

Report Highlights

Why DLA Performed This Audit

In response to concerns about investigation delays, an audit was requested to review ASCHR operations, with a focus on ASCHR's complaint resolution process. Specifically, the audit evaluated whether the commission resolved complaints promptly and reasons for delays. Additionally, the audit reports steps taken by the commission to seek out and eradicate discrimination.

What the Legislative Auditor Recommends

1. ASCHR's executive director should adopt written policies and procedures to guide the complaint resolution process, establish timelines to encourage timely resolution, and continue efforts to fill vacancies.

A Special Review of the Office of the Governor, Alaska State Commission for Human Rights (ASCHR), Select Issues

July 20, 2022

Audit Control Number 01-30100-22

REPORT CONCLUSIONS

The audit found that state law requires ASCHR to investigate complaints promptly; however, the term "prompt" is not defined in ASCHR regulations or policies. Forty-three percent of ASCHR complaints closed during the audit period took longer than one year to resolve.

The COVID-19 pandemic decreased the opportunity for discrimination, thereby reducing the number of complaints filed with ASCHR. Auditor review found many complaints were inactive for extended periods. ASCHR procedures contributed to inefficiencies. Turnover and vacancies also led to processing delays. ASCHR management expects operational changes made during 2021 and 2022 will improve the timeliness of complaint processing.

ASCHR's outreach activities were reduced during 2019 as a result of turnover and leadership changes. Activities increased after 2019, but were subject to preapproval by commission members through March 2022.

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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September 26, 2022

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24, we have reviewed the activities of the Alaska State Commission for Human Rights and the attached report is submitted for your review.

OFFICE OF THE GOVERNOR
ALASKA STATE COMMISSION FOR HUMAN RIGHTS
SELECT ISSUES

July 20, 2022

Audit Control Number
01-30100-22

The audit reviewed the Alaska State Commission for Human Rights' operations and complaint resolution process. Specifically, the audit evaluated whether the commission resolved complaints promptly and reasons for delays. Additionally, the audit reports steps taken by the commission to seek out and eradicate discrimination.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

A handwritten signature in blue ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor

ABBREVIATIONS

AAC	Alaska Administrative Code
ACN	Audit Control Number
ALJ	Administrative Law Judge
AS	Alaska Statute
ASCHR	Alaska State Commission for Human Rights
CISA	Certified Information Systems Auditor
DLA	Division of Legislative Audit
EEOC	Equal Employment Opportunities Commission
FY	Fiscal Year
NSE	No Substantial Evidence
OAH	Office of Administrative Hearings
SE	Substantial Evidence

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ORGANIZATION AND FUNCTION

Alaska State Commission for Human Rights (ASCHR)

ASCHR was created¹ in 1963 to eliminate and prevent discrimination in employment; credit and financing services; places of public accommodation; practices by the State or its political subdivisions; and in the sale, lease, or rental of real property. Under state law it is illegal to discriminate against an inhabitant of Alaska in these areas because of race, religion, color, national origin, age, sex, physical or mental disability, marital status, changes in marital status, pregnancy, or parenthood.

ASCHR is a quasi-judicial agency administratively organized within the Office of the Governor. The commission consists of seven public commissioners appointed by the governor for staggered terms of five years and confirmed by the legislature. Statutes require the commission hire, exercise general supervision, and direct the activities of the executive director and other administrative staff.

ASCHR's \$2.4 million FY 22 operating budget funded 18 permanent positions including an executive director, an investigations director, eight investigators,² three in-house attorneys,³ two law office assistants, a commission secretary, and two administrative support staff. As of March 31, 2022, three positions were vacant (two investigator positions and one in-house attorney).

The commission's staff help aggrieved members of the public file discrimination complaints. ASCHR staff investigate complaints, help parties reach agreements (including pre-determination settlement agreements reached prior to completing a full investigation or conciliation agreements reached after an adverse determination is issued), and present cases in public hearings if conciliation efforts fail.

¹ ASCHR was established under AS 18.80.

² Investigators are listed as Human Rights Field Representatives in ASCHR's budget.

³ In-house attorneys review and approve substantial evidence determinations and are responsible for managing cases during the conciliation process.

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BACKGROUND INFORMATION

In addition to processing discrimination complaints, Alaska State Commission for Human Rights (ASCHR) staff conduct outreach to help eradicate discrimination by educating businesses and the public. In carrying out its duties, the commission partners with the federal Equal Employment Opportunities Commission (EEOC). Exhibit 1 on page 6 summarizes ASCHR’s complaint resolution process in flowchart format. A detailed explanation of the process is described below.

Human Rights Complaint Resolution Process

There are four stages to the complaint resolution process; however, few complaints make it through all stages. The stages are discussed in detail below.

Intake: “Inquiry” is a term used by ASCHR to describe communication regarding potential violations of Alaska’s anti-discrimination law.⁴ The responsibility for fielding public inquiries is referred to as “intake duties”. Intake duties are assigned to specific investigators.

Investigation: In order for a complaint to be investigated, the complaint must establish: (1) a basis for violating human rights law, (2) harm to the complainant, (3) that the event is ongoing or occurred within 300 days of the filing date, and (4) the discriminatory act is under ASCHR’s jurisdiction. Once these aspects have been established, ASCHR investigators assist the complainant by drafting a proposed complaint, which is provided to the complainant for review and signature.

Before an investigation is started, ASCHR requires the complainant and respondent participate in a resolution conference.⁵ The resolution conference allows each party to present evidence and discuss the complaint with the goal of resolving the complaint through a settlement agreement. If an agreement is not reached,

⁴ Alaska Statute 18.80.

⁵ ASCHR implemented a change to its resolution conference regulation, effective at the end of February 2022, that requires both the complainant and respondent attend the resolution conference.

the investigation continues based upon evidence gathered during the resolution conference.

Alaska statutes grant the commission authority to interview witnesses and obtain evidence relevant to the investigation from the involved parties, including confidential records. The purpose of an investigation is to establish whether there is substantial evidence that a discriminatory act occurred. During an investigation, a complaint can be closed for various reasons, such as voluntary withdrawal, complainant noncooperation, and a determination that a complaint occurred outside ASCHR's jurisdiction.

At the conclusion of an investigation, investigators issue a determination of either substantial evidence (SE) or no substantial evidence (NSE). An NSE determination is made when the investigation does not find evidence that an act of discrimination occurred. NSE determinations result in the dismissal of a complaint. If the investigation establishes substantial evidence to support the complaint, investigators issue an SE determination. In the case of an SE determination, ASCHR staff facilitate conciliation.

Conciliation: Conciliation is a process that takes place after an SE determination, during which the complainant and respondent negotiate to resolve the complaint and enter a settlement agreement. Settlements may include monetary compensation and/or require the respondent take corrective action to resolve the issue. Corrective action agreements may mandate training or require other actions be taken to prevent the discriminatory act from occurring in the future. If a settlement is reached between the parties, the complaint is resolved and ASCHR staff continue to monitor the agreement until all terms are met. If a settlement cannot be reached, the ASCHR executive director can either dismiss the complaint or submit an accusation to the commission and request a public hearing.

OAH Public Hearing: Public hearings are held by the Department of Administration's Office of Administrative Hearings (OAH) and presided over by an administrative law judge (ALJ). OAH staff oversee the process, schedule hearings, and assign a judge to hear a case. OAH offers a voluntary mediation process whereby parties can agree to settle. Whether or not the parties participate in OAH mediation is at the discretion of the complainant and respondent. If mediation is unsuccessful or parties opt not to participate, the final stage of the ASCHR complaint resolution process is a public hearing presided over by an ALJ.

During a public hearing, ASCHR staff present evidence supporting the accusation and representatives of the respondent present a defense. The ALJ hears the case and issues findings of fact, conclusions of law, and an administrative order.

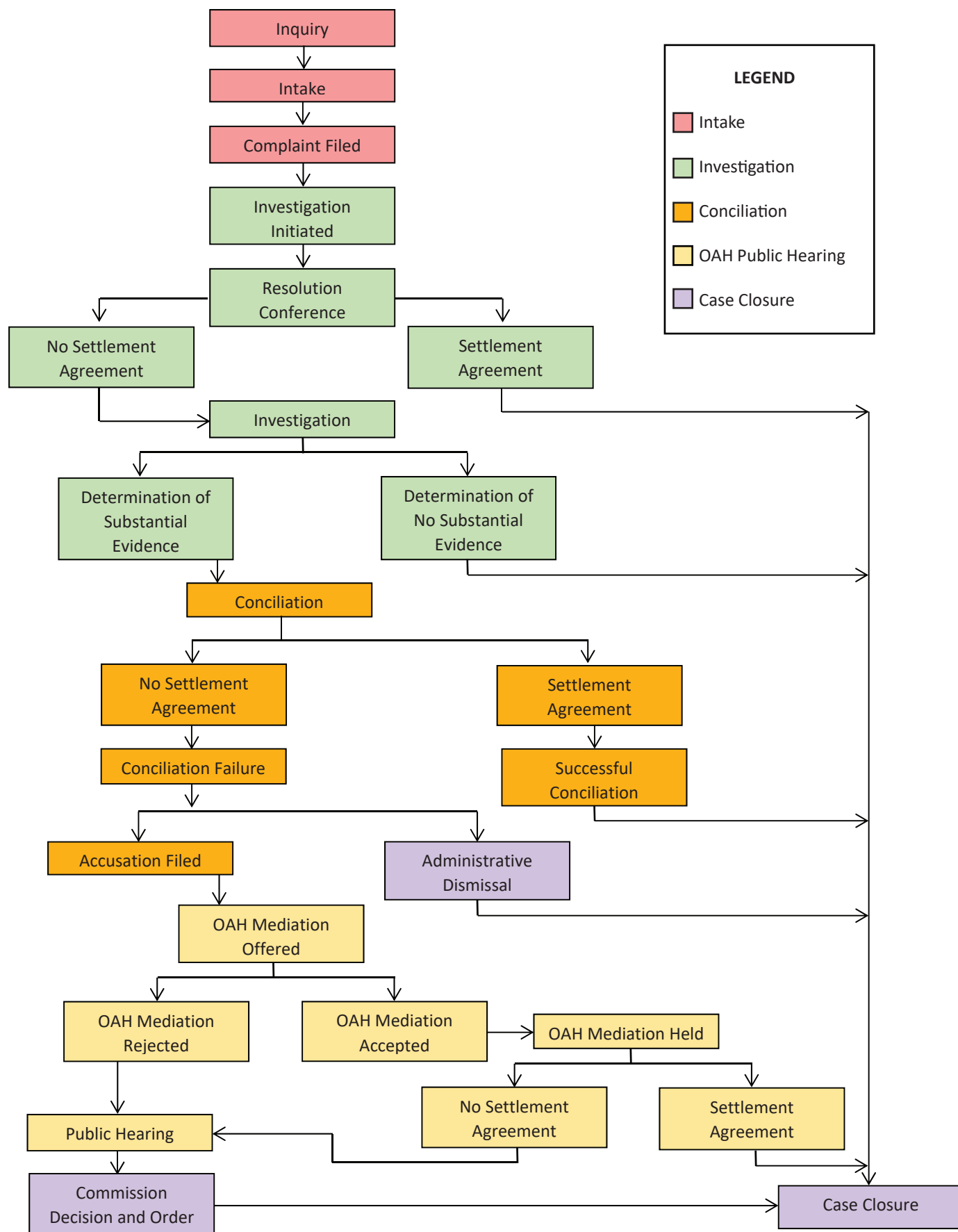
When referring the accusation to OAH, the ASCHR chair appoints at least three commissioners as hearing commissioners. The hearing commissioners are not involved in the public hearing, but receive and review the recommendation of the ALJ and make a decision on the case. The decision made by the commissioners is considered a final administrative order. Any person adversely affected by the commission's decision may seek judicial review. Judicial review is conducted by the superior court without a jury.

Exhibit 1 on the following page presents a flowchart of the complaint resolution process.

Types of ASCHR Complaints

ASCHR complaints are categorized in accordance with the discrimination definitions found in AS 18.80. The discrimination categories include employment; public accommodation; government practices; housing; finance; and aiding, abetting, or coercing a violation of the statute. Statutory definitions of each type of discrimination are included in Appendix A to this report.

ALASKA STATE COMMISSION FOR HUMAN RIGHTS Complaint Resolution Process



Source: ASCHR management.

The majority of complaints relate to employment and public accommodation. From January 1, 2019, through March 31, 2022, the commission opened 503 complaints and closed 651 complaints. Of the 503 complaints opened, 88 percent related to employment discrimination. Public accommodation was the second most common category, accounting for approximately nine percent of the opened complaints.

ASCHR's Workshare Agreement with EEOC

ASCHR's workshare agreement with EEOC has been in place for over 20 years and covers employment related complaints. The workshare agreement is designed to prevent both agencies from simultaneously investigating the same complaints, assist both agencies in fulfilling legal requirements, and provide financial resources to ASCHR. The agreement is typically renegotiated every three years and includes options for annual extensions.

The terms of the agreement require ASCHR to utilize an effective case management system and complaint acceptance form, reconcile its database with EEOC data, and maintain confidential records. Further, ASCHR is prohibited from charging processing fees. Per the agreement, both agencies receive access to the other agency's records, including complaint investigation records.

Per the agreement, complaints are processed by the agency that receives the complaint. However, the agreement specifically assigns certain complaints to each agency. For example, cases related to complaints already in process at one agency must be taken by the same agency. Additionally, each agency is allowed to request the right to process complaints specifically assigned to the other agency.

ASCHR bills EEOC for resolved complaints in accordance with the agreement. Complaints eligible for payment included no cause findings, successful settlements, successful conciliations, administrative resolutions, and final orders issued following and pursuant to administrative hearings and litigation. EEOC will also pay for complaints resolved due to a lack of jurisdiction if an investigation is required to determine jurisdiction.

The annual agreement specifies a maximum number of resolved cases that may qualify for EEOC funding.⁶ As part of the agreement, ASCHR also receives funding from EEOC for other activities, including intake services, training, and outreach.

ASCHR’s relationship with EEOC was not limited to the workshare agreement. EEOC also provided grants to ASCHR during the audit period for advertising, outreach, and informational materials. During 2020, ASCHR agreed to host an EEOC employee from September 2020 through February 2022. The agreement allowed the employee to spend two hours per day assisting with commission work. Exhibit 2 summarizes EEOC’s funding for federal fiscal years 2019 through 2021.

Exhibit 2

EEOC Workshare Agreement Financial Information Federal Fiscal Years 2019 Through 2021				
Federal Fiscal Year	Maximum Reimbursable Cases	Number of Cases Reimbursed	Training, Intake, and Outreach Grants	Total Reimbursed Amount
2019	195	173	\$3,300	\$141,700
2020	206	206	\$3,000	\$167,800
2021	130	130	\$1,000	\$105,000

Source: ASCHR management and contract documents.

⁶ EEOC reimburses \$800 per case.

REPORT

CONCLUSIONS

In response to concerns about investigation delays, an audit was requested to review Alaska State Commission for Human Rights (ASCHR) operations, with a focus on ASCHR's complaint resolution process. Specifically, the audit evaluated whether the commission resolved complaints promptly and reasons for delays.

The audit found that state law requires ASCHR to investigate complaints promptly; however, the term "prompt" is not defined in ASCHR regulations or policies. Forty-three percent of ASCHR complaints closed during the audit period took longer than one year to resolve.

The COVID-19 pandemic decreased the opportunity for discrimination, thereby reducing the number of complaints filed with ASCHR. Auditor review found many complaints were inactive for extended periods. ASCHR procedures contributed to the inefficiencies. Turnover and vacancies also led to processing delays. ASCHR management expects operational changes made during 2021 and 2022 will improve the timeliness of complaint processing.

ASCHR's outreach activities were reduced during 2019 as a result of turnover and leadership changes. Activities increased after 2019, but were subject to preapproval by commission members through March 2022.

Detailed conclusions are listed below.

The COVID-19 pandemic decreased the opportunity for discrimination, thereby reducing the number of complaints.

The pandemic increased unemployment,⁷ which decreased the number of people interacting in the workplace. Further, many people that were employed worked remotely. These employment conditions reduced the opportunity for employment discrimination, which is the most common type of complaint.

⁷ According to the Alaska Department of Labor website, in January 2019 Alaska's unemployment rate was 6.9 percent. The rate increased to 12.2 percent in May 2020 and slowly decreased to 5.9 percent in January 2022.

ASCHR management reported receiving fewer inquiries regarding potential discrimination during 2020 and 2021 when compared to previous years. As a result, the commission opened fewer complaints. In 2019, ASCHR opened 209 complaints. During 2021, a calendar year fully impacted by the pandemic, half as many complaints were opened. Exhibit 3 summarizes the number of complaints opened during the audit period.

Exhibit 3

ASCHR Complaints by Discrimination Type and Year January 1, 2019 Through March 31, 2022					
Discrimination Type	Calendar Year Opened				Percent of Total Complaints Opened
	2019	2020	2021	January 2022 — March 2022	
Employment	186	144	92	22	88%
Public Accommodation	17	12	8	6	8.5%
Finance	1	0	0	0	<.5%
Government Practices	3	1	1	1	1%
Housing	2	2	4	0	2%
Aiding and Abetting	0	1	0	0	<.5%
Total	209	160	105	29	

Source: ASCHR case management system data.

ASCHR policies do not define what constitutes a “prompt” investigation.

When creating the commission, policymakers recognized the importance of timely investigations. Alaska Statute 18.80.110 states that ASCHR’s executive director or a member of the commission’s staff “shall informally investigate the matters set out in a filed complaint, promptly and impartially.” Although statutorily required to investigate promptly, ASCHR policies and procedures do not establish timelines for completing investigations or define what is considered “prompt”. According to the ASCHR executive director, it is the commission’s informal goal to resolve complaints through conciliation, investigation, or some other administrative process, within an average of one year.

To help assess the reasonableness of ASCHR’s one-year timeline, auditors reviewed six similar organizations to determine whether a standard industry timeline existed and, if so, how the timeline compared to ASCHR’s informal goal. Auditors found none of the six organizations explicitly allowed more than one year to resolve complaints. Most required investigations be completed in less than a year. Half a year was the most common timeline; however, organizations often allowed extensions for good cause or through mutual agreement. The results of the review are summarized in Exhibit 4.

Based on the review, the audit concluded that resolving complaints within a year is reasonably prompt; however, to effectively guide ASCHR’s workflow, the informal guideline should be incorporated into formal procedures and performance reviews. Further, a shorter timeline may prove more effective if flexibility is provided for good cause extensions. (See Recommendation 1)

Exhibit 4

Investigation Timelines for Six Human Rights Organizations			
Agency Name	Type	Timeline	Comments
Equal Employment Opportunities Commission (EEOC)	Federal	180 days – extensions allowed for not more than 90 days	Applicable to complaints involving federal employees 29 CFR 1614.108(e)
Anchorage Equal Rights Commission	Municipal	240 days – extensions allowed for good cause	Anchorage Municipal Code 5.50.010 – Investigative Overview
Arizona Civil Rights Division	State	60 days	Arizona Code 41-1481(B)
Hawaii Civil Rights Commission	State	180 days – extensions may be granted	Hawaii Revised State Title 20 Section 368-13(b)
Minnesota Department of Human Rights	State	365 days	Minnesota Statute 363A.28(subd 6)(b)(6)
Montana Human Rights Bureau	State	180 days – extension for 45 days if both parties agree	Investigations related to certain types of discrimination in housing are subject to a 120-day timeline Montana Code 49-2-504

Forty-three percent of ASCHR investigations were not prompt, taking longer than one year to complete.

ASCHR did not routinely resolve complaints promptly (within the agency’s internal goal of one year). Of the 651 investigations closed from January 2019 through March 2022, 43 percent took more than one year to resolve with 10 percent taking more than two years. Further, of the 116 cases still open as of March 2022, 45 percent had been open for over one year, with 21 percent open for more than two years (see Exhibit 5).

In general, extended periods of inactivity negatively impact the investigative process. Specifically, longer periods of time between the alleged act and an active investigation may make obtaining evidence more difficult. Witnesses may not remember important details or may become uncooperative. As a result, determinations of “no substantial evidence” (NSE) are more likely.

Exhibit 5

Age of ASCHR Open Complaints as of March 31, 2022						
Year Opened	Years Open					Total
	0 to 1	1 to 2	2 to 3	3 to 4	More Than 4	
2017	0	0	1	0	1	2
2018	0	0	0	12	3	15
2019	0	1	4	2	0	7
2020	0	17	1	0	0	18
2021	39	10	0	0	0	49
2022	25	0	0	0	0	25
Total	64	28	6	14	4	116

Source: ASCHR case management system data.

The majority of complaints investigated by ASCHR did not find evidence of discrimination or result in settlements. Of the 651 complaints closed during the audit period, 91 percent were closed with NSE determinations or through administrative dismissals.

The remaining investigations resulted in substantial evidence (SE) determinations or settlements. The most common type of discrimination complaint, by far, was employment. Exhibit 6 summarizes complaints closed during the audit period by type of complaint.

Exhibit 6

ASCHR Complaints Closed by Discrimination Type and Year January 1, 2019 Through March 31, 2022					
Discrimination Type	Calendar Year Closed				Percent of Total Complaints Closed
	2019	2020	2021	January 2022 — March 2022	
Employment	253	154	158	17	89%
Public Accommodation	18	14	15	0	7%
Finance	1	0	0	0	<.5%
Government Practices	7	4	1	1	2%
Housing	2	2	2	1	1%
Aiding and Abetting	0	1	0	0	<.5%
Total	281	175	176	19	

Source: ASCHR case management system data.

Many ASCHR complaints were inactive for an extended period of time.

Auditors reviewed a sample of 32 complaints that were open for longer than a year and found it was common for no action to be taken by ASCHR staff for an extended period. Overall, 69 percent of the complaints reviewed were inactive for over six months, with 31 percent inactive for over a year. Auditors also found that witness interviews were not performed timely. In 78 percent of the complaints reviewed, it took at least a year for investigators to interview witnesses.

One complaint selected for review was open for almost nine years. The file showed the investigation was completed in 2011 and an SE determination was drafted and submitted to the in-house attorney.

ASCHR procedures contributed to the inefficient resolution of complaints.

However, the determination was never approved and the case was inactive for over five and a half years. The complaint closed in early 2019 after the parties agreed to settle. ASCHR management did not know why the case was inactive for an extended period of time because all staff and management involved with the case were no longer with the commission.

As a standard operating procedure, complaint processing is started and stopped multiple times during the investigative process. The set down and pick up approach to processing leads to an inefficient use of investigator resources. Investigators must relearn the details of a complaint once the investigation restarts. Further, making contact with witnesses and requesting documentation becomes harder, and may take more time the longer a complaint is dormant, and people may no longer be available or cooperative. Additionally, the longer an investigation sits idle, the more likely it may need to be reassigned due to turnover.

Specifically, the following factors contributed to the inefficient processing of complaints:

Complaint backlog: Due to the backlog of complaints, a complaint is set aside after intake once certain information is obtained so that resources can be shifted to processing older complaints.

Monthly closure goals: Investigators are evaluated on the number of complaints closed and have monthly closure expectations. In order to meet closure goals, investigators may set down older complaints to close simpler complaints.

EEOC workshare cases: In the last quarter of the federal fiscal year, investigators sometimes prioritize EEOC cases in order to collect full funding from the workshare agreement. Older complaints are set aside to work on EEOC workshare related complaints.

Turnover and vacancies contributed to processing delays.

Management reported difficulty retaining investigators due to the higher pay provided by similar federal and nonfederal organizations. Additionally, management reported that a limited pool of qualified candidates made it difficult to fill vacant positions. As of March 31, 2022, three positions were vacant: two investigators and one in-house attorney. Vacancies contributed to high caseloads. According to investigative staff, it was common to have a caseload of between 30 and 40 complaints.

ASCHR investigators also reported that turnover significantly impacted workflow. When an investigator leaves the commission, complaints are reassigned to other investigators. Older complaints take precedence over active investigations and newly assigned investigators must set aside active cases to work the older complaints. As discussed above, starting and stopping an investigation is an inefficient use of investigative resources.

Operational changes made in 2021 and 2022 are expected to improve the timeliness of complaint processing.

ASCHR's executive director expects two recent operational changes will improve efficiency. Specifically, an amendment to regulations governing resolution conferences should encourage early resolutions, which may negate the need for time-consuming investigations. Further, reorganizing intake responsibilities is expected to allow more focused time for investigations. The changes are discussed in more detail below.

Amended Resolution Conferences Regulations: Resolution conferences are meetings held at the outset of an investigation. The conference allows both parties to provide evidence, discuss the complaint, and agree to settle. If the parties settle at the conference, the complaint is resolved and a full investigation is avoided. In February 2022, the commission amended the resolution conference regulation⁸ to make attendance mandatory for both complainants and respondents, thereby encouraging the early resolution of more complaints.

⁸ 6 AAC 30.310(b).

According to the executive director, the regulation change improved processing timelines. Of the complaints that had gone through the new resolution conference process, several settlements were reached. For the cases that did not settle during the conference, investigators reported the process provided a clearer understanding of the available evidence. This may result in faster investigations compared to cases that did not hold a resolution conference.

Investigators stated that the new regulations increased the amount of work needed to prepare for resolution conferences, which made it difficult to continue processing older investigations. However, investigators were optimistic the change will improve overall timelines once fully implemented.

Reassigned Intake Duties: Before 2021, intake responsibilities were rotated among all investigators. The time spent conducting intake reduced the time available for processing complaints. During FY 21, ASCHR management converted a higher-level investigator position into a lower-level position to perform intake duties three days a week. Other investigators rotated responsibility for intake for the other two days a week. Management stated that by using a lower level position for the less complex intake duties, more experienced investigators were freed up to work on resolving complaints.

ASCHR outreach activities were limited in 2019 and subject to commission approval during 2020 and 2021.

An objective of the audit was to report steps taken by the commission to seek out and eradicate discrimination. The audit found that ASCHR performed outreach activities to eradicate discrimination in Alaska by providing education to businesses and the public. Outreach included presentations at human rights events, hosting information booths at events and conferences, publishing a joint newsletter with EEOC, providing Facebook advertisement campaigns, participating as a guest speaker on Alaska Public Radio, and sending letters seeking a dialogue for worker education to unions and Alaska Native organizations.

During 2019, actions taken by the executive director, which included social media posts, led to the turnover of all commission board positions and the termination of the executive director. During that time, the commission reduced outreach activities. The 2019 annual report stated:

“Due to the public attention on the agency in early 2019, outreach and public education were largely curtailed for the year while the Commission sought a new Executive Director and began rebuilding its staff leadership. Staff spent that time focusing more specifically on investigations.”

During 2020, ASCHR increased its outreach activities; however, in a May 2020 meeting commissioners voted to require all outreach activities be preapproved by the commission chair. In several subsequent meetings, the executive director proposed outreach activities, which were not approved. According to the ASCHR executive director, the commission removed the preapproval requirement for all outreach activities in March 2022. Exhibit 7 on the following page provides a summary of activities performed by the commission during the audit period.

**ASCHR Outreach Activities by Type
January 1, 2019 Through March 31, 2022**

Presentations

February 22, 2019	University of Alaska Anchorage, Elizabeth Peratrovich Day
March 5, 2019	2nd Annual Consumer Forum
February 17, 2020	Elizabeth Peratrovich Day Celebration
April 16, 2020	Rural Alaska Community Environmental Job Training Program
June 23, 2020	Alaska Public Radio Network - Talk of Alaska
July 28, 2020	Anchorage Assembly - invited testimony
August 5, 2020	Alaska Small Business Development Center
October 7, 2020	Inland Boatmen's Union
March 23, 2021	Juneau Human Rights Commission
March 30, 2021	National Education Association Alaska
April 13, 2021	University of Alaska Fairbanks Rural Alaska Community Environmental Job Training Program Graduation
May 20, 2021	Small Business Administration, Business Power Hour Workshop Series
October 6, 2021	National Federation of the Blind, Alaska Chapter Conference
October 15, 2021	National Federation of the Blind, Alaska Chapter Conference

Organization Management Meetings

January 21, 2020	Challenge Alaska
January 24, 2020	Midnight Sun Service Dogs
September 22, 2020	Copper River Native Association
June 15, 2021	Identity Incorporated, and Identity Health Clinic

Informational Booths

February 9, 2019	Alaska Veterans Affairs Healthcare: A Ruff Red Carpet Event Dog Show
February 16, 2019	Bettye Davis African American Youth Summit 2019
October 10, 2019	2nd Annual Ombudsman Day
January 20, 2020	Alaska Bar Association, 11th Annual Martin Luther King Day Free Legal Help Clinic
February 29, 2020	Bridge Builders "Meet the World" Event
November 13, 2021	Paws for Purple Hearts Open House
September 22–23, 2021	The Society for Human Resource Management Conference

**ASCHR Outreach Activities by Type
January 2019 Through March 2022
(Continued)**

Informational Materials

August 12–13, 2020	Sent letters offering dialogue and educational presentations to 14 Alaska Native regional organizations
August 12–13, 2020	Sent letters seeking a brief dialogue and worker education presentation to 16 unions
Throughout 2020	Printed and distributed pocket cards describing a person’s workplace rights related to discrimination and providing ASCHR and EEOC contact information
May 19–July 8, 2021	Facebook advertisement campaign
July 1, 2021	Published a joint ASCHR and EEOC electronic newsletter titled – LGBTQ+ Alaskans Gain Protections
Throughout 2021	New guidance documents published on ASCHR website
Throughout 2021	Service animal pocket card targeted at the service industry sent to the Alaska Cabaret, Hoteliers, Restaurant and Retailers Association

Discussions with Other Professionals

August 19, 2020	Alaska Legal Services Corporation
December 9, 2020	Public Rights Project

Source: ASCHR management and documents, including annual reports and publications.

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FINDINGS AND RECOMMENDATIONS

The prior 2011 special audit⁹ of the Alaska State Commission for Human Rights (ASCHR) made three recommendations:

1. The legislature should consider establishing statutory timelines for ASCHR.
2. ASCHR's executive director should improve and develop comprehensive policies, procedures, and regulations to ensure complaint investigations are performed timely, and submit them to the commission for adoption.
3. The legislature should consider realigning ASCHR's mission.

Prior Recommendation 1 for the legislature to consider establishing statutory timelines was resolved. The legislature considered House Bill 221 during the 2014 legislative session, which proposed requiring ASCHR resolve complaints within 24 months of the complaint date. The bill was not passed in either legislative body. Prior Recommendation 3 for the legislature to consider realigning ASCHR's mission was also resolved. Since the recommendation was issued, many ASCHR related bills have been considered by the legislature; however, none proposed realigning ASCHR's mission. Given that the legislature had ample opportunity to take action, the prior recommendation will not be reiterated.

Prior Recommendation 2 for the executive director to improve and develop comprehensive policies, procedures, and regulations to ensure investigations are performed timely was partially resolved. Regulations went into effect February 2022 to improve the resolution conference process. Procedures to guide the complaint resolution process were drafted but never formally adopted. Auditors noted the draft procedures did not include procedures related to the new resolution conference process or procedures that incorporated the new case management system. Case testing showed investigations were not performed promptly and

⁹ Office of the Governor, Alaska State Commission for Human Rights, Selected Operational Issues, September 23, 2011, Audit Control Number 01-30056-11.

procedures needed to be improved. The unresolved portions of the prior Recommendation 2 are reiterated below as part of Recommendation 1.

Recommendation 1:
ASCHR’s executive director should adopt written policies and procedures to guide the complaint resolution process, establish timelines to encourage timely resolution, and continue efforts to fill vacancies.

Of the 651 ASCHR complaints closed between January 2019 and March 2022, 43 percent took more than one year to resolve, with 10 percent taking more than two years. Further, of the 116 complaints open as of March 2022, 45 percent had been open for over one year, with 21 percent open for more than two years.

Alaska Statute 18.80.110 requires the executive director, or a member of the commission’s staff designated by the executive director, to informally investigate the matters set out in a filed complaint promptly and impartially. No formal guidelines exist to define the term “promptly”. The executive director stated that the commission has an informal goal to complete investigations within one year, on average. However, that goal is not incorporated into formal policies and is not used to evaluate performance.

ASCHR did not have written policies and procedures to guide the complaint resolution process. Although policies and procedures were drafted, they did not incorporate the new case processing system and were never formally adopted. Additionally, the draft policies did not include investigative timelines. Policies and procedures were not finalized due to competing priorities and a lack of resources. Turnover, vacancies, and the lack of formal policies and procedures negatively impacted the efficiency of complaint processing.

We recommend ASCHR’s executive director adopt formal written policies and procedures to guide the resolution process and establish timelines to encourage timely resolution. We also recommend the executive director continue efforts to fill vacancies.

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we have conducted a performance audit of the Office of the Governor, Alaska State Commission for Human Rights (ASCHR), Select Issues.

Objectives

The objectives were to:

- Determine whether the commission is investigating complaints timely.
- Determine how many and what type of complaints are investigated, how many days it takes to resolve complaints, and the reasons for delayed resolutions.
- Determine whether the commission is investigating complaints in accordance with the internal policy of “promptly” as outlined in state law that requires the commission to “informally investigate the matters set out in a filed complaint, promptly and impartially.”
- Gain an understanding and report on the commission’s work sharing agreement with the federal Equal Employment Opportunity Commission (EEOC).
- Identify and report the steps taken by the commission “to seek out and eradicate discrimination.”
- Determine the current status of the prior audit recommendations.

Scope

The audit reviewed ASCHR’s operations and investigations process from January 2019 through March 2022. The audit reviewed case data and investigation files for complaints that were open or opened at any time during this period.

Methodology

To address the objectives, auditors reviewed and evaluated the following:

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- The prior special audit report (ACN 01-30056-11) to identify issues affecting the commission and to identify the prior audit recommendations.
 - Applicable Alaska statutes and regulations to identify commission functions, responsibilities, and requirements.
 - Annual reports from 2019 through 2021 to gain an understanding of ASCHR's operations and outreach activities.
 - Commission meeting minutes from February 2019 through January 2022 to identify outreach activities, information related to the commission's relationship with EEOC, and potential issues regarding the investigation process.
 - Draft policies and procedures manual to gain an understanding of ASCHR's complaint resolution process.
 - Various internet searches and newspaper articles to identify potential complaints against the commission.
 - Complaints filed with the Office of the Ombudsman between January 1, 2019, and March 31, 2022, to gain an understanding of potential issues related to ASCHR's investigative process.
 - ASCHR's budget for FY 2020 through 2022 to identify ASCHR's resources and budgeted personnel positions.
 - ASCHR personnel data in the State's accounting system to verify vacancy information.
 - ASCHR's publications to identify outreach activities.
 - EEOC's workshare agreement and supporting documents to gain an understanding of the contractual and financial terms.
 - Proposed bills modifying AS 18.80 from the 2012 through 2022 legislative sessions to identify actions taken or considered by the legislature regarding the commission.

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- ASCHR complaint data to assess the efficiency of the complaint resolution process and report on the types and number of complaints open and closed during the scope period.

To gain an understanding and evaluate the operations and complaint resolution processes of the commission, interviews were conducted with commission staff and board members. A survey of ASCHR investigators was also conducted to obtain the investigators' perspectives regarding investigative delays and suggestions for improvements.

No internal controls were tested as no controls were found significant to the audit objectives.

The audit utilized the following samples.

- A random sample of 38 investigations was selected and 30 were tested. A judgmental sample of five investigations was also selected and two were tested. Due to the high rate of errors, entire sample selections were not tested. The samples were selected from 338 investigations that were open for more than one year, and open or opened at any point from January 1, 2019, through March 31, 2022. The random sample size was selected based on a 10 percent risk of overreliance, 10 percent tolerable deviation rate, and 2.5 percent expected deviation rate. The judgmental sample was selected based on investigations open for more than three years. Test results were not projected to the population.

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APPENDIX SUMMARY

Appendix A provides the statutory definitions for each type of discrimination.

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APPENDIX A

Statutory Definitions for Types of Discrimination

AS 18.80.220	Employment	It is unlawful for an employer to refuse employment to a person, or to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of the person’s race, religion, color, or national origin, or because of the person’s age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood.
AS 18.80.230	Public Accommodation	It is unlawful for the owner, lessee, manager, agent, or employee of a public accommodation to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, race, religion, color, or national origin.
AS 18.80.255	Government Practices	It is unlawful for the state or any of its political subdivisions to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, religion, sex, color, or national origin; or to refuse or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of physical or mental disability.
AS 18.80.240	Housing	It is unlawful for the owner, lessee, manager, or other person having the right to sell, lease, or rent real property to refuse to sell, lease, or rent the real property to a person because of sex, marital status, changes in marital status, pregnancy, race, religion, physical or mental disability, color, or national origin; however, nothing in this paragraph prohibits the sale, lease, or rental of classes of real property commonly known as housing for “singles” or “married couples” only.

APPENDIX A

Statutory Definitions for Types of Discrimination (Continued)

AS 18.80.250	Finance	It is unlawful for a financial institution or other commercial institution extending secured or unsecured credit, upon receiving an application for financial assistance or credit for the acquisition, construction, rehabilitation, repair, or maintenance of a housing accommodation or other property or services, or the acquisition or improvement of unimproved property, or upon receiving an application for any sort of loan of money, to permit one of its officials or employees during the execution of the official's or the employee's duties to discriminate against the applicant because of sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, race, religion, color, or national origin in a term, condition, or privilege relating to the obtainment or use of the institution's financial assistance or credit, except to the extent of a federal statute or regulation applicable to a transaction of the same character.
AS 18.80.260	Aiding, Abetting, or Coercing a Violation of Chapter	It is unlawful for a person to aid, abet, incite, compel, or coerce the doing of an act forbidden under AS 18.80 or to attempt to do so.

Agency Response from the Alaska State Commission for Human Rights

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THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Office of the Governor

COMMISSION FOR HUMAN RIGHTS

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November 22, 2022

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NOV 22 2022

LEGISLATIVE AUDIT

Kris Curtis, CPA, CISA
Legislative Auditor
Alaska Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Re: Preliminary audit report on: *Office of the Governor, Alaska State Commission for Human Rights, Select Issues*

Dear Ms. Curtis,

The Office of the Governor received the confidential preliminary audit report regarding the Alaska State Commission for Human Rights ("ASCHR" or the "Commission") and forwarded it to the executive director for response. He, in turn, forwarded it to ASCHR Chairperson Zackary Gottshall. Your cover letter asks ASCHR to address both the Report Conclusions and the Findings and Recommendation. This response is submitted on behalf of the Commission.

Conclusion: The COVID-19 pandemic decreased the opportunity for discrimination, thereby reducing the number of complaints.

ASCHR concurs with this conclusion.

Conclusion: ASCHR policies do not define what constitutes a "prompt" investigation.

ASCHR concurs with this conclusion but notes that comparing ASCHR investigation timelines to other civil rights agencies is not necessarily analogous as there are differing laws governing processes for those agencies.

The Commission is required to investigate *all* jurisdictional complaints, regardless of how scant the initial evidence may be. See AS 18.80.110 ("The executive director or a member of the commission's staff . . . shall informally investigate the matters set out in a filed complaint, promptly and impartially.") (emphasis added). Further, the investigation's evidentiary threshold

is “substantial evidence.” *Id.* An ASCHR “no substantial evidence” determination is a final agency action subject to administrative appeal to the Alaska Superior Court. Starting circa 2015, the Commission started aggressively screening cases for jurisdiction to avoid giving complainants any sense of false hope and to avoid wasted time.¹

An agency like the U.S. Equal Employment Opportunity Commission (“EEOC”) accepts all complaints without exception, even clearly non-jurisdictional complaints, and closes a huge number of them immediately without investigation (such as non-jurisdictional complaints) or based solely upon an initial intake interview to determine “reasonable cause.” *See* 21 CFR § 1601.19(a). In issuing a “no cause” finding, the EEOC makes no decision about the merits of the claim and does not issue a written factual analysis to the parties. A “no cause” determination ends further investigation. An EEOC “no cause” determination is issued as a “notice of right to sue” letter, granting the complainant 90 days to pursue a private civil action in federal court.

In comparing the two processes, the EEOC enjoys greater discretion at its initial intake stage (for example, if the complainant articulates a potentially non-discriminatory reason for the adverse action, the EEOC is likely to immediately issue a notice of right to sue letter), whereas ASCHR must still investigate and may not exercise prosecutorial discretion under the Alaska Statutes until a case fails conciliation. Further, the EEOC “no cause” decision is only subject to an internal appeal rather than a federal court filing. Therefore, ASCHR cases will take longer than EEOC cases because state law requires ASCHR to thoroughly investigate all jurisdictional complaints, that investigation is held to a different evidentiary standard, and it must be backed by a written factual explanation because it is an appealable final agency action. On occasion, ASCHR will non-adopt a co-filed EEOC case closure when the EEOC’s scant investigation cannot withstand an appeal under state law, thereby requiring ASCHR to continue investigating to state standards. The audit cites six agencies with articulated investigation timelines but does not cite what legal standards or regulatory procedures are required for those agencies.

Conclusion: Forty-three percent of ASCHR investigations were not prompt, taking longer than one year to complete.

ASCHR concurs with this conclusion.

Conclusion: Many ASCHR complaints were inactive for an extended period of time.

ASCHR concurs with this conclusion.

¹ Complainants may still file non-jurisdictional complaints. “If the facts related do not constitute a violation of the human rights law, the staff will accept a complaint only after advising the inquirer that the case will be closed for lack of jurisdiction.” 6 AAC 30.031.

Conclusion: ASCHR procedures contributed to the inefficient resolution of complaints.

ASCHR concurs with this conclusion. The Commission examined refreshing its investigatory process in late 2020, which resulted in changing the resolution conference regulation in 2021 with an effective date in February, 2022. The change empowered investigators to more efficiently obtain evidence and encourage settlement discussions. The new resolution conference is proving an effective procedural tool. Investigators during calendar year 2022 alternated between working new cases (using a resolution conference) with working an older case. Because of the speed in closing cases with a resolution conference, there are now only a handful of older cases. ASCHR expects the complaint backlog to be eliminated during 2023. Investigators are also on notice that monthly closure goals are less important going forward than overall average open case age. Unfortunately, the EEOC workshare agreement will likely always impact which cases are worked toward the end of each contract year to ensure that ASCHR maximizes its federal receipts and meets the contract requirement.

Conclusion: Turnover and vacancies contributed to processing delays.

ASCHR concurs with this conclusion. The Commission recently submitted requests to the Division of Personnel asking for classification/salary studies for its investigators and three administrative staff positions.

Conclusion: Operational changes made in 2021 and 2022 are expected to improve the timeliness of complaint processing.

ASCHR concurs with this conclusion. Prior to the regulatory change, there was no institutional memory of holding a resolution conference because ASCHR could not compel respondent attendance. Even if the parties do not settle, the process front-loads the investigation by requiring the respondent to produce evidence immediately, requiring the investigator to substantively interview the complainant, and requiring the complainant to identify all potential witnesses. Investigators are finding that they typically have enough evidence at the end of a resolution conference to immediately issue a determination. If additional investigation is required, the conferences serve to narrow the factual issues and identify the one or two additional witnesses to interview and/or documents to subpoena. Further, implementing a flexible PCN for investigators allows more experienced investigators to work on cases while less experienced investigators largely handle intake duties.

Conclusion: ASCHR outreach activities were limited in 2019 and subject to commission approval during 2020 and 2021.

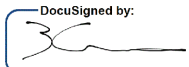
ASCHR concurs with this conclusion.

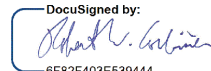
Recommendation 1: ASCHR's executive director should adopt written policies and procedures to guide the complaint resolution process, establish timelines to encourage timely resolution, and continue efforts to fill vacancies.

ASCHR concurs with this recommendation. ASCHR is actively drafting a written policy, and a written procedure that will guide the resolution process and establish timelines to encourage timely resolution. The scheduled completion date is December 31, 2022.

ASCHR continues to work on employee hire and retention. Between August 1, 2022, and October 31, 2022, ASCHR submitted several employee classification and salary study requests, the results of which will hopefully assist the Commission with personnel recruitment and retention. In addition to advertising vacancies on Workplace Alaska, ASCHR is actively using additional avenues such as third-party job search websites, the Alaska Bar Association job board, and social media.

Sincerely,

DocuSigned by:

953643CF08314A2...
Zachary Gotsman
Chairperson

DocuSigned by:

6F82F403E539444...
Robert W. Corbisier
Executive Director

Cc: Tyson Gallagher, Chief of Staff
Allan Marasigan, Director of Boards and Commissions