

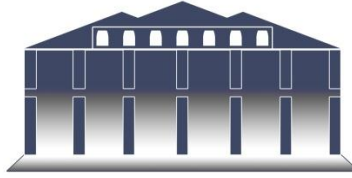
**Merger of the Human Relations Commission
with the Civil Rights Division
Would Yield Limited Cost Savings**



**Final Report to the Joint Legislative
Program Evaluation Oversight Committee**

Report Number 2012-11

October 17, 2012



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John W. Turcotte
Director

October 17, 2012

Senator Fletcher L. Hartsell, Jr., Co-Chair, Joint Legislative Program Evaluation Oversight Committee
Representative Julia Howard, Chair, Joint Legislative Program Evaluation Oversight Committee

North Carolina General Assembly
Legislative Building
16 West Jones Street
Raleigh, NC 27601

Honorable Co-Chairs:

Session Law 2012-142, Section 19.1 directed the Program Evaluation Division to evaluate the duties and services of the Department of Administration's Human Relations Commission and the Office of Administrative Hearing's Civil Rights Division to determine whether there is unnecessary overlap and duplication of services and to recommend the placement of the commission and division in the appropriate agency or agencies.

I am pleased to report that the Human Relations Commission and Civil Rights Division cooperated with us fully and were at all times courteous to our evaluators during the evaluation.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Turcotte".

John W. Turcotte
Director



PROGRAM EVALUATION DIVISION

NORTH CAROLINA GENERAL ASSEMBLY

October 2012

Report No. 2012-11

Merger of the Human Relations Commission with the Civil Rights Division Would Yield Limited Cost Savings

Summary

The General Assembly directed the Program Evaluation Division to evaluate the Department of Administration's Human Relations Commission and the Office of Administrative Hearing's Civil Rights Division to determine whether there is duplication of services and to recommend the placement of the agencies. The Human Relations Commission performs two major activities: resolving housing discrimination complaints for private persons and improving community relations. The Civil Rights Division has one major activity: resolving employment discrimination complaints for government employees.

Although the Human Relations Commission and Civil Rights Division both investigate discrimination claims, there is no duplication of duties and services between the two entities. The major differences between the commission and division's anti-discrimination activities are they cover different persons, administer different laws, interact with different federal agencies, and have different litigation responsibilities. In terms of the Human Relations Commission's community relations activities, there is limited evidence to demonstrate the effectiveness of these activities.

Moving the Human Relations Commission's fair housing activities to the Civil Rights Division could generate an estimated \$67,453 in recurring savings, but this cost savings may be offset by transfer costs. Although the majority of states have a combined fair housing and employment agency, their fair employment agencies serve both private and public employees as compared to North Carolina's agency that only serves public employees. North Carolina's employment discrimination laws could be clarified to better reflect this structure and the Civil Right Division's enforcement authority in this area.

Because there is no duplication of duties and services between the Human Relations Commission and the Civil Rights Division and combining the two entities has limited cost savings, the Program Evaluation Division does not recommend merging the two entities at this time.

Both entities would benefit from increased accountability and transparency. To this end, the General Assembly should

- require the Human Relations Commission and Civil Rights Division to report annually on their activities;
- amend the Equal Employment Practices Act by removing reference to the Human Relations Commission's enforcement authority; and
- create a statute that explicitly prohibits employment discrimination against government employees and gives the Civil Rights Division enforcement authority.

Purpose and Scope

The General Assembly directed the Program Evaluation Division to evaluate the duties and services of the Department of Administration's Human Relations Commission and the Office of Administrative Hearing's Civil Rights Division to determine whether there is unnecessary overlap and duplication of services and to recommend the placement of the commission and division in the appropriate agency or agencies.¹

This evaluation addressed four central research questions:

1. What are the duties and services of the commission and the division?
2. How do the commission and the division perform their services?
3. Is there duplication between the services of the commission and the division?
4. What is the most efficient placement of any duplicative services of the commission and division?

The Program Evaluation Division collected data from several sources, including

- interviews with staff at the Human Relations Commission and Civil Rights Division;
- program expenditures and revenue, staff, activities, outputs, and outcomes;
- interviews with staff at the U.S. Department of Housing and Urban Development's Region 4 office and the U.S. Equal Employment Opportunity Commission's Charlotte District Office; and
- research on other states.

Background

Federal and state laws prohibit discrimination in housing-related transactions and employment practices. In North Carolina, the Department of Administration's Human Relations Commission investigates claims of housing-related discrimination for private persons, and the Office of Administrative Hearing's Civil Rights Division investigates claims of employment discrimination for government employees. Exhibit 1 provides a brief description of each entity.

¹ N.C. Sess. Laws, 2012-142, Section 19.1.

Exhibit 1: Description of the Human Relations Commission and Civil Rights Division

	Human Relations Commission	Civil Rights Division
State oversight agency	N.C. Department of Administration	N.C. Office of Administrative Hearings
Federal oversight agency	U.S. Department of Housing and Urban Development	U.S. Equal Employment Opportunity Commission
Mission	Facilitate the resolution of fair housing complaints, create public awareness of anti-discrimination laws, and in general promote equal opportunities in the areas of employment, housing, public accommodations, recreation, education, justice, and governmental services	Promote equality of opportunity in state government that is fair and inclusive in the workplace through the enforcement of laws governing unlawful employment discrimination
Major functions	<ul style="list-style-type: none"> • Resolve complaints of housing discrimination made by private persons • Improve community relations by providing education, outreach, and training to the public and private sector 	<ul style="list-style-type: none"> • Resolve complaints of employment discrimination made by state and county government employees
Fiscal Year 2011–12 positions	12 positions	9 positions
Fiscal Year 2011–12 expenditures	\$744,428	\$801,232

Note: One of the Human Relations Commission's positions has been vacant for over 150 days.

Source: Program Evaluation Division based on data from the Civil Rights Division and Human Relations Commission.

Human Relations Commission

As shown on the left side of Exhibit 2, the Human Relations Commission began in 1963 as the Good Neighbor Council with a focus on improving opportunities and encouraging employment training for Blacks, Native Americans, and Whites. Over time, as the Human Relations Commission's responsibilities increased in the housing domain, it has shifted its focus away from employment issues.² The current mission of the Human Relations Commission is to facilitate the resolution of fair housing complaints, create public awareness of anti-discrimination laws, and in general promote equal opportunities in the areas of employment, housing, public accommodations, recreation, education, justice, and governmental services. To fulfill this mission, the Human Relations Commission performs the following functions:

- **Resolve complaints of housing discrimination made by private persons.** In accordance with the federal and state Fair Housing Acts,³ staff receives, investigates, conciliates, and litigates claims of discrimination related to housing transactions on behalf of private persons.⁴ The U.S. Department of Housing and Urban Development (HUD) certified the Human Relations Commission as a substantially equivalent agency in 1990, and the certification has been extended through 2015. Due to this certification, the commission

² Presently, the Human Relations Commission's involvement in the employment domain is limited to receiving calls from citizens seeking assistance with employment-related discrimination and referring those individuals to the U.S. Equal Employment Opportunity Commission.

³ 42 U.S.C. 3601 et seq.; N.C. Gen. Stat. Chap. 41A.

⁴ Conciliation means bringing two opposing sides together to reach a compromise in an attempt to avoid taking a case to trial.

receives Federal Housing Assistance Program funds for handling fair housing cases.

- **Improve community relations by providing education, outreach, and training.** Staff conducts education, outreach, and training throughout the state to increase knowledge and awareness of diversity issues in general and fair housing issues in particular.
- **Advise and assist the Human Relations Commission and Martin Luther King, Jr. Commission.** Staff members provide clerical and support services to Human Relations Commissioners who review and either ratify, modify, or reverse proposed orders of Administrative Law Judges in fair housing cases.⁵ Staff members also provide clerical and administrative support services to the Martin Luther King, Jr. Commission.⁶
- **Resolve complaints of conspiracy to deprive an individual of his or her civil rights.** Pursuant to Chapter 99D of the General Statutes, staff may bring a civil action on behalf of any person whose civil rights have been violated due to a conspiracy.⁷

The Human Relations Commission staff consists of 12 positions.⁸ Staff spend 54% of their time resolving housing discrimination complaints, 29% of their time improving community relations,⁹ 8% of their time assisting the Human Relations Commission and Martin Luther King, Jr. Commission, and 10% of their time on other activities. In Fiscal Year 2011–12, the total expenditures for the Human Relations Commission were \$744,428, with 19% from the program's Fair Housing Assistance Fund.¹⁰

Civil Rights Division

As shown on the right side of Exhibit 2, the General Assembly created the Office of Administrative Hearing's Civil Rights Division in 1987. The federal government had already established laws prohibiting employment discrimination based on age, race, color, sex, religion, and national origin in the 1960s and later prohibited employment discrimination based on disability in 1990; the U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing these federal laws. In 1987, the General Assembly designated the Civil Rights Division as the agency to

⁵ N.C. Gen. Stat. § 143B-392 establishes a 22-member board, also referred to as the Human Relations Commission, made up of 13 members appointed by the Governor from each of the congressional districts, 5 members appointed by the Governor at large, 2 members appointed by the Speaker of the House, and 2 members appointed by the President Pro Tempore. The State Fair Housing Act charges a panel consisting of three Commission members with making final decisions on fair housing cases.

⁶ N.C. Gen. Stat. § 143B-426.34A charges the 16-member Martin Luther King, Jr. Commission with encouraging appropriate ceremonies and activities throughout the State relating to the observance of Martin Luther King Day and promoting an awareness and appreciation of the life and work of Dr. King. The Martin Luther King, Jr. Commission awards grants to non-profits for creating or strengthening programs that support the legacy of Dr. King. In 2010, the Martin Luther King, Jr. Commission awarded \$35,000 in grants. In 2011, the General Assembly eliminated \$42,465 in funding for these grants, leaving \$5,000 for distribution.

⁷ In the past eight years, the Human Relations Commission has only had two Chapter 99D cases. In 2006, the Human Relations Commission brought suit against the East Spencer police force on behalf of the only Black police officer on force who claimed he was harassed and threatened by other officers when he applied for a promotion. Also in 2006, the Human Relations Commission brought suit against a homeowners association in Wilmington, a number of individual homeowners, and the homeowners' association management company on behalf of a disabled woman who claimed she was harassed and her house was vandalized.

⁸ One of the Human Relations Commission's positions has been vacant for over 150 days.

⁹ This figure represents education, outreach, and training activities which contain elements of both community relations and fair housing work. HUD requires outreach and training for the public on fair housing issues and for individuals with conciliation agreements.

¹⁰ The Human Relations Commission has a special fund to receive reimbursements from HUD.

handle EEOC cases for state and county government employees covered by the State Personnel Act.¹¹

The mission of the Civil Rights Division is to promote equality of opportunity in state government that is fair and inclusive in the workplace through the enforcement of laws governing unlawful employment discrimination. To fulfill this mission, the Civil Rights Division performs the following functions:

- **Resolve complaints of employment discrimination made by state and county government employees.** In accordance with federal laws,¹² staff receives, investigates, and conciliates claims of employment discrimination made by state and county government employees covered by the State Personnel Act. EEOC designated the Civil Rights Division as a Fair Employment Practices Agency at its inception, making it eligible to receive federal funds for handling employment discrimination cases.
- **Resolve complaints of employment discrimination based on political affiliation made by state employees and applicants for state employment.** Pursuant to N.C. Gen. Stat. § 126-14.4, staff receives and investigates charges by state employees or applicants for state employment alleging political discrimination in hiring or promotion decisions.¹³
- **Resolve complaints of employment discrimination on the basis of citizenship status and national origin made by public employees.** Pursuant to a Memorandum of Understanding with the U.S. Department of Justice, staff investigates claims of employment discrimination for public employees based on the Immigration and Nationality Act.¹⁴

¹¹ The State Personnel Act covers non-exempt state government employees; non-exempt University of North Carolina employees; and county social services, mental health, public health, and civil preparedness employees.

¹² Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-5 et seq.); Age Discrimination in Employment Act (29 U.S.C. § 621 et seq.); Americans with Disabilities Act (42 U.S.C. § 12101 et seq.).

¹³ In Fiscal Year 2010–11, the Civil Rights Division did not handle any employment discrimination cases based on political affiliation. The division received two cases in 2012 after this evaluation began.

¹⁴ Pursuant to 8 U.S.C. § 1324b, the Immigration and Nationality Act prohibits citizenship status discrimination in hiring, firing, or recruitment or referral for a fee; national origin discrimination in hiring, firing, or recruitment or referral for a fee; document abuse (unfair documentary practices during the employment eligibility verification process); and retaliation or intimidation. The Civil Rights Division has never received a case of employment discrimination based on the Immigration and Nationality Act.

Exhibit 2: Timeline of Major Events in the History of the Commission and Division

Human Relations Commission	Civil Rights Division
1963 – Governor Terry Sanford establishes Good Neighbor Council to promote improved opportunities and encourage employment training for Blacks, Native Americans, and Whites	1964 – U.S. Congress passes Title VII of the Civil Rights Act to prohibit employment discrimination
1965 – Governor Dan Moore broadens council’s scope to include all aspects of human relations	1967 – U.S. Congress passes Age Discrimination in Employment Act to prohibit employment discrimination against individuals who are 40 years of age or older
1967 – General Assembly establishes council as a state agency	
1968 – U.S. Congress passes Title VIII of the Civil Rights Act (Fair Housing Act) to prohibit housing-related discrimination	
1971 – General Assembly renames council the Human Relations Council	
1975 – General Assembly places council under Department of Administration and establishes a 22-member board	
1977 – General Assembly passes Equal Employment Practices Act and gives council authority to receive and investigate charges of employment discrimination	
1983 – General Assembly passes North Carolina Fair Housing Act and gives council authority to enforce the act	
1987 – General Assembly passes Chapter 99D and gives council authority to bring a civil action on behalf of any person damaged by a conspiracy to interfere with civil rights	1987 – General Assembly creates Civil Rights Division under Office of Administrative Hearings; U.S. EEOC designates division as a Fair Employment Practice Agency eligible to receive federal funds for handling EEOC cases for government employees
1990 – General Assembly renames council the Human Relations Commission; U.S. HUD certifies commission as a substantially equivalent agency eligible to receive Federal Housing Assistance Program funds for handling cases	1990 – U.S. Congress passes Title I of the Americans with Disabilities Act to prohibit employment discrimination against individuals with disabilities and U.S. EEOC defers cases to division
1993 – General Assembly directs commission to staff Martin Luther King, Jr. Commission	
2009 – Commission merges its Community Relations Unit and Fair Housing Unit to form one Human Relations Unit and cross-trains staff to perform both activities	1997 – General Assembly gives division authority to investigate charges of political discrimination in hiring or promotion decisions of state employees or applicants for state employment
2010 – HUD extends its certification of commission as a substantially equivalent agency to 2015	2007 – On behalf of Department of Justice, division investigates claims of employment discrimination on the basis of citizenship status and national origin

Note: U.S. HUD stands for the U.S. Department of Housing and Urban Development, and U.S. EEOC stands for the U.S. Equal Employment Opportunity Commission.

Source: Program Evaluation Division based on information from the Civil Rights Division and Human Relations Commission.

The Civil Rights Division staff consists of nine positions. Staff spend 79% of their time resolving employment discrimination complaints and the rest of their time on administrative and other activities.¹⁵ In Fiscal Year 2011–12, the expenditures for the Civil Rights Division were \$801,232.¹⁶

Because both the Human Relations Commission and Civil Rights Division investigate claims of discrimination, the General Assembly has previously considered combining the two entities. A 2007 Justification Review of the Office of Administrative Hearings by the Fiscal Research Division recommended moving the Human Relations Commission to the Civil Rights Division.¹⁷ The review noted the merger would not offer fiscal savings but would achieve efficiency in agency organization and responsibilities by combining personnel and resources that have similar missions and purposes and making access to these services more seamless to the public. In 2011, the Appropriations Bill authorized a Type I transfer of the Human Relations Commission from the Department of Administration to the Office of Administrative Hearings; however, the Budget Technical Corrections Bill repealed that provision. Instead, Session Law 2012-142 directed the Program Evaluation Division to examine whether there is unnecessary overlap and duplication of services between the two entities.

Findings

Finding 1. Although the Human Relations Commission and Civil Rights Division both investigate discrimination claims, there is no duplication of duties and services between the two entities.

The Human Relations Commission divides its time between two major activities: resolving housing discrimination complaints and improving community relations. In contrast, the primary activity of the Civil Rights Division is to resolve employment discrimination complaints. Because the Civil Rights Division has no duties or services related to improving community relations, the Program Evaluation Division focused its examination of any duplication in duties and services across the two entities on the Human Relations Commission's work on housing discrimination and the Civil Rights Division's work on employment discrimination.

The Human Relations Commission investigates housing discrimination claims for private persons. Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) prohibits discrimination in the sale, rental, and financing of dwellings and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and handicap.¹⁸ The U.S. Department of Housing and Urban Development (HUD) enforces the Fair Housing Act.

In 1983, the General Assembly established the State Fair Housing Act to provide fair housing throughout the State of North Carolina.¹⁹ The General

¹⁵ Administrative and other activities include attending trainings, responding to questions from the general public, and mediating Office of State Personnel cases.

¹⁶ The Civil Rights Division 2012-13 certified budget is \$825,353, 7% of this amount comes from federal sources.

¹⁷ Because the review was of the Office of Administrative Hearings, no data was collected from the Human Relations Commission as part of the review.

¹⁸ 42 U.S.C. 3601 et seq.

¹⁹ N.C. Gen. Stat. Chap. 41A.

Assembly charged the Human Relations Commission with the administration of the State Fair Housing Act.²⁰ In addition to the protections provided by the federal Fair Housing Act, the State Fair Housing Act has narrower exemptions, covers more properties, and prohibits local government from discriminating against affordable housing in their planning decisions.

When a state or local agency provides substantive rights, procedures, remedies, and judicial review provisions that are substantially equivalent to the federal Fair Housing Act, HUD certifies the state or local agency as a substantially equivalent agency. HUD first certified the Human Relations Commission as a substantially equivalent agency in 1990, and the office's current certification is valid until April 2015.

North Carolina also has five local agencies in the following locations that have been certified by HUD as substantially equivalent agencies: Charlotte/Mecklenburg County, Durham, Greensboro, Orange County, and Winston-Salem. These local agencies can have more stringent laws and ordinances than the State Fair Housing Act. The Human Relations Commission does not have jurisdiction over fair housing complaints where a certified local agency exists.²¹

As shown on the left side of Exhibit 3, a private person having a fair housing complaint may file a formal complaint with HUD, the Human Relations Commission, and/or a local certified agency. HUD will then refer the case to either the Human Relations Commission or a local certified agency, if one exists for the jurisdiction.

The Civil Rights Division investigates employment discrimination claims for state and county government employees. The following federal acts prohibit discrimination in employment practices:

- Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employment discrimination based on race, color, sex, religion, or national origin.²²
- The Age Discrimination in Employment Act of 1967 (ADEA) prohibits employment discrimination against individuals who are 40 years of age or older.²³
- Title I of the Americans with Disabilities Act of 1990 (ADA) prohibits employment discrimination against qualified individuals with disabilities.²⁴

The U.S. Equal Employment Opportunity Commission (EEOC) enforces these acts. As shown on the right side of Exhibit 3, a private person having a fair employment complaint must first file a formal complaint with an EEOC field office before becoming eligible to file a lawsuit against an employer. In North Carolina, the EEOC field offices are located in Charlotte, Greensboro, and Raleigh.

²⁰ N.C. Gen. Stat. § 143B-391.

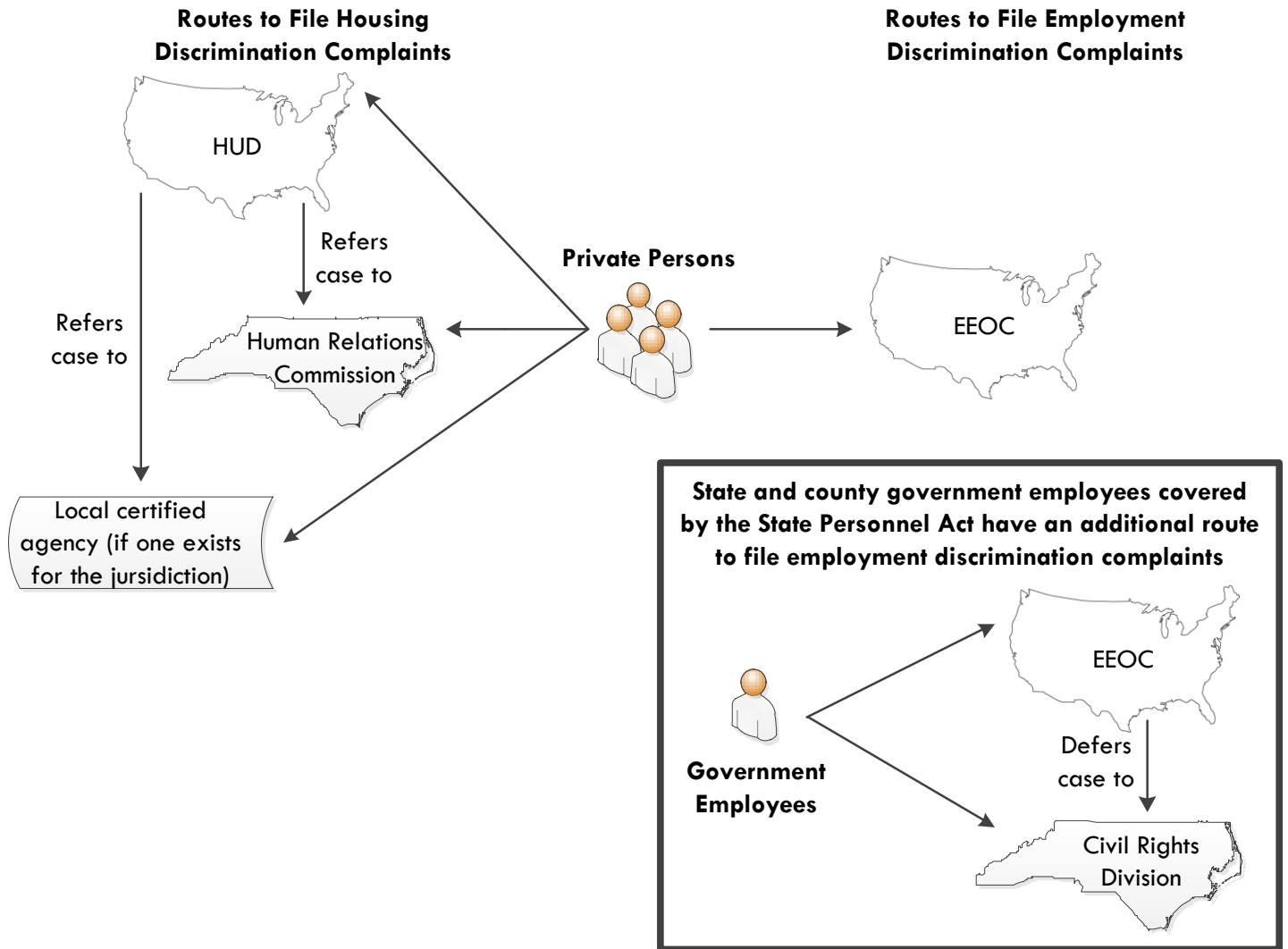
²¹ N.C. Gen. Stat. § 41A-7(c).

²² 42 U.S.C. § 2000e-5 et seq.

²³ 29 U.S.C. § 621 et seq.

²⁴ 42 U.S.C. § 12101 et seq.

Exhibit 3: Routes to Filing Housing and Employment Discrimination Complaints in North Carolina



Note: HUD stands for the U.S. Department of Housing and Urban Development, and EEOC stands for the U.S. Equal Employment Opportunity Commission.

Source: Program Evaluation Division based on information from the Civil Rights Division and Human Relations Commission.

For state and county government employees covered by the State Personnel Act, the EEOC and General Assembly designated the Civil Rights Division as the State’s agency to handle cases deferred by the EEOC for charges of discrimination.²⁵ As shown on the right side of Exhibit 3, state and county government employees covered by the State Personnel Act can file a complaint of employment discrimination with EEOC and/or the Civil Rights Division, and EEOC will defer the case to the Civil Rights Division. Employees alleging employment discrimination may file their complaints directly with the Civil Rights Division without exhausting in-house or agency grievance procedures.²⁶

²⁵ N.C. Gen. Stat. § 7A-759.

²⁶ Government employees can file all types of grievances, including employment discrimination claims, with their agency or with the Office of State Personnel.

The similarity between the Human Relations Commission and Civil Rights Division is they both conduct formal investigations of discrimination complaints. Appendix A displays the process for how housing discrimination complaints are handled by the Human Relations Commission, and Appendix B displays the process for how employment discrimination complaints are handled by the Civil Rights Division. Both entities provide similar services during the following phases:

- **Investigation phase.** The Human Relations Commission and Civil Rights Division conduct comprehensive investigations of charges, interviewing the parties and any necessary witnesses and obtaining copies of pertinent documents. Both entities prepare investigative reports that evaluate the evidence produced during the investigation and determine whether there is probable "Cause" or "No Cause" to believe the alleged discrimination occurred.
- **Conciliation phase.** Both entities attempt to bring about successful conciliation, which means bringing two opposing sides together to reach a compromise in an attempt to avoid taking a case to trial. As part of its investigation, the Human Relations Commission requests conciliation proposals from all parties that eliminates or corrects the discriminatory housing practice. For cases with "Cause," the Civil Rights Division discusses investigative findings with the charging party and respondent in an attempt to bring about full compliance with applicable federal and state laws.

The differences between the Human Relations Commission and Civil Rights Division are they cover different persons, administer different laws, interact with different federal agencies, and have different litigation responsibilities. As shown in Exhibit 4, the Human Relations Commission is working with HUD to administer the federal and state Fair Housing Acts for private persons, whereas the Civil Rights Division is working with EEOC to administer Title VII, ADEA, and ADA cases for state and county government employees. One additional distinction between the two entities is their litigation responsibilities. In accordance with the State Fair Housing Act, when the Human Relations Commission determines there is probable cause to believe discrimination occurred and conciliation efforts were unsuccessful, its role shifts from neutral analyst to advocate.

When the Human Relations Commission's attorney determines that further conciliation efforts are futile, he sends letters to the parties requesting that they elect whether to proceed to an administrative hearing at the Office of Administrative Hearings or to a jury trial in Superior Court. When they have chosen, the Human Relations Commission files suit in the chosen forum on behalf of the charging party. Although the attorney litigates the charging party's claim, the Human Relations Commission's client is the State, not the charging party.

When the Civil Rights Division determines there is probable cause to believe discrimination occurred and conciliation efforts were unsuccessful, the charging party can pursue the following options on their own: request a right-to-sue letter from EEOC, request further conciliation from EEOC, or petition for an administrative hearing at the Office of Administrative Hearings.

Exhibit 4**Differences Between the Human Relations Commission and Civil Rights Division's Work on Discrimination Complaints**

	Human Relations Commission	Civil Rights Division
Covered persons	Private persons	State and county government employees covered by the State Personnel Act
Laws	<ul style="list-style-type: none"> • Federal Fair Housing Act • State Fair Housing Act 	<ul style="list-style-type: none"> • Title VII of the Civil Rights Act of 1964 • Age Discrimination in Employment Act • Title I of the Americans with Disabilities Act
Federal agency	U.S. Department of Housing and Urban Development	U.S. Equal Employment Opportunity Commission
Litigation responsibilities	Litigation responsibilities	No litigation responsibilities

Source: Program Evaluation Division based on data from the Civil Rights Division and Human Relations Commission.

In sum, there is no duplication of duties and services between the Human Relations Commission and the Civil Rights Division. Both entities conduct formal investigations of discrimination complaints, but they cover different persons, administer different laws, interact with different federal agencies, and have different litigation responsibilities.

Finding 2. Combining the Human Relations Commission's housing discrimination duties and the Civil Rights Division's employment discrimination duties has limited cost savings.

The Civil Rights Division should remain independent of executive branch agencies. The U.S. Equal Employment Opportunity Commission (EEOC) certified the Civil Rights Division as a Fair Employment Practices Agency in 2005. One of the requirements for certification is that the state has either established a state or local authority or authorized an existing state or local authority to grant relief from unlawful employment practices, to seek relief from those practices, or to institute criminal proceedings with respect to those practices. The General Assembly created the Civil Rights Division under the Office of Administrative Hearings as the agency to handle EEOC cases for state and county government employees covered by the State Personnel Act. The Office of Administrative Hearings functions as an independent, quasi-judicial agency with judicial powers extended under statute.²⁷

The independent status of the Civil Rights Division allows it to neutrally analyze the merit of discrimination complaints against government employers. According to the EEOC, the Civil Rights Division's independence has been an effective measure in ensuring cases are processed in accordance with EEOC standards. According to the Civil Rights Division, their independence is critical in state personnel employment discrimination cases where executive branch agencies are the respondents, and employees may be deterred from filing claims or lose confidence in the

²⁷ N.C. Gen. Stat. § 7A-750.

fairness of investigations if the division were moved to an executive branch agency. To keep its independent status, the Civil Rights Division could not be attached to an executive branch agency, such as the Offices of the Governor, Attorney General, or State Personnel or the Department of Administration.

Moving the Human Relations Commission to other state agencies has been considered several times, but none of the previous proposals are optimal at this time. In contrast to the work of the Civil Rights Division, which only covers public employees, the work of the Human Relations Commission covers private persons so there is no potential conflict of interest regarding the placement of the commission in government. As a result, movement of the Human Relations Commission has been considered several times over the years. In 1992, the Government Performance Audit Committee recommended moving the Human Relations Commission, along with other advocacy groups housed at the Department of Administration, to the Governor's Office. The rationale for the recommendation was to make the Department of Administration a pure management services organization. Today, the Human Relations Commission is less of an advocacy group and more of an enforcement agency for federal and state Fair Housing Acts. The Governor's Office does not currently have any enforcement groups.

In 2009, an internal audit of the Human Relations Commission made several recommendations, one of which was moving the Human Relations Commission to the Department of Justice's Consumer Protection Division. The rationale for the recommendation was that the two entities perform similar services. The Consumer Protection Division provides citizens protection against unfair business practices. The Consumer Protection Division has 10 to 12 complaint handlers that process tens of thousands of citizen complaints per year and issue letters in an attempt to get a better response from the business. The division also has 10 to 12 attorneys who, depending on the division's resources, bring select cases on behalf of the general public for violations of Chapter 75 (Monopolies, Trusts, and Consumer Protection) of the General Statutes. Thus, unlike the Human Relations Commission, the Consumer Protection Division does not conduct formal investigations to determine whether there is probable "Cause" or "No Cause" to believe alleged discrimination occurred.

The services performed by the Human Relations Commission are more similar to the services performed by the Civil Rights Division and, as a result, moving the Human Relations Commission to the Civil Rights Division has been considered several times. In 2007, a Justification Review of the Office of Administrative Hearings by the Fiscal Research Division recommended moving the Human Relations Commission's Fair Housing Unit to the Civil Rights Division.²⁸ The report did not speak to placement of the Human Relations Commission's Community Relations Unit. Based on the recommendations of the 2009 internal audit, the Human Relations Commission merged its Fair Housing Unit and Community Relations Unit and cross-trained staff to form the Human Relations Unit, which now handles the

²⁸ The Fiscal Research Division did not collect any data from the Human Relations Commission as part of their justification review of the Office of Administrative Hearings.

consolidated caseload of fair housing and community relations matters. Although the 2009 internal audit also recommended that the Department of Administration transfer the Human Relations Commission to the Civil Rights Division, the department did not follow through on this recommendation once case processing times improved due to the cross-training of staff.

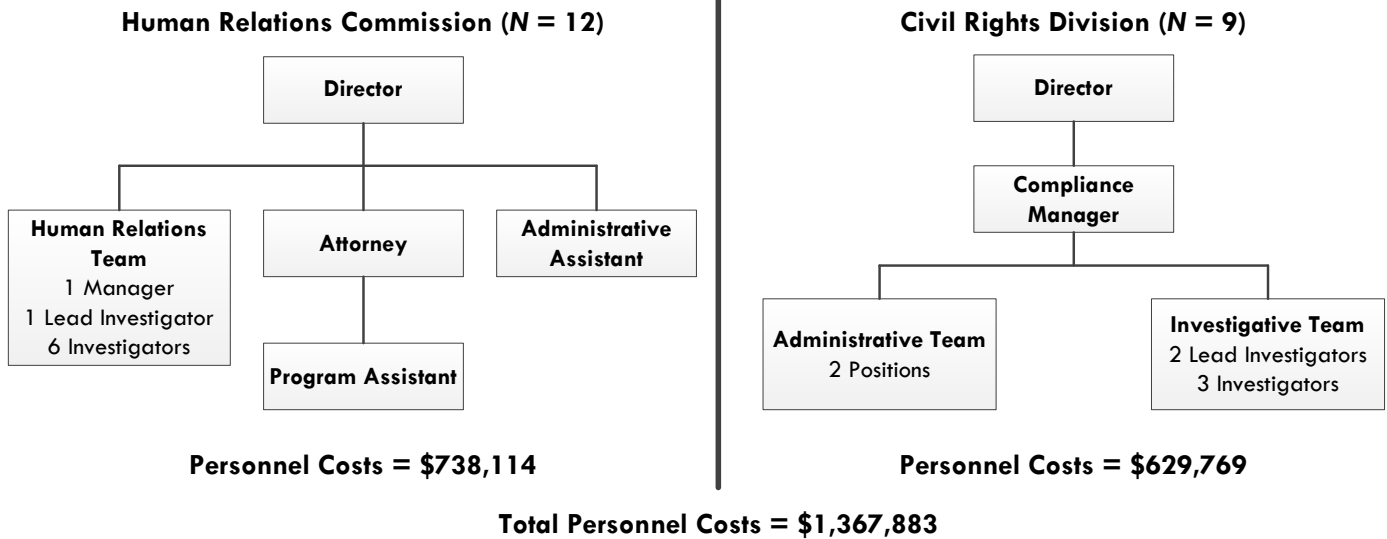
Limited cost savings would result from combining the Human Relations Commission with the Civil Rights Division. As discussed in Finding 1, any perceived overlap between the Human Relations Commission and Civil Rights Division stems from their investigations of discrimination complaints. The Human Relations Commission performs additional community relations activities that the Civil Rights Division does not. Therefore, the Program Evaluation Division attempted to separate out the Human Relations Commission's fair housing and community relations activities and determined which fair housing positions would need to transfer to the Civil Rights Division and which community relations positions would remain at the Department of Administration. Exhibit 5 shows the current positions and costs of the Human Relations Commission and the Civil Rights Division versus the combined positions and costs if the Human Relations Commission's fair housing activities were moved to the Civil Rights Division. The \$67,453 in recurring savings was generated by eliminating a vacant investigator position at the Human Relations Commission and downgrading the Human Relations Commission Director position to a Human Relations Specialist I position to carry on community relations activities at the Department of Administration.²⁹

Within a combined agency, reductions to the housing unit and employment unit staff would reduce their ability to handle their current caseloads. In federal Fiscal Year 2010–11 (October 1, 2010 to September 30, 2011), the Human Relations Commission received 96 complaints and closed 83 cases. Over the past few years, the Human Relations Commission's caseload has been increasing as local certified agencies have closed. For example, when the Asheville-Buncombe County Human Relations Commission closed in 2010, the Human Relations Commission caseload increased by 10%. In addition, the Human Relations Commission staff has been reduced over time from 18 positions to 12 positions. The Commission has one attorney who must be retained to continue providing litigation services. According to the U.S. Department of Housing and Urban Development's (HUD) last annual performance assessment of the Human Relations Commission, the commission processes and investigates a sufficient number of discrimination complaints per year based on the population size it serves.

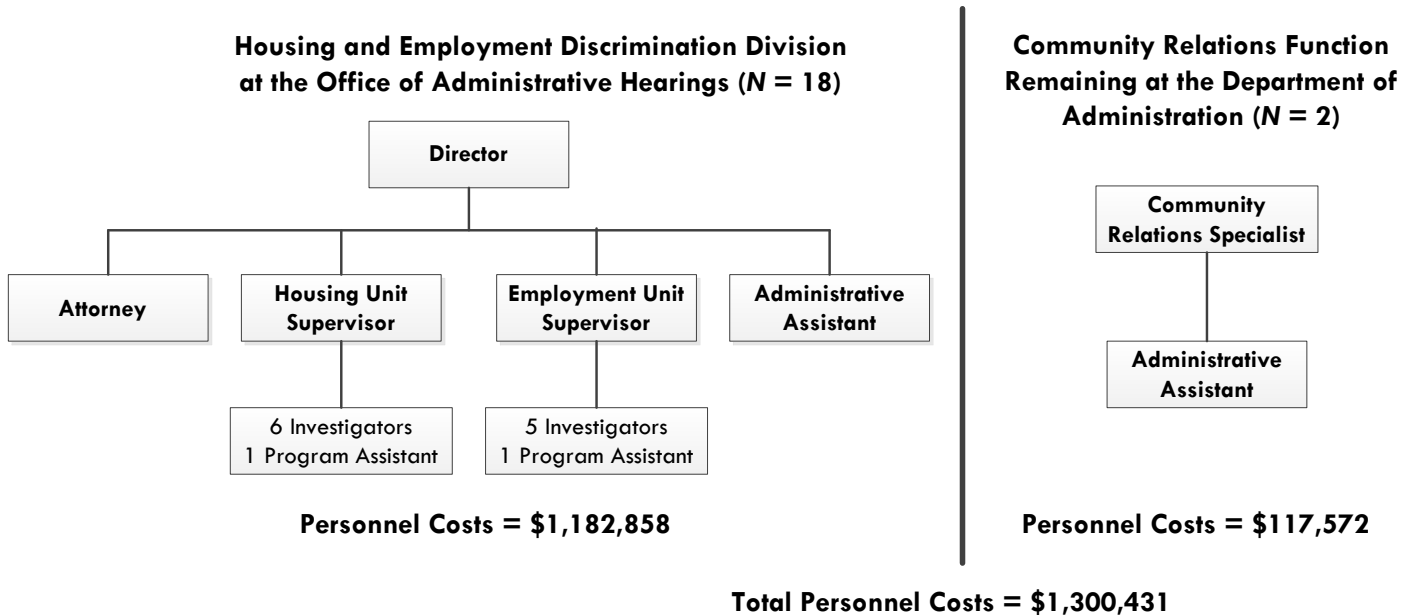
²⁹ The community relations activities related to fair housing, as shown in the last column of Exhibit 7, would move to the Civil Rights Division.

Exhibit 5: Current versus Combined Organization of Commission and Division (FY 2012–13)

Current Organization



Combined Organization with Human Relations Commission's Housing Unit Merged with Civil Rights Division



Difference between Current and Combined Organization = \$67,453

Note: Under the Human Relations Commission's current organization, one of the six budgeted investigator positions is vacant, and the salary for that position (\$46,054) is included in the personnel costs. Under the combined organization, the vacant position is eliminated and, as a result, personnel costs are reduced. An additional \$21,399 in savings was generated by downgrading the Human Relations Commission Director position to a Human Relations Specialist I position, for a total of \$67,453 in cost savings.

Source: Program Evaluation Division based on information from the Civil Rights Division and Human Relations Commission.

In federal Fiscal Year 2010–11, the Civil Rights Division received 96 complaints and closed 95 cases. In 2011, the Civil Rights Division staff was reduced by one investigator. EEOC does not perform an annual audit of the Civil Rights Division, but EEOC stated the Civil Rights Division always meets the performance measures established in its contract, has had no cases returned for additional work, produces quality cases, and has been effective in enforcement by settling cases with merit. Given that both the Human Relations Commission and the Civil Rights Division are performing satisfactorily for their federal oversight agencies, additional reductions in staff are not warranted at this time.

Within a combined agency, cross-training the housing unit and employment unit staff would require additional funding. As discussed in Finding 1, because the two entities cover different persons, administer different laws, and interact with different federal agencies, their staffs have different areas of expertise. Thirty-eight states have housing and employment discrimination under the same agency, and the majority of those agencies do not have staff that are cross-trained to handle both types of cases. A Civil Rights Division survey of 25 states found 8 states (Maine, Maryland, Minnesota, New York, North Dakota, South Dakota, Vermont, and West Virginia) have employees who are cross-trained to do both employment and housing, and typically employees are trained in employment cases and a subset are also trained in housing cases.

In North Carolina, the investigators at the Human Relations Commission are paid at a salary grade 70, and the investigators at the Civil Rights Division are paid at a salary grade 74. According to the Office of State Personnel, the difference in salary grades is due to the increased complexity of employment discrimination cases. Therefore, Human Relations Commission investigators would need additional training and compensation in order to make their positions equivalent to Civil Rights Division investigators, which would result in additional recurring costs to any merger.

Besides lack of cost savings, there are a few other potential cost considerations of transferring the Human Relations Commission's fair housing duties to the Civil Rights Division. In 1990, HUD certified the Human Relations Commission as a substantially equivalent agency and, as a result, the Human Relations Commission receives Fair Housing Assistance Program funds. In federal Fiscal Year 2011–12, the Human Relations Commission received \$250,203 from HUD. If the Human Relations Commission's fair housing unit were transferred to the Civil Rights Division, HUD stated that it "may" need to start the Civil Rights Division in interim certification status depending on its capacity. During the interim certification period, the Civil Rights Division would receive a flat amount (currently \$120,000) in the first year and transition to receipt funds for complaint processing, administrative costs, and training after the first year. After three years as interim certified, the Civil Rights Division would be considered for certification status. Therefore, transferring fair housing activities to the Civil Rights Division could result in a one-time loss of \$130,203 in federal funds.

In addition, the Civil Rights Division reported there is not sufficient office space at the Office of Administrative Hearings to accommodate the Human Relations Commission staff and therefore additional budget resources

would be needed. Based on the Office of Administrative Hearings current lease and occupancy rates, the recurring cost of placing nine Human Relations Commission employees at the Office of Administrative Hearings is estimated to be \$51,563.³⁰

In sum, the Civil Rights Division placement at the Office of Administrative Hearings allows it to remain independent of executive branch agencies, but the Human Relations Commission could be moved from the Department of Administration without creating a conflict of interest. Moving the Human Relations Commission's fair housing activities to the Civil Rights Division could generate \$67,453 in recurring savings. However, this cost savings may be offset by additional costs associated with the Civil Rights Division having to become certified as a substantially equivalent agency by HUD and with creating office space for staff that are transferred.

Finding 3. North Carolina's fair employment laws could be clarified to reflect actual practices.

The U.S. Department of Housing and Urban Development (HUD) enforces the federal Fair Housing Act, and the U.S. Equal Employment Opportunity Commission (EEOC) enforces several federal employment discrimination laws. The majority of states, including North Carolina, contract with these federal agencies to administer these federal laws in their jurisdictions. Thirty-seven states have been certified as substantially equivalent agencies by HUD, and 44 states have been certified as Fair Employment Practices Agencies by the EEOC. Contracting with these federal agencies provides several benefits to states: states receive funds for the services that assist the federal agencies; states receive training, guidance, technical assistance, and resources from the federal agencies; and citizens are assured the substantive and procedural strength of the federal laws will not be compromised.

Even though there are federal anti-discrimination laws and federal agencies to enforce them, most states also have their own state laws and agencies to handle housing and employment discrimination complaints. States choose not to rely solely on the federal government to enforce federal housing and employment laws for several reasons:

- states can have more stringent laws for housing and employment discrimination;
- states have the opportunity to address discrimination issues before federal intervention, which may reduce settlement costs and prevent class action litigation;
- citizens have access to state or local professionals who often have a greater familiarity with state and local laws and whose proximity to the site of the alleged discrimination may lead to greater efficiency in case processing; and
- citizens receive more focused education, outreach, and training.

³⁰ This figure is based on an average annual lease cost per employee of \$8,594 based on the Office of Administrative Hearings's annual lease of \$360,941 and its space for 42 employees. Because the building has three vacant offices, the Program Evaluation Division multiplied the average annual lease cost per employee by the six additional Human Relations Commission employees that would need accommodation.

The majority of states have a combined fair housing and employment agency, but their fair employment agencies serve both private and public employees as compared to North Carolina's agency that only serves public employees. As shown in Exhibit 6, there are five ways that states structure their fair housing and employment agencies depending on the populations that they serve. A total of 38 states have a single agency that provides both fair housing and employment services for all persons. Three of these states (California, Vermont, and Virginia) have an additional and separate agency that provides fair employment services for public employees only.

Five states, including North Carolina, have a fair housing agency that covers all persons and a separate fair employment agency that covers public employees only. These states rely solely on the EEOC to enforce federal employment discrimination laws for private employees.

Exhibit 6: Structure of States' Fair Housing and Employment Agencies

Structure of Fair Housing and Employment Agencies	Description	Number of States	States
Combined fair housing and employment agency	Has a single agency that provides both fair housing and employment services for all persons	38	Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin
Separate fair housing agency and fair employment agency for public employees only	Has a fair housing agency that covers all persons and a separate fair employment agency that covers public employees only	5	Alaska, Delaware, Kentucky, Louisiana, North Carolina
Fair employment agency only	Has a fair employment agency and relies solely on HUD to enforce the federal Fair Housing Act	4	Kansas, New Mexico, Oklahoma, Wyoming
Fair housing agency only	Has a fair housing agency and relies solely on EEOC to enforce federal employment discrimination laws	1	Arkansas
No fair housing agency or fair employment agency	Does not have either a fair housing agency or a fair employment agency and relies solely on HUD and EEOC to enforce federal laws	2	Alabama, Mississippi

Source: Program Evaluation Division based on data from other states and the Civil Rights Division.

Although North Carolina has a statute that prohibits employment discrimination against all persons, the law is not reflective of practice. The North Carolina Equal Employment Practices Act makes a legislative declaration that, "It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, sex or handicap by employers which

regularly employ 15 or more employees.”³¹ Within this act, the General Assembly authorized the Department of Administration’s Human Relations Commission to receive charges of discrimination from the EEOC and investigate and conciliate those charges. However, legal opinion is mixed as to whether state law allows private persons to bring discrimination charges against private employers. Some federal courts³² and one state court opinion³³ have held that the act supports a common lawsuit for wrongful discharge in violation of public policy. Other courts have held that there is no private cause of action under the North Carolina Equal Employment Practices Act.³⁴

Despite the lack of clarity about the existence of a private cause of action in North Carolina, no court has suggested that the Equal Employment Practices Act gives enforcement authority to the Human Relations Commission. Indeed, EEOC would have to certify the Human Relations Commission as a Fair Employment Practices Agency, as it has for the Civil Rights Division, to receive charges of discrimination from the EEOC. Because of this lack of enforcement authority, the commission only refers private employees seeking assistance with employment-related discrimination to the EEOC. Thus, North Carolina is unlike 42 other states that have a fair employment agency that provides services to all persons—either as a combined fair housing and employment agency or by itself, but private employees in North Carolina can still receive services from EEOC.

North Carolina is the only state that relies on the federal statutes in its law intended to prohibit employment discrimination against government employees. The enforcement provisions of Title VII, the Age Discrimination in Employment Act, and the Americans with Disabilities Act expressly authorize only the EEOC, private plaintiffs and, under certain circumstances, the U.S. Department of Justice to enforce them. The provisions do not clearly authorize state or local agencies to directly enforce these federal laws. As a result, there is some conflict and confusion regarding local and state enforcement authorities.³⁵

State and local governments may create and establish their own laws to address unlawful employment discrimination in their jurisdictions and, wherever appropriate, the EEOC will defer initial enforcement of rights protected by such laws to the state authorities. In North Carolina, N.C. Gen. Stat. § 7A-759 only refers to the federal statutes rather than explicitly establishing a law to address unlawful employment discrimination against government employees. According to the EEOC, North Carolina is the only state that has structured its employment discrimination law in this manner. The Civil Rights Division reported it would be clearer if, as a state entity, it had a state law to enforce. EEOC stated it supports any efforts to

³¹ N.C. Gen. Stat. Chap. 143, Art. 49A.

³² See, e.g., *McLean v. Patten Cmty., Inc.*, 332 F.3d 714 (4th Cir. 2003); *Hardin v. Belmont Textile Mach., Co.*, 2006 U.S. Dist. LEXIS 54452 (W.D.N.C. Aug. 3, 2006).

³³ *Whitt v. Harris Teeter, Inc.*, 165 N.C. App. 32, 598 S.E.2d 151 (2004), cert. denied, 359 N.C. 75, 605 S.E.2d 151 (2004).

³⁴ See, e.g., *Percell v. IBM, Inc.*, 765 F. Supp. 297 (E.D.N.C. 1991), aff’d, 23 F.3d 402 (4th Cir. 1994); *Smith v. First Union Nat’l Bank*, 202 F.3d 234 (4th Cir. 2000); *McFadden v. Trend Community Health Servs.*, 114 F. Supp. 2d 427 (W.D.N.C. 2000). *NCEPA. McNeil v. Scotland County*, 213 F. Supp. 2d 559 (M.D.N.C. 2002).

³⁵ See *Carl Davis vs. North Carolina Department of Correction* (48 F.3d 134 (4th Cir.1995); *Henderson vs. Employment Security Commission* (W.D.N.C. Oct. 18, 1995).

clarify enforcement authorities for North Carolina state and local civil rights entities regarding unlawful employment discrimination in the workplace.

In sum, like most states, North Carolina contracts with the federal government to enforce federal fair housing and employment discrimination laws but also has its own state laws in this area. Most states have a combined fair housing and employment agency, and their employment discrimination laws cover both private and public employees. In contrast, North Carolina has a separate fair housing agency that covers private persons and a fair employment agency that covers public employees only. North Carolina's employment discrimination laws could be clarified to better reflect this structure and the Civil Right Division's enforcement authority in this area.

Finding 4. The Human Relations Commission has a major responsibility relating to community relations activities, but there is limited evidence to demonstrate the effectiveness of this function.

As described in the background section, the original purpose of the Human Relations Commission in 1963 was to improve opportunities and encourage employment training for Blacks, Native Americans, and Whites. Within two years, the commission's purpose was expanded to include all aspects of community relations. Although the Human Relations Commission presently spends the majority of its time handling fair housing complaints, its community relations work is still central to its mission.

The General Assembly has assigned the Human Relations Commission with community relations duties. Pursuant to N.C. Gen. Stat. § 143B-391, the Human Relations Commission has the following duties related to community relations:

- to study problems concerning human relations;
- to promote equality of opportunity for all citizens;
- to promote understanding, respect, and goodwill among all citizens;
- to provide channels of communication among the races;
- to encourage the employment of qualified people without regard to race;
- to enlist the cooperation and assistance of all State and local government officials in the attainment of the objectives of the commission; and
- to assist local good neighborhood councils and bi-racial human relations committees.

The Human Relations Commission spends almost a third of its staff time on community relations activities. The Human Relations Commission reported staff spends 29% of their time on community relations activities, which includes some fair housing activities. Exhibit 7 shows the types and number of community relations activities that were performed in Fiscal Year 2011–12. Below are some recent examples of these activities.

- During the Duke Lacrosse scandal in 2006, the Human Relations Commission worked behind the scenes to keep communications open

between various civic groups and try to calm the situation. In particular, the Human Relations Commission used its established relationships with the Durham Police and local civil rights organizations to prevent hasty and inflammatory decisions and promote dialogue on contentious issues.

- In May 2012, the Human Relations Commission spoke with the Iredell County Sheriff's Department concerning a scheduled Ku Klux Klan rally and cross burning to be held on private property in Harmony. The Human Relations Commission notified local commissions and law enforcement in Greensboro, Highpoint, Winston-Salem, and Charlotte to be on alert for possible tensions in their areas.
- In June 2012, the Human Relations Commission began participating with the City of Raleigh Human Relations Commission to assist in the mediation of an incident involving a dispute between the Downtown Sports Bar and Grill and an African American patron.

As shown in Exhibit 7, several of the Human Relations Commission's community relations activities are related to fair housing. The commission receives federal funds from the U.S. Department of Housing and Urban Development (HUD) for performing these activities. Because the Human Relations Commission does not track its fair housing-related community relations activities separately from its general community relations activities, the Program Evaluation could not determine how much of the Human Relations Commission's staff time and budget are spent solely on general community relations activities.

The Human Relations Commission tracks activities and outputs but admits that it is difficult to measure the outcomes of their community relations activities. Programs can use the following measures to assess program performance and guide program improvement.

- **Activities** describe what the program currently does to achieve its overarching goal.
- **Outputs** are measures, usually counts, which the program can use to track and report on activities.
- **Outcomes** track program benefits that can be expected as a result of activities.

Exhibit 7: Human Relations Commission's Community Relations Activities in Fiscal Year 2011–12

Activities	Description	Number Performed	Related to Fair Housing
Calls			
General housing inquiries	Receive calls from consumers seeking information on non-discriminatory housing issues	132	
Fair housing complaint inquiries	Receive calls from consumers who believe they have experienced housing discrimination	115	✓
Referrals			
Landlord/tenant issues	Refer consumers seeking information on landlord obligations and tenant rights, excluding discriminatory issues, to the appropriate agencies	255	
Employment issues	Refer consumers seeking assistance with employment issues to the appropriate agencies	137	
Other issues	Refer consumers seeking information on services that the commission does not provide to the appropriate agencies	50	
Consultations			
Legal advice on fair housing issues	Provide advice to the public and private sector seeking assistance on fair housing issues	35	✓
Public accommodations inquiries	Assist parties involved in disputes regarding treatment at hotels, retail stores, restaurants, and other establishments	25	
Fair housing presentations by attorney	Make presentations to the public and private sector on fair housing issues	7	✓
Technical Assistance			
Fair housing/diversity/compliance training by staff	Provide training to the public and private sector on fair housing issues when requested	27	✓
Request for posters and pamphlets	Provide posters and pamphlets on fair housing to local organizations, affordable housing associations, landlord associations, property management companies, housing authorities, consumer groups, or private citizens when requested	19	✓
Hate crimes/hate bias incidents	Monitor hate crime related activities across the state and, when appropriate, alert local human relations agencies and/or law enforcement agencies; operate Hate/Violence Information Network to gauge the need for increased diversity and cultural awareness training in communities	17	
Requests for fair housing processing data	Provide statistical data to the private and public sector when requested	8	✓

Source: Program Evaluation Division based on information from the Human Relations Commission.

Since 2010, the Human Relations Commission has used the percentage of community relations cases closed within 90 days to measure their performance in this area. In Fiscal Year 2011–12, 88% of community relations cases were closed within 90 days. Whereas this measure enables the Human Relations Commission to track program efficiency, there is limited data on the effectiveness of community relations activities. Staff claims that performance outcomes, such as satisfaction of all parties involved, are “not fully trackable.”

The Human Relations Commission could strengthen customer satisfaction surveys and develop outcome assessments to determine whether community relations activities are having the desired effect.

Customer satisfaction surveys are commonly used by mediation and community relations programs to determine satisfaction with program activities and to measure changes in knowledge or attitudes. For example, the U.S. Equal Employment Opportunity Commission (EEOC) surveyed employees and employers to measure the satisfaction of both parties with the EEOC mediation process.³⁶ The Human Relations Commission conducted a customer satisfaction survey in 2009 to assist in establishing performance measures.³⁷ The survey asked stakeholders to rate their satisfaction with general interactions but did not include items to determine whether stakeholders were satisfied with the complaint and resolution processes specific to their cases. This level of information would allow the Human Relations Commission to identify ways to improve their processes.

The Human Relations Commission does not routinely measure how effective their community relations activities are at changing attitudes and behaviors. Outcome assessments measure change in knowledge, skills, or behaviors of individuals served. For example, the U.S. Bureau of Justice Assistance's Center for Program Evaluation and Performance Measurement recommends that community-based crime prevention programs use survey assessments to determine changes in community attitudes toward law enforcement.³⁸ Such assessments are given to individuals before and after an intervention to determine whether the program activity contributed to changes in attitudes observed. Improved performance measurement of community relations activities would provide better accountability to the individuals and groups the Human Relations Commission serves.³⁹

In sum, one of the major responsibilities of the Human Relations Commission is performing education, outreach, and training activities to improve community relations. The Commission tracks these activities but does not measure their outcomes. Improved customer satisfaction surveys and outcome assessments would allow the Human Relations Commission to determine whether its community relations activities are producing desired effects.

³⁶ U.S. Equal Employment Opportunity Commission. (September 2000). *An Evaluation of the Equal Employment Opportunity Commission Mediation Program*. Washington, DC.

³⁷ The Human Relations Commission plans to conduct a second round of customer satisfaction surveys in 2012.

³⁸ Bureau of Justice Assistance. *Performance Measures to Consider*. Retrieved August 25, 2012, from <https://www.bja.gov/evaluation/program-crime-prevention/cbcp5.htm>.

³⁹ Program Evaluation Division. (November 2009). *Accountability Gaps Limit State Oversight of \$694 Million in Grants to Non-Profit Organizations*. Raleigh, NC: General Assembly.

Recommendations

Because there is no duplication of duties and services between the Human Relations Commission and the Civil Rights Division and combining the two entities has limited cost savings, the Program Evaluation Division does not recommend merging the two entities at this time. However, the General Assembly should take steps to increase accountability and transparency of the Human Relations Commission and Civil Rights Division, and amend statutes regarding employment discrimination to clarify enforcement authority.

Recommendation 1. The General Assembly should direct the Human Relations Commission to strengthen performance measures for its community relations activities and report annually on its community relations and fair housing activities to the General Assembly and the general public.

As part of its charge, the Human Relations Commission is responsible for improving community relations by providing education, outreach, and training. The Human Relations Commission reported that staff spend 29% of their time on community relations activities.

In 2009, the Human Relations Commission merged its Fair Housing Unit and Community Relations Unit and cross-trained staff to form one unit that handles the consolidated caseload of fair housing and community relations matters. As shown in Exhibit 7, several of the Human Relations Commission's community relations activities are related to fair housing, and the commission receives federal funds from the U.S. Department of Housing and Urban Development (HUD) for performing these activities. The Human Relations Commission should start tracking its fair housing-related community relations activities separately from its general community relations activities so the General Assembly can determine how much of the Human Relations Commission's budget is spent on general community relations activities.

As discussed in Finding 4, the commission does not measure the outcomes of its community relations activities. The Human Relations Commission should work with the Office of State Budget and Management to strengthen its customer satisfaction surveys and to develop outcome assessments to administer to the parties involved in the disputes the commission mediates.

In addition, the Human Relations Commission should be required to report on both its fair housing and community relations activities. Both activities are aimed at assisting citizens in resolving discrimination complaints, and thus, information on the commission's performance should be disseminated to increase its accountability to the general public. The Human Relations Commission is required to submit performance data to HUD, but these data are not reported to the General Assembly nor do these reports appear on the commission's website.

The General Assembly should require the Human Relations Commission to strengthen performance measures for community relations activities and report on its community relations and fair housing activities to the Joint Legislative Commission on Government Operations annually, with the first

report submitted by January 1, 2014. In addition, the commission should be directed to make its performance reports accessible to the general public.

The General Assembly has not previously required the Human Relations Commission to report the outcomes of its community relations activities and, as a result, return on investment information for these activities is not currently available. However, after receiving two years of reports on the Human Relations Commission's community relations activities, the General Assembly should consider whether to continue its investment in this area. If the General Assembly decides at that time to eliminate the Human Relations Commission's community relations activities, it could do so in two ways:

- eliminating the Human Relations Commission's community relations activities would produce an estimated recurring cost savings of \$241,831; or
- eliminating the Human Relations Commission's community relations activities and merging the Human Relations Commission and Civil Rights Division would produce an estimated recurring cost savings of \$176,999 in the first year of the merger and \$307,202 in subsequent years.

Appendix C provides more detail on these options.

Recommendation 2. The General Assembly should require the Civil Rights Division to report annually on its fair employment activities to the General Assembly, government agencies, and government employees.

The Office of Administrative Hearing's Civil Rights Division is responsible for investigating and resolving claims of employment discrimination made by state and county government employees covered by the State Personnel Act. As shown in Finding 2, the Civil Rights Division handled 96 cases in federal Fiscal Year 2010–11. These activities provide state and local governments the opportunity to address discrimination issues before federal intervention, reduce processing time for complaints, and allow issues to be resolved locally by staff with administrative and operational expertise. The Civil Rights Division submits performance data to the U.S. Equal Employment Opportunity Commission quarterly but is not statutorily required to submit reports to the General Assembly. As a result, neither the General Assembly nor state or local government agencies and their employees are aware of the effectiveness of the Civil Rights Division's activities.

The General Assembly should require the Civil Rights Division to report its fair employment activities to the Joint Legislative Commission on Government Operations annually, with the first report submitted by January 1, 2014, and should direct the division to make its performance reports accessible to government agencies and employees.

Recommendation 3. The General Assembly should amend the Equal Employment Practices Act by removing reference to the Human Relations Commission's enforcement authority.

As discussed in Finding 3, the North Carolina Equal Employment Practices Act has two substantive sections:

- N.C. Gen. Stat. § 143-422.2 makes a legislative declaration that it is the public policy of the State to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination on account of race, religion, color, national origin, age, sex or handicap by employers which regularly employ 15 or more employees.
- N.C. Gen. Stat. § 143-422.3 gives the Human Relations Commission the authority to receive charges of discrimination from the U.S. Equal Employment Opportunity Commission (EEOC) and investigate and conciliate charges of discrimination.

However, no court has found the act gives enforcement authority to the Human Relations Commission, and the commission does not have the required certification from the EEOC to receive charges of discrimination from it. As a result, the commission only refers private employees seeking assistance with employment-related discrimination to the EEOC.

To clarify the law, the General Assembly should amend the Equal Employment Practices Act by removing N.C. Gen. Stat. § 143-422.3.

Recommendation 4. The General Assembly should create a statute to explicitly prohibit employment discrimination against state and county government employees covered by the State Personnel Act and give the Civil Rights Division authority to enforce the law.

As discussed in Finding 3, N.C. Gen. Stat. § 7A-759 only refers to federal statutes rather than explicitly establishing a law to address unlawful employment discrimination against government employees. According to the U.S. Equal Employment Opportunity Commission (EEOC), North Carolina is the only state that has structured its employment discrimination law in this manner. Because the federal statutes do not clearly authorize state or local agencies to directly enforce them, there may be some confusion regarding the Civil Right Division's authority to enforce federal laws.

All other states contracting with EEOC as Fair Employment Practices Agencies have established their own laws to address unlawful employment discrimination in their jurisdictions and, wherever appropriate, the EEOC will defer initial enforcement of rights protected by such laws to the state authorities. EEOC stated it supports any efforts to clarify the Civil Rights Division's enforcement authority. To prevent further confusion, the General Assembly should create a statute that explicitly prohibits employment discrimination against state and county government employees covered by the State Personnel Act and should give the Civil Rights Division authority to enforce that law.

Appendices

Appendix A: Human Relations Commission's Process for Housing Discrimination Complaints

Appendix B: Civil Rights Division's Process for Employment Discrimination Complaints

Appendix C: Cost Savings from Eliminating the Human Relations Commission's Community Relations Activities and Merging the Human Relations Commission and Civil Rights Division

Agency Responses

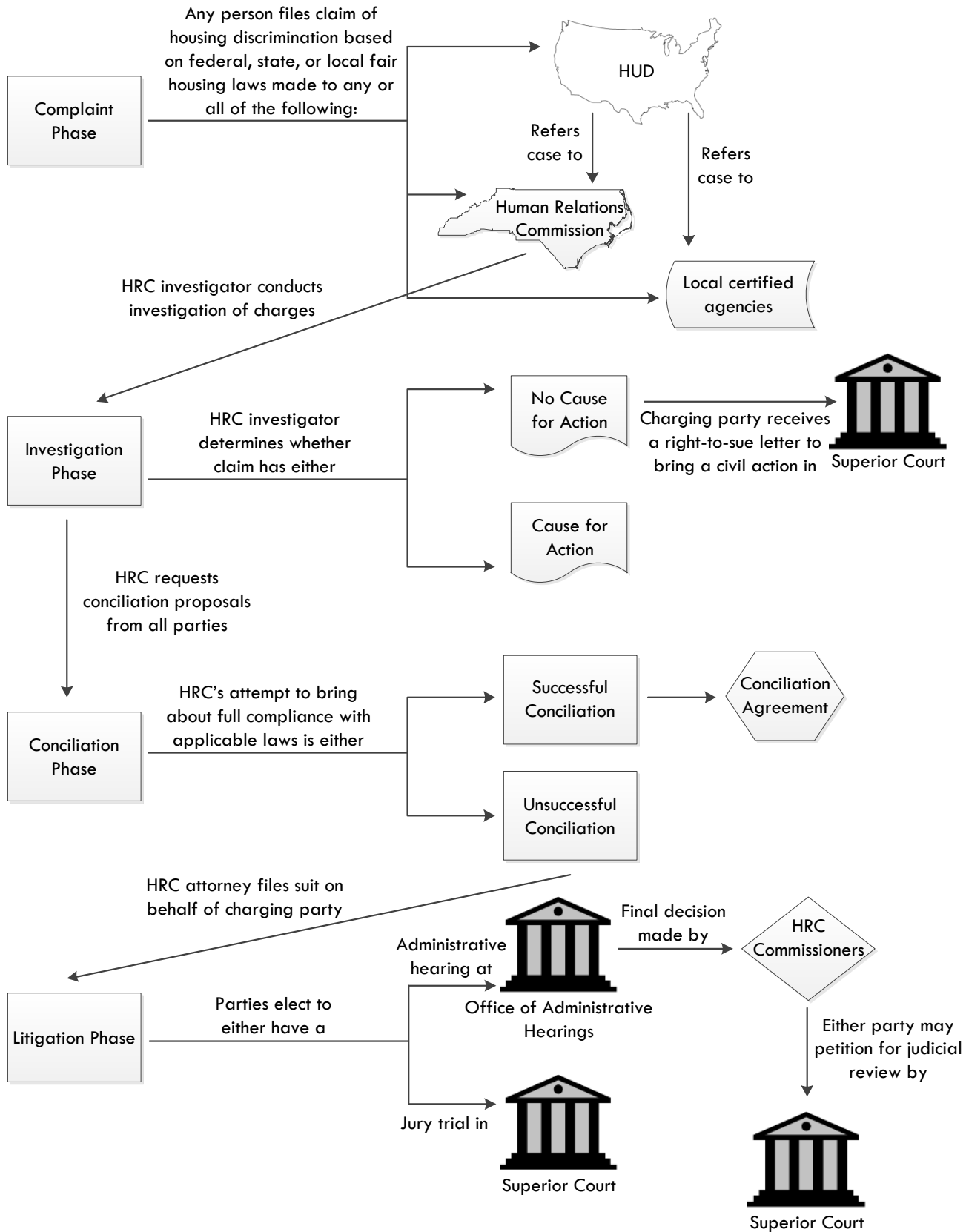
A draft of this report was submitted to the Department of Administration and Office of Administrative Hearings to review and respond. Their responses are provided following the appendices.

Program Evaluation Division Contact and Acknowledgments

For more information on this report, please contact the lead evaluator, Kiernan McGorty, at kiernan.mcgorty@ncleg.net.

Staff members who made key contributions to this report include Lee Creighton and Pamela L. Taylor. John W. Turcotte is the director of the Program Evaluation Division.

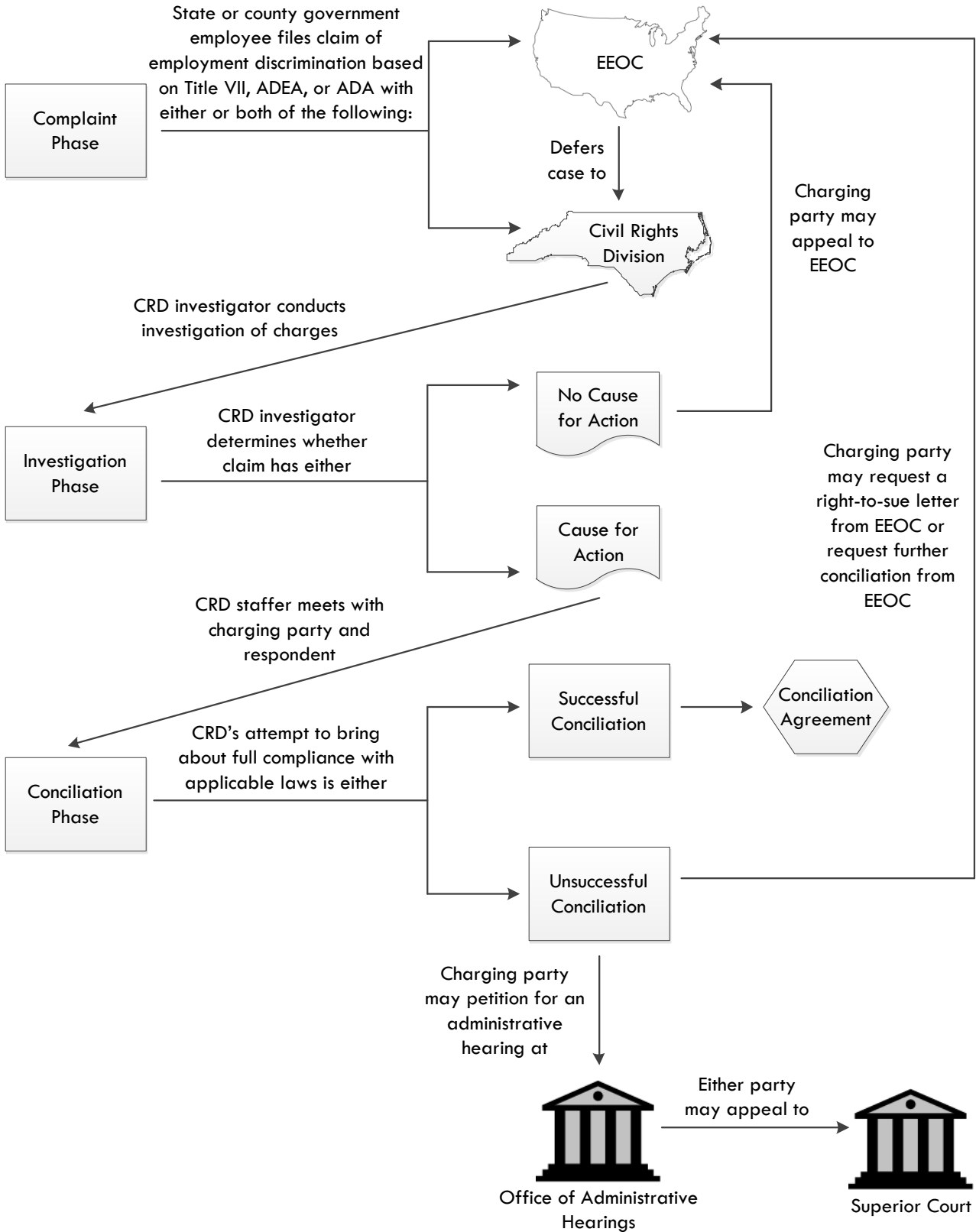
Appendix A: Human Relations Commission's Process for Housing Discrimination Complaints



Note: HRC stands for the Human Relations Commission, and HUD stands for the U.S. Department of Housing and Urban Development.

Source: Program Evaluation Division based on General Statutes and information provided by the Human Relations Commission.

Appendix B: Civil Rights Division's Process for Employment Discrimination Complaints



Note: Title VII stands for Title VII of the Civil Rights Act of 1964, ADEA stands for the Age Discrimination Employment Act, and ADA stands for the Americans with Disabilities Act. CRD stands for the Civil Rights Division, and EEOC stands for the U.S. Equal Employment Opportunity Commission.

Source: Program Evaluation Division based on information provided by the Civil Rights Division.

Appendix C: Cost Savings from Eliminating the Human Relations Commission's Community Relations Activities and Merging the Human Relations Commission and Civil Rights Division

Because there is no duplication of duties and services between the Human Relations Commission and the Civil Rights Division and combining the two entities has limited cost savings, the Program Evaluation Division does not recommend merging the two entities at this time. However, the Program Evaluation Division does recommend directing the Human Relations Commission to develop performance measures for its community relations activities. After receiving two years of reports on the Human Relations Commission's community relations activities, the General Assembly should consider whether to continue its investment in this area. If the General Assembly decides at that time to eliminate the Human Relations Commission's community relations activities, it could do so in one of the two ways shown below.

Current structure

Human Relations Commission FY 2012–13 Certified Budget	\$ 1,064,127
Civil Rights Division FY 2012–13 Certified Budget	825,353
Total	\$ 1,889,480

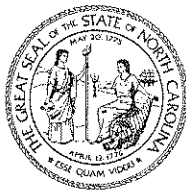
1. Eliminating Human Relations Commission's community relations activities would produce an estimated cost savings of \$241,831

Human Relations Commission FY 2012–13 Certified Budget	\$ 1,064,127	
	(195,777)	Reduce salaries by proportion of time reported spent on community relations activities
	(46,054)	Eliminate vacant Investigator position
Subtotal	822,296	
Civil Rights Division FY 2012–13 Certified Budget	825,353	
Total	\$ 1,647,649	

2. Eliminating Human Relations Commission's community relations activities and merging Human Relations Commission and Civil Rights Division would produce an estimated cost savings of \$176,999 in the first year and \$307,202 in subsequent years

	First Year	Subsequent Years	
Human Relations Commission and Civil Rights Division FY 2012–13 Certified Budget	\$ 1,889,480	\$ 1,889,480	
	(\$88,142)	(\$88,142)	Eliminate Human Relations Commission's Director position
	(\$50,829)	(\$50,829)	Eliminate Human Relations Commission's Administrative Assistant position
	(\$173,741)	(\$173,741)	Reduce remaining Human Relations Commission salaries by proportion of time reported spent on community relation activities
	(\$46,054)	(\$46,054)	Eliminate vacant Human Relations Commission Investigator position
	130,203		Non-recurring cost of merged unit having to become certified as a substantially equivalent agency by the U.S. Department of Housing and Urban Development
	51,564	51,564	Recurring cost of office space for transferred staff
Total	\$ 1,712,481	\$ 1,582,278	

Source: Program Evaluation Division based on information from the Civil Rights Division and Human Relations Commission.



North Carolina Department of Administration

Beverly Eaves Perdue, Governor

Moses Carey, Jr., Secretary

October 5, 2012

Director John Turcotte
Program Evaluation Division
North Carolina General Assembly
300 N. Salisbury Street, Suite 100
Raleigh, North Carolina 27603-5925

Dear Director Turcotte:

Thank you for the opportunity to review the Program Evaluation Division's (PED) report on the Human Relations Commission and the Office of Administrative Hearing's Civil Rights Division, related to the question of duplication of services. The Department provided significant hours for eight staff to work with the PED study staff and it is our hope the time spent will provide quality information to the General Assembly. We specifically acknowledge Kiernan McGorty and Pam Taylor for their partnership in this study.

Overall, the Department feels the findings are similar to our understanding of the Human Relations Commission, the Civil Rights Division and the costs to the taxpayers for these programs to be administered. We concur with the study findings that:

Finding I. *There is no duplication of duties and services between the two entities.* This is a positive affirmation that taxpayer funds are not being wasted by duplication of efforts.

Finding II. *There is limited opportunity for cost savings* if the agencies were combined and agree that transfer costs would offset any estimates of potential savings.

Finding IV. *The Human Relations Commission has a major responsibility relating to community relations activities* and strong performance measures that track activities and outputs can be strengthened by collaborating with OSBM to develop additional measures related to customer satisfaction and outcomes.

The Department will provide additional reports or measures of community relations activities and outcomes as requested from the General Assembly.

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An Equal Opportunity/Affirmative Action Employer

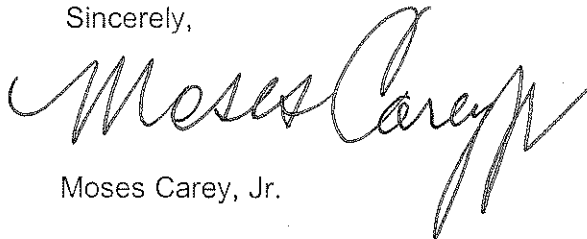
The Department wishes to note that information and calculations on Appendix C were neither discussed nor disclosed by PED prior to the final report. The Department was given no opportunity to analyze and respond to the numbers and assumptions on which Appendix C is based, and on their face, they appear implausible. And to that point, DOA wishes to remind the Committee that HRC conducts community relations activities because the General Assembly has given it that responsibility. In this capacity, the HRC serves as a centralized "ombudsman" for citizen inquiries and complaints about employment law, public accommodations law, hate crimes, and ethnic tensions. Many citizens are referred to HRC by legislators, the Governor's office, or other state and local agencies. HRC listens to them, analyzes their situation, and refers them to the appropriate state or federal agency, if any. In many cases, HRC delivers the bad news that there is no legal remedy for the citizen, as nothing illegal has occurred. If HRC were no longer to exercise this function, every legislative office and state agency would need to answer these questions itself. We believe that this centralized approach is the most cost-effective method to deliver this service to taxpayers.

In addition, community relations activities function like community policing. By listening, observing, mediating and keeping lines of communication open, community relations work reduces tensions and can reduce the need for law enforcement or litigation. It helps to avert some problems, and keeps others from getting bigger. The HRC cannot put a precise price tag on the value of these services to the citizens of North Carolina. That does not mean they have no value.

Ultimately, whether and how North Carolina should provide community relations services is a matter of public policy for the General Assembly. The current study did not examine that question, but added it as an appendix after the study was closed. The Department urges the Assembly not to change that public policy of 50 years' standing without a full debate on this specific issue.

The Department of Administration is appreciative of the work done by the PED team to understand the administration of two very significant roles included in duties of the Human Relations Commission. We are also appreciative of the recognition of the Department's work and our efforts to keep program administrative costs to a minimum, on behalf of the taxpayers.

Sincerely,

A handwritten signature in black ink that reads "Moses Carey, Jr." The signature is written in a cursive, flowing style.

Moses Carey, Jr.



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

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October 5, 2012

Mr. John W. Turcotte, Director
Program Evaluation Division
300 North Salisbury Street, Suite 100
Raleigh, NC 27603

Dear Mr. Turcotte:

Thank you for the opportunity for the Office of Administrative Hearings to respond to the Program Evaluation Division report on the study of the Merger of the Human Relations Commission with the Civil Rights Division of the Office of Administrative Hearings.

My comments are as follows:

Recommendation 1. The General Assembly should direct the Human Relations Commission to develop performance measures for its community relations activities and report annually on its community relations and fair housing activities to the General Assembly and the general public.

OAH has no recommendation.

Recommendation 2. The General Assembly should require the Civil Rights Division to report annually on its fair employment activities to the General Assembly, government agencies and government employees.

The Office of Administrative Hearings, Civil Rights Division agrees with this recommendation and will report its results in whatever form would best suit the needs of the General Assembly. OAH could also post this same information on the OAH website as notification to both government agencies and government employees of the statistical results of activities.

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An Equal Employment Opportunity Employer

Recommendation 3. The General Assembly should amend the Equal Employment Practices Act by removing reference to the Human Relations Commission's enforcement authority.

OAH has no recommendation.

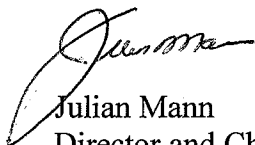
Recommendation 4. The General Assembly should create a statute to explicitly prohibit employment discrimination against state and county government employees covered by the State Personnel Act and give the Civil Rights Division authority to enforce the law.

The Office of Administrative Hearings supports any effort to strengthen the laws that prohibit discriminatory employment practices against government employees. However, according to the statutory language of G.S. 126-36 and appellate case construction, G.S. 126-36 prohibits discrimination. This section for covered state and local employees is comprehensive in its prohibition, which includes harassment and retaliation. It is our conclusion that G.S. 126-36 is plenary in its prohibitions. Therefore, as far as the present recommendation as to employment for covered state and local employees, I would not recommend amendment at this time to G.S. 7A-759.

G.S. 7A-759 does not apply to private employment and does not provide a means of deferral enforcement. If there would be a recommendation to extend coverage to the private sector, then the Civil Rights Division would be the appropriate place for the EEOC deferral agency to be placed in North Carolina. Also, some of the enforcement authority may need to be re-examined, but, presently conciliation and contested case remedies appear to be adequate to resolve these issues.

The Office of Administrative Hearings and would like to thank your staff for the professional and courteous manner in which they conducted their research and study.

Sincerely,



Julian Mann
Director and Chief Administrative Law Judge