

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.² 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 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

² When prosecution is declined, the case is not submitted to the Commission for decision, and is closed.

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.

VOLUME

Discipline Cases Pending

Provision 7, subdivision (b)(1) and (5) calls for the number of discipline cases pending at the Office of the Attorney General at the beginning and end of the quarter. It does not request the number of new referrals received or cases resolved during the quarter; notwithstanding, these numbers are included, since they have a direct effect on the volume of pending cases.

Two categories of matters are included in the count of discipline cases: adverse action (accusation and statement of issues administrative cases) and judicial review of adverse action decisions³. The table below shows the number of discipline cases pending at the Office of the Attorney General at the beginning and end of the first quarter of the Fiscal Year 2017-2018 (July-September 2017), as well as new referrals, and cases resolved, for both adverse action and judicial review cases.

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

Our focus in representing the Commission is on protection of the public through imposition of discipline in adverse action cases. At the beginning of the quarter, the Office of the Attorney General started with a total of 304 adverse action cases. During the quarter, 38 additional adverse action referrals were received and 29 were resolved,

³ A few cases in the “Judicial Review” group include lawsuits filed against the Commission collaterally attacking its adverse action decisions and other litigation related to discipline.

leaving a balance at the end of the quarter of 313 cases, an increase of nine more than the number of cases at the beginning of the quarter.

The annual referral rate sets the equilibrium number for the most efficient case processing. To establish the equilibrium number, the quarterly referral rate of 38 is annualized, which is 152 ($38 \times 4 = 152$). For equilibrium, the resolution rate should be the same, but fell short this quarter at 29, yielding an annual rate of 116 ($29 \times 4 = 116$), or 36 cases less and 24 percent below the annual referral rate and equilibrium number ($152 - 116 = 36$). The quarter ended with 313 pending adverse action cases, which is twice the equilibrium number ($313 \div 152 = 2.06$), and constitutes a backlog. Our goal is to bring down the number of pending adverse action cases from 313 to about 152, and eliminate the backlog as quickly as possible.

Discipline Cases Adjudicated

Provision 7, subdivision (b)(4), requests the number of discipline cases adjudicated during the reporting period. During the quarter, 37 adverse action cases were adjudicated⁴, compared with 29 resolved. “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. Because adverse action cases are not resolved until the Commission has issued a final decision and it has become effective, it takes about one to three months after adjudication until resolution. Most of the cases adjudicated are included in the number that were resolved during the quarter (29 cases). Some of the cases were adjudicated last quarter, and the others are likely to be fully resolved in the next quarter.

TIMELY ADJUDICATION

Time to Commence Hearings

During the quarter, adjudicatory hearings were commenced in six adverse action cases. As requested under Provision 7, subdivision (b)(6), and shown in the table below, the median number of days to complete the process from the receipt of adverse action referrals from the Commission on Teacher Credentialing to the beginning of hearings with the Office of Administrative Hearings was 484, the average 500, minimum 174 and maximum 845.

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

⁴ Two judicial review cases were also adjudicated by superior court decision.

Time to Adjudicate Cases

Although not requested under Provision 7, we have provided the age of adverse action discipline cases adjudicated during the quarter, including all five types of adjudication, based upon the number of days from receipt of the referral until the adjudicative event. Because circumstances vary widely in litigation, any single case may resolve quickly or take much longer, as can be seen from the disparity between the 16 days minimum and 1,966 days maximum for cases adjudicated this quarter. In this first quarter, it took an average of 553 days for adjudication of 37 adverse action cases⁵. Based upon the overall average, we are currently exceeding our goal for adjudication of adverse action cases within an average of 365 days by 188 days, or nearly 50 percent, as shown in the table below.

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

There is inherent delay in preparing a case for hearing if the evidence is insufficient. When a new adverse action referral is received by the Office of the Attorney General, the assigned deputy attorney general determines whether the evidence provided is sufficient to meet the requisite burden of proof at hearing, and if not, further investigation may be requested, which delays the initiation of the adjudicatory hearing. During the quarter, the Office of the Attorney General requested that 15 adverse action cases be investigated further, and received supplemental investigation in 19 cases for which further investigation had previously been requested. The information in the table below was requested under Provision 7, subdivision (b)(2) and (3).

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

As part of a coordinated effort between the Commission on Teacher Credentialing and the Office of the Attorney General to improve both the quality of the adverse action cases referred and time for adjudication, in Fiscal Year 2016-17, a portion of the funding budgeted for legal services was transferred to the Commission on Teacher Credentialing to increase its investigative staff. The addition of investigator positions at the Commission is expected to result in more complete investigation of adverse action cases before referral to the Office of the Attorney General, thereby reducing the incidence of supplemental investigation requests. Until older cases are

⁵ If the minimum and maximum numbers (outliers) are excluded, the average would be 528; much closer to the median of 491 days.

resolved, further investigation requests are likely to continue at about the same frequency, and then should decline.

PROPER FUNDING FOR LEGAL SERVICES

Most of the legal work performed for the Commission on Teacher Credentialing is for prosecution of its adverse action cases, outlined above. As requested by Provision 7, subdivision (c)(1), (2) and (3), the average and median of hours, fees and costs for the 29 discipline cases that were resolved during the quarter are set forth in this table.

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 ⁶
Total Fees and Costs per Adverse Action Case	\$14,096	\$9,528

The total hours spent and fees billed by the Office of the Attorney General to the Commission on Teacher Credentialing during the quarter is comprised mostly of legal work related to discipline, but includes a small component of general litigation, usually for defending the Commission in actions brought against it. The hours and fees for discipline work are shown in the table below pursuant to Provision 7, subdivision (d)(1) and (2), and for general litigation pursuant to subdivision (d)(3) and (4). The total hours, fees and costs for all legal work performed by the Office of the Attorney General for the Commission on Teacher Credentialing during the quarter are also included.

During this first quarter, the staff members of the Office of the Attorney General worked a total of 3,773 hours, resulting in fees charged to the Commission on Teacher Credentialing totaling \$621,828. The Office of the Attorney General spent 3,754 hours representing the Commission in discipline cases (adverse action and judicial review) and only 19 hours on general litigation cases.

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

CONCLUSION

This first quarterly report provides a baseline of the volume, time for adjudication and funding for the legal work performed by the Office of the Attorney General for the

⁶ There were no costs for the median matter.

Commission on Teacher Credentialing. Over time, the progress of the Attorney General's staff toward meeting its goals can be evaluated, along with assessment of proper staffing and funding for the Commission's legal services expenditures.

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.

STATISTICAL SUMMARY

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