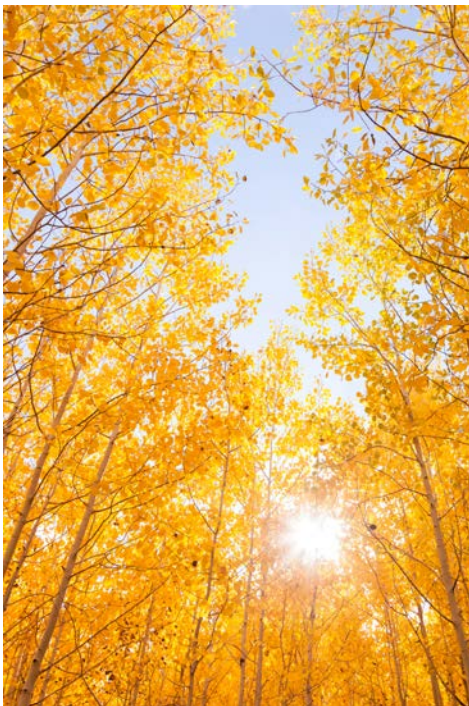


Department of Regulatory Agencies

Colorado Civil Rights Commission and Civil Rights Division

Performance Audit
September 2024
2359P



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September 26, 2024

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Civil Rights Commission and the Civil Rights Division within the Department of Regulatory Agencies. The audit was conducted pursuant to Section 2-3-125, C.R.S., which requires the State Auditor to conduct a performance audit of the Colorado Civil Rights Division, created in Section 24-34-302, C.R.S., and the Colorado Civil Rights Commission, created in Section 24-34-303, C.R.S., by December 15, 2024. This audit was also conducted pursuant to Section 2-7-204(5), C.R.S., the State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act. The report presents our findings, conclusions, and recommendations, and the responses of the Civil Rights Commission, the Civil Rights Division, and the Department of Regulatory Agencies.



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Report Highlights

Colorado Civil Rights Commission and Civil Rights Division

Department of Regulatory Agencies

Performance Audit • September 2024 • 2359P



OFFICE OF THE STATE AUDITOR

C O L O R A D O

Key Concern

Neither the Colorado Civil Rights Commission (Commission) nor the Colorado Civil Rights Division (Division) are fulfilling some of their powers and duties outlined in statute and, in some cases, the Division—rather than the Commission—is carrying out the Commission’s powers and duties. In addition, the statutory requirements for Commission membership may be restricting the Governor’s ability to timely fill vacancies on the Commission.

Key Findings

- The Commission and Division have implemented the recommendations from our 2019 Management of Civil Rights Discrimination Complaints performance audit and have taken steps to improve their overall operations. Specifically:
 - The Division has improved the timeliness of investigations. The Division closed all cases filed between August 10, 2022 and December 31, 2023, within the statutorily-required 450 days.
 - The Division has improved its data collection and the functionality of its case management system, CaseConnect.
 - The Commission votes on cases in public session, in compliance with open meetings laws.
- The Division and Commission have effective policies in place to fulfill their primary responsibilities of investigating discrimination complaints, reviewing appeals, and taking action on cases where the Division finds probable cause that discrimination occurred.
- We found that some of the Commission’s powers and duties are not being fulfilled by either the Commission or the Division, and sometimes the Division is carrying out those duties assigned in statute to the Commission. This is due to the roles of the Commission and Division having changed over time and some Commission powers and duties may be at odds with some of its other responsibilities. For example, statute states that it is the Commission’s power and duty to make policy recommendations on issues related to discrimination. However, by making policy recommendations, it could appear that the Commission is taking an advocacy role, which could hinder its ability to remain neutral.
- The statutory requirements for Commission membership may be making it difficult to fill vacancies on the Commission. Since the current membership requirements were enacted in 2018, the geographic diversity of the Commission has decreased and the length of time that seats remain vacant has increased. Of 37 states with similar commissions, 35 have less restrictive membership requirements than Colorado.

Background

- The Colorado Anti Discrimination Act (CADA) prohibits discrimination on the basis of certain characteristics known as protected classes (e.g., race, disability, sex).
- The Division enforces CADA by investigating complaints of discrimination in employment, housing, and public accommodations (i.e., businesses). The Division investigates around 1,500 complaints annually.
- The Commission is comprised of seven members that the Governor appoints and the Senate approves to represent business and employee interests. The Commission meets monthly to review appeals of the Division’s decisions and take action on cases where the Division found probable cause that discrimination occurred.

Recommendations Made

1

Responses

Agree: 1

Partially Agree: 0

Disagree: 0

Policy Considerations

1



Chapter 1

Overview

The Colorado Anti-Discrimination Act (CADA) [Sections 24-34-301 through 805, C.R.S.] prohibits discrimination against individuals in employment, housing, and public accommodations based on certain characteristics known as protected classes. The list of protected classes varies across the three areas that CADA addresses, but includes categories such as color, disability, race, and sex; a full of list of the protected classes for each of the three CADA areas is included in the Appendix. The Colorado Civil Rights Division (Division) and the Colorado Civil Rights Commission (Commission)—both within the Department of Regulatory Agencies (Department)—have statutory responsibilities and jurisdiction to investigate and make determinations about discrimination complaints in the state.

Types of Discrimination

Under CADA, individuals can file a discrimination complaint related to employment, housing, or public accommodations. Additionally, CADA prohibits retaliation for filing a discrimination complaint or requesting a reasonable accommodation for a disability [Sections 24-34-402(1)(e)(IV), 24-34-502(1)(e), and 24-34-601(2.5), C.R.S.].

Employment. CADA prohibits employers and employment agencies doing business in Colorado from discriminating against employees based on their protected class, including: refusing to hire, discharging, refusing to promote, demoting, harassing during employment, discriminating in matters of compensation, and discriminating in the terms and conditions, or privileges of employment. Employment discrimination, the most common type of discrimination complaint, accounted for 77 percent of complaints received by the Division in the past 5 years.

One example of **employment discrimination** is a mechanic being denied a job based on her sex and gender identity.

Housing. CADA prohibits landlords, real estate brokers, mortgage lenders, homeowner associations, and others involved in the housing market doing business in Colorado from discriminating against residents or prospective residents based on their protected class. This includes refusing to rent or sell, applying unequal terms or conditions of sale or rental, refusing to allow reasonable accommodation for a disability, redlining (i.e., denying people access to mortgage loans because of protected characteristics), steering (i.e., directing prospective homebuyers toward or away from neighborhoods based on protected

One example of **housing discrimination** is a landlord who only required immigration documents from prospective tenants who spoke Spanish.

characteristics), intimidating, threatening, coercing, advertising with a discriminatory preference or limitation, or misrepresenting the availability of housing. Housing discrimination complaints accounted for 12 percent of complaints filed in the last 5 years.

Public Accommodations. CADA prohibits places of public accommodation doing business in Colorado from discriminating against customers and visitors based on a protected class. Places of

One example of **public accommodation discrimination** is a deaf woman who was denied treatment by a medical provider who was unwilling to provide interpreter services.

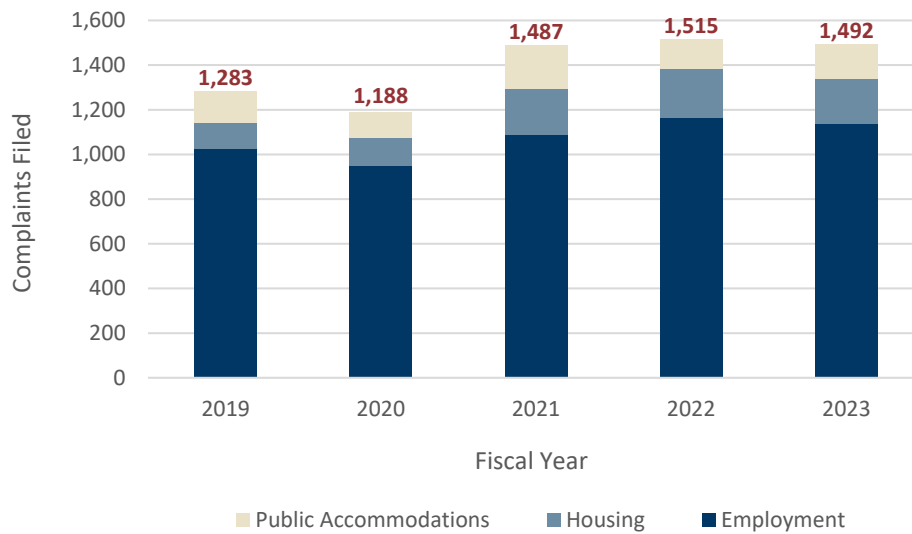
public accommodation include any business engaged in selling goods or services to the public and any public facility. Statute provides several examples of places of public accommodation including restaurants, hotels, sporting and recreational areas, public transportation facilities, barber shops, swimming pools, campsites, dispensaries, hospitals, mortuaries, cemeteries, schools,

universities, parks, theaters, museums, and libraries. It would be a discriminatory action for a place of public accommodation to refuse, withhold from, or deny to an individual or group the full and equal enjoyment of the goods, services, facilities, privileges, and advantages of the public accommodation based on their protected class. Public accommodations complaints accounted for 11 percent of complaints filed in the last 5 years.

Exhibit 1.1 shows the number of complaints filed with the Division by the type of discrimination. The number of discrimination complaints filed with the Division increased by 25 percent from Fiscal Year 2020 to Fiscal Year 2021, and has remained stable at around 1,500 complaints a year since then. The Division explained that the increase could be attributed to the more prominent national discussion about systemic racism during the Summer of 2020. In addition, the General Assembly passed House Bill 22-1367 in June 2022, that extended the time a complainant could file an employment discrimination complaint from 180 days after the incident to 300 days.

Exhibit 1.1

Discrimination Complaints Filed with the Civil Rights Division by Type



Source: Office of the State Auditor analysis of data from the Civil Rights Division and Commission annual reports.

Colorado Civil Rights Division

The Division is a neutral, fact-finding, administrative agency that conducts investigations of complaints alleging CADA violations. The Division’s director oversees its operations and staff. Statute requires that the Division “receive, investigate, and make determinations on charges alleging unfair or discriminatory practices in violation of [CADA]” [Section 24-34-302(2), C.R.S.]. The Division also provides mediation and alternative dispute resolution services to resolve civil rights complaints, provides civil rights education to the community, and provides administrative support to the Commission. The Division has 5 intake specialists, 21 investigators, and 2 mediators.

Colorado Civil Rights Commission

The Commission is made up of seven volunteer members who the Governor appoints, with consent of the Senate, to 4-year terms. The role of the Commission is to promote awareness of the State’s anti-discrimination laws, hold monthly public meetings, review complaints if the complainant appeals the Division’s complaint determination, and decide if some cases should be set for a hearing in the Office of Administrative Courts. Commission membership includes:

- 1 member who is the majority owner of a business with at least 5, but less than 50 employees.
- 1 member who is the majority owner of a business with more than 50 employees.
- 1 member representing a statewide chamber of commerce or similar organization.
- 3 members who represent employee associations such as labor unions.
- 1 member from the community-at-large.

In addition, at least four Commission members must be members of groups who have been, or who might be, discriminated against; Commission members must represent the various geographic areas of the state, as much as is practical; and no more than three Commission members may be from the same political party, with no more than six members affiliated with a major political party.

Administrative Process for Discrimination Complaints

Individuals who allege that they have been discriminated against in an employment, housing, or public accommodations setting can file a complaint with the Division, and each complaint will go through the following process:

Intake. Individuals can file discrimination complaints in-person at the Division, or through the Division's online case management system, CaseConnect. Once the Division receives a complaint, Division staff contact the potential complainant, determine whether the alleged discrimination falls within the Division's jurisdiction, and, if it does, send a formal charge of discrimination to the complainant to sign. The complaint is officially filed once the Division receives the signed charge back from the complainant.

Request for Information. Division staff send the charge of discrimination to the respondent with a request for further information. Division staff then send the respondent's response to the complainant so that the complainant can provide a rebuttal. Once the Division has collected this information from both parties, Division management assigns an investigator to the case and the investigation begins.

Investigation. The investigation aims to determine whether there is probable cause to reasonably believe that the respondent violated CADA. To make this determination, the investigator collects and analyzes the available evidence. The investigation may include conducting interviews with witnesses, issuing written questions or statements, and reviewing any documentary evidence such as respondent policies, records related to the alleged incident of discrimination, and data on the respondent's treatment of similarly situated individuals. The investigation concludes when the Division issues a letter of determination stating the circumstances of the case and whether there is probable cause that the respondent discriminated against the complainant in violation of CADA. The Division determines if the case has probable cause, no probable cause, or mixed probable cause where some aspects have cause and others do not. We discuss the process that occurs after the Division issues its decision below.

A **complainant** is the individual who files the discrimination complaint.

A **respondent** is the entity that the complainant alleges committed discrimination.

Mediation and Settlements. At any point after the complaint is filed and before the letter of determination is issued, the parties may request that the Division's Alternative Dispute Resolution Team attempt to mediate a settlement. During this

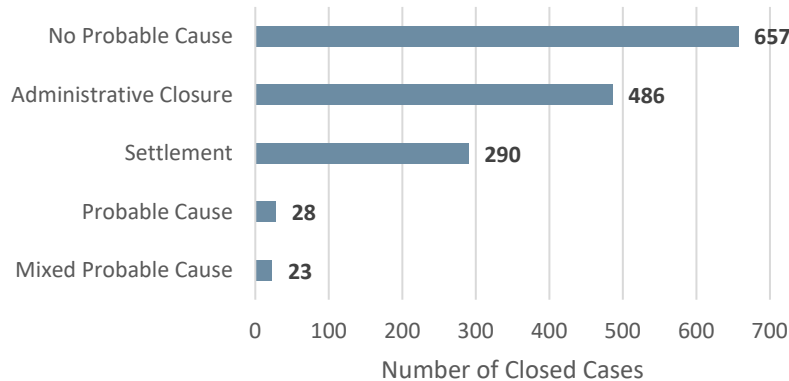
optional mediation process, the investigation is put on hold, and if the parties reach a settlement, the case is closed.

Administrative Closure. The Division administratively closes some cases without completing an investigation or facilitating a mediation. Administrative closures can occur due to lack of jurisdiction, complainants requesting the right to file a lawsuit, and complainants withdrawing their complaint.

- In some instances, the Division may find that it does not have jurisdiction over the matter after the complaint was filed. The Division also does not have jurisdiction in some cases that were already filed with federal agencies.
- The Division administratively closes cases if the complainant decides to file a lawsuit instead of having the Division investigate the allegation. For employment discrimination cases, statute requires complainants to exhaust the Division’s investigation process and receive a letter of determination before they can file their case in court [Section 24-34-306(14), C.R.S.]. Complainants can file a lawsuit regardless of whether the Division finds probable cause. Complainants can also request the right-to-sue from the Division if the investigation is not completed in 180 days, or can request an early right-to-sue prior to 180 days into the process. Statute requires the Division to grant all right-to-sue requests filed after 180 days and to evaluate the circumstances and approve or deny early right-to-sue requests [Section 24-34-306(15), C.R.S.].
- In some cases, the complainant withdraws their complaint before the Division completes an investigation, but this means that the complainant did not exhaust the administrative procedures, which can limit their ability to file a lawsuit.

Pursuant to statute, the Division and Commission lose jurisdiction 450 days after the complainant files the discrimination complaint with the Division [Section 24-34-306(11)(a)(I), C.R.S.]. This means that the Division and Commission have to issue their decisions on a complaint within the 450-day deadline. If the Division and Commission lose jurisdiction, the complainant can file a lawsuit as their last recourse to address the discrimination. House Bill 22-1367 extended the Division’s jurisdictional deadline from 270 days to 450 days, for complaints filed on or after August 10, 2022. To give a snapshot of how cases are resolved, Exhibit 1.2 shows the number of discrimination complaints filed with the Division between August 10, 2022—the effective date of the new 450-day deadline—and December 31, 2023. A total of 2,209 complaints were filed during this time and the Division had completed processing 1,484 of those complaints as of February 27, 2024.

Exhibit 1.2
Cases Filed August 10, 2022 to December 31, 2023
Results of Closed Cases, as of February 27, 2024

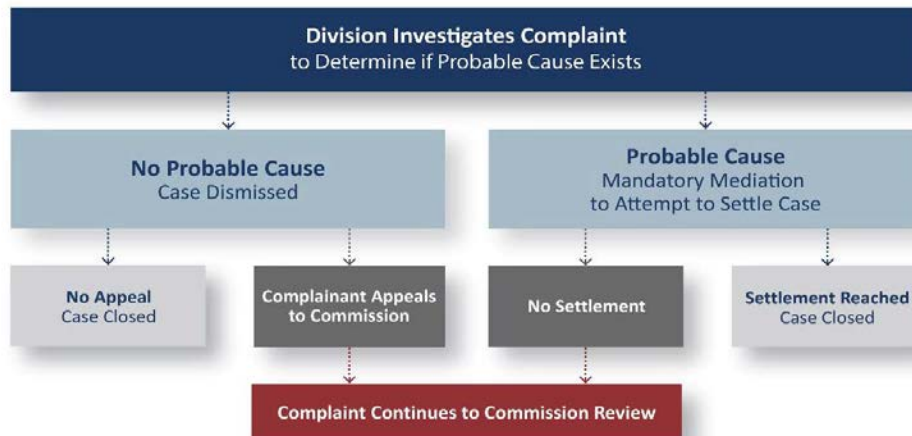


Source: Office of the State Auditor analysis of Civil Rights Division complaint data.

Post Investigation Processes

The Division’s determination of whether probable cause exists drives whether and how the complaint is further reviewed. Exhibit 1.3 illustrates the post investigation process for discrimination complaints.

Exhibit 1.3
Complaint Investigation Process



Source: Office of the State Auditor analysis of the Civil Rights Division’s process.

Appeal to Commission. When the Division determines that a case has no probable cause or is not in its jurisdiction, it sends a letter of determination dismissing the case. Complainants have 10 days to appeal the Division’s decision to the Commission [Section 24-34-306(2)(b)(I)(A), C.R.S.]. In accordance with state regulations, the Commission reviews appeals to determine whether new

evidence is available or if the Division misinterpreted existing evidence [10.6.A.1, 3 CCR 708-1]. The Commission can vote to uphold or reverse the Division's determination or remand the case to the Division for further investigation. For cases filed between August 10, 2022 and December 31, 2023 that went in front of the Commission on appeal by February 2024, the Commission reviewed 82 appeals filed by complainants and upheld the Division's determination of no probable cause in 80 of those cases, upheld the Division's determination of mixed probable cause in one case, and upheld the Division's determination of no jurisdiction in one case.

Mandatory Mediation and Hearing Worthiness Review. Section 24-34-306(2)(b)(II), C.R.S., requires the parties to participate in mandatory mediation, which the Division conducts if it finds that the case has probable cause. This mandatory process is called conciliation. When the parties in a case are unable to reach a settlement through conciliation, the case may go to hearing. Housing cases are automatically set for hearing by statute [Section 24-34-504(4.1), C.R.S.], but the Commission decides whether or not employment and public accommodations cases should be set for hearing. With input from the Attorney General's Office, the Division provides recommendations to the Commission on whether to set cases for hearing. The Commission conducts a hearing worthiness review by considering a number of factors including the strength of evidence provided, public interest in the issue, the impact of the violation on the public at-large, the availability of remedies, and the cost of holding a hearing compared to possible relief. If the Commission decides to not set a case for hearing, it issues a notice to the complainant that they have the right to file a lawsuit. For cases filed between August 10, 2022 and December 31, 2023 the Division determined that 28 cases had probable cause and 23 cases had some probable cause, as shown in Exhibit 1.2 above. Out of these 51 cases, 41 cases went through mandatory mediation by February 2024. The Division settled 18 cases during mandatory mediation and the Commission set 8 housing cases that failed mediation for hearing. The Commission reviewed the remaining 15 employment and public accommodations cases and set 3 of these cases for hearing.

Exhibit 1.4 shows how many cases the Commission reviewed and the results of the review for cases filed between August 10, 2022 and December 31, 2023.

Exhibit 1.4
Cases Filed August 10, 2022 to December 31, 2023
Commission Reviews and Decisions



Source: Office of the State Auditor analysis of Civil Rights Division complaint data as of February 27, 2024.

Hearings. Under Section 24-34-305(1)(d)(I), C.R.S., for those cases that the Commission determines should be set for hearing, the Commission can conduct the hearing itself or request that an administrative law judge do so. In practice, however, the Commission has an administrative law judge (ALJ) at the Office of Administrative Courts conduct all of its discrimination complaint hearings. If, as a result of the hearing, the ALJ finds that the respondent engaged in a discriminatory practice that violates the law, the Commission is required to issue a cease and desist order to the respondent [Section 24-34-306(9), C.R.S.]. The Commission may also order remedies for the complainant, including, for example, that the respondent must compensate the complainant for lost earnings, reimburse moving costs, pay actual damages, or provide other equitable relief [Sections 24-34-405(2)(a) and 24-34-508(1), C.R.S.]. Once the Commission sets a case for hearing, the Attorney General's Office will represent the complainant in administrative court. Five of the 11 cases set for hearing in Exhibit 1.4, are pending a hearing or settlement, the Attorney General's Office settled 4 cases, 1 complainant decided to file their own lawsuit in state court, and 1 case went to hearing before an ALJ.

Division and Commission Revenue and Expenses

The Division's and Commission's activities are primarily funded with state general funds. The Division also receives federal funds through a workshare agreement with the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD). The Division receives these funds for investigating or referring cases that fall within the jurisdiction of the EEOC or HUD under federal civil rights laws. The Division coordinates with the EEOC and HUD to determine which entity will investigate these complaints to avoid duplication of effort.

Exhibit 1.5 shows the Division's annual state and federal revenues, annual expenditures, and full-time equivalent staff (FTE) for Fiscal Years 2020 through 2024. The Division explained that its funding and FTE increase since 2020 is driven by the increase in the number of complaints that it has received and special projects. One reason for the increase in the number of complaints received is legislation passed over the years expanded definitions around discrimination. For example, the General Assembly passed Senate Bill 23-172 that expanded the definition of prohibited employee harassment and added about 2.6 FTE and almost \$300,000 to the Division's Fiscal Year 2024 appropriation to handle complaints resulting from this expanded definition. Also, House Bill 23-1296 appropriated the Division an additional 1.5 FTE and almost \$300,000 in 2024 to implement a disability rights task force.

Exhibit 1.5

Division and Commission Revenue, Expenses, and Full-Time Equivalent Employees Fiscal Years 2020 through 2024

Fiscal Year	2020	2021	2022	2023	2024	Percent Change
State General Funds	\$2,630,000	\$2,510,000	\$3,250,000	\$3,500,000	\$4,310,000	64%
Federal Funds	\$1,080,000	\$1,390,000	\$1,440,000	\$1,440,000	\$1,340,000	24%
Total Revenue	\$3,710,000	\$3,900,000	\$4,690,000	\$4,940,000	\$5,650,000	43%
Total Expenses	\$3,700,000	\$3,890,000	\$4,680,000	\$4,920,000	\$5,650,000	53%
FTE	30.0	33.3	32.5	36.0	40.8	36%

Source: Office of the State Auditor analysis of the State's accounting system—Colorado Operations Resource Engine (CORE) and analysis of Full-Time Equivalent employee actuals in the Department of Regulatory Agencies annual budget submissions for Fiscal Years 2020-2023, and appropriated for Fiscal Year 2024.

Audit Purpose, Scope, and Methodology

We conducted this performance audit pursuant to Section 2-3-125, C.R.S., which requires the State Auditor to conduct a performance audit of the Colorado Civil Rights Division, created in Section 24-34-302, C.R.S., and the Colorado Civil Rights Commission, created in Section 24-34-303, C.R.S., by December 15, 2024. This audit was also conducted pursuant to Section 2-7-204(5), C.R.S., the State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act. Audit work was performed from November 2023 through September 2024. We appreciate the cooperation and assistance provided by the management and staff of the Department, Division, and Commission during this audit.

We conducted this performance audit 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.

The key objectives of the audit were to:

- **Determine whether the Division has adequate processes to receive, investigate, and make determinations timely on charges alleging unfair or discriminatory practices in violation of the Colorado Anti-Discrimination Act.** We determined that the Division has adequate processes to receive, investigate, and make determinations timely on discrimination complaints.
- **Determine if the Commission has processes in place to fairly and consistently make decisions on appeals and set hearings in accordance with statutory requirements.** We determined that the Commission has processes to fairly and consistently make decisions on appeals and set cases for hearing.
- **Evaluate whether the Commission follows statute by carrying out its powers and duties. Provide information to the General Assembly about how the Commission and Division currently operate and whether statutory change might be needed.** We discuss the results of our work for this objective in Chapter 2 of this report.

To accomplish our audit objectives, we performed the following audit work:

- Reviewed relevant statutes, rules, and Division and Commission policies and procedures.
- Reviewed training materials for both the Division and the Commission. Listened to meeting audio for the Commission's most recent annual training in October 2023.

- Reviewed the Department’s performance plans for Fiscal Years 2019 through 2024 and the Division’s annual reports for Fiscal Years 2012 through 2023.
- Reviewed U.S. Supreme Court Opinions on 303 Creative LLC v. Elenis and Masterpiece Cakeshop v. Colorado Civil Rights Commission cases to better understand the role of the Commission in reviewing appealed cases.
- Interviewed five of the seven commissioners. One commissioner did not meet with us and one Commission seat was open during the duration of our fieldwork.
- Reviewed and analyzed data for discrimination complaints filed with the Division from August 10, 2022 through December 31, 2023.
- Attended two Commission meetings virtually, one in November 2023 and one in February 2024.
- Listened to the audio of six full Commission meetings between August 2022 and October 2023.
- Listened to the audio recordings of General Assembly committee hearings and chamber debates for Senate Bill 21-193, which requires the Commission to receive reports from people alleging maternity care that was not respectful and culturally appropriate.
- Interviewed Division staff regarding the Commission’s role and responsibilities.
- Observed a meeting in which the Division developed recommendations for the Commission on whether to set cases for hearing.

We relied on sampling techniques to support some of our audit work. We chose samples and targeted selections of cases filed between August 10, 2022 and December 31, 2023 because cases filed on or after August 10, 2022 are subject to the statutory change that increased the case completion deadline from 270 days to 450 days.

We relied on sampling techniques to support our audit work as follows:

- A non-statistical random sample of 5 complaints that the Commission reviewed upon appeal to evaluate the factors it considered when making appeal decisions.
- A non-statistical random sample of 25 discrimination complaints to evaluate the timespan between the Division’s complaint processing activities.
- The full population of 15 complaints that the Commission reviewed for hearing worthiness. We reviewed the complaints to determine whether the Division met hearing noticing requirements and the factors Commissioners considered when making hearing worthiness decisions.

- A targeted selection of 8 complaints that lasted longer than 400 days to see if there was an explanation for the long timespan between the complaint filing date and the case end date.
- A targeted selection of 15 complaints that had more than 100 days between different investigation steps to determine the reason for the extended time period between steps.

We chose these samples and targeted selections to provide sufficient coverage of those areas that were significant to the audit objectives; the results of our sample testing were not intended to be projected to the entire population.

As required by auditing standards, we planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Details about the audit work supporting our finding and conclusions are described in the remainder of this report.

A draft of this report was reviewed by the Department, Division, and Commission. Obtaining the views of responsible officials is an important part of the Office of the State Auditor's (OSA) commitment to ensuring that the report is accurate, complete, and objective. The OSA was solely responsible for determining whether and how to revise the report, if appropriate, based on the Department's, Division's, and Commission's comments. The written responses to the recommendations and the related implementation dates were the sole responsibility of the Department, Division, and Commission.

Chapter 2

Colorado Civil Rights Division and Commission

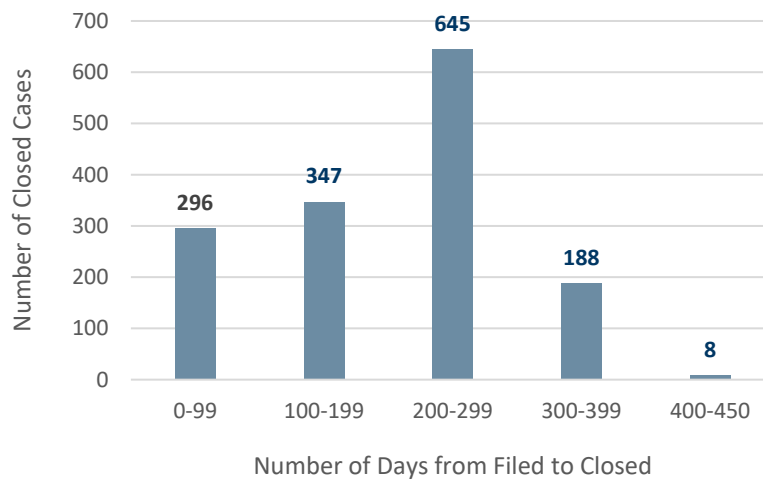
The Colorado Civil Rights Division's (Division's) and Colorado Civil Rights Commission's (Commission's) annual reports state that, "The shared mission of the Division and Commission is to promote equal treatment of all people in Colorado and foster a more open and receptive environment in which to conduct business, live, and work." To fulfill this mission, the Division and Commission divide responsibilities pertaining to civil rights issues such as making rules, issuing studies, recommending policies, holding hearings, investigating civil rights complaints, reviewing appeals, and educating the public on civil rights processes.

This is the second of two performance audits of the Division and Commission required by statute [Section 2-3-125, C.R.S.]. We conducted our first audit under this requirement in 2019. Our 2019 *Management of Civil Rights Discrimination Complaints* performance audit included six recommendations related to the timeliness of the Division's investigations, the Division's data and case management system, and the transparency of the Commission's decision-making and votes on appeals and hearing worthiness. As part of our work on this current audit, we reviewed the Division's and Commission's implementation of recommendations contained in our 2019 report. Overall, we found that the Division and Commission have implemented our prior audit recommendations and have taken steps to improve their overall operations. Specifically, we found:

The Division has improved the timeliness of case investigations. The 2019 audit found that 566 of the 933 cases (61 percent) that we tested were completed in 270 days, which was the statutory deadline at the time of the 2019 audit; this meant that 39 percent of the cases reviewed did not meet the statutory deadline for completion. During the current audit, we reviewed the timeliness of the Division's investigations for cases filed between August 10, 2022 and December 31, 2023; we selected this start date for our review because the statutory deadline for completing investigations increased to 450 days for cases filed starting August 10, 2022. We found that the Division completed all 1,484 cases that it received during this time period within the new 450-day statutory deadline. The Division completed its work for the longest lasting case in 441 days and the average length of cases was 197 days.

Exhibit 2.1 shows how long the Division took to close these 1,484 cases.

Exhibit 2.1
Number of Days to Complete Discrimination Cases Filed Between
August 10, 2022 and December 31, 2023



Source: Office of the State Auditor analysis of the Civil Rights Division discrimination complaint data.

The Division has improved its data collection and case management system. In 2019, we found that the Division was unable to determine if it was making progress on increasing the number of cases completed before the deadline in statute due to a lack of reporting functionality in CaseConnect. Our current analysis shows that the Division made improvements to CaseConnect. The Division can now run aggregate data reports, show data trends by investigation step and case type, and monitor case timeliness through alerts and countdown clocks.

The Commission votes on appeals and hearing worthiness cases in public hearings. During the 2019 audit, we found that the Commission voted on appeals and hearing worthiness reviews in executive session, rather than in public session, in violation of Section 24-6-402(2)(a), C.R.S. During the current audit, we found that the Commission made changes to its processes and now votes on appeals and hearing worthiness reviews in public sessions.

In addition, during this audit, we looked at the various powers and duties listed in statute for the Division and the Commission, as well as at the statutory requirements around the makeup of Commission members. We identified issues in both of these areas, as discussed in this chapter.

Finding 1—Civil Rights Commission Powers and Duties

The Colorado Civil Rights Commission (Commission) is a commission of seven volunteer members who are appointed by the Governor and approved by the Senate to carry out responsibilities delineated by the Colorado Anti-Discrimination Act (CADA). The Commission receives staff support from the Colorado Civil Rights Division (Division), an administrative agency housed within the Department of Regulatory Agencies (Department). Statute and rule lay out the Commission's responsibilities in the discrimination complaint process. Pursuant to statute and state rules, the Commission must:

- Review timely filed appeals of discrimination cases where the Division found no probable cause. Complainants must file appeals within 10 days of the date that the Division issues its letter of determination at the conclusion of its investigation [Section 24-34-306(2)(b)(I)(A), C.R.S.].
- Determine if employment and public accommodations cases with probable cause that did not settle during mandatory mediation should be set for hearing with an administrative law judge [Section 24-34-306(4), C.R.S.]. Housing cases are automatically set for hearing by statute [Section 24-34-504(4.1), C.R.S.].
- Issue its final decision on a case after a hearing before an administrative law judge. The Commission may decide to issue a cease and desist order or dismiss the case [Section 24-34-306(9) and (10), C.R.S.]. This decision is the final step in the State's administrative process for discrimination complaints that go to hearing.

In addition to these complaint process responsibilities, statute states that the Commission has powers and duties related to combatting discrimination in the State [Section 24-34-305(1), C.R.S.]. For example, the Commission regularly exercises its power to adopt, publish, amend, and rescind rules for the implementation of CADA [Section 24-34-305(1)(a), C.R.S.]. Further, at the November 2023 Commission meeting, the Commission adopted changes drafted by the Division to align state rules with Senate Bill 23-172, which prohibited employment discrimination on the basis of marital status and updated the legal definition of harassment.

What was the purpose of the audit work and what work was performed?

The purpose of our audit work was to assess whether the Commission and the Division are carrying out their powers and duties, as delineated in statute.

We researched the legislative history of the Division's and Commission's powers and duties through a review of statute, historical bills, and sunset review reports from the Colorado Office of Policy, Research, and Regulatory Reform, which is also housed within the Department. We interviewed 5 of

the 7 Commission members; of the remaining two commissioners who we did not interview, one commissioner stepped down in December 2023 and another did not respond to our interview requests. We also interviewed the Division Director and Division staff regarding the statutory powers and duties of the Division and Commission. We reviewed training materials the Division provided to the Commission including the Commission Orientation Manual, the Department's Boards and Commissions Handbook, and an audio recording of the Commission's October 2023 annual training. We also observed a rulemaking hearing conducted by the Commission in November 2023. Additionally, we researched the Commission's activities as reported in the Division and Commission's 2021 and 2022 Annual Reports and their most recent studies of discrimination.

How were the results of the audit work measured and what problems did the audit work identify?

Overall, we found that the Commission is fulfilling its complaint process responsibilities outlined in statute. That is, the Commission is reviewing appeals of discrimination cases where the Division found no probable cause, deciding whether to set employment and public accommodations cases for hearing, approving settlements, and issuing the final decision on cases that reach hearing.

However, we found that some of the Commission's powers and duties are not being fulfilled by either the Commission or the Division and the Division—rather than the Commission—is carrying out some of the Commission's powers and duties outlined in statute. Specifically, we found:

- **Policy Recommendations.** Statute states that it is the Commission's power and duty to make recommendations to the General Assembly on legislation concerning discrimination, to recommend policies to the governor, and to submit recommendations to persons, agencies, organizations, and other entities in the private sector to effectuate such policies [Section 24-34-305(1)(g) and (h), C.R.S.]. Division staff told us there are no current efforts by the Division or Commission to make any policy recommendations even though making policy recommendations is described as part of the Commission's mission in the Commission Orientation Manual, in the Department's Board and Commission Handbook, and on the Commission's website. The Division explained that some of the Commission's powers and duties, such as making policy recommendations, could appear as the Commission taking on an advocacy role and hinder its ability to serve as a neutral decision-making body with respect to discrimination cases. Therefore, the Commission has not made any policy recommendations concerning discrimination legislation to the General Assembly or general policy recommendations to the governor since at least 2009, when it was involved with the most recent of the three studies that we list in the next bullet.
- **Discrimination Studies.** Statute states that it is the Commission's power and duty to investigate and study the existence, character, causes, and extent of unfair or discriminatory practices, as defined in CADA [Section 24-34-305(1)(c)(I), C.R.S.]. We found, however, that neither the Commission nor the Division have completed any studies of discrimination since

2009. We identified three reports on topics related to discrimination that were produced by the Division and Commission, with the help of academic and community partners, between 2002 and 2009:

- *A Research-Based Assessment of the Disparity in Educational Achievement Between Black and White Students (2002).*
- *Colorado Hospital Billing and Collection Practices: A Formal Inquiry by the Colorado Civil Rights Commission (2004).*
- *Discriminatory Predatory Lending in Colorado (2009).*

Division staff said that there are no current efforts by the Commission or Division to conduct studies of discrimination beyond the Division analyzing case trends to inform its outreach and the annual report.

- **Intergroup Mediation.** Statute states that it is the Commission's power and duty to intervene in racial, religious, cultural, age, and intergroup tensions or conflicts for the purpose of informal mediation using alternative dispute resolution techniques [Section 24-34-305(1)(i.5), C.R.S.]. Division staff were not able to identify any instances of the Commission mediating an intergroup dispute, and the Division and Commission indicate that they currently have no plans to do so. Division management said it is unsure why the Commission is empowered by statute to mediate intergroup disputes, and could not think of an example of when it might be appropriate for the Commission to take on this function.
- **Education and Outreach.** Statute states that it is within the Commission's powers and duties to (1) formulate plans for the elimination of discriminatory practices by educational or other means [Section 24-34-305(1)(c)(I), C.R.S.], (2) issue publications and reports of investigations and research to promote goodwill and to minimize or eliminate discriminatory practices [Section 24-34-305(1)(e), C.R.S.], and (3) cooperate with other agencies or organizations whose purposes are consistent with CADA in the planning and conducting of educational programs [Section 24-34-305(1)(i), C.R.S.]. We found, however, that the Commission is not conducting any outreach to help eliminate discriminatory practices, but rather the *Division* is conducting outreach on the Commission's behalf. Specifically, the Division conducts outreach to educate the public on the complaint process and CADA requirements. This includes creating instructional videos and conducting online trainings regarding specific aspects of CADA. Division staff also attend community events and conduct advertising campaigns, and the Division partners with academic institutions, non-profits, and other government agencies to provide training and outreach. The Division provides the Commission with monthly updates on its outreach and educational work, but the Commission does not plan or conduct these activities itself.
- **Annual Report.** Statute states that it is within the Commission's powers and duties to prepare an annual report accounting to the governor the completion of the Commission's work. [Section

24-34-305(1)(f), C.R.S.]. However, we found that the Division prepares the annual report on the Commission's behalf. It includes case statistics, anonymized narratives of select cases, and a summary of the Division's outreach and funding for the past year. Division staff told us that the Commission has an opportunity to review the annual report and provide feedback before publication.

Why did these problems occur?

The roles of the Division and Commission have changed over time and the Division sees some Commissioner powers and duties at odds with other Commissioner statutory responsibilities. However, the Division and Commission have not evaluated the powers and duties of the Commission listed in statute to determine if they are still appropriate.

- **First, legislation over the past seven decades has changed the roles of the Division and Commission.** The Commission's current powers, with the exception of mediating intergroup disputes and receiving reports related to maternity care, date back to its creation in 1955 by House Bill 55-284. Until 1979, the Division and Commission operated with the Commission serving as the head of the Division and supervising the Division Director's work. House Bill 79-1355 made the Division Director the head of the Division, instead of the Commission. However, this bill left all of the powers and duties outlined in Section 24-34-305(1), C.R.S. under the Commission rather than clarifying which powers and duties should be carried out by the Division and which should be carried out by the Commission. The 2008 sunset review of the Commission recommended that the roles of the Division and Commission be clarified by formally transferring the power to receive and investigate discrimination complaints from the Commission to the Division. The General Assembly implemented this recommendation in 2009 with Senate Bill 09-110, but other powers and duties conducted by the Division such as education and outreach, issuing publications, and writing an annual report on the Commission's activities remained assigned to the Commission.
- **Second, the Division sees the powers and duties in statute at odds with other Commission responsibilities.**
 - **Neutrality.** The Division told us that the commissioners need to maintain neutrality and cannot take an advocacy role—or have the appearance of being an advocacy group—because the Commission must be impartial when reviewing discrimination complaints. Statute [Section 24-34-305(3), C.R.S.] requires the Commission to presume the innocence of respondents in discrimination complaints, but does not otherwise discuss neutrality. In 2018, the Commission's neutrality received national scrutiny in the U.S. Supreme Court case *Masterpiece Cakeshop v. Colorado Civil Rights Commission*. The Supreme Court opinion called some statements made by Commissioners during a public meeting “clear and impermissible hostility toward the sincere religious beliefs” of the business owner. Because

of the legal risks illustrated by this case, the Division and Commission place a high value on maintaining and communicating the neutral non-partisan nature of the Division and Commission.

- **Confidentiality and Transparency.** The Division sees a risk that the Commission could compromise the confidentiality of cases if the Commission were to conduct studies or make policy recommendations on the basis of cases they have reviewed. Section 24-34-306(3), C.R.S., requires the Commission to keep case details confidential and there is a risk that some of these details could be disclosed during the course of conducting studies. The Division is also concerned that the Commission could violate open meeting laws if multiple Commissioners were to participate in outreach events. Specifically, statute states that if two or more members of the Commission meet it is a public meeting and subject to state open meeting laws [Section 24-6-402(2)(a), C.R.S.]. This means that members of the public must be allowed to attend the meeting, and Division staff must record the minutes of the meeting. If a majority of Commissioners are expected to be in attendance, Division staff must post a notice of the meeting at least 24-hours in advance, along with an agenda, if possible, and any reasons to enter executive session, if needed. This could make it difficult for commissioners to participate in public outreach.
- **Capacity.** The Division raised concerns that the volunteer Commissioners would not have the time or legal knowledge to make policy recommendations and conduct discrimination studies in addition to fulfilling the Commission's complaint process responsibilities. The Commission currently meets monthly for 1-2 hours to review appeals and take action on probable cause cases. The Division estimates that Commissioners spend an additional 4-10 hours per month reviewing case documents in preparation for these meetings. Given this, Division staff explained that Commissioners may not have time to take on these other responsibilities, even if they were appropriate for the Commission to undertake.

Why do these problems matter?

When the statute does not reflect current practices, it can create confusion among commissioners, lawmakers, and the general public as to what the Commission's role is.

First, it can make it difficult for the Division to provide clear training on the Commission's duties. Pursuant to statute, the Division is responsible for annually training the Commission on "understanding and operating within the limits of statutory directives, legislative intent, and any specific directions or laws related to the board or commission's establishment and its powers and duties" [Section 24-3.7-102(1)(a), C.R.S.]. The Division and Attorney General's Office provide the Commission with detailed guidance and training on reviewing appeals and taking action on probable cause cases, but provide minimal guidance on the Commission's powers and duties outlined in Section 24-34-305(1), C.R.S. The Commission Orientation Manual includes detailed procedures on

appeals and hearings and lists making policy recommendations as part of the Commission's mission, though the Division told us that, in practice, it avoids having the Commission take an active role in policy recommendations in order to maintain the Commission's neutrality. The Commission Orientation Manual also includes a copy of Section 24-34-305(1), C.R.S., which lists the Commission's powers and duties, and the Division's most recent annual training for the Commission briefly covered this statute. The trainer listed several of the Commission's powers and duties and stated that the Division issues the annual report and other publications on the Commission's behalf. The trainer also stated that commissioners can make policy recommendations through the Department's legislative liaison, but cautioned commissioners against approaching the General Assembly directly. The training did not provide guidance related to the other Commission powers and duties that the trainer listed such as studies of discrimination and mediation of intergroup disputes.

Second, we found that some confusion may exist within the General Assembly regarding whether the Division and Commission are separate entities and what their respective roles are. For example, in 2021, the General Assembly passed Senate Bill 21-193, which made several changes to statute regarding the rights of a pregnant person to have culturally appropriate maternity care. According to statute, adequate maternity care "is culturally congruent; maintains the person's dignity, privacy, and confidentiality; ensures freedom from harm and mistreatment; and enables informed choices and continuous support" [Section 24-34-305(1)(k), C.R.S.]. This bill empowered the Commission to receive reports alleging instances of inadequate maternity care. However, during the legislative debate of the bill, the bill was described by legislators and members of the public as granting the power to receive reports about inadequate maternity care to the *Division*. Division staff told us that people tend to think of the Division and Commission as if they are the same, though in practice they are different. To implement this bill, the Division created a form on the Commission's website for people to file reports of inadequate maternity care separately from discrimination complaints. The Division said that it does not know why the duty to collect reports on inadequate maternity care was added to the Commission's responsibilities, since the bill did not create a new protected class within CADA or give the Division or Commission authority to investigate these reports. As such, the Division stores these reports and neither the Division nor Commission reviews them. Since there appears to have been some confusion regarding the roles of the Division and Commission in the drafting of this bill, it is not clear whether this outcome aligns with the legislative intent for the bill.

Third, the Commissioners we interviewed were aware that they are responsible for attending monthly meetings, reviewing appeals, and taking action on probable cause cases. However, in general, they did not have a unified perspective on their other statutory responsibilities. One Commissioner told us that the Commission is not involved with rulemaking, another told us the Commission is very involved with rulemaking, and yet another was unclear on the difference between rulemaking and amending statute. One commissioner told us that they were disappointed that the Commission had not made any policy recommendations in their time on the Commission, while another stated that the Commission should not make policy recommendations as it could threaten the Commission's neutrality and give the appearance of bias. Commissioners were also

uncertain whether the Commission’s review of individual appeals constituted a study of discrimination, and whether the power to make policy recommendations is a separate power from rulemaking. The Commissioners we spoke with were aware that the Division collects reports related to inadequate maternity care, but told us either that they had not seen these reports, or that the Division investigates these reports as discrimination complaints.

This confusion regarding the role of the Commission creates a risk that the Commission may not be able to fulfill its intended purpose.

Recommendation 1

The Department of Regulatory Agencies and the Colorado Civil Rights Commission (Commission) should evaluate the statutory powers and duties of the Division of Civil Rights and Commission to determine whether these powers and duties are still appropriate, and if they should work with the General Assembly to amend statute to reflect the current operations of the Division and Commission.

Response

Department of Regulatory Agencies and Civil Rights Commission

Agree

Implementation Date: May 2025

The Department of Regulatory Agencies (Department) and the Colorado Civil Rights Commission (Commission) agree to evaluate the statutory powers and duties of the Division and Commission to determine whether these powers and duties are still appropriate and if they should work with the General Assembly to amend statute to reflect the current operations of the Division and Commission.

Policy Consideration Related to Commission Membership

The Commission has been active in the State since its creation in 1955 and the 1957 enactment of the Colorado Anti-discrimination Act (CADA). The Commission is made up of seven individuals who volunteer their time to do two primary activities.

- First, the Commission reviews employment and public accommodations cases that the Division determined to have probable cause but were unable to settle to decide whether to set those cases for hearing in front of an administrative law judge.
- Second, the Commission reviews appeals from complainants who believe that the Division's determination of no probable cause in their cases was incorrect and who are requesting that the Commission determine whether the Division misapplied the law, or if the Division misinterpreted existing evidence according to state regulations [10.6.A.1, 3 CCR 708-1].

Statute lays out the requirements that individuals must meet in order to serve on the Commission [Section 24-34-303(1)(b)(I), C.R.S.], which include:

- 1 member who is the majority owner of a business with at least 5, but no more than 50 employees.
- 1 member who is the majority owner of a business with more than 50 employees.
- 1 member representing a statewide chamber of commerce or similar organization.
- 3 members who represent employee associations such as labor unions.
- 1 member from the community-at-large.

At least four members of the Commission must be members of groups of people who have been or who might be discriminated against because of disability, race, creed, color, sex, sexual orientation, gender identity, gender expression, national origin, ancestry, marital status, religion, or age [Section 24-34-303(1)(b)(II)(A), C.R.S.]. No more than three members of the Commission may be from the same political party, with no more than six members affiliated with the two major parties. Members must have been registered with the same political party or registered as unaffiliated for at least 2 years immediately preceding their appointment to the Commission [Section 24-34-303(1)(b)(II)(B), C.R.S.]. The Commission must also represent the various geographic areas of the state, as much as is practical [Section 24-34-303(1)(b)(III), C.R.S.].

The Division and Department work with the Governor's Office of Boards and Commissions to find individuals who meet the requirements to be a Commission member. The Governor appoints commissioners to 4-year terms with consent of the Senate. The Division's recruitment strategy includes Division staff discussing the opportunity to serve on the Commission at its outreach events, asking Commission members vacating the board whether they have recommendations for potential applicants, and targeted outreach to individuals who may qualify for the upcoming Commission vacancy.

Changes to Membership Requirements

The General Assembly enacted the current requirements related to Commission membership through House Bill 18-1256. The bill included several new requirements for commission membership, but did not include language to indicate why the General Assembly changed the requirements. House Bill 18-1256 was the final bill passed by the House in the 2018 Legislative Session, with both parties proposing several amendments to the language around Commission composition. According to the discussion at the committee hearings, some legislators were asking to add business representatives, some were asking to add at-large members, and some were asking to increase the requirements around the political affiliation of commissioners. Exhibit 2.2 outlines the changes made to the Commission's membership requirements that were included in the final bill.

Exhibit 2.2

Civil Rights Commission Requirements Before and After House Bill 18-1256

Prior to House Bill 18 1256	After Enacting House Bill 18 1256
Commission Membership	
1 Business Owner	1 Business Owner with more than 50 employees
1 Small Business Owner	1 Business Owner with at least 5, but no more than 50 employees
2 State or Local Government Representatives	1 statewide chamber of commerce or other statewide organization representing business representative
3 Members-At-Large	3 members of an employee association that represents workers in Colorado
	1 Member-At-Large
Political Affiliation	
No more than 4 members in same political party	No more than 6 members affiliated with a major political party and no more than 3 members affiliated with the same political party

Source: Office of the State Auditor analysis of House Bill 18-1256 amending Section 24-34-303, C.R.S.

What policy issue did the audit identify?

Overall, we found that the statutory requirements for commissioner membership may be restricting the Department's and the Division's ability to identify qualified candidates for the Governor's consideration to fill vacancies on the Commission. Specifically, we found a reduction in geographic representation and longer vacancy periods between terms since the new membership requirements were enacted, as discussed below.

Geographic Representation. We reviewed the geographic location of the commissioners between 2017 and 2023 and found that before the 2018 change in requirements for commission membership, 57 percent of the commission members were located outside of the Denver metropolitan area. After 2018, the percentage of commissioners located outside of the Denver metropolitan area has decreased steadily and for the past 2 years, there have been no members outside the Denver metropolitan area. As of 2023, all seven of the commissioners resided in the Denver metropolitan area. This is not consistent with the statutory requirement that commission members be as geographically representative as possible. Exhibit 2.3 shows the change of geographic representation on the Commission from 2017 to 2023.

Exhibit 2.3

Number of Commissioners Residing Inside/Outside of the Denver Metro Area

Year	Denver Metro ¹	Outside Denver Metro	% Outside Denver Metro
2017	3	4	57%
2018	4	3	43%
2019	4	3	43%
2020	4	3	43%
2021	6	1	14%
2022	7	0	0%
2023	7	0	0%

Source: Office of the State Auditor’s analysis of Department data.

¹ We applied the United States Office of Management and Budget’s definition of the Denver-Aurora-Lakewood, CO Metropolitan Statistical Area for this analysis.

Commissioner Vacancies. We reviewed data from the Department on the time it took to find a qualified applicant to fill the last seven open Commission positions, which represents the commission terms that ended and the positions that, therefore, needed a new commissioner since early 2020. Two of those positions remained vacant as of August 30, 2024—one had been vacant for 8 months and the other had been vacant for 6 months. The other five Commission positions were vacant for an average of about 6 months, with one position being vacant for 11 months, before the Department found an applicant to refer to the Governor that met the criteria to fill the open position. This is significantly longer than it generally took the Department to identify qualified and interested candidates for the Commission prior to the enactment of House Bill 18-1256. We reviewed the Division’s and Commission’s 2012 to 2023 Annual Reports and identified eight instances where there were open commission positions prior to the 2018 statutory change in member requirements. According to the start and end dates of these commissioners’ terms in the Annual Reports, the new commission members for these positions were identified before the prior members had completed their terms. As a result, these new members were able to take their place on the Commission immediately upon the expiration of the prior members’ terms.

According to the Department, it is more difficult to find applicants who qualify for open commission positions now than it was prior to the 2018 statutory changes. The time to find an applicant appears to be driven by two main factors.

- **Narrow Qualifications.** The Department explained that the Governor's Office of Boards and Commissions does not typically receive a pool of applicants that fulfill the statutory requirements to serve as commissioners. As a result, the Division and Department have to spend time trying to identify individuals who meet the criteria, which has generally taken some time. Since 2019, the Division begins recruiting for new commissioners about 3 months prior to the end of a commissioner's term, but it has still taken an additional 6 months, on average, after the end of the prior commissioner's term to find a qualified candidate. For example, the Department and Division noted that the statute currently requires that there be three members affiliated with employee associations that represent workers in Colorado. However, members have to meet other requirements as well, per the statute. Department staff said that the prescriptive nature of the statute means that they often have to find very specific qualities for a Commission opening, such as finding someone who is a member of an employee organization, is not affiliated with a particular political party, and is part of a group that may be discriminated against.
- **Time Commitment.** Finding qualified applicants is also challenging because of the time commitment needed from commissioners. This could further reduce the number of applicants. We interviewed 5 of the current commissioners and 4 of them (80 percent) reported that they have a lot of work to do as part of their duties on the Commission. Monthly, they receive packets of information to review that are about 400 pages long, on average. Between Fiscal Years 2019 and 2023, the Commission reviewed an average of 95 appeals per year. The Division estimates that commissioners spend an average of 4-10 hours each month reviewing the packets in addition to the approximately 1-2 hour long monthly Commission meetings. This lengthy volunteer commitment could also be a deterrent to individuals applying for the vacancies.

We conducted a review of 50 states and found that 37 other states have civil rights commissions similar to Colorado's. However, Colorado is one of only three states, including Arkansas and Kansas, where there is only one member appointed at-large, with the remaining seats reserved for representatives of specific stakeholder groups. The other 35 states had more members appointed at-large with fewer prescriptive requirements for categories of representation required by their state statute as compared to Colorado.

Policy Consideration

The General Assembly may want to consider whether the statutory membership requirements for Colorado Civil Rights Commission members should be revised due to the impact that current requirements are having on filling Commission vacancies.

Response

Civil Rights Division and Civil Rights Commission

A revision of the statutory membership requirements for Commission members would improve the process for filling Commission vacancies and encourage member diversity.

The current statutory requirements for commissioner membership limit the Department's and the Division's ability to identify qualified candidates for the Governor's consideration to fill vacancies on the Commission. This leads to a reduction in geographic representation and longer vacancy periods between terms.

The Division closely partners with the Department of Regulatory Agencies leadership and the Governor's Office of Boards and Commissions to actively recruit and fill these commission seats in a manner that comports with the statute. The Division's concern with the statutory language as drafted, is that it is prescriptive and specific to a degree that creates difficulty in recruiting individuals that are able to meet the criteria needed for vacant seats. (Especially in light of the fact that the members of the Colorado Civil Rights Commission are unpaid volunteers without a specific background/training on civil rights cases or issues and who donate approximately anywhere from six to twelve hours a month on this work).

Appendix



Colorado Anti-Discrimination Act Protected Classes			
Protected Class	Employment	Housing	Public Accommodation
Age (over 40)	•		
Ancestry	•	•	•
Color	•	•	•
Creed	•	•	•
Disability	•	•	•
Familial Status		•	
Gender Expression	•	•	•
Gender Identity	•	•	•
Marital Status	•	•	•
Marriage to a Coworker	•		
National Origin	•	•	•
Pregnancy	•		
Race	•	•	•
Religion	•	•	
Sex	•	•	•
Sexual Orientation	•	•	•
Source of Income		•	
Veteran/Military Status		•	

Source: Office of the State Auditor analysis of Sections 24-34-401 through 805, C.R.S.

Colorado Anti-Discrimination Act Exceptions and Statutes of Limitations for Protected Classes		
Complaint Type	Statute of Limitations	Exceptions
Employment	300 days	Religious organizations are not considered employers that must comply with the state's antidiscrimination laws providing that they are not partially supported by public funds [Section 24-34-402(6), C.R.S.].
Housing	1 year	Religious organizations that own housing for noncommercial purposes [Section 24-34-502(3), C.R.S.]. Owners of three or fewer properties can consider the source of income of their potential tenants [Section 24-34-502(1.5)(a), C.R.S.]. A landlord who lives in a building with four or fewer units can consider familial status when renting out those units [Section 24-34-502(8)(a)(III), C.R.S.].
Public Accommodations	60 days	Places principally used for religious purposes such as churches, synagogues, and mosques [Section 24-34-601(1), C.R.S.].

Source: Office of the State Auditor analysis of Sections 24-34-401 through 805, C.R.S.

Glossary

This glossary contains definitions of the protected classes that are defined in guidance, statute, and rule. Some of the protected classes are not defined and, therefore, do not have a definition below.

Age: age as a protected class includes individuals who are 40 and over [Section 24-34-301(1), C.R.S.].

Color: pigmentation, complexion, or skin shade or tone [U.S. Equal Employment Opportunity Commission online guidance].

Creed: all aspects of religious beliefs, observances, practices, as well as sincerely-held moral and ethical beliefs as to what is right and wrong or addresses ultimate ideas or questions regarding the meaning of existence, as well as the beliefs or teachings of a particular religion, church, denomination, or sect [Section 10.2(H), 3 CCR 708-1].

Disability: includes both physical and mental impairment which substantially limits one or more of a person's major life activities and includes a record of such an impairment and being regarded as having such an impairment [Section 24-34-501(1.3)(a), C.R.S.]. Further, an individual with a disability has the right to be accompanied by a service animal without being required to pay an extra charge in any place of employment, housing, or public accommodation [Section 24-34-803, C.R.S.].

Familial Status: one or more individuals who are younger than 18 years of age and living with a parent or legal custodian. This also applies to a pregnant person or someone who is in the process of securing legal custody of an individual younger than 18 [Section 24-34-501(1.6), C.R.S.].

Gender Expression: an individual's way of reflecting and expressing the individual's gender to the outside world, typically demonstrated through appearance, dress, and behavior [Section 24-34-301(9), C.R.S.].

Gender Identity: an individual's innate sense of the individual's own gender, which may or may not correspond with the individual's sex assigned at birth [Section 24-34-301(10), C.R.S.].

Marital Status: a relationship or a spousal status of an individual, including, being single, cohabitating, engaged, widowed, married, in a civil union, legally separated, or in a relationship or spousal status of an individual who has had or is in the process of having a marriage or civil union dissolved or declared invalid [Section 24-34-301(14), C.R.S.].

National Origin: the country where a person was born, or, more broadly, the country from which his or her ancestors came [Section 10.2(V), 3 CCR 708-1].

Pregnancy: current, past or potential pregnancy status and medical conditions related to pregnancy or childbirth and breastfeeding. [U.S. Equal Employment Opportunity Commission online guidance].

Public Accommodation: any place of business engaged in sales to and offering services, facilities, or accommodations to the public, including but not limited to businesses such as restaurants, swimming pools, hospitals, schools, and parks. A place of public accommodation does not include a church, synagogue, mosque, or other place that is principally used for religious purposes [Section 24-34-601(1), C.R.S.].

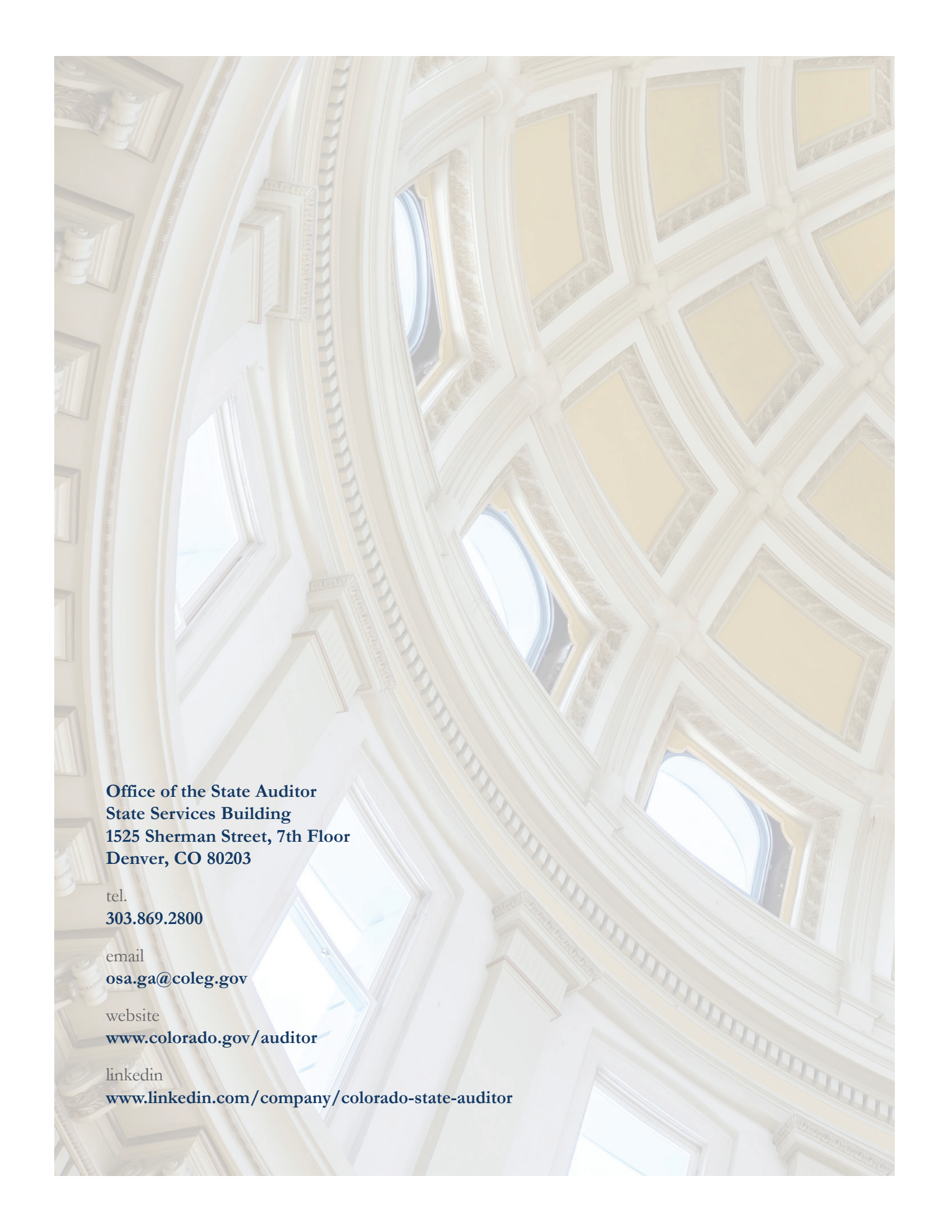
Race: includes hair texture, hair type, or a protective hairstyle that is commonly or historically associated with race. [Section 24-34-301(21), C.R.S.].

Religion: all aspects of religious observance, belief, and practice [Section 10.2(Y), 3 CCR 708-1].

Sexual Orientation: an individual's identity, or another's perception thereof, in relation to the gender or genders to which the individual is sexually or emotionally attracted and the behavior or social affiliation that may result from the attraction [Section 24-34-301(24), C.R.S.].

Steering: the practice of guiding renters or buyers to specific housing areas [Section 24-34-502(1)(h)(i), C.R.S.].





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