

Workers' Compensation Ethics Advisory Committee

Annual Report, 2021



State of California
Gavin Newsom, Governor

Labor and Workforce Development Agency
Natalie Palugyai Secretary

Department of Industrial Relations
Katrina S. Hagen, Director

Message from the Director



The year 2021 was extraordinary in many ways. The COVID-19 pandemic continued to create challenges and difficulties that impacted everyone. Our second year into the pandemic, the Department of Industrial Relations, and notably the Division of Workers' Compensation, continued to ensure access to state services and the safety of the public and our employees. This year, the Division of Workers' Compensation was able to resume limited in-person hearings for trials, lien trials, expedited hearings, and special adjudication (SAU) trials.

Throughout the COVID-19 crisis, the Workers' Compensation Ethics Advisory Committee continued its work investigating judicial misconduct complaints against Workers' Compensation Administrative Law Judges. In virtual, online meetings held quarterly, the Advisory Committee reviewed complaints and, as appropriate, recommended investigations to the Administrative Director and the Chief Judge of the Division of Workers' Compensation. In 2021, the Advisory Committee filled two vacant positions, appointing Chris Willmon and Presiding Judge William Gunn to serve on the Committee. 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.

This complaint review process is one aspect of our effort to maintain ongoing dialogue and feedback with Administrative Law Judges to ensure that they are held to the highest ethical standards. Since the onset of the COVID-19 crisis, we have continued with annual mandatory training and added new elements to the training program to acknowledge new challenges, including a behavioral scientist on the panel of speakers, to discuss difficult issues that judges face including how to deal with these emotions and responses.

Finally, 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, and it has never been more evident than during the COVID-19 pandemic, 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,

[/Katrina S. Hagen](#)

Katrina S. Hagen
Director of Industrial Relations

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I. The Ethics Advisory Committee: A Profile

A. 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.

B. 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' Compensational 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 2021. Although EAC meetings are open to the public, 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.

II. Complaint Procedures

A. 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.

B. 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. 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.

III. Complaint Digest

A. Complaint Statistics for Calendar Year 2021

1. Workers' Compensation Administrative Law Judges

The DWC has 23 district office locations, one virtual satellite office, and a Special Adjudication Unit (SAU). In December of 2021, the DWC had authority over 186 active judges, including 162 serving judges and 24 PJs.

2. 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 2021 was 24 complaints. (See Table 1)

Table 1. 2021 Complaint Caseload

2021 Complaint Caseload	Number of complaints
2020 complaints pending ongoing investigation	4
2020 complaints filed after the last 2020 meeting	1
New complaints filed in 2021	19
Total complaints	24

In calendar year 2021, the EAC considered and resolved five complaints from 2020: four pending ongoing investigation (meaning that an investigation was requested and did not conclude by the end of the year) and one pending consideration (meaning that the complaint was filed after the last meeting of the year). The one complaint pending consideration led to an investigation. Of 19 new complaints received in 2021, the EAC considered 19 and resolved 15. Of those considered, eight resulted in investigations, three of which were not concluded and remain pending, and one resulted in a request for additional information. A total of 20 complaints were resolved, which includes the five complaints from 2020. Three complaints are pending ongoing investigation in 2022, and one complaint is pending additional information from the complainant. (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 20 resolved complaints, none resulted in findings of judicial misconduct (See Table 2.)

Table 2. 2021 Disposition of Complaints

Disposition of Complaints	Number of complaints
2021 complaints received	19
Investigations filed based on 2020 complaints	1
New complaints considered	19
Investigations filed based on new complaints	8

Disposition of Complaints	Number of complaints
2020 complaints resolved	5
New complaints resolved	15
Total complaints resolved (2020, 2021)	20
Total complaints investigated (2020, 2021)	9
Findings of no misconduct	20
Findings of misconduct	0
New complaints pending ongoing investigation	3
New complaints pending consideration (filed after the last 2021 meeting)	0
New complaint pending additional information from complainant	1

3. 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 2021, but unrepresented employees made up by far the largest group. (See Table 3.)

Table 3. Complaints Filed in 2021, by Type of Complainant

New Complaints Filed in 2021, by Type of Complainant	Number of Complaints
Employees represented by attorneys	2
Employees not represented	15
Employers	0
Applicant attorneys	0
Defense attorneys	0
Hearing representatives	0
Claims administrators	0
Lien claimants (medical providers, interpreters)	1
Attorneys/hearing representatives for lien claimants	0
Other (anonymous)	1

B. Alleged Types of Conduct Complained About in 2021

Types of Conduct Complained About in 2021	Number of Complaints
Demeanor/Decorum	2
Abuse of Contempt/Sanctions	0
Disqualification/Disclosure/Post-Disqualification Conduct	0
Ex Parte Communications	1
Failure to Ensure Rights	3
Bias or Appearance of Bias Not Directed Toward a Particular Class (includes embroilment, prejudgment, favoritism)	4
Improper Political Activities	0
Decisional Delay, False Salary Affidavits	4
Off-bench Abuse of Office/Misuse of Court Information	0
On-bench Abuse of Authority in Performance of Judicial Duties	1
Administrative Malfeasance (includes conflicts between judges, failure to supervise staff, delay in responding to complaints about commissioners)	0
Bias or Appearance of Bias Toward a Particular Class	4
Miscellaneous Off-bench Conduct	0
Misuse of Court Resources	0

C. Description of Complaints that led to Investigations in 2021

1. Complainant, an unrepresented applicant, complained that the judge erred approving the Stipulation and Award entered into on August 2, 2018, even though the judge admitted having questions as to its contents. Complainant complained that the judge knew this was not an equitable settlement for complainant after 18 years in the workers' compensation system. Complainant argued that the judge knew that there was ambiguous language in the settlement agreement.

The complainant also alleged that the judge had unauthorized ex-parte communication with the complainant concerning the completion and filing of a petition for reconsideration of the Stipulation and Award.

Complainant complained that the judge gave misleading advice to complainant during this ex-parte meeting which gave the defense a procedural advantage to get a judge to eventually rule against complainant's petition to rescind.

Complainant alleged that the judge exhibited bias and prejudice in favor of complainant's former attorney by not letting complainant confront the attorney as to the contents of the contract. The judge ordered complainant to direct all questions to the defense even though the judge knew that complainant had issues and questions with complainant's attorney.

Complainant also claimed that the judge failed to exercise control over the conduct of the attorneys during hearings. The former attorney attempted on several occasions to threaten complainant and intimidate complainant into silence by calling complainant a "looney tune." This was demeaning and the judge did not say anything. Not until complainant called out the judge on the attorney's behavior did the judge tell the attorney, "this is a professional proceeding and there would be no name calling." Not long after that, the attorney started calling complainant an "angry woman." Nothing was said by the judge. The judge also exhibited bias and prejudice in favor of the defense attorney by not reprimanding the attorney for not giving answers to most of complainant's questions and for lying to a few of them. Complainant complained that the judge did not uphold impartiality, integrity and the independence of the judicial system during the settlement conferences and hearings. Complainant believed that the judge's actions were influenced by the attorneys and the judge unfairly listened to the bad mouthing of complainant. The judge allowed the former attorney to bring a vexatious litigant petition against the complainant and the judge refused to rule on that action during a lien hearing which the former attorney said complainant did not need to attend. Complainant claimed that the judge was unfairly and intentionally holding the vexatious litigant petition over complainant.

2. Complainant, an applicant's attorney, complained that the judge repeatedly failed to correctly list Applicant's three Exhibits at a hearing on defendant's "Petition to be Relieved of AME Agreement dated on or about 11/5/2019," to evade compliance with the 90-day affidavit requirement. The judge refused to make a decision and extended submission dates under false pretenses. Applicant complained to the PJ on numerous occasions without any corrective action. The judge admitted at a hearing that the judge had caused unnecessary delays. The judge's 12/9/2020 Order promises a decision will issue shortly after the 12/28/2020 hearing. No such decision had been issued, continuing violations of Canon 3.

3. Complainant, an unrepresented applicant, wanted to limit the medical release to the defense team as they have already been caught lying to the judge. The judge explained that the medical release forms would be reviewed and discussed on what was relevant

and let the defense team look at it. Then complainant asked the same question and the judge said it will have to go to the defense team. The complainant received two different answers and does not feel the judge is confident in the answers. The judge also made a reference to masturbate.

4. Complainant, an unrepresented applicant, complained that the judge expressed bias or prejudice. Complainant indicated that there were a set of incidents which complainant believes showed the judge's expression of bias or prejudice. Below are the set of events:

Upon defense witnesses providing their testimony, the judge thanked each one of them for their state service. Complainant felt that the judge was showing bias towards state employees by thanking them for their state service.

At one point during the first day of trial, the judge complimented the defense attorney, about the attorney's beautiful children, complainant felt uncomfortable and thought that the judge had a pre-disposed impression of the defense attorney from having previously known the defense attorney. Complainant became concerned that the judge would favor the defense.

Complainant felt that the judge was not allowing complainant to explain complainant's responses, as complainant intended to go back to one of the questions to provide more detail, but the judge only asked to provide a response to a question when asked.

At a later time during trial, the judge asked whether complainant was aware that complainant had received a settlement offer. Complainant responded, "yes." At that moment, complainant felt awkward. Later, complainant thought that the judge was acting biased towards the employer overlooking the facts of how complainant was being abused by the colleagues. Complainant felt that the judge's comment was not necessary and inappropriate.

The judge started having a casual conversation with complainant's attorney with a smile discussing how one of the retired judges has agreed to come back and volunteer. It appeared to complainant that the judge was happy complainant had agreed to accept the settlement offer; whereby, the judge did not need to bother with the remainder of the trial and had completed the trial in a manner satisfactory to the judge's desire to support the defendant. Complainant complained of feeling completely undermined in being given the proper attention to come to a proper and fair outcome.

5. Complainant, an unrepresented applicant, complained that since the beginning of trial, the judge failed to rule on any of the petitions submitted.

Complainant also complained that at a hearing on March 23, 2021, the judge received information about the lawsuit complainant filed against the judge. As relief in federal court, the complainant sought injunctive relief and declaratory relief. That case was pending. While complainant was speaking leading up to a question that did not require legal advice the judge stated "I am ending this court call" and the judge hung up. The judge ended the court call and hung up while the complainant was still speaking. The judge never gave a

new trial date during this call. The judge ended the court call and hung up while the complainant was still speaking, the judge created a hostile environment and now the complainant fears retaliation. The complainant felt and knows that the judge discriminated against complainant because of complainant's race. The judge has not ended a court call and hung up on 1) a Plaintiff or Defendant of another race who was speaking leading up to asking a question that did not require legal advice. 2) the judge has not ended a court call and hung up on a Plaintiff or Defendant of another race that has one pending civil lawsuit against the judge.

6. Complainant, an unrepresented applicant, complained that the case finally went to trial on September 15, 2021. Unfortunately, the court trial did not go smoothly from the beginning. Complainant admitted there was a telephone connection issue until complainant fixed it. At the beginning, the judge got angry about something and the judge tried to scare complainant that the judge would stop the trial, so complainant's answer was, "are you trying to blackmail me?" Then the defense attorney explained to the judge that there was a bad connection, and the parties went on with the trial. This time the judge couldn't find the statements for the trial within the court file documents, and again the defense attorney helped the judge by phone to locate statements from complainant and the former defense attorney. After reading the court documents, the judge panicked, "there are 2 compelling orders to go to an evaluation," and "I have to ask the PJ what to do." Complainant believed, the complainant heard the judge say "this is not my trial." Complainant was shocked because there were two orders compelling and after 2 more MSC hearings, and the last MSC conference before going to trial. The judge should have done the homework before coming to the trial.

After a long fight for the case to be set for trial, this judge sent it to another judge for trial. Complainant complained that this case has been going on for about 17 years (even though the Award is from 2008). When the judge came back from the meeting with the PJ, the judge said "go around."

7. Complainant, an unrepresented applicant, complained the PJ told the trial judge to "finish the case." The complainant was shocked because complainant needed someone to advise why they denied treatment all this time. Then somehow the judge refused to continue the trial and told the parties to take a break while the judge sees the PJ. After the break, the trial judge told them that the PJ to "let [complainant] go around." The court trial was postponed for another date. Complainant was shocked again, is this the way PJs conduct their advice. This is the same PJ that complainant wrote last year asking for a meeting wanting an explanation about complainant's case. For a while later, complainant went to the Board and talked to one of the supervisors about the letter because complainant never received a response from the PJ. Complainant was then told that "you have no right to talk with the PJ about matter or with/about his/her secretary." Complainant hopes this matter is investigated because complainant has been without medical treatment but instead asked to undergo more and more evaluations.

8. Complainant, an unrepresented applicant, complained that the judge should have removed oneself from the case because the judge is a personal friend of the defense attorney. Complainant felt that the judge had a personal bias due to the friendship with the attorney. When the parties were preparing to state the case, they would talk about their weekend activities together.

9. An anonymous complainant complained that the matter went to trial in January of 2021. A vacation of submissions was done, then believed to be resubmitted in August of 2021 after rating instructions. Complainant complained that it does not appear that the judge is acting within time frames.

IV. Appendices

A. Number of Misconduct Complaints Filed with the EAC, 2007-2021

Year	Number of Complaints
2007	24
2008	25
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

B. 2021 Committee Membership and Staff

2021 Ethics Advisory Committee Members

Jim Zelko

Member of the Public from Outside the Workers' Compensation Community

Ellen Sims Langille, 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

Chief Judge

Karen Pak

DWC Attorney

Ursula Jones

Administrative Assistant

C. Acronyms

AME	Agreed Medical Evaluator
CCR	California Code of Regulations
CHP	California Highway Patrol
CJ	Chief Judge
C&R	Compromise and Release
DOR	Declaration of Readiness
DWC	Division of Workers' Compensation
EAC	Ethics Advisory Committee
EAMS	Electronic Adjudication Management System
F&A	Findings and Award
GC	Government Code
I&A	Information & Assistance
IME	Independent Medical Exam
LC	Labor Code
MSC	Mandatory Settlement Conference
PD	Permanent Disability
PJ	Presiding Judge
QME	Qualified Medical Evaluator
WCAB	Workers' Compensation Appeals Board
WCALJ	Workers' Compensation Administrative Law Judge