

2003 Activity Report

City of Madison Equal Opportunities Commission



Pictured (left to right): Ariel Ford, EOC Investigations Supervisor; David Lopez, EOC Investigator/Conciliator; Anthony L. Brown, Executive Director; Dr. Benjamin L. Hooks; Cynthia L. Wick, Executive Assistant; Clifford E. Blackwell, III, Hearing Examiner; Lynette Boughton, Clerk Typist; Eric Kestin, EOC Investigator/Conciliator; and Annie Weatherby, Educational Outreach Coordinator

December 12, 2003 marked the 40th anniversary of the adoption of Equal Opportunities Ordinance, creating the Equal Opportunities Commission. This event was celebrated on December 2, 2003 with an anniversary commemoration at Monona Terrace. Featured speakers included Dr. Benjamin L. Hooks, Former CEO & Executive Director, National Office

of the National Association for the Advancement of Colored People (NAACP); Dr. Enrique Figueroa, Assistant to Provost for Latino Affairs, UW-Milwaukee; and A. J. Nino Amato, Former Co-Chair, Mayor's Task Force on Race Relations and President, Wisconsin Coalition of Energy Consumers. For more on this event, see page 7.

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Executive Director's Remarks



EOC Executive Director, Anthony L. Brown

The Equal Opportunities Commission marked many highlights and milestones in 2003, making significant progress on many fronts. Our community has become increasingly multicultural in recent years. Census data indicate that since 1990, groups of color have increased from approximately 9% of the Madison population to more than 18%. Unfortunately, stereotyping still occurs within the workplace, public accommodations, and the retail sector. Combating discrimination and providing individuals with opportunities to voice their complaints remain our primary goals, but our educational outreach programs for students, retailers and employers have been equally important. These programs systematically eliminate the sources of discrimination, rather than addressing the problem after the fact. Educating the public about common types of discrimination—when salespeople instinctively direct minority customers to the least expensive products, for example—has been essential.

We were very pleased that our preschool reading program, through which children begin learning about other cultures, has been expanded. Likewise, the Commission experienced great success with our many race and media forums, our popular Summer

Media Institute, which places talented high school students with broadcasting professionals, and our retail training program, “Avoiding Retail Racial Profiling,” which teaches theft prevention without racial profiling. The EOC also played integral roles in Dane Dances, Celebrate Madison! and Juneteenth Day, staffed booths at numerous community festivals, hosted its annual diversity picnic, and presented the James C. Wright Human Rights Award. And this year, the EOC introduced an ethnic and diversity cookbook, featuring many of the most popular dishes from the picnic.

Of our many goals for 2003, none were more rewarding than putting together the EOC Diversity Conference, featuring author and national commentator Dr. Julianne Malveaux. In addition, the Commission remembered the 40th anniversary of the Madison Equal Opportunities Ordinance, enjoying the privilege of hosting distinguished civil rights leader Dr. Benjamin L. Hooks. A special multimedia presentation, produced by John Roach Projects, depicted the many events, tragic and inspirational, that took place forty years ago: The assassination of President John Kennedy and NAACP Field Secretary Medgar Evers; the Alabama church bombing, where four young girls were killed during Sunday school; the first major policy declarations denouncing segregation; and the march on Washington, where Dr. Martin Luther King delivered his famous “I Have a Dream” speech.

Because we know that prejudice will not disappear overnight, our mission remains strong. With courage and expedience, the Commission provides redress for discrimination and fights prejudice through education and community outreach. Our challenge to eliminate racial barriers and discrimination urgently requires all our best efforts. The Commission thanks you for your unremitting support and encouragement. We will continue working diligently to improve race relations, address community concerns, and enhance life in Madison.

Race Relations Initiatives

Preschool Reading

In 2003, two sessions of the Preschool Reading Program were conducted. The first session ran from January-May and the second from August-December. Children received 336 books, meeting the goal of giving a book a month to each young reader. In addition, the National First Book Office donated books and the EOC is now a Literacy Partner with Scholastic Books, which entitles purchasing books at discounted rates—some as low as 89 cents. The EOC also applied for and was awarded a book grant from the local First Book group.

On February 5 and 19, story times were held at all four sites, reading to 84 students. Ken Haynes was the guest reader for this month and read the book “Young Harriet Tubman.” On March 5 and 19, former Mayor Susan J.M. Bauman was the guest reader. She read at the Wexford Ridge site on March 5 and at Lake Point, Packers and Northport on March 19. Eighty young people were read to.

The fall program kicked off at two of the four sites, Wexford and Lake Point with Mayor David J. Cieslewicz as the guest reader (see page 8). Forty-four young readers were a part of the program kick off. On September 23, 2003 three story times were conducted at Wexford Ridge, Lake Point and Packers. Sixty-six students were read to and received a book to take home.

Preschool Reading story times were held on November 4 and 18. The guest reader was a Native American dancer and storyteller, Ramona Union. Preschool Reading coordinator Annie Weatherby disseminated 83 books to participants.

Weatherby also organized and held a book sale as a fundraiser for the preschool reading program on November 24, 2003. The sale raised \$654.15 from donated books and other materials. The proceeds will be used to purchase additional books for participants.

The last story time was held on Wednesday, December 16, 2003. John Strothers was the guest reader. Eighty-six young people were read to. At each site, the semi-annual sessions ended with cake as a symbol of completion.

Quarterly Race and Media Forums

Instead of the customary February forum, the group sponsored the first of two Preview forums on the subject of Race and the Media. The first was held at the Multicultural Center on February 28 and focused on young people and their beliefs on how the media portrays them and others that look or dress like them. At the end of the session, each student was given a camera to take pictures that told their stories. Around 100 young people from local schools, programs and community centers were present.

On Saturday March 8, 2003 at Edgewood College, “A Matter of Color: The Untold Stories Preview Forum” was held with 132 people attending various programming. The program featured Teju Ologboni, a nationally renowned storyteller from Milwaukee, Soulful Noize, Art Shegonee as well as two panel presentations. The first panel consisted of individuals from the Muslim community and the second was a combination of Media and community members. The morning media panel created lots of stimulating dialogue. The photos that the young people took were displayed at the forum.

The third quarter Race and Media Forum was held on November 3, 2003 at Faith Community Christian Church. WISC-TV 3 was the host. The panel presentation dealt with the Black Church and race relations including media coverage (see page 8). The panelists included: Pastor Gregory Armstrong, SS Morris AME Church; Pastors Marque and Dee Duncan, Berean Kingdom Believers Fellowship; and Pastor Donna Hammer, Logos International Deliverance Ministries. Twenty-five media partners were in attendance.

Summer Media Institute

The Summer Media Institute is an offshoot of the Race and Media Forums. Media Partners work with students of color to give them a taste of what occupations in the media are like to encourage them to pursue these occupations.

The 2003 Summer Media Institute was held June 10-July 11, 2003 at Edgewood College. Phonekeo Siharath again was the coordinator and the program partners included: Bob Miller and WKOW; Neil

Heinen and David Sanks at WISC-TV3; WIBA and WTDY; The Isthmus newspaper; Bob Smith and WMTV-15; David Ford and FOX 47; The Capital Times, The Simpson Street Free Press; The Wisconsin State Journal; Edgewood College and the City of Madison Equal Opportunities Commission.

A Recognition Ceremony was held on July 24, 2003 at the Simpson Street Free Press. Ten young people spent five weeks in classroom instruction and on-site at local media outlets. (See page 8)

Education and Outreach Initiatives

Diversity Conference

On November 21, the Equal Opportunities Commission held its annual diversity conference, “Building Our Community: Embracing Our Differences” at the Concourse Hotel. More than 150 people heard three excellent panel discussions on diversity, immigration, and issues affecting persons with disabilities. The conference was highlighted by an outstanding keynote presentation by nationally known author and commentator Dr. Julianne Malveaux. She also met with the Mayor prior to the conference (see page 9). The program was also televised a number of times throughout the month of December on the Madison City Channel. The EOC received numerous positive comments regarding the conference.

Educational Presentations

The EOC provides training upon request. During 2003, the following education presentations were made:

February

Independent Living Class at Shabazz High School, February 11 and 12, general overview of equal opportunities laws

Tellurian UCAN, February 20, prohibitions against harassment in the workplace

March

Racial Justice Session, March 18, on “The Color of Fear” in cooperation with Jessica Spotts, YWCA

Morningstar Foods, March 25 and 26, prohibitions against harassment in the workplace

April

Independent Living class at Shabazz High School, April 22

Mirrors on Discrimination class at Shabazz High School, April 23

May

Provided a tour of the EOC offices and an explanation of EOC services for Marquette and Lincoln Elementary School students

July

Tellurian UCAN, July 15, prohibitions against sexual harassment in the workplace

Three sessions at Morningstar Foods, July 7 and 8 on prohibitions against sexual harassment in the workplace

September

GDS Associates, September 5, on prohibitions against sexual harassment in the workplace

Tellurian UCAN, September 22, overview of prohibitions against harassment in the workplace

Shabazz High School, September 24 and 25, overview on civil rights and EOC services

December

Shabazz High School, December 1 and 3, overview of EOC services

MATC Real Estate Class, December 5, fair housing regulations (This session was also teleconferenced to the Baraboo and Reedsburg campuses).

Summer Celebration of Diversity Picnic

The EOC held its Ninth Annual Summer Celebration of Diversity Picnic on July 16 at Warner Park. More than 200 people attended the picnic bringing delicious ethnic and favorite food items.

Mayor David Cieslewicz unveiled his plans to appoint a Community Advisory Committee to advise him on diversity issues.

Peter Muñoz was selected as the 2003 recipient of the Rev. James C. Wright Human Rights Award (see page 10).

The EOC debuted its new Ethnic and Diversity Cookbook at the picnic. Proceeds from cookbook sales will benefit the EOC's Preschool Reading Program. A number of people purchased cookbooks at the picnic (see p. 10). Copies of the Cookbook are available for purchase by contacting the EOC offices at (608) 266-4910.

Festivals

The EOC distributes information and responds to questions at a variety of festivals each year. During 2003, the EOC participated in the following festivals:

Celebrate Madison!, May 10 (including participation on planning committee)

Juneteenth Day, June 15

Fiesta Hispana, July 19

Wednesday Farmer's Market, July 30, August 27, and October 8

Triangle Ethnic Fest, August 17 (see page 10)

Blues Festival, August 23 and 24

African Fest, August 30

Willy Street Festival, September 20 and 21

Other Activities

Annual King Holiday Celebration including participation throughout the year on the King Coalition, January 17-20

Let's Talk Breakfast, August 19

Commemoration of 40th Anniversary of March on Washington, August 28

Assisting with preparation of 2004 Black History Month exhibit in cooperation with the City of Madison's Minority Affairs Committee

EOC Employment Committee Activities

Mission Statement

To assist the Madison Equal Opportunities Commission in fulfilling its mission of enabling all individuals to live and work free of employment discrimination.

This is accomplished by:

- Acting as an advisor on fair employment issues.
- Further developing and supporting the community's understanding of and commitment to fair employment.
- Further developing and supporting the community's understanding of and commitment to the value of diversity in the workplace.

The committee is made up of employer representatives and advocacy agency representatives. This provides a unique mix of perspectives on employment issues and approaches to address inequity, discrimination and diversity in the workplace.

Committee Structure

- Administration: Annie Weatherby, EOC Educational Outreach Coordinator, provides the drive and ultimate support. She coordinates all Committee activities including events, meetings, and information related to the Committee on the EOC website.
- The positions of Chair and Vice Chair are elected for two-year terms.
 - Chair: The Chair presides over the Committee meetings, calls special meetings and retreats and takes a leadership role in the administration of the duties of the Committee. The Chair works in conjunction with the Vice Chair and EOC Educational Outreach Coordinator in the development of the meeting agenda, reviews the draft of meeting minutes, and drafts correspondence.

- Vice Chair: Actively assists the Chair in organizing and leading all Committee activities. Presides in the absence of the Chair. Coordinates new member orientation.

Subcommittees and Membership

To accomplish its goals and more effectively focus efforts on objectives, the Committee has developed four subcommittees:

- **Major Events** - develops and coordinates the presentation of programs aimed at providing education and guidance to the community at large. Each year, the Committee sponsors at least one such event. Topics range from diversity fairs to panel discussions.
- **Marketing and Recruitment** - focuses on promoting the Committee and services it provides to employers and employees. Ensures a lively mix of participants on the Committee through recruitment efforts. This is accomplished through enhancing the content of the Committee's website (found at <http://www.cityofmadison.com/eoc/employmentcomm.htm>), marketing efforts to publicize the website, and increasing participation through enhanced community awareness of the Committee and its objectives and activities.
- **Outreach** - works in the community to support Committee objectives, including participation in a mock interview program through the Dane County Job Center and educational programs on employment for students at the Brearly Street Alternative School.
- **Informational Sessions** - provides educational opportunities for Committee members. Sessions are presented at Committee meetings on a wide range of topics. The subcommittee surveys membership regularly to determine areas of interest and presents at least 3 programs per year.

2003 Accomplishments

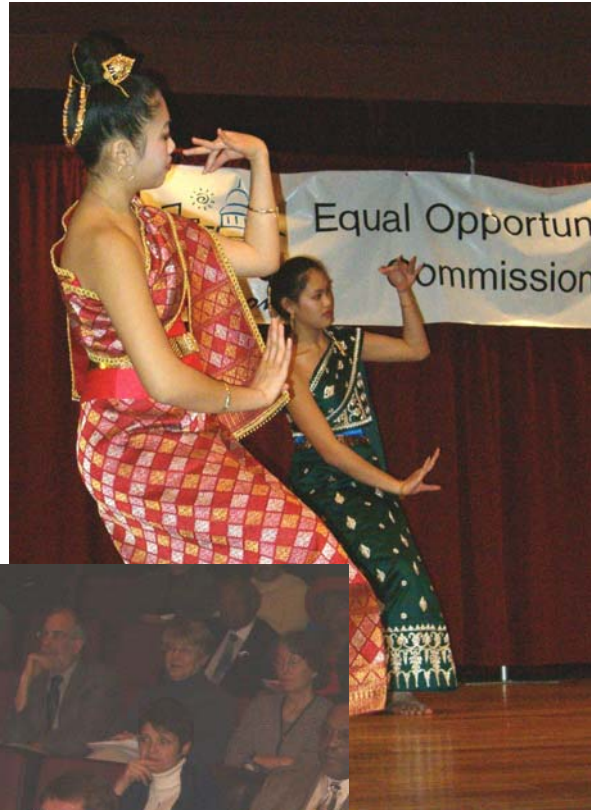
- Informational Sessions
 - Senator Kohl Update (February 2003)
 - ADA, Making Work Pay Initiative (March 2003)
 - Affirmative Actions (June 2003)
- Major Event - The Shrinking Workforce, Strategies for Future Workforce Needs (June 2003)
- Marketing - Updated the Employment Committee brochure, improved website with links, and implemented company overview presentations by meeting site host.
- Education in the community through involvement and sponsoring programs
 - Outreach - Mock Interview Program with Dane County Job Center
 - Bready Street Alternative School, Work 'n Learn Program - Educational sessions on Employment

EOC Employment Committee Members and Participants:

Amos Anderson, Madison Metropolitan School District
Julia Anthony-Brown, YWCA
Mayra Archilla-Barton, Summit Credit Union
Trisha Bauer, UW Office of the Vice Chancellor for Student Affairs
Carousel Andrea S. Bayrd, Equal Opportunities Commission
Amber Buschmann, United Way of Dane County
H. Wayne Canty, Oscar Mayer and Kraft Foods
Mary Coddington, Associated Bank
Karen Colwell, Group Health Cooperative HMO
Deborah Cook, Shea Services/Dane County Job Center
Nancy Corrigan, Edgewood College
David Gaspar, Auto Glass Specialists
Terry Glodowski, Placement Opportunities for People with Disabilities
Nicole L. Hanson, QTI Consulting & QTI Human Resources
Kris Holmes, RN, MSN, Meriter Hospital
Andrea Holschbach, American Red Cross Badger-Hawkeye
Michael Howe, Equal Opportunities Commission
Margaret Leitinger, Spherion
Ann Marks, YWCA Employment & Training Annex
Marc Miele, American Family Insurance
Ellen Molitor, M&I Bank
Bob Monahan, Social Security Administration
Traci Morovic, Neway Directions, Inc.
Steve Nepstad, Summit Credit Union
Marj Pieper, Life Style Staffing
Georgia Pride-Euler, Wisconsin Department of Natural Resources
Jenna Ruehlow, Neway Directions, Inc.
Cindy Schmelzer, QTI Human Resources, Inc.
Eric Shupert, Madison Newspapers, Inc.
Susan Stolts, Berbee Information Networks
Kristi Stormer, Madison Gas & Electric
William Strycker, Madison Area Technical College
Rochelle Wanner, Madison Area Technical College
Jenny Wohlfert, Metavante Corporation
Laura Zweber, John Deere Credit



Left: A. J. Nino Amato



Right: Southeast Asian Dancers

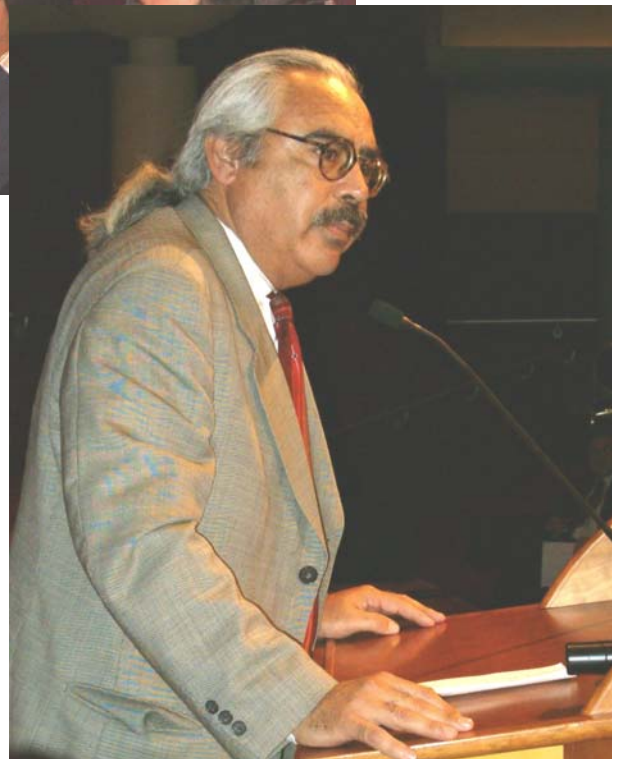


Right: EOC Commissioners enjoy the 40th Anniversary Program

Below: Professor Enrique Figueroa



Above: James C. Wright Middle School String Ensemble



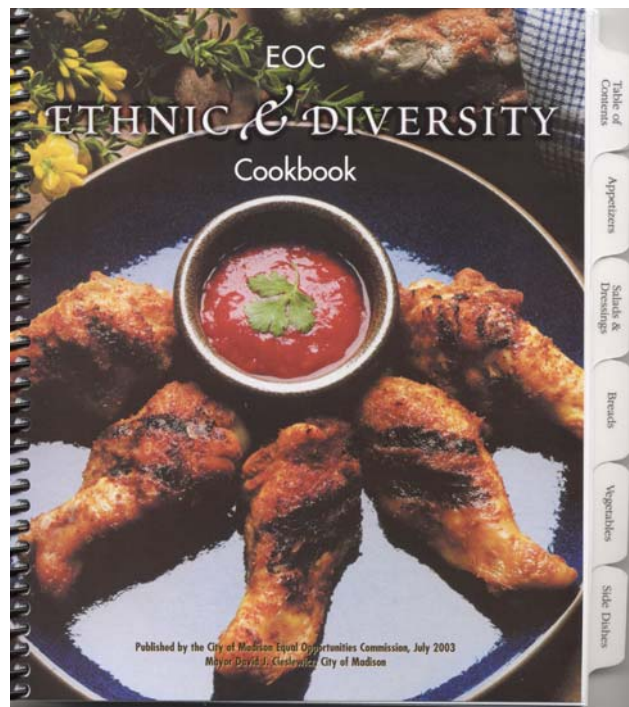


Left: EOC Executive Director Anthony L. Brown presents the 2003 Rev. James C. Wright Award to Peter Muñoz.

Below: Recipients of Rev. James C. Wright Human Rights Award (left to right)-John Y. Odom, Ph.D (2002), Dr. Richard Harris (1997), A.J. Nino Amato (2000), Jacqueline Wright (1996), Peter Muñoz (2003), EOC President Ramona L. Natera, Mayor Dave Cieslewicz, John Noreika, Sr. (2001), and EOC Executive Director Anthony L. Brown



Above: EOC Investigator/Conciliator David Lopez distributes information at the Bayview Community Festival.



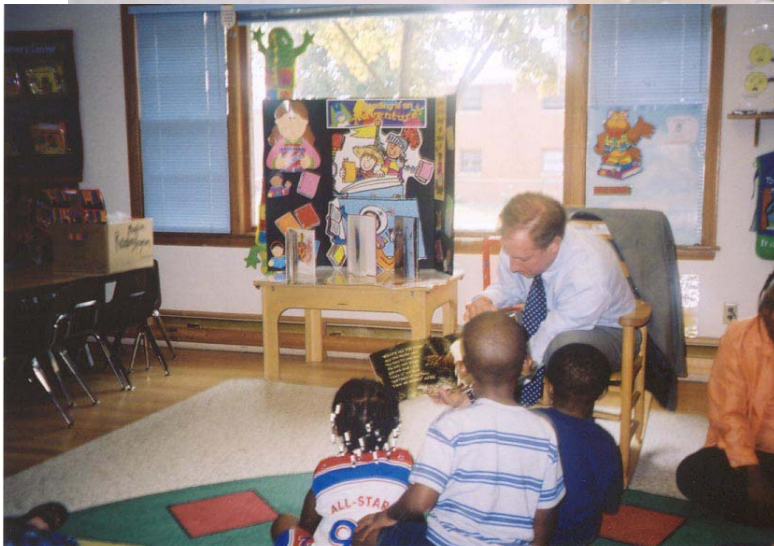


Left: Fabiola Hamden, Juan Jose Lopez, Alfonso Zepeda Capistran and Carol Lobes participate at the March Quarterly Race and Media Forum held at Edgewood College.

Right: Participants in the 2003 Summer Media Institute



Above: The November Quarterly Race and Media Forum.



Left: Mayor Dave Cieslewicz reads to children as part of the Preschool Reading Program.



Left: Dr. Julianne Malveaux converses with Mayor Dave Cieslewicz.



Below: Dr. Malveaux addresses the audience at the EOC's 2003 "Building Our Community: Embracing Our Differences" Diversity Conference at the Concourse Hotel.



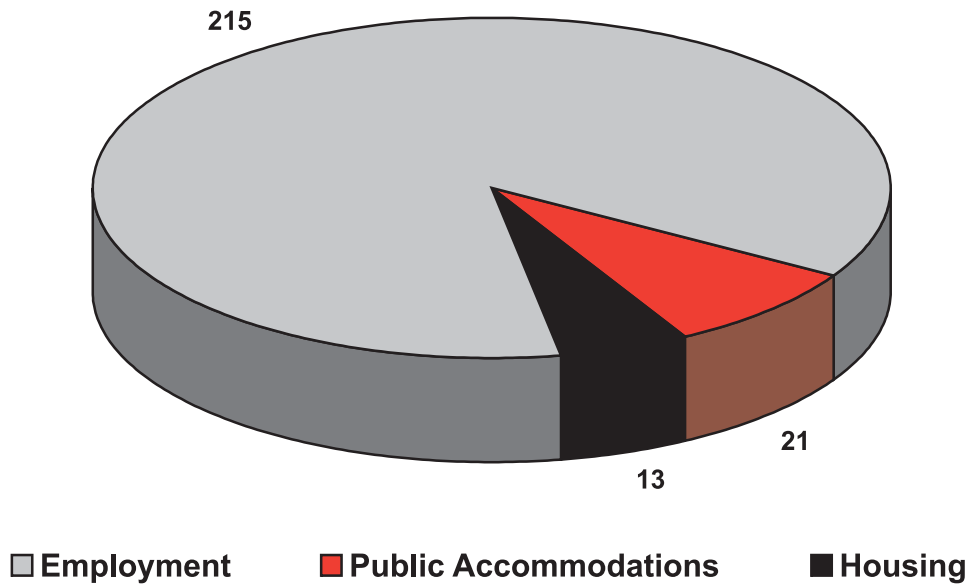
Above: 2003 Diversity Conference Panel on Immigration Issues, (left to right) EOC President Ramona L. Natera, Sarah Shatz, Interfaith Coalition for Worker Justice, Maria Flores, EEOC, and Ald. Santiago Rosas.

Case Processing

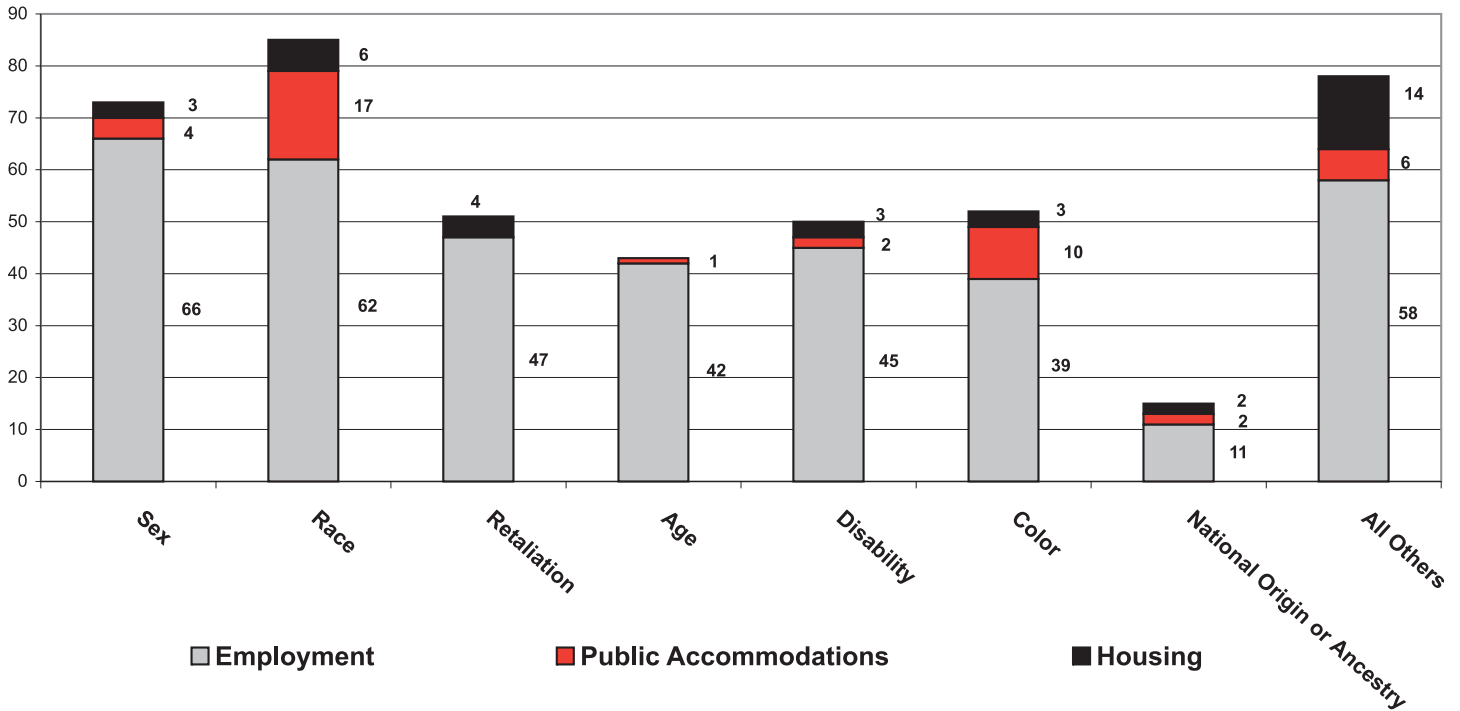
The Equal Opportunities Commission processes complaints alleging discrimination in employment, housing and public accommodations under Section 3.23 Madison General Ordinances, the Equal Opportunities Ordinance.

New Complaints Filed

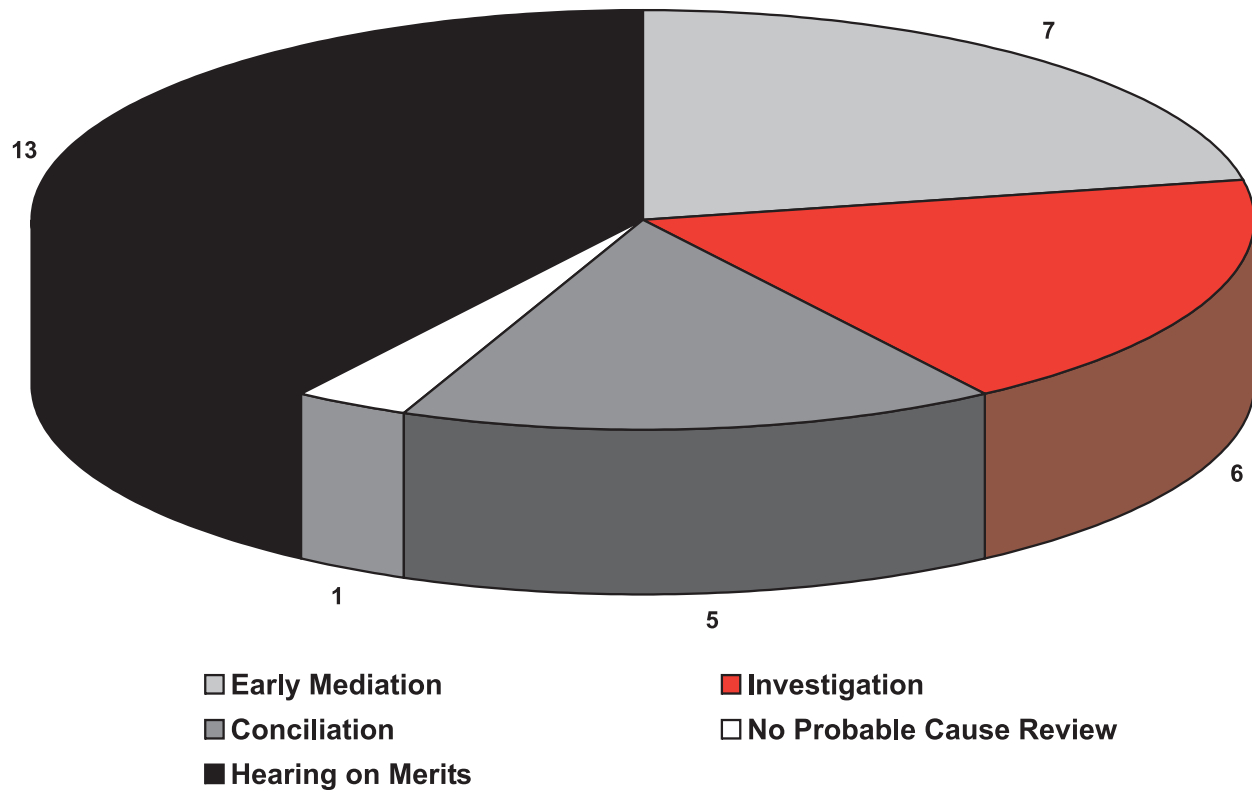
The Equal Opportunities Commission received 249 new complaints during 2003, broken down by category below.



Breakdown of Complaints



Settlements by Stage in Process



Investigation Results

During 2003, the Investigation Unit was short one Investigator/Conciliator for the first seven months of the year. The responsibility for complaint processing (Early Mediation, Complaint Investigations, Writing Determinations and Conciliations) fell primarily on Investigator/Conciliator David Lopez with assistance from Ariel Ford, Investigations Supervisor. In July, Eric Kestin was hired as an Investigator/Conciliator. It is noteworthy that despite this significant personnel vacancy, the unit was able to complete its investigative tasks and at the same time do other activities in support of the Department's mission.

Investigator Lopez is an active participant in LaSup (Latino Support Network) and Investigator Kestin is involved with Communities United. The presence of these two investigators in these community based organizations enables the unit to educate individuals about the work of the EOC.

Investigator Kestin attended the YWCA's Racial Justice facilitator training and was a facilitator at the second Annual Racial Justice Forum. Investigator Lopez, again this year, participated in the Madison Metropolitan School District's Latino Parent outreach night at LaFollette High School. The Investigators and the Supervisor continue to try to educate the public on what discrimination is and is not. The Unit routinely receives telephone calls from potential complainants regarding various situations that while unpleasant, are not discriminatory. Employers call for technical assistance, to review portions of their handbooks, procedures manuals and policies to ensure that they are in compliance with the City Ordinance.

During the critical period when the unit had only one Investigator/Conciliator, Lopez was able to attend the International Association of Human Rights Agencies (IAOHRA) annual training

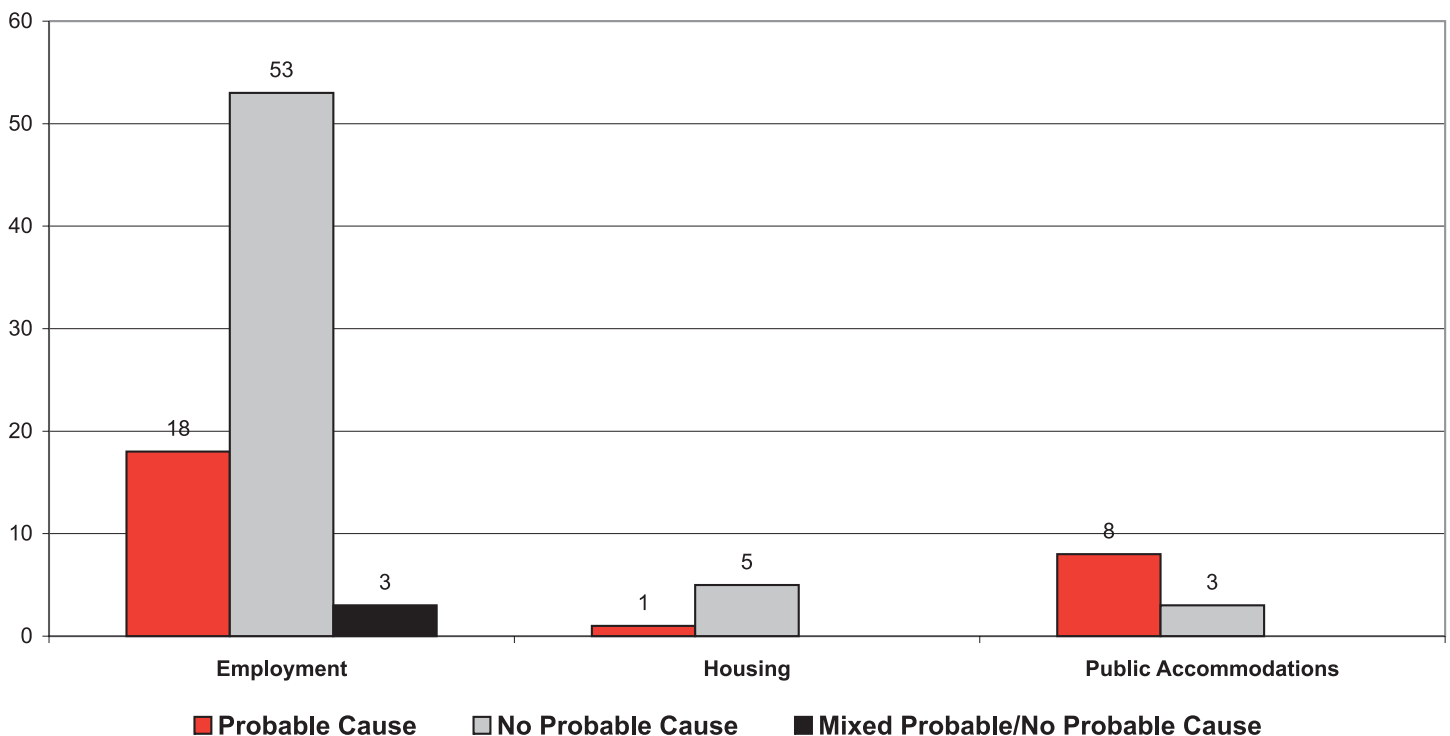
conference. His attendance at this conference was essential so as to keep abreast of how to safeguard the human and civil rights of all people in our community.

Along with its daily tasks, the Unit spends time trying to keep abreast of current trends in equal opportunities. This is done in a number of ways including: spending time reading and understanding court decisions and their impact on our interpretation of the City’s ordinance; research on the world wide web and belonging to a variety of listservs.

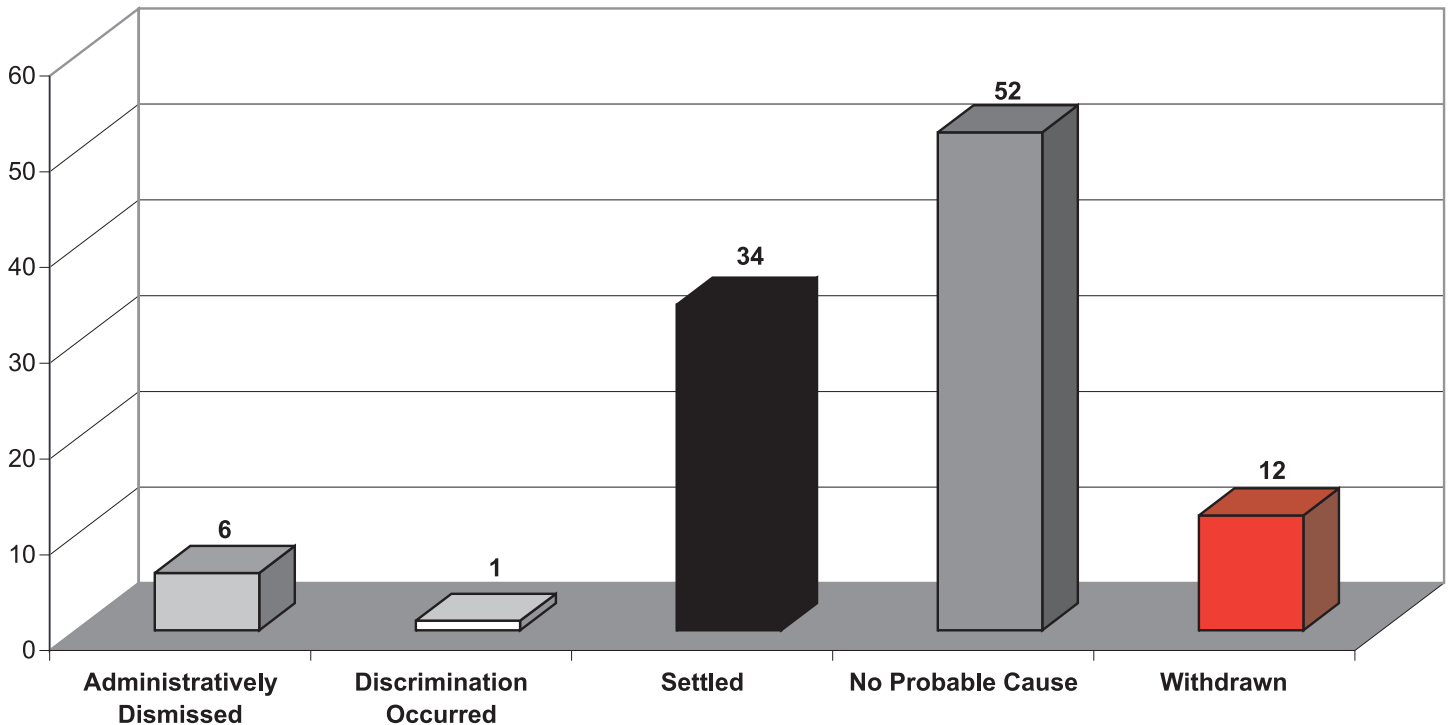
Being sufficiently trained remains a priority with the unit as it looks at current trends in Equal Opportunities. Recent court decisions regarding the Americans With Disabilities Act (ADA) have affected our interpretation as to what impairs a major function of life. Is work an essential function of life?; “Service Animals” and “Therapy Animals”; retaliation after the filing of a complaint with an Equal Employment Agency; and immigration issues. It is clear that there is still much to learn and absorb.

A major unit project during 2003 was the revision of the Equal Opportunities Investigations Unit Procedures Manual. This project included not only the revising and updating of the Procedures Manual, but looking at what we do in complaint processing and asking the important question of why do we process complaints in this manner? Are we using the most effective and efficient methods to be responsible stewards of the taxpayer dollars? With the revisions that were made in the Manual, procedures and letters mailed to parties, we feel that we are being good stewards.

During 2003, the Investigation Unit completed the processing of 112 cases. The Unit settled six cases, four were administratively dismissed, ten cases were withdrawn and initial determinations were issued in 92 cases. The chart below shows the disposition of cases in which the Investigative Unit issues initial determinations.



Disposition of Cases



Case Decision Summaries

The following are summaries of court, Commission and Hearing Examiner decisions rendered in 2003. The complete text of these decisions may be found by following the appropriate links in our online Decision Digest, found at: <http://www.cityofmadison.com/eoc/DecDigest.htm>.

These summaries do not include Hearing Examiner decisions regarding appeals from Initial Determinations of No Probable Cause, Commission decisions in those cases, or Commission decisions on appeal from administrative dismissals.

Sam's Club, Inc. v. MEOC (Maier), No. 02-2024 (Ct. App. 7/24/2003)

Complainant brought discrimination claim against her former employer following her termination for violating the company dress code, which prohibited eyebrow rings. The Equal Opportunities Commission found that the Respondent had discriminated against the Complainant based upon her physical appearance. Respondent appealed the decision. The Dane County Circuit Court reversed the discrimination finding. Complainant appealed, alongside the EOC, and the Court of Appeals affirmed, holding that enforcement of the dress code served legitimate, nondiscriminatory business purposes.

Regarding the issue of proving and/or disproving legitimate business purposes, the appellate court held that because the EOC had historically imposed upon complainants the burden of discrediting articulated "reasonable business purposes," the Commission could not impose upon this particular Respondent the burden of proving them as affirmative defenses.

The EOC was also arguing that the Respondent was being unreasonable about maintaining its conservative image, but the appellate court disagreed, stating that business success plainly depended upon customer preferences and customer satisfaction. And in response to another EOC argument-that the Respondent could not describe

with sufficient precision its conservative image-the Court of Appeals held that whether the Respondent defined “conservative” with precision was unrelated to whether Respondent could reasonably have chosen to promote its conservative image. Finally, the Court held that one could not rationally distinguish between retail and office settings when determining whether dress codes serve some “reasonable business purpose.” The Court approved requirements involving cleanliness, uniforms and prescribed attire, provided they serve reasonable business-related goals.

Laitinen-Schultz v. TLC Wisconsin Laser Center,
MEOC Case No. 19982001 (Ex. Dec. 7/1/03)

In discouraging Complainant from seeking advancement within the company, and in failing to provide her with any opportunity to explain whether her congenital hip condition would affect her fitness for certain positions, the Respondent discriminated against the Complainant based upon her disability. One particular position required interaction with local physicians and marketing experience. The successful candidate was allegedly chosen because she had professional marketing experience, but the Complainant demonstrated that her manager had repeatedly discouraged her from seeking promotions, steering her toward less visible jobs.

The Complainant also maintained that she was constructively terminated from her employment based upon her disability. Although her credibility was somewhat shaken by certain allegations that proved untrue, the Complainant demonstrated that under the circumstances, her belief that she was constructively terminated was reasonable. The work environment created by her manager was sufficiently hostile that she was forced to discharge herself.

Regarding damages, the Complainant could recover only limited back pay. Shortly after leaving her employment with the Respondent, the Complainant obtained temporary work and began training for real estate sales. The record simply did not show whether she had voluntarily changed careers, or had begun her real estate training only because she could not find substantially similar employment after parting ways with the Respondent. Thus, she could

recover back pay only until she began her real estate training.

The Complainant also sought bonuses and commissions, and damages for emotional distress. The Hearing Examiner determined that bonuses and commissions were far too speculative because there was no telling whether the Complainant would have earned them. But damages for emotional distress were appropriate, given that the Complainant had suffered obvious emotional injury. Thus, the Hearing Examiner awarded \$15,000 for emotional distress.

Duncan v. H. James & Sons, Inc., MEOC Case
No. 20022040 (Ex. Dec. 12/22/2003)

African-American construction worker brought action against his employer, alleging that his employer discriminated against him based upon his race and color. The employer allegedly displaced the worker from certain equipment, denying him overtime opportunities. Thereafter, the employer allegedly fired the worker. Based upon the record, the Hearing Examiner found that the employer had neither displaced the worker, nor fired him, nor showed any racial animus. Regarding displacement, the worker had voluntarily stepped aside for another, more experienced employee who needed additional overtime hours. And regarding termination, the worker was evidently mistaken about having been fired. He simply departed and never returned after voluntarily stepping aside for another employee. His employer immediately invited him back, but he declined.

Goodman v. Isthmus Publishing Company, Inc.,
MEOC Case No. 20013060 (Ex. Dec. 10/17/2003);
Perry v. Isthmus Publishing Company, Inc.,
MEOC Case No. 20013067 (Ex. Dec. 10/17/2003)

After seeing advertisements for allegedly discriminatory services, Complainants brought identical actions against the newspaper that published the advertisements, claiming the paper had violated the Equal Opportunities Ordinance, which prohibits the publication of any written communication indicating that certain persons will be unlawfully discriminated against within places of public accommodation. The advertisements fell into

two categories: those promoting self-defense courses for women, and those soliciting volunteer drivers for rape-prevention and medical-assistance ride services. The Complainants argued that men were clearly being discriminated against. The newspaper moved to dismiss the complaint, asserting that the Equal Opportunities Commission lacked jurisdiction because the Hearing Examiner could not judge the constitutionality of the Equal Opportunities Ordinance, which was arguably coming into conflict with the First Amendment.

The main question was whether the advertisements represented commercial speech, meaning they would not receive full First Amendment protection. The Hearing Examiner ruled that because the advertisements soliciting volunteer drivers did not contemplate commercial activity, they were protected under the First Amendment and beyond the reach of the Equal Opportunities Commission. The self-defense courses and the related advertisements were more problematic because participants usually paid for the courses. Ultimately, the Hearing Examiner could not discern from the record whether this activity, which seemed commercial, was indeed commercial. Because it was unclear whether the self-defense courses were intended for profit, the Hearing Examiner, via Interim Decision and Order on Jurisdiction, sought additional evidence.

Goodman v. Women's Transit Authority, MEOC Case No. 20013059 (Ex. Dec. 10/17/2003); **Rathmann v. Women's Transit Authority**, MEOC Case No. 20013061 (Ex. Dec. 10/17/2003); **Perry v. Women's Transit Authority**, MEOC Case No. 20013068 (Ex. Dec. 10/17/2003)

After seeing advertisements soliciting volunteer drivers for rape-prevention ride services, Complainants brought identical actions against the organization that provided the services, claiming the organization had violated the Equal Opportunities Ordinance, which prohibits the publication of any written communication indicating that certain persons will be unlawfully discriminated against within places of public accommodation. The Complainants argued that the organization was openly discriminating against men. The organization

moved to dismiss the complaint, claiming their advertisements were constitutionally protected speech.

The main issue was whether the advertisements represented commercial speech, meaning they would not receive full First Amendment protection. The Hearing Examiner determined that the advertisements did not constitute commercial speech because they neither proposed nor contemplated any commercial activity, whatsoever. Thus, the advertisements were fully protected under the First Amendment and beyond the reach of the Equal Opportunities Commission.

Nichols v. Buck's Madison Square Garden Tavern, MEOC Case No. 20033011 (Ex. Dec. 10/14/2003)

After having been ejected from a tavern, allegedly because the bartender disapproved of his service animal, patron filed a discrimination complaint alleging that the Respondent had violated the Equal Opportunities Ordinance, MGO Sections 3.23(5) and 3.23(6), which protects against disability discrimination within places of public accommodation. The Respondent moved for dismissal, arguing that the Equal Opportunities Commission lacked jurisdiction over the complaint because MGO Section 7.08(6)(o), which establishes sanitation requirements for taverns, unambiguously states that animals are prohibited within taverns, except guide dogs accompanying blind persons. This particular patron was not blind. Essentially, the Respondent wanted the seeing-eye dog limitation read into the Equal Opportunities Ordinance.

The Hearing Examiner determined that this narrow reading would eviscerate certain broad protections afforded disabled individuals under the Ordinance, which does not distinguish between seeing-eye dogs and other service animals. In reaching his decision, the Hearing Examiner also considered other factors: the Ordinance had been adopted more recently than the tavern sanitation provision, and served the much broader social purpose of protecting against discrimination. In contrast, the tavern sanitation rule served the narrow purpose of regulating food storage and service.

Members of the Equal Opportunities Commission

Carousel Andrea S. Bayrd
Henry C. Boyd, III
Nia Enemuoh-Trammell
Megin L. Hicks
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