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# Performance Report



## Department of Human Rights

# 1996

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## AGENCY PERFORMANCE REPORT

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### EXECUTIVE SUMMARY

1996

HUMAN RIGHTS DEPARTMENT

Prepared: December 2, 1996

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## **OVERVIEW:**

The Department of Human Rights is responsible for two program areas:

1. Processing, investigating and resolving allegations of unlawful discrimination, and
2. Reviewing affirmative action plans submitted by firms seeking to do business with the State of Minnesota and certifying their compliance with state laws to the Department of Administration.

These programs are means to fulfilling Minnesota's commitment to non-discrimination, by providing individuals who believe they have been discriminated against an opportunity for an impartial investigation into the facts, and by using state purchasing power to increase employment opportunities for groups whose members have often historically had their employment opportunities restricted due to discrimination.

This 1996 Performance Report lays the foundation for future evaluation of the effectiveness of the agency's work. As is seen in the narrative, major changes in agency operation were implemented during 1996, which will be reflected in significantly improved agency performance in the next report. Preliminary data provided herein provides an indication of the major impact those changes will have on agency performance once they have been in operation for a full fiscal year. The data set out in this Report will provide an excellent base for review of those future performance improvements.

## **MISSION**

The Department of Human Rights works to foster a society which respects, supports and is enriched by each member of our increasingly diverse population, and works toward a future in which our children will not experience discrimination.

## **AGENCY GOAL**

The Minnesota Department of Human Rights seeks to provide citizens the opportunity to resolve alleged unlawful discrimination through fair and timely action of the agency, as well as providing increased employment opportunities by reviewing and monitoring affirmative action steps taken by firms doing business with the State of Minnesota.

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## **PROGRAM: COMPLAINT PROCESSING**

### **GOALS:**

The agency has established the following goals and objectives for processing complaints:

**Goal 1: Reduce illegal discrimination through the timely processing of charges filed with the Department and obtaining appropriate relief.**

Objective 1: Reduce the time for reaching a charge determination to 12 months.

Objective 2: At least 75% of cases not warranting use of resources (DWR) are dismissed within 6 months of their filing.

Objective 3: Through predetermination settlement, withdrawn/satisfactorily adjusted, mediation, conciliation and litigation obtain relief for parties alleging discrimination.

**Goal 2: Better inform people of their rights and obligations under the Minnesota Human Rights Act (M.S. Ch. 363)**

**Objective 1:** Review and edit all public communication to increase clarity and improve public education.

**Description of Services**

The complaint processing program of the Department of Human Rights is composed of several components which work in sequence, providing information to individuals regarding possible unlawful discrimination. These components include: writing and filing charges when the agency has jurisdiction, conducting an impartial investigation into the facts, and deciding whether there is probable cause to believe the discrimination occurred. Only if the agency finds probable cause does it become an advocate on the issue and refer the matter for litigation by its attorneys in the Attorney General's Office.

Components of case processing include:

**Intake** - Providing information about agency jurisdiction, securing information from charging parties necessary to draft charges for allegations that are jurisdictional, filing charges when completed and signed, and preparing an initial information request to the Respondent about the alleged facts.

**Screening** - Effective April 1, 1996, all new cases are reviewed by an internal committee and either: 1) dismissed as not warranting agency resources (DWR); 2) referred to mediation; or 3) assigned for investigation into the merits. The screening committee includes two experienced supervisors, as well as one of the agency attorneys from the Attorney General's Office.

**Investigation** - Staff investigators conduct impartial investigations to determine whether or not the evidence supports charging parties' claims of discrimination. Investigations may include a review of all relevant documents and may include witness interviews. After reviewing the evidence, the investigator makes a recommendation to his/her supervisor as to whether or not the evidence is sufficient to support a finding of probable cause.

**Litigation/Conciliation after a Probable Cause Finding** - If the agency issues a probable cause finding in a case, the matter is then referred to agency attorneys in the Attorney General's office. The agency investigation then becomes the basis for either settlement or litigation. No Department settlement or litigation occurs without the agreement of the Commissioner of Human Rights or her designee.

**Recent Case Processing Changes**

In 1995 the agency initiated the first of a series of changes which have completely revamped the system for handling cases. The first change was the Alternative Dispute Resolution Demonstration Project. That effort, now being managed for the agency by the state's Office of Dispute Resolution, provides an opportunity for many parties to initially attempt mediation, rather than extended investigation, to resolve the discrimination claim.

Beginning April 1, 1996, cases in the investigative process were reviewed by a committee consisting of experienced supervisors and attorneys. Specific recommendations were made for resolving each case.

Also beginning April 1, 1996, every case newly filed with the agency was sent to a permanent screening committee to follow the process outlined above. The new system's results show a dramatic improvement in the agency's ability to manage its caseload in a more timely and thorough manner. On April 1, 1996, the agency had 1,695 cases in the investigative process. By October 1, 1996, the number of these cases had been reduced to 1,196.

**NOTE:** Throughout these changes the percentage of cases in which the Department has found probable cause has remained consistent with historic experience. (During FY 96, the Department found probable cause in 7.3% of the cases it decided.)

Data for FY 96 begins to reflect the improvement in case processing. FY 97 will provide the first full-year results, and the agency expects the data to reflect continued improvement in the ability to resolve cases in a more timely manner.

### Background Information

#### Measures of Workload, Outcomes and Unit Costs

(Outcome measures are focused on the agency making a "determination" on the merits of a case filed with the Department. M.S. 363.06 Subd. 4 requires that "...the Commissioner shall make a determination ...as to whether or not there is probable cause to credit the allegation of unfair discriminatory practices.)

Type	Measure	1995FY	1996FY
Workload	New cases filed	1,363	1,284
Outcome	Cases closed	1,298	1,723
Outcome	Number of cases needing decision at year end.	NA	1,213
Outcome	Average compensation received when case settles or is litigated.	NA	\$9,118

#### Detail on Workload

Workload	New Charges Filed/Discrimination alleged in:	1995FY	1996FY
	Employment	980	886
	Housing	71	54
	Public Accommodation	77	80
	Education	41	38
	Public Services	51	93
	Aiding & Abetting	77	81
	Credit	13	4
	Reprisal	121	86

Workload:	New Charges Filed/Discrimination based on:	1995FY	1996FY
	Race	366	356
	Color	6	1
	National Origin	108	114
	Sex	481	418
	Religion	21	24
	Creed	1	1
	Age	163	183
	Marital Status	39	36
	Sexual Orientation	44	36
	Public Assistance Status	9	17
	Disability	278	333
	Familial Status	7	6
	Reprisal	244	277

**Note:** Total dockets include some charges containing multiple allegations .

Outcome: Cases Closed/Detail of Cases Decided by the Agency

**FY 96 DETERMINATIONS BY BASIS**  
(Does not reflect withdrawn or settled cases)

- \* Cases withdrawn or settled are not included since they were not decided by the agency.
- \*\* Some charges are filed charging discrimination on more than one basis; because they are reported on more than one basis, the number of determinations exceeds the total number of cases closed.

Charge Basis	Probable Cause*	No Probable Cause	Dismissal**	Total
Religion/Creed	2/6%	5/15%	26/79%	33
Disability	22/6%	14/4%	327/90%	363
Sex	58/13%	28/6%	369/81%	455
Race/Color/Nat'l Origin	24/4%	39/7%	525/89%	588
Reprisal	21/9%	11/5%	207/8%	239
Sexual Orientation	3/7%	1/2%	42/91%	46
Marital Status	5/12%	1/2%	35/85%	41
Familial Status	2/40%	0/0%	3/60%	5
Public Assistance	3/17%	2/11%	13/72%	18
Age	7/3%	8/4%	209/98%	224
<b>Total/Average %</b>	<b>147/7.3%</b>	<b>109/5.4%</b>	<b>1756/87.3%</b>	<b>2012/100%</b>

\* Probable Cause found in some or all of charged allegations.

\*\* Includes those charges dismissed as moot or nonjurisdictional, or due to charging party's lack of cooperation or failure to inform Department of change of address.

**Program Drivers**

The September, 1996 decision of the Minnesota Supreme Court in Beaulieu vs. Josés American Bar creates two contradictory pressures for the agency. That decision concluded that if the agency did not investigate and decide a case within 12 months, the respondent could claim that they were prejudiced by the delay. The Court also held that at 31 months no evidence of actual prejudice was necessary but that the case would be dismissed. That decision then penalizes charging parties who have valid claims if the agency fails to complete its investigation within 12 months.

The reorganization of case processing, discussed previously, will allow the agency to investigate and decide cases within the required time-frames.

However, because of the new requirements, private attorneys may increase their use of the right to a state-paid hearing. Current law requires the agency pay the Office of Administrative Hearings to conduct a hearing if one is requested by the charging party whose charge has not been decided within 180 days of its filing..

If private attorneys increase their use of this provision of the law to protect clients from anticipated adverse consequences under the Josés decision, the ability of the agency to meet its case processing and other statutory goals could be jeopardized as funds will need to be re-allocated to pay for the increased cost of these hearings.

**Agency Goals for Case Processing:**

**Goal 1:** Inform people of their rights and obligations under the Minnesota Human Rights Act.

**Objective 1:** Review and edit all public communication to enhance clarity and increase effective public education.

**Measure 1:**        Outcome:        All informational materials will be rewritten by the end of FY 97 to improve clarity and readability, and public education efforts will be increased.

**Measure 2:**        Output:        Develop materials for the public; establish a uniform reporting system for tracking public outreach contacts; and monitor the effectiveness of those outreach contacts.

**Reason for goal:**

- Agency communications no longer accurately reflect agency procedures in light of recent changes.
- In addition, those recent changes in agency processes need to be communicated to the diverse publics who use the services of the agency. This includes attorneys, advocacy groups and the general public.

**Goal 2 :**        Reduce illegal discrimination in Minnesota, through the timely processing of charges filed with the Department and obtain appropriate relief.

**Objective 1:**        Reduce the time for reaching a charge determination to 12 months.

**Measure 1:**        Number of cases pending before the agency for over 12 months without a determination.

**Baseline data:**

484 cases pending on 7/1/96 were over 12 months old. This was 40% of the cases pending with the agency. [484/1,213:40%]

Average age of open cases without determination [as of 7/1/96, 301 days]

Average case age at time of determination [466 days]

Detail on age of cases needing a determination:

## Human Rights Department Executive Summary

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<u>Year filed</u>	<u>As of 7/1/96 - Number of cases filed still needing determination</u>
1989	1
1990	0
1991	0
1992	2
1993	13
1994	279
1995	435
1996	<u>483</u>
<b>TOTAL</b>	<b>1,213</b>

Unit Cost: Resource cost per case determination [.23 x \$1,670,503/418 cases = \$919] *with support*. 23% of case determinations are other than DWR, predetermination settlement or withdrawn as satisfactorily adjusted. (.23)

[.23 x \$725,860/418 cases = \$399] *without support*

Reason for Objective: The September 1996 Supreme Court decision in Beaulieu vs. Jose's American Bar and Grill penalizes individuals who allege they have been discriminated against, if the agency takes longer than 12 months to investigate and decide their case. The court allows Respondents to raise claims of prejudice from any delay longer than 12 months and concluded that if a case is not decided within 31 months the claim is barred. This goal then is necessary to fully protect the rights of persons alleging discrimination.

**Objective 2:** At least 75% of cases not warranting use of resources (DWR) are dismissed within 6 months of their filing.

**Measure 1:** Outcome: % of DWR cases dismissed within 6 months  
Baseline: FY 96 25% of those dismissals occurred within six months. (340/1,346=25%) 73% of Department case closures were DWR (.73)

Unit Cost: Resource cost per DWR determination [.73 x \$1,670,503/ 1,346 DWR = \$906] *including support*

[.73 x \$725,860/1,346 DWR = \$394] 17 EOs *without support*

Workload: Since April 1, 1996, all cases are screened.

\* Note: (2,080 hours - 10% vacation, sick and holiday = 1,872)

**Reason for objective:** The legislative appropriation language adopted in 1996 included this as a new standard for judging agency eligibility for additional funding. While that language applies strictly to cases filed after July 1, 1996, the agency intends to meet or exceed the goal for all cases filed since April 1, 1996.



**Objective 3:** Through predetermination settlement, withdrawn/satisfactorily adjusted, mediation, conciliation and litigation, obtain relief for Charging Parties alleging discrimination. (see table below)

**Measure 1:** Outcome: The average compensation received by charging parties through settlement or litigation conducted by the Department.  
Baseline data: (\$9,118)

**Measure 2:** Outcome: Number of cases resolved and compensation recovered  
Baseline data:

TYPE	TOTAL #	[S TERMS]	RECOVERED	AVERAGE**
WD/SA	65	[14]	\$430,303	\$30,736
PD SETTLEMENT	55	[54]	\$175,055	\$3,242
PC-LIT/CONCIL*	81	[53]	\$497,957	\$9,395
<b>TOTAL</b>	<b>201</b>	<b>[121]</b>	<b>\$1,103,315</b>	<b>9,118</b>

\* Recovery, only, obtained through services of Department's attorneys (Attorney General); recovery work not calculated as Department resource cost. (Resources utilized in reaching Probable Cause determination are included in Objective 1.)

\*\* Averaged for resolutions with financial terms.

Explanatory: All bracketed numbers are for FY'96-baseline year, unless otherwise noted.

Definitions:

**Determination:** Department's determination on the merits of the case (i.e., probable cause, no probable cause, or the Department's determination that further use of its resources to reach a cause determination is unwarranted), or other case closure made pursuant to withdrawal, predetermination settlement, or other means consistent with Minnesota Rules, chapter 5000

**WD/SA:** Withdrawn/Satisfactorily Adjusted. Prior to a determination being issued in a case, Charging Party withdraws charge pursuant to an agreement reached with the Respondent. The Department is not a party to this agreement and cannot enforce these two-party settlements.

**PD Settlement:** Predetermination settlement. Prior to issuing a determination in a case, the Department obtains an agreement between the parties, by which the charge is resolved. The Department negotiates these agreements, is a party to them, and may go to court to enforce compliance.

PC-Lit/Concil.: After probable cause (PC) is found in a case, the Department, largely through its attorneys, may pursue remedies through conciliation or litigation. The Department is party to conciliation agreements and may go to court to ensure compliance.

**FY96 CASE CLOSURES BY TYPE:**

CLOSURE TYPE	NUMBER	PERCENTAGE
Dismissed	1,346	73%
Withdrawn	171	10%
PD Settlement-WD/SA	68	4%
No Probable Cause	97	5%
Post-Probable Cause	150	8%
<b>TOTAL</b>	<b>1,832*</b>	<b>100%</b>

\*Total closures exceed total cases closed (see p. 12) because appeals and reconsideration requests lead to some cases being reopened or having initial determinations reversed.

**LITIGATION and 180 DAY HEARINGS**

Litigation refers to Department resources spent on enforcement actions initiated by the Department and taken to either the Office of Administrative Hearings or a court.

180 Day hearing refers to Department resources which must be spent to pay for charging party-initiated hearings before an Administrative Law Judge. M.S. 363.071 requires the Department to pay for these administrative trials if a charging party makes a request to the Department after their charge has been pending for more than 180 days without a determination.

**Goal 1: Reduce illegal discrimination through the timely processing of charges filed with the Department.**

Objective 1: Reduce the time for reaching a charge determination to 12 months.

Caveat: The current provision requiring the agency to pay for a 180 day hearings may jeopardize the agency's ability to meet objective 1. The September 1996 decision of the Minnesota Supreme Court in Beaulieu v Jose's American Bar makes it likely that there will be a dramatic increase in the number of 180 day hearings as attorneys seek to protect the rights of their clients from the possibility that the agency will take more than 12 months to decide a case. The average cost to the agency of a 180 day hearing is double the cost of an agency investigation, and some hearings may be requested following considerable investigation, but before a case is decided. The increase in requests could drain resources the agency needs, in order to be able to decide cases within the Court mandated deadlines.

**EXPENDITURES AND STAFFING:**

	<u>(\$ in Thousands)</u>	<u>Percent of Department</u>
Total Expenditure	\$166	5.16%
General	\$166	
Number of FTE Staff		0.00%

**Note:** The average cost to the agency of a 180 day hearing investigation in FY1996 was \$1,967.34. The agency provided these state paid hearings to 77 charging parties. The increase in use of these hearings is seen in the following:

Cost to Agency for 180 Day Hearings			
FY1993	FY1994	FY1995	FY1996
\$43,130	\$106,808	\$156,664	\$151,486

**PROGRAM: CONTRACT COMPLIANCE**

**Description of Services:**

The contract compliance program exists to promote the policy that state government should do business only with businesses committed to equal opportunity and affirmative action. This is one of the policy tools chosen by the legislature to increase employment opportunities for groups who have historically faced discrimination in employment.

No agency may accept a bid or proposal costing more than \$50,000 with any business having more than 20 full-time employees unless that business has received a certificate from the Department of Human Rights indicating that the business has an affirmative action plan for employment opportunities for women, minorities and persons with disabilities.

The Department reviews plans submitted by firms who intend to solicit business from state government. Plans are reviewed and any problems are brought to the attention of the firm. A certificate is issued to the firm as soon as the plans meet the requirements of the rules.

The Department also is obligated to monitor whether the firms are making a "good faith" effort to implement the plans they prepared and submitted. Sanctions can be imposed against firms who fail to make reasonable efforts to implement their plans.

**Background Information:**

Type	Measure	1995FY	1996FY
Workload	Plans filed and reviewed	2,450	2,762
Outcome	Plans not meeting requirements	1,158	1,405
Outcome	Certificates of compliance issued	1,292	1,357

## Human Rights Department Executive Summary

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Workload	Firms monitored for compliance	13*	0
Outcome	Sanctions or other enforcement actions	92	61

\* In FY1995 there were 3 additional FTEs

### Program Drivers

Changes in the level of state spending for bid or contracted services affects the number of firms filing plans and seeking a certificate from the agency.

**Goal 1:** To increase employment opportunities for women, minorities and persons with disabilities within businesses doing business with state government.

**Objective 1:** Decrease by two percentage points annually the percent of affirmative action plans submitted, but which are deficient under MN Rules.

**Measure 1:** Outcome: Percent of affirmative action plans which were deficient.  
Baseline: FY96: 49% of all plans submitted were deficient.

**Measure 2:** Efficiency: Increase staff efficiency by reducing time spent on securing necessary changes to plans prior to a certificate being issued.

\*Baseline salary: \$292,603/1,357 number of certificates issued = \$215.62;  
13,104/1,357 = 9.66 hrs. average staff time needed per certificate

**Objective 2:** Improve compliance with affirmative action requirements by increasing the number of contractors who are audited by ten the first year and an additional five each year thereafter.

**Measure 1:** Outcome: This measure will show the number of contractors audited who are not making good faith efforts to implement their affirmative action plans.

Baseline: During FY96 no contractors were audited by either on-site compliance review or by a desk audit.

Efficiency: Average cost per audit will be measured by the cost of staff time per audit plus travel and any other expenses.

\* Total cost based on staff salaries only (variable cost); does not include other operations costs (fixed cost)

**AGENCY EXPENDITURE SUMMARY**

FY 1996

<b>NAME</b>	<b>(thousands \$)</b>	<b>% of \$</b>	<b>FTE</b>	<b>% of FTE</b>
Agency: Human Rights Dept.	\$3,220	100.0%	55	100.0%
Program: Complaint Processing	\$2,153	66.9%	38	70.0%
BACT: Complaint Processing	\$2,153	66.9%	38	70.0%
MACT: Case Processing	\$1,987	61.7%	38	70.0%
MACT: Lit./180 Day Hearings	\$ 166	5.2%		0.0%
Program: Contract Compliance	\$ 316	9.8%	7	12.6%
BACT: Contract Compliance	\$ 316	9.8%	7	12.6%
MACT: Compliance Monitoring		0.0%		0.0%
MACT: Affirm. Action Plan Rvw.	\$ 316	9.8%	7	12.6%
Program: Mgmt. Svcs. & Admin	\$ 751	23.3%	10	17.4%*
BACT: Mgmt. Svcs. & Admin	\$ 751	23.3%	10	17.4%*

\* Includes \$270 computer money and Human Rights Day

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# **AGENCY PERFORMANCE REPORT**

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**1996**

**HUMAN RIGHTS  
DEPT**

**AGENCY : HUMAN RIGHTS DEPT****MISSION**

The Department of Human Rights works to foster a society which respects, supports and is enriched by each member of our increasingly diverse population, and works toward a future in which our children will not experience discrimination.

**GOALS**

- The Minnesota Department of Human Rights seeks to provide citizens the opportunity to resolve alleged unlawful discrimination through fair and timely action of the agency, as well as providing increased employment opportunities by reviewing and monitoring affirmative action steps taken by firms doing business with the State of Minnesota.

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**AGENCY : HUMAN RIGHTS DEPT****MISSION**

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The Department of Human Rights is responsible for two program areas:

1. Processing, investigating and resolving allegations of unlawful discrimination, and
2. Reviewing affirmative action plans submitted by firms seeking to do business with the State of Minnesota and certifying their compliance with state laws to the Department of Administration, Department of Transportation, Metropolitan Council, Metropolitan Airports Commission and any other contracting state agency.

These programs are means to fulfilling Minnesota's commitment to non-discrimination, by providing individuals who believe they have been discriminated against an opportunity for an impartial investigation into the facts, and by using state purchasing power to increase employment opportunities for groups whose members have often historically had their employment opportunities restricted due to discrimination.

This 1996 Performance Report lays the foundation for future evaluation of the effectiveness of the agency's work. As is seen in the narrative, major changes in agency operation were implemented during 1996, which will be reflected in significantly improved agency performance in the next report. Preliminary data provided herein provides an indication of the major impact those changes will have on agency performance once they have been in operation for a full fiscal year. The data set out in this Report will provide an excellent base for review of those future performance improvements.

See the Executive Summary for a detailed description and background data of the agency's two program areas.

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WAYS TO IMPROVE PROGRAM OUTCOMES

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The complaint processing program of the Department of Human Rights is being re-engineered to improve its effectiveness. To understand the re-engineering, a brief overview of program components is necessary. These components work in sequence to provide information to individuals regarding possible unlawful discrimination and to gather facts necessary to determine whether or not unlawful discrimination occurred. They include: writing and filing charges, conducting an impartial investigation into the facts, and deciding whether there is probable cause to believe the discrimination occurred. Only if the agency finds probable cause does it become an advocate on the issue and refer the matter for litigation by its attorneys in the Attorney General's Office.

Components of case processing include:

**Intake** - Providing information about agency jurisdiction, securing information from charging parties necessary to draft charges for allegations that are jurisdictional, filing charges when completed and signed, and preparing an initial information request to the Respondent about the alleged facts.

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**Investigation** - Staff investigators conduct impartial investigations to determine whether or not the evidence supports charging parties' claims of discrimination. Investigations may include a review of all relevant documents and may include witness interviews. After reviewing the evidence, the investigator makes a recommendation to his/her supervisor as to whether or not the evidence is sufficient to support a finding of probable cause.

**Litigation/Conciliation after a Probable Cause Finding** - If the agency issues a probable cause finding in a case, the matter is then referred to agency attorneys in the Attorney General's office. The agency investigation then becomes the basis for either settlement or litigation. No Department settlement or litigation occurs without the agreement of the Commissioner of Human Rights or her designee.

#### Recent Case Processing Changes

In FY 1996 the agency initiated the first of a series of changes which have completely revamped the system for handling cases. The first change was the Alternative Dispute Resolution Demonstration Project. That effort, now being managed for the agency by the state's Office of Dispute Resolution, provides an opportunity for many parties to initially attempt mediation, rather than extended investigation, to resolve the discrimination claim.

Beginning April 1, 1996, two changes were initiated. First, all cases in the investigative process were reviewed by a committee consisting of experienced supervisors and attorneys. Specific recommendations were made for resolving each case.

Second, every case newly filed with the agency was sent to a permanent screening committee to follow the process outlined above. The results of these new systems show a dramatic improvement in the agency's ability

to manage its caseload in a more timely and thorough manner. On April 1, 1996, the agency had 1,695 cases in the investigative process. By October 1, 1996, the number of these cases had been reduced to 1,196.

NOTE: Throughout these changes the percentage of cases in which the Department has found probable cause has remained consistent with historic experience. (During FY 96, the Department found probable cause in 7.3% of the cases it decided.)

Data for FY 96 begins to reflect the improvement in case processing. FY 97 will provide the first full-year results, and the agency expects the data to reflect continued improvement in the ability to resolve cases in a more timely manner.

## **EMPLOYEE PARTICIPATION**

To prepare this report the agency appointed a committee of individuals from the organization. That committee worked with the Department of Administration, Management Analysis Division. In addition Ideas were sought from all staff as well as committee members..

Date : December 3, 1996

## Agency Expenditure Summary

F.Y. 1996

NAME	(in thousands \$)	% of \$	FTE	% of FTE
AGENCY: HUMAN RIGHTS DEPT	\$3,222	100.0%	54	100.0%
BACT: CONTRACT COMPLIANCE	\$316	9.8%	7	12.9%
BACT: COMPLAINT PROCESSING	\$2,153	66.8%	38	71.3%

**Agency** : HUMAN RIGHTS DEPT  
**Program** : CONTRACT COMPLIANCE  
**BACT** : CONTRACT COMPLIANCE

**EXPENDITURES AND STAFFING :**

	<u>(\$ in Thousands)</u>	<u>Percent of Department</u>
Total Expenditure	\$316	9.81%
General	\$316	
Number of FTE Staff:	7	12.87%

**GOAL :**

- To increase employment opportunities for women, minorities and persons with disabilities within businesses doing business with state government. (Minnesota Statute Chapter 363)

**DESCRIPTION OF SERVICES :**

The contract compliance program exists to promote the policy that state government should do business only with businesses committed to equal opportunity and affirmative action. This is one of the policy tools chosen by the legislature to increase employment opportunities for groups who have historically faced discrimination in employment.

No agency may accept a bid or proposal costing more than \$50,000 with any business having more than 20 full-time employees unless that business has received a certificate from the Department of Human Rights indicating that the business has an affirmative action plan for employment opportunities for women, minorities and persons with disabilities.

The Department reviews plans submitted by firms who intend to solicit business from state government. Plans are reviewed and any problems are brought to the attention of the firm. A certificate is issued to the firm as soon as the plans meet the requirements of the rules.

The Department also is obligated to monitor whether the firms are making a "good faith" effort to implement the plans they prepared and submitted. Sanctions can be imposed against firms who fail to make reasonable efforts to implement their plans

**BACKGROUND INFORMATION :**

**MEASURE TYPES: ACTIVITIES (A), EFFICIENCY (E), OUTPUT (O), OUTCOMES (OC),  
OTHER DATA (OD), UNIT COSTS (UC), WORKLOAD (W)**

**DATA BASED ON: CALENDAR YEAR (CY), FISCAL YEAR (FY), FEDERAL FISCAL YEAR  
(FFY), BIENNIUM YEARS (BY)**

<u>Type</u>	<u>Based</u>	<u>Measure</u>	<u>1994-95</u>	<u>1995-96</u>
W	FY	Plans filed and reviewed	2,450	2,762
	FY	Plans not meeting requirements	1,158	1,405
	FY	Certificates of compliance issued	1,292	1,357
W	FY	Firms monitored for compliance	13	0
	FY	Sanctions or other enforcement actions	92	61

**PROGRAM DRIVERS :**

The number of contractors filing affirmative action plans in any one year varies with changes in the level of state spending for bid or contracted services. The workload then varies with the level and type of state spending.

Any reduction in the number of plans filed or reduction in the number of inaccurate plans filed would free agency resources to resume on-site monitoring for compliance.

For example, reducing the percentage of inaccurate plans filed will result in less time seeking revisions to the plan and will make staff time available for other purposes.



**Goal 1** : To increase employment opportunities for women, minorities and persons with disabilities within businesses doing business with state government.

**Objective 1** : Decrease by two percentage points annually the percent of affirmative action plans submitted, but which are deficient under Minnesota rules.

**Measure 1** : Percent of deficient affirmative action plans which were submitted. Baseline: FY96: 49% of all plans submitted were deficient.

	<u>F.Y.1993</u>	<u>F.Y.1994</u>	<u>F.Y.1995</u>	<u>F.Y.1996</u>	<u>F.Y.1997</u>	<u>F.Y.1998</u>
<b>% of Deficient Affirmative Action Plans</b>						
Actual				49%		
number of affirmative action plans submitted						
Actual				2,762		
number of certificates issued						
Actual			1,292	1,357		
Average staff time (hours) needed per certificate						
Actual			N/A	9.66		

#### OTHER FACTORS AFFECTING PERFORMANCE :

The Department provides technical assistance to firms to assist them in preparing affirmative action plans.

**Goal 1** : To increase employment opportunities for women, minorities and persons with disabilities within businesses doing business with state government.

**Objective 1** : Decrease by two percentage points annually the percent of affirmative action plans submitted, but which are deficient under Minnesota rules.

**Measure 2** : Increase staff efficiency by reducing time spent on securing necessary changes to plans prior to a certificate being issued. \*Baseline salary: \$292,603/1,357 number of certificates issued = \$215.62; 13,104/1,357 = 9.66 hrs. average staff time needed per certificate

Agency : HUMAN RIGHTS DEPT  
 Program : COMPLAINT PROCESSING  
 BACT : COMPLAINT PROCESSING

#### EXPENDITURES AND STAFFING :

	<u>(\$ in Thousands)</u>	<u>Percent of Department</u>
Total Expenditure	\$2,153	66.82%
General	\$2,153	
Number of FTE Staff:	38	71.27%

#### GOALS :

- Reduce illegal discrimination through the timely processing of charges filed with the Department and obtaining appropriate relief. (M.S. 363.06, Subd. 4.)
- Better inform people of their rights and obligations under the Minnesota Human Rights Act (M.S. Ch. 363) (M.S. Ch. 363.)

#### DESCRIPTION OF SERVICES :

The complaint processing program of the Department of Human Rights is composed of several components which work in sequence to identify, investigation and resolve complaints of discrimination. Those components include:

**Intake:** Providing information about agency jurisdiction, securing information from charging parties necessary to draft chards, filing charges, and preparing an initial information request to the respondent.

**Screening:** Since April 1, 1996 all new cases are reviewed by an internat committee and either: 1. assigned for investigation on the merits; 2. referred for mediation; or 3. dismissed as now warranting the resources of the agency.

**Investigation:** Staff investigators conduct impartial investigations to determine whetehr or not the evidence supports charging partiess claim of discrimination. Investigations may include a review of relevant documents and witness interviews. After completing an investigation, the staff investigator recommends wether the evidene is sufficient to support a finding of probable cause.

**Litigation/Conciliation after a Probable Cause Finding.** If the agency concludes that there is probable cause to believe discrimination occured , the matter is referred for the agency attorneys in the Attorney General's Office.

The agency investigation becomes the basis for either settlement or litigation. No Department settlement or litigation occurs without the agreement of the Commissioner or her designee.

**PROGRAM DRIVERS :**

The September, 1996, decision by the Minnesota Supreme Court in *Beaulieu vs. Joses American Bar* creates two contradictory pressures for this agency program. That decision concluded that if the agency did not investigate and decide a case within 12 months, the respondent could claim that they were prejudiced by the delay. The Court also held that at 31 months, no evidence of actual prejudice was necessary but that the case would be dismissed. That decision then penalizes charging parties who have valid claims if the agency fails to complete its investigation and make a determination of cause within 12 months.

The recent re-engineering of case processing, as discussed previously, will allow the agency to meet these time-frames for new cases.

However, one potential stumbling block is the provision in current law that requires the agency to pay for a hearing before an Administrative Law Judge if a charging party requests such a hearing any time 180 days after they filed their case.

Private attorneys are likely to increase their use of this provision because of the fear that should the agency not finish its work within 12 months, the respondent may claim prejudice from the delay under the *Joses* case. Any substantial increase in the number of requests will decrease resources available to complete agency investigations. Since the average cost to the agency of a 180 day hearing is more than double the cost of completing an investigation an increase in hearing request is likely to have a severe impact on the agency's ability to meet this important goal.

**Goal 1** : Reduce illegal discrimination through the timely processing of charges filed with the Department and obtaining appropriate relief.

**Objective 1** : Reduce the time for reaching a charge determination to 12 months.

**Measure 1** : Number of cases pending before the agency for over 12 months without a determination. Baseline data is in the printed Executive Summary.

	<u>F.Y.1993</u>	<u>F.Y.1994</u>	<u>F.Y.1995</u>	<u>F.Y.1996</u>	<u>F.Y.1997</u>	<u>F.Y.1998</u>
Number of cases over 12 months old at fiscal year end						
Actual				40%		
Target					0%	

#### DEFINITION :

MS 363.06 subd. 4 requires the Commissioner to make a determination...as to whether or not to credit the allegation of unfair discriminatory practices. The definition of a case over 12 months old is that there has been no determination within 12 months after the date the charge is filed.

#### RATIONALE :

The September, 1996 decision of the Supreme Court in *Beaulieu v. Jose's American Bar*, penalizes the charging party if the agency takes longer than 12 months to make a determination on a case. Therefore it is necessary that the agency change its procedures to prevent any loss of rights to the charging party.

#### DISCUSSION OF PAST PERFORMANCE :

The 1996 report of the Legislative Auditor showed that this agency has not reached a determination on cases within a 12 month period for many years. This did not cause legal problems for the charging party in past years since the Supreme Court had previously interpreted legislative language similar to that found in the Human Rights Act to establish a goal instead of being a mandate.

#### PLAN TO ACHIEVE TARGETS :

See the agency's Executive Summary for a complete description of the new case processing system.

#### OTHER FACTORS AFFECTING PERFORMANCE :

NOTE: The current provision requiring the agency to pay for a 180 day hearings may jeopardize the agency's ability to meet Objective 1. The September, 1996 decision of the Minnesota Supreme court in *Beaulieu v. Jose's American Bar* makes it likely that there will be a dramatic increase in the number of 180 day hearings as attorneys seek to protect the rights of their clients from the possibility that the agency will take more than 12 months to decide a case. The average cost to the agency of a 180 day hearing is double the cost of an agency investigation, and some hearings may be requested following considerable investigation, but before a case is decided. The increase in requests could drain resources the agency needs, in order to be able to decide cases within the Court mandated deadlines. Additional information on this is contained in the Executive Summary.

- Goal 1** : Reduce illegal discrimination through the timely processing of charges filed with the Department and obtaining appropriate relief.
- Objective 2** : At least 75% of cases not warranting use of resources (DWR) are dismissed within 6 months of their filing.
- Measure 1** : % of DWR cases dismissed within 6 months. Baseline: FY96 25% of those dismissals occurred within six months (340/1,346=25%) 73% of Department case closures were DWR (.73)

	<u>F.Y.1993</u>	<u>F.Y.1994</u>	<u>F.Y.1995</u>	<u>F.Y.1996</u>	<u>F.Y.1997</u>	<u>F.Y.1998</u>
Percent of DWR Cases actually dismissed within 6 months of f						
Actual				25%		
Target					75%	

**DEFINITION :**

DWR refers to cases which are Dismissed as not warranting resources under the authority specified in M.S. 363.06, subd. 4(7).

**RATIONALE :**

In the appropriation approved by the legislature for the agency in 1996, the goal of dismissing 75% of cases that are identified as cases to be dismissed as not warranting resources (DWR) would be actually dismissed within 6 months of filing.

**DISCUSSION OF PAST PERFORMANCE :**

As indicated by the 1996 Legislative Auditor's Report, the agency has never processed cases in a manner to allow this rapid a resolution of the dispute.

**PLAN TO ACHIEVE TARGETS :**

The new case processing system implemented April 1, 1996 will allow the agency to meet this goal. Every new case is now screened by a committee as soon as the answer to the charge and the rebuttal have been received. As described more fully in the Executive Summary, every case is then either dismissed, offered mediation or sent to investigation.

## **GLOSSARY**

**DETERMINATION**

Outcome measures are focused on the agency making a 'determination' on the merits of a case filed with the Department. M.S. 363.06 Subd. 4 requires that ...the Commissioner shall make a determination ...as to whether or not there is probable cause to credit the allegation of unfair discriminatory practices.

**APPENDIX**

**AGENCY : Human Rights' Data on Performance: See the Executive Summary**

The Executive Summary contains charts showing data for FY95 and FY96 on the nature and quantity of discrimination charges filed with the agency as well as their disposition. Similar information concerning the work of Contract Compliance is also provided in the Executive Summary.

Complex charts could not be entered into the Performs system. As a result, it is necessary to review the Executive Summary to locate detailed information about agency performance.