Workers’ Compensation Ethics Advisory Committee Annual Report, 2023



**State of California Gavin Newsom, Governor**

**Labor and Workforce Development Agency Stewart Knox, Secretary**

**Department of Industrial Relations Katrina S. Hagen, Director**

Message from the Director



In 2023, the Workers’ Compensation Ethics Advisory Committee (EAC) received 22 complaints against Workers’ Compensation Administrative Law Judges. Each year, the EAC members, its support staff, and investigating judges spend considerable time reviewing each complaint, and if warranted, conducting a thorough investigation of the complaints, including interviewing witnesses and reviewing court documents. The complaint review process is one aspect of our effort to maintain ongoing dialogue and feedback with Workers’ Compensation Administrative Law Judges to ensure that they are held to the highest ethical standards.

The integrity of the adjudicatory function of the workers’ compensation system is sustained by a continual, impartial review of complaints, and I thank the Advisory Committee for their essential work in this area.

With the ending of the COVID-19 Public Health Emergency in 2023, the Division of Workers’ Compensation (DWC) was able to schedule most trials in person while remaining in a hybrid model by holding conferences virtually.

I would like to thank all our Workers’ Compensation Administrative Law Judges across the state. They continue to perform a critical role in the states’ workers’ compensation system, to ensure our injured workers across the state are provided timely and appropriate medical care and indemnity benefits, and that they return to work safely and quickly.

Thank you,

/s/ Katrina S. Hagen Katrina S. Hagen

Director of Industrial Relations

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# The Ethics Advisory Committee: A Profile

# The Committee’s Function

The Workers’ Compensation Ethics Advisory Committee (EAC or committee) is a state committee independent of the Division of Workers’ Compensation (DWC or division). The EAC’s authority and duties are set forth in the California Code of Regulations (CCR), Title 8, sections 9722 through 9723.

As civil servants, Workers’ Compensation Administrative Law Judges (WCALJs or judges) are not subject to review by the California Commission on Judicial Performance, the agency responsible for investigating misconduct complaints against supreme, superior, and appellate court judges. Instead, it is the EAC that monitors and reviews complaints of judicial misconduct filed against WCALJs.

The EAC meets at regular intervals to review complaints. If a complaint warrants a formal investigation, the committee recommends investigation to the Administrative Director of the DWC and the Chief Judge (CJ) of the Division of Workers’ Compensation.

# Committee Membership and Meetings

Pursuant to CCR, Title 8, section 9722, the EAC is composed of nine members, each appointed by the DWC Administrative Director for a term of four years. Reflecting the various constituencies within the California workers’ compensation community, the EAC consists of the following:

* + - A member of the public representing organized labor
		- A member of the public representing insurers
		- A member of the public representing self-insured employers
		- An attorney who formerly practiced before the Workers’ Compensation Appeals Board (WCAB) and who usually represented insurers or employers
		- An attorney who formerly practiced before the WCAB and who usually represented applicants (injured workers)
		- A presiding judge (PJ)
		- A judge or retired judge
		- Two members of the public outside the workers’ compensation community

The committee is assisted in carrying out its function by an attorney and secretary on the DWC staff.

The EAC meets four times a year at the DWC headquarters, located at 1515 Clay Street in Oakland. However, due to the COVID-19 pandemic, the meetings continued to take place remotely in 2023. The committee meets in executive session when it engages in the review and discussion of complaints, and that portion of the proceedings is closed to the public.

# Complaint Procedures

# Filing a Complaint

Anyone may file a complaint with the EAC. Complaints may be submitted anonymously but must be in writing. Typically, a complaint is submitted in the form of a letter from an injured worker, attorney, or lien claimant (i.e., medical provider) who has been a party to a proceeding before a WCALJ, and the complaint alleges ethical misconduct by that judge.

On receipt of the complaint, the EAC opens a case, and the DWC sends a letter to the complainant acknowledging that the complaint was received by the committee. Each complaint that alleges misconduct by a judge is formally reviewed by the EAC. To ensure the objectivity of the reviewing members, the names of the complainant, WCALJ, witnesses, and the DWC office where the alleged misconduct occurred are redacted from complaint copies.

A complaint that fails to allege facts that constitute WCALJ misconduct is forwarded to the CJ with a recommendation that no further action be taken. In such a case, the complainant is advised in writing that the EAC considered the complaint, found that no misconduct was either alleged or established, decided that no further action was appropriate, and closed the file.

# Investigation by the Chief Judge or Administrative Director

When a complaint makes allegations that, if true, would constitute misconduct by a WCALJ, the EAC recommends that the CJ or Administrative Director conduct an investigation. After the investigation is complete, the EAC is briefed on the findings and determines whether an ethical violation occurred. If no ethical violation is found, the EAC recommends no further action. If the EAC finds an ethical violation, it recommends corrective action by the CJ. The complainant is advised in writing that appropriate corrective action has been taken and that the matter has been closed.

Any disciplinary action taken against a WCALJ by the CJ or Administrative Director is in the form required by Government Code [GC] Section 19574 or 19590(b). The right of the CJ or the Administrative Director under CCR, Title 8, Section 9720.1 *et seq.* to enforce ethical standards among judges does not replace or reduce a WCALJ's procedural rights under the State Civil Service Act (GC section 18500 *et seq.*).

Furthermore, the rights and obligations of the CJ or the Administrative Director and the WCALJ concerning the probationary period mandated by GC Sections 19170 through 19180 are not affected.

# Complaint Digest

# Complaint Statistics for Calendar Year 2023

## Workers’ Compensation Administrative Law Judges

The DWC has 23 district office locations, including one virtual satellite office, and a Special Adjudication Unit (SAU). In 2023, the DWC had authority over 188 active judges, including 164 serving judges and 24 PJs.

## Complaints

The EAC’s caseload consists of complaints still pending at the end of the prior year and newly filed complaints. The total caseload for 2023 was 25 complaints. (See Table 1)

# Table 1. 2023 Complaint Caseload

|  |  |
| --- | --- |
| **2023 Complaint Caseload** | **Number of complaints** |
| 2022 complaints pending ongoing investigation/consideration | 3 |
| New complaints filed in 2023 | 22 |
| Total complaints | 25 |

In the calendar year 2023, the EAC considered and resolved three (3) pending complaints from 2022, meaning that an investigation was requested and did not conclude by the end of the year. Of the 22 new complaints received in 2023, the EAC considered 20 and resolved 20, two of the new complaints were filed after the last meeting in 2023. Of those considered, three resulted in investigations. A total of 23 complaints were resolved, which includes the three pending investigations from 2022. (See Table 2)

The complaints set forth a wide variety of grievances. A large proportion alleged judicial misconduct or bias based on dissatisfaction with a judge’s decision. Of the 23 resolved complaints, none resulted in findings of judicial misconduct (See Table 2)

# Table 2. 2023 Disposition of Complaints

|  |  |
| --- | --- |
| **Disposition of Complaints** | **Number of complaints** |
| 2023 new complaints received | 22 |
| Investigations filed based on 2022 complaints | 3 |
| New complaints considered | 20 |
| Investigations filed based on new complaints | 3 |
| 2022 complaints resolved | 3 |
| New complaints resolved | 20 |
| Total complaints resolved (2022, 2023) | 23 |

|  |  |
| --- | --- |
| **Disposition of Complaints** | **Number of complaints** |
| Total complaints investigated in 2023 (2022, 2023) | 6 |
| Findings of no misconduct | 23 |
| Findings of misconduct | 0 |
| New complaints pending ongoing investigation | 0 |
| New complaints pending consideration (filed after the last 2023 meeting) | 2 |
| New complaint pending additional information from complainant | 0 |

## Complainants

The workers’ compensation community is composed of a variety of groups, including but not limited to injured workers, attorneys, hearing representatives, claims administrators, and lien claimants (medical providers). Many types of complainants filed new complaints during 2023, but unrepresented employees made up by far the largest group. (See Table 3)

**Table 3. Complaints Filed in 2023, by Type of Complainant**

|  |  |
| --- | --- |
| **New Complaints Filed in 2023, by Type of Complainant** | **Number of Complaints** |
| Employees represented by attorneys | 1 |
| Employees not represented | 15 |
| Employers | 0 |
| Applicant attorneys | 2 |
| Defense attorneys | 1 |
| Hearing representatives | 2 |
| Claims administrators | 0 |
| Lien claimants (medical providers, interpreters) | 0 |
| Attorneys/hearing representatives for lien claimants | 0 |
| Other (anonymous) | 1 |

* 1. **Alleged Types of Conduct Complained About in 2023**

|  |  |
| --- | --- |
| **Types of Conduct Complained About in 2023** | **Number of Complaints** |
| Demeanor/Decorum | 6 |
| Abuse of Contempt/Sanctions | 2 |
| Disqualification/Disclosure/Post-Disqualification Conduct | 1 |
| Ex Parte Communications | 0 |
| Failure to Ensure Rights | 5 |
| Bias or Appearance of Bias | 2 |
| Improper Political Activities | 0 |
| Decisional Delay, False Salary Affidavits, Fraud | 3 |
| Off-bench Abuse of Office/Misuse of Court Information | 0 |
| On-bench Abuse of Authority in Performance of Judicial Duties | 3 |
| Administrative Malfeasance (includes conflicts between judges, failure to supervise staff, delay in responding to complaints) | 0 |
| Miscellaneous Off-bench Conduct | 0 |
| Misuse of Court Resources | 0 |

# Description of Complaints that led to Investigations in 2023

1. Complainant, an unpresented applicant, complained that the judge had a conflict of interest because the judge had a personal relationship with the defendant’s insurance company. The complainant claimed that the spouse of the judge is a member of the Board of Directors for the defendant’s insurance company. The complainant complained that the judge should have recused him/herself from the complainant’s case.
2. Complainant, an applicant’s attorney, complained that the judge demonstrated a pattern and practice of circumventing Labor Code section 123.5, by repeatedly taking a trial out of submission without good cause.
3. Complainant, an applicant’s attorney, complained that the judge threatened sanctions for exercising their right of appeal on behalf of the client.

# Appendices

# Number of Misconduct Complaints Filed with the EAC, 2009-2023

|  |  |
| --- | --- |
| **Year** | **Number of Complaints** |
| 2009 | 28 |
| 2010 | 40 |
| 2011 | 41 |
| 2012 | 19 |
| 2013 | 37 |
| 2014 | 45 |
| 2015 | 44 |
| 2016 | 44 |
| 2017 | 20 |
| 2018 | 29 |
| 2019 | 27 |
| 2020 | 26 |
| 2021 | 19 |
| 2022 | 27 |
| 2023 | 22 |

* 1. **2023 Committee Membership and Staff 2023 Ethics Advisory Committee Members**

**Jim Zelko**

Member of the Public from Outside the Workers’ Compensation Community

# Sara Widener-Brightwell, Esq.

California Workers’ Compensation Institute Member Representing Insurers

# Chris Ellen Willmon

Attorney who formerly Practiced Before the WCAB and Represented Insurers and Employers

**Kenneth Peterson, Esq.** Former Applicants’ Attorney Workers’ Compensation Law

# Cristine E. Gondak

Member of the Public from Outside the Workers’’ Compensation Community

# Steven Siemers, Esq.

Member Representing Organized Labor

# Hon. William E. Gunn

Presiding Workers’ Compensation Judge

Special Adjudication Unit – Van Nuys District Office

# Hon. Deborah Whitcomb

Workers’ Compensation Judge

Workers’ Compensation Appeals Board, Stockton

# Jill A. Dulich

California Self-Insurers’ Security Fund

Member of the Public Representing Self-Insured Employers

**Division of Workers’ Compensation Staff**

|  |  |  |
| --- | --- | --- |
| **Hon. Paige Levy** | **Karen Pak** | **Ursula Jones** |
| Chief Judge | DWC Attorney | Administrative Assistant |