



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

**August 30, 2018**

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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 fourth quarterly report as required by the 2018 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 fourth quarterly report provides the information required under Provision 7 for the period April 1 through June 30, 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.<sup>1</sup>

An adverse action case is *active* until it has been adjudicated. It then becomes *inactive* until the commission's final decision becomes effective; this can take up to 12 weeks. 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 commission's decision is effective, the case is considered *resolved* and may be closed. However, the commission's ultimate decision can be challenged in judicial review or other proceedings filed in superior court. This would be considered a separate judicial review case. A summary of the adjudication process in the appendix provides greater detail.

After four quarters of data, definitive progress in reducing the backlog is evident. This quarter, we adjudicated 62 adverse action cases and received 24 new cases from the commission. The total number of adverse action cases (active and inactive) was reduced from 286 to 248, and the total number of active adverse action cases was reduced from 235 to 184. The backlog has been reduced from 162 discipline cases at the end of the first quarter to 32 at the end of the fourth quarter.

The appendix includes a summary of this quarter's activity in a format similar to that used in previous reports. For ease of comparison, summaries from previous quarters are also included. Provision 7 reporting requirements and a summary of the adjudication process for the commission's cases are also contained in the appendix.

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<sup>1</sup> 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 cases, and (3) general litigation unrelated to adverse actions. For more detail, see the summary of the adjudication process in the appendix.

## DISCUSSION

### Volume of Discipline Cases [Provision 7, subdivision (b)(1) and (b)(5)]

After one year, the discipline caseload for the Commission on Teacher Credentialing continues to approach equilibrium. Equilibrium is established when the number of cases referred in a one-year period is equal to the number of cases resolved and also to the number of cases pending. Backlog is the number of cases *above* equilibrium. In our first quarter report, we approximated equilibrium at 152 adverse action referrals per year. Over the past year, discipline referrals totaled only 119, indicating that our equilibrium point may need to be adjusted downward.

Although we did not break down caseload into active and inactive adverse action cases in the first quarter report, we have done so subsequently. Counting active cases more closely approximates the way the commission counts cases pending at the Attorney General's Office, as regularly published in its reports. Measuring backlog in terms of active cases also provides the best insight into the pending caseload, because once an adverse action case becomes inactive, the work of the Attorney General's Office is complete.

Figure 1, below, summarizes active and inactive adverse action cases pending at the end of each of the past three quarters.<sup>2</sup> The total number of adverse action cases remaining at the end of this fourth quarter was 248, of which 184 were *active*, and 64 were inactive. The number of active adverse action cases has been reduced by 78 cases in the past six months.

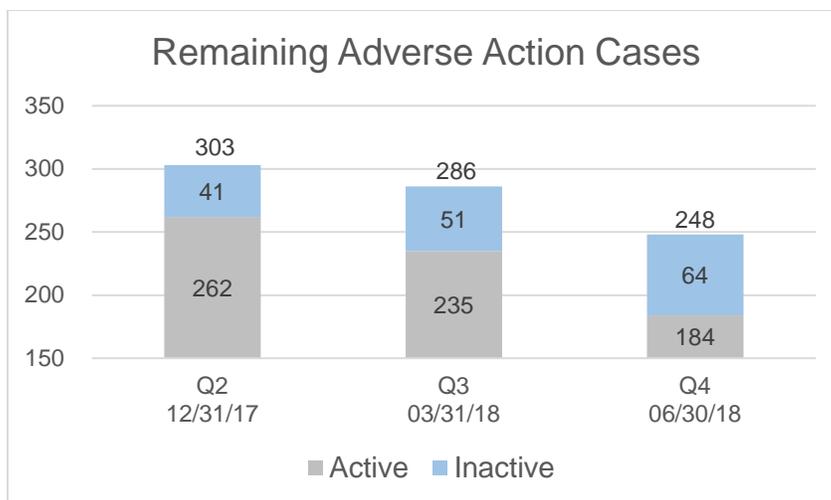


Figure 1

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

*Backlog* is the number of active cases pending above equilibrium (152).<sup>3</sup> At the end of the first quarter, the backlog was 162<sup>4</sup>; at the end of the second quarter, it was 110; at the end of the third quarter it was 83; and at the end of the fourth quarter, on June 30, 2018, the backlog was down to 32. This is summarized in Figure 2, below.

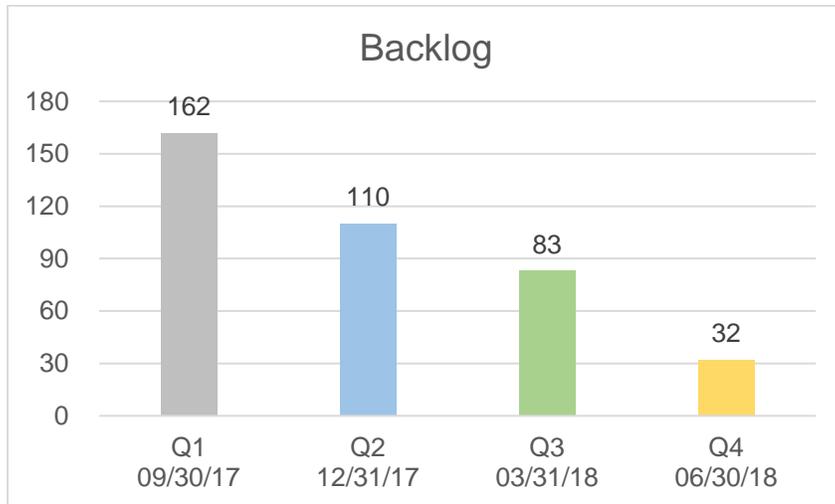


Figure 2

## Investigations

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

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 discipline, 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.<sup>5</sup>

In this fourth quarter, in cases where a pleading had not yet been filed, seven requests for further investigation were made, compared with 16 requests in the third quarter. Also this quarter, the Office of the Attorney General received fewer investigations from the commission than in the previous quarter; there were only four investigations completed this quarter, and nine were completed in the previous quarter.

<sup>3</sup> After one year of data, the annualized referral rate was 119 rather than 152 as was projected based on first quarter data.

<sup>4</sup> The first quarter backlog number is based on a count of both *active* and *inactive* adverse action cases.

<sup>5</sup> However, 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 should be consulted directly for data on the full extent the commission's investigators have provided their services.

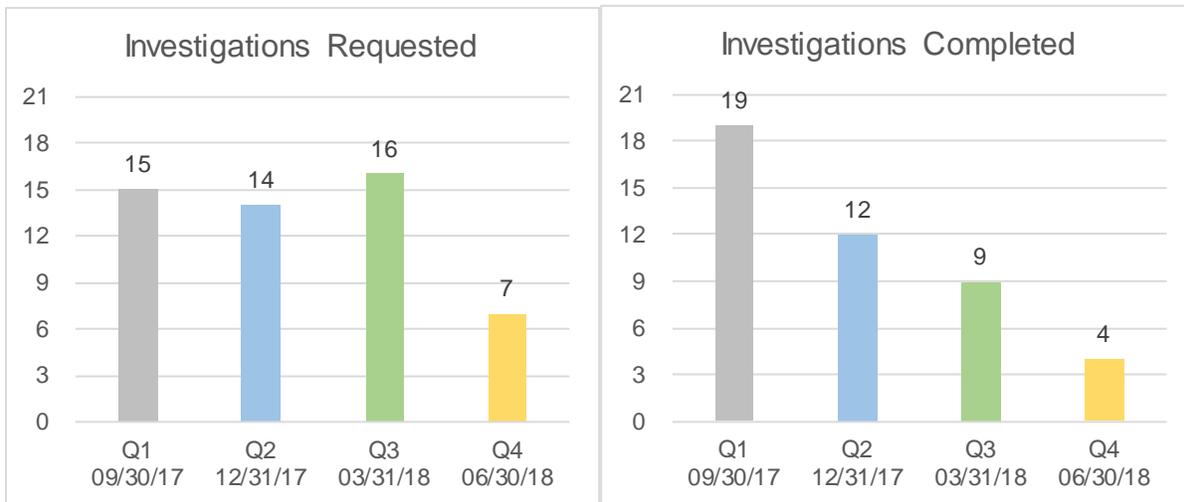


Figure 3

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

In the fourth quarter, 62 adverse action cases were adjudicated in an average of 571 days, compared with an average of 752 days to adjudicate 55 cases in the third quarter, as shown below in Figure 4.

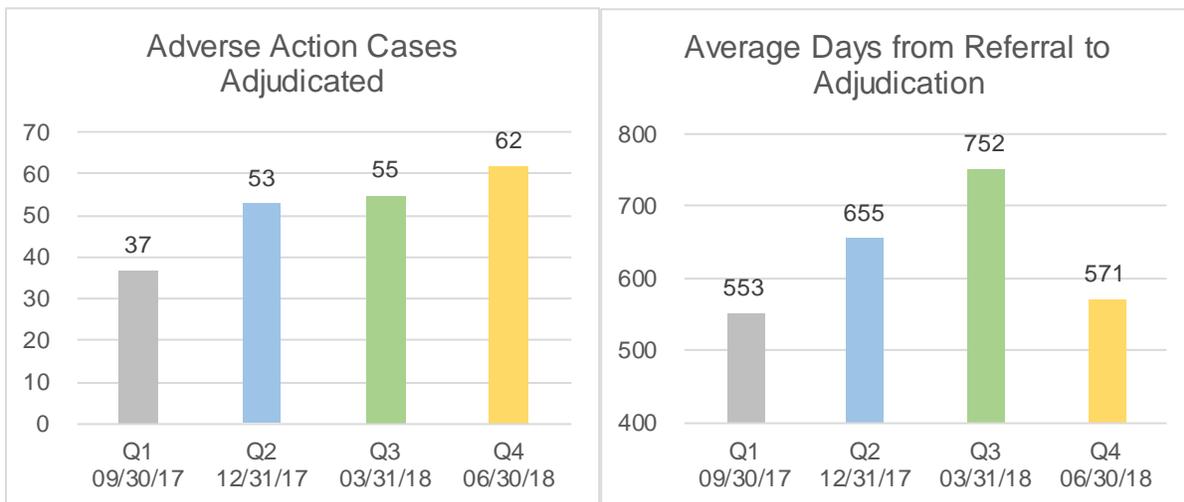


Figure 4

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

In the fourth quarter, 14 hearings commenced, similar to the third quarter when there were 15. It took an average of 696 days from receipt of the adverse action referral until hearing commencement this quarter, compared with an average of 912 days in the previous quarter.

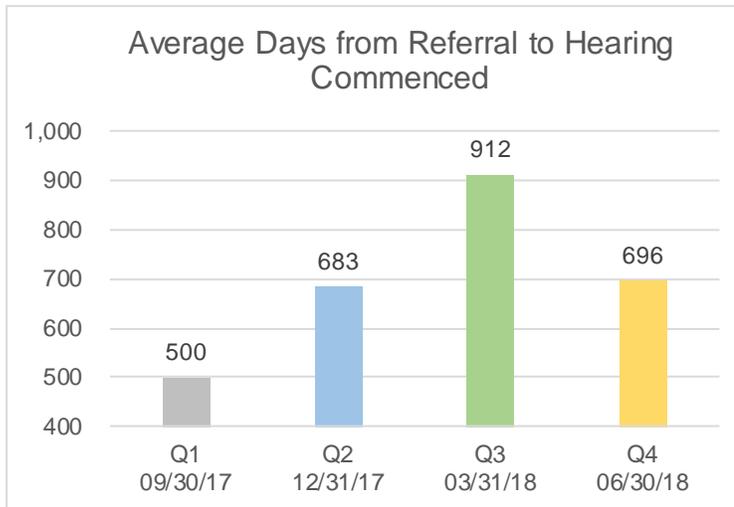


Figure 5

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

In the fourth quarter, 62 adverse action matters were resolved,<sup>6</sup> which is significantly above the pace at which the commission has been making decisions to bring cases to resolution earlier this year.

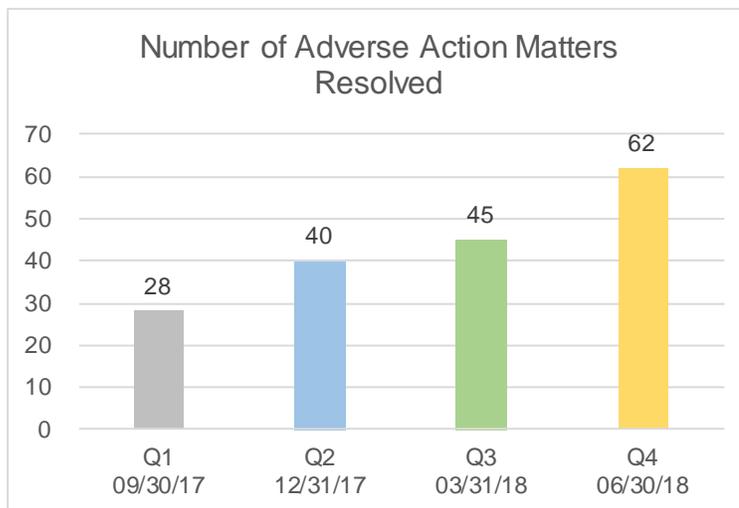


Figure 6

Average hours to resolve an adverse action matter this quarter were 79, compared with 98 hours last quarter. Comparing the same information in terms of fees, average fees to adjudicate matters in the fourth quarter were \$12,578 per resolved

<sup>6</sup> *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.

matter, a decrease of \$3,145 compared with \$15,723 per resolved matter last quarter. Figure 7, below, shows these comparisons.

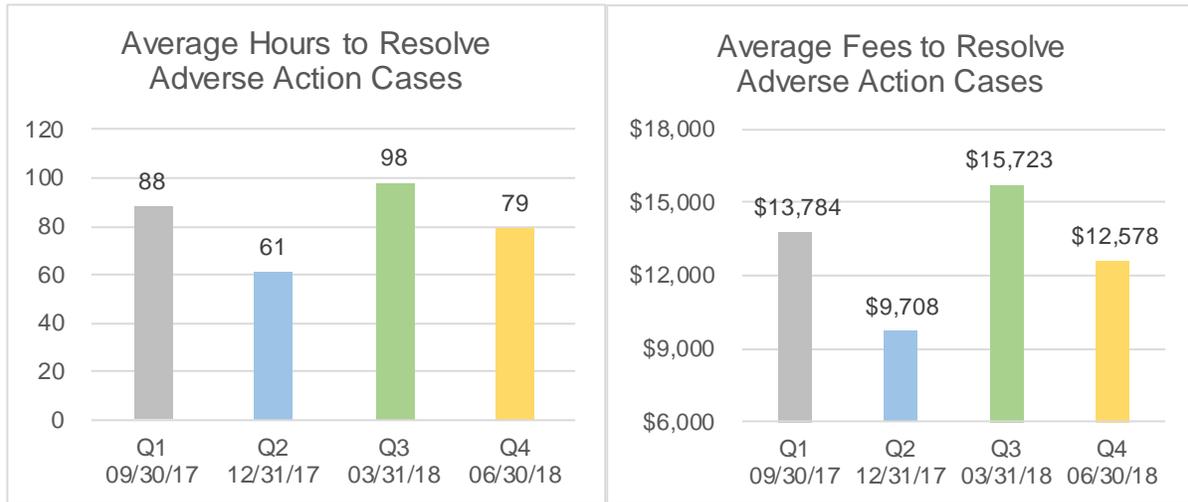


Figure 7

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

The Attorney General’s staff performed 5,687 hours of legal work related to teacher discipline in the fourth quarter, a significant increase over the 4,949 hours performed last quarter. Comparing the same information in terms of fees, during the fourth quarter the Office of the Attorney General billed a total of \$950,435 to the commission related to the teacher discipline caseload, compared with \$822,888 last quarter. Figure 8, below, summarizes hours and fees for all four quarters of the fiscal year. Total hours and fees for the past year are 18,602 and \$3,089,148, respectively.

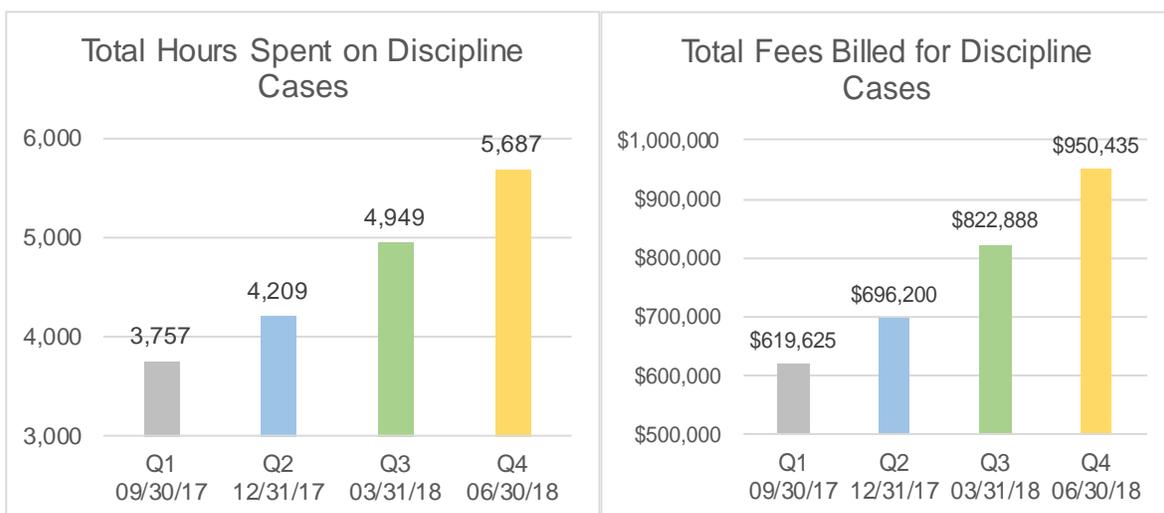


Figure 8

In the summary for quarter four in the appendix, we have also reported that hours and fees for general litigation cases *not* related to teacher misconduct were only 23 hours and \$3,983.

The summary for quarter four in the appendix provides a snapshot of the matters addressed in this discussion. We also included summaries of previous quarterly reports for ease of comparison.

## **CONCLUSION**

This fourth 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 one year of data now available for analysis, summarized by quarter, we see good progress toward reducing the backlog. While we strive to eliminate the backlog of adverse action cases as quickly as possible, we also want to ensure 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](mailto:sirat.attapit@doj.ca.gov) or 916-210-6192.

## APPENDIX

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**Quarter Four Summary – Published August 30, 2018**

<b>Discipline Cases at the Office of the Attorney General Provision 7, subdivisions (b)(1) and (b)(5)</b>			
Total Referrals, Active and Inactive	Adverse Action	Judicial Review	Total
Referrals start of quarter, subdivision (b)(1)	286	13	299
Referrals received during the quarter	24	0	24
Referrals resolved during the quarter	62	1	63
Referrals end of the quarter, subdivision (b)(5)	248	12	260

<b>Further Investigation Requested and Received in Adverse Action Cases Provision 7, subdivisions (b)(2) and (b)(3)</b>	
Further investigation requests, subdivision (b)(2)	7
Supplemental investigations received, subdivision (b)(3)	4

<b>Adverse Action Adjudication – Provision 7, subdivision (b)(4)</b>						
Minimum	Maximum	Average	Goal	Above Goal	Median	Count
10	1,520	571	365	206	520	67

<b>Number of Days from Receipt of Referral to Hearing Commenced Provision 7, subdivision (b)(6)</b>				
Minimum	Maximum	Average	Median	Count
139	1,491	696	714	14

<b>Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivisions (c)(1), (c)(2) and (c)(3)</b>		
For 62 adverse action cases resolved:	Average	Median
Hours per case, subdivision (c)(1)	79	49
Fees per case, subdivision (c)(2)	\$12,578	\$7,538
Costs per case, subdivision (c)(3)	\$159	\$0

<b>Total Hours and Fees – Discipline and General Litigation Cases Provision 7, subdivisions (d)(1), (d)(2), (d)(3) and (d)(4)</b>		
Type of Case	Total Hours	Total Fees
Discipline cases, subdivisions (d)(1) and (d)(2)	5,687	\$950,435
Other cases, subdivisions (d)(3) and (d)(4)	23	\$3,983
All cases combined	5,710	\$954,418

**Quarter Three Summary – Published May 31, 2018**

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

<b>Further Investigation Requested and Received in Adverse Action Cases Provision 7, subdivisions (b)(2) and (b)(3)</b>	
Further investigation requests, subdivision (b)(2)	16
Supplemental investigations received, subdivision (b)(3)	9

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

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

<b>Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivisions (c)(1), (c)(2) and (c)(3)</b>		
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

<b>Total Hours and Fees for All Referrals Provision 7, subdivisions (d)(1), (d)(2), (d)(3) and (d)(4)</b>		
Type of Case	Total Hours	Total Fees
Discipline cases, subdivisions (d)(1) and (d)(2)	4,949	\$822,888
Other cases, subdivisions (d)(3) and (d)(4)	252	\$41,670
All cases combined	5,201	\$864,558

**Quarter Two Summary – Published February 28, 2018**

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

<b>Further Investigation Requested and Received in Adverse Action Cases Provision 7, subdivisions (b)(2) and (b)(3)</b>	
Further investigation requests, subdivision (b)(2)	14
Supplemental investigations received, subdivision (b)(3)	12

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

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

<b>Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivisions (c)(1), (c)(2) and (c)(3)</b>		
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

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

**Quarter One Summary – Published November 30, 2017**

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

<b>Further Investigation Requested and Received in Adverse Action Cases Provision 7, subdivisions (b)(2) and (b)(3)</b>	
Further investigation requests, subdivision (b)(2)	15
Supplemental investigations received, subdivision (b)(3)	19

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

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

<b>Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivisions (c)(1), (c)(2) and (c)(3)</b>		
For 28 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

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

## Provision 7 Measures Reported

The 2018 Budget Act, 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 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 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.<sup>7</sup> Adjudication can occur in five ways:

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

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 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 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 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 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 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 an discipline case. The diagram below shows this process after an discipline case is referred to the Office of the Attorney General.

Flowchart – Adjudication Process

