



ANNUAL REPORT

Fiscal Year 2017

December 31, 2017

The Five Sitting VHRC Commissioners and their Terms of Appointment:

Mary Marzec-Gerrior, Chair	2008-2018
Nathan Besio	2007-2017 (pending re-appointment)
Donald Vickers	2008-2021
Mary Brodsky	2011-2019
Dawn Ellis	2015-2020

All appointments are for five-year staggered terms and expire on the last day of February.

Staff

Name	Position	Date of Hire
Karen Richards	Executive Director	3/18/2013
Nelson Campbell	Administrative Law Examiner	4/27/2010
Bor Yang	Administrative Law Examiner	11/30/2015
Ayn Lee Sing	Administrative Law Examiner	1/9/2017
Jocelyn Bolduc	Executive Staff Assistant	3/23/2015

Vermont Human Rights Commission

MISSION STATEMENT

The mission of the Vermont Human Rights Commission is to promote full civil and human rights in Vermont. The Commission protects people from unlawful discrimination in housing, state government employment and public accommodations. * The Commission pursues its mission by:

- Enforcing laws
- Conciliating disputes
- Educating the public
- Providing information and referrals
- Advancing effective public policies on human rights

* A public accommodation is an establishment such as a school, restaurant, office or store that offers facilities, goods or services to the public.

INTRODUCTION

The Vermont Human Rights Commission (VHRC) will celebrate 30 years in 2018 as the State's civil right enforcement agency. The VHRC has jurisdiction over claims of unlawful discrimination in housing, state government employment, and public accommodations. Public accommodations include any business or governmental unit that provides goods, services or facilities to the public (including but not limited to stores, restaurants, professional offices, and hospitals, and government agencies/entities (including schools). The VHRC has four statutorily mandated roles: enforcement, conciliation, outreach and education, and public policy development.

The law prohibits individuals or entities from taking adverse action (discriminating) against individuals in protected categories based on their membership in one or more of the categories. The Vermont Human Rights Commission enforces state anti-discrimination/civil rights laws; it does not enforce federal laws. Vermont law is broader than federal law in terms of the categories of people who are protected from discrimination. See page 5 for a list of the protected categories by type of case (federal categories are in bold type).

By its enabling statute, the Human Rights Commission is an enforcement agency. It does not represent either party in a complaint. The VHRC staff conduct impartial investigations of allegations of discrimination under the Vermont Fair Housing and Public Accommodations Act (VFHPA), 9 V.S.A. §4500 *et seq.*, the Vermont Fair Employment Practices Act (FEPA)(for State government employees only)¹ and the anti-harassment provisions of Title 16 (education), 16 V.S.A. §11 and §570 *et seq.* VHRC staff determine whether there are reasonable grounds to believe that unlawful discrimination occurred and make a recommendation to the Commissioners. During the course of the impartial investigation, VHRC staff seek to resolve complaints through conciliation and, if appropriate, formal mediation. If the Commissioners, after hearing, find reasonable grounds to believe that a person or entity discriminated against someone in a protected class, the executive director engages in post-determination conciliation efforts. If a settlement cannot be

¹ Individuals with discrimination complaints concerning private employment file their complaints with the Vermont Attorney General's Office, Civil Rights Division.

reached, the Commissioners can authorize the executive director to file suit in state court in furtherance of the public’s interest in a society free from discrimination.

The VHRC is also charged with increasing “public awareness of the importance of full civil and human rights for each inhabitant of this state;” examining “the existence of practices of discrimination which detract from the enjoyment of full civil and human rights;” and with recommending “measures designed to protect those rights.” 9 V.S.A. §4552. It is within these roles that the VHRC works to ensure equal justice, equal opportunity, and equal dignity without discrimination. In furtherance of these goals, VHRC staff speak with and provide training to individuals and groups about their rights and responsibilities under state and federal civil rights laws, work with individuals, agencies and groups to combat bias and bigotry, and supply information, legal analysis, and advice to the Legislative, Executive and Judicial branches.

JURISDICTION

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

HOUSING	PUBLIC ACCOMMODATIONS	STATE EMPLOYMENT
Race	Race	Race
Color	Color	Color
Sex	Sex	Sex
Religion	Religion	Religion
National Origin	National Origin	National Origin
Disability	Disability	Disability
Sexual Orientation	Sexual Orientation	Sexual Orientation
Marital Status	Marital Status	Ancestry
Gender Identity	Gender Identity	Gender Identity
Minor Children	Breastfeeding	Age
Public Assistance		Breastfeeding
		HIV blood test
		Workers’ Compensation
		Family/Parental Leave
		Place of birth
		Credit history
		Pregnancy accommodation

STRATEGIES TO ACHIEVE THE MISSION AND VISION

- Complaints alleging violations of anti-discrimination laws are investigated impartially and decided in a timely manner by the Human Rights Commission.
- Complainants and Respondents are offered timely and meaningful access to mediation services or informal means of conciliation that promote mutually satisfactory resolution of their dispute.
- VHRC staff offers information, referrals, educational programs and educational training to those who request these services. A small fee may be charged to cover expenses.
- The VHRC provides leadership in public policy development with respect to civil and human rights issues in Vermont, provides testimony to the legislature on such issues and advice to the executive and judicial branches upon request.
- VHRC staff engage in coalition and community activities that address the needs of members of protected categories.

VHRC PROGRAM OPERATIONS

VHRC Contact Information

Office hours:	7:45 a.m. - 4:30 p.m. Monday - Friday
Telephone number:	(800) 416-2010 (Toll Free Voice Line) (802) 828-2480 or 828-1625 (Voice)
Fax number:	(802) 828-2481
Mailing address:	14-16 Baldwin Street Montpelier, VT 05633-6301
E-mail address:	human.rights@vermont.gov
Website:	hrc.vermont.gov

Staffing

There are five Human Rights Commissioners appointed by the Governor, with the advice and consent of the Senate, for five-year terms. Commissioners may be re-appointed. The Commissioners meet regularly, usually monthly, to discuss and decide the merits of individual discrimination complaints, as well as to set the overall policy of the organization. (See page 2 for a listing of the Commissioners).

The VHRC also has a staff of five state employees. The Commissioners hire, supervise and direct the organization's executive director who also acts as the VHRC's legal counsel and legislative liaison. Karen Richards was hired as the executive director and began her work in March 2013. The executive director hires, supervises and directs the executive staff assistant, and three administrative law examiners/trainers. (See page 2 for a listing of staff)

COMPLAINTS

Phone Contacts

In FY17, the VHRC received 1037 calls for assistance from the general public. The vast majority of these calls do not result in formal complaints. Many of the calls are individuals seeking assistance for issues beyond VHRC's jurisdiction. Those are referred to other appropriate organizations. Other calls require a VHRC staff person to answer basic questions regarding Vermont's various anti-discrimination laws. VHRC does not provide legal counsel or advice. Some of the calls result in informal cases² and others in formal complaints. In FY17, there were two (2) informal cases and sixty (60) formal complaints accepted for processing

Enforcement Programs

Vermont's anti-discrimination laws protect people from discrimination based on race, color, sex, sexual orientation, religion, national origin, mental or physical disability, age, marital status and, gender identity. Different categories are protected in each area: housing, employment, and public accommodations. (See chart on page 5). For example, in addition to the above reasons, a person may not be denied housing because of the presence of minor children or due to receipt of public assistance (including housing assistance).

² An "informal case" is a situation, (often an accessibility issue), that can be resolved easily and does not require a full investigation.

A “complaint” as used in this report refers to those contacts that result in a formal VHRC investigation. For an allegation of discrimination to become a formal investigation, a citizen must allege the *prima facie*³ elements of a violation of Vermont’s discrimination laws in one of VHRC’s areas of jurisdiction - - housing, public accommodations or State government employment.

The staff receives and impartially investigates allegations of unlawful discrimination only after an individual has signed a complaint under oath. At the conclusion of the investigation, administrative law examiners write Investigative Reports that are reviewed and approved by the executive director. They are then distributed to the parties and to the Commissioners who consider these reports at their monthly meeting for their review and determination in executive session. The parties to the complaint (the complainant and the respondent) are invited to attend, present the reasons why they agree or disagree with the staff recommendation and answer questions from the Commissioners about the circumstances surrounding the complaint. The hearings are non-evidentiary. The information considered is the evidence presented in the investigative report from the administrative law examiner.

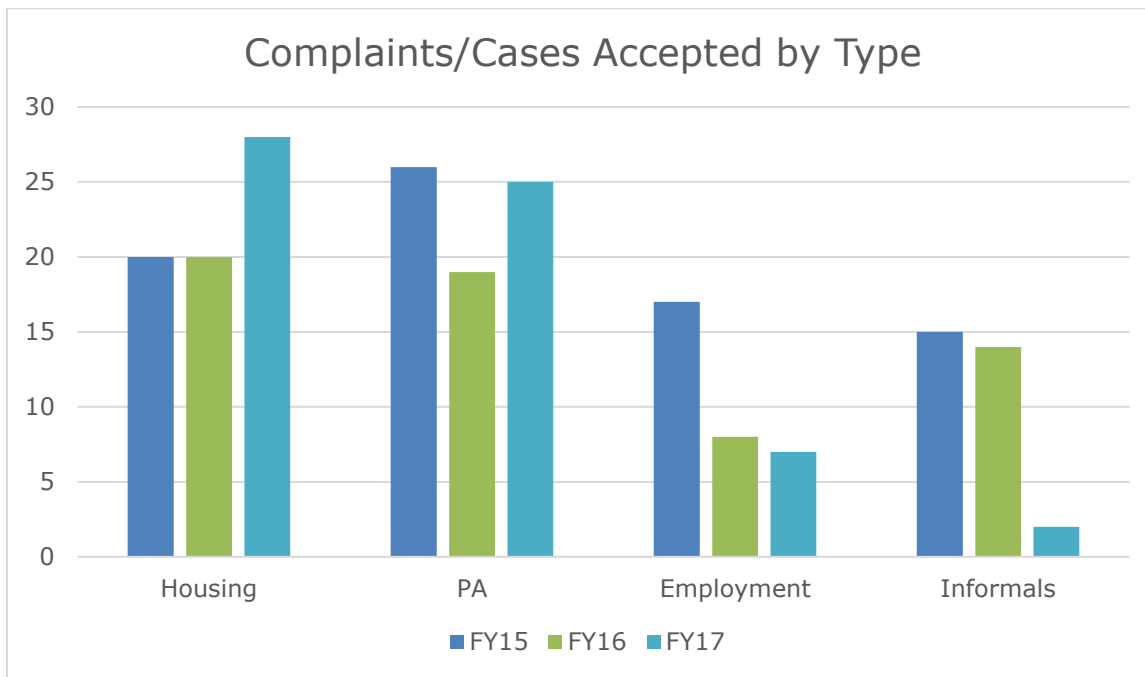
If the Commissioners determine that the evidence is sufficient (using a preponderance of the evidence standard) to show illegal discrimination, they reach a finding of reasonable grounds. The Investigative Report becomes a public record at that point. In addition, by statute all settlements of complaints filed with the VHRC are also public records. If the Commissioners issue a reasonable grounds finding, the executive director actively pursues settlement negotiations for a period of up to six months, either directly or through a professional mediator. Past settlements have included agreements not to discriminate in the future, modification of inaccessible premises or discriminatory policies, anti-discrimination education, letters of apology, compensation for damages, attorneys’ fees and modest civil penalties or reimbursement of costs to the VHRC.

If the Commissioners determine there are no reasonable grounds to believe that discrimination occurred, the case is closed and remains confidential. The parties are free to make the information about the case public if they so desire. Additionally, the complaining party may decide to pursue legal or other administrative action, but the VHRC is not a party to those actions.

³ A *prima facie* case lists the facts that if proven to be true would be a violation of the specific law. (e.g., in a housing discrimination case the complainant must allege that she is a member of a protected class, that she experienced an adverse housing action and that the adverse action was due to her membership in the protected class.)

The VHRC only has legal authority to investigate complaints, negotiate and enforce anti-discrimination provisions in settlements, and to bring an action in court after a reasonable grounds finding and failed efforts to resolve the dispute informally or to enforce a settlement agreement. If illegal discrimination is proven to a judge or jury, the court may impose fines or monetary damages, costs and attorneys' fees against the Respondent/Defendant as well as require other remedial measures to avoid further violations of law.

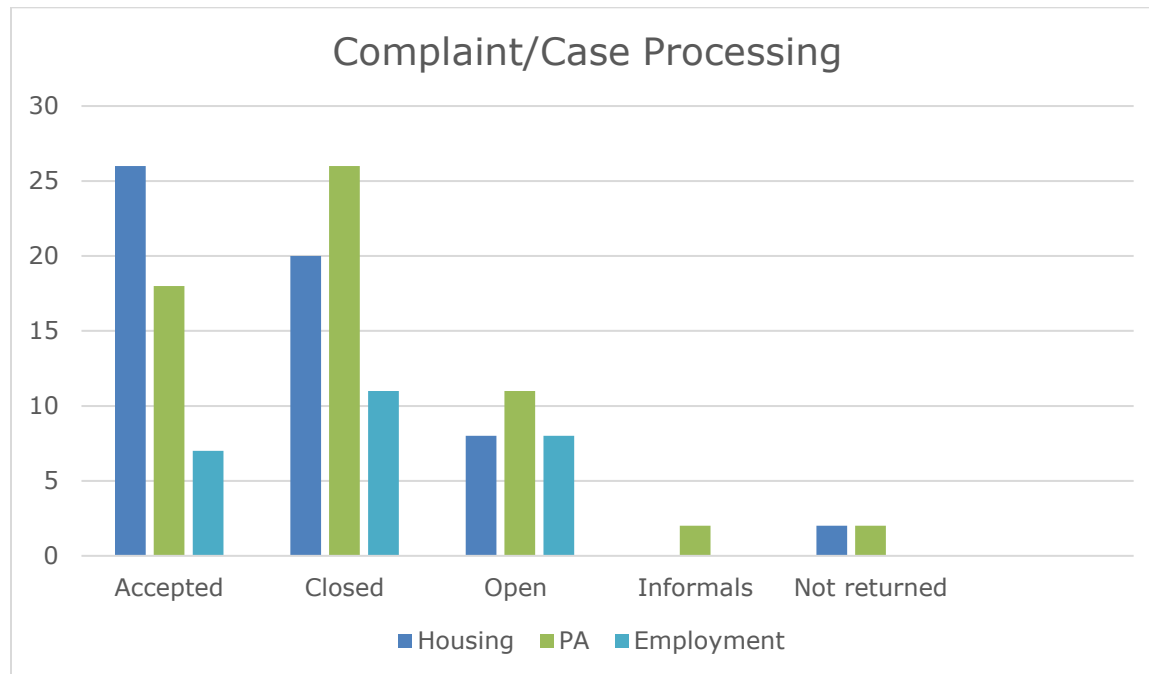
Complaints/Cases



In FY17, HRC accepted sixty-two (62) cases for processing which is slightly below average for the past three years (including FY15). Housing cases remained stagnant in FY16 yet increased to twenty-eight (28) accepted in FY17. The housing investigator provided fair housing training that reached 591 people this past year. Historically housing cases were the ones most likely to not be returned for processing, this year only one housing cases was not returned. Reaching tenants in Vermont is difficult but clearly the VHRC needs to conduct some additional outreach that will directly reach tenants and/or reach providers who are assisting them. Our long-term housing investigator retired in January 2017 after ten years. The new investigator has learned more about the Vermont agencies that assist potential complainants and is working on concentrated outreach to targeted groups.

In our other areas of jurisdiction, we accepted twenty-five (25) public accommodation cases and two (2) informal cases for a total of twenty-seven (27) public

accommodations cases for FY17 versus 33 (combined) in FY16. There were seven (7) employment cases, only one less than the previous year.



This chart shows the manner in which cases were processed for FY17 including the number closed, some of which were opened in prior fiscal years. It also shows the number of cases remaining open at the end of the fiscal year and therefore carried forward into FY17. The totals are: closed fifty-seven (57) cases; open at the end of FY17-twenty-three (23) cases; and not returned- four cases (4) (0-Employment, 2-Housing and 2-Public Accommodations).

Complaints Brought Before the Commission for Hearing

In FY17, the Commission heard *12 cases, compared to 13 in FY16. Of the cases heard, the Commission found no reasonable grounds in nine (9) cases and reasonable grounds in five (5) cases. *Two cases had dual findings.

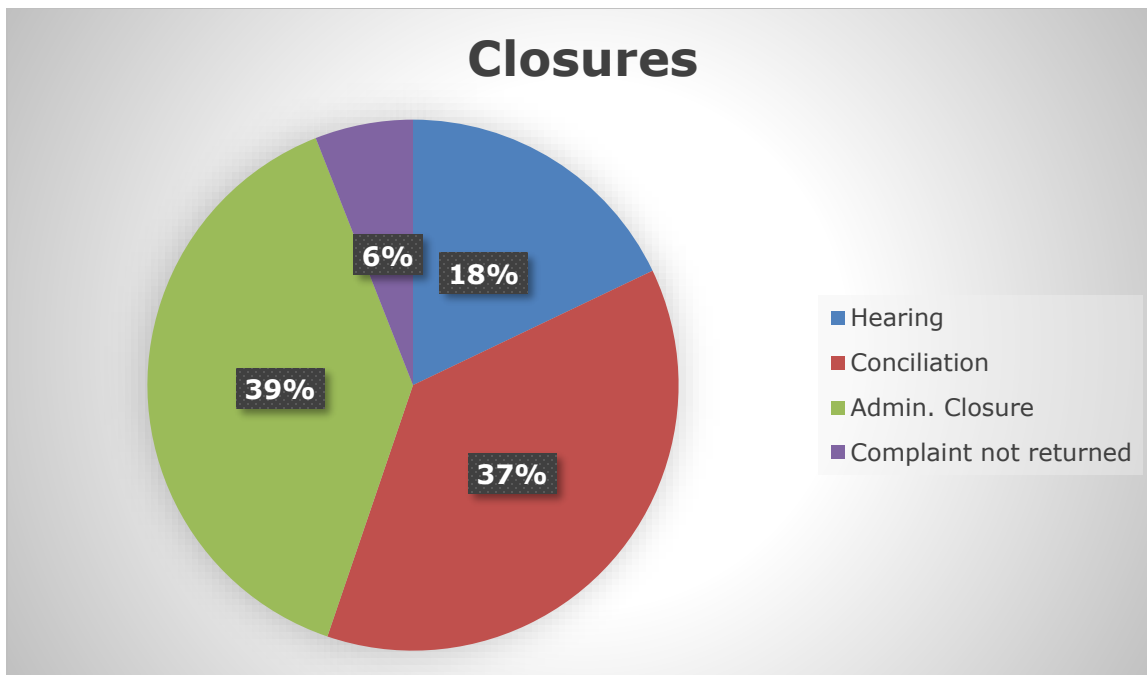
Outcome	Employment	Housing	Public Accommodations	Totals
Reasonable Grounds	0	0	5	5
No reasonable grounds	4	1	4	9

While the Commission heard 12 cases in FY17, five (5) were reasonable grounds. Most of the reasonable grounds cases in FY17 were in the category of public

accommodations and the highest number of no reasonable grounds cases was tied for employment and public accommodations, followed by housing. Most housing and employment cases that should settle, from a factual standpoint, do. In the public accommodations area, the reasonable grounds cases have been in areas of emerging law and interpretation (specifically the ADA/VFHPAA rights of offenders with mental illness and racial profiling). The reasonable grounds findings have resulted in positive local and national press coverage that is raising the VHRC's statewide profile and bringing important civil and human rights issues to the attention of legislators, regulators and the general public.

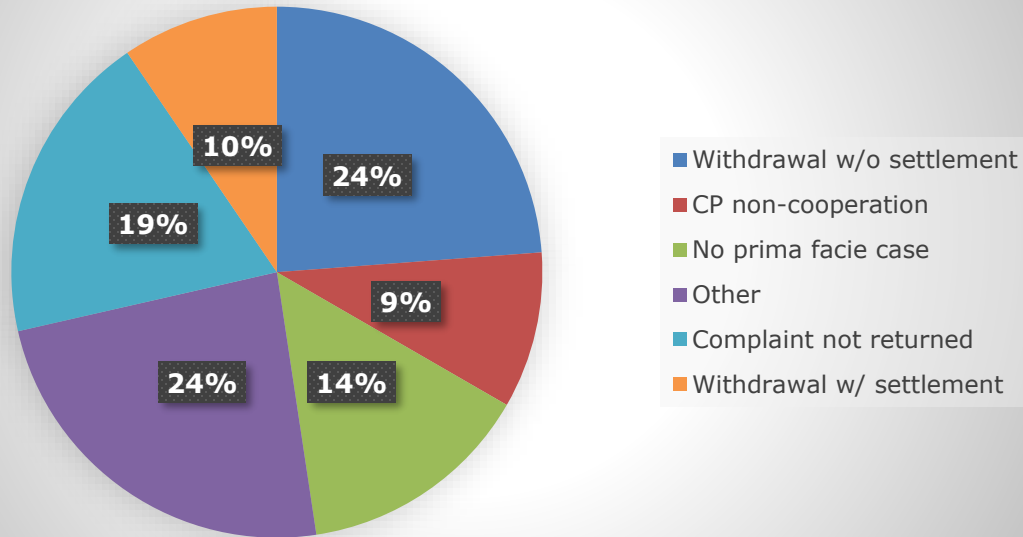
Disposition of Closed Complaints

Cases are generally disposed of in three ways: (1) hearing, (2) conciliation/settlement or (3) administrative dismissal. This chart shows the percentage of cases that were disposed of in each category.



Last year, administrative dismissals (which included administrative closure and complaints not returned) were 35% of the total cases. In FY17, administrative dismissals (including administrative closure and complaints not returned) increased to 45% of the dismissals and the number of complaints processed to hearing or conciliation was 55% versus 64% in FY16. The chart below shows the breakdown of administrative dismissals by type.

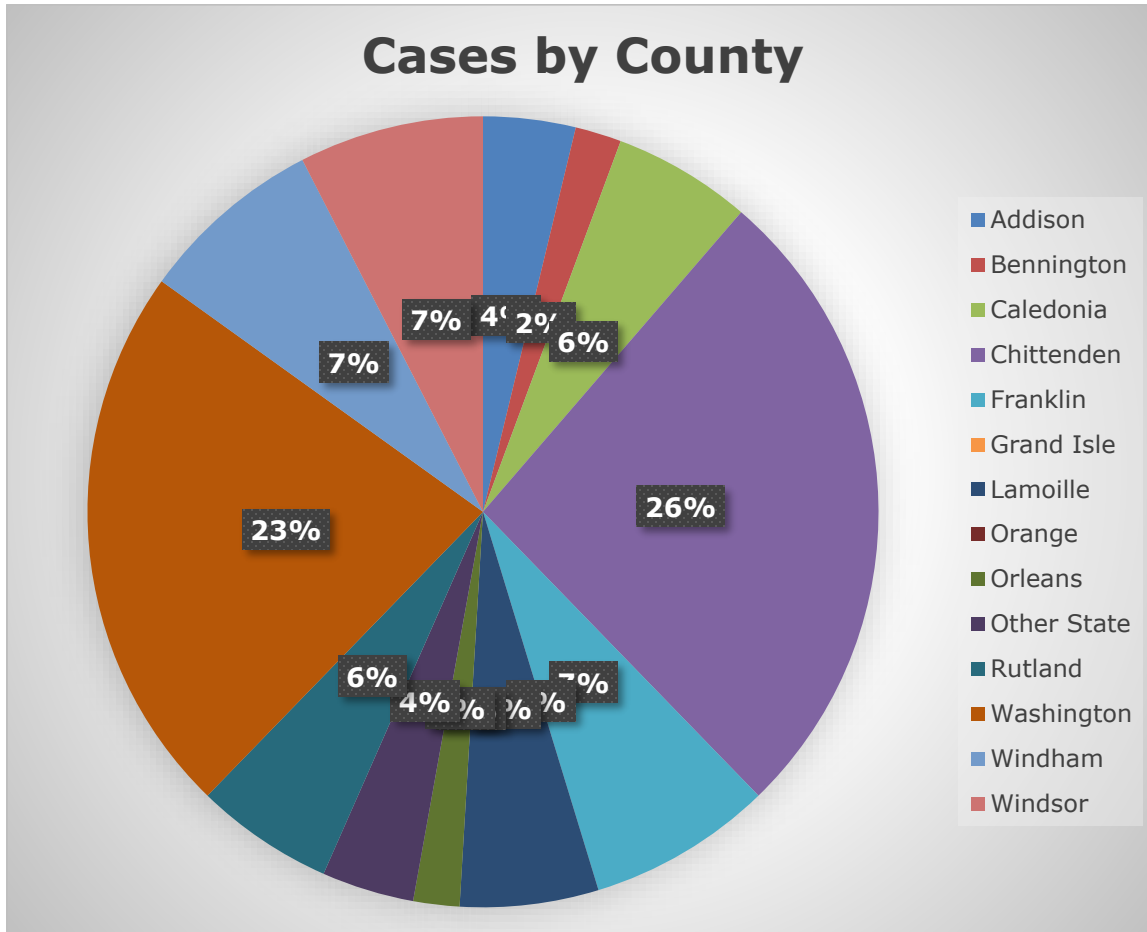
Administrative Dismissals



A total of 21 cases were administratively dismissed. The largest category in FY17 was "other" with five (5) cases. This captures closures related to complainants who die (1), cases where parties fail to comply with general rules of pleadings (1), unable to locate a party (1) and the initiation of an administrative or judicial complaint in another forum (1) and the settlement of a pending case and withdrawal of the complaint (these are private settlements reached without HRC participation). The relief is still captured in our statistics as it relates to the filed complaint.

Complainant non-cooperation-- consists of individuals who file a complaint and then fail to keep in contact with the administrative law examiner during the course of the investigation. Two (2) cases were dismissed for this reason. Multiple attempts are made to reach complainants with email, telephone, and certified and regular mail warning of dismissal before a case is actually dismissed. This number is also down from 11% in FY16 and dismissal for lack of a *prima facie* case three (3) cases or some other legal argument that may have arisen during the course of the investigation of the complaint are up slightly (12% this year versus 9% last year).

Areas of the State Served



This chart shows the cases accepted in FY17 by county of residence of the complainant. We had cases from all counties except Grand Isle and Orange so we are more or less serving the entire state with case intake. The largest number of cases came from Chittenden (14-26%) and Washington (12- 23%). It appears that the numbers are generally consistent with relative population--Addison (2- 4%) Bennington (1-2%), Caledonia (3-6%), Franklin (4- 7%), Lamoille (3- 6%), Orleans (1- 2%), Windham (4- 7%) and Windsor (4- 7%).

Protected Categories by Type of Complaint/Case FY17

Protected Category	Housing	PA	Employment	Total ⁴
Age	0	0	2	2
Breastfeeding	0	0	0	0
Disability	20	16	1	37
Gender ID	0	2	0	2
National Origin	0	0	1	1
Race/Color	2	0	3	5
Retaliation	0	0	1	1
Religion	0	1	0	1
Sex	3	2	1	6
Minor Children	0	0	0	0
Public Assistance	2	0	0	2
Marital Status	0	1	0	1
Family/Parental Leave	0	0	1	1
Workers Comp	0	0	0	0
Sexual Orientation	2	2	0	4

The category of disability continues to generate the most significant number of complaints across all three jurisdictional areas. We are seeing a slight increase in race and gender identity complaints but would expect to see more, given statistical evidence of fairly widespread discrimination against these protected categories nationally.

Settlements

There were a total of 25 settlements, 24 of them were pre-determination and 1 was post-determination. Given that the post case was also a reasonable grounds case, this means that there were 37 cases resolved either by hearing or conciliation. Thus 55% were settled or heard. This chart includes only the relief actually obtained in FY17. Some of the cases reported in the reasonable grounds section were settled after June 30, 2017 and the relief obtained is not reflected in this chart.

⁴ Totals will not equal the number of actual complaints because many cases allege discrimination based on more than one protected category.

Relief Obtained FY16

Complaint/Case Type	Monetary Relief	Non-monetary Relief/ Public Interest
Employment (4)	\$131,000	Written reprimand removed from personnel file and job relocation.
Housing (12)	\$9650	Fair Housing Training (6)
		Forgiveness of back rent owed.
		Inform housing authorities of acceptance of section 8.
		Allowed to remain in rental unit with training for assistance animal.
		Stopped eviction
		Prevented further disparaging remarks and harassment.
		Placement of ½ page Fair Housing ad in the Rutland Herald
Public Accommodations (11)	\$91,300	Waiver of two testing fees
		Inform employees of service animal policy and law in new employee orientation and article for existing employees
		(2) Implicit Bias Training
		Provided requested accommodation
		Agreement to review protocol for interpreters with Complainant's input
		ADA Assessment & ADA Training for staff
Total	\$231,950	

Summary of Reasonable Grounds Complaints

After the VHRC finds reasonable grounds in a matter, the executive director attempts to settle the complaint through conciliation efforts or formal mediation. This settlement process lasts for up to six months after the determination. If this process is not successful, the VHRC can file a lawsuit against the responding party.

Many times, the mediation process results in a settlement. More often than not a reasonable grounds complaint is not resolved in the same fiscal year that the determination was made.

Below are summaries of the complaints heard in FY17 in which the Commissioners found there were reasonable grounds to believe that discrimination occurred. **The status of the case is as of the date of this report not the status at the end of the fiscal year.**

Public Accommodations:

Merriam v. Department of Public Safety (DPS) Marijuana Registry – PA16-0006 (disability) Complainant, an individual with a psychiatric disability alleged that the DPS prevented him from gaining access to medical marijuana by requiring that he, and others like him, demonstrate that the experience “severe physical pain” as a result of their emotional and/or mental disabilities, rather than just “severe pain” which is how their statute and rule reads. Complainant is pursuing the matter through a private lawsuit.

Diallo v. DTG Operations, Inc. d/b/a Thrifty Car Rental – PA16-0007 (race, color & national origin) Complainant, an adult black male of a different national origin, filed a complaint with the VHRC alleging that he had been discriminated against based on his color, race, and national origin, when Thrifty counter agents refused to rent him a car. Complainant then was able to make an on-line rental reservation but was again denied a car when he returned to their site with his reservation. After post conciliation efforts, Complainant received \$16,000 with the VHRC receiving \$200 for a three-hour training for all Thrifty Burlington staff on implicit bias and an agreement that Thrifty provide training regarding its anti-discrimination policies to all new and existing employees every two years.

Fortin v. Hayes Hospitality Holdings, LP d/b/a Grey Fox Inn – PA17-0010 (disability) Complainant, an individual with a physical disability, filed a complaint with the VHRC after being refused accommodation for a prepaid reservation due to her having a service animal and her refusal to pay a \$250 pet deposit. Efforts to conciliate the matter failed and the matter has been filed in court.

Hay v. University of Vermont Medical Center (UVMC) and Central Vermont Medical Center (CVMC) – PA16-0016 (disability) Complainant, a Deaf person, filed a complaint with the VHRC after being denied a live interpreter while being treated for chest pains even though she made this request. She was instead provided remote interpreter services by UVMC which was inadequate and did not provide her effective communication. A comprehensive settlement was reached in November of 2017.

PUBLIC EDUCATION ACTIVITIES

Committees and Task Forces

VHRC staff members serve on a number of state-wide committees/task forces. Attendance at these meetings provides an opportunity to advocate for civil and human rights and to educate the public about anti-discrimination laws in the State of Vermont. Membership on these various committees helps VHRC fulfill its mandate to advance effective public policy on civil and human rights for the Vermont public. These include but not limited to:

Fair Housing Council- This task force meets regularly to discuss statewide issues related to fair housing. Members include representatives of government agencies, non-profits, and housing authorities, among others. The group provides advice to the Agency of Commerce & Community Development's Housing Division including input on the Consolidated Plan and the Analysis of Impediments.

Vermont Justice Coalition- This coalition is made up of stakeholders from state agencies, non-profits, former offenders and others interested in reforms to the criminal justice system that would reduce prison populations and ensure that all Vermont offenders are housed in correctional facilities within the state. Efforts focus both on ways to reduce the number of people entering correctional facilities using treatment (addiction and mental health), diversion and restorative justice, improving conditions within the facilities that will better prepare offenders to lead productive lives when released and providing better re-entry programming and services to help offenders be successful and reduce recidivism.

Hazing, Bullying and Harassment Prevention Advisory Council- This council was created by the legislature to address these issues in Vermont schools. Members include the VHRC, other state agencies, the school boards', superintendents' and principals' associations, non-profits, parents and others.

Vermont Dignity in Schools Coalition- This grass roots coalition seeks to address disparities based on race, disability and socio-economic status, in school discipline, specifically suspension and expulsion.

Staff also attend public meetings such as school board meetings, legislative hearings and other public forums where issues of human rights are discussed.

Training and Outreach to the Community

Education Provided by VHRC Staff to Others

Type	# of Events	# of People
Employment	2	160
Housing	25	591
Public Accommodation	10	642
Implicit Bias	16	712
Total	53	2158

Training Received by Staff

In addition to providing training/education to others, HRC staff and Commissioners participated in training to improve their own knowledge and skills:

3/27-31 NFHTA Fair Housing for Public Interest Attorneys- ALEs Yang and Lee Sing

3/27/17 Diversity Conference, Burlington- Richards

3/30-31/17 Vermont Bar Association Spring Meeting, Burlington- Richards

4/6-7/17 New England Civil Rights Conference- Springfield, MA- All HRC staff and Commissioner Ellis

6/2/17 Vermont Legal Aid, Annual Staff College- Gender Identity seminar- Richards

Legislation

The Human Rights Commission works actively on legislation that furthers its statutory mandate to increase public awareness of the importance of full civil and human rights for each inhabitant of this state; to examine the existence of practices of discrimination which detract from the enjoyment of full civil and human rights; and to recommend measures designed to protect those rights.

The executive director actively worked on several bills during the legislative session including:

- S. 61 (Act 78) An act related to offenders with mental illness
- H. 333 An act related to gender neutral bathrooms
- H. 136 (Act 21) An act related to pregnancy accommodations

- Act 54- An act related to racial disparities in the criminal and juvenile justice system advisory council.

The executive director provided testimony and information with regard to numerous other bills related to civil and human rights.