

# **PERFORMANCE AUDIT REPORT**

## **Processing Civil Rights Cases**

**A Report to the Legislative Post Audit Committee  
By the Legislative Division of Post Audit  
State of Kansas  
June 1986**

# ***Legislative Post Audit Committee***

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## ***Legislative Division of Post Audit***

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## **PERFORMANCE AUDIT REPORT**

### **Processing Civil Rights Cases**

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#### **OBTAINING AUDIT INFORMATION**

This audit was conducted by Ron Green, Senior Auditor, and Allan Foster and Tom Vittitow, Auditors, of the Division's staff. If you need any additional information about the audit's findings, please contact Mr. Green at the Division's offices.

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## PROCESSING CIVIL RIGHTS CASES

### Summary of Legislative Post Audit's Findings

A 1980 audit of the Commission on Civil Rights showed that the State's civil rights program was plagued with problems that hampered the prompt and accurate investigation and resolution of discrimination complaints. A follow-up audit, conducted in 1982, showed that the Commission had taken a number of actions to significantly improve its handling of complaints. However, many problems still existed. This audit addresses questions concerning whether the Commission's handling of civil rights complaints has continued to improve, or whether it has deteriorated.

**How effective is the Commission's handling of civil rights cases?** Since the previous performance audits, the Commission on Civil Rights has made numerous improvements in its handling of civil rights cases. These improvements include increasing the productivity of its investigators, maintaining a lower turnover rate on its investigative staff, reducing the time taken to reach probable cause findings, reducing the time needed to complete public hearing cases, and changing its policy on cases already investigated by the Equal Employment Opportunity Commission.

Despite these significant improvements, there are problems with the Commission's management of its caseload. The Commission's method of assigning cases has resulted in a large backlog at the Wichita office. The Commission has taken some steps to reduce the Wichita backlog, but these steps may not solve the problem on a long-term basis. Other problems noted with the Commission's caseload management include unexplained delays in a number of cases and a failure to actually close some cases which should have been closed.

Finally, since fiscal year 1983, the Commission has not closed as many cases as were filed each year. If this trend continues, the Commission's ability to resolve cases on a timely basis will be impaired. In addition, the Commission needs to scrutinize the performance of its preliminary investigation unit. This unit was intended to resolve cases quickly, but in fiscal year 1985 it resolved cases at a lower rate than the regular investigative staff.

**What additional steps, if any, are needed to improve the effectiveness of the State's civil rights program?** The report presents several recommendations designed to help the Commission improve its complaint handling process. These include improving its procedures for assigning and handling cases, evaluating the role and performance of its preliminary investigation unit, and monitoring its overall caseload.



## PROCESSING CIVIL RIGHTS CASES

A 1980 audit of the Commission on Civil Rights showed that the State's civil rights program was plagued with problems that hampered the prompt and accurate investigation and resolution of discrimination complaints. A follow-up audit, conducted in 1982, showed that the Commission had taken a number of actions to significantly improve its handling of complaints. However, many problems still existed.

Recently, legislative questions have been raised about whether the Commission's handling of civil rights complaints has continued to improve, or whether it has deteriorated. The audit addresses two primary questions:

1. **How effective is the Commission's handling of civil rights cases?**
2. **What additional steps, if any, are needed to improve the effectiveness of the State's civil rights program?**

To answer these questions, the auditors reviewed statutes and regulations. They conducted in-depth reviews of a sample of cases closed in fiscal year 1985, a sample of cases open for 18 months or longer, and a sample of public hearing cases. They reviewed Commission files to collect information on investigator turnover and productivity. Finally, they surveyed a sample of complainants and respondents to obtain opinions on the way cases were handled by the Commission. The auditors' findings are discussed in the following sections, after a brief description of the Commission's operations and a summary of the findings of the two previous audits of the Commission.

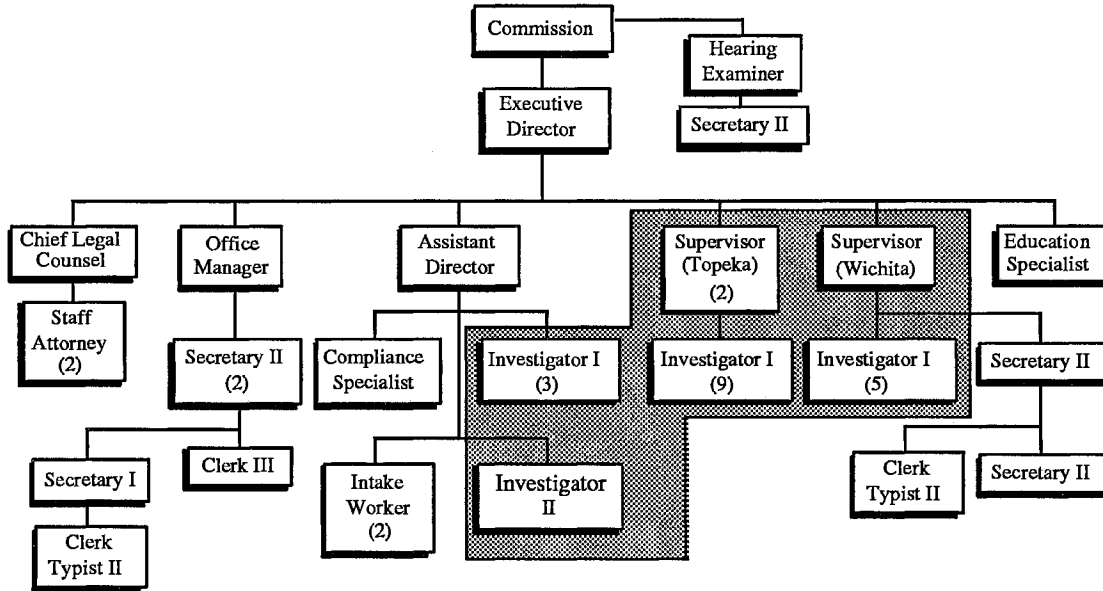
### Summary of Commission Operations

The Commission comprises seven members appointed by the Governor to four-year terms, subject to confirmation by the Senate. Under the Kansas Act Against Discrimination, two members must represent industry, two must represent labor, one must be an attorney, one must represent the real estate industry, and one must represent the general public. To carry out the daily operations of the Commission, the commissioners appoint an executive director and a hearing examiner. The rest of the 41-member staff primarily includes investigators, attorneys, intake workers, and clerical workers. Ten of the staff members work in the Commission's Wichita office and 31 in the Topeka office. The Commission's fiscal year 1987 organization is presented in the chart on the following page.

The Commission's primary activities are processing, investigating, conciliating, and hearing discrimination complaints. Such complaints usually involve employment practices, but could also relate to housing or public accommodations. The flow chart on page three illustrates the Commission's complaint investigation process. The basic steps of the process--such as the preliminary investigation conference, investigation, conciliation, and public hearing--are represented by the rectangular boxes. Decisions that can lead to a resolution of the case are made at the end of many of these steps. The diamond-shaped figures represent decisions that result in the process continuing, while the circular figures represent decisions that result in case closing. Most complaints are resolved in some manner before reaching the public hearing stage.



## KANSAS COMMISSION ON CIVIL RIGHTS



This organization chart shows the fiscal year 1987 positions authorized for the Kansas Commission on Civil Rights. The shaded area represents the Commission's complaint investigation staff. Preliminary investigation conferences are conducted by the Investigator II and four Investigator I's.

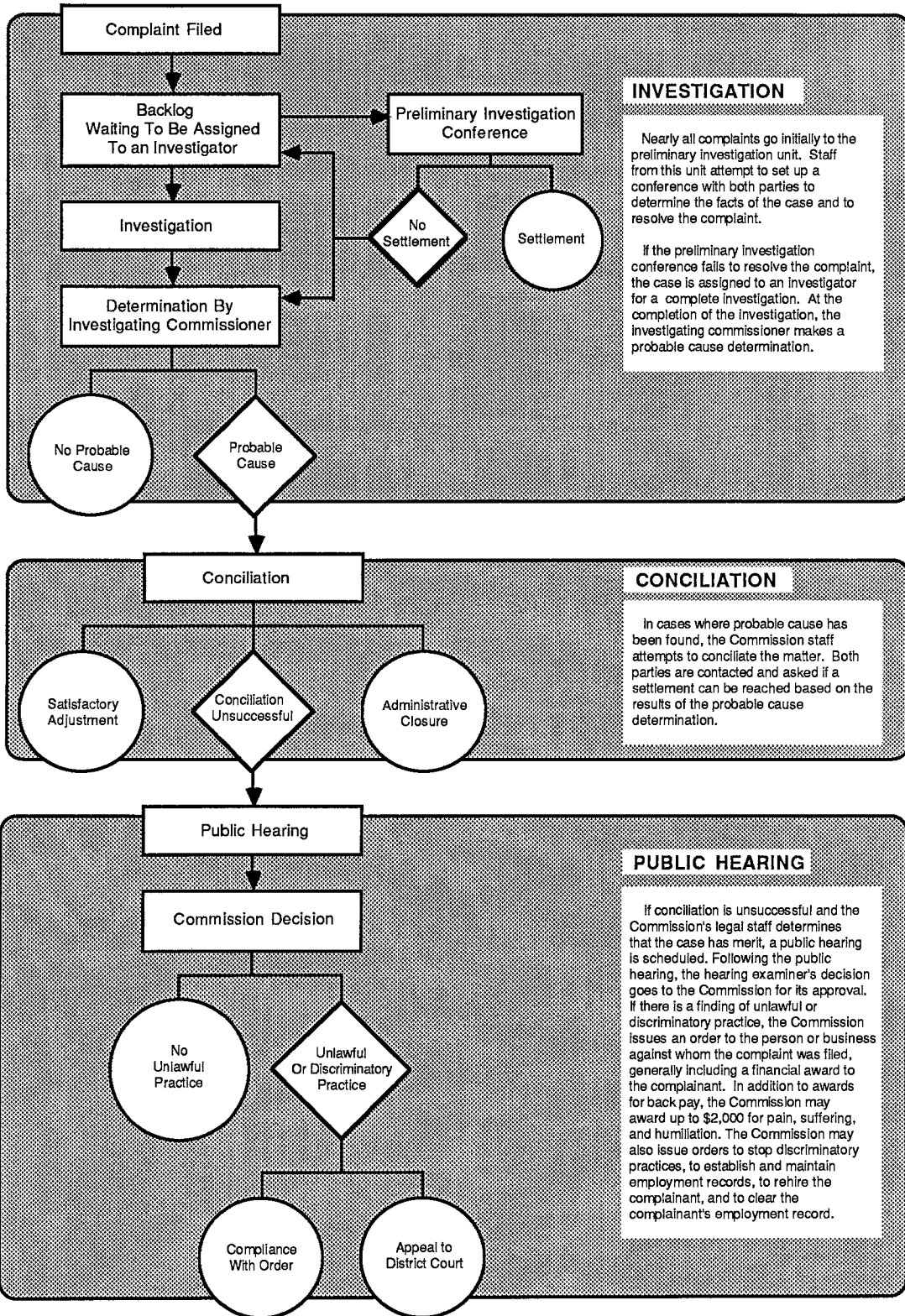
Civil rights cases can also be withdrawn or settled at any stage of the process. The following table shows the breakdown of cases closed in fiscal year 1985, by type of closure.

### Cases Closed in Fiscal Year 1985

<u>Type of Closure</u>	<u>Number</u>	<u>Percent Of Total</u>
No Probable Cause	615	55.0%
Administrative Closing	213	19.0
Withdrawn by Complainant	157	14.0
Mediation	83	7.4
Conciliation	25	2.2
Pre-Hearing Settlement	10	.9
Probable Cause-Lack of Merit For Hearing	8	.7
Complied with Public Hearing Order	6	.6
Other	2	.2
<b>Total Cases Closed</b>	<b>1,119</b>	<b>100.0%</b>

As the table shows, more than half the cases were closed because the investigations showed no probable cause of unlawful discrimination. Administrative closings and cases withdrawn made up the next largest categories of case closings. In fiscal year 1985, only about 11 percent of the cases were formally settled or decided in favor of the complainant. An explanation of each type of closure can be found in the box on page four.

## KANSAS COMMISSION ON CIVIL RIGHTS COMPLAINT INVESTIGATION PROCESS



## WAYS IN WHICH A COMPLAINT IS CLOSED

Complaints of discrimination can be closed in a number of ways. Following is a brief description of the most common ways.

**Administrative Closing**--The Commission can close a case at any time for a variety of administrative reasons. For example, the respondent may have gone out of business, the complainant may have moved or died, or errors may have been made in accepting or handling the complaint.

**Mediation**--The parties involved in the complaint may be able to resolve their differences before a full investigation is conducted. This usually takes place at a preliminary investigation conference.

**No Probable Cause**--The investigation does not disclose sufficient evidence to indicate that discrimination probably took place.

**Conciliation**--If probable cause is found, the Commission tries to conciliate any differences

and make any necessary adjustments to resolve the complaint.

**Lack of Merit For Hearing**--When conciliation fails and the evidence is not strong enough to justify a public hearing, the case may be closed.

**Pre-Hearing Settlement**--When conciliation has failed initially and a public hearing has been set, the parties may yet reach an agreement.

**Public Hearing**--The hearing examiner rules on the case, subject to approval of the Commission. If the examiner finds that the evidence does not support the discrimination complaint, no action is taken. If the examiner finds that the evidence supports the complaint, the respondent must comply with the Commission's orders or may appeal to a district court.

**Withdrawn By Complainant**--The complainant can voluntarily withdraw the complaint at any point in the process for any reason.

The table below shows the cases filed, cases closed, and the resulting carryover for the past 10 years, plus estimated figures for fiscal year 1986. As the table shows, the Commission received more complaints than it closed in seven of the last 11 years. In fiscal years 1982 and 1983, the Commission closed nearly 600 more cases than were filed. Since 1983, the Commission has closed fewer cases than were filed each year.

Since fiscal year 1981, the number of new cases filed has increased in every year except one. Over this period, new cases filed increased at an average rate of 70 cases per year. Part of this increase has been caused by the addition of age discrimination to Kansas' discrimination laws in 1983. The Commission received 75 complaints of age discrimination in fiscal year 1984 and 138 cases in fiscal year 1985.

### Caseload Information Commission on Civil Rights Fiscal Years 1976 through 1986

<u>Fiscal Year</u>	<u>New Cases Filed</u>	<u>Cases Closed</u>	<u>Carryover Cases To Next Year</u>
1976	498	903	949
1977	584	697	836
1978	741	588	881
1979	968	570	1,255
1980	761	574	1,442
1981	918	849	1,511
1982	1,112	1,351	1,272
1983	939	1,278	933
1984	1,233	1,035	1,131
1985	1,260	1,119	1,272
1986 (est.)	1,267	1,100	1,439

The number of cases closed annually is down from the peak in fiscal year 1982. The major factor contributing to this trend is the decline in the number of cases administratively closed, which the Commission has little control over. Another factor is the decline in the number of cases resolved through preliminary investigation conferences.

The number of cases carried over at the end of the year has varied over the last 10 years. During that period, carryover has ranged from 2.5 times the number of cases closed to .7 times the number of cases closed. At the end of fiscal year 1986 the auditors estimate that it will represent 1.3 times the number of cases closed.

### **Prior Performance Audits of the Commission**

The audit of the Commission conducted in 1980 noted numerous problems. It found that the State's civil rights program was plagued with managerial problems that hampered the prompt and accurate investigation and resolution of discrimination complaints. The auditors found delays in resolving complaints, administrative oversights, inadequate or incomplete investigations, and substandard investigator productivity.

The follow-up audit conducted in 1982 showed that the Commission had taken a number of actions to implement recommendations in the previous audit. It increased the investigator productivity standard from three cases to five cases per month, established a system to mediate as many cases as possible within 60 days of filing, increased the training of investigators, and took steps to reduce turnover on the investigative staff. As a result of these actions, complaint processing was more timely, investigator productivity had increased by 60 percent, and investigative staff turnover had decreased. However, more improvement was needed. Additional work was needed to reduce the backlog of cases and increase investigator productivity to meet the new standard. In addition, the public hearing process was still too lengthy, and most public hearing cases continued to be appealed to the courts. The report presented recommendations to address these problems.

Since the 1982 audit, legislation has increased the Commission's workload. In 1983, legislation was passed that prohibited age discrimination in employment. This addition has increased the number of cases that must be investigated each year. Furthermore, legislation was passed in 1984 allowing the Commission to award damages up to \$2,000 for pain and suffering in certain cases. During this period of time, the Commission's investigative staff was reduced by two positions.

With this background in mind, the auditors attempted to answer the questions raised by the Legislature in 1986. In many instances, the auditors compared prior audit findings to the Commission's more recent performance.

### **How Effective Is the Commission's Handling Of Civil Rights Cases?**

To answer this question, the auditors interviewed Commission officials and reviewed files to gather information on the Commission's performance since 1982. They conducted in-depth reviews of a sample of closed and open cases to gather information on the adequacy of the Commission's investigations. In addition, they surveyed a sample of complainants and respondents to obtain opinions on the way the Commission handles complaints.

They found that the Civil Rights Commission has continued to improve its handling of civil rights complaints. Investigator productivity has increased, investigator turnover has

decreased, and the average time taken to complete investigations and public hearings has decreased. However, some areas still need attention. The Commission needs better procedures for managing its caseload, and it is not closing as many cases as are filed each year. These findings are discussed in more detail in the following sections.

### **The Commission Has Made Numerous Improvements In Its Handling of Civil Rights Cases**

Since the 1982 performance audit, the Commission has continued to improve its handling of cases in the areas of investigator productivity, turnover, and timeliness. These improvements are summarized in the sections that follow.

**Investigator productivity has increased to meet the standard of five cases per month.** The previous audits reported that the Commission's investigators completed an average of 2 investigations per month in calendar year 1979 and 3.2 per month in calendar year 1981. In fiscal years 1982 through 1984, productivity leveled off at slightly more than 4 cases per month. In fiscal year 1985, however, productivity increased to 4.9 completed investigations per month per investigator. As the accompanying table shows, when productivity levels are adjusted for new investigators' probationary periods, the investigators' productivity rises to 5.1 cases per month per investigator.

**Average Productivity of Commission Investigators**

<u>Year</u>	<u>Number of Investigations Per Month</u>	<u>Adjusted Number of Investigations Per Month</u>
CY 1979	2.0	--
CY 1981	3.2	--
FY 1982*	4.1	4.2
FY 1983	4.2	5.0
FY 1984	4.1	4.9
FY 1985	4.9	5.1

\* Because of the switch from calendar years to fiscal years, there is overlap between calendar year 1981 and fiscal year 1982.

Productivity has increased primarily because the Commission raised the productivity standard from 3 cases per month to 5 cases per month in May 1981. In addition, the Commission acted in other ways to help investigators meet the standard. It purchased tape recorders so that reports could be dictated, developed a set of form letters, increased investigators' caseloads so that they would have less idle time, and offered training in time management.

The table above shows that the Commission's investigators have generally complied with their productivity standard of five investigations per month. Based on contacts with five other states, the auditors determined that this standard appears to be reasonable. The standards in the other states averaged 5.3 investigations per month and ranged from four to eight cases.

**The Commission has generally maintained a low investigator turnover rate.** The 1980 performance audit stated that the primary reason for investigators not meeting productivity standards was staff turnover. Between 1975 and 1979, the average

annual turnover rate was 59 percent. That rate had dropped to 15 percent in 1981. The Commission indicated that it had accomplished this reduction by changing its organizational structure to improve communications between management and staff. The Commission has generally continued to maintain a low rate of turnover since the 1982 audit. The average annual turnover rate for investigator positions for the period of fiscal year 1982 to 1985 was 11 percent.

The Commission has reduced the average time it takes to reach a probable cause finding. The 1980 audit reported that, during calendar year 1979, it took the Commission an average of 12 months to reach a probable cause finding in employment discrimination complaints. For comparison purposes, the auditors selected a sample of 40 employment discrimination complaints closed in fiscal year 1985. Their review showed that the average time to reach a finding had been reduced to 10.5 months. The following table compares the average time each of the steps took during these two time periods.

<u>Steps After Complaint Filed</u>	<b>Average Number of Months For Sample Cases Reviewed</b>	
	<u>Calendar Year 1979</u>	<u>Fiscal Year 1985</u>
Case in backlog, waiting to be assigned to an investigator	5.0	3.0
Case assigned but waiting for the investigation to start	1.5	.5
Investigation	4.0	5.5
Commission reaches a probable cause finding	<u>1.5</u>	<u>1.5</u>
<b>Months Elapsed To Reach A Probable Cause Finding</b>	<b>12.0</b>	<b>10.5</b>

As the table indicates, for the sample fiscal year 1985 cases, the backlog time decreased by two months, the time to start the investigation decreased by one month, and the investigation time increased by 1.5 months. Such shifts appear to be the result of actions taken by the Commission to improve investigators' productivity.

In 1982, for example, the Commission increased investigators' caseload from about 10 cases to about 30 cases at any one time. The purpose of this action was to reduce investigators' idle time and increase productivity. This increase resulted in cases being assigned to investigators sooner, thus reducing the time cases spent in backlog. The Commission's decision to increase investigators' productivity standard from three cases to five cases per month may have reduced the time for the investigation to begin.

The time required to complete investigations has been affected by several factors. For example, because investigators are handling more cases at a time, the investigation of those cases can take somewhat longer to complete. Another factor has been the formation of the preliminary investigation unit. Because this unit resolves many of the cases that require less investigation, the regular investigators may receive the more difficult cases. In

**Commission Often Resolves  
Cases Timely**

In January 1984, the Commission received a racial discrimination complaint from an individual who alleged that he was subjected to racial slurs, was unjustly fired and then replaced by a white worker. The case was assigned to the preliminary investigation unit within one week and a preliminary investigation conference was held in February. Following the conference, the respondent declined to settle the complaint, and the case was assigned to an investigator. The investigation was completed in May, and the Commission then found no probable cause of discrimination and closed the case in June 1984.

In October 1983, another complainant claimed that he was placed on probation and then fired due to racial discrimination. The preliminary investigation took two months to complete and the case was then turned over to a regular investigator. Even though the investigation of the complaint took more than one year to complete, the records showed continuous activity throughout the investigation period. In May 1985, the Commission found the complaint to lack probable cause that race discrimination had occurred.

addition, the Commission developed a manual to standardize investigations. The manual placed more stringent requirements on investigators. Overall, these factors increased the amount of time required to complete investigations by 1.5 months.

In sum, while the investigation stage takes somewhat longer to complete than before, the Commission has reduced the overall time required to reach a probable cause finding by 1.5 months.

**The Commission has reduced the average time it takes to complete public hearing cases.** A public hearing is the administrative equivalent to a trial on the merits of a discrimination complaint. Public hearings are held only for cases in which the investigation has shown probable cause that the complainant was discriminated against. The 1980 audit pointed out that, after a public hearing was held, it took an average of 11 months for the Commission to determine whether a violation had occurred. The following table shows the length of the steps in the public hearing process.

<u>Steps After the Public Hearing</u>	<u>Average Number of Months</u>	
	<u>Fiscal Year 1979</u>	<u>Fiscal Year 1984-85</u>
Transcript of public hearing received	1.0	1.0
Attorneys submit legal briefs to hearing examiner	3.0	3.5
Examiner's findings submitted to Commission	5.0	1.5
Commission reaches its final determination	<u>2.0</u>	<u>2.0</u>
<b>Months Elapsed After Public Hearing</b>	<b>11.0</b>	<b>8.0</b>

When the auditors reviewed cases in which public hearings were held in fiscal years 1984 and 1985, they found that it took an average of 8 months for the Commission to reach its determination. In these cases, the hearing examiner submitted findings to the Commission in under two months. In the 1980 audit, this phase averaged five months. However, the examiner held just seven public hearings in fiscal years 1984 and 1985 combined, compared with 27 hearings in fiscal year 1979 alone. The Commission attributes the decrease in the number of public hearings to a more extensive legal review of cases before they go to public hearing. The more extensive legal reviews were an attempt to reduce the number of public hearing orders that were reversed by the courts. Currently, cases that do not appear to merit a hearing are administratively closed.

**The Commission decided not to re-investigate complaints that had been investigated by the federal government.** Complaints filed with both the Kansas Commission and the federal Equal Employment Opportunity Commission are

investigated by the agency where the case is first filed. However, Kansas law requires the Commission to investigate all complaints filed with the agency. In the past, the Commission obtained a complete federal investigation file for cases investigated initially by the federal agency. The complaint would then be assigned to an investigator, who would often re-investigate the case because of the federal agency's less stringent documentation requirements.

In March 1986, the Commission formally adopted a policy to limit its re-investigation of such complaints to reviewing the case summaries from the federal agency, giving substantial weight to the federal investigations. Following the review of the case summary by a Commissioner, any cases that require additional information can still be assigned to an investigator. This policy change should reduce the time spent re-investigating complaints filed first with the federal Equal Employment Opportunity Commission. It should also help reduce the number of cases carried in the Commission's backlog.

### **Despite These Improvements, the Commission Needs Better Procedures for Managing Its Caseload**

The auditors reviewed Commission complaint files to determine whether individual complaints were being investigated promptly, as required by Kansas law. For this review, the auditors selected a sample of 40 employment discrimination complaints closed in fiscal year 1985, and a second sample of 18 cases from complaints that were open for 18 months or longer.

Although the auditors' review showed that the Commission was reaching probable cause findings about 1.5 months faster in 1985 than in 1979, it also revealed unexplained delays in the processing of several of these complaints. Such delays can have an adverse effect on the complainants, the respondents, and the investigation of complaints.

Based on the samples, the auditors determined that the way the Commission assigned cases for investigation resulted in a large backlog of cases at the Wichita office. They also found that the Commission's system for monitoring open cases failed to prevent long delays in individual cases. For the sample of closed cases, the auditors sent surveys to complainants and respondents, many of whom felt that their cases were not resolved in a reasonable amount of time. The following sections discuss the auditors' findings relating to the management of complaint investigations, and include case profiles that describe examples of the delays that occurred.

The Commission's assignment of cases has resulted in a large

#### **Respondent Avoids Responsibility for Alleged Sex Discrimination**

In August 1983, the complainant became the manager of a store in Kansas City, Kansas. In November 1983, she was told that the company was going to lay off one of its managers because of economic problems. She was then laid off even though she had more experience with the firm than a male manager at another store. The company offered her another job that paid an hourly wage rather than a salary, and requested her to sign a statement that she had not been discriminated against. She declined the offer and filed a complaint with the Commission in December 1983. A preliminary investigation conference failed to resolve the case and it was assigned to an investigator in February 1984. The investigation began immediately and was completed in October 1984. In December, the Commission found probable cause of discrimination. Conciliation recommended in January 1985 was not accepted by the respondent. Finally, this case was administratively closed in May 1985 because the respondent was no longer in business in the Kansas City location. However, a firm with the same name and owner was operating in Topeka under a new corporation.



**backlog at its Wichita office.** From the sample of 40 closed complaint files, the auditors found that it took the Commission an average of 87 days to assign a complaint to an investigator. When they examined cases assigned to the Wichita and Topeka offices separately, however, the auditors found that complaints remained in backlog in the Wichita office an average of 135 days, compared to 55 days for complaints filed in Topeka. It should be noted that the time spent attempting to mediate complaints through preliminary investigation conferences is included in the time that complaints are in backlog.

Until recently, all complaints were first assigned to the preliminary investigation unit in Topeka. This unit attempted to hold a conference with the involved parties to resolve each complaint. If a complaint was not resolved during the preliminary investigation, it was placed in the backlog file at Wichita or Topeka. In both locations, cases were assigned from the backlog as investigators needed additional cases. During fiscal year 1985, the Wichita backlog of cases nearly doubled, going from 89 cases to 174 cases. Because the Wichita backlog has exceeded the backlog in Topeka, Wichita cases have occasionally been assigned to investigators in Topeka. In March 1986, the Commission assigned one of its Wichita investigators to conduct preliminary investigation conferences in the Wichita area.

The Commission's policy has been to assign all complaints initiated west of U.S. Highway 77 to its Wichita office, and to assign all other complaints to its Topeka office. During fiscal year 1985, 41.1 percent of all complaints were assigned to the Commission's Wichita office. During this same period, five of the Commission's 14 complaint investigators, 35.7 percent, were assigned to Wichita.

**The Commission lacks an effective method for monitoring cases.** The auditors found unexplained delays in the processing of about 10 percent of the case files reviewed.

**Large Settlement Recommended, but Legal Staff Finds Insufficient Evidence**

A woman claimed to have been fired due to sex discrimination. The company said that the woman was fired because of her aggression that led to a fight with a male employee. The case was filed in February 1981 and was initially investigated by the U.S. Equal Employment Opportunity Commission which found that the evidence did not support the complaint. The Kansas Commission received the federal agency's decision in June 1982. The Kansas Commission's investigation of the case began in July 1982 and took more than 20 months to complete. The lengthy investigation appears to have been caused by three unexplained breaks that lasted a total of 16 months. The investigation did result in a probable cause finding. The investigation supervisor attempted to conciliate the case with a suggested \$87,000 payment by the respondent, which the respondent refused. The supervisor then suggested a settlement amount of \$27,000 which was also rejected. Finally in August 1984, the case was administratively closed at the recommendation of the Commission's legal staff due to insufficient evidence to prove that discrimination had occurred.

The Commission's investigation supervisors could not explain why most of the delays occurred. The auditors were told that the supervisors reviewed the status of open cases with investigators on a monthly basis. In some instances, this system for reviewing investigator caseloads does not appear to have worked well.

In two cases, investigators did not start investigating the cases assigned to them for more than four months. The average is 20 days. In addition, four complaints reviewed by the auditors took longer than one year to investigate, or nearly twice as long as average. While some investigations may be unusually difficult and time consuming, the auditors noted that no investigative activity was recorded in these cases for several months. Commission records showed that an investigator had been given specific deadlines to complete two complaint investigations that were late. One of the investigations was completed four months after the deadline given by the supervisor, and the other investigation went 10 months past the established deadline.

Even after a complaint investigation is complete, delays can occur. In four of the complaints reviewed by the auditors, it took more than 100 days after conclusion of the investigation to make a finding of probable cause. The average time required was 47 days. One complaint took nine months for the investigation supervisor to review the completed investigation file and submit the case for a probable cause finding.

The auditors also found that six of the cases shown as open complaints should have been officially closed. In all six cases the final actions had been taken, but the Commission either did not act to formally close the cases or did not record the case as closed. The primary importance of officially closing a case is to notify all parties that the Commission has completed its activity.

In sum, the Commission's caseload management system has allowed delays to occur in the timely resolution of some civil rights complaints. The Commission's geographical assignment of cases has resulted in investigation delays in the Wichita office because of the length of time that complaints remain in backlog. Breakdowns in the monitoring of investigators' caseloads have caused occasional delays in the completion of cases. This problem has also caused several cases to remain open after they should have been closed.

**Some complainants and respondents indicated dissatisfaction with the time taken to resolve their cases.** To determine how the Commission is viewed by the parties involved in the process, the auditors sent surveys to 36 complainants and 39 respondents of the 40 sampled employment discrimination complaints. Some individuals could not be surveyed because the Commission's files listed no current address. A copy of the survey form is included in Appendix A. The auditors received surveys from nine complainants and 26 respondents. Generally, the complainants were dissatisfied with the way their complaints were handled by the Commission, while the respondents were generally satisfied.

The dissatisfaction of the complainants who responded to the survey can be attributed to the fact that none of their cases were resolved in their favor. Overall, 31 of the 40 complaints in the sample were found by the Commission to lack probable cause of discrimination. Another five complaints were closed administratively, two were resolved through mediation, and two were decided through Commission orders. The table on the following page shows the answers received for the most significant survey questions.

The table shows the generally favorable opinions of the respondents and the dissatisfaction of the complainants. Taking complainants and respondents together, the greatest number of negative answers concerned the timeliness of the entire process. Sixty-seven percent of complainants and 27 percent of respondents felt that their cases were not resolved in a reasonable amount of time.

**Lengthy Delay Prior to  
\$2,500 Settlement**

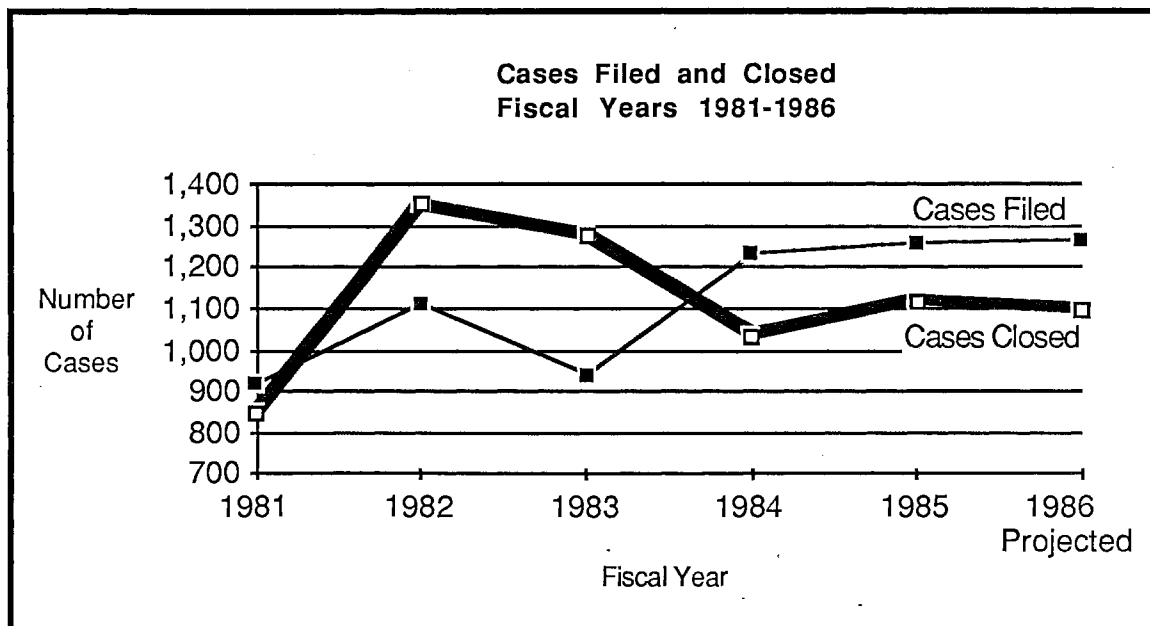
A complainant alleged that after her application for a new position was approved, she was returned to her former position due to sex discrimination. The case was filed with the Commission in September 1982, assigned to an investigator in October 1982, and the investigation started in December of that year. However, the record of the investigative work in December was not entered in the file until June 1983. The case was reassigned to another investigator in August 1983, and the first activity recorded by the new investigator was in March 1984. The investigation was completed in September 1984, and resulted in a probable cause finding. The complainant accepted settlement (including \$2,500) in this case in April 1986, and the case was closed. However, the closing was not shown on the Commission's central log book.

<u>Survey Questions</u>	<u>Survey Answers</u>			
	<u>Complainants</u>		<u>Respondents</u>	
	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>
Do you feel that this case was thoroughly investigated by the Commission?	1	7	23	2
Do you feel that this case was resolved in a reasonable amount of time?	3	6	19	7
Do you feel that this case was handled in an objective way by the Commission?	1	6	24	1
Overall, are you satisfied with the way the Commission handled this case?	0	8	23	3

**The Commission's Ability To Resolve Cases On A Timely Basis Will Be Impaired If It Continues To Close Fewer Cases Than Are Filed**

The auditors reviewed the Commission's records to determine the number of cases it has closed each year in relation to the number of cases filed. This relationship has an important effect on the Commission's ability to resolve cases in a timely manner. For example, when fewer cases are closed than are filed, the number of unresolved complaints increases. In turn, the higher number of open cases will tend to increase the length of time before cases can be assigned for investigation.

Many different variables can influence the number of cases filed and the number of cases closed each year. The Commission has no control over the number of cases filed, but does influence the number of cases it can close. During the last five years, the number of cases filed has generally risen, while the number of cases closed has declined.



In fiscal years 1982 and 1983, the Commission closed more cases than were filed. The reason for the high number of case closings in those two years appears to be the large number of cases withdrawn and administratively closed, combined with increased investigator productivity. However, since 1983, the Commission has closed an average of 169 cases fewer than were filed each year. As a result, the number of cases carried over from one year to the next has risen steadily. If this recent trend continues, it could pose problems for the Commission's ability to close cases in a timely manner.

**Resolution of cases by the preliminary investigation unit has fallen.** Total productivity of the investigative staff has remained fairly constant since fiscal year 1982. While the number of cases closed by regular investigators has risen, the number of cases resolved by the preliminary investigation unit has fallen each year since fiscal year 1982. During that period, the number of cases assigned to the unit has remained fairly constant. In fiscal year 1985, resolution of cases by the preliminary investigation unit fell below the Commission's standard for regular investigators.

The preliminary investigation unit was established during fiscal year 1981. Its purpose was to attempt to resolve cases within 60 days of filing, without the need for full investigations. This mediation process involves gathering evidence that is readily available, bringing both parties together, and explaining the complaint investigation process. For the cases in the auditors' sample, it took an average of 38 days to resolve them or return them to backlog. The preliminary investigation unit has generally consisted of four investigators, but another investigative position was added in March 1986.

In fiscal year 1982, the preliminary investigation unit resolved 350 cases. However, the number of cases it has resolved has shown a steady downward trend since then. In fiscal year 1985, it only resolved 227 cases, or a 35 percent drop from fiscal year 1982.

The only explanation Commission officials have for this decline is the 1984 legislation allowing the Commission to award up to \$2,000 for pain and suffering. They stated that many complainants now demand an award for pain and suffering as a part of a settlement at the preliminary investigation conference. Respondents are often willing to compromise on other terms, but are unwilling to pay an extra amount for pain and suffering that early in the investigation process. This factor can explain some of the decrease in fiscal year 1985, but does not explain the declines during previous years.

**The Commission has not established a production standard for the preliminary investigation unit.** Unlike regular investigators, members of the preliminary investigation unit have no monthly standard for resolving or closing cases. This unit's job is to close those cases that can be resolved quickly, by agreement of the parties. It cannot force them to attend a preliminary investigation conference, or to reach an agreement.

Without a standard to measure the unit's performance, the Commission cannot determine whether the decline in cases resolved has occurred because of a decline in the performance of unit members or because of other factors. If it has occurred because of a decline in performance, then more attention placed on the unit could increase the number of cases resolved. Some method of monitoring the unit's performance needs to be developed so that any needed improvements can be made. In addition, by monitoring the unit's performance, the Commission could compare the unit's performance to that of the regular investigation staff. By making such a comparison, the Commission could determine the most efficient allocation of resources to the two investigative staffs.

## Commission Findings of Discrimination Are Usually Reversed on Appeal in the Courts

In cases where the Commission finds probable cause that discrimination occurred and no settlement can be reached, the Commission approves the cases for public hearing. At a public hearing, both the complainant and the respondent present evidence and testimony as to whether or not the complainant was unlawfully discriminated against. After the hearing, the attorneys submit briefs to the Commission's hearing examiner. The hearing examiner's decision is then submitted to the full Commission for its final determination. The Commission's final order may be appealed to the district court in the county where the incident occurred.

The auditors found that more than three-fourths of the Commission's findings of discrimination are appealed to the district courts. On appeal, the courts have reversed more than two-thirds of the Commission's findings that discrimination occurred. Despite these problems, the Commission's administrative procedure has been successful in keeping the vast majority of cases out of the State court system.

**The number of cases approved for public hearing has declined in recent years.** In fiscal years 1976-1980, the Commission approved an average of 44.4 cases for public hearing each year. Because of that high caseload, an increasing number of public hearing cases were carried forward each year. This problem has now been erased due to two related factors. First, the Commission is handling its public hearing cases faster, as described earlier in this report. Second, the number of cases approved for public hearing has declined. In fiscal years 1982-1985, the Commission approved an average of 15.5 cases for public hearing each year. This represents about 35 percent of the average number of cases approved for public hearing in the 1976-1980 period. The table below shows the status of public hearing cases in the last four fiscal years, as compared to the averages for fiscal years 1976-1980.

**Status of Public Hearings**

	<u>Average</u> <u>1976-1980</u>	<u>Fiscal Years</u>			
		<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
Cases Approved for Public Hearing	44.4	15	19	14	14
Hearings Held	23.6	8	13	5	2
Pre-hearing Settlements	13.4	8	10	7	11
Administrative Closures	1.8	14	3	4	1
Cases Carried Forward to Next Year	15.2	13	6	4	4

The table shows an overall decline in the number of cases approved for public hearing, the number of hearings held, and the number of cases carried forward each year. The lowest point for public hearings was reached in fiscal year 1985, when only two public hearings were held. However, during the first 10 months of fiscal year 1986, the Commission reported that 26 cases were approved for public hearing, and six public hearings were held.

**For appealed cases, the courts have reversed more than two-thirds of the Commission's findings that discrimination occurred.** More than three-

fourths of the Commission's findings of discrimination are appealed to the district courts. The auditors found that, in fiscal years 1982-1985, 18 of 23 Commission findings of discrimination, or 78 percent, were appealed to the district courts. This is slightly lower than the 87 percent rate of appeal reported in the 1980 audit.

Of the 18 Commission findings of discrimination that were appealed in fiscal years 1982-1985, 11 were reversed, three were settled before trial, two were upheld, and two have not been decided. (Three of the 11 reversed cases are pending further appeal in the courts.) Thus, 11 of the 16 decided cases, or 69 percent, were reversed through the court appeal process.

This percentage of reversed decisions is slightly lower than the percentage shown in the 1980 audit. For that report, the auditors found that 11 of 14 cases sampled, or 79 percent, had been reversed on appeal. This comparison is shown in the following table.

**Commission Findings of Discrimination  
Appealed to the District Courts**

<u>Resolution of Appeals</u>	<u>Fiscal Years 1976-1980</u>	<u>Fiscal Years 1982-1985</u>
Decisions Reversed by Courts	11	11
Decisions Upheld by Courts	2	2
Pre-trial Settlements	<u>1</u>	<u>3</u>
Total	14	16

Commission officials attribute the high rate of reversal primarily to differing philosophies between the Commission and the court system. They point out that State law requires the civil rights act to be construed liberally to accomplish its purposes. However, given the high rate of reversal, the Commission is apparently taking the law further than the courts' interpretation of unlawful discrimination.

Despite the high percentage of cases that are appealed and reversed, the Commission's investigation, conciliation, and public hearing processes are resolving the vast majority of cases without burdening the State court system. Without the Commission's public hearing process, State courts might have received all 62 cases approved for public hearing in fiscal years 1982-1985, instead of only the 18 cases that were actually appealed.

**What Additional Steps, If Any, Are Needed  
To Improve the Effectiveness of the  
State's Civil Rights Program?**

Since the previous performance audits, the Commission on Civil Rights has made numerous improvements in its handling of civil rights cases. These improvements include

**More Than Five Years  
to Close Case**

In February 1980, a woman filed a complaint with the Commission alleging that she had been denied employment due to a physical handicap. The Commission found probable cause of discrimination and a public hearing was held in July 1981. A second public hearing was held in February 1983, resulting in a finding for the complainant. The reasons for the delay between hearings included taking of needed depositions, motions for additional evidence, and waiting for a Supreme Court decision related to this case. A rehearing requested by the respondent was held in March 1984, and the Commission's order was approved in May. The respondent then appealed the Commission's order in Sedgwick County District Court, which in April 1985 reversed the Commission's finding. The Commission decided not to appeal the court's decision and the case was closed in June 1985.

increasing the productivity of its investigators, maintaining a lower turnover rate on its investigative staff, reducing the time taken to reach probable cause findings, reducing the time needed to complete public hearing cases, and changing its policy on cases already investigated by the Equal Employment Opportunity Commission.

Despite these significant improvements, the Commission's management of its caseload can still be improved. The Commission's method of assigning cases has resulted in a large backlog at the Wichita office. This backlog has caused Wichita cases to sit longer than Topeka cases, awaiting assignment to an investigator. The Commission has taken some steps to reduce the Wichita backlog, but these steps may not solve the problem on a long-term basis. Other problems noted with the Commission's caseload management include unexplained delays in a number of cases and a failure to actually close some cases which should have been closed.

Finally, since fiscal year 1983, the Commission has not closed as many cases as were filed each year. The Commission will need to monitor whether the number of cases filed continues to exceed the number of cases closed over the long-term. In addition, the Commission needs to scrutinize the performance of its preliminary investigation unit. This unit was intended to resolve cases quickly, but in fiscal year 1985 it resolved cases at a lower rate than the regular investigative staff.

### **Recommendations**

1. The Commission should continue to improve its procedures for assigning and handling civil rights cases. These procedures should ensure that cases are assigned to investigators on a logical, equitable basis, taking into consideration the travel requirements and the complexity of each case, as well as the backlog of cases at its two offices. These procedures should also ensure that unnecessary delays do not occur and that cases are officially closed as soon as possible.
2. To ensure that its resources are effectively allocated, the Commission should evaluate the role and performance of its preliminary investigation unit. At a minimum, the Commission should establish a productivity standard for the unit and monitor its performance as it compares with the performance of the regular investigative staff.
3. The Commission should actively monitor its overall caseload, including the trend in the number of cases closed and the number of cases filed. If the Commission continues to close fewer cases than are filed annually, the average time to process cases will eventually increase. In this event, the Commission may again need to review its productivity standards and resource allocation.

**APPENDIX A**  
**Civil Rights Survey Form**





**CIVIL RIGHTS CASE**  
**LEGISLATIVE POST AUDIT SURVEY**  
**APRIL 1986**

This survey is part of a performance audit being conducted by the Legislative Division of Post Audit. The Legislature has asked the Division to review the way that the Kansas Commission on Civil Rights is handling complaint investigations and how civil rights cases are resolved.

The first part of the survey includes information relating to a civil rights case in which you were involved. Please review the information and make any needed corrections. The second part of the survey asks you to provide information about the way this case was handled by the Kansas Commission on Civil Rights.

**PART 1: Case Information**

Records at the Kansas Commission on Civil Rights show that You, \_\_\_\_\_, were the \_\_\_\_\_ in the civil rights case number \_\_\_\_\_.

Case Name: \_\_\_\_\_

Type of Case: \_\_\_\_\_ Date Filed: \_\_\_\_\_

Basis of Alleged Discrimination: \_\_\_\_\_ Date Resolved: \_\_\_\_\_

Resolution of Case: \_\_\_\_\_

**PART 2: Please answer the following questions about how the civil rights case was handled by the Commission on Civil Rights.** The explanatory section at the end of each question is optional.

1. Do you feel that this case was thoroughly investigated by the commission?

Yes: \_\_\_\_\_ No: \_\_\_\_\_ No Opinion: \_\_\_\_\_

Please explain: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Do you feel that this case was resolved in a reasonable amount of time?

Yes: \_\_\_\_\_ No: \_\_\_\_\_ No Opinion: \_\_\_\_\_

Please explain: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(over)

3. Do you feel that this case was handled in an objective way by the Commission?

Yes: \_\_\_\_\_ No: \_\_\_\_\_ No Opinion: \_\_\_\_\_

Please explain: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. If this case had a public hearing, was that hearing conducted fairly?

Yes: \_\_\_\_\_ No: \_\_\_\_\_ No Opinion: \_\_\_\_\_

Please explain: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. Overall, are you satisfied with the way the Commission handled this case?

Yes: \_\_\_\_\_ No: \_\_\_\_\_ No Opinion: \_\_\_\_\_

Please explain: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. Overall, are you satisfied with the resolution of this case?

Yes: \_\_\_\_\_ No: \_\_\_\_\_ No Opinion: \_\_\_\_\_

Please explain: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **APPENDIX B**

### **Agency Response**

A copy of the draft audit report was sent to the Kansas Commission on Civil Rights for its review and comment on June 12, 1986. The response to the audit is included in this Appendix.

STATE OF KANSAS

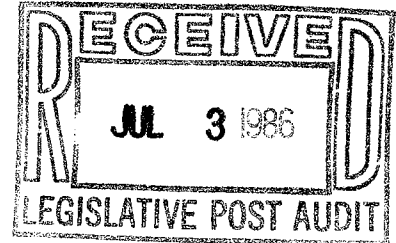


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GEORGE M. LATTIMORE  
WICHITA

July 1, 1986



Meredith Williams, Legislative Post Audit  
Legislative Division of Post Audit  
109 West 9th Suit 301, Mills Bldg.  
Topeka, Kansas 66612

Dear Mr. Williams:

This letter constitutes the Commission on Civil Rights response to the recently completed performance audit report. On behalf of the entire Commission staff I would like to thank audit team members Ron Green, Allen Foster and Tom Vittitow for the professional manner in which they approached the audit, their courtesy to Commission staff members, and their sensitivity to the Commission's problems.

After a complete review of the audit report, we feel the report is reasonably accurate in its assessment of the Commission's performance since 1982. The problem areas noted by the auditors are precisely the same problems already identified by the Commission's new management team as needing remedy. Steps are already in place, or under study, to resolve these problems. In response to the recommendations made by the audit report, the following is submitted:

- Recommendation
1. The Commission should continue to improve its procedures for assigning and handling civil rights cases. These procedures should ensure that cases are assigned to investigators on a logical, equitable basis, taking into consideration the travel requirements and the complexity of each case, as well as backlog of cases at its two offices. These procedures should also ensure that unnecessary delays do not occur and that cases are officially closed as soon as possible.

RESPONSE

The Executive Director has assigned a management team to develop a new case assignment system that takes into account geographic location of the case, travel requirements, complexity of the case, and the case backlog by each office. The target date for implementing the new system is January 2, 1987. Additionally, the agency's new computer system will significantly enhance the assignment and monitoring of the total case processing procedures.

Recommendation

2. To ensure that its resources are effectively allocated, the Commission should evaluate the role and performance of its preliminary investigation unit. At a minimum, the Commission should establish a productivity standard for the unit and monitor its performance as it compares with the performance of the regular investigative staff.

RESPONSE

The audit report points out that since 1982 the Preliminary investigative Conference Unit has experienced a 35 percent decline in the number of cases resolved since 1982. It should be noted that while the primary purpose of this unit (PIC) is to resolve cases quickly, the lack of a satisfactory resolution of any particular case does not equate to wasted staff time. In the instances where a preliminary conference is held and the case is not resolved, significant investigative information is developed which expedites processing of the case later when it is assigned to a regular investigator. Nevertheless, the Commission is concerned with the decline in the overall case resolution by the PIC unit and will continue to study and monitor this unit. The Commission is in the process of developing new production standards for the investigators in the PIC unit. These new standards will be implemented by September 1, 1986, to coincide with the Division of Personnel's deadline for implementing the State's new performance evaluation System.

Recommendation

3. The Commission should actively monitor its overall case load, including the trend in the number of cases closed and the number of cases filed. If the Commission continues to close fewer cases than are filed annually, the average time to process cases will eventually increase. In this event, the Commission may again need to review its productivity standards and resource allocation.

RESPONSE


As mentioned above, the agency's new computer system will greatly increase the Commission's ability to monitor the overall case load and case processing procedures. This new capability along with new management procedures, either already implemented or in the process of being implemented, will have a positive impact on the overall effectiveness of the agency.

Meredith Williams, Legislative Post Audit  
Legislative Division of Post Audit  
109 West 9th Suit 301, Mills Bldg.  
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Page 3

At the same time, however, it is important to note, as mentioned in the audit report, the work of the Commission has been expanded over the past several years through legislative action. There exists at this time a need in the agency for additional investigative staff. If the case load of complaints filed annually continues to grow, this need will become paramount, affecting the Commission's ability to maintain the improvement it has accomplished over the past several years in processing and completing cases. However, separate from this growing need for additional investigators, the Commission can and will improve its monitoring methods.

I will reiterate, in closing, that the Commission is in basic agreement with the audit report. We agree with the recommendations and are either currently in process of implementing remedies, or will be doing so in the near future. Again, our appreciation goes to the legislative post-audit staff for the efforts put forth in this most recent study of the Commission on Civil Rights.

Sincerely,

  
Joanne Hurst  
Executive Director

JH/ms