Case Processing

CHAPTER 3

The Minnesota Department of Human Rights was established to enforce Minnesota's laws against illegal discrimination. The department's central focus is the investigation of charges filed by people who feel they have been the victims of unlawful discrimination. This chapter examines the process by which the department investigates and resolves discrimination charges. Specifically, we asked:

- **How is the investigation of charges organized and carried out in the Department of Human Rights?**
- **What is the legal context of case processing?**
- **How many charges have been investigated each year?**
- **What types of charges have been filed?**
- **Have charges been investigated and resolved in a timely fashion?**
- **What were the outcomes of cases investigated in recent years?**
- **How is the appeals process organized? How many charges have been appealed in recent years, and how many decisions were reversed?**

To address these questions, we conducted interviews with the management, first-line supervisors, and staff of the Department of Human Rights; the Attorney General's staff who serve the department; and representatives of other human rights departments locally and around the country. We reviewed a sample of case files and discussed specific and general issues of case investigation with the enforcement officers who conducted the investigations. We also extracted data files from the department's computerized case tracking system, performed various quality checks and edits, and used these records to compute the statistics presented in this chapter on case processing at the department.

Our main focus is the department's performance during fiscal years 1993 through 1995. The department's case tracking system began operation in mid-1992, and most of the statistical analysis we present does not go back before this time. Much of the statistical information on case processing was extracted in August 1995 and does not reflect subsequent activity except as noted. We were able to

make some longer historical comparisons because we conducted two evaluation studies in the early 1980s, and we reviewed statistics and research reports prepared by others in the mid-1980s. Our interviews and other data collection activities took place during the Summer and Fall of 1995.

In general, we found that the department has an orderly process for accepting and investigating charges, but has been unable to keep abreast of its caseload. Cases filed with the department experienced delays that exceeded the deadlines set in law, and, in our view, these delays threaten the effectiveness of the department's enforcement program.

ORGANIZATION OF CASE PROCESSING

DHR's intake unit handles initial contact with people who want to file a charge.

In this section we describe the process by which the department accepts and investigates charges of discrimination. Figure 3.1 provides a simplified view of the life cycle of a case at the department. The process begins in the department's intake unit, which is responsible for initial contact with individuals wishing to file charges of discrimination. The unit receives inquiries by mail, telephone, and occasionally walk-in visits, but most people contact DHR by phone. The department receptionist directs calls to one of the two intake unit personnel who are on phone duty during office hours. The five enforcement officers in intake rotate to phone duty on a weekly basis.

The intake officer provides information about the case filing and investigation process and helps the potential charging party decide whether to file a formal charge. The intake unit plays a key role in ensuring that the department accepts only cases that fall within the jurisdiction of the Minnesota Human Rights Act. In order for the department to accept a discrimination charge, the case must meet the following jurisdictional tests:

- the alleged discriminatory act must have occurred within a year of when the charge is filed;[1]
- it must have happened in Minnesota; and
- it must be prohibited by the Minnesota Human Rights Act.

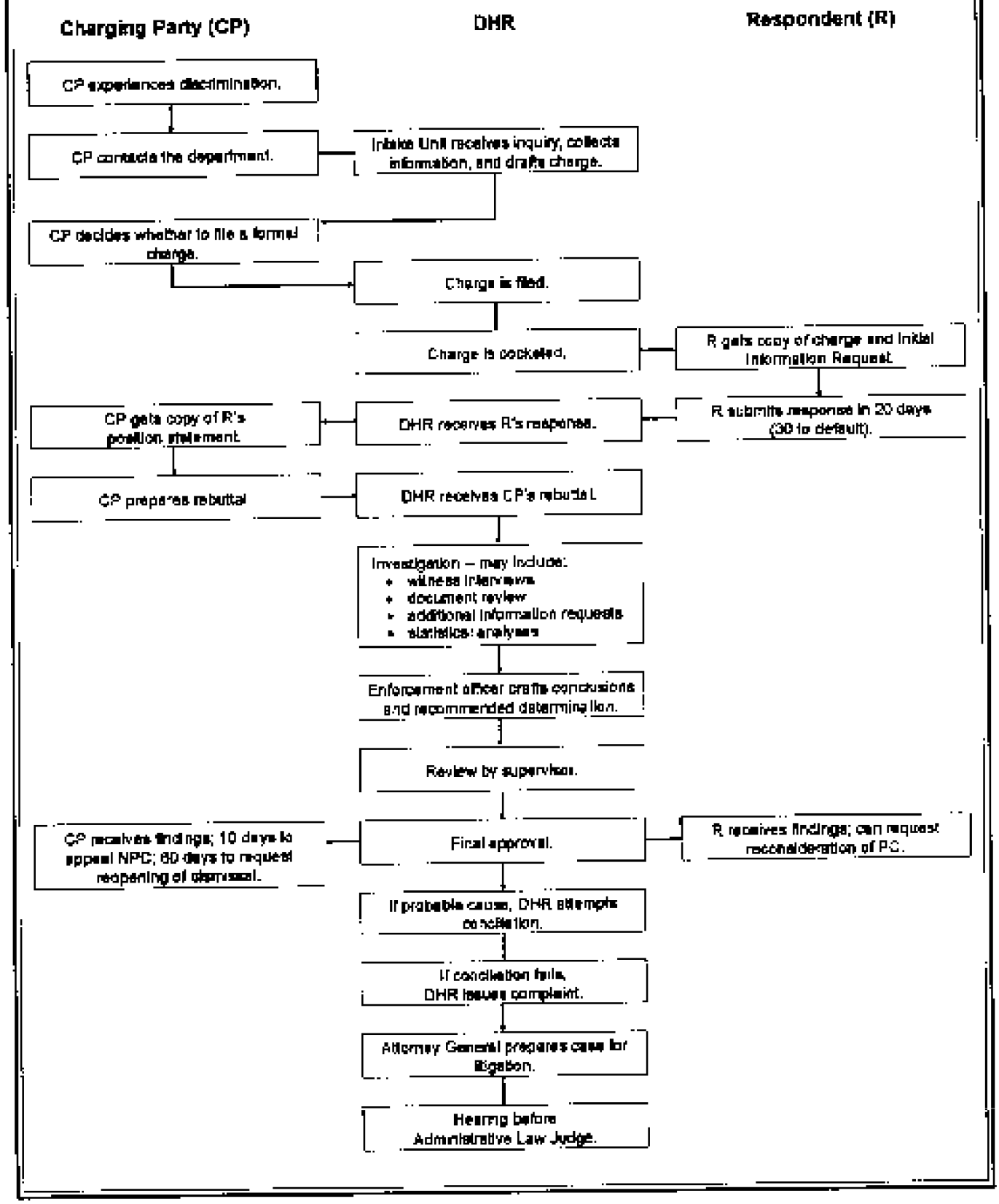
Every year the department receives thousands of inquiries that do not result in a jurisdictional charge being filed. In these cases, the intake officer handling the inquiry may simply provide information or make referrals to other agencies.[2]

If it appears that a case is jurisdictional, the intake officer will arrange to gather more specific information about the nature of the charge. In many employment

1 The running of the one-year limitation period may be suspended during the time a potential charging party and respondent are voluntarily engaged in a dispute resolution process.

2 Effective November 1995, the department decided to accept jurisdictional charges filed by private attorneys. This policy change is intended to permit additional resources to be shifted from intake to investigations.

Figure 3.1: Minnesota Department of Human Rights (DHR) Case Processing Overview



cases, the department sends out a questionnaire. The department also sends out information describing the Human Rights Act and the department's process for handling charges. Department personnel told us that unless the potential charging party (PCP) specifically asks, the department does not routinely tell the PCP the average length of time required for investigating and closing a case.

Intake officers draft discrimination charges.

Some PCPs do not respond to the mailing, and the department does not pursue these cases. If the questionnaire is completed and returned or other materials are submitted, an intake officer will review them, collect additional necessary information by phone, organize a case file folder, and then draft a formal charge for the case. (The charge is a succinct statement of the allegation, generally less than one page in length). Intake staff mail the charge draft to the PCP, who must affix a notarized signature and return the charge for filing. The charge is filed as of the date the signed charge is received by the department.

As Figure 3.1 indicates, when a signed and notarized charge is returned, the intake officer sends an initial information request to the respondent along with a copy of the charge. The Human Rights Act allows the department ten days after filing to send notification of the charge to the respondent, along with the request for information. The intake unit secretary assembles the case file and forwards it to the management information system (MIS) unit for formal docketing. Docketing includes the assignment of an official case number in the computerized case tracking system, entry of case data into the system, and the preparation of a department case file folder.

Charges are filed as of the date they are signed and returned to the department.

The MIS unit completes its work on the case file and then forwards the case to one of four case processing units. MIS distributes new employment discrimination cases on a rotating basis because all of the units investigate employment cases, which constitute the bulk of the department's work. Each unit also specializes in certain types of other cases, such as housing, disability, or sexual harassment. Within each case processing unit, there are four to five enforcement officers, or investigators, who (depending on the case) mediate settlements or agreements; investigate charges by gathering documents, interviewing witnesses, and analyzing other evidence; and recommend a determination for each charge. As of late 1995, each full-time enforcement officer carried a caseload of about 75 cases. All open cases are assigned either to a supervisor or enforcement officer. In the recent past, before a separate mediation program was established and before trainees were assigned a partial caseload, each full-time enforcement officer was responsible for over 100 cases.

Priority Designation

The department can assign one of two priority levels to new cases.[3] The department assigns *A-level priority* to cases where the charging party is HIV-positive or

3 The Legislature amended the Minnesota Human Rights Act in 1987 and directed the department to give priority to investigating six types of charges. The Legislature had previously granted the department the authority to determine which charges it processed and the order in which it processed them. Upon these two statutory bases, DHR constructed a two-level priority designation system for cases.

terminally ill, regardless of whether the medical condition is material to the charge. *A-level priority* is also assigned to commissioner's charges and charges where there is likelihood of irreparable harm to the charging party. Commissioner's charges are cases filed by the DHR commissioner, usually on behalf of a class of citizens who have experienced discrimination. Irreparable harm is defined as harm that cannot be remedied by monetary damages awardable under the Human Rights Act. In fiscal years 1993 through 1995, the department designated only 52 of the 4,000 cases filed as A-level priority cases.

The department assigns *B-level priority* if any of the following criteria apply to a case: (1) there is evidence that the respondent has intentionally engaged in reprisal; (2) there is substantial evidence or credible documentation to support the charge; (3) numerous cases have recently been filed against the respondent; (4) the respondent is a government entity; (5) the charge appears to be frivolous or without merit, despite meeting jurisdictional requirements; or (6) there is potential for broadly promoting the policies of the Human Rights Act.

According to department records, 260 cases were classified as B-level priority cases in fiscal years 1993-95. However, department personnel told us that many cases that should qualify as B-level priority are not designated as such. In our review of case files, we found several examples of cases filed against government entities that were not marked as B-level priority. Staff explained to us that the statutory criteria for selecting priority cases are too broad and, if strictly applied, would tag more cases than the department could handle in a priority fashion. Practically speaking, the department pays little attention to the B-level priority designation.

On the whole, the intake process is well organized.

In summary, there is an orderly procedure for accepting charges, drafting and perfecting the wording of the charge, and initiating proper notification of all parties to the case. By the time the case processing enforcement officer gets the case, the charge has been drafted, a request for information has been sent to the respondent, and a case file has been assembled. Each case active in the department is assigned to someone either to investigate, negotiate a settlement, or review and approve. In the next chapter we discuss the issue of whether changes in the intake process might improve the department's overall performance, but there is no operational breakdown of the process as matters stand.

BURDEN OF PROOF IN CASE INVESTIGATION

The guiding purpose of case processing at the Department of Human Rights is to determine whether or not there is probable cause to believe a violation of the Human Rights Act has occurred. As we will see, many cases are settled, withdrawn, or dismissed before reaching a determination, but, from the beginning, case investigations are oriented to making such a determination.[4]

4 After a probable cause determination is made, cases take on a new life. The department becomes the complainant and is represented by the Attorney General's staff.

Investigations are designed to determine if there is probable cause to believe a violation of the Human Rights Act has occurred.

In making a determination, " ... the department seeks to determine if it is probably true, or more likely than not, that a particular entity or individual has engaged in practices which constitute unlawful discrimination." In reaching this determination, "...the department may consider evidence regardless of whether it is sworn to, constitutes hearsay, or would otherwise be inadmissible or useful for determining proof beyond the probable cause level."[5] A more stringent standard of proof, *preponderance of the evidence*, is applied once probable cause has been determined, and the department's role in the case changes from that of investigative agency to complainant before an administrative law judge.

The ultimate burden of proof is on the charging party in discrimination cases filed with the department. During the investigative process, the burden of proof or the burden for producing evidence shifts from the charging party to the respondent and back to the charging party. The approach to proving a claim of discrimination in such cases has been established by an important Federal employment discrimination case, *McDonnell-Douglas v. Green*. The reasoning in this case has been adopted in many states including Minnesota.[6]

First, following McDonnell-Douglas, the charging party must establish a *prima facie* case by showing that he or she is a member of a protected class; that he or she was qualified for opportunities that the respondent was making available to others; that the charging party was denied the opportunities despite apparent qualifications, and that the opportunities remained available or were given to other persons not of the charging party's protected class status.[7] DHR's intake unit is responsible for conducting this stage of the investigation, and failure to articulate a *prima facie* case should result in the charge being rejected at intake. The *prima facie* case depends only on an assertion made by the charging party. No evidentiary standard must be met at this time.

Under the framework of McDonnell-Douglas, once the charging party has articulated a *prima facie* case, the burden shifts to the respondent to present a non-discriminatory reason for the alleged discrimination. The respondent generally does not have to prove his or her case, only provide an explanation for his or her actions, because the ultimate burden of proof still rests with the charging party.[8] Once the respondent has provided an affirmative defense or a non-discriminatory explanation, the burden shifts back to the charging party to rebut the respondent's assertions or evidence.

In actual practice, of course, cases can be complicated. A respondent can have both a non-discriminatory and a discriminatory motive at the same time. For example, an employee can be guilty of misconduct, but be sanctioned by his or her employer in a way that is different than non-protected group members guilty of

5 Policies and Procedures Manual 7/29/94 Section 15.1, Standards of Proof.

6 *Danz v. Jones* 263 N. W. 2nd 395, 399 (Minn. 1978) and *Sigurdson v. Isanti County*, 386 N. W. 2d 715, 720-21 (Minn. 1986) *The McDonnell-Douglas Corp. v. Green*, 411 U.S. 792, 36 L. Ed. 2d 668.

7 Department of Human Rights Policies and Procedures Manual 7/29/94 Section 15-2.

8 The respondent does have to prove any of several affirmative defenses in some cases. These include a defense that an employment practice is based on a bona fide occupational qualification.

similar misconduct. Or, behavior that is non-discriminatory on its face can have a discriminatory result. Other types of cases and issues are sometimes presented to the department, but the vast majority of cases are investigated through the three-step process established by the McDonnell-Douglas case in 1973.

Minn. Stat. §363.06 prescribes several deadlines during the investigative process. As Figure 3.1 shows, the respondent has 20 days to respond to the original information request. After 30 days, the commissioner may bring an action for default in district court, although this is seldom or ever done. In practice, the department frequently grants extensions of time to respondents.[9] Enforcement officers have large caseloads, and can afford to grant extensions in most cases without causing a further delay.

After a response is received, there is no specific statutory deadline for the charging party to provide a rebuttal, or for the department to interview witnesses, review evidence, and make a determination. But the Human Rights Act specifies an outside limit of 12 months to make a probable cause or no probable cause determination.[10] As we will see later in this chapter, the deadline is regularly exceeded.

The Human Rights Act specifies an outside limit of 12 months for DHR to make probable cause determinations.

The department argues that the 12-month deadline is advisory rather than mandatory, because the law contains no penalty for exceeding the deadline. However, the Minnesota Court of Appeals recently overturned a major case because the department took nearly three years to make a determination.[11] This case is now before the Minnesota Supreme Court. The outcome of the case may clarify the legal standing of the statutory 12-month deadline. Notwithstanding the legal question, in the next chapter we offer our analysis of the desirability of the deadline from the perspective of its impact on program effectiveness.

TYPES OF CLOSURES

Cases under investigation can travel various paths and come to different conclusions. Figure 3.2 presents a summary of the ways in which cases may be closed. The department has the authority to dismiss a case if a charging party fails to cooperate with the investigation. For example, administrative rules require that the charging party cooperate with the department's requests for information, and failure to provide information within 30 days of the request is grounds for dismissal.[12] The department can also dismiss a charge that is moot; outside of its jurisdiction; illogical, fantastic, or incoherent; brought by a charging party acting in bad faith; or a charge that is substantially the same as a previous charge filed by the same charging party, where the department found no probable cause.[13] *Minn.*

9 Recently, department management has implemented a more restrictive policy on the use of time extensions.

10 *Minn. Stat.* §363.06 Subd. 4.

11 State of Minnesota vs. RSJ Inc. d/b/a Jose's American Bar and Grill and Joseph Schaefer. Appellate Court Case No. C1-94-2365. Date of Decision: June 13, 1995.

12 *Minn. Rules* 5000.0540.

13 *Minn. Rules* 5000.0530.

Figure 3.2: Types of Case Outcomes

ACRONYM	CASE OUTCOME	DESCRIPTION
DOTH	Dismissed - Other	Dismissed because DHR was unable to locate the charging party (CP) or the CP failed to provide required information.
DLJS	Dismissed - Lack of Jurisdiction	Dismissed because, during investigation, case was found to be outside DHR's jurisdiction, despite earlier intake screening.
DWR	Dismissed - Doesn't Warrant Further Use of Department Resources	Dismissed because preliminary investigation indicated that a finding of no probable cause was almost certain if a full investigation were completed. The department has established early dismissal standards to identify these cases. Could also be dismissed because the allegations in the charge were not the subject of collectible facts; the CP's own statements indicated that the respondent (R) had a nondiscriminatory basis for action; or the charge was nearly identical to another charge.
WPA	Withdrawn - Private Right of Action	Withdrawn by a charging party who wishes to initiate a private lawsuit in district court. CP must wait at least 45 days after filing to withdraw charge.
WSR	Withdrawn - Situation Resolved	Withdrawn because the CP and R resolved their dispute. Usually the CP and R conducted their own direct negotiations and achieved a settlement, without assistance from DHR.
WDO	Withdrawn - Other	Voluntarily withdrawn by the CP, who has decided not to pursue the charge. Department is supposed to ensure that CP was not coerced into withdrawal.
PSA	Predetermination Settlement Agreement	DHR negotiated a settlement between the CP and R before reaching a determination.
NPC	No Probable Cause	DHR completed full investigation of the charge and found insufficient evidence to establish probable cause to believe that a violation of the Minnesota Human Rights Act occurred.
CSA	Conciliation Settlement Agreement	After a determination of probable cause, DHR negotiated a settlement between the CP and R.
LDW	Litigation - Dismissed or Withdrawn	The case was dismissed or withdrawn after a determination of probable cause.
LSA	Litigation - Settlement Agreement	DHR found probable cause in the case but was unable to negotiate a settlement. The case moved to the Attorney General's office for litigation, but a settlement was reached under the aegis of the AG.
ALJ	Litigation - Administrative Law Judge	After a probable cause determination, the case proceeded to an administrative hearing, where an ALJ reached a decision.

Rules 5000.0520 also states that the department can dismiss a charge "which the commissioner determines does not warrant further use of department resources."

In some cases, the charging party exercises his or her right to withdraw the charge 45 or more days after filing, in order to pursue the case in civil court. Other cases are withdrawn because the situation is resolved or because the charging party decides not to pursue the matter any further.

There are many ways cases can be closed prior to a probable cause determination.

In some cases, the enforcement officer is able to promote a settlement between the parties prior to a determination. But, if a case is not settled, withdrawn, or dismissed, it eventually reaches the point where the department issues a determination of probable cause or no probable cause. If DHR finds probable cause to believe that the respondent engaged in the alleged unfair discriminatory practice, the investigator or attorney general's staff will attempt to conciliate, or settle, the case. If conciliation fails, the case may move to litigation at the Office of Administrative Hearings. Both the charging party and the respondent have available avenues of appeal for no probable cause and probable cause determinations by the department. We discuss the appeals process in detail at the end of this chapter.

NUMBER OF CHARGES FILED, CLOSED, AND PENDING

The workload of the department varies with the number of people who decide to file charges each year. Timely investigation of charges and effective performance of its mission require that DHR close as many cases as it opens over the course of a year or so. We looked at the historical pattern of case filings and found:

- **The number of charges filed has fluctuated between 1,000 and 2,000 charges per year over the last 15 years.** [14]

As Table 3.1 shows, about 1,200 charges were filed in 1979 and 1980, but this number increased to about 1,400 charges in 1987 and peaked at 1,900 in 1991. During the last three years, however, filings dropped again to an average of approximately 1,350 charges annually.

Factors explaining variations in the number and type of charges filed include expansion of the Human Rights Act to cover new areas of discrimination, such as disparate treatment due to sexual orientation. In Chapter 1 we reviewed the history of how the Minnesota Human Rights Act was extended, over time, to cover new protected groups and new areas of discrimination. Filings in fiscal years 1993-95 are lower than the several preceding years, however, and are not unusually high by historical standards.

14 We used data from the department's computerized case tracking system to calculate case filings in fiscal years 1993 through 1995. Data for the period from 1978 to 1983 came from our two earlier reports on the Department of Human Rights. Written department documents provided information on case filings between 1987 and 1992, but we are unable to verify the reliability of these figures.

The number of charges filed and cases closed has varied over the years.

Table 3.1: Charges Filed, Cases Closed, and Year-End Inventory, FY 1978-85

Fiscal Year	Charges Filed	Cases Closed	Year-End Inventory
1978	1,034	641	2,096
1979	1,218	932	2,383
1980	1,231	990	2,626
1981	1,628	1,069	3,062
1982	1,676	1,838	2,969
1983	1,350	1,200	3,119
1984	*1,477*	*1,368*	*3,228*
1985	*1,395*	*2,415*	*2,045*
1986	*1,772*	*2,007*	*1,401*
1987	*1,437*	*1,328*	*1,510*
1988	*1,421*	*1,194*	*1,737*
1989	*1,523*	*1,652*	*1,608*
1990	*1,692*	*1,527*	*1,773*
1991	*1,927*	*1,724*	*1,976*
1992A	*1,441*	*1,591*	*1,826*
1992B	--	--	1,445
1993	1,287	1,373	1,359
1994	1,396	1,089	1,666
1995	1,362	1,244	1,784

Sources: Data for FY 1978-83 from Office of the Legislative Auditor, *Evaluation of the Minnesota Department of Human Rights* (St. Paul, January 1981), and *Evaluation of the Minnesota Department of Human Rights: A Follow-up Study* (St. Paul, August 1983). Data for FY 1984-86 from Human Rights Advisory Task Force, *Human Rights Advisory Task Force Report* (St. Paul, February 1987). Charges filed in 1985 and 1986 from DHR. Data for FY 1987-92 from DHR Office Memorandum to Deb Pile, MN Planning, January 14, 1993. Data for FY 1993-95 extracted from the Department of Human Rights case-tracking system and analyzed by the Office of the Legislative Auditor.

Note: Data sources do not provide consistent information for FY1984-92. Numbers in italics were taken from reports prepared by others as specified in the source note above. Numbers for 1993-1995 were calculated for this report and are as accurate as possible. Two year-end estimates (1992A and 1992B) are shown for 1992. Estimate A is 1,826 calculating forward from earlier years, and Estimate B is 1,445 calculating backwards from later years. We think 1,445 is the more reliable estimate for this year, but data on charges filed, closed and open at year end for earlier years is accurate enough to show the historical range of variation in these numbers.

We examined changes in the number of cases closed by the department for the same period of time. The statistics, displayed in Table 3.1, show that:

- **The number of cases closed has also fluctuated over the years, but the department closed more cases annually between 1989 and 1992 than it has closed in each of the past three years.**

The number of cases closed increased from fewer than 1,000 in 1980 to more than 2,000 in 1985 and 1986 and then dropped to about 1,400 in 1993 and about 1,100 in 1994. Some unusually high numbers, as in 1982, 1985, and 1986, may be explained by the dismissal of old cases and short-term extraordinary efforts to clear the accumulated backlog.

A comparison of the number of cases filed and closed each year demonstrates whether the department is accumulating an inventory of cases. If DHR regularly closes fewer cases than are filed, then over time a backlog of aging cases will accumulate. We were unable to verify the statistics for the period between 1984 and 1992 because the available data conflicts with reliable information we put together for recent years.[15] We did examine the trend in the number of cases in DHR's inventory at year-end over the last several years, and found that:

The number and growth of open cases are reasons for concern.

- **The department's inventory of cases increased from 1,359 at the end of fiscal year 1992 to 1,784 cases by July 1995.**

This inventory level is not unusually high by historical standards, but in the past, the department had to take drastic action to reduce the inventory including the summary dismissal of old cases. The inventory averaged about 2,700 cases between 1978 and 1983, and the large backlog prompted the 1983 Legislature to direct the Commissioner of Administration to appoint a "transition team" to develop a plan to solve the department's operational problems. The Department of Administration was instructed to report back to the Legislature in February 1984.[16] The Management Analysis Division staffed the transition team and in February 1984, Governor Perpich appointed Kathryn Roberts of the Management Analysis Division as acting commissioner of the Department of Human Rights.[17] Problems at the department were not solved for very long. In 1986, the Governor again appointed an acting commissioner when Linda Johnson, the commissioner who replaced Kathryn Roberts, was forced to resign.[18]

The size of the current inventory of cases is a source of concern. If no new cases were accepted into the department, it would take about a year and a half, at the present rate of production, to clear the current inventory of old cases. Of particular concern is the fact that the inventory has grown by about 400 cases, or 31 percent, over the last two years.

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15 We think the data can be used to understand how filings and closures vary over the period. We are reasonably confident of data before 1984 because our office put together these statistics in the early 1980s. We also believe data for fiscal years 1993 to 1995 to be accurate. We cannot vouch for the accuracy of statistics for 1984 through 1992, however. A break in the statistical series occurred in mid-1992 when data were not entered into the current case-tracking system. There is a discrepancy of 381 cases in the inventory at the end of fiscal year 1992 between our calculations backward from current data, and calculations going forward through the 1980s using data from the sources noted in Table 3.1. DHR asked that the year- end data prior to 1992 be shown in the table. These data are useful if it is understood that they might be off by several hundred cases across a nine-year period 1983 to 1992.

16 *Minn. Laws* 1983 Ch. 301, Sec. 42.

17 Minnesota Department of Administration, *An Operational Analysis of the Department of Human Rights* (St. Paul, January 1984), 1.

18 Minnesota Department of Administration, *Minnesota Department of Human Rights Status Report* (St. Paul, November 1986), 1.

TYPES OF CHARGES FILED

In Chapter 1 we described how the scope of the Human Rights Act has expanded over the years. The law now prohibits discrimination in 11 different areas, including employment and housing, and it forbids discrimination on any of 12 different bases, including race, religion, age, and disability. We looked at the types of charges filed with the department and compared the distribution with previous years. We found that:

- **More than 70 percent of all charges relate to employment.**

As Table 3.2 shows, over 70 percent of cases filed in fiscal years 1993 through 1995 allege some type of discrimination in the area of employment. During the same period, 4.5 percent of cases alleged discrimination in housing, 5 percent in public accommodations, and fewer cases in the other areas covered by the Human Rights Act. Nearly 7 percent of charges filed alleged reprisal, defined in statute as (among other things) any form of intimidation, retaliation, or harassment against an individual for participating in a human rights investigation, filing a charge, or associating with persons in protected classes.[19]

Table 3.2: Distribution of Docketed Cases, by Area of Discrimination, FY 1993-95

	Date Docketed											
	July - Dec. 1992		Jan. - June 1993		July - Dec. 1993		Jan. - June 1994		July - Dec. 1994		Jan. - June 1995	
	#	Pct	#	Pct	#	Pct	#	Pct	#	Pct	#	Pct
SINGLE AREA OF ALLEGED DISCRIMINATION												
Aiding/Abetting	33	4.8%	20	3.5%	27	3.9%	42	6.0%	46	5.9%	28	4.8%
Business	6	0.9	4	0.7	4	0.6	2	0.3	4	0.5	1	0.2
Credit	0	0.0	0	0.0	1	0.1	0	0.0	3	0.4	1	0.2
Employment Agency	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Education	23	3.4	23	4.0	19	2.7	29	4.2	22	2.8	17	2.9
Employment	506	74.0	440	76.4	517	74.6	441	63.3	531	68.2	387	66.5
Union	2	0.3	0	0.0	2	0.3	0	0.0	2	0.3	2	0.3
Housing	39	5.7	16	2.8	33	4.8	25	3.6	42	5.4	24	4.1
Public Accomodations	30	4.4	17	3.0	28	4.0	50	7.2	41	5.3	33	5.7
Public Service	19	2.8	25	4.3	32	4.6	30	4.3	24	3.1	27	4.6
Reprisal	25	3.7	22	3.8	16	2.3	37	5.3	24	3.1	35	6.0
TWO OR MORE AREAS OF ALLEGED DISCRIMINATION												
Reprisal and Employment	1	0.1	3	0.5	8	1.2	30	4.3	33	4.2	19	3.3
Reprisal and Other	0	0.0	1	0.2	4	0.6	4	0.6	7	0.9	3	0.5
Other	0	0.0	5	0.9	2	0.3	7	1.0	0	0.0	5	0.9
TOTAL	684	100.0%	576	100.0%	693	100.0%	697	100.0%	779	100.0%	582	100.0%

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking d ata.

19 Minn. Stat. §363.03, Subd. 7.

The data also show that:

- **The leading basis of discrimination allegations was sex, followed by race and disability.**

Table 3.3 presents the distribution of charges filed in fiscal years 1993 through 1995 by the alleged basis of discrimination. The leading basis of discrimination was sex (22 percent), followed by race (17 percent), disability (17 percent), and age (11 percent). About 22 percent of cases allege discrimination on more than one basis. Most cases in this category combine a charge of reprisal with another basis, such as race, sex, or age.

We compared the distribution of charges filed in the last three years with the distribution in the early 1980s, when we conducted our previous studies of the department.[20] Then, as now, employment was the major area in which charges of discrimination were filed. Sex, race, age, and disability were also the major bases, with only minor differences in the proportion of charges of each type.

Table 3.3: Distribution of Docketed Cases, By Basis of Discrimination, FY 1993-95

	Date Docketed											
	July - Dec. 1992		Jan. - June 1993		July - Dec. 1993		Jan. - June 1994		July - Dec. 1994		Jan. - June 1995	
	#	Pct	#	Pct	#	Pct	#	Pct	#	Pct	#	Pct
SINGLE BASIS OF ALLEGED DISCRIMINATION												
Age	70	10.2%	68	11.8%	92	13.3%	74	10.6%	65	8.3%	53	9.1%
Color	0	0.0	0	0.0	3	0.4	2	0.3	0	0.0	0	0.0
Disability	101	14.8	106	18.4	108	15.6	143	20.5	121	15.5	90	15.5
Family Status	3	0.4	1	0.2	2	0.3	5	0.7	0	0.0	2	0.3
Marital Status	13	1.9	0	0.0	7	1.0	10	1.4	16	2.1	3	0.5
National Origin	22	3.2	15	2.6	25	3.6	30	4.3	25	3.2	19	3.3
Public Assistance Status	5	0.7	3	0.5	2	0.3	5	0.7	2	0.3	2	0.3
Race	94	13.7	81	14.1	128	18.5	138	19.8	142	18.2	94	16.2
Religion	7	1.0	4	0.7	5	0.7	8	1.1	5	0.6	4	0.7
Reprisal	26	3.8	25	4.3	23	3.3	39	5.6	35	4.5	37	6.4
Sexual Orientation	0	0.0	0	0.0	1	0.1	4	0.6	13	1.7	9	1.5
Sex	172	25.1	125	21.7	154	22.2	154	22.1	175	22.5	118	20.3
TWO ALLEGED BASES												
Reprisal and Other	72	10.5	54	9.4	58	8.4	27	3.9	78	10.0	56	9.5
Other	79	11.5	71	12.3	61	8.8	39	5.6	84	10.8	69	11.9
Three or More Alleged Bases	20	2.9	23	4.0	24	3.5	19	2.7	18	2.3	26	4.5
TOTAL	684	100.0%	576	100.0%	693	100.0%	697	100.0%	779	100.0%	582	100.0%

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking d ata.

20 Office of the Legislative Auditor,*Evaluation of the Minnesota Department of Human Rights* (St. Paul, January 1981), 21-22. *Evaluation of the Minnesota Department of Human Rights: Follow-Up Study* (St. Paul, August 1983), 6-7.

TIMELINESS OF INVESTIGATION

The length of time the department takes to investigate charges of discrimination was one of the central questions prompting this evaluation study. In the Human Rights Act, the Legislature clearly expressed its intent that the department handle individual charges of discrimination in a timely fashion. The Act lists some types of charges into which the commissioner should make an immediate inquiry, and others to which the commissioner should give priority. It then states:

> On other charges the commissioner shall make a determination within 12 months after the charge was filed as to whether or not there is probable cause to credit the allegation of unfair discriminatory practices.[21]

To evaluate the reasonableness of this standard of timeliness, we reviewed statutory provisions in other states and interviewed knowledgeable staff in civil rights agencies around the country. We found that:

- **At least 21 states other than Minnesota have a statutory deadline of one year or less for making a determination in cases filed with the state human rights agency.**

Many states set a statutory deadline for making a probable cause determination in human rights cases.

Five states besides Minnesota also have a deadline of exactly one year. Sixteen other states require case closure in less than a year, with deadlines ranging from 30 days for employment discrimination cases in Kentucky to 300 days, in Illinois and Kansas. Figure 3.3 lists the states that restrict the amount of time their human rights agency can spend investigating a case. These data show that, in comparison with other states, Minnesota's 12-month deadline is not an unreasonable standard of timeliness for making a determination. This is not to suggest that all the states listed in Figure 3.3 have succeeded in eliminating large backlogs. We found that aging cases and large inventories of open cases are a common problem at the EEOC and state agencies around the country.

From our interviews with civil rights enforcement personnel, we also found that:

- **Some human rights agencies are striving to close most cases in less than 120 days.**

The federal Equal Employment Opportunity Commission has been experimenting with ways to expedite case processing. According to staff in their Milwaukee regional office, three to four months is considered to be an adequate amount of time to conduct most investigations. Under their system, the respondent has 30 days to submit a written response to a charge. The investigator then sends a summary of the respondent's position to the charging party, with the respondent's consent, and the charging party is given 30 days for rebuttal. With this information, collected in 60 days, and an additional 30 to 60 days for interviewing witnesses and reviewing other evidence, the investigator can usually make a determination. At least

21 Minn. Stat. §363.06, Subd. 4.

Many states set shorter deadlines than Minnesota for making probable cause determinations.

Figure 3.3: State Limits on Case Time in Investigation

State	Limit on Time in Investigation
Kentucky	30 days for employment; 100 for housing
Louisiana	30 days
Arizona	60 days
Georgia	90 days
Nebraska	100 days for housing complaints
Ohio	100 days
Vermont	100 days
Delaware	120 days
West Virginia	150 days
Florida	180 days
Hawaii	180 days
New York	180 days
Colorado	270 days
Connecticut	9 months
Illinois	300 days
Kansas	300 days
California	1 year
Idaho	1 year
MINNESOTA	**1 year**
Oregon	1 year
New Mexico	1 year
Rhode Island	1 year
New Hampshire	2 years

Source: Various state human rights agencies.

five states (Connecticut, Kansas, Maine, Massachusetts, and Oregon) have created similar systems to address the majority of their cases within 60 to 90 days.

In light of Minnesota's 12-month deadline, and the recognition that some experts think it is possible to close most cases in less than four months, we examined the timeliness of investigations performed by the department. We analyzed two different, but overlapping, groups of cases: (1) cases docketed in fiscal years 1993 through 1995; and (2) cases closed in fiscal years 1993 through 1995.[22] In our analysis of cases grouped by docket date, we looked at a set of cases docketed in a specific time period and followed how many were closed over time and how long it took to close them. We also examined the age of open cases in a manner analogous to the way a business might measure the age of its inventory. Such a view is different from an examination of recently closed cases. Statistics on elapsed time of investigation for a group of cases selected by closure date can unduly reflect the department's recent performance, and it can be influenced by the choice of cases that are closed. For example, if the department focused its attention on cases filed

22 We described earlier in this chapter the process by which charges are filed and docketed. The difference between the filing date (when a signed charge is received by DHR) and the docket date (when the charge information is entered onto DHR's computer system) should be at most ten days. We used the docket date in our analysis because the docket date information was easier to access and check for reliability.

within the last year, rather than the oldest open cases, the data on elapsed time in investigation would look quite different. We think it is necessary to look at the status and age of open cases as well as cases closed.

Our analysis is limited by the fact that the department's current case-tracking system contains data only for cases open as of July 1, 1992 or filed since that time. Data on closed cases from prior years were not entered into the case tracking system when it became operational at the beginning of fiscal year 1993. Therefore, we were unable to construct a complete data set for cases filed and closed prior to FY 1993, although we assembled some information from department records on cases filed before mid-1992 and closed in the last three years.

In general, our analyses of cases docketed and cases closed both show that:

- **Many charges were not investigated and resolved in a timely fashion.**

Analysis of Cases Docketed FY 1993-95

Table 3.4 presents data on cases filed between July 1992 and June 1995. It shows the number of cases that were docketed in this period, and the number of cases that were closed by August 17, 1995, the date on which we extracted data from the department's system. The data are broken down into 6, six-month periods for further analysis. The number of cases docketed in each six-month period ranged between 582 and 780 cases. The data show that:

- **Many cases filed between July 1992 and June 1994 were still open in August 1995.**

Table 3.4 indicates that 9 percent of cases docketed between July and December 1992 were still open in August 1995, as were 15 percent of those docketed between January and June 1993, 23 percent of those docketed between July and December 1993, and 54 percent of cases docketed between January and June 1994.

Table 3.4: Rate of Closure of Cases Docketed During FY1993-95

Date Docketed	Total Cases Docketed	Number of Cases Closed	Percent of Cases Closed	Percent of Cases Open[1]
July 1992 - December 1992	701	637	90.9%	9.1%
January 1993 - June 1993	586	501	85.5	14.5
July 1993 - December 1993	696	537	77.2	22.8
January 1994 - June 1994	700	325	46.4	53.6
July 1994 - December 1994	780	271	34.7	65.3
January 1995 - June 1995	582	87	14.9	85.1
July 1992 - June 1995	4,045	2,358	58.3%	41.7%

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking d ata.

[1]As of August 17, 1995.

We calculated the age of open cases and the elapsed time between docketing and closure for closed cases and found that the average age of open cases from the earliest period was over 1,000 days, and the average case life from docketing to closure for closed cases was about a year.[23] Table 3.5 presents information on the age of open cases and the time it took to process cases that are now closed. As Table 3.5 shows, the department took an average of 369 days to close cases filed in July through December 1992, and 345 and 333 days to close cases filed in the next two six-month periods.[24] These numbers are fairly constant; for cases filed in later periods less time was available to investigate cases, so the average age of closed cases is lower.

Table 3.5: Average Age of Cases Docketed During FY1993-95

Date Docketed	Number of Cases Closed	Average Elapsed Time From Docketing to Closure (days)	Number of Cases Still Open[1]	Average Age[1] (days)
July 1992 - December 1992	637	369	64	1,023
January 1993 - June 1993	501	345	85	863
July 1993 - December 1993	537	333	159	686
January 1994 - June 1994	325	270	375	501
July 1994 - December 1994	271	152	509	317
January 1995 - June 1995	87	95	495	137
July 1992 - June 1995	2,358	307	1,687	394

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking data.

[1]As of August 17, 1995.

Analysis of Cases Closed FY 1993-95

Table 3.6 looks at how many cases the Department of Human Rights closed between mid-1992 and mid-1995. As Table 3.6 shows, a total of 3,706 cases were closed during the period, and the average elapsed time to closure in this period was 427 days. Table 3.6 shows that:

- **Fewer cases were closed in fiscal year 1995 than in fiscal 1993, and it took longer, on average, to close them.**

This is not a positive trend, although it could mean that the department has recently concentrated on old, difficult to close, cases. It could also simply mean that the department is closing fewer cases and taking longer to do so.

23 There were, as of mid-September 1995, in addition to the cases identified in Table 3.4, 26 open cases filed prior to July 1992. These cases were 1,142 days old or older at this time.

24 Keep in mind that fewer of the recently-filed cases are closed, and those that are resolved may not be the same mix of cases as those filed in earlier periods if complex, difficult cases take longer to close.

On average, it took 427 days from docketing to closure for cases closed in FY 1993-95.

Table 3.6: Average Elapsed Time Between Docketing and Closure for Cases Closed During FY1993-95

Date Closed	Average Elapsed Time From Docketing to Closure (Days)	Number of Cases Closed
July 1992 - December 1992	345	666
January 1993 - June 1993	391	707
July 1993 - December 1993	433	552
January 1994 - June 1994	429	537
July 1994 - December 1994	490	595
January 1995 - June 1995	486	669
July 1992 - June 1995	427	3,706

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking data.

ANALYSIS OF CASE AGE

We examined the proportion of cases in which the department either reached a determination or closed a case within a year. We calculated the elapsed time to completion or to a determination of probable cause or no probable cause. We found that:

- **The department took more than a year to close a large percentage of cases, and thus was out of compliance with the 12-month deadline for making a determination.**

Table 3.7 shows that 55 percent of cases closed between July 1992 and June 1995 were closed within 12 months. About 33 percent took between one and two years, and 9 percent took between two and three years. About 3 percent of cases took more than three years to close.[25]

Table 3.8 also shows how long it took to close cases docketed in fiscal year 1993, again excluding cases with probable cause outcomes. For these cases, 61 percent were closed in less than one year, 32 percent in one to two years, and 7 percent in over two years.

Finally, we looked at the cases that reached a probable cause determination. Data on these cases are presented in Table 3.9. For 173 cases closed mid-1992 through mid-1995 for which data were available, the time between docketing and a probable cause determination was a year or less in 34 percent of cases, one to two years in 45 percent, two to three years in 16 percent, and more than three years in the remaining 6 percent. The average number of days between docketing and the original determination for the 173 probable cause cases and 21 additional split

25 This table does not include 216 cases in closure categories reflecting a probable cause determination. Such cases could be in compliance with the 12-month requirement, but take longer than 12 months to finally resolve. Table 3.9 presents data on the amount of time it took the department to issue probable cause determinations.

Many cases exceeded the 12-month statutory deadline for making a probable cause determination or closing the case.

Table 3.7: Cases Closed in FY1993-95, Grouped by Elapsed Time from Docketing to Closure

Elapsed Time from Docketing to Closure	Number of Cases	Percent
Less than 1 year	1,906	55.6%
1-2 years	1,153	33.1
2-3 years	323	9.2
3-4 years	68	1.9
4-5 years	17	0.5
5-6 years	15	0.4
6-7 years	5	0.1
7-8 years	0	0.0
8-9 years	3	0.1
Total	3,490	100.0%

Note: Excludes 216 cases with probable cause outcomes.

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking d ata.

Table 3.8: Cases Docketed in FY1993 Grouped by Elapsed Time from Docketing to Closure

Elapsed Time from Docketing to Closure	Number of Cases	Percent
Less than 1 year	660	61.4%
1-2 years	340	31.6
2-3 years	75	7.0
Total	1,156	100.0%

Note: These counts do not include the 63 cases docketed in FY1993 that had probable cause out - comes. They also exclude the 149 cases docketed in FY 1993 that were still open as of August 199 5.

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking d ata.

determination cases was 558 days. This average rose from 484 days for cases closed in FY 1993 to 609 days in FY 1995. So, like the other analyses, this comparison also shows that many determinations took much longer than the statutory deadline of 12 months. This is a serious problem, and we discuss its causes and possible solutions in the next chapter.

CASE PROCESSING OUTCOMES

We examined not only the rates at which cases were closed, but the outcomes of investigations as well. Figure 3.2 presents the complex array of possible case outcomes. Cases can be dismissed for several reasons, withdrawn for several rea-

Table 3.9: Length of Time from Docketing to Probable Cause Determination, Cases Closed in FY 1993-95

Time From Docketing to Probable Cause Determination	1993		1994		1995		1993-95	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Less than 1 year	15	36.6%	16	30.8%	27	33.8%	58	33.5%
1-2 years	21	51.2	26	50.0	31	38.8	78	45.2
2-3 years	5	12.2	8	15.2	15	18.8	28	16.2
3-4 years	0	0.0	1	2.0	2	2.5	3	1.7
4-5 years	0	0.0	0	0.0	3	3.8	3	1.7
5-6 years	0	0.0	1	2.0	2	2.5	3	1.7
Total	41	100.0%	52	100.0%	80	100.0%	173	100.0%

AVERAGE TIME FROM DOCKETING TO DETERMINATION (DAYS)

Original Determination	Total Cases FY 93-95	Average Number of Days from Docketing to Determination			
		1993	1994	1995	1993-95
Probable Cause (PC)	173	487	530	608	555
Split Determination	21	453	675	618	580
All PC and Split Determinations	194	484	545	609	558

Note: These tables look at the elapsed time between the docketing of a case and the issuance of a probable cause determination. We did not include in our calculations the amount of elapsed time between the issuance of a det ermination and the final closure of a case.

Of the cases closed in FY 1993-95, the department issued 271 probable cause determinations a nd 22 split determinations. Our calcula - tions are based on a total of 194 determinations because the department's case tracking sys tem did not contain information on the original determination date for a number of cases.

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking d ata.

sons, or settled with or without the department's assistance. In addition, the department can make a determination of no probable cause or probable cause. After a probable cause determination, cases may be settled, withdrawn, dismissed, or litigated.

It is impossible to set a precise standard, but a reasonable percentage of department investigations should sustain the charge filed with the department if citizens are bringing strong cases to the department and investigations are competent. It is well recognized that a certain percentage of cases filed will be frivolous or meritless, and that other cases, however well-motivated, will lack evidence to sustain an ultimate finding that discrimination occurred, or even that there is probable cause to believe it was likely. Our earlier studies found a somewhat higher proportion of cases were resulting in a probable cause determination. Our 1981 and 1983 studies found that about 6.5 percent of cases closed in FY 1978-93 had probable cause outcomes, compared with 5.8 percent in FY 1993-95. Proportionately there were also more no probable cause determinations and fewer dismissals in the

past.[26] The attorney general's staff now serving the department have told the department that they would like more probable cause cases, and stronger cases, to litigate. The department, in response, made an effort to accelerate probable cause determinations.

The great majority of charges were withdrawn, dismissed, or found to lack probable cause.

In general, our examination of the outcomes of charges investigated by the department found that:

- **Relatively few cases were settled in favor of the charging party. Over 80 percent of charges filed were withdrawn, dismissed, or found to lack probable cause.**

To recapitulate, the purpose of investigations at the department is to assemble enough evidence relating to each charge to make a determination if a case is worth pursuing or to promote a settlement of the case if the parties are amenable. If the investigation concludes that it is more likely than not that discrimination occurred, the department finds probable cause, and its role changes from investigator to complainant. After a determination of probable cause, the Attorney General's staff serving the department takes charge of prosecuting the case although the department may still be involved in negotiating a settlement. Again, most cases do not reach the point where a cause or no cause determination is made. Most cases are withdrawn, dismissed, or settled.

Analysis of Cases Closed FY 1993-95

Table 3.10 presents an analysis of case outcomes and case processing time for all cases closed in fiscal years 1993 to 1995. As this table shows, 67.3 percent of cases closed during this period were dismissed, nearly all because the department judged that further investigation would lead to a no probable cause determination, meaning the cases lacked evidence or a rebuttal of respondent's evidence or arguments. The abbreviation used in Table 3.10 for these cases is DWR, "does not warrant further use of department resources." An additional 14.5 percent were withdrawn, 7.0 percent were settled prior to a determination, and 5.4 percent ended in a no probable cause determination. Only a relatively small percentage of cases, 5.8 percent of all closed from July 1993 to June 1995, resulted in a probable cause determination and subsequent settlement or litigation. Although we have collapsed some of the closure categories used by the department, Table 3.10 is still complex. Refer to Figure 3.2 for more information on how cases may be closed.

There are several reasons why cases are withdrawn. Table 3.10 shows that 5.7 percent of cases were withdrawn to pursue the case in court, 3.9 were withdrawn because the parties resolved the dispute on their own, and 4.9 percent were withdrawn because the charging party decided not to pursue the case for other reasons.

The reasons for dismissal include inability to locate the charging party, or discovery of a jurisdictional defect that was overlooked at intake. Most cases, however,

26 Office of the Legislative Auditor,*Evaluation of the Minnesota Department of Human Rights: Follow-Up Study* (St. Paul, August 1983), 14.

Table 3.10: Type of Outcome and Time to Closure Cases Closed in FY 1993-95

Type of Case Outcome	Number of Cases	Percent of Cases	Average Elapsed Time from Docketing to Closure (days)
Dismissed:			
DOTH	58	1.6%	371
DLJS	47	1.3	302
DWR	2,387	64.4	426
Withdrawn:			
WDO	182	4.9	326
WPA	211	5.7	419
WSR	145	3.9	359
Predetermination Settlement Agreement	259	7.0	212
No Probable Cause	201	5.4	499
Probable Cause:			
Conciliation Settlement (CSA)	88	2.4	806
Litigation:			
LDW	44	1.2	656
LSA	72	1.9	924
ALJ	12	0.3	703
All Cases Closed FY 1993-95	3,706	100.0%	427

DOTH - Dismissed: Unable to Locate Charging Party (CP); Lack of Cooperation by Charging Par ty.
DLJS - Dismissed: Lack of Jurisdiction.
DWR - Doesn't Warrant Further Use of Department Resources; Early Dismissal.
WDO - Withdrawn: Other.
WPA - Withdrawn: Private Right of Action.
WSR - Withdrawn: Situation Resolved.
CSA - Conciliation Settlement after Probable Cause (PC) Determination.
LDW - Dismissed or Withdrawn During Litigation after PC Determination.
LSA - Settlement Agreement through the Attorney General after PC Determination.
ALJ - Administrative Law Judge decision after PC Determination.

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking d ata.

The elapsed time from docketing to closure varies, but those closed after a probable cause determination take the longest time on average.

fall into the category "does not warrant further use of department resources" (DWR). This category includes cases where the department judges that further investigation would result in a finding of no probable cause.[27] Many DWR case files that we reviewed were cases lacking evidence that rebutted a respondent's non-discriminatory explanation of events. Often there was no answer to the respondent's defense or explanation in the file.

27 The department then may dismiss the case under the authority granted by *Minn. Stat.* §363.06 Subd. 4(7), which says "The commissioner has the authority to adopt policies to determine which charges are processed ... based on their particular social and legal significance, administrative convenience, difficulty of resolution, or other standards."

Adding up all the cases that were decided in a way that failed to support the initial charge, including dismissals, some withdrawals, and no probable cause determinations, the total equals 78 percent of all charges filed.[28]

Table 3.10 shows how much time elapsed between docketing and closure for each type of closure. Looking at the totals for the three year period, dismissed and withdrawn cases generally took 302 to 426 days from docketing to closure on the average. DWR cases, which were 64 percent of all charges closed, took 426 days from docketing to closure. This was about the same as the average of 427 days for all 3,706 cases closed in the three-year period.

As Table 3.10 shows, cases that resulted in a no probable cause outcome took 499 days on average to close, and cases that ended in a probable cause outcome took much longer, 656 to 924 days, depending on the exact type of case. Only 216 cases out of 3,706 were closed with a probable cause outcome, so the averages for these closures are based on relatively few cases.

Caseloads assigned to each enforcement officer are relatively large.

Why did it take 426 days to dismiss weak cases? We identified two major causes of these slowdowns in the work flow. First, the enforcement officers we interviewed attributed the delays to the large caseload. EOs carry about 75 cases at a time but are only able to pay attention to some of these from week to week. Our interviews, and our review of individual files, confirmed that many cases languish as they await attention by the enforcement officer in charge of the case.

Second, we observed that many cases experienced delays at the supervisory review stage. As of March 1995, there were 223 cases awaiting supervisory review. Our analysis of data for cases closed in FY 1993-95 shows that DWR cases spent an average of 106 days, more than three months, on supervisors' desks. We interviewed all supervisors, and learned that, for typical DWR cases, the supervisory review required only about one or two hours of work. The department recently announced a plan for eliminating this bottleneck through increased attention to the problem and a more uniform and streamlined approach to supervisory review. Still, supervisors are permitted 90 days to review enforcement officers' recommendations.

An average of 106 days is spent waiting for supervisory review.

Analysis of Cases Docketed in FY 1993

We examined the outcome of cases docketed during fiscal years 1993 to 1995. This could give a different view of case outcomes than the analysis of cases closed in a given period if the department selected certain types of cases over others for closure. However, our ability to examine cases grouped by the docket date was limited by the lack of data on cases filed prior to mid-1992. A high percentage of cases filed in the last year or two are still open, and we do not know how they will come out.

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28 This is the sum of cases dismissed, withdrawals other than WSR and WPA, and NPC determinations. We count cases that support the original charge as probable cause determinations except those withdrawn after a PC determination, all settlements, cases withdrawn to pursue a private action, and cases withdrawn because of a satisfactory agreement.

We looked at the outcome of cases filed between July 1992 and June 1993. About 91 percent of these cases were closed by August 1995. We found that the distribution of case outcomes for these cases was similar to the distribution of outcomes for cases closed 1993 to 1995. Only a relatively small percentage of cases resulted in a probable cause determination (6.4 percent of cases filed in the first half of fiscal year 1993 and 4.6 percent in the second half) and only 7.2 percent and 4.6 percent were closed with a no probable cause determination. Over 75 percent of cases were withdrawn or dismissed.

SETTLEMENTS

In some cases the charging party and the respondent are able to reach a settlement with or without the department's help. We examined data from the department's case tracking system and found:

- **A few cases resulted in large monetary settlements in recent years, but most settlements were small--half were under $3,000.**

Most settlements are reached prior to a determination of probable cause. During fiscal years 1993 to 1995, as Table 3.10 shows, 7.0 percent of cases were closed through a predetermination settlement, and an additional 2.4 percent were settled after a probable cause determination.

Table 3.11 shows that between July 1993 and June 1995, 379 cases were closed with a monetary settlement. These settlements totaled $3.1 million, and ranged from $50 to $259,000. Three awards equaled or exceeded $100,000, but half of the awards were under $3,000.

Table 3.11: Cases Closed with Monetary Settlements, FY 1993-95

		Settlement Value				
Date Closed	Number of Cases	Total	Average	Minimum	Maximum	Median
July 1992 - December 1992	47	$222,028	$4,724	$500	$46,000	$2,000
January 1993 - June 1993	64	354,687	5,542	150	56,963	2,000
July 1993 - December 1993	56	296,644	5,297	50	43,412	1,750
January 1994 - June 1994	80	814,914	10,186	150	224,044	3,625
July 1994 - December 1994	70	581,313	8,304	250	62,500	3,000
January 1995 - June 1995	62	872,360	14,070	100	258,701	4,507
July 1992 - June 1995	379	$3,141,947	$8,290	$50	$258,701	$3,000

Source: Program Evaluation Division analysis of Department of Human Rights case-tracking d ata.

ADMINISTRATIVE APPEALS

The statutes and rules governing the Department of Human Rights provide a process by which department decisions on individual cases may be appealed. The appeals process provides an important check on the quality and professionalism of case adjudication in the department. A large number of appeals or requests to reopen cases could raise questions about the quality of case investigations in the department.

There are three types of administrative appeals of case processing decisions:

Generally, the rate of appeals of DHR decisions is low and the reversal of a case on appeal is rare.

- A charging party may request reconsideration of a no probable cause determination under *Minn. Stat.* §363.06 subd.4(2) and *Minn. Rules* 5000.0700;
- A respondent may request reconsideration of a probable cause determination pursuant to *Minn. Rules* 5000.0750; and
- A charging party may request that the department reopen a case that was dismissed for any of several reasons under *Minn. Rules* 5000.0570.

We studied the appeals process and asked:

- How many of the department's determinations were appealed?
- Is the department handling appeals and requests to reopen cases in a timely manner?
- How many determinations were reversed on appeal, and does the rate of reversal signal a problem with the quality of original decisions?
- How is the appeals process organized, and does the process provide an independent review of the department's original decision?
- How is the appeals process organized in other states?

On the question of the overall rate of appeals, we found:

- **The rate of appeals and requests to reopen cases was low, except for appeals of no probable cause determinations.**

Of cases closed during fiscal years 1993-95, the department issued 271 probable cause determinations, and 17 of those cases were appealed, a rate of 6 percent. There were 213 no probable cause determinations and 45 corresponding appeals, a rate of 21 percent.[29] Of the 2,492 dismissals issued in the three years, the department received requests to reopen 5 percent of the cases.

29 In addition, there were six appeals out of a total of 22 split determinations. A split determination means that the department found probable cause in some parts of the case but found no probable cause in other areas.

The appeal rate for probable cause determinations was low, in part, because respondents have other avenues for seeking redress. A case does not end with a probable cause determination but rather proceeds to settlement negotiations and, if that fails, litigation. A respondent might choose to await a later phase of the process at which the charging party would be required to meet a higher standard of proof, or where a different body would hear the case.

In contrast to the low probable cause rate of appeal, the 21 percent appeal rate of no probable cause (NPC) determinations is fairly high. This might be partially explained by the fact that many no probable cause determinations represent close decisions, since the department dismisses a high percentage of cases in which the evidence is quite clear. The high rate of NPC appeal might also be attributable to the conclusive nature of the NPC decision. If a charging party does not appeal a no probable cause determination, the case has reached the end of its road, unless the case is taken to court.

DHR has allowed a backlog of appeals to accumulate, but recent efforts to address the problem have shown results.

Finally, there is a fairly low rate of requests for reopening dismissed cases. This may reflect the fact that, unlike no probable cause notifications, charging parties whose cases are dismissed are not officially notified by the department of their right to request that their cases be reopened.

We examined whether the department is handling appeals in a timely manner and found:

- **The Department of Human Rights has allowed a backlog of appeals cases to accumulate.**

- **Many appeals cases are not being decided within statutory deadlines.**

Deadlines in statute and rule govern the department's consideration of appeals and reopen requests. In the case of a no probable cause determination, the department has 20 days after receipt of a reconsideration request to affirm the determination of no probable cause, reverse the determination, or vacate the determination and remand the case for further investigation on its merits.

For a probable cause determination, the department must notify the respondent whether the request is substantial enough to warrant further consideration, but there is no time limit imposed on the department's decision.

In the case of a request to reopen a dismissed charge, a charging party has 60 days from the date of the dismissal to submit a written request. Within 10 days of receipt of the request, the department is to send a notice to the respondent, and within 20 days of the respondent's receipt of notice, the department is to notify the parties of its decision, either to deny the charging party's request or reopen the investigation.

Given the generally low rate of appeals, it is clear that if the department were handling appeals in a timely manner, it would have few appeals decisions pending at any one time. However, we found that as of September 1995, there were 21 no

probable cause appeals and 55 reopen requests awaiting department action. The department has acknowledged its need to address the accumulation of appeals cases and has established a plan to eliminate the backlog by December 1, 1995. By mid-January 1996, it had made substantial progress toward this goal.

Many appeals decisions are not rendered within the deadlines set in statute and administrative rule.

We also found that the department exceeded its deadlines for rendering decisions in NPC appeals and requests to reopen dismissed cases. We looked at cases closed during a three-year period ending June 30, 1995. For NPC appeals, the department took an average of 173 days from appeal to closure. In the 37 cases where the department upheld its original NPC determination, it took an average of 171 days from appeal to closure, meaning that most cases were well beyond the 30-day deadline for a ruling.[30]

The department dismissed 2,492 cases in FY 1993-95 and received 132 requests to reopen. Of the 132 cases, 61 were pending in August 1995 and were, on the average, 360 days past their date of appeal. There were 64 cases where the department denied the request to reopen, but the decision took an average of 270 days. These averages are well beyond the maximum of 30 days allowed for the process.

We looked at the percentage of cases reversed on appeal and found:

- **In fiscal years 1993-95, few case outcomes were reversed on appeal.**

Of the 132 requests to reopen that the department received, our data show that none resulted in probable cause determinations, which would indicate a reversal of the original decision to dismiss.[31] By our count there were only two reversals of NPC determinations and two reversals of probable cause findings.

We considered the independence of the appeals process, and found:

- **The department's appeals process provides less organizational separation than is found in other states.**

In Minnesota, the Deputy Commissioner supervises the appeals process, but the deputy also oversees the department's entire case processing operation. The deputy is not involved in reviewing routine cases, so, to some extent, appeals cases are reviewed by a party not involved in the original determination. Also, cases accepted for reconsideration are assigned to enforcement supervisors who were not involved in the initial investigation. These arrangements provide a measure of organizational separation and independence, but not as much as might be desired.

In many other states, human rights investigations are governed by a commission, which typically serves as the hearing panel for appeals. Staff investigators make the original determinations, and parties to a case can appeal to the commissioners,

30 The department is allowed 20 days to rule on the appeal, and an additional 10 days to notify the parties of its ruling.

31 However, department records show that two cases were reversed in 1994. The difference may be attributable to the selection of cases studied. We looked only at closed cases, and the two cases counted by the department may be still officially open.

who have not previously seen the case. This arrangement provides more organizational separation than the Minnesota system. We discuss the organization of human rights agencies in other states in the next chapter.

SUMMARY

The Minnesota Department of Human Rights accepts more cases than it can handle in a timely fashion. As a result it is accumulating a growing inventory of open cases. In the past, an accumulated backlog of old cases had to be summarily dismissed. This, of course, added insult to whatever injury the charging parties had suffered that led them to file charges in the first place. It is, however, the predictable result of the chronic failure to investigate as many charges as are filed.

In response to historic problems in case processing, the Legislature enacted a number of provisions to permit and encourage the department to prioritize cases for investigation and dismiss low-potential cases. The Legislature also enacted a 12-month deadline for finding probable cause, but data presented in this chapter show that many cases exceeded that deadline. The department argues that the 12-month deadline is advisory rather than mandatory, but we think a deadline is a necessary discipline for a department that is tempted, for the best motives, to accept more cases than it can investigate. Most human rights agencies have similar deadlines.

Finally, this chapter has pointed out that most cases are not closed in a way that sustains the charge of discrimination that prompted the investigation. About two-thirds of cases were dismissed, and additional cases were withdrawn or determined to lack evidence to sustain a probable cause finding. Of the cases withdrawn, some may be destined for success in district court, but they would have succeeded there without the department. A few were withdrawn because the parties resolved the dispute on their own.