



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

February 28, 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 second quarterly report as required by the 2017 Budget Act, Item 6360-001-0407—For Support of the Commission on Teacher Credentialing, payable from the Teacher Credentials Fund, effective on July 1, 2017.

EXECUTIVE SUMMARY

This second quarterly report builds upon the initial report published on November 30, 2017, by providing the information required under Provision 7 for the period of September 1, 2017 through December 31, 2017 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.

Although two quarters of data does not provide much time to show change in a caseload of individual cases that each take many months to litigate, this report shows that we have made progress. The total number of adverse action cases has been reduced to 303, and the total number of *active* adverse action cases now stands at 262. Compared to 37 last quarter, we adjudicated 53 adverse action cases this quarter, which equates to an annual adjudication rate of 212.

The Appendix includes a summary of the statistics for this second quarterly report in the same format used in the first report. For ease of comparison, the statistical summary from the first quarterly report is 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))**

In the first quarterly report, we noted that the adverse action caseload for the Commission on Teacher Credentialing had not yet reached equilibrium, and that a backlog remained¹. 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

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.

equilibrium. In the first quarter, we identified the equilibrium level based upon the annual referral rate of 152 adverse action cases and reported that, at the end of the first quarter, the volume of adverse action cases at the Office of the Attorney General was 314².

In the Statistical Summary for Quarter Two in the Appendix, below, we report both the numbers of adverse action and judicial review cases. Once an adverse action is final, the Commission’s decision can be challenged through the courts in judicial review. Our focus in representing the Commission is on protection of the public through imposition of discipline in adverse action cases, and therefore we have provided greater detail concerning adverse action cases.

At the end of the second quarter, there were 303 adverse action cases at the Office of the Attorney General, including 29 new referrals received during the quarter – a reduction of 11 cases from the end of the first quarter. Figure 1 shows a comparison between the two quarters.

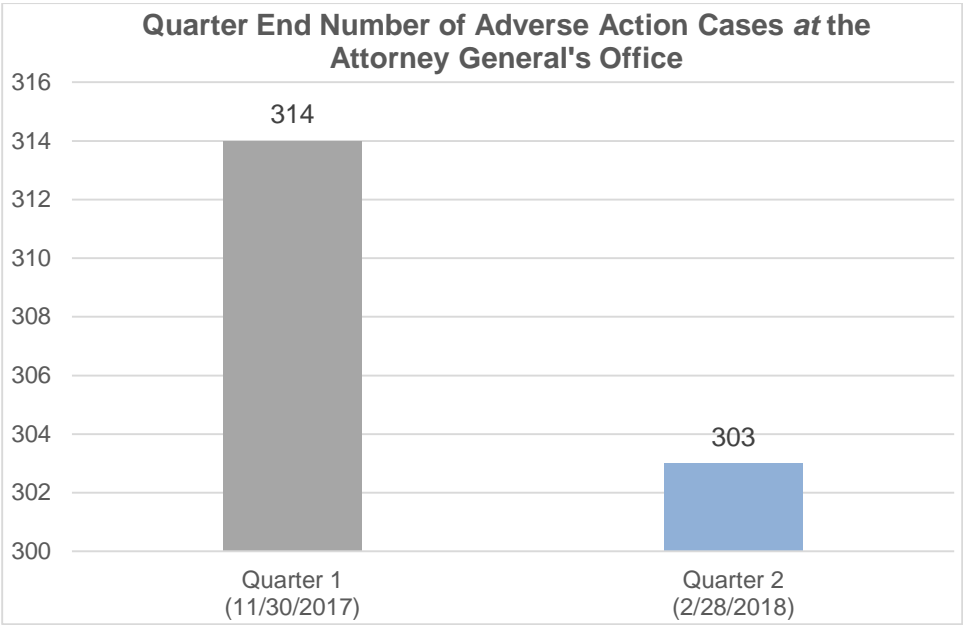
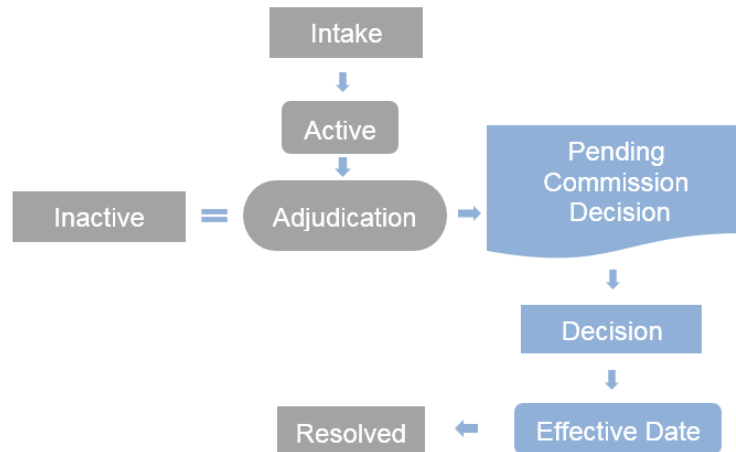


Figure 1.

In addition, it must be kept in mind that these figures represent *all* adverse action cases still *at* the Office of the Attorney General, whether the cases are active or not. This is because a case remains in our office *after adjudication* until the Commission has issued its decision and the effective date of the decision has arrived. Until the decision is effective, it is possible that additional legal work may be required. Because we report all hours that were needed to resolve the cases pursuant to the requirements of Provision 7, subdivision (c), cases remain *at* the Office of the Attorney General until no further legal action can be taken, which is the effective date of the decision. On the effective date, the case is considered resolved and only then is closed – no longer *at*

² In this second quarterly report, the ending number for the first quarter was revised from 313 to 314, due to a correction in the underlying data.

the Office of the Attorney General for purposes of these quarterly reports. The schematic below illustrates this process.



To put this in perspective, although the number of adverse action cases *at* the Office of the Attorney General at the end of the second quarter was 303, the number of *active* adverse action cases *that had not yet been adjudicated* was 262, and the number of cases awaiting a Commission decision was 39.³

Adequacy of Staffing

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

The Licensing Section in the Civil Law Division of the Attorney General’s Office assumed responsibility for the adverse action caseload for the Commission as of July 1, 2016. At that time, we allocated 22,400 hours of legal work per year for this caseload, which is the equivalent of 14 deputy attorney general positions.

The total number of hours of legal work performed by the Attorney General’s staff related to adverse action in the second quarter was 4,209 – an increase of 452 hours over the first quarter, when 3,757 hours were spent on the Commission’s legal work in adverse action cases. Annualized, the 4,209 hours spent this quarter amounts to 16,836 hours. Comparing the same information in terms of fees, in the second quarter, the Office of the Attorney General billed a total of \$696,200 to the Commission compared to \$619,625 in the first quarter, which represents an increase in billing of \$76,575. Figure 2 shows the comparison between the two quarters.

³ If the deputy attorney general determines that the evidence is insufficient and does not recommend further investigation, prosecution is declined and the case is closed. Prosecution was declined in two cases this quarter.

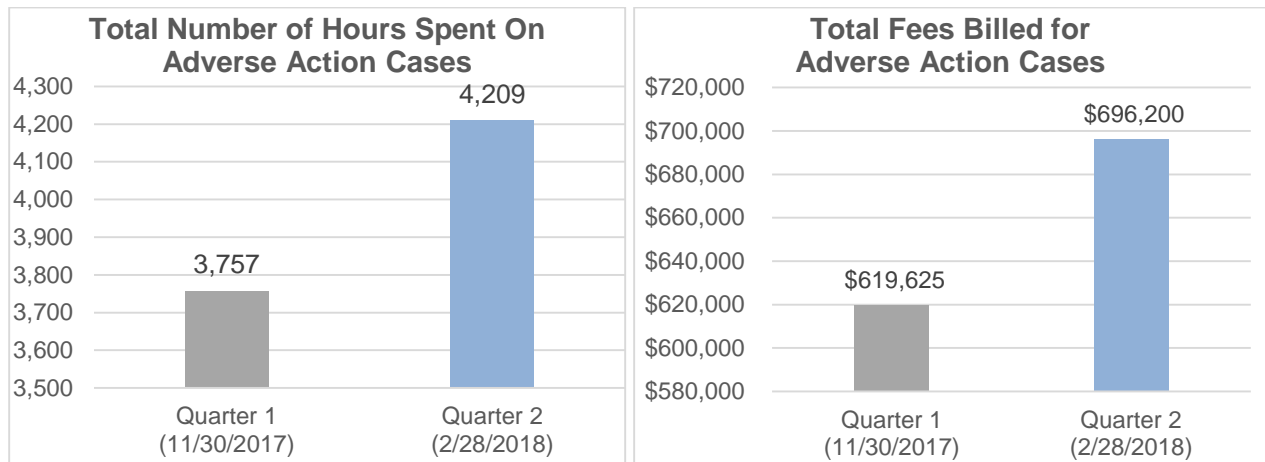


Figure 2.

The primary reason fewer hours were billed than allocated is that it took longer to hire and train staff than we anticipated. Recruitment, interviews, approvals, onboarding, and training began in July 2016, and was completed on December 4, 2017. Hiring good, quality attorneys that are suitable to handle this specialized work through the civil service system takes time. It required serial job postings because the candidate pools established by each posting did not contain enough qualified candidates to hire. Although hiring new staff took longer than anticipated, taking that time to hire very competent, well-suited attorneys was a prudent investment for the future.

In addition, the Commission's cases are spread across nearly half the Licensing Section staff members. Initially, cases were assigned to a limited number of attorneys so that they could learn the work quickly and then help train other attorneys who were assigned the work. To ensure these cases are given high priority, the work was then spread out and assigned to more than 50 deputy attorneys general.

In the Statistical Summary for Quarter Two in the Appendix, below, we have also reported the number of hours and amount of fees in general litigation cases, not related to discipline, which was only 118 hours this quarter.

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

In the second quarter, 40 adverse action matters were resolved,⁴ which is an increase of 11 resolutions compared with the first quarter when 29 adverse action matters were resolved. The average hours to resolve a matter in the second quarter was 61 compared with 88 hours in the first quarter, representing a reduction of 27 hours per resolved case. Comparing the same information in terms of fees, the average fees to adjudicate the matters in the second quarter were \$9,708 per resolved matter – a reduction of \$4,076 compared with \$13,784 per resolved matter in

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

the first quarter. Figures 3 and 4 below show these comparisons between the two quarters.

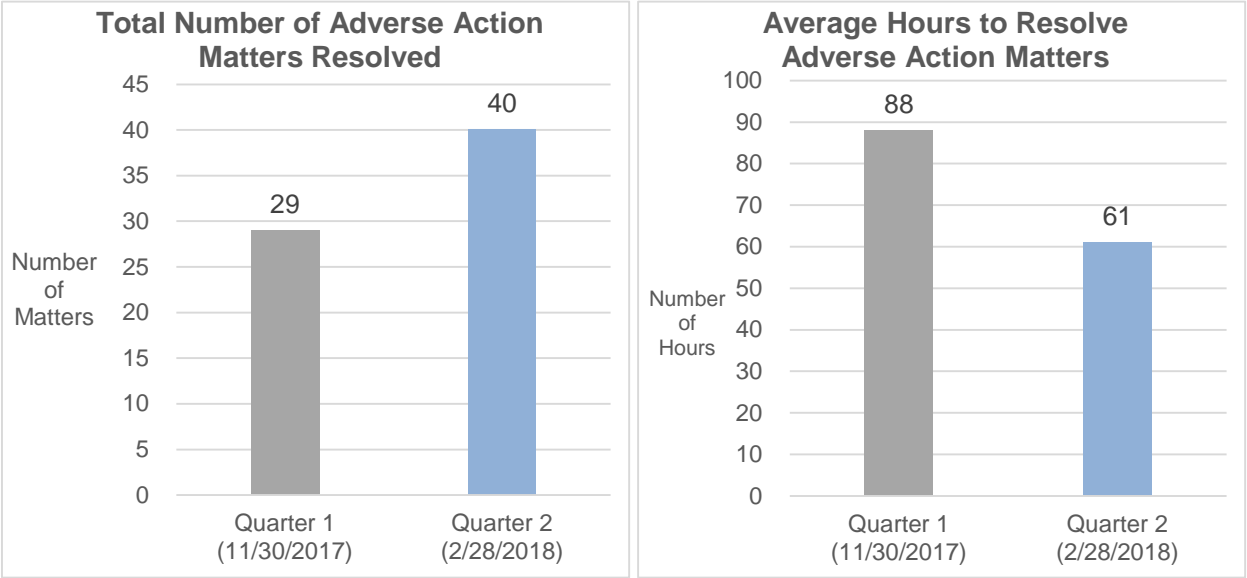


Figure 3.

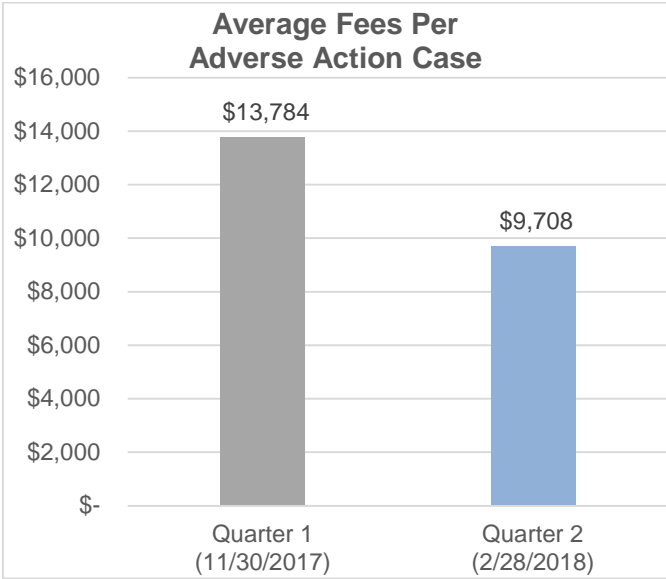


Figure 4.

The reduction of 27 hours per case to reach resolution is significant. Although at this point we only have two quarters of data to compare, and a total of 69 resolved cases between the two quarters, one conclusion that can be reached is that as our staff becomes more adept at handling the Commission’s work, and as the older cases are removed from the caseload, the amount of time needed to resolve cases declines. Over a longer period of time, we should be able to calculate a firmer estimate of the average number of hours required to resolve adverse action cases.

With all of the cases in the Commission’s adverse action caseload being regularly worked and given due attention, we expect the backlog reduction rate will likely increase over time. Two quarters is not enough time to demonstrate the end results of the progress we are making on each and every case every day.

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

In the second quarter, 53 adverse action cases were adjudicated in an average of 655 days, compared to an average of 553 days to adjudicate 37 adverse action cases in the first quarter. As shown in Figure 5, the number of adjudications increased by 16 in the second quarter compared to the first quarter, and the adjudications in the second quarter averaged 102 days longer than the first quarter adjudications.

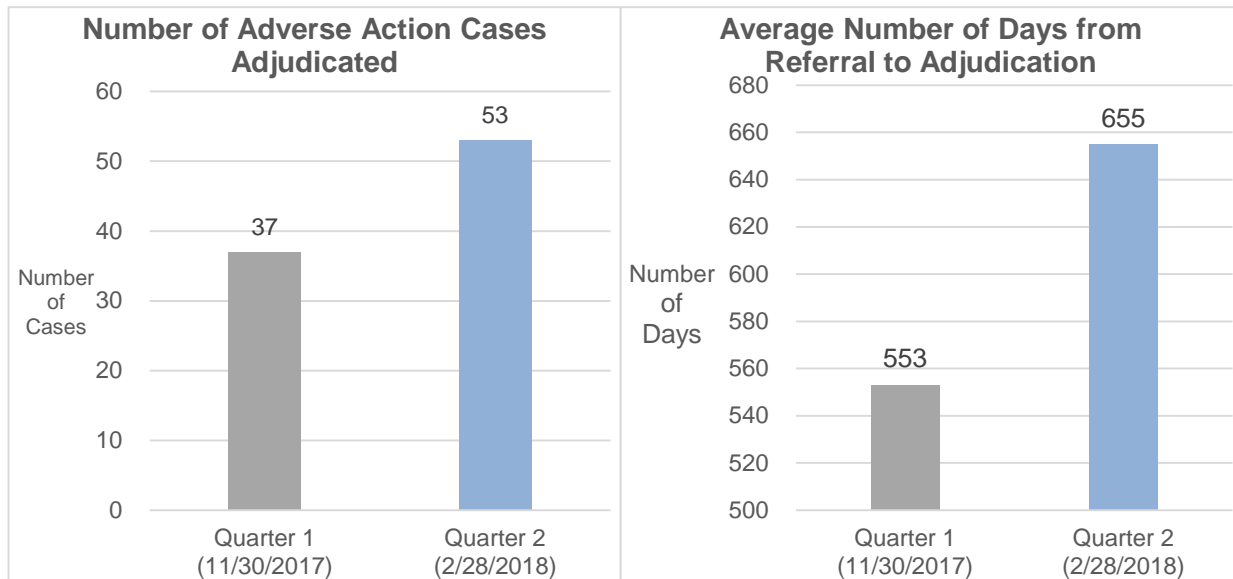


Figure 5.

The 43 percent increase in the number of adjudications of adverse action cases in the second quarter compared to the first is positive progress. If annualized, the 53 adjudications would result in 212 adverse action cases adjudicated. The caseload still contains a significant number of older cases, which drives up the average number of days it takes for adjudication. Once the backlog of older cases is significantly reduced, the average number of days for adjudication will decline.

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

In the second quarter, 14 hearings commenced, which was more than twice the number in the first quarter, when hearings were commenced in six cases. It took an average of 683 days from receipt of the adverse action referrals until the dates the hearings commenced in the second quarter, compared to an average of 500 days in the first quarter. On average, the hearings that commenced in the second quarter had been

pending in the caseload for 183 days longer compared to the cases that went to hearing in the first quarter. The high average shows that older (backlogged) cases are being adjudicated.

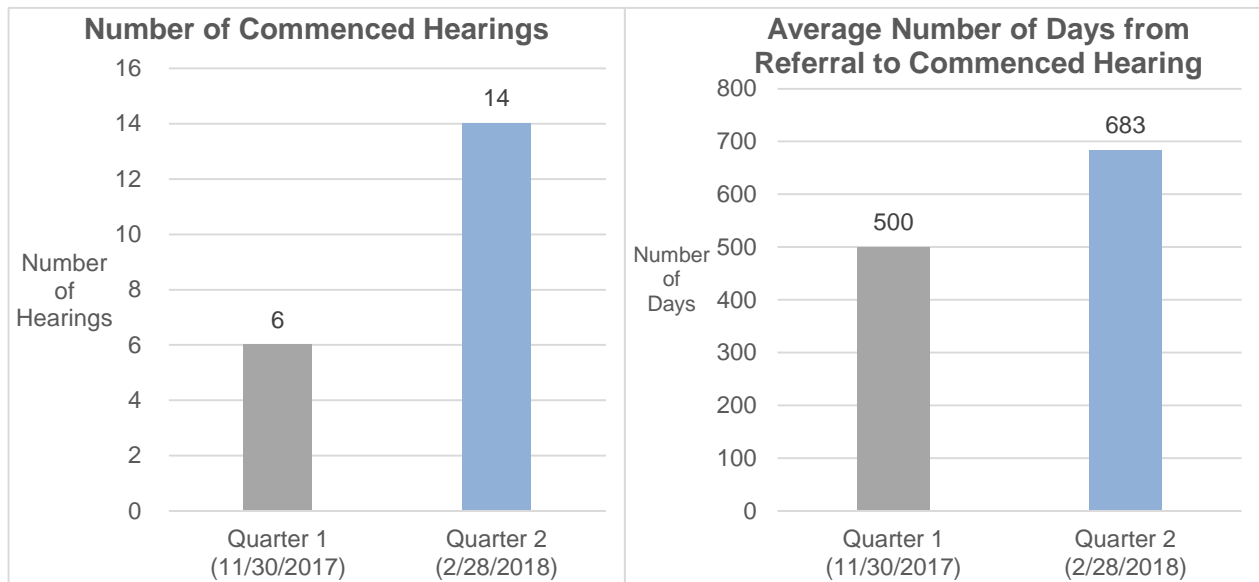
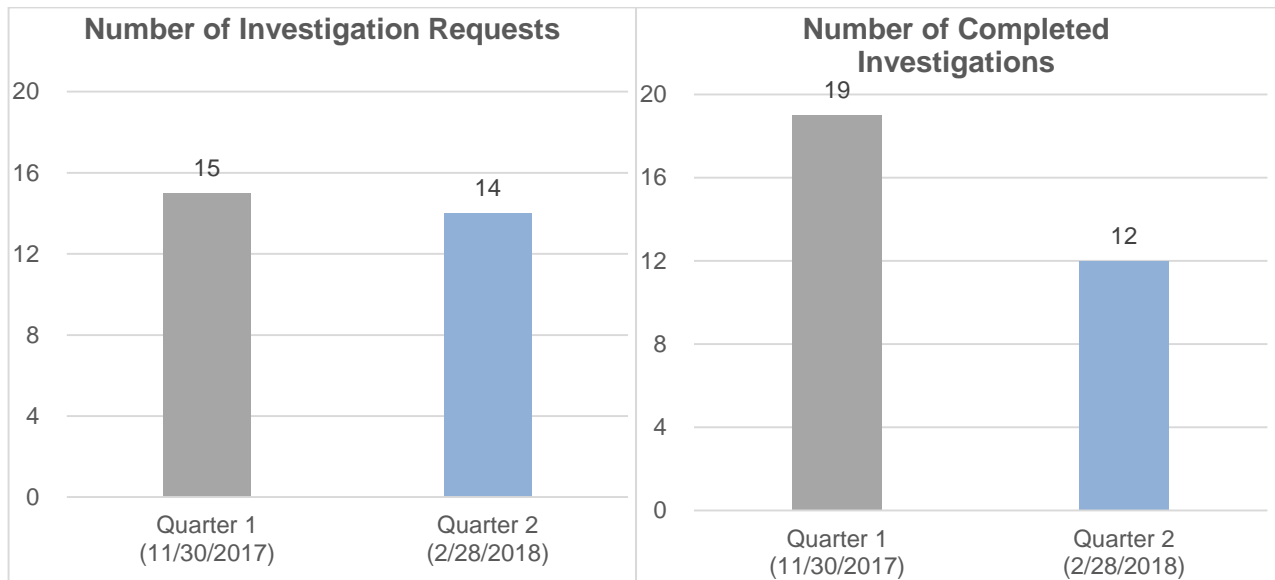


Figure 6.

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

If 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. In the second quarter of this fiscal year, 15 requests for supplemental investigation were made, compared to 14 requests in the first quarter. In the second quarter, the Office of the Attorney General received fewer supplemental investigations from the Commission than in the first quarter; there were 12 investigations completed in the second quarter, compared with 19 completed in the first quarter, as shown below.



The Statistical Summary in the Appendix provides a snapshot of the matters addressed in this discussion. We also reproduced the Statistical Summary from the first quarterly report for ease of comparison and the Provision 7 measures to be reported.

CONCLUSION

This second 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 only two quarters of data for comparison, and only six months of data altogether, the conclusions that can be reached are limited, but progress toward reducing the backlog is evident. As much as we would like to eliminate the backlog of 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 Linda Schneider, Senior Assistant Attorney General, Licensing Section, Civil Law Division, at (619) 738-9411.

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STATISTICAL SUMMARY FOR QUARTER TWO – February 28, 2018

Discipline Cases at the Office of the Attorney General Provision 7, subdivision (b)(1) and (5)			
Number of Discipline Cases and Provision 7 Subdivision	Adverse Action	Judicial Review	Total
Number of cases at the beginning of the quarter. Subdivision (b)(1).	314 ⁵	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 at the 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, subdivision (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, subdivision (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, subdivision (d)(1), (2), (3) and (4)		
Type of Case and Provision 7 Subdivision	Total Hours	Total Fees
In discipline cases, subdivision (d)(1) and (2)	4,209	\$696,200
In general litigation cases, subdivision (d)(3) and (4)	118	\$19,878
In all cases combined	4,327	\$716,078

⁵ The beginning number of adverse action cases was adjusted from 313 to 314, due to a correction in the underlying data for the previous quarter.

STATISTICAL SUMMARY FOR QUARTER ONE – November 30, 2017

Discipline Cases at the Office of the Attorney General Provision 7, subdivision (b)(1) and (5)			
Number of Discipline Cases and Provision 7 Subdivision	Adverse Action	Judicial Review	Total
Number of cases at the beginning of the 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.	29	4	33
Number of cases at the end of the quarter. Subdivision (b)(5).	313	7	320

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

Number of Days from Receipt of Referral to Adjudication						
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, subdivision (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, subdivision (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 Fees and Costs per Adverse Action Case	\$14,096	\$9,528

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

PROVISION 7 MEASURES REPORTED

Provision 7 of the 2017 Budget Act, items 6360-001-0407 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 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 upon 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.

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 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

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

Commission on Teacher Credentialing then receives the recommendation of the Committee of Credentials for its ultimate decision.

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 about two or three months after adjudication before final resolution of an adverse action case.