



OFFICE OF THE STATE AUDITOR



February 23, 2021

DIANNE E. RAY, CPA
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STATE AUDITOR

MANAGEMENT OF CIVIL RIGHTS DISCRIMINATION COMPLAINTS – STATUS REPORT

Members of the Legislative Audit Committee:

Attached is the status report from the Colorado Civil Rights Division (Division) and Colorado Civil Rights Commission (Commission) on the implementation of recommendations contained in the Office of the State Auditor's (OSA) August 2019 *Management of Civil Rights Discrimination Complaints Performance Audit*.

OSA REVIEW OF DOCUMENTATION

As part of the status report process, we requested and received supporting documentation for each recommendation that the Division and Commission reported as having been implemented. Specifically, we reviewed the following documentation:

- The Division's civil rights case completion timeline for staff, and associated communications with staff and performance plan notations to implement.

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- Division communication with the Office of Information Technology regarding the implementation of reporting capabilities within the Division's case management system (CaseConnect) to provide case completion data, and example reports the Division has since pulled from the system for review.
- Commission and Division forms for documenting the process staff should use for (1) communicating delays in case completion to the parties and (2) requesting an extension due to an administrative delay.
- Training materials provided to Commission members and signed forms attesting commissioners received training.
- A written opinion from the Attorney General's Office affirming the Commission's inclusion of administrative delays as falling within the statutory definition of good cause for extension requests.
- Commission meeting minutes, manual, and other guidance documents from the Division and Attorney General's Office establishing the factors that commissioners will use when making decisions about appeal and hearing worthiness cases.
- Commission meeting minutes recording commission voting on appeal and hearing worthiness cases during open meetings.

Based on our review, the supporting documentation substantiates the Division's and Commission's reported implementation status.



COLORADO

**Department of
Regulatory Agencies**

Colorado Civil Rights Division

February 10, 2021

Dianne E. Ray, CPA
State Auditor
Colorado Office of the State Auditor
1525 Sherman St., 7th Floor
Denver, CO 80203

Dear Auditor Ray:

In response to your request, we have prepared the attached status report on the implementation status of audit recommendations contained in the Management of Civil Rights Discrimination Complaint Performance Audit, conducted at the Department of Regulatory Agencies (Department). The report provides a brief explanation of the actions taken by the Department's Civil Rights Division and Civil Rights Commission to implement each recommendation.

If you have any questions about this status report and the Civil Rights Division's and Commission's efforts to implement the audit recommendations, please contact Aubrey Elenis, at (303) 894-7816 or Aubrey.elenis@state.co.us.

Sincerely,

Aubrey Elenis

Aubrey Elenis
Division Director



AUDIT RECOMMENDATION STATUS REPORT

AUDIT NAME	Management of Civil Rights Discrimination Complaints Performance Audit
AUDIT NUMBER	1820P
AGENCY	Department of Regulatory Agencies, Colorado Civil Rights Division and Colorado Civil Rights Commission
DATE OF STATUS REPORT	February 10, 2021

SECTION I: SUMMARY OF RECOMMENDATIONS TO THE DIVISION

REC. NUMBER	AGENCY'S RESPONSE	ORIGINAL IMPLEMENTATION DATE	CURRENT IMPLEMENTATION STATUS	CURRENT IMPLEMENTATION DATE
1-A	Agree	January 2020	Implemented	January 2020
1-B	Agree	January 2020	Implemented	January 2020
1-C	Agree	January 2020	Implemented	January 2020
3	Partially Agree	January 2020	Implemented	June 2020
4	Agree	January 2020	Implemented	January 2020

SECTION I: SUMMARY OF RECOMMENDATIONS TO THE COMMISSION

REC. NUMBER	AGENCY'S RESPONSE	ORIGINAL IMPLEMENTATION DATE	CURRENT IMPLEMENTATION STATUS	CURRENT IMPLEMENTATION DATE
2-A	Partially Agree	September 2019	Implemented	November 2019
2-B	Partially Agree	September 2019	Implemented	November 2019
2-C	Partially Agree	November 2019	Implemented	November 2019
5	Agree	January 2020	Partially Implemented	February 2021
6-A	Partially Agree	October 2019	Implemented	October 2019
6-B	Partially Agree	October 2019	Partially Implemented	February 2021
6-C	Partially Agree	October 2019	Implemented	September 2020

SECTION II: NARRATIVE DETAIL

RECOMMENDATION 1-A

The Colorado Civil Rights Division (Division) should improve the timeliness of its investigations of and determinations on complaints by:

Implementing internal timeliness goals and expectations for each milestone in the process (e.g., notifying the respondent, requesting information from each party, completing the review of the parties' statements, contacting parties for interviews, completing the determination, and bringing the case to the Commission) that do not rely on the parties' time extensions for case completion, allow sufficient jurisdictional time for cases that may result in complainant appeals, and allow time for Commission review of appeals or case hearing worthiness.

CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	January 2020
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AGENCY UPDATE

The Division has developed a case completion timeline that creates deadlines for processing steps to be completed within the statutory requirement of 270 days, without the use of jurisdictional extensions of time. This timeline was developed in November 2019 and shared with staff in January 2020. Completing cases within this timeline is a performance expectation for all staff who have duties related to the processing of cases. Timeliness goals and expectations were added to staff performance plans in July 2020, when the performance plans for the 2020-2021 performance period were put in place for all State of Colorado executive branch employees. This timeline allows 60 days for the appeals process or 60 days for the Commission to decide if it wants to set a case for hearing if conciliation efforts do not result in a resolution between the parties. The Division is collaborating with the Office of Information and Technology to create reports generated by the Division's case management system (CaseConnect) that show how long a case has been in a particular stage in the case process, as well as the overall age of cases from the date of filing.

RECOMMENDATION 1-B

The Colorado Civil Rights Division (Division) should improve the timeliness of its investigations of and determinations on complaints by:

Implementing a process to track data on staff performance against the timeliness goals established in response to RECOMMENDATION 1 PART A.

CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	January 2020
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AGENCY UPDATE

The Division is using CaseConnect reports that show the age of a case from the date of filing to the current date and how long a case has been at a certain stage in the case process. CaseConnect can show all cases assigned to a specific staff member, and the current status of the case.

RECOMMENDATION 1-C

The Colorado Civil Rights Division (Division) should improve the timeliness of its investigations of and determinations on complaints by:

Using the information from the tracking implemented in response to RECOMMENDATION 1 PART B to comprehensively review the time needed to complete work and use the review to identify and pursue (1) system-wide methods to increase productivity and timeliness; (2) processes to promptly reassign cases when staff leave; and (3) additional resources, if needed.

CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	January 2020
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AGENCY UPDATE

Using information and evidence obtained following the implementation of recommendations 1-A and 1-B, the Division tracked data to determine how much time staff need to complete cases. This information revealed that staff needed more time at the front end of cases to collect and organize evidence in a manner that would allow for more efficient and expedient investigation. As a result, the Division created and hired three “Investigative Specialists” to address this data-driven need for change. The Division also hired two additional investigators to reduce the caseload of investigators and reduce the length of time taken to complete investigations. The age of cases and completion of dates can be monitored in the Division’s CaseConnect system. If a staff member resigns, the staff member’s direct supervisor is responsible for re-assigning that staff member’s caseload within one week and collaborates with other managers to distribute the caseload in an equitable manner.

RECOMMENDATION 2-A

The Colorado Civil Rights Commission (Commission) should ensure that it is fulfilling its statutory obligations regarding time extension requests by modifying its rules and/or policies to:

Prohibit the Colorado Civil Rights Division (Division) from initiating requests for time extensions through the practice of staff asking the complainant and respondent parties to make requests to the Commission on the Division’s behalf.

CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	November 2019
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AGENCY UPDATE

The Commission and Division worked collaboratively to develop a process based on the Commission’s updated rules, by which the Division will report to the parties any administrative delay, explain the consequences of the delay, and explain the process for requesting an extension of time to protect the parties’ rights. Division staff have undergone training regarding how to present the issue so as to avoid any appearance that the Division is asking for the extension, and Division staff must fill out the second page of the procedural document.

RECOMMENDATION 2-B

The Colorado Civil Rights Commission (Commission) should ensure that it is fulfilling its statutory obligations regarding time extension requests by modifying its rules and/or policies to:

Require all extension requests to articulate the reason the party needs more time.

CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	November 2019
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AGENCY UPDATE

The Colorado Civil Rights Commission has implemented a Jurisdictional Extension of Time Good Cause Procedure, which, per Commission rule Section 10.7 (B) (3 CCR 708-1) (amended, July 2020) must consider “all relevant factors . . . including but not limited to, 1) Whether the failure to grant an extension would jeopardize the rights of any party; 2) Whether there have been administrative delays that would adversely affect the rights of any party, 3) Whether there are other factors outside the control of any party, including any administrative delays during the investigatory process of the Division (amended language from July 2020 rule-making), that caused delays in the administrative process; and 5) whether the rights of any party would be unduly prejudiced by the granting of an extension. A worksheet utilized by Division staff is used to provide information to the Commission for its consideration to determine if good cause has been demonstrated, to assist in its decision making.

RECOMMENDATION 2-C

The Colorado Civil Rights Commission (Commission) should ensure that it is fulfilling its statutory obligations regarding time extension requests by modifying its rules and/or policies to:

Outline how it will assess each time extension request to ensure consideration of the factors cited in rule and how it will document the assessment’s adherence with rules.

CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	November 2019
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AGENCY UPDATE

The Jurisdictional Extension of Time Good Cause procedure and worksheet for documenting such requests were implemented in November 2019. The Commission approved this process and worksheet, and received additional training at its annual September 2020 commission member training regarding the responsibilities of the Commission’s liaison when reviewing and considering such requests. The new worksheet is designed to ensure that the Commission understands who has requested the extension and the basis of the request for the extension, which will provide improved transparency to the Commission during the process.

RECOMMENDATION 3

The Colorado Civil Rights Division (Division) should discontinue initiating time extension requests that statute allows the complainant and respondent parties to make. If the Division determines that it cannot complete its work without reliance on time extensions, it should work with the Colorado Civil Rights Commission (Commission) to seek legislative change to authorize the Division to request extensions directly. Alternatively, if the Division does not agree that it should discontinue initiating time extension requests to complete its work, the Division should work with the Commission to obtain a written opinion from the Attorney General’s Office affirming that its practice is within statutory requirements and intent.

CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	June 2020
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AGENCY UPDATE

The Division informs all parties of their right to request a jurisdictional extension of time if the extension falls within the statutory good cause definition. The guidelines and worksheet for the Jurisdictional Extension of Time Good Cause Procedure explain how requests are evaluated. The Division has worked with the Commission to obtain a written opinion from the Attorney General’s Office affirming that any and all practices going forward are within statutory requirements and intent.

RECOMMENDATION 4

The Colorado Civil Rights Division (Division) should ensure that the planned updates to CaseConnect include modifications to allow the Division to efficiently query the system or run reports to provide information needed for management to achieve its objectives, comply with statutes, and produce accurate external reports.

CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	January 2020
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AGENCY UPDATE

CaseConnect is now capable of producing reports with respect to information pertinent to the Division’s objectives and obligations. The Division continues to work closely with the Office of Information and Technology to ensure reporting accuracy, as well as to create additional reports and system queries consistent with this recommendation.

RECOMMENDATION 5

After the Colorado Civil Rights Division has modified CaseConnect to allow queries, in response to RECOMMENDATION 4, the Colorado Civil Rights Commission should use the data available from CaseConnect to study and make recommendations to address discrimination, as required by statute.

CURRENT IMPLEMENTATION STATUS	Partially Implemented	CURRENT IMPLEMENTATION DATE	February 2021
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AGENCY UPDATE

The Division continues to work with the Office of Information and Technology (OIT) to create reports and system queries consistent with this Recommendation. The Division’s management meets with OIT staff regarding CaseConnect’s development status, which includes specific reporting or system query needs or concerns. Using information and evidence provided by CaseConnect, the Division engaged the Commission in rulemaking during June 2020. Additionally, the Division continues to use CaseConnect data to draft its Annual Report. The Division’s FY 2020 Annual Report will be formally provided to the Commission for review and acknowledgement so that the Commission may use the information contained therein to issue educational information and make recommendations. Lastly, using CaseConnect data, the Division has created a public-facing dashboard, found at <https://ccrd.colorado.gov/colorado-civil-rights-division-dashboard> that illustrates status, progress, and the commitment made by Colorado Civil Rights Commission and the Colorado Civil Rights Division to ensure a Colorado for all.

RECOMMENDATION 6-A

The Colorado Civil Rights Commission should operate in a transparent and accountable manner and implement rules or policies while maintaining necessary confidentiality, with respect to appeals and cases it considers for hearing worthiness, by:

Documenting the consideration of each appeal and hearing worthiness case that demonstrates the application of the factors in rules and policies.

CURRENT IMPLEMENTATION STATUS	Implemented	CURRENT IMPLEMENTATION DATE	October 2019
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AGENCY UPDATE

When this audit report recommendation was presented, the Commission agreed to engage in training. In October 2019 and September 2020, the Commission received thorough training on its obligations related to appeals and hearing worthiness. The Commission members now present their review of the appeal to the full Commission and state whether the appellant has identified a disregard or misapplication of applicable law or a disregard or misinterpretation of the available evidence. The Commission Chair invites additional discussion from the balance of the Commission after each presentation and before moving on to the next appeal on the agenda. When reviewing matters for hearing worthiness, the Commission receives a report from a member of the Division regarding strengths and weaknesses of the case, and the Commission has an opportunity to discuss whether it wants to notice a case for hearing or not. A memorandum notifying the Commission members of the implementation of the rules and policies used for the consideration of each appeal and hearing worthiness case was provided to Commission members during the September 2020 Commission meeting and training. This document and accompanying training materials are provided to Commissioners at onboarding and again during the Commission’s annual training.

RECOMMENDATION 6-B

The Colorado Civil Rights Commission should operate in a transparent and accountable manner and implement rules or policies while maintaining necessary confidentiality, with respect to appeals and cases it considers for hearing worthiness, by:

Discussing the factors in rules and policies, and commissioners’ perspectives on how these factors should be applied to each appeal and hearing worthiness case, and use the discussion as a basis for decision-making.

CURRENT IMPLEMENTATION STATUS	Partially Implemented	CURRENT IMPLEMENTATION DATE	February 2021
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AGENCY UPDATE

As noted above, the Commission member who is assigned the appeal for review now articulates his or her reasoning in relation to Commission Rule 10.6, and the entire Commission is invited by the chair to comment, question, or provide additional feedback for consideration. The Commission takes no action on the appeal while in the executive session of the meeting and votes on the question of whether to affirm, remand, or reverse the Director’s initial determination in public session, after the confidential review has been completed. Beginning at the February 26, 2021 meeting, commissioners will provide an attestation during the public session confirming that the rules and policies used for the consideration of each appeal and hearing worthiness case were followed for each case considered.

RECOMMENDATION 6-C

The Colorado Civil Rights Commission should operate in a transparent and accountable manner and implement rules or policies while maintaining necessary confidentiality, with respect to appeals and cases it considers for hearing worthiness, by:

Voting on appeals and hearing worthiness cases during open meetings, in accordance with statute.

CURRENT
IMPLEMENTATION
STATUS

Implemented

CURRENT
IMPLEMENTATION
DATE

September 2020

AGENCY UPDATE

The Commission votes on appeals and cases before the Commission for hearing worthiness review in public session. The Commission deliberates cases on appeal and before the Commission for hearing worthiness review during the executive session of the meeting.