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CERTIFIED PUBLIC MANAGER PROJECT
ON
REDUCING COMPLAINT PROCESSING TIME

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STATE DOCUMENTS

GOAL

To develop a plan to reduce the average time needed to complete an employment discrimination investigation to less than 180 days for the coming fiscal year.

PROBLEM STATEMENT

Since October 1, 1994, the South Carolina Human Affairs Commission (SHAC) has averaged investigating approximately 1200 employment discrimination complaints per year based upon the federal fiscal year of October 1 through September 30¹. During this period, the average processing time has increased to 180 or more days per complaint. Surveys of users of our services indicate dissatisfaction with the length of time taken to complete investigations. (Exhibit 1) Furthermore, SHAC is not meeting its own self-imposed goal of completing at least 60% of its investigations within 180 days. (Exhibit 2) Therefore, a reduction in processing time is necessary to enhance user satisfaction and to meet internal deadlines.

¹ Because the South Carolina Human Affairs Commission's contract with the Equal Employment Opportunity Commission is predicated upon the federal fiscal year, all figures will be based upon the federal fiscal year rather than the state fiscal year.

HISTORY AND ORGANIZATION

The South Carolina Human Affairs Commission (SHAC), created in 1972 upon enactment of the South Carolina Human Affairs Law, is responsible for administering and enforcing laws to prevent and eliminate unlawful discrimination. (Exhibit 3) SHAC is comprised of three program areas - Administration (Fiscal/Procurement, Human Resources, and Public Information), Consultive Services (Training/Technical Services, Community Relations and Information Technology) and Compliance Programs. (Exhibit 4)

The Compliance Programs area serves as SHAC's investigative and enforcement arm. A goal of the Compliance Programs area is to prevent and eliminate discriminatory employment practices that are illegal under the South Carolina Human Affairs Law. (Under Federal Law, the Equal Employment Opportunity Commission [EEOC] is the agency responsible for enforcing laws relating to employment discrimination. Since 1975, the EEOC has contracted with SHAC to investigate employment discrimination complaints on its behalf and to receive payment from the EEOC. The EEOC is notified when complaints are filed with SHAC and reviews the complaints after SHAC completes its investigations.)

A principal responsibility of the Compliance Programs area is to receive, investigate and resolve complaints alleging unlawful employment discrimination filed against South Carolina employers² on the basis of race, color, sex (which includes sexual harassment and pregnancy-related discrimination), age (40 or older), religion, national origin, disability, and retaliation.

The Compliance Programs area is comprised of seven divisions - five of which are responsible for the resolution of complaints of unlawful discrimination in employment: Intake & Referral, Mediation, Private Sector Investigations, Public Sector Investigations and Age and Disability Investigations.

SHAC has approximately 25 staff - nearly half of its allotted FTE positions - assigned to its Compliance Programs areas to provide clerical support, receive, mediate and investigate employment discrimination complaints. As a result, the majority of SHAC's resources are allocated to the Compliance Programs area. (Exhibit 5)

² Neither SHAC nor EEOC have jurisdiction over employers having less than 15 employees.

Intake & Referral

The Intake & Referral division serves as the initial contact point for all complaints of discrimination received by SHAC. This division's primary responsibilities are to conduct preliminary interviews with potential charging parties, gather essential information, draft formal complaints, effect service of said complaints, dual file complaints with the EEOC, track complaint activity for reporting purposes and make referrals for complaints that do not fall under SHAC's jurisdiction. A division director and four intake counselors staff this unit.

Mediation

The Mediation division attempts to facilitate complaint closure by bringing the disputing parties together to reach a mutually acceptable solution. These complaints are identified during the intake stage if they appear to have a strong potential for early settlement or if the charging party has a terminal disability. An impartial mediator facilitates negotiations. It precludes the investigation process and usually results in a "win-win" solution for the two parties. If mediation is unsuccessful, the complaint is forwarded to the appropriate investigative division for investigation. SHAC currently has one certified mediator in this division to handle these complaints.

Private Sector Investigations

The Private Sector Investigations division processes employment discrimination complaints filed against private, non-governmental employers in South Carolina with 15 or more employees. A division director and four investigators are currently assigned to this division.

Public Sector Investigations

The Public Sector Investigations division processes employment discrimination complaints filed against agencies of state government, city government, county government and regional government. A division director and four investigators are currently assigned to this division.

Age/Disability

The Age/Disability Investigations division processes complaints alleging employment discrimination on the basis of age and disability in the public sector and in private sector employers with 15 or more employees. A division director and four investigators are currently assigned to this division.

Procedure in the three investigative divisions requires the investigator to promptly gather evidence from the employer, the

charging party, and any witnesses upon being assigned the complaint. After receipt of all relevant evidence, the investigator must prepare a written investigative summary to the appropriate division director and to SHAC's Legal Counsel. This summary contains a review of the evidence as well as the investigator's recommendation for disposition of the complaint.

(Exhibit 6)

Each SHAC investigator is required to complete a minimum of six complaints per month. At this rate, however, less than 900 of the nearly 1200 complaints per year that SHAC is contractually obligated to investigate can be completed. Therefore, investigators must produce at a rate substantially higher than the minimum.

PROBLEM ANALYSIS/DATA COLLECTION

As previously noted, SHAC's responsibility is to receive, investigate and resolve complaints of unlawful employment discrimination. Since its inception in 1972, SHAC has investigated in excess of 23,000 employment discrimination complaints. In fiscal year 94-95, SHAC completed 877 employment discrimination investigations. More recently, in fiscal year 98-99, the latest year for which figures are readily available, SHAC completed 1183 employment discrimination investigations.

During this period, the average length of time to complete an employment discrimination investigation has varied from a low of 140 days in fiscal year 95-96 to 180 days in fiscal year 98-99. (Exhibit 7) As previously noted, for the last three fiscal years (96-97 through 98-99), SHAC has not met its internal goal of completing 60% of its investigations within 180 days. During these years this percentage ranged from 54% to 58%. (Exhibit 2) Generally though, SHAC's investigations have been timelier than those conducted by the EEOC. (Personal communication with Patricia Monroe-Franks, EEOC Coordinator for State and Local Agencies, personal communication, February 23, 2001.)

There is no one clear reason for the increase in investigative time - rather several factors have contributed to this problem:

- 1) Charge receipts, while fluctuating some from year to year, have remained very high. (See Exhibit 8)
- 2) Over the past five fiscal years, SHAC has accepted an average of approximately 120 aged complaints per year from the EEOC to assist that agency in reducing its backlog. SHAC has, however, recently accepted as many as 264 older complaints from the EEOC. Such an influx of complaints

inflates SHAC's pending inventory and places an additional burden on its twelve investigators, which thereby prolongs processing time.

- 3) Staff turnover in the investigative divisions has adversely impacted processing time, as it requires time and resources to train and mentor new investigators.
- 4) SHAC's attention to detail and the thoroughness of its investigations means additional time and effort are expended in order to scrutinize more closely each charge of discrimination it investigates.
- 5) Lack of cooperation from employers, charging parties or witnesses adds time to the process. In the case of a recalcitrant employer, 90 or more days can be added as SHAC must send demand letters, subpoenas and possibly schedule judicial proceedings in order to compel an employer to cooperate.
- 6) Investigator complacency is another factor. Some investigators simply don't do what they are supposed to do when they are supposed to do it. This includes failure to promptly send demand letters, failure to request the timely

issuance of a subpoena, and failure to make other necessary contacts with the employer, with the charging party, and/or with witnesses in a reasonable timeframe.

RECOMMENDATIONS FOR IMPROVEMENT/IMPLEMENTATION PLAN

There are several methods SHAC can utilize to aid in reducing processing time of employment discrimination complaints. They are:

- 1) Endeavor to reduce investigator caseloads by tightening the screening of potential complaints during the intake phase to eliminate untimely, facially self-defeating, and non-jurisdictional complaints.

This recommendation should be implemented on October 1, 2001, by the Intake Director and measured for success on September 30, 2002.

- 2) Hire more investigators in order to relieve SHAC's already overburdened investigators from an almost unmanageable caseload.

This recommendation should be implemented as soon as possible after the State's current fiscal crisis has been

resolved. The success of this recommendation cannot be measured for at least two years while these new investigators complete the learning curve.

- 3) Increase investigators' salaries to assist in retaining knowledgeable and productive personnel.

Again, this recommendation should be implemented as soon as possible after the State's current crisis is resolved. The success of this recommendation, however, may not be readily apparent.

- 4) Establish a "triage" system for investigating complaints. The investigation to be made should be appropriate to that particular complaint and take into account SHAC's limited resources.

This recommendation should be implemented on October 1, 2001, by the Intake Director, Legal Counsel and the Directors of the investigative divisions. Its success will be measured on September 30, 2002.

- 5) Use "adverse inference" against uncooperative employers. Rather than wasting time and other resources to get a recalcitrant employer to cooperate, SHAC should draw the conclusion that the employer must have no legitimate, non-discriminatory defense to assert and rule accordingly.

This recommendation should be implemented on October 1, 2001, by Legal Counsel. The success of this recommendation will be measured on September 30, 2002.

- 6) Require division directors to more closely monitor complaint progress in their respective divisions to ensure investigators are diligent with respect to receiving employer responses, sending demand letters, making any witness contacts, and reviewing information with appropriate parties in an expeditious manner. A newly developed routing sheet can be used to record the dates of these actions. (Exhibit 9)

This recommendation should become effective immediately. Division directors must make at least quarterly inquiries of staff to ensure compliance.

7) Division directors should carry a caseload. If the directors of SHAC's three investigative divisions completed at least three complaints each per month (one-half of what is minimally required for an investigator), approximately nine complaints could be eliminated from each investigator's caseload. While this may sound minuscule, it will reduce some processing time by freeing up time for an investigator to work on other complaints in his caseload.

This recommendation should be implemented on October 1, 2001, by the Commissioner. Its success in alleviating investigators' caseloads will be measured on September 30, 2002.

EVALUATION

Complaint processing time will be evaluated at the end of the fiscal year following implementation of the recommendations for improvement. It is anticipated that the data will reveal that the average complaint processing time has fallen below 180 days and that SHAC is meeting its self-imposed goal of completing at least 60% of its investigations within that timeframe.

REFERENCES

South Carolina Human Affairs Commission, Annual Report, 1994-1995

South Carolina Human Affairs Commission, Annual Report, 1995-1996

South Carolina Human Affairs Commission, Annual Report, 1996-1997

South Carolina Human Affairs Commission, Annual Report, 1997-1998

South Carolina Human Affairs Commission, Annual Report, 1998-1999

Equal Employment Opportunity Commission Performance Report, Fiscal Year 94-95

Equal Employment Opportunity Commission Performance Report, Fiscal Year 95-96

Equal Employment Opportunity Commission Performance Report, Fiscal Year 96-97

Equal Employment Opportunity Commission Performance Report, Fiscal Year 97-98

Equal Employment Opportunity Commission Performance Report, Fiscal Year 98-99

South Carolina Legislative Audit Council Report, March 2000

Beazley, Paul W. (1997). South Carolina Human Affairs Commission: A History 1972-1997

SOUTH CAROLINA HUMAN AFFAIRS COMMISSION
Performance Survey

Complaint Number: _____
(Complainant Form)

Please indicate the extent to which you agree or disagree with the following statements. Thank you for helping us improve our services.

	<u>Strongly</u> <u>Disagree</u>	<u>Disagree</u>	<u>Agree</u>	<u>Strongly</u> <u>Agree</u>	<u>Not</u> <u>Applicable</u>
1) The service I received was very helpful.	1	2	3	4	5
2) The persons handling the case I was involved in were fair	1	2	3	4	5
3) The Commission provided service in a timely manner.	1	2	3	4	5
4) I have filed a similar case with another office, i.e., EEOC, and the services you provide are better.	1	2	3	4	5

Comments regarding the above responses: _____

5) What, if any, extra efforts were made on your behalf? _____

6) What could have been done to make you feel more positive (other than outcome) about your experience here?

7) What suggestions would you offer for our improvement? _____

Please write below any other comments or concerns you may have and would like to share.

SOUTH CAROLINA HUMAN AFFAIRS COMMISSION
Performance Survey

Complaint Number: _____
(Respondent Form)

Please indicate the extent to which you agree or disagree with the following statements. Thank you for helping us improve our services.

	<u>Strongly Disagree</u>	<u>Disagree</u>	<u>Agree</u>	<u>Strongly Agree</u>	<u>Not Applicable</u>
1) The Commission allowed adequate time to respond.	1	2	3	4	5
2) Request for information was clear and definitive.	1	2	3	4	5
3) The work of the Commission was impartial in addressing the issues of both parties.	1	2	3	4	5
4) The Commission's investigator was courteous/professional when making contacts with your organization.	1	2	3	4	5
5) The Commission performed its work in a timely fashion	1	2	3	4	5
6) The Commission is regarded equal to or better than other similar agencies with addressing complainant issues.	1	2	3	4	5

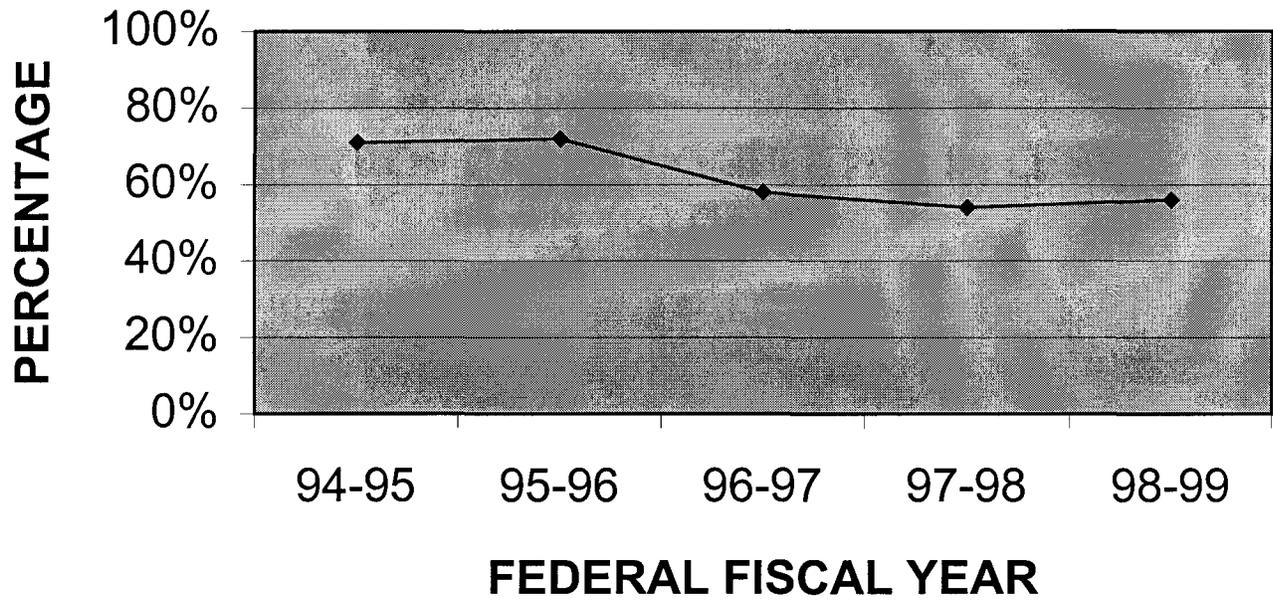
Comments regarding the above responses: _____

7) What, if any, extra efforts were made by the investigator to satisfactorily resolve the complaint? _____

8) What could have been done to make you feel more positive (other than outcome) about your experience here?

Please write below any other comments or concerns you may have and would like to share.

PERCENT OF CASES COMPLETED IN LESS THAN 180 DAYS



SUMMARY OF THE SOUTH CAROLINA HUMAN AFFAIRS LAW

(A detailed version available in last section of this document)

Section 1-13-10: Names the law "The South Carolina Human Affairs Law."

Section 1-13-20: Declares discrimination on the basis of race, religion, color, sex, age, and national origin and disability unlawful. Creates the State Human Affairs Commission to eliminate and prevent discrimination.

Section 1-13-30: Defines words and phrases used throughout the Act. For example, "age" is defined as "at least 40 years." The phrase "because of sex" includes rules about pregnancy, childbirth and related medical conditions.

Section 1-13-40: Sets the number of Commission members at 15. The Commission members are appointed by the Governor, with the advice and consent of the Senate. They generally serve for a three year term and are eligible to serve two consecutive terms. The Governor appoints the Chairman of the Commission from among the three At-Large members. This section sets up the framework for the Commission to meet and transact business.

Section 1-13-50: Allows the Commission to employ a Commissioner with the Governor's approval. The Commissioner is given the authority to hire a staff.

Section 1-13-70: Allows the Commission to:

- 1) Establish offices in South Carolina.
- 2) Adopt Bylaws.
- 3) Establish rules and regulations.
- 4) Make policies.
- 5) Cooperate and contract with federal agencies.
- 6) Recognize certain local groups that can help promote and enhance the South Carolina Human Affairs Law and its purpose.
- 7) Require specific reports from state agencies and/or departments.
- 8) Deal with problems in human affairs above and beyond problems of employment discrimination.
- 9) Go to court to compel employers to cooperate with the Commission.
- 10) Furnish technical assistance.

Section 1-13-80: Defines unlawful employment practices (with limited exceptions) making the South Carolina Human Affairs Law apply to all aspects of employment, including hiring, promotion, pay, and terminations.

Section 1-13-90: Gives the Commission certain powers concerning complaints, investigations, hearings and orders. Specifically, the law gives the Commission the power to informally investigate complaints on the basis of race, religion, color, sex, age and national origin, other than employment discrimination.

Complaints:

1. Must be in writing.
2. Must be filed within 180 days.
3. Must be filed at the Commission office, in person or by mail.
4. Must be forwarded to the employer by the Commission.

A complaint against a state agency:

1. Will be investigated by the Commission under the supervision of one Commission member. The Commission has the power to require the cooperation of the "state agency" employer.

2. May be settled or withdrawn at any time.
3. If not settled, may go to a public hearing before a panel of three Commission members. During or before a hearing, the Commission may issue a subpoena, requiring a witness to appear, or requiring an employer to provide records. At the hearing, both sides can present witnesses and testimony. The Commission, after hearing the testimony, can issue an order either dismissing the complaint or ruling in favor of the person who filed the complaint. A Commission order can be appealed before the Court of Common Pleas. The Commission can go to court to get its Order enforced.

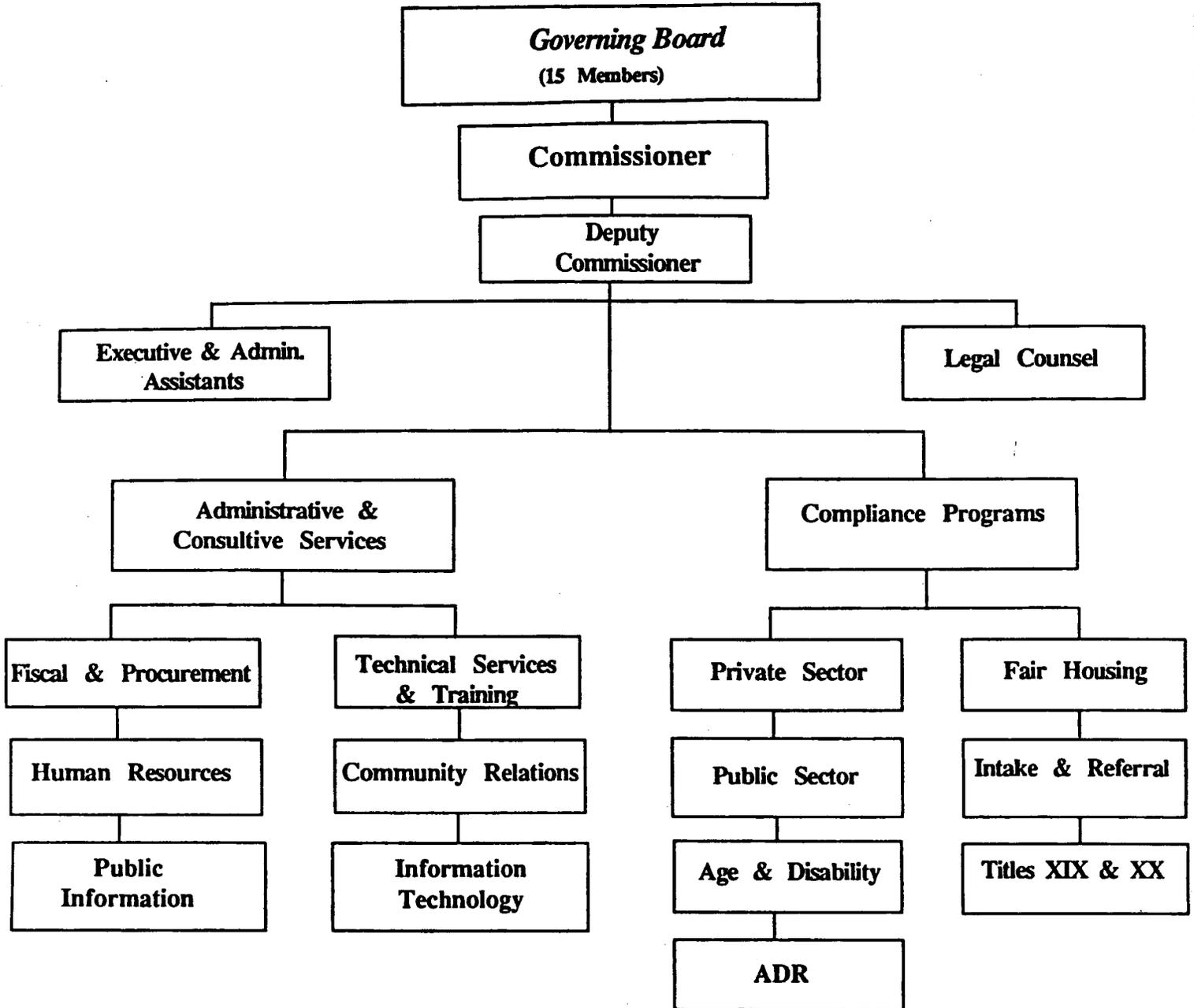
A complaint against a non-state employer:

1. Will be investigated by the Commission. The Commission has the power to require the cooperation of the employer.
2. May be settled or withdrawn at any time.
3. If not settled before the investigation ends, will be acted upon by the Commissioner.
4. May be taken to court if complainant disagrees with the Commission's determination. The Commission may also follow through with a complaint in court.

Section 1-13-100: Makes it clear that the sections of the law dealing with employers are intended to parallel Title VII of the U. S. Civil Rights Act of 1964.

Section 1-13-110: Requires State agencies to develop Affirmative Action Plans. Requires the Commission to submit a report to the General Assembly on the status of Affirmative Action Plans of all State agencies.

Organizational Chart



Revised 11/26/97

STATEMENT OF EXPENDITURES: FY1998-99

Administration

Personal Services	\$448,895
Per Diem: Boards and Commissions	3,150
Contractual Services	96,096
Supplies and Materials	16,306
Fixed Charges and Contributions 169,765	
Travel	32,975
Equipment	16,220
Total	\$783,407

Consultive Services

Personal Services	\$445,136
Contractual Services	33,297
Supplies and Materials	6,277
Fixed Charges and Contributions 285	
Travel	15,869
Equipment	11,856
Total	\$512,720

Compliance Programs

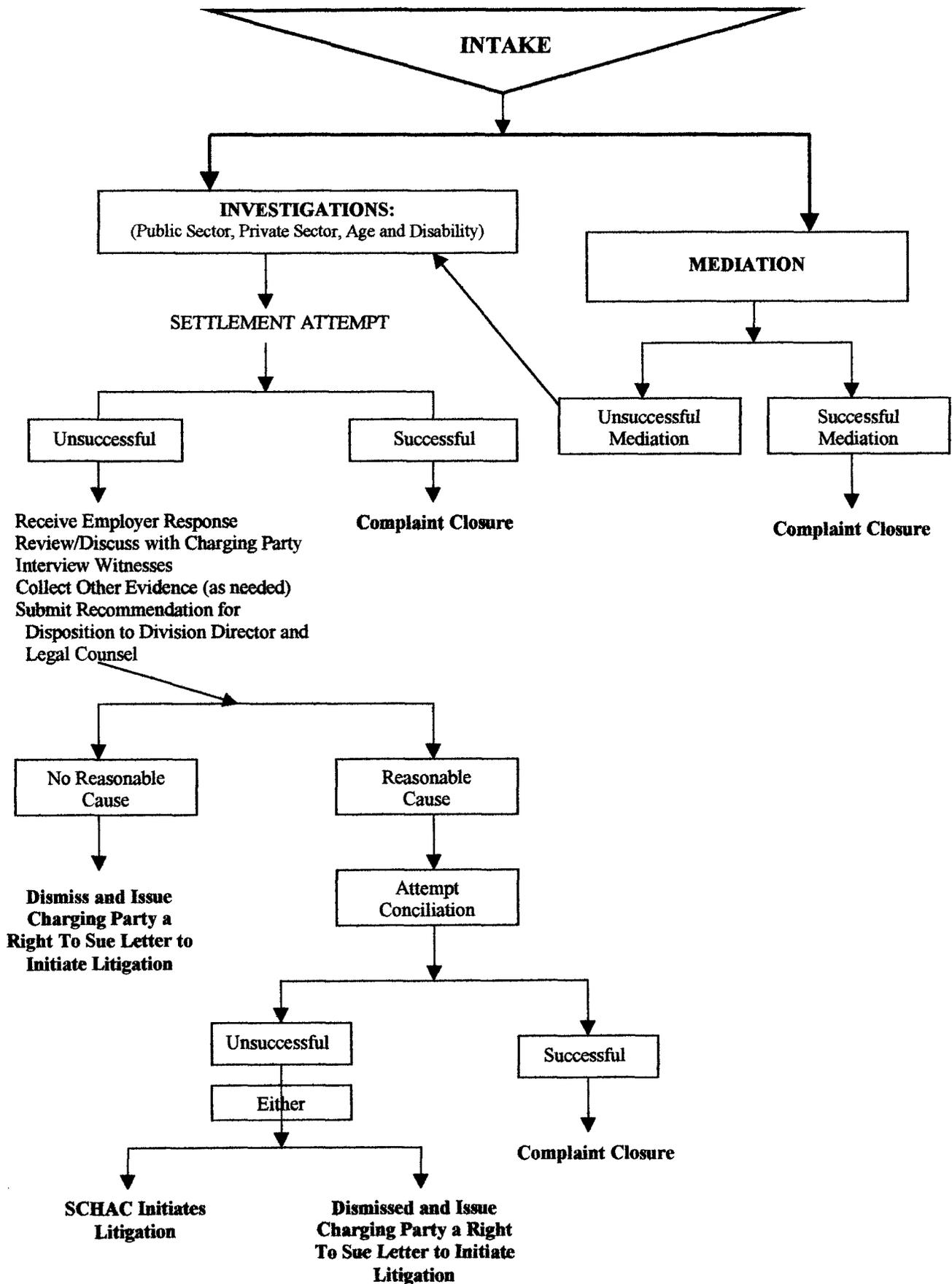
Personal Services	\$1,176,223
Contractual Services	67,160
Supplies and Materials	32,316
Fixed Charges and Contributions	31,923
Travel	54,556
Equipment	26,585
Total	\$1,388,763

Employer Contributions

Employer Contributions	\$471,840
Total Expenditures	\$3,156,730

Sources of Funds:

1997-98 State Appropriations	\$2,367,105
Federal Funds	102,540
Earmarked Funds	687,085
Total Funds	\$3,156,730



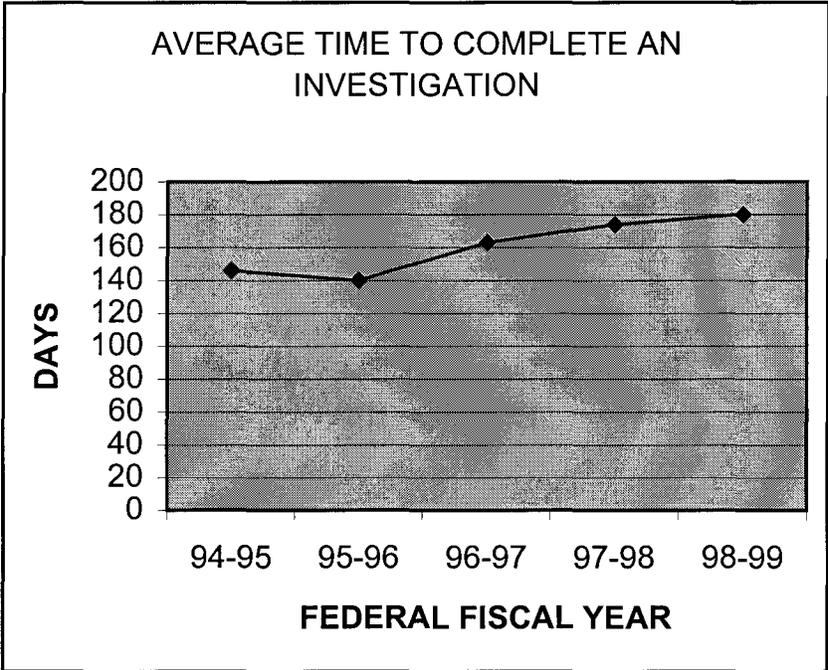


Exhibit 7

COMPLAINTS RECEIVED AND CLOSED

