

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 08/15)

| | | | |
|--|-----------------------|---------------------------|-------------------------|
| Fiscal Year 2016-17 | Business Unit 0820 | Department JUSTICE | Priority No. 4 |
| Budget Request Name 0820-004-BCP-BR-2016-GB | | Program LEGAL SERVICES | Subprogram CIVIL LAW |

Budget Request Description
 Public Protection and Consumer Protection Enforcement Initiative

Budget Request Summary

The Department of Justice requests a permanent increase of seven (7.0) positions and \$1,373,000 in Legal Services Revolving Fund authority in the Licensing Section for the purpose of reducing average case processing time to work towards meeting the goals of the Department of Consumer Affairs (DCA) Consumer Protection Enforcement Initiative (CPEI), and thereby improving consumer protection.

| | | |
|---|--|------|
| Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Code Section(s) to be Added/Amended/Repealed NA | |
| Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i> | Department CIO | Date |
| For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance. <input type="checkbox"/> FSR <input type="checkbox"/> SPR Project No. Date: | | |

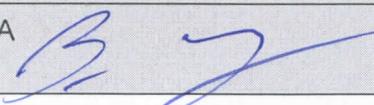
If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.

| | | | |
|---|--------------------|-----------------------------|--------------------|
| Prepared By Linda Schneider, SAAG | Date 11-25-2015 | Reviewed By Julie Neller | Date 11-25-2015 |
| Department Director  | Date 12/31/15 | Agency Secretary | Date |

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Dept. of Technology

BCP Type: Policy Workload Budget per Government Code 13308.05

| | |
|---|---|
| PPBA  | Date submitted to the Legislature 1/7/16 |
|---|---|

BCP Fiscal Detail Sheet

BCP Title: Public Protection and Consumer Protection Enforcement Initiative

DP Name: 0820-004-BCP-DP-2016-GB

Budget Request Summary

| | FY16 | | | | | |
|---|------------|----------------|----------------|----------------|----------------|----------------|
| | CY | BY | BY+1 | BY+2 | BY+3 | BY+4 |
| Positions - Permanent | 0.0 | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 |
| Total Positions | 0.0 | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 |
| Salaries and Wages | | | | | | |
| Earnings - Permanent | 0 | 698 | 698 | 698 | 698 | 698 |
| Total Salaries and Wages | \$0 | \$698 | \$698 | \$698 | \$698 | \$698 |
| Total Staff Benefits | 0 | 341 | 341 | 341 | 341 | 341 |
| Total Personal Services | \$0 | \$1,039 | \$1,039 | \$1,039 | \$1,039 | \$1,039 |
| Operating Expenses and Equipment | | | | | | |
| 5301 - General Expense | 0 | 147 | 147 | 147 | 147 | 147 |
| 5302 - Printing | 0 | 3 | 3 | 3 | 3 | 3 |
| 5304 - Communications | 0 | 19 | 19 | 19 | 19 | 19 |
| 5306 - Postage | 0 | 2 | 2 | 2 | 2 | 2 |
| 5320 - Travel: In-State | 0 | 17 | 17 | 17 | 17 | 17 |
| 5322 - Training | 0 | 6 | 6 | 6 | 6 | 6 |
| 5324 - Facilities Operation | 0 | 46 | 46 | 46 | 46 | 46 |
| 5340 - Consulting and Professional Services - | 0 | 79 | 79 | 79 | 79 | 79 |
| 5340 - Consulting and Professional Services - | 0 | 1 | 1 | 1 | 1 | 1 |
| 5346 - Information Technology | 0 | 14 | 14 | 14 | 14 | 14 |
| Total Operating Expenses and Equipment | \$0 | \$334 | \$334 | \$334 | \$334 | \$334 |
| Total Budget Request | \$0 | \$1,373 | \$1,373 | \$1,373 | \$1,373 | \$1,373 |

Fund Summary

| | | | | | | |
|--|------------|----------------|----------------|----------------|----------------|----------------|
| Fund Source - State Operations | | | | | | |
| 9731 - Legal Services Revolving Fund | 0 | 1,373 | 1,373 | 1,373 | 1,373 | 1,373 |
| Total State Operations Expenditures | \$0 | \$1,373 | \$1,373 | \$1,373 | \$1,373 | \$1,373 |
| Total All Funds | \$0 | \$1,373 | \$1,373 | \$1,373 | \$1,373 | \$1,373 |

Program Summary

| | | | | | | |
|--|------------|----------------|----------------|----------------|----------------|----------------|
| Program Funding | | | | | | |
| 0435010 - Civil Law | 0 | 1,373 | 1,373 | 1,373 | 1,373 | 1,373 |
| 9900100 - Administration | 0 | 285 | 285 | 285 | 285 | 285 |
| 9900200 - Administration - Distributed | 0 | -285 | -285 | -285 | -285 | -285 |
| Total All Programs | \$0 | \$1,373 | \$1,373 | \$1,373 | \$1,373 | \$1,373 |

Budget Change Proposal - Cover Sheet

DF-46 (REV 08/15)

A. Budget Request Summary

The Licensing Section requests a permanent increase of seven (7.0) positions, including five (5.0) Deputy Attorneys General (DAG) along with the Legal Complement of two (2.0) Legal Secretaries and \$1,373,000 in Legal Services Revolving Fund authority. The augmentation will enable the Licensing Section to reduce average case processing time for formal discipline matters to assist with client agency needs.

On July 1, 2015, the Civil Law Division Budget Change Proposal (BCP) 2015-16 added nine (9.0) positions to the Licensing Section. These new positions that the Licensing Section received will help to alleviate the most acute needs of the Licensing Section, but will not increase staffing enough to meet performance metrics established by the Department of Consumer Affairs (DCA) Consumer Protection Enforcement Initiative (CPEI) in terms of the average time for adjudication of formal discipline matters referred by DCA constituent agency clients. Ideally, the Licensing Section should meet the goal of completing the adjudicative phase of the cases within an average period of 9 months (274 days), where it is currently taking an average of 12.66 months (384 days). The proposed initial increase in staffing for the Licensing Section will improve the average processing time for formal discipline matters to 362 days and will thereby improve consumer protection.

B. Background/History

Background. In 2009, a series of articles were published in the Los Angeles Time revealing that the DCA licensing agencies were slow to bring enforcement action against law violating licensees, with an overall average case processing time, from complaint until decision, of more than three years, thus subjecting the public to increased risk while unprofessional, negligent or incompetent licensees continued to practice. As the Los Angeles Times author observed – and the Legislature, DCA and Attorney General's Office (AGO) have also recognized – lack of timeliness for imposition of discipline on unlawful licensed professionals subjects the public to risk.

Case Movement Goals. Throughout the United States, performance-based budgeting and use of performance metrics, particularly in caseload management, is becoming the norm to ensure efficient and effective handling of government work. In line with this trend, in 2010 the DCA worked with the CPEI to set case movement performance metrics, and a goal of completing resolution of cases – from intake of complaint, investigation, adjudication and decision – within an average of 12 to 18 months. Each disciplinary case involves different participants in five phases: (1) complaint receipt and review by agency staff; (2) investigation by agency staff or the DCA Division of Investigation; (3) administrative prosecution and hearing by the Licensing Section; (4) proposed decision by the Office of Administrative Hearings; and (5) decision-making by the agency itself. The Licensing Section prosecution portion of that timeline (part 3) takes the longest and is finished with one of four types of resolution – decline prosecution, default, settlement, or hearing conducted – called “adjudicative events.” In order to meet CPEI’s overall goal, the Licensing Section aims to complete the adjudication phase of disciplinary matters within an average of 9 months (274 days), leaving the other half of the allowable time under CPEI for complaint intake and review, investigation, preparation of proposed decision and agency decision-making. However, due to restrictions in the client agencies budget, modifications have been made to the current staffing request, and would therefore support a phased approach to reducing case processing timeframes. The initial staffing increase as requested in this BCP will reduce the case processing timeframe from 384 to 362 days. The additional required staffing will subsequently be re-evaluated to determine the ongoing need and client budgetary allowances in further reaching the goal of 274 days.

State Interest in Licensing Section Case Processing Time. When disciplinary action is delayed, the public is put at risk, which is the reason the DCA, Legislature and Governor’s Office are all focused on reducing case processing goals. In March of 2015, sunset review hearings were held for several Licensing Section client agencies before the joint Assembly Business and Professions Committee and Senate Business, Professions and Economic Development Committee. The Committee held a hearing to specifically inquire about whether the goals of the CPEI were being met. Testimony was then taken from the Director of the DCA, Deputy Director of the DCA Division of Investigation (DOI), Chief of the AGO Civil Law Division, and Director of the Office of Administrative Hearings (OAH). Shortly after the hearings, the Chair of the Senate Committee proposed an amendment to Senate Bill (SB) 467, to require the AGO to begin annual reporting of average case movement statistics to the Legislature, Governor and the DCA. A similar measure last year (SB 1243) sought to include the AGO in reporting case movement statistics, but was passed with only OAH being required to report their case movement statistics. The Licensing Section, along with its client constituent agencies of the DCA, is

Budget Change Proposal - Cover Sheet

DF-46 (REV 08/15)

under close political scrutiny to perform according to the goals of CPEI, and is currently unable to do so with the existing staff levels.

Days to Case Adjudication Compared to Staff Growth. The average case processing time for the adjudication of formal discipline matters has increased over the past five fiscal years due to a large increase in the volume of referrals of new cases, without comparable increases in staffing levels. The increased volume of referrals from client agencies has caused the average days to adjudication of formal discipline cases to increase 20% from 319 days in FY 2010-11 to 384 days in FY 2014-15, which is 40% longer than the goal of 274 days (9 months). In addition, staffing levels between FY 2010-11 and FY 2015-16 have only increased by 14%, and cannot support the required reduction in case processing time.

Prior BCPs – DCA, OAH and AGO. Through a BCP in FY 2010-11, the DCA obtained one hundred and seven (107.0) positions and \$12,770,000 in FY 2010-11 and one hundred and thirty-eight and a half (138.5) positions and \$14,216,000 in FY 2011-12, specifically for the implementation of the CPEI performance metrics, which were allocated to the DCA constituent agencies with the specific goal of reducing average prosecution time from three years to 12 – 18 months. (BCP # 1110-1A: "Consumer Protection Enforcement Initiative".) The Office of Administrative Hearings (OAH), which is an integral part in the adjudication of license discipline matters, also obtained a BCP for FY 2014-15 which added fourteen (14.0) Administrative Law Judges (ALJs) to their staff. (2014 Budget Act (Stats. 2014, ch. 25).) The Civil Law Division of the AGO subsequently pursued a BCP for FY 2015-16, which included nine (9.0) new positions for the Licensing Section, effective July 1, 2015. The nine (9.0) FY 2015-16 BCP positions for the Licensing Section were granted and are included in the charts below.

Resource History. The current staffing of the Licensing Section, including the nine (9.0) positions from FY 2015-16 BCP, are as follows: 90 DAGs, 11 SDAGs, 15 LAs and 1 SAAG, for a total of 117 positions.

Resource History (Dollars in thousands)

| Program Budget | 2010-11 | 2011-12 | 2012-13 | 2013-14 | 2014-15 |
|-------------------------|----------|----------|----------|----------|----------|
| Authorized Expenditures | \$22,516 | \$22,588 | \$22,750 | \$25,179 | \$27,403 |
| Actual Expenditures | \$18,987 | \$22,188 | \$21,381 | \$23,986 | \$25,233 |
| Revenues | \$24,476 | \$24,617 | \$24,268 | \$26,009 | \$26,673 |
| Authorized Positions | 97.0 | 102.0 | 103.0 | 104.0 | 108.0 |
| Filled Positions | 95.0 | 99.0 | 98.0 | 102.0 | 103.0 |
| Vacancies | 2.0 | 3.0 | 5.0 | 2.0 | 5.0 |

Workload: As reflected in the Workload History chart below, over the past five fiscal years a high volume of new cases were referred to the Licensing Section, and lengthening in the average case processing times has resulted. Reduction in case processing time for the prosecution of license discipline matters is the goal of the CPEI, which is driving the need for the Licensing Section to reduce current case adjudication times.

The Workload History chart below shows that historically, the maximum annual resolution (case closing) rate that the Licensing Section has been able to achieve is 5,158 cases per year. When the volume was lower (FY 2010-11), the Licensing Section resolved 3,612 cases. With less volume in FY 2010-11, the Licensing Section was also able to resolve cases more quickly, i.e., 319 days on average. With increasing volume over the past five years, several efficiencies have been incorporated to process the workload more quickly, but the benchmark of 274 days is still not attainable with existing staff levels. Furthermore, the increase in volume has caused case-aging to continue to increase, as reflected in the "Average Days to Adjudication of Formal Discipline Cases" row.

The goal of the Licensing Section in increasing its staff is to reduce case processing time to 9 months (274 days) to assist DCA constituent agency clients in meeting their goals under CPEI. As the Workload History chart below indicates, this cannot be accomplished with the current staffing levels.

Budget Change Proposal - Cover Sheet

DF-46 (REV 08/15)

Workload History

| Workload Measure (Grey scale shows projected) | PY – 4 FY10-11 97 Pos. | PY – 3 FY11-12 102 Pos. | PY – 2 FY12-13 103 Pos. | PY – 1 FY13-14 104 Pos. | PY FY14-15 108 Pos. | CY FY15-16 117 Pos. |
|--|------------------------------|-------------------------------|-------------------------------|-------------------------------|---------------------------|---------------------------|
| Starting Caseload | 4,034 | 5,125 | 5,704 | 5,926 | 6,190 | 5,660 |
| Cases Opened | 4,703 | 4,610 | 4,815 | 5,142 | 4,628 | 4,780 |
| Total Cases | 8,737 | 9,735 | 10,519 | 10,968 | 10,818 | 10,440 |
| Cases Closed | 3,612 | 4,031 | 4,693 | 4,778 | 5,158 | 5,850 |
| Hours Per Case* | 42 | 37 | 32 | 33 | 32 | 32 |
| Average Days to Adjudication of Formal Discipline Cases | 319 | 352 | 355 | 362 | 384 | 384 |
| Average Days Goal | 274 | 274 | 274 | 274 | 274 | 274 |
| Number of Days Beyond Goal | 45 | 78 | 81 | 88 | 110 | 110 |
| Percentage Beyond Goal | 25.8% | 28.5% | 29.5% | 32% | 40% | 40% |

*"Hours Per Case": Total Billable Hours for fiscal year divided by number of cases closed.

C. State Level Considerations

This proposal will allow the Licensing Section to assist DCA client agencies in meeting the CPEI goals for the purpose of protecting the public from incompetent, negligent or fraudulent practitioners of various professions as well as improve consumer confidence. The Licensing Section is reimbursed for its services from the special funds of the DCA client agencies that it serves. The Licensing Section clients are estimated to have sufficient funding to be able to reimburse the Licensing Section for this initial increase in staffing.

The Attorney General is required to provide the legal services necessary to support state agencies' robust enforcement programs. This BCP furthers these goals, and is also consistent with Government Code section 11040, wherein the Legislature articulated that the AGO shall be provided with the resources needed to develop and maintain its capability to provide competent legal representation for agencies of the State.

D. Justification

In line with Government Code section 11040, the resources requested in this proposal are required to maintain the Licensing Section's ability to provide competent legal representation for agencies of the State within the required CPEI timeframes. The Justification Tables below reflect the increased number of positions needed to meet the CPEI timeframes.

| Justification Table | | | |
|--|--|-------------------------------------|--------------------------------------|
| (Based on FY 2014-15 Workload History Data) | | | |
| | Current (Exceeding 9 Month Goal) | Required To Meet 9 Month Goal | With Initial Staffing Increase |
| Cases Closed Annually | 5,158 | 5,158 | 5,158 |
| Average Days to Adjudication of Formal Discipline Cases | 384 | 274 | 362 |
| Approximate Number of Cases Closed Per Day | 13 | 19 | 14.25 |
| To fully reach the goals of CPEI, 4.75 more cases will need to be closed per day. | | | |

Budget Change Proposal - Cover Sheet

DF-46 (REV 08/15)

| Required Increase In Positions | | |
|--|---|--|
| | To Meet 9 Month Goal (6 more cases/day) | With Initial Staffing Increase (1.25 more cases/day) |
| Hours Per Case | 32 | 32 |
| Additional Cases To Be Closed Per Day | 6 | 1.25 |
| Additional Hours of Work Needed To Be Completed/Day | 192 | 40 |
| Number of Hours Worked/Person/Day | 8 | 8 |
| Increased Positions Needed To Meet 9 Month Goal | 24 | 5 |

The current staffing levels in the Licensing Section are not sufficient to fully process cases within the necessary 9 month timeframe which will allow the CPEI to meet DCA case processing time expectations. The addition of twenty-four (24.0) total positions would shorten the time needed for adjudication of disciplinary cases to be handled within 9 months, and would meet the needs of the CPEI. However, due to restrictions in the client agencies' budget, the request has been modified to a phased approach, including five (5.0) DAGs. These additional 5 positions will allow the Licensing Section to adjudicate formal disciplinary cases in an average of 362 days. Although this reduction in case processing time will not fully meet the optimal goal of 9 months, case processing time will be reduced by 22 days and will thus allow the client agency to come closer to meeting their required timeframes. Additionally, the Licensing Section, in conjunction with the DCA, will continue to evaluate the staffing levels required to meet the 274 day target, and may request additional resources at a future date.

The current shortage in staffing dedicated to accomplishing these goals not only places consumers at risk from law violating licensees who are not promptly disciplined, but also feeds a perception of inadequate and untimely legal service, which emboldens licensees who have been charged with violations to continue their licensed practice as long as possible while the litigation process drags on. This leads to the erosion of the regulatory licensing system and diminishes the public's perception of the value of hiring licensed professionals.

E. Outcomes and Accountability

Projected Outcome: Additional Positions. The Projected Outcome: Additional Positions Chart, shows the positive impact of adding five (5.0) legal positions to the Licensing Section. In addition, 2.0 Legal Secretaries are needed to provide the appropriate administrative support.

Projected Outcome: With Additional Positions

| Workload Measure (Grey scale shows projected) | CY FY 15-16 117 Pos. | BY FY 16-17 122 Pos. | BY +1 FY 17-18 122 Pos. | BY +2 FY 18-19 122 Pos. | BY +3 FY 19-20 122 Pos. | BY +4 FY 20-21 122 Pos. |
|--|----------------------------|----------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Cases Closed | 5,850 | 5,850 | 5,850 | 5,580 | 5,580 | 5,580 |
| Hours Per Case | 32 | 32 | 32 | 32 | 32 | 32 |
| Average Days to Adjudication of Formal Discipline Cases | 384 | 362 | 362 | 362 | 362 | 362 |
| Average Days Goal | 274 | 274 | 274 | 274 | 274 | 274 |
| Number of Days Beyond Goal | 110 | 88 | 88 | 88 | 88 | 88 |
| Percentage Beyond Goal | 40% | 24% | 24% | 24% | 24% | 24% |
| *Referral of new cases is expected to continue to increase, with a growth rate in referrals projected at 2% per year for this analysis. | | | | | | |

As shown in the above Projected Outcome: With Additional Positions chart, the proposal to add five (5.0) positions to the Licensing Section, as the initial phase in increasing staffing levels, will accomplish a reduction in caseloads per position

Budget Change Proposal - Cover Sheet

DF-46 (REV 08/15)

and will help towards the goal of meeting the case processing time goals set by the DCA constituent agencies to meet their case processing goals under the CPEI.

F. Analysis of All Feasible Alternatives

There are no alternatives that will enhance public protection and the confidence in the licensing system as well as this proposal, identified as Alternative A, below.

Alternative A. Add seven (7.0) total positions to enable the Licensing Section to work towards meeting the performance goals of the CPEI and improve consumer protection. This is the recommended alternative because it works toward the goal of fulfilling the mandate for the AGO to provide effective legal services to state agencies and promotes the goals of the DCA to improve consumer protection by reducing the average time to adjudicate formal discipline matters.

Alternative B: Continue with current operations. Without additional staffing, the caseload of the Licensing Section will continue to grow over time. Continuing with existing staffing levels will allow licensees who have violated the law to continue to practice for well beyond the 12-18 month period envisioned by the CPEI, and consumer confidence in the State's licensing system will likely be eroded.

Alternative C: Cases in excess of the capacity of the Licensing Section could be referred to outside counsel. This alternative would avoid the increase in civil service staff, but the cost of outside counsel would likely far exceed the cost of hiring qualified civil service employees who will specialize in disciplinary administrative prosecution. Additionally, there would be no ability to monitor the average time for processing cases handled by outside counsel, nor a way to ensure that such matters are expeditiously prosecuted. Due to legal concerns, such as a lack of control of the cases handled by outside counsel and high costs, this alternative would not be acceptable.

G. Implementation Plan

Once approved, the Licensing Section will immediately begin the hiring process to fill approved positions.

H. Supplemental Information. None to report.

I. Recommendation

Alternative A. Add seven (7.0) total positions to enable the Licensing Section to work towards meeting the performance goals of the CPEI and improve consumer protection. This is the recommended alternative because it works toward the goal of fulfilling the mandate for the AGO to provide effective legal services to state agencies and promotes the goals of the DCA to improve consumer protection by reducing the average time to adjudicate formal discipline matters.