matched the information contained in the case files. In addition, the Commission lacked a carefully planned coding system that would meet its information and reporting needs, and comprehensive policies and procedures on how to record case closure codes.

Without accurate data reflecting the underlying case records, Commission management would have had difficulty informing its decisions and accurately reporting how and why its cases were closed. In addition, new staff members would have difficulty understanding closure codes that were used in practice but were undefined in the *Investigator Manual*.

Recommendations:

We recommend Commission management:

- **develop policies and procedures for recording accurate data in its spreadsheets reflecting precise dates of case events and consistent closure codes,**
- **develop quality control policies and procedures to ensure data accuracy,**
- **update the *Investigator Manual* to reflect all codes in use, and**
- **consider implementing a case management system that can accurately record and report case events.**

Auditee Response:

The Commission concurs with the audit's recommendations.

The Commission has already begun a review of its policies and training materials to ensure consistency. It will also incorporate those reviews into the development of the case management system to best ensure accuracy of closing codes. The Commission anticipates completing this recommendation with the full implementation of the case management system in approximately six months.

Observation No. 4

Identify Need For Case Management System

The Commission was unable to gather case statistics efficiently and effectively because it relied on a new federal database from which the Commission was unable to retrieve statistical information. Although the Commission used the Equal Employment Opportunity Commission (EEOC)-sponsored Integrated Mission System during most of the audit period, the EEOC implemented a new system in 2022, called Agency Records Center (ARC), that replaced the Integrated Mission System. The ARC was used by the Commission for data input during the remainder of the audit period. According to Commission management, the ARC was not a case management system and it was primarily used by the EEOC for generating statistical reports for their own purposes. Commission management reported not having access to statistical information maintained in the ARC for ad hoc reporting. Delays in transitioning to a digital case management system were attributed to a lack of Commission staff resources to complete necessary documentation and identify available funding.

The Commission did not identify the need for a case management system in its 2022/2023 biennial State information technology plan and a 2024/2025 information technology plan was not created as required by statute. As of February 2024, the Commission was working with the Department of Information Technology (DoIT) to issue a request for information to solicit information from vendors that provide case management solutions for small organizations like the Commission.

The Commission reported it could not implement a case management system that accepted electronic documents because RSA 354-A:21 required verified complaints. Our review of statute indicated the term “verified” was not defined but expired administrative rule HUM 201.01(o) defined “verified” as “signed, and sworn or affirmed, before a notary public or justice of the peace.” RSA 641:3 *Unsworn Falsification* could be used as an alternative to verification.

Management was responsible for designing its information systems so that organizational objectives may be achieved, and risks may be addressed. Information systems consist of the people, processes, data, and technology within the organization. Without an automated case management system, the Commission was not able to efficiently process its cases and calculate basic performance measures such as the length of time it took to process a case or determine how many cases it had in each phase of processing. The absence of an automated system increased the risk of misplaced files and the need for physical storage space.

Recommendations:

We recommend Commission management:

- **complete the 2024/2025 State information technology plan as required by statute, and identify the need and available funding for a case management system;**
- **complete documentation required by the DoIT to help it identify requirements; and**
- **consider defining “verified” in administrative rules to mirror the provisions of RSA 641:3 *Unsworn Falsification* to allow for the electronic submission of complaints.**

While waiting for a case management system, the Commission should enhance existing spreadsheets to capture and report on caseload statistics to better manage operations.

Auditee Response:

The Commission concurs with the audit's recommendations.

The Commission has identified a need for an electronic case management system and has secured funding and contracted with an outside vendor to provide such a system. It anticipates having that system operational within the next six months. Going forward, the Commission will work with the Department of Information Technology on its information technology plan.

Regarding the third recommendation, the Commission will explore with counsel whether this can be completed through rulemaking. If so, the Commission anticipates updating its rules with appropriate changes in the next eighteen to twenty-four months. If it requires legislative intervention, the Commission will work with legislators to introduce legislation to make such changes or clarifications in an upcoming legislative session.

Observation No. 5

Develop A Strategic Plan And Define Objectives

The Commission neither developed a strategic plan nor defined specific objectives to guide its operations. The mission of the Commission was established in statute – to eliminate and prevent discrimination in New Hampshire. As part of a system of internal controls, an entity determines its mission, develops a strategic plan, establishes objectives (what the entity wants to achieve), and formulates plans to achieve its objectives.

Management was responsible for defining their organization's objectives to meet their mission, strategic plan, and goals, as well as the requirements of applicable laws or regulations. Objectives may be identified as part of the strategic planning process and should be defined in specific and measurable terms to enable management to identify and respond to risks related to achieving those objectives. The executive director's supplemental job description responsibilities included developing and implementing "programs to further agency goals" and establishing "short and long-range goals and directs all aspects of agency operations to ensure agency objectives are met." Without a strategic plan and defined objectives, there could be confusion or disagreement amongst management and staff as to what the Commission's priorities were, or how they were to be achieved.

Recommendation:

We recommend Commission management engage in a strategic planning process to link the Commission's mission to defined, measurable objectives.

Auditee Response:

The Commission concurs with the audit's recommendation.

Although RSA Chapter 354-A establishes the Commission's purpose and mission, Commission management in conjunction with the commissioners will work together over the next several months to develop a plan to establish objectives and measurements to assess whether the Commission is achieving those objectives. The Commission anticipates finalizing such a plan within the next six to twelve months.

Observation No. 6

Conduct Formal Risk Assessment

The Commission did not complete a formal risk assessment during the audit period. Additionally, the Commission did not have formal risk assessment policies or processes in place for identifying, assessing, and responding to risks which could negatively impact Commission operations, reporting, and compliance responsibilities. This issue was also observed in our 2019 financial audit report.

Risk assessment was one of five generally accepted components of internal control. After management establishes a control environment, it must then assess risks which could jeopardize the agency's objectives. After risks are identified, management can then determine proper responses to those risks. Generally accepted risk responses include acceptance, avoidance, reduction, and sharing, which are established, assessed, and implemented by management accordingly.

Commission management reported being unfamiliar with risk assessments. Without a robust risk assessment, Commission management could not respond efficiently and effectively to risk events which could arise during its intake, investigation, and resolution processes.

Recommendation:

We recommend Commission management establish periodic formal, written risk assessments to help ensure the Commission's operating, reporting, and compliance objectives are achieved.

Auditee Response:

The Commission concurs with the audit's recommendation.

As the Commission develops systems of internal controls to guide its practices, it will assess methods to control risks that may arise and jeopardize the Commission's work. The Commission will work with partner agencies as necessary to ensure that its physical space and data remain secure and that it has plans for continuity of operations in the case of emergencies. As this is an

ongoing process, the Commission cannot set a timeframe for completion but anticipates ensuring a review of potential risks on a biennial basis.

Observation No. 7

Institute Comprehensive Performance Measurement

The Commission did not establish comprehensive performance measures to report on its oversight activities for the Legislature and the public. During the audit period, the Commission used three performance measures: 1) number of cases filed, 2) number of cases completed, and 3) percent of completed cases under the federal contract. Commission management did not track and did not report other useful performance measures such as timeliness of case completion, number of cases resulting in probable cause decisions, number and types of discrimination cases filed, or trainings provided to external parties.

Performance measurement is the ongoing monitoring and reporting of program accomplishments, particularly progress towards achieving pre-established goals, and is typically conducted by program management. Performance measurement focuses on whether a program has achieved its objectives, expressed as measurable performance standards. Performance measures may address: 1) the type or level of program activities conducted (process), 2) the direct products and services delivered by a program (outputs), or 3) the results of those products and services (outcomes). A performance measurement system promotes efficient and effective management by assessing whether an agency's activities were achieving its mission and producing desired results. Such a system can tie activities to goals supporting the agency's mission, compare actual performance to pre-established targets, allow agencies to identify their strengths and weaknesses, and actively monitor performance over time.

As noted in Observation No. 5, the Commission did not have defined objectives, goals, or a strategic plan, and therefore was limited in evaluating its success. As a result of not having a formal strategic plan with defined goals and objectives connected to a performance measurement system, the Commission's ability to monitor and report on program effectiveness was also limited.

Recommendation:

We recommend Commission management institute a comprehensive performance measurement system. Management should choose performance measures based on attainable data which can be used to determine the Commission's achievement of its goals and objectives.

Auditee Response:

The Commission concurs with the audit's recommendation.

As the audit indicates, this is closely tied to the recommendations in Observation No. 5. As the Commission develops its strategic plan, short-term and long-term goals, and other objectives to fulfill its mission, metrics for measuring those goals and the Commission's performance will also

be identified. The Commission anticipates finalizing such performance management metrics within the next six to twelve months.

Observation No. 8

Develop And Implement Comprehensive Policies And Procedures

The Commission's policies and procedures – primarily comprised of an *Investigator Manual* and a *Commissioner Training Manual* – were deficient. The manuals were compilations of different documents, adopted at various times, and stitched together to form an *Investigator Manual* and a *Commissioner Training Manual*. Management was responsible for establishing the documentation needed to run its organization, including policies and procedures to implement control activities, respond to risks facing the agency, and help to achieve the Commission's objectives.

Policies And Procedures Incomplete

The Commission did not have comprehensive policies and procedures for its significant practices. While the manuals contained some policies and procedures, they did not contain detailed procedures such as investigation methods or legal standards.

Existing Information Inaccurate And Outdated

The Commission's manuals contained numerous errors, were out-of-date, and organized in a haphazard manner. Errors included references to nonexistent statutes or rules, typographical errors within statutory references, and incorrectly quoted language. The *Investigator Manual* had duplicated content, such as two different case processing figures and two copies of the same sick leave policy. Errors within the training manuals could have increased the risk of incorrectly reviewing, assessing, and applying current law to cases. This could have resulted in improper findings of probable cause or no probable cause, and could have irreparably harmed a complainant's chances of recovering damages if he or she could not afford to remove their case to Superior Court.

Additionally, the Commission's manuals contained an outdated fee schedule from the New Hampshire Department of Education's administrative rules, undated EEOC models of proof, and a printout of expired Commission administrative rules from January 2019 in their entirety. The *Investigator Manual* and *Commissioner Training Manual* also contained potentially outdated material, including EEOC guidance. The risk of relying on older material for guidance was that the guidance may reference cases or statutes that were either no longer relevant or not the best sources of legal guidance.

Management did not prioritize the design of its manuals and inclusion of significant practices employed by the Commission. The lack of formal, comprehensive policies and procedures exposed the Commission to inconsistent practices, inadequate internal quality control, increased potential for errors, and an increased risk of disruption in operations due to the departure of key employees. It also prevented the Commission from holding staff accountable to internal standards and practices.

Recommendations:

We recommend Commission management:

- **perform a thorough review of policies and procedures supporting Commission operations to close the gap between current practices and what was documented in the manuals;**
- **develop and implement policies and procedures to support all significant Commission operations that are not currently documented;**
- **periodically review case law and statutes to ensure policies and procedures are kept current;**
- **ensure investigators and commissioners are periodically trained in the investigation process and relevant statutes and case laws; and**
- **organize policies and procedures in a logical manner for ease of use by commissioners and Commission staff.**

Auditee Response:

The Commission concurs with the audit's recommendations.

In terms of training and resources for investigators, since the audit's initial findings, the Commission has begun to review existing procedure manuals and training materials to ensure that it is utilizing the most up-to-date guidance from the Equal Employment Opportunity Commission. The Commission has also begun reviewing training materials for investigators to ensure that they focus more on conducting investigations and that all investigators are receiving consistent training when they begin work at the Commission. The Commission has also begun developing supplemental training opportunities for the investigators and other staff throughout the year so that all staff receive the same trainings and are up to date on new practices or law as case law develops in New Hampshire and across the country.

The Commission will also begin producing written policies, procedures, and materials related to non-investigatory functions, for example the procedures leading up to a hearing before the Commission and updating any existing materials to ensure that all policies, procedures, and materials are consistent. The Commission will also review the Commissioner's Manual to ensure that it is well-organized and that the information it contains is consistent with that provided to staff.

This work has already begun, and the Commission anticipates finalizing the project in the next nine to twelve months.

Observation No. 9

Confidential Information Should Be Removed From Instructional Manuals

The Commission used unredacted documents containing personal information from real discrimination cases in its *Investigator Manual* and *Commissioner Training Manual*, contrary to confidentiality requirements in expired administrative rule. Personal information included name, mailing address, email address, witness names, and phone numbers.

According to expired administrative rules, all case information was confidential until a Notice of Public Hearing was issued after a finding of probable cause. The expired rules, which were still used in practice, also contained a provision which permitted any person to inspect public and non-confidential records, increasing the risk that confidential information could be released to the public.

Commission management appeared to be unaware of personal information in the manual, or misunderstood what should be considered confidential information. Although the executive director stated cases cited in the manuals were determined to be probable cause cases allowing for public release of the information, we identified several cases where letters to the charging parties stated the charges were never docketed, and therefore could not have been considered for a probable cause determination. One case, regarding a disability-related housing eviction, was included in the *Investigator Manual*. It contained the charging party's name and address and the nature of the complaint. Because it was not docketed and never went to a probable cause determination, it appears the document should have been considered confidential and inappropriate for inclusion in the manual.

Use of unredacted personal information within the manuals increased the risk confidential information could be released to the public. Circulating personal information without proper authorization may also violate State and federal privacy laws.

Recommendation:

We recommend Commission management remove all personal information and case details from its manuals and use fictitious information if examples are needed.

Auditee Response:

The Commission concurs with the audit's recommendation.

The Commission has removed confidential information from the Commissioners' and Investigators' Manuals. The Commission will review any other training materials to ensure that confidential information is removed.

Observation No. 10

Review And Improve Conciliation Process

The Commission unsuccessfully attempted to segregate its conciliation and investigation processes, including segregating the duties of the personnel involved in each process. The Commission offered free, voluntary, and confidential conciliation (sometimes referred to as mediation)⁶ as an alternative dispute resolution process. The Commission relied on the assistant director, some of the Commission’s investigators, and volunteers from external law practices to conduct these meetings.

Conciliation And Investigation Processes Not Segregated In Practice

Commission manuals stated the conciliation processes and investigation processes were operationally separate, and conciliation information would not be shared with investigative staff. Yet, there were structural and operational conflicts of interest due to a lack of segregation of duties. The assistant director was tasked with managing both conciliation and investigators, and also served as a mediator. Additionally, the assistant director was the first to approve a charge prior to the Commission sending it to the charging party for signature and was also responsible for reviewing the investigatory report during the audit period. An investigator also assumed coordination responsibilities, even though mediation coordination was not a responsibility listed in the position’s supplemental job description. In addition, the Commission improperly delegated statutory conciliation duties to agency personnel rather than keeping these duties with the investigating commissioners.

Investigating Commissioners’ Statutory Role In Conciliation Conflicts With Practice

There were conflicts among the statutory and regulatory powers providing authority to manage conciliation and the commissioners’ job duties. Statute appeared to place the power of conciliation with the investigating commissioner. RSA 354-A:21, II (a) stated:

After the filing of any complaint, one of the commissioners designated by the chair shall make, with the assistance of the commission’s staff, prompt investigation in connection therewith; during the course of the investigation, the commission shall encourage the parties to resolve their differences through settlement negotiations; and if such commissioner shall determine after such investigation that probable cause exists for crediting the allegations of the complaint, *the commissioner shall immediately endeavor to eliminate the unlawful discriminatory practice complained of by conference, conciliation and persuasion.* [emphasis added]

This statute was supported by expired administrative rules which defined an investigating commissioner as: “the commissioner designated by the chair of the commission to supervise the

⁶ Conciliation and mediation are conceptually the same dispute resolution process. However, mediation occurred during the investigation phase and provided parties an opportunity to resolve disputes before a determination of probable cause, while conciliation occurred after a finding of probable cause.

commission's investigation of a complaint, make a determination of probable cause or no probable cause, and, upon a determination of probable cause, conduct efforts at conciliation...." The Commission disagreed with our reading of the statute and believed the investigating commissioner had a role in *facilitating* conciliation but the actual act of conciliation may be performed by others. Yet, none of the commissioners we interviewed identified conciliation as a job responsibility. We found no evidence investigating commissioners had been involved in conciliation.

Conciliation Process Not Reviewed

Commission management was responsible for periodically monitoring and evaluating the Commission's programs and activities. However, Commission management did not review or evaluate the conciliation process to determine if the process was operating as intended. Inconsistencies in conciliation responsibilities and operational conflicts could raise doubts about the integrity of the Commission's mediation process and could cause confusion when the public seeks information about the process.

Recommendations:

The Legislature may wish to clarify whether commissioners should be involved in the conciliation process due to the potential for conflicts of interest.

We recommend Commission management review and improve its conciliation process by performing the following:

- **consider removing the assistant director from investigative oversight responsibilities and instead focusing on supervision of conciliation, especially if the new supervisory investigator position recommended in Observation No. 18 is created;**
- **revise the *Investigator Manual* and *Commissioner Training Manual* to reflect conciliation practices authorized by statute; and**
- **consider seeking a part-time mediator with a background in employment law to reduce reliance on other Commission staff.**

Auditee Response:

The Commission concurs with the audit's recommendations.

In terms of clarification and recognizing the commissioners' roles as unpaid volunteers, the Commission would recommend an amendment consistent with the language contained earlier in RSA 354-A:21, II(a): "the commissioner, with the assistance of the commission's staff, shall immediately endeavor to eliminate the unlawful discriminatory practice complained of by conference, conciliation and persuasion" (new language in underlined text). From there, the Commission could either promulgate rules or written policies that articulate what that process will be, and which members of the Commission's staff can or cannot participate in the conciliation process. In the interim, the Commission will develop policies to incorporate the investigating commissioners into the conciliation process to the extent parties are willing to participate in

conciliation after a finding of probable cause. Should conciliations become particularly resource intensive, the Commission will consider seeking funding for a part-time or full-time mediator.

The Commission also anticipates using existing resources to establish a supervisory investigator role consistent with Observation No. 18, which would remove the responsibility of investigator supervision from the assistant director. The assistant director would focus on post-investigation processes, such as conciliation and public hearing preparation, as well as the Commission's legal work, such as reviewing and issuing orders on motions.

Consistent with other recommendations dealing with training materials, the Commission has begun working on revising its materials and updating them. It will incorporate these recommendations with those updates.

Statutory and rule changes depend first on updates to the statute. If the statute is updated, the Commission anticipates that it would take eighteen to twenty-four months to promulgate new rules. The Commission is actively working to address the remaining recommendations and anticipates completion within six to twelve months.

Observation No. 11

Resolve Prior Audit Findings

We conducted a financial audit on the Commission in 2019 and found seven of ten Observations (70 percent) in the report had not been fully resolved as of January 2025. Commission management, who had been in their current positions since 2018, had not fully resolved the following seven observations from the 2019 financial audit report:

- Prepare And Implement Fundamental Internal Control Processes And Plans (see current Observation Nos. 5, 7, and 8);
- Establish Formal Risk Assessment Process (see current Observation No. 6);
- Establish Effective Systems And Controls Promoting Contract Compliance (see current Observation Nos. 4, 8, and 25);
- Contract Compliance Requirements Should Be Followed (see current Observation Nos. 1 and 15);
- Administrative Rules For Fee Setting Should Be Developed (see current Observation No. 21);
- File Statutorily Required Report (see current Observation No. 24); and
- Address Expired Administrative Rules (see current Observation No. 20).

Of the three observations that had been resolved, two pertained to payroll issues that were fixed when the Legislature administratively attached the Commission to the Department of Justice.

Management was responsible for remediating identified internal control deficiencies, such as audit findings, on a timely basis. The Commission lacked a system to track and report on its handling of identified weaknesses in its operating, reporting, and compliance functions. In fact, such a system

could have helped implement Executive Order 2014-03 which required a remedial action plan within 30 days of an audit report release with a semi-annual progress report filed on the TransparentNH website. Our 2019 financial audit report was released January 13, 2020 and no remediation plan was filed. The Commission submitted one progress report to the TransparentNH website on July 21, 2023, after we requested a status of prior audit findings.

Unresolved audit findings resulted in prolonged inefficiencies and ineffectiveness increasing the risk the Commission could not achieve its mission.

Recommendations:

We recommend Commission management:

- **develop written policies and procedures to track and report its progress in resolving deficiencies like audit findings,**
- **resolve outstanding and current audit findings in a timely manner, and**
- **timely submit required reports to TransparentNH pursuant to Executive Order 2014-03.**

Auditee Response:

The Commission concurs with the audit's recommendations.

Other observations detail the Commission's specific plans for resolving outstanding issues. The Commission will submit regular reports via TransparentNH consistent with executive branch requirements.

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STATE OF NEW HAMPSHIRE
NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS

INVESTIGATIONS

Investigations were the heart of the Commission’s operations. Staffing shortages were part of the reason for the growth of the case backlog. Additionally, not all complaints were accepted for investigation as required, while the complaints that were accepted were not investigated by the Commission in an efficient manner. For example, we found investigators were assigned duties outside of their normal investigatory responsibilities and training for new investigators was inadequate. With the expansion of the investigation team beginning with State fiscal year (SFY) 2024, there may be a need for a dedicated supervisor for investigators. Investigators also needed encrypted email to correspond with complainants and respondents while protecting confidential or sensitive information.

Legal Terms

To understand the investigative context in this report, it is necessary to discuss some legal terms, such as: “prima facie,” “affirmative defense,” “preponderance of evidence,” “probable cause,” and “burden of proof.” We found the Commission had not defined basic legal concepts and terms in its expired administrative rules, policies, procedures, and manuals.

Prima facie is a legal standard for evidence on which decisions are made in civil and criminal matters. The Cornell Law School Legal Information Institute defines it as “a fact or presumption that is *sufficient to be regarded as true unless otherwise disproved or rebutted.*” However, this presumption can be overcome by the opposing party by asserting an affirmative defense. An *affirmative defense* means there is credible evidence to overcome the prima facie evidence. For example, in a civil context, affirmative defenses could be duress, statute of limitations, or waiver (i.e., relinquishment of a known right).

When there is prima facie evidence and an affirmative defense, and if settlement fails, the parties must attend a public administrative hearing to determine the facts of the case. In the civil and administrative legal environments, *preponderance of evidence* is a legal standard the evidence must attain to win a case. To prove a case, the evidence must be more likely true than not. The determination of probable cause, in the context of the Commission, is defined in expired administrative rules. Determination of *probable cause* is established “after investigation that there is sufficient evidence upon which a fact finder could form a reasonable belief that the respondent(s) committed one or more unlawful practices....” *Burden of proof* was defined by the Cornell Law School Legal Information Institute as “the standard that a party seeking to prove a fact in court must satisfy to have that fact legally established.” “Sufficient evidence” and “reasonable belief” were not defined in statute or expired rules.

The investigating commissioner must make a finding of probable cause for a complaint to move forward to a public hearing. For a finding of fact, a public hearing with a three-commissioner panel was held. This occurred after a determination of probable cause had been made by the single investigating commissioner assigned to the case. The Cornell Law School Legal Information Institute states, “[f]indings of fact may be made by either a jury or a judge depending on whether the case is criminal or civil and/or if there is an agreement between the parties.”

Observation No. 12

Define Legal Concepts And Terms In Administrative Rules

The Commission lacked administrative rules defining several key legal concepts, and policies and procedures describing how to use these concepts in its investigations. While there was a definition in the expired administrative rules for the determination of probable cause, the term “probable cause” was undefined in policies, procedures, and manuals. Likewise, other essential terms such as “sufficient evidence,” “reasonable belief,” “burden of proof,” “affirmative defense,” “prima facie,” “preponderance of evidence,” and “findings of fact” were undefined for the purposes of Commission investigations. The *Investigator Manual* and *Commissioner Training Manual* were meant to introduce anti-discrimination law and processes and, as a result, these terms should be clearly defined in the guidance materials.

Without defining legal terms and concepts, a uniform understanding may not be shared among investigators, commissioners, Commission staff, and other parties to a case. This could result in an inconsistent application of the standards, more investigative work than necessary, and an inefficient use of State resources.

Recommendation:

We recommend Commission management define key legal concepts in administrative rules and develop policies and procedures describing how these concepts should be used in investigations.

Auditee Response:

The Commission concurs with the audit’s recommendations.

As the Commission promulgates its rules, it will include more definitions of legal concepts to ensure that members of the public who may be appearing before the Commission as self-represented parties can better understand the process. The Commission anticipates that promulgating these new rules will take eighteen to twenty-four months.

In terms of developing policies and procedures for staff, the Commission will, as it always does, ensure that staff have a sufficient understanding of these terms and what they mean for investigations. Notably, the audit’s observations do not state that this is lacking. These policies will serve as a foundation for investigations, but because each investigation is often a fact-specific inquiry and requires case-by-case determinations, policies and procedures cannot dictate the entire universe of outcomes. The Commission has begun examining policies, procedures, and training for staff and anticipates addressing these issues within the next six to twelve months.

Observation No. 13

Clarify Complaint Acceptance Process

The Commission may have improperly screened out some complaints before docketing the cases. State law, which required all complaints to be accepted for investigation, stated: “[a]ny person claiming to be aggrieved by an unlawful discriminatory practice may make, sign and file with the commission a verified complaint in writing.” [emphasis added]

Likewise, expired rules stated in part “[t]he following people and entities shall be entitled to file a complaint...[a]ny person claiming to be aggrieved by an unlawful discriminatory practice...” [emphasis added] Additionally, statute stated: “[a]fter the filing of any complaint, one of the commissioners designated by the chair shall make, with the assistance of the commission’s staff, prompt investigation in connection therewith....” [emphasis added]

Prior to docketing the case, management performed a prima facie analysis of each complaint to determine jurisdiction, whether the complaint was filed timely, and whether the complaint alleged an unlawful discriminatory practice.

Neither statute nor expired administrative rules authorized a prima facie analysis for complaint docketing. Because the initial complaint may have been screened out using prima facie, it would never become a docketed case that went to an investigating commissioner for consideration of probable cause. By screening out potential cases, the Commission did not comply with statutes requiring all complaints be accepted for investigation by an investigating commissioner.

Recommendations:

We recommend Commission management review and determine to what extent, if any, a prima facie analysis should be used to determine jurisdiction. If it is determined useful to screen cases, Commission management should seek legislation to amend RSA 354-A:21, II(a) to allow jurisdictional screening and specify who should be responsible for making jurisdictional determinations. At a minimum, the Commission’s administrative rules should disclose its screening practices. Until then, all complaints filed with the Commission should go to a commissioner for investigation, who can determine if the Commission has jurisdiction.

Auditee Response:

The Commission concurs in part with the audit’s recommendation.

The Commission has considered and adopted a complaint screening process. With the advice of legal counsel, for years the Commission has screened out complaints where the complainant does not allege that they have been aggrieved by an unlawful discriminatory practice as defined in RSA Chapter 354-A. The Commission’s expired rules define a complaint to mean “a written verified statement charging illegal discrimination under RSA 354-A.” See Hum 201.01(b). Under the Commission’s rules and procedures, only complaints, meaning written verified statements charging illegal discrimination, proceed to investigation. Counsel has advised that this is

consistent with RSA 354-A:21's language that "any person claiming to be aggrieved by an unlawful discriminatory practice may make, sign and file with the commission a verified complaint in writing." Counsel has advised that the Commission need only accept those complaints where the complainant claims to be aggrieved by an unlawful discriminatory practice. See RSA 7:8 (vesting the Office of the Attorney General with the authority to direct agency operations so that they comply with state law).

Under this guidance, the Commission screens out complaints where the complainant does not allege that an unlawful discriminatory practice has occurred and refers the complainant to the correct agency, for example a complainant attempting to file a wage and hour claim that should go to the Department of Labor will be advised that the Commission cannot assist them and given information to contact the Department of Labor. If complaint alleges an unlawful discriminatory practice but questions remain as to whether the target of the complaint is covered by state law or whether the Commission's authority extends to the target, then those complaints are accepted and the parties can litigate those questions before the Commission. The Commission only screens out those complaints where it is clear from the allegations that the complainant is not alleging that an unlawful discriminatory practice has occurred.

The Commission screens complaints for several reasons. First, accepting and investigating complaints that do not allege unlawful discrimination would waste limited Commission resources. Second, accepting and investigating complaints that do not allege unlawful discrimination wastes resources of the parties that appear before the Commission. Third, accepting and investigating complaints that do not allege unlawful discrimination but do allege acts that other agencies have jurisdiction over could waste time and cause complainants to lose their ability to file complaints with the correct agency.

The Commission concurs, however, that its rules should clarify this screening process. Accordingly, the Commission intends to promulgate rules to clarify this process for the public. The Commission anticipates completing this process in the next eighteen to twenty-four months.

To the extent that the audit's observation and recommendation suggest that the Commission lacks the authority to screen out complaints that do not allege discrimination, that the legislature needs to act to vest the Commission with this authority, or otherwise disagrees with the Commission's guidance from legal counsel, the Commission does not concur.

Observation No. 14

Establish A Clear Investigation Process

The Commission's rules, policies, procedures, and investigation standards were not sufficient to provide members of the public or its investigators a clear understanding of the Commission's investigation process.

Administrative Rules Lacking

Expired administrative rules covered limited procedures for investigations. Rules included information which may be requested from the complainant and respondent, and the requirement of opposing parties and counsel to share documentation with one another. Rules did not contain basic information about Commission investigations that would be important for the public to know such as: legal definitions, type of case closures, deadlines for the submission of information, consequences of missing deadlines, and circumstances in which extensions may be requested. The Commission also lacked comprehensive administrative rules in the following areas: using forms, handling of “No Jurisdiction – Waived” cases, consolidating cases where the same respondent was named, granting extensions, serving respondents, consenting to recordings and their use, charging administrative fees, and handling of cases when a party was deceased.

According to the State’s *Administrative Procedure Act* (APA), a rule was the:

regulation, standard, form... or other statement of general applicability adopted by an agency to (a) implement, interpret, or make specific a statute enforced or administered by such agency or (b) prescribe or interpret an agency policy, procedure or practice requirement binding on persons outside the agency, whether members of the general public or personnel in other agencies.

Administrative rules defined an agency’s practices and procedures that were binding on the public. Rules were necessary to clarify ambiguous laws for the public, required by the APA, and could be especially helpful for unrepresented individuals filing charges *pro se* (i.e., without counsel), and respondents who may not have the requisite knowledge to understand the parameters of the investigation process. Administrative rules for the Commission in HUM 200, such as administrative case closure, were expired. Because rules were expired and other practices were never adopted in rules, they were *ad hoc* and could not be enforced.

Without administrative rules, the public – including complainants, respondents, and their legal counsel – could have been unaware of agency requirements and practices. The inability to satisfy agency requirements could have created hardships for those seeking Commission services.

Policies And Procedures Manuals Were Not Comprehensive

As described in Observation No. 8, the *Investigator Manual* and the *Commissioner Training Manual*, which reportedly contained all current Commission policies and procedures, were not comprehensive. The *Investigator Manual* contained a short, eight-page section on investigations which generally included steps taken during the preliminary investigation, statutes, partial elements required for different types of cases, and questions investigators should ask. It did not address the investigation process, timing, or appropriate investigative techniques. The investigation process was not clear from documents provided. For example, it was not clear whether a full investigation should be conducted or was needed before the probable cause hearing was held, or whether an abbreviated investigation could be conducted to determine probable cause. The *Commissioner Training Manual* did not contain any policies or procedures related to investigations and contained limited legal standards.

Legal standards vital to conducting investigations, and determining the elements needed for determining probable cause, were separately located on the Commission's shared drive and did not always match the standards included in the manuals. These standards could only be directly accessed by Commission staff, not Commissioners. Because Commissioners had no direct access and legal standards in their manual differed from the shared drive, there was an increased risk that Commissioners would not know the elements needed to determine probable cause.

The Commission's burdensome investigation practices developed over time due to expired administrative rules, staff turnover, and inadequate training and documentation. Because the investigation process had not been fully articulated in rules, statute, or policies, it was not clear what a proper investigation should encompass. This may have caused 62.3 percent of cases to close (142 cases of 228) after the two-year time frame required by statute.

Recommendations:

We recommend the Commission provide more guidance to investigators and transparency to the public by:

- **reviewing the current investigation process and adopting relevant administrative rules and policy, and**
- **reviewing with legal counsel standards necessary for determining "probable cause" and ensuring investigators are provided adequate guidance on those standards.**

Auditee Response:

The Commission concurs with the audit's recommendations.

Consistent with its responses in Observation No. 1 and Observation No. 17, the Commission intends to review its rules to detail its expectations of the parties during the investigation process, including deadlines and other time limits, and to provide minimum expectations to the parties for what the Commission will do as part of an investigation. The rules will also clearly state other avenues for producing information to the Commission outside of records and interviews, such as use of affidavits or written statements from witnesses. As detailed more in Observation No. 17's response, the Commission has an obligation to provide due process to both parties and prematurely ending an investigation and issuing a "no probable cause" finding can lead to orders from the Superior Court remanding the case for further investigation, which wastes time and resources. The Commission anticipates promulgating new rules within the next eighteen to twenty-four months.

The Commission will consult with legal counsel at the Attorney General's Office as it develops rules and policies defining major legal concepts, such as "probable cause," and developing training on those standards for investigators. The Commission also plans to either hire an attorney into the vacant Assistant Director role or reclassify that role as a general counsel position so that it has an attorney on staff to provide support to investigators on legal questions, review and address motions from parties, and administer the adjudicatory process that occurs after a finding

of probable cause. The Commission anticipates addressing these issues in the next six to nine months.

Observation No. 15

Investigators Should Focus On Investigations

Investigatory work suffered when investigators were given tasks unrelated to investigating cases. Many cases took too long to close. The Commission did not close the number of cases required by their contract with the federal Equal Employment Opportunity Commission (EEOC) in Federal fiscal year (FFY) 2023. To cope with staff shortages, including shortages in administrative positions, Commission management assigned investigators additional work that was not outlined in their supplemental job descriptions. One investigator was assigned additional supervisory tasks such as peer reviewing investigative reports, and others had been assigned additional nonsupervisory tasks such as redesigning the Commission’s website and tracking Commission statistics. Commission management partially based performance evaluations on extra work assignments, in addition to the standard job responsibilities related to investigations.

Case Closure Target Deadlines Not Met

As reported in Observation No. 1, we found it took an average of 840 days (2.3 years) for a case to close at the Commission during State fiscal year (SFY) 2023, which was 110 days past the two-year target statutory deadline. It took an average of 557 days (1.5 years) to be assigned to an investigator and the subsequent investigation took approximately one year.

Number Of Case Closures Lower Than Required

The Commission did not achieve the requirement in its contract with the EEOC to close a minimum number of cases in FFY 2023, although it was able to complete more than the required number of cases during FFY 2020 through FFY 2022. The Commission’s Worksharing Agreement with the EEOC for FFY 2023 required closure of 215 cases pertaining to federal anti-discrimination laws. However, the Commission closed 202 of the 215 cases (94.0 percent) required for compliance with the EEOC contract. The Commission received \$830 for each of the 202 cases closed under the contract for a total of \$167,660 in federal revenues, which was \$10,790 less than what could have been collected had the Commission completed all its cases.

Recommendation:

We recommend Commission management only assign its investigators to work on duties directly related to investigations to help ensure the case closure requirements in the EEOC contract will be achieved.

Auditee Response:

The Commission concurs with the audit's recommendation.

With the allocation of funding for an office administrator, the Commission has shifted and continues to shift many administrative tasks to that role that had previously been performed by investigators. The Commission believes that this recommendation has been satisfied, but it will review the workloads of investigators to ensure that any other administrative tasks become the primary responsibility of the administrator.

Observation No. 16

Provide Investigators With Adequate Training

The Commission did not provide adequate training to its investigators upon hire. The *Investigator Manual* was the primary training tool and a repository for general office policies. It did not contain critical information for new hires, such as an overview of conducting investigations; the role of the investigator; job descriptions; purposes of, or approaches to, investigations; applicable legal concepts; or important timelines and deadlines in handling cases.

Investigators reported several concerns with their new hire training and the *Investigator Manual* in particular. Some investigators characterized their initial training as “terrible” or “inadequate.” Investigators described the manual as lacking content and not much help as a training tool. Additionally, two of four investigators (50 percent) noted inadequate training resulted in months of unproductive time as new hires were trying to learn basic job duties, leading to increased staff turnover.

Although supplemental job descriptions required the executive director and assistant director to establish and maintain in-house training procedures, identify the training needs of staff, develop and participate in training delivery, and approve training requests, the Commission had no policies, procedures, or training curriculum in place for new investigators other than the *Investigator Manual*. In practice, responsibility for investigator onboarding was split among the assistant director, the Department of Information Technology (DoIT), and a more senior investigator. As a result, training for new investigators was haphazard.

Technical training provided to new hires was not documented by the Commission. Therefore, we were unable to determine whether investigators completed the 32 hours of training required by the EEOC before conducting investigations.

Management was responsible for developing instructional materials for new employees so that employees complied with relevant laws and rules, and organizational goals could be achieved. Creation of these materials should have incorporated factors such as:

- making information clear, concise, and easy to follow;
- continuously adapting materials; and

- identifying resources for trainee use.

Training for new hires did not appear to be a priority for Commission management. Without adequate training for new hires, there was an increased risk the Commission would not follow State laws, rules, policies, and procedures. Further, the Commission could continue to experience staff turnover.

Recommendations:

We recommend Commission management:

- **develop and implement a training curriculum for new hires, including ensuring new hires are properly trained before being allowed to handle a case on their own;**
- **evaluate existing instructional manuals to ensure policies and procedures are relevant to job responsibilities and reflect current practices; and**
- **document training provided to ensure newly hired investigators obtain the training hours required by the EEOC.**

Auditee Response:

The Commission concurs with the audit's recommendations.

As discussed in response to other recommendations, the Commission has begun reviewing its policies and procedures and updating the Investigator Manual. In conjunction with these efforts, the Commission has begun to develop a training curriculum for new hires and procedures that track such training. The Commission has also begun to discuss regular supplemental training for investigators and staff. The Commission anticipates that this review and updating will be completed within the next six to twelve months, although the need to review and update training will remain an ongoing obligation.

Observation No. 17

Improve Interview Rules And Guidance

The Commission provided no guidance to investigators regarding who, and under what circumstances, parties related to a discrimination investigation should be interviewed. The *Investigator Manual* did not have interview policies, and related administrative rules were expired and lacked specificity. As a result, investigators reported differing understandings of who was required to be interviewed when investigating discrimination cases.

Expired administrative rules required interviews be held with all parties who were “individuals.” However, the term “individuals” was never defined. Expired rules stated all individuals were to be interviewed if a mediation agreement could not be reached and further investigation was required. Additionally, expired rules gave discretion to the investigator to determine whether it was necessary to interview a representative of the respondent, co-workers of the complainant, and other

potential witnesses. Administrative rules did not provide for alternatives to interviews such as written statements or affidavits, or a requirement for investigators to indicate in their investigative report why witnesses were not interviewed.

The assistant director reported those deemed relevant to the investigation were interviewed and those who were individually named within the complaint had to be interviewed per the expired rules. Yet all four investigators reported differing understandings of interview requirements. One investigator reported only the complainant needed to be interviewed. Another investigator stated the complainant and respondent were interviewed but also stated anyone else offering valuable insight may also be interviewed. A third investigator reported the complainant and sometimes the respondent would be interviewed, while the fourth investigator reported the complainant needed to be interviewed, but there was no requirement to interview the respondent, and additional interviews could be conducted depending on the case. Several attorneys reported concerns about the lack of interviews conducted or documentation regarding these interviews.

Recommendations:

We recommend Commission management adopt administrative rules to define:

- **the minimum individuals required to be interviewed during a discrimination investigation;**
- **alternatives to interviews such as written statements or affidavits, which can be used in place of interviews; and**
- **a requirement that investigator reports articulate why witnesses were not interviewed.**

We also recommend Commission management develop policies and procedures to guide investigators on the process for conducting interviews with all relevant parties to a case.

Auditee Response:

The Commission concurs with the audit's recommendations.

Regarding necessary rulemaking, the Commission anticipates reviewing and updating rules to establish minimum expectations for an investigation, but because of the case-by-case nature of investigations and the Commission's obligation to provide parties with due process of law, the Commission cannot establish maximum expectations. The Commission also plans to update rules to reflect the use of other tools such as written statements or affidavits are possible. The Commission anticipates promulgating such rules within the next eighteen to twenty-four months.

In terms of policies and procedures, the Commission, as detailed in response to other observations, has begun reviewing existing materials, policies, and procedures, and plans to update those to provide greater clarity and guidance. The Commission also plans to engage in initial and supplemental training for investigators regarding witness interviews and whether and when interviewing certain witnesses is necessary. The Commission anticipates completing these steps in the next six to twelve months.

Observation No. 18

Establish Supervisory Investigator Position

Supervisory responsibilities at the Commission were often delegated to non-supervisory staff. During the audit period, the Commission did not have policies and procedures outlining investigator oversight practices. The assistant director supervised all investigators and other personnel within the Commission. However, investigators reported more supervision or better-quality supervision was needed.

Both the assistant director and some investigators reported spending one hour per month with the assistant director, although ad hoc supervision was available upon request by the investigators. The assistant director reported formerly reviewing all investigative reports but no longer had time to do so. Instead, the responsibility for reviewing investigative reports was initially transferred to the executive director, who also reportedly had little time to review the reports. The task was ultimately assigned to one of the investigators in early SFY 2024. The assistant director also reported formerly providing training to investigators, but some of this responsibility was also transferred to an investigator. Other responsibilities transferred from the assistant director position to investigators were maintenance of the Commission's website, statistical reporting, and coordinating mediation.

Supervisory responsibilities will increase as the Commission adds more investigators. At the end of SFY 2023, the Commission had six investigator positions (four filled) who were supervised by the assistant director. Beginning with SFY 2024, four additional investigator positions were added by the Legislature to begin to resolve the case backlog that had plagued the Commission for years. As of February 2025, the Commission had nine full-time investigator positions (six filled). However, no revision to the Commission's organizational structure or job responsibilities had been defined to handle the increased workload on the assistant director.

The supplemental job description for the assistant director was extensive and listed the following accountabilities:

- Monitors and evaluates the Commission's short- and long-term organizational goals and makes recommendations to the executive director.
- Prepares statistical reports and analysis for Commission, State, and federal use.
- Discusses proposed legislation with the executive director and presents testimony to the Legislature as needed.
- Works with the executive director to analyze needs and prepares grant proposals.
- Conducts pre-hearing conferences, writes pre-hearing orders, researches law, clerks hearings, and drafts Commission decisions.
- Conducts interviews of investigator applicants, recommends hire, and performs employee evaluations.
- Supervises investigators, recommends leave approval, reviews work product, and conducts individual monthly supervisory meetings.

- Develops new work methods and materials for investigative staff as required.
- Identifies training needs of staff, develops and participates in the delivery of training, and approves training requests.
- Conducts discrimination investigations; legal research and analysis; requests information and documents from the parties; interviews witnesses; conducts negotiations; prepares motions, orders, and court worthy reports; and makes recommendations of statute violations to the investigating commissioner.
- Drafts formal charges of discrimination.
- Coordinates the Commission mediation program, prepares statistical reports, and conducts mediations.
- Conducts educational outreach to public and private employers, places of public accommodations, and housing providers.
- Maintains the Commission's website.
- Assumes responsibility for Commission and staff activities during the executive director's absence.

A supervisory investigator position could be created to ensure adequate supervision of investigations and sufficient training are provided. This could alleviate the burden of supervisory responsibilities on a staff investigator who, according to their job description, should have had no supervisory responsibility. The supervisory investigator position could, for example, be responsible for:

- assigning and reassigning cases;
- supervising investigators and conducting annual performance evaluations;
- training new hires and ongoing training for investigators;
- reviewing investigative reports before they are issued;
- reviewing investigative plans as needed, such as for first-year investigators and complex cases;
- monitoring and managing case backlogs;
- opening and closing cases;
- developing and monitoring case and investigator performance measures, and case statistics;
- developing, reviewing, and revising investigator policies and procedures; and
- ensuring consistent case management practices and procedures are used universally.

The assistant director could then focus on developing policies and procedures; updating administrative rules; conducting annual performance evaluations for paralegal, intake, and administrative assistant positions; coordinating mediation; developing a training program, including a curriculum for new staff investigators and ongoing training; and community outreach.

Management was responsible for providing qualified and continuous supervision so that internal control objectives were achieved. However, extensive responsibilities assigned to the assistant

director led to limited supervisory involvement in cases, delayed review of investigative reports, increased turnover, and delayed case closure. According to a staff member, two motions for reconsideration had been granted due to the application of incorrect legal standards. This likely would have been caught if adequate review had occurred.

Recommendations:

We recommend Commission management:

- **seek approval to create a supervisory investigator position to help oversee the work of investigators and to help ensure delays in case investigations are minimized, and**
- **work towards providing adequate, continuous supervision so that internal control objectives can be achieved.**

Auditee Response:

The Commission concurs with the audit's recommendations.

With the additional resources allocated to the Commission in the current biennium, the Commission had begun to work with the Department of Administrative Services to create a supervisory investigator position. The Commission intends to complete that process in the coming year. With that new position, the Commission anticipates that it will be better able to train and supervise the investigators on its staff. The Commission anticipates this will be completed within the next six to nine months.

Observation No. 19

Use Encrypted Email

The Commission did not consistently use encrypted email to transmit information that it considered confidential. According to expired administrative rules, all case information was confidential until a notice of public hearing was issued after a finding of probable cause. Because it was not known which cases would be determined as no probable cause at the investigatory stage, every case should have been treated as confidential. To ensure case records were kept confidential, encrypted email should have been used in all cases.

DoIT reported encrypted email had been available to the Commission since January 2022. DoIT's encryption system automatically encrypted several types of personally identifiable information such as medical information, social security numbers, driver's license numbers, payment card information, bank account numbers, and individual taxpayer identification numbers. However, it did not automatically encrypt other information such as charging party, responding party, or witness names. Without encryption, there was an increased risk confidential information, such as the fact an individual had filed a complaint, could become public.

Organizations were responsible for designing control activities to protect the entity's data from internal and external threats, thereby safeguarding against unauthorized access. This was especially important for entities which relied on telecommunications and the internet. Like many State agencies, the Commission's information technology needs were provided by the DoIT. We identified emails in Commission files which appeared unencrypted and contained case information such as charging party and respondent party names. We also found group emails sent by the Commission to separate charging parties which had filed against the same respondent.

It did not appear Commission management fully understood the nature of the information it communicated in its email or how that information could be intercepted. The executive director stated the Commission did not use encrypted email because the parties were known to each other, and the agency's duty of confidentiality was toward the public. To reduce the likelihood confidential information was seen by unauthorized parties, email containing confidential information should be encrypted.

Recommendations:

We recommend Commission management:

- **review its email practices with an appreciation for the sensitivity of the messages,**
- **write an encrypted email policy for staff and provide instructions to members of the public involved with complaints and investigations on transmitting sensitive information, and**
- **implement the encryption policy and electronic solution to better protect confidential information from access by unauthorized individuals.**

Auditee Response:

The Commission concurs with the audit's recommendations.

The Commission will work with the Department of Information Technology to develop best practices for using encrypted email and alternative, secure communication systems when parties are unable or unwilling to use encrypted email. The Commission will then develop written policies and instructions for staff and the commissioners on the use of encrypted email or other secure communication systems to conduct Commission business. The Commission anticipates developing and implementing this policy over the next nine to fifteen months.

**STATE OF NEW HAMPSHIRE
NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS**

COMPLIANCE

Management was responsible for ensuring compliance with applicable State and federal laws and regulations in addition to adapting the organization’s structure to any new, binding laws. In fulfilling this responsibility, management ensured it reliably reported quality information in accordance with laws and regulations.

Administrative rules were the statements of responsibility adopted by an agency to: 1) implement, interpret, or make specific a statute enforced or administered by an agency, or 2) prescribe or interpret agency policies and procedures. These rules were binding and had the force of law. We found the Commission’s administrative rules had been expired for nearly a decade, and current practices were not enabled by rules. These practices included administrative fees imposed on outside parties and the use of various forms, which also needed to be adopted in rules.

Commissioners did not complete statements of financial interests correctly or consistently, nor had Commission management filed biennial reports, as required by law. Additionally, during the audit period, the Commission had not complied with requirements to reconcile its records to the federal Agency Records Center (ARC) system on a quarterly basis.

Observation No. 20

Immediately Promulgate Administrative Rules

The Commission had been operating since 2015 with expired administrative rules governing its proceedings. Administrative rules defined an agency’s practices and procedures that were binding on the public. Our office observed the Commission’s rules were expired during our 2019 financial audit. At the time, the Commission agreed with the observation and stated it was in the process of updating its rules. Rules had been submitted to the Joint Legislative Committee on Administrative Rules for review and approval in April 2024 but had been rejected due to various errors. Revised rules had not been resubmitted as of January 2025.

The Commission’s enabling legislation expressly provided it the power and duty to adopt rules pursuant to the *Administrative Procedure Act* so that the enabling legislation could be properly executed. According to the executive director’s supplemental job description, the executive director was responsible for drafting statutory changes and promulgating regulations to implement agency enabling legislation. The executive director reported staff shortages had delayed the drafting and submission of rules.

Recommendation:

We recommend Commission management immediately prioritize, complete, and present draft rules to the Joint Legislative Committee on Administrative Rules.

Auditee Response:

The Commission concurs with the audit's recommendation.

The Commission began the process of drafting new rules and had prepared to submit them to the Office of Legislative Services for public comment in April 2024. OLS identified some errors to correct and sent the rules back to the Commission for revision. The Assistant Director spearheaded this process. With the Assistant Director's departure and the emergency leave of the Executive Director, the Acting Executive Director has picked up the task and anticipates submitting the rules to OLS for public comment in the new year. The Commission anticipates promulgating these new rules within the next six to nine months.

The Commission will update these rules based upon the recommendations contained in this audit within the next eighteen to twenty-four months. The Commission determined that enacting rules should be a priority over revising the draft rules to incorporate the audit's recommendations because the draft rules were at the cusp of being ready for posting.

Observation No. 21

Administrative Fees Must Be Authorized And Reasonable

The Commission charged what appeared to be arbitrary fees to external parties for various services without knowing whether the fees were appropriate in amount and, in some cases, with no statutory authority to charge a fee. This observation was similar to an observation in our 2019 financial audit report which found the Commission did not have documentation to support that fees charged were reasonable or established in administrative rules. In its response to the status of the 2019 financial audit report finding on the TransparentNH website, the Commission wrote, "a determination by the Commissioners was made to annually adopt a fee schedule... it was deemed inexpedient to make a rule for this activity as fees may change over time which would result in inefficient use of the rule making process." The Commission's reasoning was flawed, as only administrative fees authorized in State law or administrative rules can be collected.

Cost Of Services Not Documented

State law allowed charging the actual cost of providing a service. Expired administrative rules did not identify specific costs or how costs were calculated. A fee schedule had been adopted by the Commission in January 2023, but the executive director reported not knowing how the fee amounts were determined, as they were in place prior to the executive director's arrival in 2018. The Commission's expired administrative rules stated there would be no fees for photocopies up to 25 pages, but it "shall charge the commission's costs for more than 25 pages." Expired rules did not state the basis for calculating "the commission's costs," nor did they specify a rate.

Like statute and expired rules, the Commission's *Record Duplication Request Procedure*, revised May 2023, also did not specify how fees were calculated or establish a rate. The policy stated, "[r]easonable fees are set by the Commissioners annually during their January meeting." While statute allowed the Commission to "charge reasonable fees for educational services, programs,

publications, and other written materials,” the Commission never defined what reasonable fees were, and conducted no analyses to determine the actual costs of providing the services.

Unauthorized Administrative Fees

We reviewed all cases closed during State fiscal year (SFY) 2023. Of the 233 case files reviewed during SFY 2023, we found 14 (6.0 percent) cases where an administrative fee was charged in addition to a copy fee of \$0.25 per page. Administrative fees charged in 13 of these instances were \$30, and one was \$15. Neither statute, expired rules, nor policy explained what the administrative fee was for or how it was calculated.

The Commission was noncompliant with statute because it did not adopt administrative rules for the fees it charged, deprived the Legislature of its oversight responsibilities, and lacked transparency to the public. Additionally, without appropriate analysis of the cost of providing a service, the Commission could not ensure the State was recovering the actual cost of the service.

Recommendations:

We recommend Commission management:

- **only charge fees that are statutorily authorized;**
- **document how the Commission will periodically determine reasonable fees in its policies;**
- **establish its fees in administrative rules;**
- **periodically conduct an analysis to determine the actual cost of providing services it was allowed to charge for; and**
- **publish the fee schedule on the Commission’s website to ensure fees, established in rule, are transparent to the public.**

Auditee Response:

The Commission concurs with the audit’s recommendations.

The Commission has suspended charging any administrative fees as it promulgates new administrative rules. New rules will document the costs and support any administrative fees charged consistent with statute. The Commission will periodically review and seek to update administrative fees that it charges. Once a fee has been approved, the Commission will make the fee schedule accessible to the public. To the extent that new rules are required, the Commission anticipates completing that rulemaking in the next eighteen to twenty-four months.

Observation No. 22

Adopt Forms In Administrative Rules

The Commission improperly required complainants to complete various forms that had not been established in administrative rules. The following forms were used by the Commission:

- an employment intake questionnaire,
- a housing and commercial property intake questionnaire,
- a public education general intake questionnaire, and
- a complaint withdrawal form.

Forms, including questionnaires, that were not adopted in rule were invalid and unenforceable, according to statute.

Recommendation:

We recommend Commission management adopt administrative rules to enable the use of the forms it created.

Auditee Response:

The Commission concurs with the audit's recommendation.

Pending draft rules and any future administrative rules will document the information collected in the Commission's forms and enable the use of those forms. This recommendation will largely be addressed in the Commission's draft rules that it anticipates will be enacted in the next six to nine months.

Observation No. 23

File Statements Of Financial Interests Timely And Correctly

Commission members did not consistently file statements of financial interests in accordance with statute. Commissioners had to complete a statement of financial interests form each calendar year and file it with the Secretary of State before the third Friday of January. The statement of financial interests form and governing statute required:

The name, address, and type of any profession, business, or other organization in which the reporting individual or family member was an officer, director, associate, partner, proprietor, or employee, or served in any other professional or advisory capacity, and from which any income in excess of \$10,000 was derived during the preceding calendar year. Sources of retirement benefits other than federal retirement and/or disability benefits shall be included.

Three of seven commissioners (42.9 percent) filed the required statement of financial interests in 2024. None of the three commissioners who filed a form claimed they or their spouses earned more than \$10,000 as required by statute. Instead, all commissioners who filed in 2024 reported no sources of income. Similarly, in 2023, four of seven commissioners (57.1 percent) filed a statement of financial interests, but only one commissioner reported earning more than \$10,000.

When we inquired in October 2023, the executive director believed there had been a misunderstanding regarding how the form was to be completed. However, the forms were still apparently incorrectly filed in January 2024.

By not filing the required statements of financial interests, it was impossible for a member of the public to determine whether a commissioner had any financial interest in the decisions made. Additionally, non-filers were not eligible to serve in their appointed capacity according to State law.

Recommendations:

We recommend Commission management:

- **establish written policies and procedures to help ensure commissioners submit complete statements of financial interests by the required filing deadline,**
- **inform and educate the commissioners in completing the form correctly and timely, and**
- **only allow commissioners to serve in their appointed capacity with proof that forms were timely filed.**

Auditee Response:

The Commission concurs with the audit's recommendations.

As the Commission revises its policies and procedures, it will include procedures and instructions for completing financial interest statements timely and correctly. In the interim, the Commission will provide training to the commissioners and other staff required to complete financial interest forms so that they can do so timely and correctly. The Commission anticipates crafting new policies and procedures in the next six to twelve months.

Observation No. 24

File Biennial Reports As Required

The Commission did not publish biennial reports during the audit period. Statute required the Commission to provide a written report of its activities and recommendations to the Governor and Council biennially. According to the executive director, the reports had not been filed due to a lack of sufficient staff.

Without biennial reporting, the Governor, Legislature, and public were not regularly informed of the activities of the Commission, including the difficulties in processing cases. A biennial report could have informed interested parties of how long it took to assign an investigator, investigate cases, reach a probable cause conclusion, and close a case. A biennial report could have been an opportunity to inform interested parties of staffing issues and case backlogs that occurred during the audit period.

Recommendation:

We recommend Commission management ensure the required report is written and submitted to the Governor and Council biennially. The report should include appropriate performance measures for the Commission’s operations such as outputs, outcomes, caseloads, and the time elapsed during each phase of a case.

Auditee Response:

The Commission concurs with the audit’s recommendation.

The Commission has submitted the missing biennial reports and will develop plans to ensure that future biennial reports are submitted in a timely manner.

Observation No. 25

Reconcile Commission Records To Federal Database

Quarterly reconciliations of Commission records to the federal Agency Records Center (ARC) database required by the Equal Employment Opportunity Commission’s (EEOC) *State, Local and Tribal Programs Handbook* were not completed during the audit period. In addition, the Commission had no policies or procedures in place for performing the reconciliations. A similar observation was reported in our 2019 financial audit report and an earlier financial audit report in 2008.

The executive director stated, with the migration to the EEOC’s new ARC database in 2022, the Commission no longer needed to perform reconciliations. Although the contract with EEOC did not include reconciliation requirements, a policy in the EEOC handbook required reconciliations quarterly. The purpose of reconciling Commission-held data with its reported data in the federal ARC database was to help ensure the accuracy and completeness of both sets of data. According to the executive director, the administrative assistant position that had been responsible for conducting the quarterly reconciliations was unfunded in 2020.

Recommendations:

We recommend Commission management establish formal policies and procedures for the periodic reconciliation of Commission records to the federal ARC database. Procedures should include effective management review and approval controls over the reconciliation process. When reconciliations cannot be performed due to vacant or unfunded positions,

Commission management should implement appropriate mitigating controls to ensure the accuracy and completeness of the Commission's data.

Auditee Response:

The Commission concurs with the audit's recommendations.

As the Commission revises its policies and procedures, it will include procedures and instructions for management and administration to ensure that records are properly reconciled on a regular basis. The Commission anticipates that the deployment of its electronic case management system will streamline this process significantly. The Commission anticipates crafting new policies and procedures in the next six to twelve months.

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**STATE OF NEW HAMPSHIRE
NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS**

OTHER ISSUE AND CONCERN

In this section, we present an issue we considered noteworthy, but we did not develop the issue into a formal Observation. The New Hampshire Commission for Human Rights (Commission) and the Legislature may wish to consider whether this issue deserves further study or action.

Choice Of Forum Legislation

Proposals to change the choice of forum in RSA 354-A:21-a had been considered in at least four Legislative sessions since 2010 (2010 HB 686, 2020 SB 509, 2022 SB 296, 2023 HB 362-FN). Choice of forum governs who may change the venue of a case brought by the charging party.

Under current law, the charging party may remove the case to Superior Court after 180 days of filing the case with the Commission (or anytime with permission of the Commission) or within 300 days if filed under federal law. In 2000, RSA 354-A:21-a *Choice of Forum* was created to allow those charged with violating discrimination laws to remove the case to Superior Court once a probable cause finding had been determined.

Concerns of fairness were raised by both sides of the argument when considering whether to change the law relative to choice of forum. Proponents of changing the law argued that the charging party should be the one to determine the choice of venue since they were the ones bringing the charges. Their argument was that, by allowing the responding party to remove the case to Superior Court, it was an effort to terminate the case because the charging party may not have financial resources available to hire attorneys to pursue the case in Superior Court. Cases brought to the Commission were at no cost to the charging party, so the charging party may have been able to file a charge without the need, and cost, of consulting with an attorney.

Proponents of leaving the law as is – that is, allowing the responding party to remove the case to Superior Court – suggest it was a matter of fairness in that the respondent should also have its choice of forum.

The Legislature may wish to consider whether changes to RSA 354-A:21-a *Choice of Forum* are necessary.

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APPENDIX A
SCOPE, OBJECTIVE, AND METHODOLOGY

In January 2023, the Fiscal Committee of the General Court approved a joint Legislative Performance Audit and Oversight Committee request to conduct a performance audit of the New Hampshire Commission for Human Rights (Commission). The purpose of this audit was to evaluate the Commission’s efficiency and effectiveness in enforcing laws against discrimination when receiving, investigating, and making findings on complaints. We held an entrance conference to discuss the audit with representatives of the Commission in May 2023 and the audit scope was approved by the joint Legislative Performance Audit and Oversight Committee in August 2023.

Scope And Objective

We designed the audit to answer the following question:

Was the New Hampshire Commission for Human Rights efficiently and effectively enforcing laws against discrimination when receiving, investigating, and making findings on complaints?

Our audit period encompassed State fiscal year (SFY) 2020 through SFY 2023; however, we examined management controls and other relevant matters outside the audit period when they affected Commission operations during and after the audit period.

Methodology

To gain a general understanding of the Commission and anti-discrimination investigations, we:

- reviewed relevant State laws, federal laws and regulations, expired and draft administrative rules, procedures, guidance, and an Attorney General Opinion;
- reviewed prior financial audits, and relevant audits and additional materials from other states;
- reviewed materials from the federal Equal Employment Opportunity Commission (EEOC);
- reviewed the Commission’s website and forms;
- obtained perspectives from stakeholders outside the Commission; and
- reviewed legislation and Legislative hearings on House Bill 362-FN (2023), Senate Bill 300-FN (2022), and Senate Bill 296 (2022).

To gain an understanding of the Commission’s processes and operations, we:

- interviewed Commission members, management, and staff;
- reviewed and analyzed case files for cases closed during SFY 2023;
- reviewed and analyzed case processing practices;
- reviewed commissioner statements of financial interests;

- analyzed Commission statements of appropriation from the NH FIRST state accounting system and budget documents for SFYs 2020 through 2023;
- reviewed human resource staffing reports and supplemental job descriptions;
- reviewed EEOC Worksharing Agreements;
- reviewed public and non-public Commission meeting minutes and observed Commission meetings;
- reviewed the Commission’s *Investigator Manual* and *Commissioner Training Manual*;
- reviewed Superior Court case filings;
- reviewed expired and draft administrative rules;
- reviewed personnel files of Commission staff; and
- surveyed complainant and respondent attorneys.

Data Limitations

While the Commission used two federal automated systems provided and managed by the federal EEOC during the audit period, the Commission reported it had no access to the data contained within them. To manage its operations, the Commission used three spreadsheets to keep track of the status of its cases: a Cases Filed spreadsheet, a Pending File spreadsheet, and a Cases Closed spreadsheet. The Cases Filed spreadsheet represented cases that were opened. The Pending File spreadsheet represented cases that were filed but not yet assigned to an investigator. Cases on this spreadsheet were added as cases were filed and removed as they were assigned to investigators. The Cases Closed spreadsheet accumulated the cases closed on a running basis.

Out of the 241 cases closed on the Commission’s Cases Closed spreadsheet during SFY 2023, we reviewed 233 cases during our file review. Eight of the cases were listed as “No Jurisdiction - Waived,” or NJWA. NJWA cases were those that had a docket number with the EEOC, but no case file existed at the Commission due to a lack of Commission jurisdiction. For NJWA cases, the Commission completed intake and docketed the charge for the EEOC, input the information into the federal Agency Records Center (ARC) system, and referred the case to the EEOC. There is no case file created for NJWA cases due to the Commission’s lack of jurisdiction. Therefore, these eight NJWA cases were not reviewed. Another five cases were excluded for various reasons leaving 228 cases for our timeliness analysis.

We found the Commission’s data in the spreadsheets discussed above were not sufficiently reliable for our analysis. Reliance on the dates captured in the Commission’s spreadsheets would have resulted in an underreporting of timelines to complete a case and would therefore, have led to an incorrect conclusion of how long it took to process a case to completion. To achieve our goal of determining how long it took to process a case, we conducted a review of 233 case files closed between July 1, 2022 and June 30, 2023, recorded dates of important events in our spreadsheet, and analyzed the results. Most data analysis contained in this report represented data from our file review. Observations and recommendations for correcting the Commission’s data are reported in Observation Nos. 3, 4, and 7.

Case File Review

For Figure 2, *Pending Cases By Discrimination Type, As Of June 30, 2023*, we used data contained in the Commission's Pending File spreadsheet. We found data reliability acceptable for case type analysis. We analyzed 259 pending cases to determine the case type assigned.

For our analysis of completed case type and case closure coding for cases closed during SFY 2023, we used data from our file review of 233 cases where we could determine the case type and closure codes. Although we excluded five cases for our timeliness analysis because not all dates were present for analysis, we included these five cases for the completed case type and case closure analyses.

Figure 3, *Average Case Processing Times For Complaints Closed In SFY 2023*, shows the results of our analysis of how long it took the Commission to process cases throughout the complete case lifecycle. We reviewed the Cases Closed spreadsheet and identified 241 cases closed between July 1, 2022 and June 30, 2023. We then located each paper file in the possession of the Commission. We were unable to review eight of the 241 case files (3.3 percent) due to the Commission's lack of jurisdiction for NJWA cases, leaving 233 cases. Five additional cases (2.1 percent) yielded unusable timeliness data, so we analyzed data for the remaining 228 case files. Because each case could be closed at any time during the process, the number of cases for each measure varied between 108 and 228 cases. None of the cases went to a public hearing.

For each of the cases reviewed for timeliness, we collected and analyzed the dates of important case milestones throughout the lifecycle of the closed cases to determine the average amount of time it took the Commission to close the cases. We recorded and analyzed the following dates in the Cases Closed spreadsheet to calculate the number of days elapsed between the various steps in the case process:

- date the charge of discrimination was filed;
- date an investigator was assigned to the case;
- date of probable cause finding;
- date of public hearing, if any; and
- date of case closure.

Survey Of Charging Party And Responding Party Attorneys

We surveyed the attorneys of both the charging parties and responding parties for the cases closed during SFY 2023 to obtain their opinions on the Commission and their operations. The surveys were designed to identify deficiencies rather than to identify positive attitudes towards existing practices. We obtained their email addresses through our file review of cases closed during SFY 2023.

The survey was conducted via email using an online survey platform during the month of January 2024. Of the 42 emails sent to charging party attorneys, seven emails (16.7 percent) were returned to us due to an incorrect email address, for a total viable population of 35 charging party attorneys. For the 126 responding party attorneys, 27 emails (21.4 percent) were returned to us due to an

incorrect email address, the attorney was no longer with the firm, the individual stated the case was closed outside of SFY 2023, or the individual listed as counsel was not actually an attorney, for a total viable population of 99.

Of the combined total viable population of 134, we received 31 responses, for a response rate of 23.1 percent. Due to the low response rate of this survey, we did not base any Observations on the survey results and the results could not be projected to the population. However, we used the results to corroborate potential issues identified by our other audit methods. The aggregated survey results are located in Appendix C.

Internal Control

According to generally accepted government auditing standards, internal control was defined as a process effected by an entity's oversight body, management, and other personnel that provides reasonable assurance that the objectives of an entity will be achieved. Auditing standards require we identify and determine which, if any, internal control components were significant to the audit. We use the definitions and concepts of internal control from the *Standards for Internal Control in the Federal Government* to conduct performance audits in accordance with auditing standards.

Internal controls were comprised of five internal control components and 17 underlying principles. We considered all five internal control components and 15 underlying principles to be significant to the audit objective.

1. **Control Environment** – The foundation for an internal control system. It provides the discipline and structure, which affect the overall quality of internal control. It influences how objectives are defined and how control activities are structured. The oversight body and management establish and maintain an environment throughout the entity that sets a positive attitude toward internal control.

Demonstrate Commitment to Integrity and Ethical Values – The oversight body and management should demonstrate a commitment to integrity and ethical values. We found some commissioners had not correctly completed and timely filed their statements of financial interests (Observation No. 23).

Exercise Oversight Responsibility – The oversight body should oversee the entity's internal control system. We found the Commission had not fully established an effective internal control system by developing a strategic plan, defining objectives, developing comprehensive policies and procedures, or resolving prior audit findings (Observations Nos. 5, 8, 11).

Establish Structure, Responsibility, and Authority – Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives. We found the Commission had not developed comprehensive policies and procedures, investigators had been assigned to non-investigatory tasks, and the Commission needed a supervisory investigator position (Observation Nos. 2, 8, 10, 15, 17, 18).

Demonstrate Commitment to Competence – Management should demonstrate a commitment to recruit, develop, and retain competent individuals. We found the training manuals provided to investigators and commissioners were outdated, contained errors, and were haphazardly organized. We also found training provided to new investigators and commissioners needed improvement (Observation Nos. 8, 16).

Enforce Accountability – Management should evaluate performance and hold individuals accountable for their internal control responsibilities. We found the Commission needed comprehensive performance measurement, and had not developed comprehensive policies and procedures, promulgated administrative rules, and had not adopted reasonable fees and forms (Observation Nos. 7, 8, 20, 21, 22).

2. **Risk Assessment** – Having established an effective control environment, management assesses the risks facing the entity as it seeks to achieve its objectives. This assessment provides the basis for developing appropriate risk responses. Management assesses the risks the entity faces from both external and internal sources.

Define Objectives and Risk Tolerances – Management should define objectives clearly to enable the identification of risks and define risk tolerances. We found the Commission needed to develop a strategic plan, define objectives, and conduct a risk assessment (Observation Nos. 5, 6).

Identify, Analyze, and Respond to Risks – Management should identify, analyze, and respond to risks related to achieving the defined objectives. We found the Commission had not developed a strategic plan and defined objectives, completed a formal risk assessment, identified risks of including confidential information in its training manuals, and had not used encrypted email (Observation Nos. 5, 6, 9, 19).

Identify, Analyze, and Respond to Change – Management should identify, analyze, and respond to significant changes that could impact the internal control system. We found the Commission had not developed a strategic plan or defined objectives, had not identified a case management system that could generate statistics for its operations, needed a supervisory investigator position to oversee an increase of investigators, and had not performed required reconciliations (Observation Nos. 4, 5, 18, 25).

3. **Control Activities** – Control activities are the actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system, which includes the entity’s information system.

Design Activities for the Information System – Management should design the entity’s information system and related control activities to achieve objectives and respond to risks. We found the Commission had not developed comprehensive policies and procedures, or updated its training manuals, making it difficult to design and use an effective information system (Observation Nos. 4, 8, 25).

Implement Control Activities – Management should implement control activities through policies. We found the Commission had not established comprehensive policies and procedures reflecting all its significant practices (Observation Nos. 8, 10, 12, 13, 14, 17).

4. **Information and Communication** – Management uses quality information to support the internal control system. Effective information and communication are vital for an entity to achieve its objectives. Entity management needs access to relevant and reliable communication related to internal as well as external events.

Use Quality Information – Management should use quality information to achieve the entity’s objectives. We found the Commission had not ensured cases were processed timely, partially due to the lack of an information system that could track how long it took to process a case and the lack of a comprehensive performance measurement system (Observation Nos. 1, 3, 7).

Communicate Internally – Management should internally communicate the necessary quality information to achieve the entity’s objectives. We found the Commission could not accurately determine how long it took to process a case (Observation No. 1).

Communicate Externally – Management should externally communicate the necessary quality information to achieve the entity’s objectives. We found the Commission could not accurately determine how long it took to process a case and had not filed required biennial reports (Observation Nos. 1, 13, 24).

5. **Monitoring** – Since internal control is a dynamic process that has to be adapted continually to the risks and changes an entity faces, monitoring of the internal control system is essential in helping internal control remain aligned with changing objectives, environment, laws, resources, and risks. Internal control monitoring assesses the quality of performance over time and promptly resolves the findings of audits and other reviews. Corrective actions are a necessary complement to control activities in order to achieve objectives.

Perform Monitoring Activities – Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results. We found administrative rules were expired, forms and fees had not been adopted in administrative rules, fees had not been determined to be reasonable, and the Commission records had not been reconciled to the federal ARC database (Observation Nos. 20, 21, 22, 25).

Evaluate Issues and Remediate Deficiencies – Management should remediate identified internal control deficiencies on a timely basis. We found the Commission did not resolve seven of 10 observations (70 percent) included in our 2019 financial audit report (Observation No. 11).

**STATE OF NEW HAMPSHIRE
NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS**

**APPENDIX B
COMMISSION RESPONSE TO AUDIT**

New Hampshire Commission for Human Rights

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January 17, 2025

The Honorable Kenneth Weyler, Chairman
Joint Legislative Fiscal Committee
Legislative Office Building
33 N. State Street
Concord, NH 03301

Dear Representative Weyler,

The Commission for Human Rights thanks the Audit Division of the Office of Legislative Budget Assistance for their efforts during the Commission's performance audit.

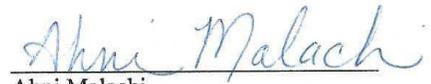
The performance audit and report gives the Commission helpful guidance on improving its operations. Over the past couple of years, the Commission had conducted its own examination of how to improve its efficiency and the performance audit reiterates and emphasizes much of what the Commission had considered, such as acquiring a digital case management system, reorganizing duties within the office, and establishing firm deadlines for parties in its cases. The performance audit provides helpful guidance on incorporating much of what it had considered into its rules or policies, which ensures that its practices are transparent and consistent.

As detailed in the Commission's responses, the Commission has implemented or begun implementation of several recommendations, such as acquiring a digital case management system and updating training materials for investigators and commissioners, and anticipates addressing the remaining recommendations in the coming months.

The Commission appreciates that the performance audit recognized that the concerns which served as the foundation for requesting the performance audit, such as the backlog of cases and the time taken to assess cases, have been long standing issues that the Commission has worked to manage with limited resources. The Commission believes that the additional resources it has been allocated in the most recent budget cycle, which fell outside the scope of the audit's purview, will enable it to further address those issues and reduce or even eliminate its backlog of cases.

The Commission is grateful to the auditing team for its collaboration.

Sincerely,

A handwritten signature in blue ink that reads "Ahni Malachi". The signature is written in a cursive style with a horizontal line underneath the name.

Ahni Malachi
Executive Director, Commission for Human Rights

**STATE OF NEW HAMPSHIRE
NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS**

**APPENDIX C
ATTORNEY SURVEY RESULTS**

In January 2024, we sent a survey link to attorneys assigned to cases that were closed by the Commission for Human Rights (Commission) during State fiscal year (SFY) 2023. The surveys were designed to identify Commission deficiencies rather than to identify positive attitudes towards existing practices. We gathered email addresses from the closed case files for 35 charging party attorneys and 99 responding party attorneys for a total of 134 attorneys. We received 31 complete responses for a 23.1 percent response rate. All responses from charging party attorneys and responding party attorneys were aggregated. All comments below were verbatim except for some minor changes in spelling or grammar and personally identifiable information that has been redacted. Some totals in the following tables may not add up to 100 percent due to rounding or where respondents could provide multiple responses to the same question.

Question 1. Overall, based on your experience, how satisfied were you with the Commission’s case filing process?		
Answer Options	Count	Percent
Very satisfied	5	16.1
Somewhat satisfied	12	38.7
Neither satisfied nor dissatisfied	11	35.5
Somewhat dissatisfied	0	0.0
Very dissatisfied	3	9.7
	<i>respondent answered question</i>	31
	<i>respondent skipped question</i>	0

Question 1. Please briefly describe why you were dissatisfied with the Commission’s case filing process.	
Comments	Count
No active review by Commission, upon filling, or merit determination.	1
Entire files have been lost; original pleadings have been lost; Commission deflects or refuses to accept blame for losing files and for failing to properly process files; Commission claims to attempt to make service on entities and individuals when I am nearly positive that they have not done so.	1
	<i>provided comment</i>
	2

Question 2. Generally, how would you rate the Commission’s case filing efficiency? Efficiency is the ability to accomplish a goal or task in a manner that minimizes the waste of resources.		
Answer Options	Count	Percent
Very efficient	3	10.0
Somewhat efficient	10	33.3
Neither efficient nor inefficient	10	33.3
Somewhat inefficient	3	10.0
Very inefficient	4	13.3

respondent answered question **30**

respondent skipped question **1**

Question 2. Please briefly describe why you believe case filing was less than efficient.	
Comments	Count
Respondents are required to file prompt responses (within 10-30 days), but it will then be well over a year before an investigator is assigned and then more than 6 months to a year or more before the investigator requests additional information.	1
Commission takes an inordinate amount of time to process cases upon filing and/or to notify other parties.	1
No online case filing or tracking capability, no docket report to check or confirm what has been filed, email communications and notifications are often tardy and are delivered very unevenly.	1
There have been some significant delays between filing and notice to respondent.	1
The Commission took two years to conduct an “investigation,” which consisted of the collection of initial responses and production of documents, and absolutely no follow up. After a two-year silence, the Commission hurriedly issued a finding that was riddled with clear, factual misstatements that are likely attributable to the delay between “investigation” and issuance of finding. During the intervening two years, HUD carried out an interactive investigation and concluded no discrimination existed. The NH Commission, after two years and very little attempt at fact-finding, found the opposite. This seems problematic.	1
The charge was not supported by relevant/credible facts and it dragged on for over 3 years.	1
Perhaps I’ve jumped ahead to another question, but I routinely remove my cases as they take longer than the statute of limitations to resolve. There simply isn’t enough trained staff to do the work.	1
I received a probable cause finding more than three years after filing.	1

provided comment **8**

Question 3. Generally, how would you rate the Commission’s case filing effectiveness? Effectiveness is producing the intended results from operational processes.

Answer Options	Count	Percent
Very effective	8	26.7
Somewhat effective	5	16.7
Neither effective nor ineffective	12	40.0
Somewhat ineffective	3	10.0
Very ineffective	2	6.7

respondent answered question **30**

respondent skipped question **1**

Question 3. Please briefly describe why you believe case filing was less than effective.

Comments	Count
The Commission seems to have its own agenda, and some investigators seems to create evidence to get the result they want, specifically probable cause findings.	1
For my clients, fine, I just completed, notarized EEOC 5 form from continuation pages. However, pro se employees, I understand, first do a phone call; then complete some questionnaire; then get the draft charge of proof, possibly ask for corrections, then they have to go to a notary and then have to get it back to the Commission, all before the 180-day deadline which can pass in the interim.	1
Delays serve no one.	1
Because in most cases, there is no effort to process cases and serve defendants in anything approaching a timely fashion. I have NEVER seen the Commission conduct an investigation with any sort of care. Investigators often show a marked lack of respect for employers in the rare instances they bother speaking with their representatives during interviews.	1

provided comment **4**

Question 4. Overall, based on your experience, how efficient was the Commission’s investigation process?

Answer Options	Count	Percent
Very efficient	0	0.0
Somewhat efficient	4	13.8
Neither efficient nor inefficient	2	6.9
Somewhat inefficient	7	24.1
Very inefficient	16	55.2

respondent answered question **29**

respondent skipped question **2**

Question 4. Please briefly describe why the Commission's investigation process was less than efficient.	
Comments	Count
After the filing of a position statement, it is generally a year before an investigator is assigned. During this time, witnesses can move, memories can fade, even with care documents can be lost. The process is simply too long.	1
Over the last few years, the investigators in my cases never reached out or talked to my witnesses. In other words, cases were delayed for years and then decided without talking to witnesses.	1
It can take over a year before an investigator is even assigned; and when they are, they are swamped.	1
The Commission falls so far behind that they seem to conduct only a partial, one-sided investigation, including not interviewing all the witnesses they should interview.	1
Cases literally sit in the Commission for years without any interviews being done.	1
Takes an inordinate amount of time to investigate, frequently request the same documentation more than once, very little follow through once provided, slow to the point of being inert.	1
In my experience it has been taking approximately 18 months to have an investigator assigned after the response is filed.	1
Investigations are slow. Requests for information are usually burdensome and do not appear directed at the legal issues actually framed by RSA 354-A or Title VII. Defense witnesses are almost never interviewed prior to assessing probable cause. Investigators seem to lack basic understanding of the concepts of severity or pervasiveness required to find violations of Title VII or 354-A in harassment cases. Investigators routinely appear to find pretext without any meaningful explanation for doing so in making probable cause determinations. Investigative reports are so poorly drafted and thought out that it is impossible to ask employers to respect the process.	1
Charges remain pending for months if not years, investigators rarely conduct interviews, summation letters issued without actually investigating merits.	1
The entire process takes a very long time. It often takes years for an investigator to even be assigned to a case.	1
They do not have enough investigators, the investigators do not all seem well-trained, complainants cannot propound document requests, the investigators do not always speak to key witnesses, and the process takes forever.	1
Takes forever such that most are inclined to file because it is required and then off to court. They need more resources to investigate effectively.	1

Question 4. Please briefly describe why the Commission’s investigation process was less than efficient. (Continued)	
Comments	Count
<p>The Commission’s investigation process has been, in my opinion, terrible in the past many years. I have been practicing before the Commission for over 20 years. I represent almost exclusively claimants. It takes YEARS for cases to even get assigned to investigators. When a case is finally assigned to an investigator, the investigations are almost always not good. I have personal experience in the past 2 years of an investigation where a complainant got a NO PROBABLE CAUSE FINDING and not a single employee of the Respondent was interviewed. It was a race discrimination case. It was deplorable. The employer actually joined in our Motion to Reconsider to have the case re-assigned to a new investigator and for a real investigation to be done. I frequently have potential clients contact me who were PRO SE before the Commission, and the Commission finally renders a probable cause finding in their case in MORE THAN 3 YEARS. There is a 3-year statute of limitation for claims under RSA 354-A. So when it takes the Commission more than 3 years to find PROBABLE CAUSE, the Complainant has then LOST his/her ability to file the case in the Superior Court under RSA 354-A. The Commission is not working. It is underfunded and does not have sufficient resources to do its job. There needs to be more than one attorney working at the Commission. Also, for more than 30 years, the Commission has been operating under expired Regulations. It is one of the MOST important agencies in the state, and hasn’t had regulations (that weren’t EXPIRED) for more than 30 years. Again, deplorable. Based on my discussions with even defense counsel (many of whom I know well from practicing for 32 years in NH), no one has confidence in the Commission. The process is not good for complainants or respondents. Cases filed at the Commission simply go into a BLACK HOLE unless a complainant is represented by counsel, and counsel removes the case from the Commission and files in Court. We no longer keep cases at the Commission. After a case has been at the Commission for 180 days, we immediately pull the case out of the Commission and file in Court. We can go through full-blown Court litigation, and get a jury verdict for our client (or a good settlement) much more quickly than the case could ever make its way through the Commission.</p>	1

Question 4. Please briefly describe why the Commission’s investigation process was less than efficient. (Continued)	
Comments	Count
The Commission took two years to conduct an “investigation,” which consisted of the collection of initial responses and production of documents, and absolutely no follow up. After a two-year silence, the Commission hurriedly issued a finding that was riddled with clear, factual misstatements that are likely attributable to the delay between “investigation” and issuance of finding. During the intervening two years from filing to finding, HUD carried out an interactive investigation and concluded no discrimination existed. The NH Commission, after two years and very little attempt at fact-finding, found the opposite. This seems problematic.	1
Extremely long delay before assignment of investigator; no effort whatsoever by investigators to interview relevant witnesses from both sides - it seems only complainants are interviewed; requests for information that are not tailored to the allegations in the case; requests for information that are redundant of what has already been produced in the case; unnecessarily short deadlines for responding to requests for information.	1
Investigators are sometimes not assigned as late as a year after filing, investigators sometimes do not interview witnesses, investigators sometimes do not enforce the procedural rules.	1
There doesn’t appear to be a sufficient number of investigators for the number of charges filed as it has taken a year and half from filing before an investigator is assigned to a case.	1
The process takes way too long. In many instances the cases are not even assigned to an investigator until several months after the position statement and initial response is received.	1
As previously mentioned, the charge was filed in 2019 and was not dismissed until 2022. Charging party was able to file lengthy, rambling rebuttals and the case was pending for a long period of time. I think had someone looked closely at the claims involved it might have been more quickly dismissed.	1
There were long delays in responding to inquiries, the investigator(s) changed throughout the pendency of the case, the notifications to the parties were inconsistent, the investigators made errors regarding who was notified and when, the investigation process was not transparent, investigation notes were not divulged, interviews with the witnesses were not recorded or thoroughly documented.	1

Question 4. Please briefly describe why the Commission’s investigation process was less than efficient. (Continued)	
Comments	Count
Defense counsel regularly allow cases to sit at the Commission knowing they won’t be investigated in less than 3 years. People proceeding pro se then lose the right to bring their cases as the statute of limitations passes. The investigators turn over too often, aren’t paid enough, aren’t all lawyers, have too large caseloads and the cases just linger. I almost always remove my cases at the six month mark because as slow as court is, it’s faster than the Commission.	1
My client had a charge filed against it in May 2022. We filed a timely response outlining the Commission’s lack of jurisdiction in June 2022. The charge was dismissed for lack of jurisdiction in December 2023. Additionally, I was retained for the conciliation portion of two 2019 charges for which there was a probable cause finding made in 2023.	1
<i>provided comment</i> 22	

Question 5. Overall, based on your experience, how effective was the Commission’s investigation process?		
Answer Options	Count	Percent
Very effective	1	3.6
Somewhat effective	7	25.0
Neither effective nor ineffective	2	7.1
Somewhat ineffective	7	25.0
Very ineffective	11	39.3
<i>respondent answered question</i>		28
<i>respondent skipped question</i>		3

Question 5. Please briefly describe why the Commission’s investigation process was less than effective.	
Comments	Count
Delays and understaffing.	1
Because the investigators are not experts in the law, they fail to ask for evidence from the employers that would be required.	1
Same as previous.	1
Ultimately a decision was reached but the investigation was a long-drawn-out process and cases seem to be investigated twice before a decision is reached. All too often investigators requested information or documents that were already provided. There does not appear to be any review of case filings to see if the filing meets statutory or administrative rule requirements prior to investigation.	1
I’ve been told in several cases that none of the witnesses I listed were contacted.	1
See previous answers. Plaintiffs are mis-served by the length of proceedings. Defendants are mis-served by the low-quality investigations.	1

Question 5. Please briefly describe why the Commission’s investigation process was less than effective. (Continued)	
Comments	Count
There’s barely an investigation and interviews are conducted with a strong, evident bias and assumption of wrongdoing.	1
In some cases, the Commission did not interview witnesses that should be interviewed. The Commission’s rules are expired and some attorneys do not respond to discovery requests on that basis. This results in incomplete investigations.	1
Too few investigators, investigators not all well-trained, key witnesses not always interviewed, parties cannot have document requests answered. I had one investigation that [Employee] closely supervised (at my request I believe) - and one was well done in my opinion. I believe they need more attorneys as investigators since they are really analyzing the facts under the law.	1
Very little investigation, long delay, incorrect factual findings (putting aside the application of law to fact).	1
Insufficient resources to accomplish the task.	1
I am not aware of any investigation that was conducted, other than a request for charging party’s personnel file.	1
See my last set of comments. Terrible for all of the reasons stated. In addition -- parties are not required to exchange documents at the Commission. Under the EXPIRED regulations, parties can propound Interrogatories but NOT requests for production of documents. As a result, even if a complainant asks respondent (or respondent’s counsel) for production of documents while the case is at the Commission, respondents regularly simply say "NO!" And -- because charges of discrimination (filed) sit in a holding pattern for so long, it is extremely difficult to get fair settlements while a case is pending at the Commission. Defendants know that the Commission won’t do anything with a case for 2 or 3 or even 4 years....and so they know they can hold onto their money, and invest their money, and as a result, they rarely offer any fair settlement offers while a claim is sitting the Commission.	1
As stated in the preceding response, it takes too long for assignment of investigator, few if any interviews are conducted for any relevant witnesses for respondents; motions filed take too long for determinations.	1
It is less than effective because of the duration of time that cases are in the investigation process. The lengthy delay in investigating is detrimental to both parties.	1
See previous summary.	1
See my previous answer.	1

provided comment 17

Question 6. Overall, in your experience, were the Commission's investigations conducted timely?		
Answer Options	Count	Percent
Yes	0	0.0
No	25	92.6
Don't know	2	7.4
<i>respondent answered question</i>		27
<i>respondent skipped question</i>		4

Question 7. Overall, how satisfied were you with the quality of the Commission's investigations?		
Answer Options	Count	Percent
Very satisfied	1	3.7
Somewhat satisfied	6	22.2
Neither satisfied nor dissatisfied	5	18.5
Somewhat dissatisfied	9	33.3
Very dissatisfied	6	22.2
<i>respondent answered question</i>		27
<i>respondent skipped question</i>		4

Question 8. Generally, how often were your clients interviewed by an investigator?		
Answer Options	Count	Percent
Always	3	11.1
Often	4	14.8
Sometimes	3	11.1
Rarely	7	25.9
Never	7	25.9
Don't know	3	11.1
<i>respondent answered question</i>		27
<i>respondent skipped question</i>		4

Question 9. Generally, how often were the parties recorded during their interview with an investigator?		
Answer Options	Count	Percent
Always	6	35.3
Often	1	5.9
Sometimes	2	11.8
Rarely	3	17.6
Never	2	11.8
Don't know	3	17.6
<i>respondent answered question</i>		17
<i>respondent skipped question</i>		14

Question 10. Did the interviews still occur if a party withheld consent to being recorded?		
Answer Options	Count	Percent
Yes	1	16.7
No	0	0.0
Don't know	5	83.3
<i>respondent answered question</i>		6
<i>respondent skipped question</i>		25

Question 11. In your opinion, how often does the investigating commissioner reach an appropriate conclusion based on the evidence?		
Answer Options	Count	Percent
Always	1	3.7
Often	6	22.2
Sometimes	9	33.3
Rarely	4	14.8
Never	0	0.0
Don't know	7	25.9
<i>respondent answered question</i>		27
<i>respondent skipped question</i>		4

Question 11. Please briefly describe why you believe the investigating commissioner reached an appropriate conclusion based on the evidence.	
Comments	Count
In some cases, the investigator seems to twist the evidence presented to get the conclusion they want. In some cases, the investigator has raised issues on behalf of the complainant.	1
Because of delays memories fade and that is assuming witnesses are interviewed.	1
They fail to pass to hearing factual issues involving material facts.	1
They don't always address the relevant legal issues.	1
Cannot complete in a confidential manner. In general, when an investigation reaches a conclusion, probable cause is always found, even in cases where there is nothing more than a self-serving statement by a plaintiff that is contrary to volumes of documentary evidence and that would be contradicted if the investigator cared to interview anyone who was not personally interested in the outcome of the case.	1
As noted, the investigators seem to ignore case law and barely conduct interviews in hopes that the case goes away through mediation or removal, or that pro se claimants will just be fine festering with inaction. Probable cause findings seem to be the default.	1
Usually due to inadequate investigation and/or the lack of discovery of relevant documents.	1

Question 11. Please briefly describe why you believe the investigating commissioner reached an appropriate conclusion based on the evidence. (Continued)	
Comments	Count
It is unfathomable how a determination can be made without interviewing people from the respondent's side.	1
Had the investigation been done timely, witness testimony would have been available and more accurate. Also, investigators are so backlogged that they are not as thorough in investigating as they used to be.	1
Generally, I find that where probable cause is not found, there is no legal analysis performed, which I think if done, would change the outcome of the investigator's report as it would force the facts to be applied to the law. Generally, I find that investigators draft an extremely long version of the facts without identifying those which are pertinent for determining whether there is probable cause for discrimination, or if they do, without explaining why they are pertinent or otherwise analyzing them. Additionally, I find that some parts of claims are not addressed, but which the facts would support a probable cause finding. For example, you might have a charge against two respondents with claims that are different from each other, but an "analysis" is only performed as to one, yet, the outcome is the same for both, without explanation as to the unanalyzed respondent. There are also times where multiple claims are brought, but only one claim is analyzed. It leaves uncertainty as to the outcome for the other claims.	1
The evidence was very clear, the complainant was being untruthful, it is evidenced in her voluminous writings to the Commission, which should not have been considered, as they were unsolicited and not part of any process, but the commissioner either did not notice the untruths, inconsistencies in stories, attempts to conflate and distract from the issues, or disregarded same. The whole process had the feel that there was something going on of which we were not made aware. The commissioner would refer to statements or documents that had not been divulged to us, despite our requesting the entire file during discovery.	1
I'm an advocate and I often disagree with decision makers, including the investigators. That said, it is generally believed among the employment bar that the Commission leans toward employers in their investigations. That is not my experience, but it is part of the Commission's reputation.	1
	12

provided comment

Question 12. Overall, do you believe the investigations were conducted impartially?		
Answer Options	Count	Percent
Yes	8	30.8
No	7	26.9
Don't know	11	42.3

respondent answered question **26**
respondent skipped question **5**

Question 12. Why do you believe the investigations were not conducted impartially?	
Comments	Count
There is the appearance of bias toward the filing party and/or preconceived wrongdoing on the part of the opposing party.	1
Because of the overwhelming percentage of cases where probable cause is found when a fair application of facts to law would show that a plaintiff cannot, e.g., overcome the employer's legitimate nondiscriminatory reason for an employment decision. Also, because investigators have never, in any case I have defended, interviewed the individuals that a defendant has identified as having important firsthand information.	1
Investigators do not hide bias when interviewing.	1
I do not think that a reasonable fact-finder could determine that a landlord's decision to enforce a uniformly-applied prohibition on large public gatherings on its private property during a pandemic is discriminatory. Therefore, some bias must exist.	1
As stated in prior responses, it has been over five years since I have had any respondent interviewed by the Commission.	1
I don't believe any investigation is conducted impartially when only witnesses on ONE SIDE of the dispute are interviewed. See my prior answers. FREQUENTLY, investigators ONLY interview the complainant, and never interview employees of the respondent OR witnesses that the complainant lists on his/her witness list (submitted to the Commission.) That practice simply does not make for an impartial investigation. NEVER would any court proceeding involve witnesses from only ONE SIDE OF A DISPUTE. It is a ridiculous notion, and it is patently unfair to complainants. And -- I would imagine a respondent would not like it either -- if, for example, a PROBABLE CAUSE finding was rendered AFTER only the complainant was interviewed -- and employees of the respondent were NOT interviewed.	1
The Commission gave the complainant advice on how and what to file, how to word it, what steps to take next. The complainant had the advantage of having someone "on their side" that knew how the system worked inside out. The complainant was very forthcoming that the Commission was aiding her, at one point, referring to them as her counsel.	1

provided comment 7

Question 13. Overall, do you believe probable cause determinations were made impartially by the investigating commissioner?		
Answer Options	Count	Percent
Yes	9	34.6
No	6	23.1
Don't know	11	42.3

respondent answered question 26
respondent skipped question 5

Question 13. Please briefly explain why you believe probable cause determinations were not made impartially.	
Comments	Count
See previous answers.	1
See past responses based on conduct by the investigators. They are pleasant to deal with and courteous, but seemingly ignore case law and punt to probable cause without interviewing sometimes a single witness.	1
Please see prior response.	1
Insufficient resources.	1
Impartiality cannot co-exist in the absence of hearing what both sides have to say.	1
By the Commission's own definition of probable cause, the complainant did not meet the threshold, her stories were inconsistent and her evidence was easily refuted with proof of dates, personnel records, witnesses. Yet probable cause was found.	1

provided comment **6**

Question 14. Overall, do you believe the investigators were competent in conducting investigations?		
Answer Options	Count	Percent
Yes	8	30.8
No	12	46.2
Don't know	6	23.1

respondent answered question **26**
respondent skipped question **5**

Question 15. Overall, do you believe investigators were competent in conducting interviews?		
Answer Options	Count	Percent
Yes	9	34.6
No	7	26.9
Don't know	10	38.5

respondent answered question **26**
respondent skipped question **5**

Question 16. Overall, do you believe Commission staff were knowledgeable of current statutes and case law in the cases you were involved in?		
Answer Options	Count	Percent
Yes	10	40.0
No	8	32.0
Don't know	7	28.0

respondent answered question **25**
respondent skipped question **6**

Question 17. In your opinion, was mediation offered early enough in the process to efficiently and effectively resolve disputes?		
Answer Options	Count	Percent
Yes	15	60.0
No	8	32.0
Don't know	2	8.0
<i>respondent answered question</i>		25
<i>respondent skipped question</i>		6

Question 18. How often was mediation offered to your clients?		
Answer Options	Count	Percent
Always	15	60.0
Often	5	20.0
Sometimes	1	4.0
Rarely	1	4.0
Never	1	4.0
Don't know	2	8.0
<i>respondent answered question</i>		25
<i>respondent skipped question</i>		6

Question 19. If there is anything else you would like to share, you may do so here.	Count
The investigators vary in competence, and they are not attorneys. They do not seem to understand that in the real world, there are limitations to what an employer can do for an employee and still run a business. They also never seem to believe that an employee actually was not performing well, and it had nothing to do with a protected characteristic. Overall, the Commission feels more employee friendly than neutral.	1
The current staffing is not adequate and the executive director should be an experienced employment law attorney admitted to the NH bar.	1
This agency should either be completely overhauled or eliminated. As constituted, it serves no purpose.	1
I have always been impressed by the way the Commission handles discrimination cases.	1
It would be very helpful if we could switch to electronic filing. Maintaining paper files is now just too cumbersome. The reason why not all my cases proceed to the investigation phase is because I usually remove them so we can pursue them in Court. Of the investigations that I have participated in, I have been impressed with the quality of the interviews and the analysis of the written probable cause findings -- which are usually supported by the evidence.	1

Question 19. If there is anything else you would like to share, you may do so here. (Continued)	Count
I think the investigators need more training. I think there is only one attorney working at the Commission, and that is not enough. The Commission needs more attorneys to oversee investigations and more staff to move the process along faster. Concluding the process in a timely manner is beneficial to complainants and respondents.	1
I don't generally blame the individual investigators -- they are understaffed and overworked -- the legislature needs to fix this. In addition, their roles should really be filled by attorneys. However, I have represented both charging parties and respondents and the delay in this system is not acceptable to either side. I also do not think respondents should be able to remove after probable cause findings because cases may be left at the Commission because the charging party is pro se and/or because the damages are not large enough to justify court litigation. It is important for those cases to have a forum in NH.	1
It doesn't matter that mediations are offered early to the parties. Mediation is rarely productive in a system where a respondent knows that if it only offers nuisance value to resolve a case, once in a while, a complainant (frequently PRO SE) will take their measly offer. Good faith settlement offers that actually reflect the value of the case are nearly NEVER made in Commission mediations (except, sometimes in sexual harassment case) because respondents know that the case will take so long to go through the system, that it just holds onto its money (and makes interest on its money) and respondents hope that PRO SE complainants will NOT be able to find counsel, and hope that maybe the Commission will NEVER GET AROUND TO INVESTIGATING THE CHARGE OF DISCRIMINATION. Very sad. We do not have a functioning Human Rights Commission. I think [employee] and [employee] -- the people I most often deal with -- are both EXCELLENT -- but it takes more than 2 people to handle the business of one of the most important state agencies in the state. Thank you for letting me participate in this survey.	1
I have greater experience working with the Maine Commission, and find its investigative process to be more efficient, thorough, and accurate.	1
Commission needs more resources. Mediation skills need to be upgraded. It's more than relaying positions. Mediators need to be able to assess disputes and credibly predict outcomes when interacting with parties. Now, mediators aren't taken as being very credible.	1
Although the Commission offers a fine free mediation service, it has no mechanism for allowing the parties to select a mediator. Mediators are often selected in the private sector based on the type of case, the personalities of the parties and the personalities of attorney. It would be beneficial to all if the Commission offered parties a choice of one of three mediators, so the parties or their counsel could more appropriately select someone for the alternative dispute resolution.	1
I would like it to be a rule that no findings can be made without interviewing witnesses. These cases require credibility determinations which can only be made by interviewing the parties. If a party is unresponsive to another party or the investigator's requests, the Commission should take appropriate action. The Commission has enforcement power and should use it when appropriate.	1

Question 19. If there is anything else you would like to share, you may do so here. (Continued)	Count
<p>In my opinion, mediation should be a mandatory prerequisite to an investigator being assigned. In my opinion, investigators should be assigned earlier. In my opinion, investigators should identify the sources of their facts in their investigative reports, especially when relying upon documents provided to them. In my opinion, investigators should draft a thorough legal analysis that applies the law to the facts, similar to judicial opinions, rather than simply reiterating the facts of the case, and then stating conclusions of law at the end of the report (this is true for both cases in which probable cause is found and where it's not). In my opinion, commissioners should thoroughly review and analyze the investigator's report, and if appropriate, send the report back to the investigator for further review/analysis/etc., and or decline to adopt the findings and state a different conclusion. In other words, the commissioner should not simply act as a rubber stamp for the investigator's findings.</p>	1
<p>[Employee] is a tremendous resource and very effective mediator. Very friendly as well.</p>	1
<p>There are definitely problems with Commission process, but I believe those problems are more based on the statutory framework than the Commission's personnel.</p>	1
<p>This process was anything but impartial. As the representative of the employer, I always felt like I was fighting against the Commission and the complainant. I understand the role of the Commission to insure employee's rights, etc. but this was so one-sided, so poorly processed. Deadlines for me were firm, for the complainant, there were no deadlines. The complainant was allowed to freely story-tell, and those writings were taken into consideration. These writings were not a formal part of any process or solicited from the Commission, the complainant would just submit random long letters telling tales in an attempt to grab sympathy for herself for events that had nothing to do with the case, but were about her past life events and subsequent to employment events. She added allegations and events throughout the process. And all of it was taken as fact and truth. We even provided evidence of social media posts by the complainant congratulating herself for winning, and lying about the outcome, before there even was an outcome. The Commission ignored the evidence.</p>	1
<p>Mediation is meaningless at the early point it is offered. Cases can't resolve until they are worked up and each side is educated about the other side's case. Early mediation means an undersized, unjust settlement. Additionally, as I've acted as a volunteer mediator, I can tell you that, early in the process, neither party is prepared for mediation, they are just guessing. It has been a near total waste of the mediator's (read: my) time. Cases should be much further into the process, just prior to a finding, for mediation to be effective. In the real practice of law, no one mediates before depositions and the exchange of discovery. How can I evaluate my risk?</p>	1

respondent answered question

17

	<u>Status</u>
<p>2019-5 Strengthen Payroll Controls</p> <p><i>Ensure employees have sufficient training for assigned responsibilities. Establish an appropriate review and approval process to prevent or detect and correct errors in a timely manner. When controls cannot be performed due to vacant positions, the Commission should consider alternative ways to mitigate the risk by implementing a secondary control such as a detail review of payroll changes performed by management or by seeking assistance from the Department of Administrative Services.</i></p>	<p>● ●</p>
<p>2019-6 Part-Time Employee Leave Accrual Should Be Paid</p> <p><i>Comply with the statute and pay the employee the amount owed for accrued leave time. Obtain a clear understanding from statute and from the Department of Administrative Services over how part-time leave is to be tracked and paid and implement policies and procedures to annually, on the employee’s anniversary date, determine if an annual leave payout has been earned in compliance with RSA 98-A:6.</i></p>	<p>● ●</p>
<p>2019-7 Contract Documents Should Be Maintained And Utilized</p> <p><i>Ensure current copies of contract documents are on file and are periodically reviewed by employees involved in contracted activities. Policies and procedures to ensure compliance with the terms and conditions of the contract should also be reviewed and updated as contract changes are made.</i></p>	<p>● ●</p>
<p>2019-8 Establish Effective Systems And Controls Promoting Contract Compliance</p> <p><i>Review current paper-based case management file system that is supported by Word and Excel documents to track cases and discrimination statistics to determine if it is effectively meeting its current needs. Written policies and procedures should be established over the reconciliation process, including an effective review and approval control. When controls cannot be performed due to vacant positions, consider alternative ways to mitigate the risk by implementing a secondary control. For example, management could select cases closed during the period and agree pertinent information from the case file to the IMS. (See current Observation Nos. 4, 8, 25)</i></p>	<p>● ○</p>

Compliance Comments

State Compliance

Status

2019-9	<p>Contract Compliance Requirements Should Be Followed</p> <p><i>Maintain a current and complete set of contract documents, review the federal requirements, and enhance current policies and procedures to aid in contract compliance. Add to current staff personnel with the appropriate background to address the large case back log. Work with the federal EEOC to revise its contract, if funding is available, to secure reimbursement for a higher number of completed charge resolutions. The Commission should not intentionally delay the processing of cases in order to receive federal reimbursement. (See current Observation Nos. 1, 15)</i></p>	<p>● ○</p>
2019-10	<p>Administrative Rules For Fee Setting Should Be Developed</p> <p><i>Review the fees charged for photocopying materials and training sessions to ensure the fees charged are reasonable for the services provided. The reasonableness of the fees should be adequately documented and the fee schedule should be established in administrative rules. (See current Observation No. 21)</i></p>	<p>○ ○</p>
2019-11	<p>File Statutorily Required Report</p> <p><i>File statutorily required biennial reports. If the Commission determines the required reports are unnecessary, the Commission should request an appropriate revision to RSA 354-A:5, X. (See current Observation No. 24)</i></p>	<p>● ○</p>
2019-12	<p>Address Expired Administrative Rules</p> <p><i>Determine if the cited rules meet the criteria of RSA 354-A:5, V, and if so, readopt the required rules. (See current Observation No. 20)</i></p>	<p>● ○</p>

**2008 Financial Audit
Internal Control Comments**

Significant Deficiencies

	<u>Status</u>
<p>2008-3 Case Information Systems Should Be Periodically Reconciled</p> <p><i>Consider the need to continue utilizing a manual charge log. The Commission should determine whether the IMS could provide all information required by the Commission. If the Commission determines it needs to continue to maintain a manual charge log in addition to the IMS, the Commission should institute a review and reconciliation process for the two charge-status information systems to reasonably ensure the two systems report consistent and accurate information. Review the cause of the inconsistent information observed in the two systems during the six months ended December 31, 2008. Take steps to reasonably ensure the Commission's ongoing control processes will detect and correct similar errors in the future. (See current Observation No. 25)</i></p>	○ ○
<p>2008-8 Procedures Should Be Established To Remind Commission Members Of Statement Of Financial Interests Filing Requirements</p> <p><i>Establish procedures to annually remind Commission members of their statutory responsibility to submit a Statement of Financial Interests to the Secretary of State. (See current Observation No. 23)</i></p>	○ ○

<u>Status Key</u>	<u>Status</u>	<u>Count</u>
Resolved	● ●	3
Remediation In Process (action beyond meetings and discussion)	● ○	4
Unresolved	○ ○	<u>5</u>
	Total	12