



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

**November 30, 2017**

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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 first 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**

The Office of the Attorney General represents the Commission on Teacher Credentialing 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. This report sets a baseline for future reporting on the volume of adverse action cases, time to adjudicate them, and the cost of all legal services provided by the Office of the Attorney General to the Commission.

The Office of the Attorney General seeks to maximize efficiency in processing adverse action cases by establishing equilibrium between three aspects of the Commission's adverse action caseload. The number of cases referred by the Commission each year, the number of cases resolved by the Attorney General's Office each year, and the number of cases pending at any one time should all be the same. When all three are equal, case processing is efficient and timely. If they are out of balance, there may be too much work for the amount of staff allocated, which hinders timeliness and suggests more staff is needed.

This report shows that the Commission's adverse action caseload is not in equilibrium. The current rate of resolution is 24 percent below the referral rate, and the number of pending cases is twice the referral rate, which constitutes a backlog. This backlog prevents us from reaching our goal of adjudicating adverse action cases within an average of 365 days. Going forward, it will be important to increase the resolution rate, decrease the backlog to achieve equilibrium, and improve average case processing time.

We expect a decrease over time in both the number of pending adverse action cases and the time to adjudicate them because the Office of the Attorney General has added legal staff to prosecute adverse action cases, and the Commission on Teacher Credentialing has added investigators to obtain the evidence needed for these cases before they are referred to the Office of the Attorney General.

During the quarter, the staff of the Office of the Attorney General spent a total of 3,773 hours working for the Commission, mostly in adverse action cases, at a total cost for legal services of \$621,828.

A summary of all the statistics in this report can be found on page 11.

## 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.

## **DISCUSSION**

In line with the intent expressed in subdivision (e), we have included all of the information requested in Provision 7, and added information not requested for context and completeness. With respect to statistics, we have included average, median and the number of matters from which the average and median are determined.

## **Goals**

The Office of the Attorney General has set three goals to improve public protection in its representation of the Commission on Teacher Credentialing with respect to adverse action cases.<sup>1</sup> First, to maximize the efficiency in processing adverse action cases, we would like to eliminate the backlog of pending adverse action cases and bring the caseload into equilibrium. Our second goal is to process adverse action cases within an average of 365 days or less from receipt of referral to adjudication. The last goal is to ensure the proper staffing level to achieve our goals of equilibrium and average case processing time for the Commission.

## **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 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.

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<sup>1</sup> We focus on adverse action cases because imposition of discipline protects the public and is the core purpose of the legal work we handle for the Commission.

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.<sup>2</sup> 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

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<sup>2</sup> 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 decisions<sup>3</sup>. 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.

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

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<sup>3</sup> 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 adjudicated<sup>4</sup>, 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.

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

<sup>4</sup> 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 cases<sup>5</sup>. 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

<sup>5</sup> 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.

<b>Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivision (c)(1), (2) and (3)</b>		
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 <sup>6</sup>
<b>Total Fees and Costs per Adverse Action Case</b>	<b>\$14,096</b>	<b>\$9,528</b>

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.

<b>Total Hours and Fees – Discipline and General Litigation Cases Provision 7, subdivision (d)(1), (2), (3) and (4)</b>		
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
<b>In all cases combined</b>	<b>3,773</b>	<b>\$621,828</b>

### **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

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<sup>6</sup> 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

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