



Attorney General's Quarterly Report

Legal Services Provided to the Commission on Teacher Credentialing

May 31, 2019

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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 for Fiscal Year 2018-19 as required by the Budget Act of 2018, Item 6360-001-0407, Provision 7—For Support of Commission on Teacher Credentialing, payable from the Teacher Credentials Fund.

EXECUTIVE SUMMARY

This quarterly report provides information required under Provision 7 for the period January 1 through March 31, 2019, concerning the caseload for the Commission on Teacher Credentialing.

The Office of the Attorney General began quarterly reporting in Fiscal Year 2017-18. An aggregate summary for that year on page 13 shows that we received 129 new discipline referrals from the commission in Fiscal Year 2017-18 and resolved 182 cases, reducing the total discipline caseload by 53, from 313 to 260. During the first three quarters of Fiscal Year 2018-19, the Attorney General received 123 new discipline referrals and resolved 173 cases, further reducing the caseload by 50, bringing the total remaining discipline caseload to 210.

This report provides the number of *active* adverse action cases – those that 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.¹ There were 196 adverse action cases both at the beginning and end of the quarter, with new cases replacing older cases. The number of referrals received and resolved were both 39. We adjudicated more adverse action cases than received, thus reducing the number of *active* adverse action cases from 148 to 135. Judicial review cases were reduced from 17 to 14.

With respect to the age of the caseload, 57 percent of the adverse action cases adjudicated this quarter were received before July 1, 2017. At the end of the quarter, 25 cases from that period remained, which is approximately 18 percent of the adverse action caseload.

In addition to a one-page aggregate summary for Fiscal Year 2017-18 and separate summaries for the current and previous quarters of Fiscal Year 2018-19, the appendix beginning on page 9 includes Provision 7 reporting requirements, and a summary of the adjudication process for the commission's cases.

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

DISCUSSION

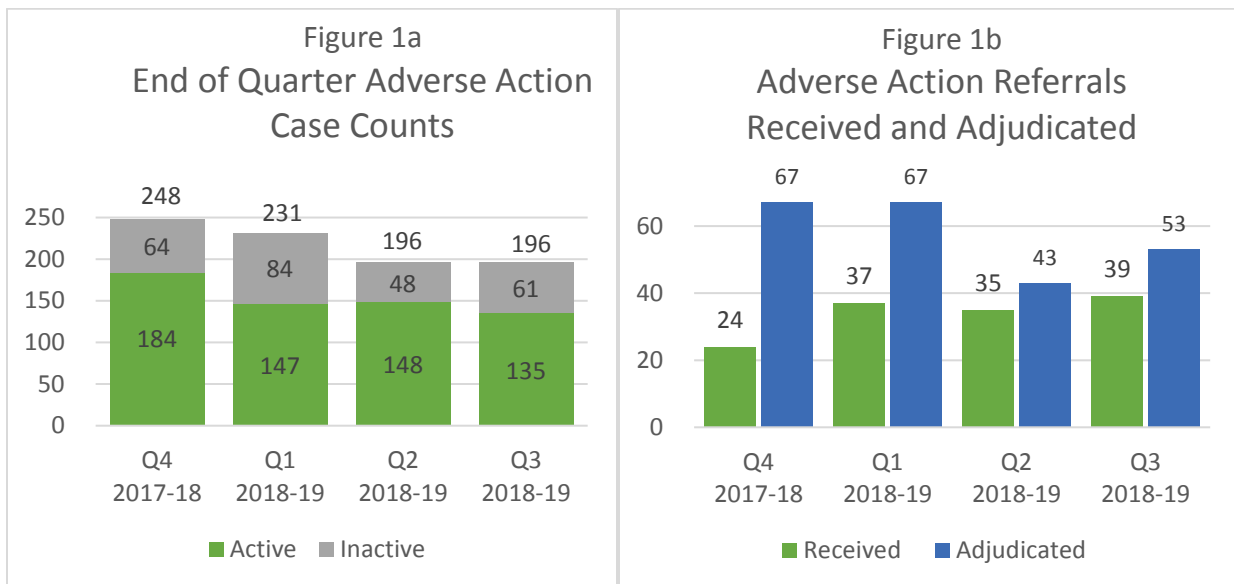
Volume [Provision 7, Subdivisions (b)(1) and (b)(5)]

As discussed in this report, discipline cases are of two types – adverse action cases to revoke, suspend or deny a credential, and judicial review of adverse action decisions. Our focus in representing the commission is on protection of the public through imposition of discipline in adverse action cases.

The Licensing Section of the Office of the Attorney General assumed responsibility for 282 Commission on Teacher Credentialing discipline cases on July 1, 2016 (“inherited backlog”). At the end of the third quarter of Fiscal Year 2018-19, there were 196 adverse action cases, including ten from the inherited backlog, and 14 judicial review cases, for a total of 210 discipline cases at the Office of the Attorney General.

Adverse Action Cases

The adverse action case counts at the end of each of the four most recent quarters are summarized in Figure 1a below. Figure 1b summarizes the number of adverse action referrals received and adjudicated during the same period.



Open adverse action cases can be divided into those that have not yet been adjudicated (active), and those that have been adjudicated (inactive).²

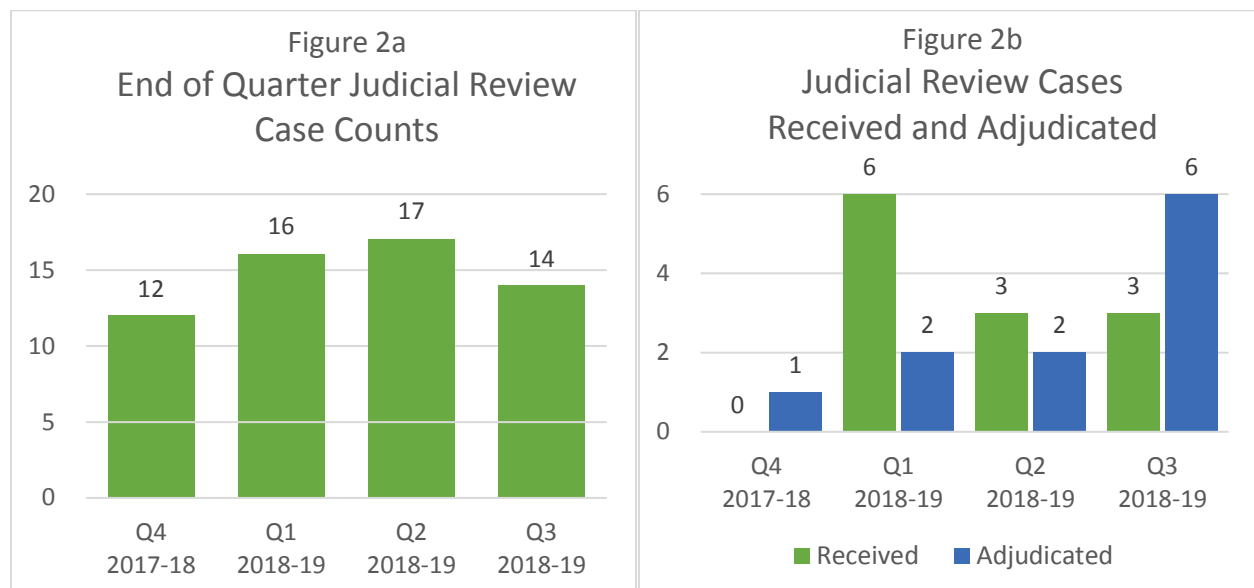
² Counting active cases more closely approximates the way the commission counts cases pending at the Office of the Attorney General, as regularly published in its reports. An inactive case cannot be closed until the Commission on Teacher Credentialing issues its decision and the decision becomes effective. Once a decision becomes effective, the case may be closed and is therefore no longer at the Office of the Attorney General for purposes of this report.

As shown in Figure 1a, during our first reporting year, Fiscal Year 2017-18, we adjudicated more adverse action cases than we received each quarter, reducing the inherited backlog. That year ended with 184 active adverse action cases. In the first three quarters of the second reporting year, Fiscal Year 2018-19, the active adverse action caseload was further reduced by 49 cases, from 184 down to 135. As shown in Figure 1b, during the reporting quarter, the Office of the Attorney General received 39 adverse action referrals and adjudicated 53, continuing to adjudicate more cases than received.

Judicial Review Cases

If a respondent wishes to challenge the commission’s decision, they can petition for judicial review in superior court. When this happens, a new judicial review case is opened.³ Since we began reporting, the number of judicial review cases increased, corresponding to an increase in adverse action cases adjudicated and decisions issued by the commission. While only a small percentage of litigants seek superior court review of the commission’s adverse action decisions, a higher number of decisions issued results in more judicial review cases.

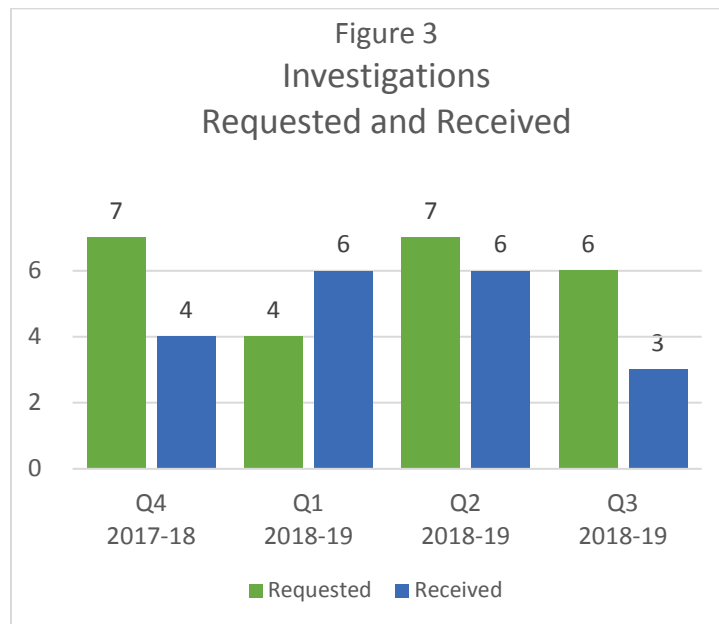
Figure 2a below shows that at the end of the second quarter of the current fiscal year 17 judicial review cases were pending at the Office of the Attorney General, which was the peak number since reporting began. Figure 2b shows the number of new judicial review cases received and adjudicated for the most recent four quarters. Three judicial review cases were referred to the Office of the Attorney General in the third quarter and six were resolved, leaving 14 judicial review cases at the end of the quarter.



³ A detailed summary of the adjudication process is provided in the appendix.

Further Investigations [Provision 7, Subdivisions (b)(2) and (b)(3)]

When evidence in a case is not sufficient to sustain our burden of proof to impose discipline, the assigned deputy attorney general will request further investigation. Figure 3 below displays the number of further investigation requests and investigations received during the most recent four quarters in cases where pleadings had not yet been filed.⁴ Six requests for further investigation were made this quarter and three completed investigations were received.



Adjudications [Provision 7, Subdivision (b)(4)]

In the third quarter of Fiscal Year 2018-19, 53 adverse action cases were adjudicated in an average (mean) of 610 days and median of 611 days.⁵ The quickest adjudication this quarter was completed in 93 days, and the slowest took 1,767 days.

In the summary for this quarter on page 10, we have included the minimum, maximum and median number of days for adjudication of cases in addition to the mean.

⁴ Deputy attorneys general are also assisted by the commission's investigators with additional investigation *after* pleadings are filed. These quarterly reports do not include data about investigations conducted after a pleading is filed. The commission collects more comprehensive data about its investigations and should be consulted for greater detail.

⁵ The median is less distorted by outliers than the average (mean).

Figures 4a and 4b below show the numbers of adverse action cases adjudicated and the median number of days from referral to adjudication for the past four quarters.

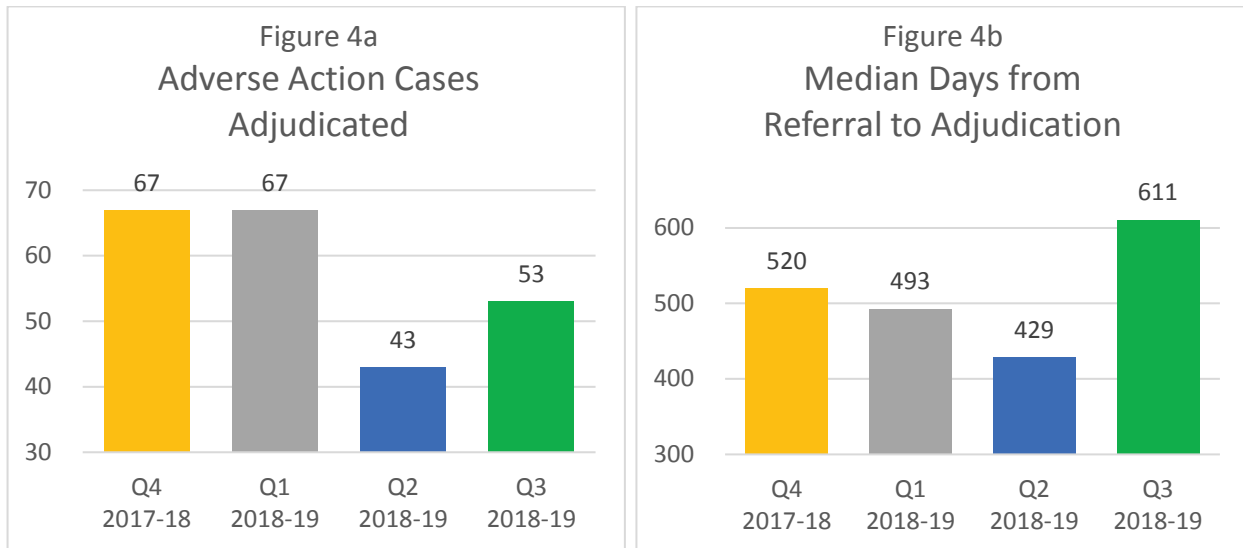
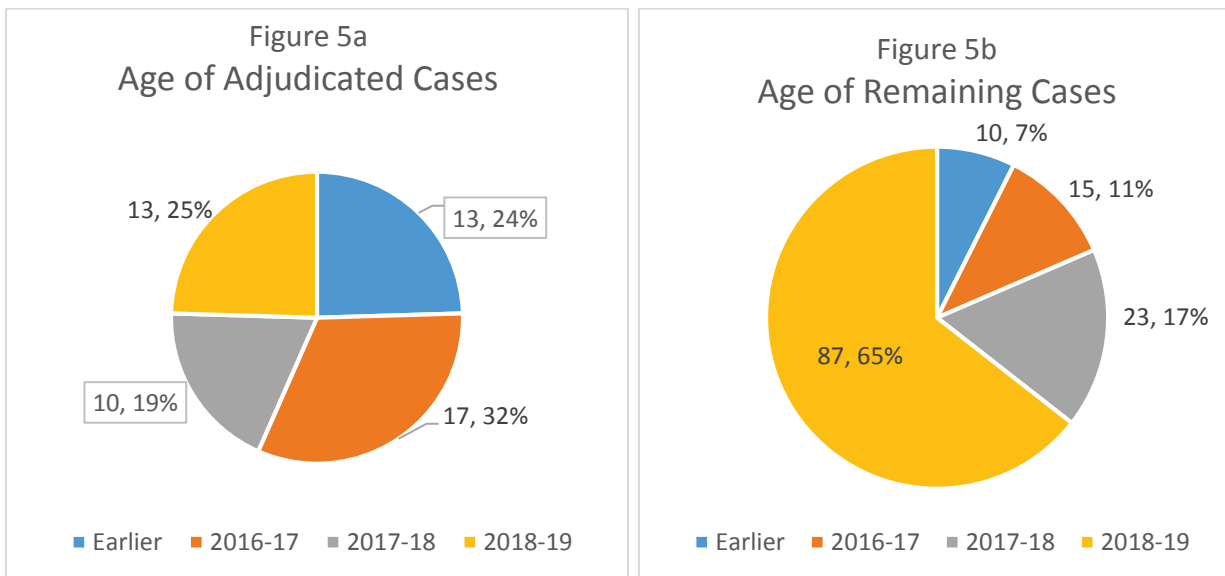
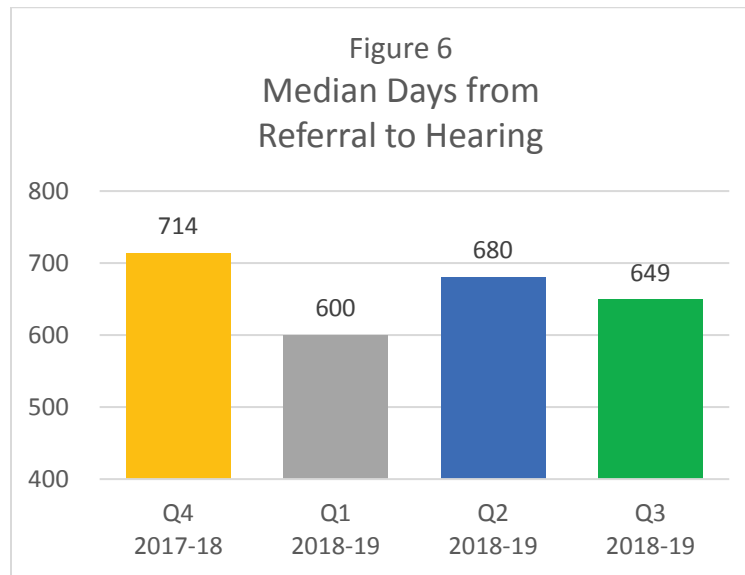


Figure 5a below displays the age of the 53 adverse action cases that were adjudicated during the third quarter. More old cases were adjudicated than newer cases; 30 of the cases were received before July 1, 2017, and 23 after that date. Figure 5b shows the age of the remaining adverse action caseload, which includes 25 cases received before July 1, 2017, and only 10 from the inherited backlog. Our work will continue to shift to more recent cases as the older cases are resolved and eliminated from the caseload.



Hearings [Provision 7, Subdivision (b)(6)]

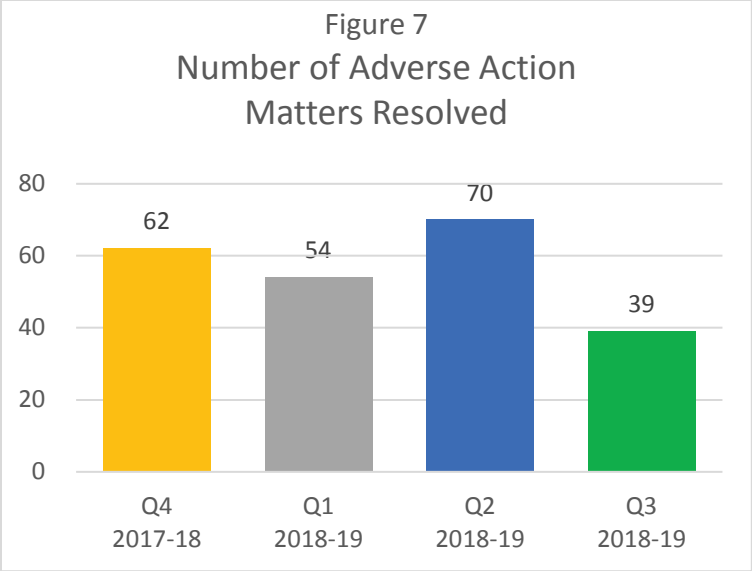
In the third quarter of Fiscal Year 2018-19, 12 hearings commenced, which has been a fairly consistent quarterly pace. This quarter, the shortest time from receipt of the adverse action referral until the hearing commenced was 280 days; the longest was 1,386 days; and the median was 649 days. Figure 6 below displays the median number of days from receipt of referrals to hearings for the most recent four quarters.



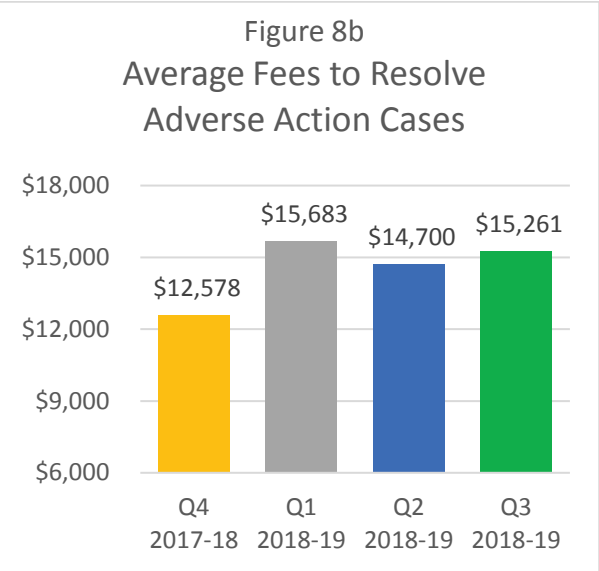
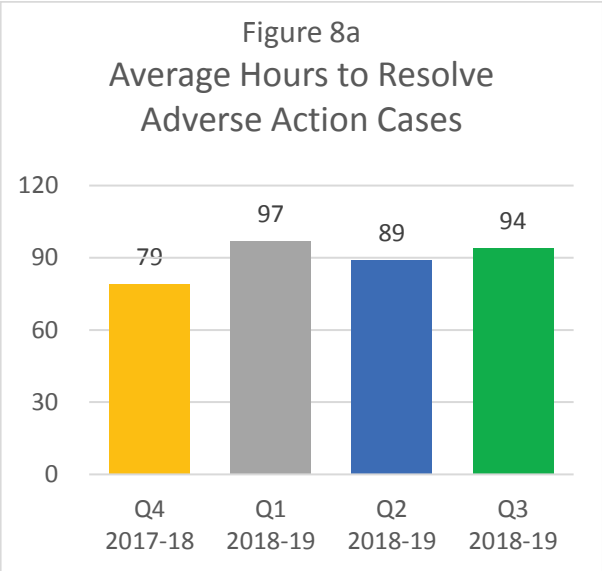
Average Hours and Fees [Provision 7, Subdivision (c)]

As shown in Figure 7 below, 39 adverse action cases were resolved⁶ this quarter. This is similar to the average quarterly number of decisions the commission issued to resolve cases during the previous fiscal year, which was 44 decisions per quarter. In the current fiscal year, the commission has issued 163 decisions to resolve adverse action cases, which is an average of 54 decisions per quarter. The average is particularly high this year due to the large number of decisions issued in the second quarter. The commission issued 70 decisions in the second quarter compared with 39 this quarter.

⁶ *Resolution* is when the effective date of the commission's final decision has arrived; the case can then be closed. Resolved cases are no longer considered to be *at* the Office of the Attorney General.

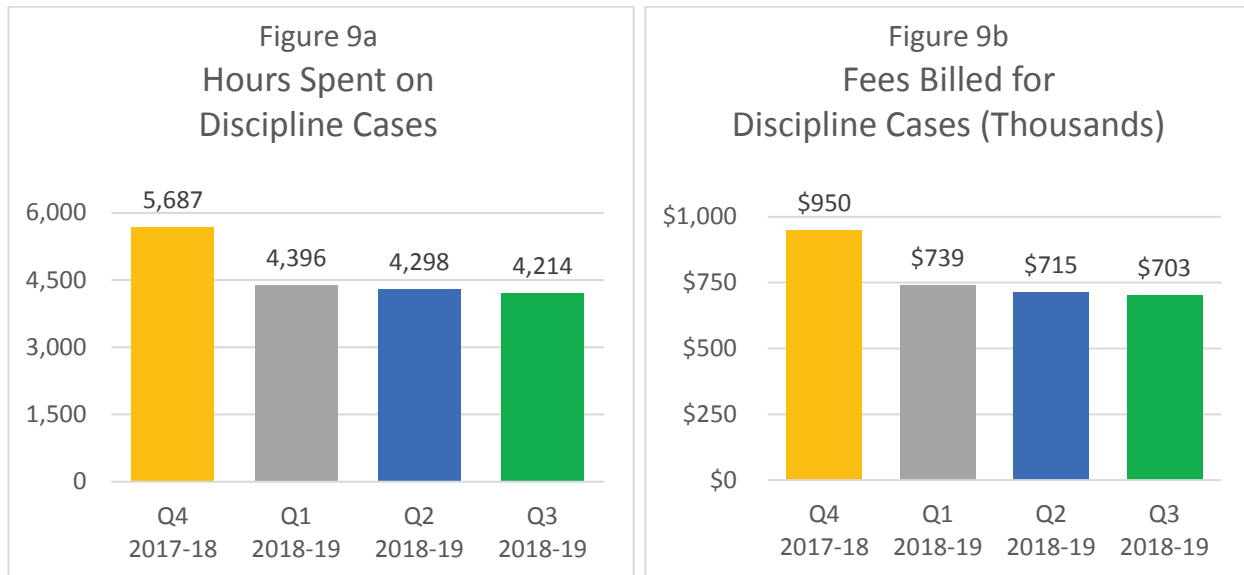


In this reporting quarter, an average of 94 hours were required to resolve adverse action cases. Comparing the same information in terms of fees, average fees to adjudicate matters this quarter were \$15,261. Figures 8a and 8b below show comparisons for the last four quarters.



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

In the third quarter of Fiscal Year 2018-19, the Attorney General's staff performed 4,214 hours of legal work related to teacher discipline, including both adverse action and judicial review cases. The Office of the Attorney General billed a total of \$703,439 to the commission related to the teacher discipline caseload. As the inventory of pending adverse action cases continues to decline, fewer hours of work will be required for the caseload. Figures 9a and 9b below summarize hours and fees for the current and three previous quarters.



Total hours worked for Fiscal Year 2017-18 were 18,602, an average of 4,651 per quarter. Total fees were \$3,089,148, an average of \$772,287 per quarter. The average quarterly hours and fees in Fiscal Year 2018-19 are 4,303 and \$718,994, respectively.

CONCLUSION

This quarterly report provides information regarding the volume, time for adjudication, and cost for the legal work performed by the Office of the Attorney General for the Commission on Teacher Credentialing. We will continue to provide representation for the commission that conforms to the highest standards of the Office of the Attorney General.

This report is also available on the Attorney General's website at:

<https://oag.ca.gov/publications>

If you have questions regarding this report or 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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FY 2018-19 Quarter Three – Published May 31, 2019

Discipline Cases at the Office of the Attorney General Provision 7, subdivisions (b)(1) and (b)(5)			
Total Referrals, Active and Inactive	Adverse Action	Judicial Review	Total
Referrals start of quarter, subdivision (b)(1)	196	17	213
Referrals received during the quarter	39	3	42
Referrals resolved during the quarter	39	6	45
Referrals end of the quarter, subdivision (b)(5)	196	14	210

Further Investigation Requested and Received Provision 7, subdivisions (b)(2) and (b)(3)	
Further investigation requests, subdivision (b)(2)	6
Supplemental investigations received, subdivision (b)(3)	3

Number of Days for Adverse Action Adjudications Provision 7, subdivision (b)(4)						
Minimum	Maximum	Mean	Goal	Above Goal	Median	Count
93	1,767	610	365	245	611	53

Number of Days from Receipt of Referral to Hearing Commenced Provision 7, subdivision (b)(6)				
Minimum	Maximum	Mean	Median	Count
280	1,386	726	649	12

Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivisions (c)(1), (c)(2) and (c)(3)		
For 39 adverse action cases resolved:	Mean	Median
Hours per case, subdivision (c)(1)	94	72
Fees per case, subdivision (c)(2)	\$ 15,261	\$ 11,964
Costs per case, subdivision (c)(3)	\$ 344	\$ 0

Total Hours and Fees – Discipline and General Litigation Cases Provision 7, subdivisions (d)(1), (d)(2), (d)(3) and (d)(4)		
Type of Case	Total Hours	Total Fees
Discipline cases, subdivisions (d)(1) and (d)(2)	4,214	\$ 703,439
Other cases, subdivisions (d)(3) and (d)(4)	1	\$ 170
All cases combined	4,215	\$ 703,609

FY 2018-19 Quarter Two – Published February 28, 2019

Discipline Cases at the Office of the Attorney General Provision 7, subdivisions (b)(1) and (b)(5)			
Total Referrals, Active and Inactive	Adverse Action	Judicial Review	Total
Referrals start of quarter, subdivision (b)(1)	231	16	247
Referrals received during the quarter	35	3	38
Referrals resolved during the quarter	70	2	72
Referrals end of the quarter, subdivision (b)(5)	196	17	213

Further Investigation Requested and Received Provision 7, subdivisions (b)(2) and (b)(3)	
Further investigation requests, subdivision (b)(2)	7
Supplemental investigations received, subdivision (b)(3)	6

Number of Days for Adverse Action Adjudications Provision 7, subdivision (b)(4)						
Minimum	Maximum	Mean	Goal	Above Goal	Median	Count
43	1,785	634	365	269	429	43

Number of Days from Receipt of Referral to Hearing Commenced Provision 7, subdivision (b)(6)				
Minimum	Maximum	Mean	Median	Count
243	1,784	779	680	12

Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivisions (c)(1), (c)(2) and (c)(3)		
For 70 adverse action cases resolved:	Mean	Median
Hours per case, subdivision (c)(1)	89	72
Fees per case, subdivision (c)(2)	\$ 14,700	\$ 11,990
Costs per case, subdivision (c)(3)	\$ 494	\$ 0

Total Hours and Fees – Discipline and General Litigation Cases Provision 7, subdivisions (d)(1), (d)(2), (d)(3) and (d)(4)		
Type of Case	Total Hours	Total Fees
Discipline cases, subdivisions (d)(1) and (d)(2)	4,298	\$ 714,526
Other cases, subdivisions (d)(3) and (d)(4)	0	\$ 42
All cases combined	4,298	\$ 714,568

FY 2018-19 Quarter One – Published November 30, 2018

Discipline Cases at the Office of the Attorney General Provision 7, subdivisions (b)(1) and (b)(5)			
Total Referrals, Active and Inactive	Adverse Action	Judicial Review	Total
Referrals start of quarter, subdivision (b)(1)	248	12	260
Referrals received during the quarter	37	6	43
Referrals resolved during the quarter	54	2	56
Referrals end of the quarter, subdivision (b)(5)	231	16	247

Further Investigation Requested and Received Provision 7, subdivisions (b)(2) and (b)(3)	
Further investigation requests, subdivision (b)(2)	4
Supplemental investigations received, subdivision (b)(3)	6

Number of Days for Adverse Action Adjudications Provision 7, subdivision (b)(4)						
Minimum	Maximum	Mean	Goal	Above Goal	Median	Count
14	1,443	619	365	254	493	67

Number of Days from Receipt of Referral to Hearing Commenced Provision 7, subdivision (b)(6)				
Minimum	Maximum	Mean	Median	Count
196	1,390	744	600	14

Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivisions (c)(1), (c)(2) and (c)(3)		
For 54 adverse action cases resolved:	Mean	Median
Hours per case, subdivision (c)(1)	97	62
Fees per case, subdivision (c)(2)	\$15,683	\$10,390
Costs per case, subdivision (c)(3)	\$81	\$0

Total Hours and Fees – Discipline and General Litigation Cases Provision 7, subdivisions (d)(1), (d)(2), (d)(3) and (d)(4)		
Type of Case	Total Hours	Total Fees
Discipline cases, subdivisions (d)(1) and (d)(2)	4,396	\$739,018
Other cases, subdivisions (d)(3) and (d)(4)	148	\$25,160
All cases combined	4,544	\$764,178

FISCAL YEAR 2017-18

Discipline Cases at the Office of the Attorney General Provision 7, subdivisions (b)(1) and (b)(5)			
Total Referrals, Active and Inactive	Adverse Action	Judicial Review	Total
Referrals start of the year, subdivision (b)(1)	304	9	313
Referrals received during the year	119	10	129
Referrals resolved during the year	175	7	182
Referrals end of the year, subdivision (b)(5)	248	12	260

Further Investigation Requested and Received Provision 7, subdivisions (b)(2) and (b)(3)	
Further investigation requests, subdivision (b)(2)	52
Supplemental investigations received, subdivision (b)(3)	44

Number of Days for Adverse Action Adjudications Provision 7, subdivision (b)(4)						
Minimum	Maximum	Mean	Goal	Above Goal	Median	Count
10	1,966	630	365	265	565	212

Number of Days from Receipt of Referral to Hearing Commenced Provision 7, subdivision (b)(6)				
Minimum	Maximum	Mean	Median	Count
139	1,838	728	683	49

Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivisions (c)(1), (c)(2) and (c)(3)		
For 175 adverse action cases resolved:	Mean	Median
Hours per case, subdivision (c)(1)	84	54
Fees per case, subdivision (c)(2)	\$13,373	\$8,935
Costs per case, subdivision (c)(3)	\$281	\$0

Total Hours and Fees – Discipline and General Litigation Cases Provision 7, subdivisions (d)(1), (d)(2), (d)(3) and (d)(4)		
Type of Case	Total Hours	Total Fees
Discipline cases, subdivisions (d)(1) and (d)(2)	18,602	\$3,089,148
Other cases, subdivisions (d)(3) and (d)(4)	409	\$67,734
All cases combined	19,011	\$3,156,882

Provision 7 Measures Reported

The Budget Act of 2018, Item 6360-001-0407, Provision 7 states:

- (a) 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 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 with the Attorney General at the beginning of the reporting period.
 - (2) The number of matters for which further investigation was requested by the Attorney General.
 - (3) The number of matters for which further investigation was received by the Attorney General.
 - (4) The number of matters adjudicated by the Attorney General.
 - (5) The number of matters with the Attorney General at the end of the reporting period.
 - (6) The minimum, maximum, and median number of days from the date the Attorney General receives an accusation or statement of issues referral from the commission 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 Attorney General to adjudicate a case representing the commission, 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 Attorney General to adjudicate accusation and statement of issues matters.
 - (2) The average and median fees charged by 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 Attorney General to represent the commission for each period, the Attorney General shall report the following:
- (1) The total hours worked during the period by staff of the Attorney General for representation of the commission in teacher discipline matters.
 - (2) The total fees charged during the period by the Attorney General to the commission for representation in teacher discipline matters.
 - (3) The total hours worked during the period by staff of the Attorney General for representation of the commission unrelated to teacher discipline matters.
 - (4) The total fees charged during the period by 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 Attorney General in relation to representation of the commission 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 Attorney General shall provide timely followup 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 this 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 discipline. If the committee finds probable cause and recommends discipline, 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 discipline 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.⁷ 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 of Credentials. The 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 based on terms sufficient to provide for 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 on 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 “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. This concludes the case, except for any judicial review in superior court and ensuing appeal seeking to overturn the commission’s discipline decision. The commission generally meets six times per year, during which discipline cases are considered and final decisions made. Therefore, it usually takes two or three months after adjudication before final resolution of a discipline case. The diagram below outlines the adjudication process.

⁷ When prosecution is declined, the case is not submitted to the commission for decision, and is closed.

Flowchart – Adjudication Process

