



**Attorney General's Quarterly Report
Legal Services Provided to the Commission on
Teacher Credentialing**

May 31, 2018

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California Department of Justice, Office of the Attorney General
Attorney General's Quarterly Report on Legal Services Provided to
the Commission on Teacher Credentialing

The Office of the Attorney General submits this third quarterly report as required by the 2017 Budget Act, Item 6360-001-0407, Provision 7—For Support of the Commission on Teacher Credentialing, payable from the Teacher Credentials Fund.

EXECUTIVE SUMMARY

This third quarterly report provides the information required under Provision 7 for the period of January 1, 2018 through March 31, 2018, concerning the teacher discipline caseload for the Commission on Teacher Credentialing. In addition to the information required under Provision 7, we have also provided the number of *active* adverse action cases – those which have not yet been adjudicated – as well as the total number of adverse action and judicial review cases at the Office of the Attorney General. An adverse action case is *active* until it has been adjudicated, and then becomes inactive until the commission's final decision has become effective. It is then considered *resolved* and ready to be closed. However, the commission's ultimate decision can be challenged in judicial review or other proceedings filed in the superior court, which is considered a separate judicial review case.

After three quarters of data, definitive progress in reduction of the backlog is evident. This quarter, we adjudicated 55 adverse action cases and received 28 new cases from the commission. The total number of adverse action cases (both active and inactive) was reduced from 303 to 286, and the total number of *active* adverse action cases was reduced from 262 to 235. Since the beginning of the first quarter, the backlog has been reduced from 162 adverse action cases to 134, with only 83 of those cases *active* at the end of the third quarter.

The appendix includes a summary of the statistics for this third quarterly report in the same format used in the first two reports. For ease of comparison, the statistical summaries from the first two quarterly reports are also included. The Provision 7 requirements for reporting and a summary of the adjudication process for the commission's cases are also contained in the appendix.

DISCUSSION

Volume of Discipline Cases at the Office of the Attorney General (Provision 7, subdivision (b)(1) and (5))

At the end of the third quarter, after nine months, the reduction of the adverse action caseload for the Commission on Teacher Credentialing continues toward

equilibrium, with a smaller backlog of pending adverse action cases at the Office of the Attorney General.¹

To review, *equilibrium* is established when the number of cases referred in a one-year period is equal to the number of cases resolved, and is also equal to the number of pending cases. The *backlog* is the number of cases above equilibrium. In the first quarter, we identified the equilibrium level based on the annual referral rate of 152 adverse action cases.

However, in the first quarterly report, we did not break down the caseload by *active* and *inactive* adverse action cases, as we did in the second quarter, and now in this report for the third quarter. Counting *active* cases is equivalent to the way the commission counts cases pending at the Attorney General's Office as regularly published in its reports. Measuring the backlog in terms of *active* cases also provides the best insight into the pending caseload because the work of the Attorney General's Office is already complete on *inactive* cases. A case pending at the commission for decision is *inactive*. The commission meets six times per year and during each of its meetings, decisions are made on adverse action cases that have been adjudicated by the Office of the Attorney General. Once the decision is rendered and becomes effective, the case will be closed. The summary of the adjudication process in the appendix provides greater detail.

Figure 1 below shows a snapshot of the active, inactive and total number of adverse action cases pending at the end of the second and third quarters². The total number of adverse action cases remaining at the end of the third quarter was 286, of which 235 were *active*, down from a total of 303 adverse action cases at the end of the second quarter, with 262 *active*.

¹ The Office of the Attorney General represents the commission in three categories of litigation: (1) adverse action administrative cases (accusation and statement of issues), (2) judicial review of adverse action cases, and (3) general litigation unrelated to adverse actions. For more detail, see the summary of the adjudication process in the appendix.

² Adverse action case counts were not broken down into *active* and *inactive* cases for the first quarter ending September 30, 2017.

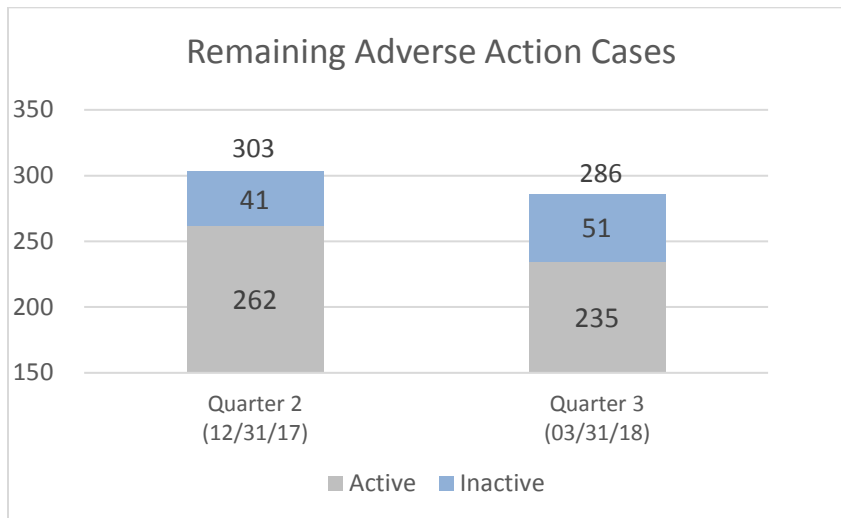


Figure 1

The *backlog* is the number of active cases pending above equilibrium (152). At the end of the first quarter, the backlog was 162³, at the end of the second quarter, it was 110, and at the end of the third quarter on March 31, 2018, the backlog was down to 83. This is shown in Figure 2, below.

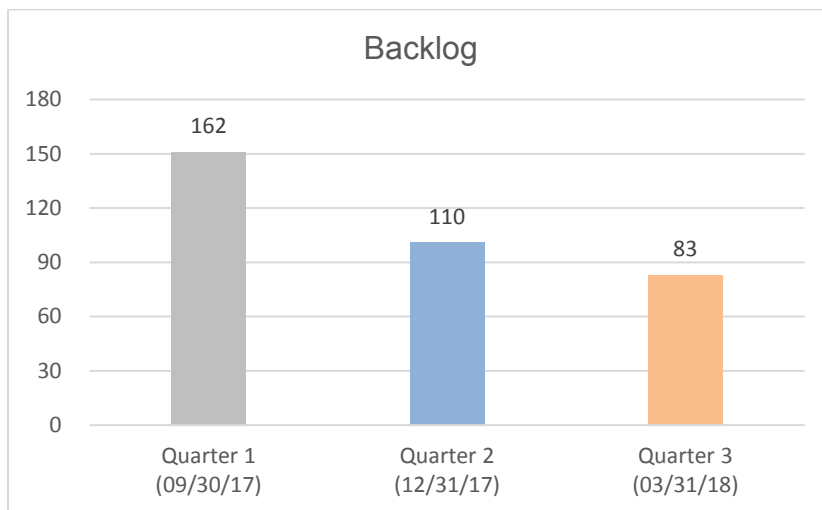


Figure 2

To summarize, although the number of adverse action cases at the Office of the Attorney General at the end of the third quarter was 286, the number of *active* adverse action cases *that had not yet been adjudicated* was 235, and the number of cases awaiting a commission decision was 51. The backlog has been reduced to 83 active adverse action cases.

³ The first quarter backlog number is based on a count of both *active* and *inactive* adverse action cases.

Quarterly Hours and Fees (Provision 7, Subdivision (d))

The Attorney General's staff performed 4,949 hours of legal work related to teacher misconduct in the third quarter – an increase of 740 hours over the second quarter, when 4,209 hours were spent and an increase of 1,192 hours over the first quarter, when 3,757 hours were spent on this work. Comparing the same information in terms of fees, in the third quarter, the Office of the Attorney General billed a total of \$822,888 to the commission related to the teacher misconduct caseload, compared to \$696,200 in the second quarter, which represents an increase in billing of \$126,688, and compared to \$619,625 in the first quarter, an increase of \$203,263. Figure 3 below summarizes the hours and fees for all three quarters.

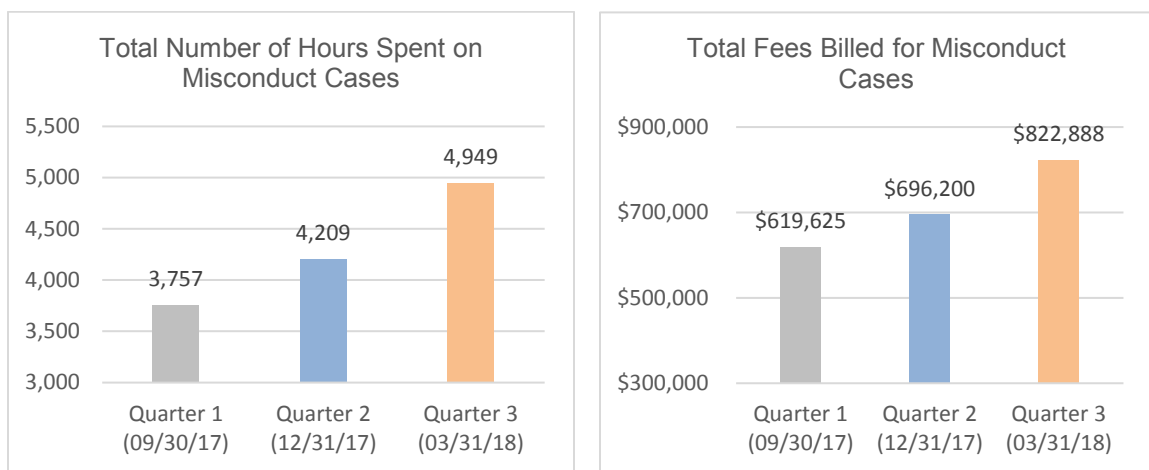


Figure 3

In the statistical summary for quarter three in the appendix, we have also reported hours and fees for general litigation cases, not related to teacher misconduct, which were 252 hours and \$41,670 in fees this quarter.

Average Hours and Fees (Provision 7, Subdivision (c))

In the third quarter, 45 adverse action matters were resolved,⁴ an increase of five resolutions over the second quarter. The average hours to resolve a matter in the third quarter was 98 compared with 61 hours in the second quarter, an increase of 37 hours per resolved case. Comparing the same information in terms of fees, the average fees to adjudicate matters in the third quarter were \$15,723 per resolved matter, an increase of \$6,015 compared with \$9,708 per resolved matter in the second quarter. In the second quarter, there were only six cases that required more than 100 hours to resolve, while in the third quarter, 13 cases required more than 100 hours, and some of them

⁴ *Resolution* is when the effective date of the decision has arrived and the case can then be closed. The case is no longer considered to be *at* the Office of the Attorney General.

required substantially more time to resolve. Consequently, the average number of hours and fees to resolve cases in the third quarter were considerably higher than in the second quarter. Figures 4 and 5 below show these comparisons.

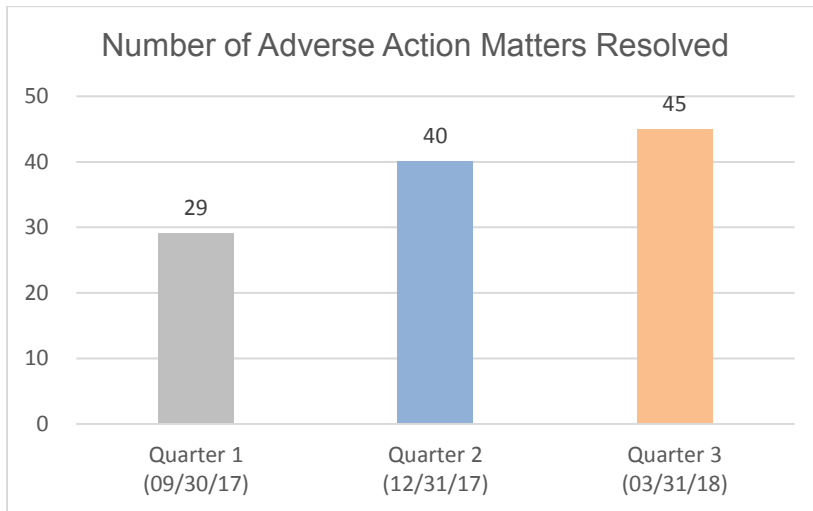


Figure 4

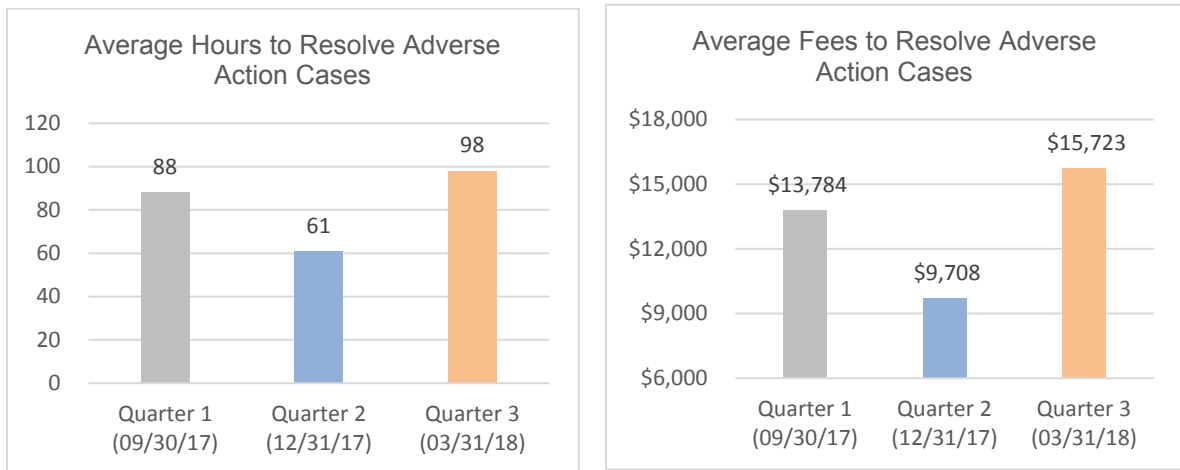


Figure 5

Number of Adjudications and Days to Adjudicate (Provision 7, Subdivision (b)(4))

In the third quarter, 55 adverse action cases were adjudicated in an average of 752 days, compared to an average of 655 days to adjudicate 53 adverse action cases in the second quarter, and an average of 553 days to adjudicate 37 adverse action cases in the first quarter, as shown below in Figure 6. The higher average number of days to adjudicate cases in the third quarter shows that older cases are being adjudicated and removed from the caseload.

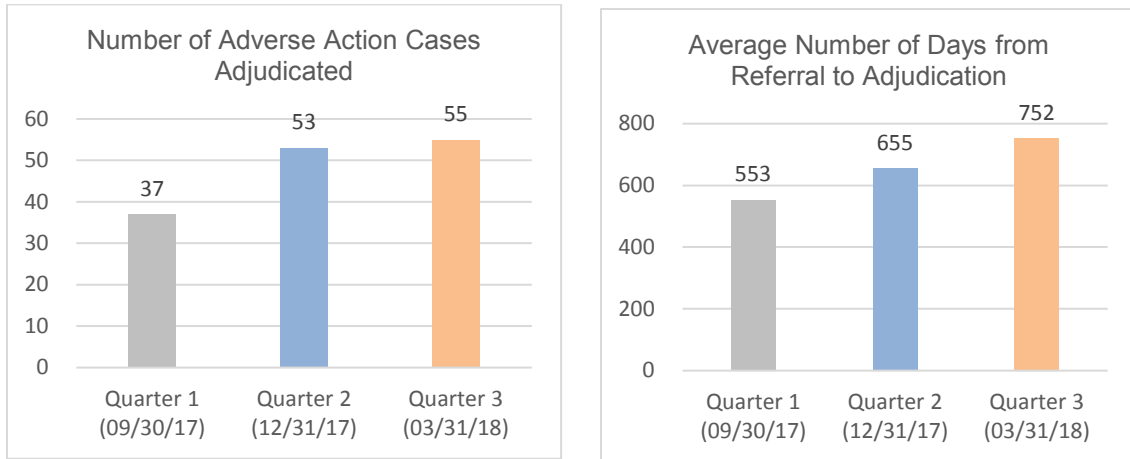


Figure 6

The caseload still contains a significant number of older cases, and that drives up the average number of days for adjudication. As the backlog of older cases goes down, the average number of days for adjudication will decline.

**Hearings
(Provision 7, Subdivision (b)(6))**

In the third quarter, 15 hearings commenced, similar to the second quarter when there were 14; in the first quarter, there were only six. It took an average of 912 days from receipt of the adverse action referral until hearing commencement in the third quarter, compared to an average of 683 days in the second quarter and 500 days in the first quarter. The higher averages in the second and third quarters are a result of older (backlogged) cases going to hearing during those quarters.

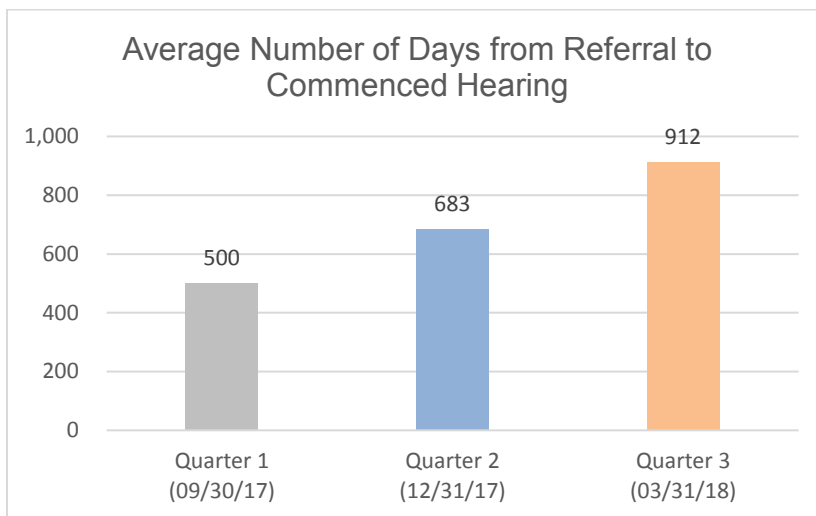


Figure 7

Investigations (Provision 7, Subdivision (b)(2) and (3))

Since July 1, 2016, as a result of increased funding to augment the commission's investigative staff, when a case is referred to the Office of the Attorney General, and the evidence is insufficient to sustain our burden of proof to impose adverse action, the assigned deputy attorney general requests that the commission's investigators conduct further investigation. Currently, based on longstanding protocol, the Licensing Section uses the case management system in the Office of the Attorney General to identify only cases that require further investigation *before* a pleading is prepared. However, deputy attorneys general are also assisted by the commission's investigators *after* pleadings are filed. The quarterly reports do not include data about investigations conducted *after* a pleading is filed. The commission should be consulted directly for data on the full extent the commission's investigators have provided their services.

In the third quarter of this fiscal year, in cases where a pleading had not yet been filed, 16 requests for investigation were made, compared to 14 requests in the second quarter, and 15 in the first quarter. In the third quarter, the Office of the Attorney General received fewer investigations from the commission than in the second quarter; there were nine investigations completed in the third quarter, compared with 12 completed in the second quarter, and 19 in the first quarter.

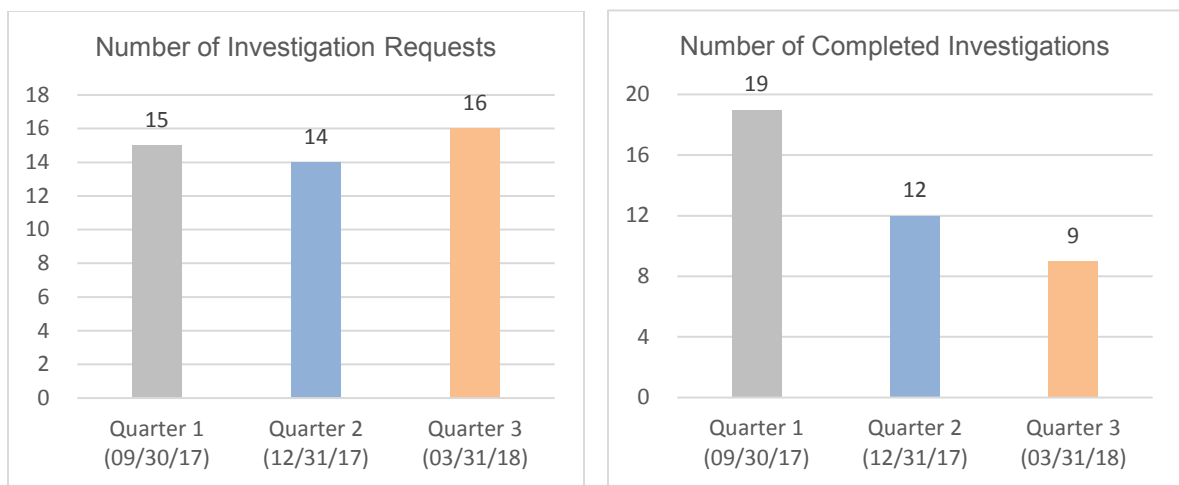


Figure 8

The statistical summary for quarter three in the appendix provides a snapshot of the matters addressed in this discussion. We also reproduced the statistical summaries from the first two quarterly reports for ease of comparison.

CONCLUSION

This third quarterly report provides information regarding the volume, time for adjudication, and funding for the legal work performed by the Office of the Attorney General for the Commission on Teacher Credentialing. With three quarters of data for comparison, and nine months of data altogether, we can see good progress toward reducing the backlog. While we strive to eliminate the backlog of active adverse action cases as quickly as possible for our client, the Commission on Teacher Credentialing, we also share their goal that the representation we provide conforms to the highest standards of the Office of the Attorney General.

This Attorney General's Quarterly Report on Legal Services Provided to the Commission on Teacher Credentialing is also available on the Attorney General's website at <http://oag.ca.gov/publications>.

If you have any questions regarding this report, or if you would like additional information, please contact Sirat Attapit, Director of Legislative Affairs, at sirat.attapit@doj.ca.gov or 916-210-6192.

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STATISTICAL SUMMARY FOR QUARTER THREE – May 31, 2018

Discipline Cases at the Office of the Attorney General Provision 7, subdivisions (b)(1) and (5)			
Number of Active and Inactive Discipline Cases	Adverse Action	Judicial Review	Total
Number of cases beginning of quarter, subdivision (b)(1)	303	9	312
Number of new referrals received during the quarter	28	5	33
Number of cases resolved during the quarter	45	1	46
Number of cases end of the quarter, subdivision (b)(5)	286	13	299

Number of Days from Receipt of Referral to Hearing Commenced Provision 7, subdivision (b)(6)				
Minimum	Maximum	Average	Median	Count
252	1,838	912	974	15

Adverse Action Adjudication – Provision 7, subdivision (b)(4)						
Minimum	Maximum	Average	Goal	Above Goal	Median	Count
25	1,903	752	365	387	665	55

Further Investigation Requested and Received in Adverse Action Cases Provision 7, subdivisions (b)(2) and (3)	
Number of further investigation requests, subdivision (b)(2)	16
Number of supplemental investigations received, subdivision (b)(3)	9

Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivisions (c)(1), (2) and (3)		
For 45 adverse action cases resolved:	Average	Median
Hours per case, subdivision (c)(1)	98	54
Fees per case, subdivision (c)(2)	\$15,723	\$8,935
Costs per case, subdivision (c)(3)	\$571	\$0

Total Hours and Fees – Discipline and General Litigation Cases Provision 7, subdivisions (d)(1), (2), (3) and (4)		
Type of Case	Total Hours	Total Fees
Discipline cases, subdivisions (d)(1) and (2)	4,949	\$822,888
General litigation cases, subdivisions (d)(3) and (4)	252	\$41,670
All cases combined	5,201	\$864,558

STATISTICAL SUMMARY FOR QUARTER TWO – February 28, 2018

Discipline Cases at the Office of the Attorney General Provision 7, subdivisions (b)(1) and (5)			
Number of Active and Inactive Discipline Cases	Adverse Action	Judicial Review	Total
Number of cases beginning of quarter, subdivision (b)(1)	314	7	321
Number of new referrals received during the quarter	29	3	32
Number of cases resolved during the quarter	40	1	41
Number of cases end of the quarter, subdivision (b)(5)	303	9	312

Number of Days from Receipt of Referral to Hearing Commenced Provision 7, subdivision (b)(6)				
Minimum	Maximum	Average	Median	Count
174	1,102	683	709	14

Adverse Action Adjudication – Provision 7, subdivision (b)(4)						
Minimum	Maximum	Average	Goal	Above Goal	Median	Count
22	1,507	655	365	290	631	53

Further Investigation Requested and Received in Adverse Action Cases Provision 7, subdivisions (b)(2) and (3)	
Number of further investigation requests, subdivision (b)(2)	14
Number of supplemental investigations received, subdivision (b)(3)	12

Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivisions (c)(1), (2) and (3)		
For 40 adverse action cases resolved:	Average	Median
Hours per case, subdivision (c)(1)	61	52
Fees per case, subdivision (c)(2)	\$9,708	\$8,561
Costs per case, subdivision (c)(3)	\$49	\$0

Total Hours and Fees – Discipline and General Litigation Cases Provision 7, subdivisions (d)(1), (2), (3) and (4)		
Type of Case	Total Hours	Total Fees
Discipline cases, subdivisions (d)(1) and (2)	4,209	\$696,200
General litigation cases, subdivisions (d)(3) and (4)	118	\$19,878
All cases combined	4,327	\$716,078

STATISTICAL SUMMARY FOR QUARTER ONE – November 30, 2017

Discipline Cases at the Office of the Attorney General Provision 7, subdivisions (b)(1) and (5)			
Number of Active and Inactive Discipline Cases	Adverse Action	Judicial Review	Total
Number of cases beginning of quarter, subdivision (b)(1)	304	9	313
Number of new referrals received during the quarter	38	2	40
Number of cases resolved during the quarter	28	4	32
Number of cases end of the quarter, subdivision (b)(5)	314	7	321

Number of Days from Receipt of Referral to Hearing Commenced Provision 7, subdivision (b)(6)				
Minimum	Maximum	Average	Median	Count
174	845	500	484	6

Adverse Action Adjudication – Provision 7, subdivision (b)(4)						
Minimum	Maximum	Average	Goal	Above Goal	Median	Count
16	1,966	553	365	188	491	37

Further Investigation Requested and Received in Adverse Action Cases Provision 7, subdivisions (b)(2) and (3)	
Number of further investigation requests, subdivision (b)(2)	15
Number of supplemental investigations received, subdivision (b)(3)	19

Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivisions (c)(1), (2) and (3)		
For 29 adverse action cases resolved:	Average	Median
Hours per case, subdivision (c)(1)	88	57
Fees per case, subdivision (c)(2)	\$13,784	\$9,528
Costs per case, subdivision (c)(3)	\$312	\$0

Total Hours and Fees – Discipline and General Litigation Cases Provision 7, subdivisions (d)(1), (2), (3) and (4)		
Type of Case	Total Hours	Total Fees
Discipline cases, subdivisions (d)(1) and (2)	3,757	\$619,625
General litigation cases, subdivisions (d)(3) and (4)	16	\$2,203
All cases combined	3,773	\$621,828

PROVISION 7 MEASURES REPORTED

The 2017 Budget Act, item 6360-001-0407, Provision 7 states:

(a) The office of the Attorney General shall submit a quarterly report to the chairpersons and vice chairpersons of the budget committees of each house of the Legislature, the Legislative Analyst's Office, and the Department of Finance concerning the status of the teacher misconduct discipline caseload and other cases being handled by the office of the Attorney General for the Commission on Teacher Credentialing. The quarterly report shall be submitted by August 30, November 30, February 28, and May 31, of each year for the previous corresponding fiscal quarter.

(b) Each report shall include, at a minimum, all of the following for teacher discipline matters:

(1) The number of matters at the office of the Attorney General at the beginning of the reporting period.

(2) The number of matters for which further investigation was requested by the office of the Attorney General.

(3) The number of matters for which further investigation was received by the office of the Attorney General.

(4) The number of matters adjudicated by the office of the Attorney General.

(5) The number of matters at the office of the Attorney General at the end of the reporting period.

(6) The minimum, maximum, and median number of days from the date the office of the Attorney General receives an accusation or statement of issues referral from the Commission on Teacher Credentialing to the commencement of a hearing at the Office of Administrative Hearings for cases adjudicated during this period.

(c) To determine the average cost of the office of the Attorney General to adjudicate a case representing the Commission on Teacher Credentialing, each report shall provide the following information for cases adjudicated in the reporting period specified in paragraph (a):

(1) The average and median number of hours worked by the staff of the office of the Attorney General to adjudicate accusation and statement of issues matters.

(2) The average and median fees charged by the office of the Attorney General to the commission to adjudicate accusation and statement of issues matters.

(3) The average and median litigation costs to adjudicate accusation and statement of issues matters.

(d) To determine the total activities conducted by the office of the Attorney General to represent the Commission on Teacher Credentialing for each period, the Attorney General shall report the following:

(1) The total hours worked during the period by staff of the office of the Attorney General for representation of the commission in teacher discipline matters.

(2) The total fees charged during the period by the office of the Attorney General to the commission for representation in teacher discipline matters.

(3) The total hours worked during the period by staff of the office of the Attorney General for representation of the commission unrelated to teacher discipline matters.

(4) The total fees charged during the period by the office of the Attorney General to the commission for representation unrelated to teacher discipline matters.

(e) This information shall be provided with the intent that recipients shall be able to determine the caseload input and output of the office of the Attorney General in relation to representation of the Commission on Teacher Credentialing in teacher discipline cases, especially as it relates to determining the average case processing time for accusation and statement of issues representation and adjudication, and proper funding level for handling the teacher discipline caseload and other legal work for the commission. Staff from the office of the Attorney General shall provide timely follow-up information to staff from the offices identified in paragraph (a) upon request if further explanation or information is required.

SUMMARY OF THE ADJUDICATION PROCESS

To provide context for the report, we have included a short primer on the adjudicatory hearing process. The Commission on Teacher Credentialing Committee of Credentials reviews acts or omissions of a credential holder or applicant to determine whether probable cause exists for adverse action. If the Committee finds probable cause and recommends adverse action, the credential holder or applicant has the right to appeal the recommendation, which initiates an adjudicatory hearing under Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code (Administrative Procedure Act). The appeal is referred to the Office of the Attorney General to be prepared for hearing.

The deputy attorney general assigned to the case reviews the evidence supplied by the Commission on Teacher Credentialing to determine its sufficiency to meet the requisite burden of proof. If the evidence is insufficient and circumstances suggest additional avenues for evidentiary development, the deputy may request further investigation from the commission's investigators and the file remains open pending its receipt. When evidence is insufficient and further investigation is not recommended or legal issues prevent prosecution, the Office of the Attorney General declines prosecution and the case is closed.

Based on sufficient evidentiary support, an accusation is prepared to initiate the adjudicatory hearing against a credential holder, or statement of issues to set forth the grounds for denial of an application. The pleading is sent to the Commission on Teacher Credentialing for signature by the executive director, who is the complainant. The pleading is "filed" when the executive director signs it, and it is then returned to the Office of the Attorney General for service on the credential holder or applicant. Once served with an accusation, the credential holder must file a notice of defense within fifteen days or is in default. Once the notice of defense has been received in an accusation case, or the statement of issues has been served in an application denial case, a hearing is scheduled with the Office of Administrative Hearings. Of course, many cases are resolved through settlement before hearing.

The deputy attorney general prosecutes the adverse action case before the Office of Administrative Hearings. Upon conclusion of the hearing, the case is submitted to the administrative law judge who presides over the hearing, issues a proposed decision, and sends it to the Commission on Teacher Credentialing for its ultimate decision.

Subdivision (b)(4) of Provision 7 requests the number of cases adjudicated by the Office of the Attorney General. "Adjudicated" means the work of the Office of the Attorney General is complete to bring the case back before the commission for its final decision.⁵ Adjudication can occur in five ways:

1. Withdrawal of the request for hearing by respondent. Before a pleading is filed, the credential holder or applicant may withdraw the request for a hearing, thereby accepting the recommendation of the Committee on Credentials. The Commission on Teacher Credentialing then receives the recommendation of the Committee of Credentials for its ultimate decision.

⁵ When prosecution is declined, the case is not submitted to the commission for decision, and is closed.

2. Default. If a credential holder does not submit a timely notice of defense, the deputy attorney general prepares a default decision, which is sent to the commission for its ultimate decision.

3. Settlement. The executive director may authorize a consent determination upon terms that are sufficient to provide for the protection of the public, schoolchildren, and the profession, which will be presented to the Committee of Credentials for its recommendation, and then to the commission for its ultimate decision.

4. Hearing submitted. Upon completion of the adjudicatory hearing, the case is submitted to the administrative law judge, who prepares a proposed decision and sends it to the Commission on Teacher Credentialing for its ultimate decision.

5. Prosecution declined. Occasionally, the deputy attorney general determines that the evidence is insufficient and does not recommend further investigation, whereby prosecution is declined and the case is closed.

Even after the commission’s decision is issued, it may not be final. The respondent may exercise the right to petition for reconsideration, and if granted by the commission, the decision will be reconsidered. This can also happen if the commission decides a case based upon the default of the respondent who fails to file a notice of defense or appear at a duly noticed hearing. The commission can vacate the default decision, and additional proceedings are then conducted to ultimately decide the case. Each of these types of “post-submission” events will lengthen case processing and require further adjudication of the case.

Cases that have been adjudicated remain open at the Office of the Attorney General until the final decision is issued by the commission and the decision becomes effective, which concludes the case, except for any judicial review in superior court and ensuing appeal seeking to overturn the commission’s adverse action decision. The commission generally meets six times per year, during which adverse action cases are considered and final decisions made. Therefore, it usually takes two or three months after adjudication before final resolution of an adverse action case. The diagram below shows this process after an adverse action case is referred to the Office of the Attorney General.

