

**W**orkers'

**C**ompensation

**B**oard

**POLICY & PROCEDURE**

**Date Issued:** January 24, 2001

**Section:** *Hearings Division*

**Subject:** *ALJ Complaint Policy*

**Approved:**  Workers' Compensation Board

This policy supersedes all previous policy statements on this topic and is effective for complaints received on or after January 24, 2001.

**Purpose:** The purpose of this policy is to provide a fair and timely process for handling complaints about Administrative Law Judges.

**Authority :** ORS 656.724

**Effective Date:** All complaints received on or after January 24, 2001.

**Policy:**

The Workers' Compensation Board (Agency) and its employees are accountable to the public to provide the highest quality of service to the parties who come before it. To ensure this, the Agency holds its Administrative Law Judges (ALJs) to a high standard of professional conduct, discretion and good judgment. By virtue of their quasi-judicial function, the ALJs are important, powerful, and very visible representatives of the Agency. Their conduct must be judicious and exercised for the good of the public.

**Definitions:**

1. Complaint: A notification either in writing or orally to the Board Chair or the Agency's managers alleging that an Administrative Law Judge has engaged in improper conduct in the performance of duties potentially warranting disciplinary or corrective action. If in writing, the complaint must be signed by the complainant. If the complaint is received orally, the recipient of the information must put the information in writing. The complainant must sign this writing, indicating that it accurately reflects the complaint, unless the anonymity of the complainant and/or the confidentiality of the complaint is protected by state or federal law. An affidavit to remove an ALJ per OAR 438-006-0095 can, but does not necessarily, constitute a complaint under this policy.

2. Complaint Inquiry Committee (committee): A committee created by the Board Chair whose duty it is to investigate the allegations and report to the Board Chair. The committee may include one or more Board Members, the Presiding Administrative Law Judge, one or more ALJs, or any other individual(s) who the Board Chair determines to be appropriate.

**Procedure:**

1. Upon receipt, a notification of potentially improper conduct shall be delivered to the Presiding Administrative Law Judge (PALJ). The PALJ shall determine whether the notification alleges improper conduct sufficient to potentially warrant disciplinary or corrective action. If the PALJ determines that the alleged conduct is not sufficient to potentially warrant disciplinary action, the PALJ shall so advise the complainant. In that event, the PALJ will, as the ALJ's supervisor, take appropriate corrective/coaching action, if any, regarding the concerns expressed by the complainant. If the PALJ determines that the alleged conduct potentially warrants disciplinary action, the PALJ shall deliver a copy of the complaint to the Board Chair. After reviewing the complaint, if the Board Chair, after consulting with the Board Members, determines that the alleged conduct may warrant disciplinary action, the Board Chair, after consulting with the Board Members, may assign the complaint to a complaint inquiry committee to investigate the matter and submit a report to the Board Chair or the Board Chair, after consulting with the Board Members, may assign the complaint to the PALJ, as supervisor, to conduct a more informal inquiry and/or take appropriate action, if any.

2. Except where the Board Chair, after consulting with the Board Members, determines that the alleged conduct is sufficiently egregious, the Board Chair will not consider any complaint, or any portion of a complaint, that is based on alleged ALJ conduct that occurred more than three years prior to the filing of the complaint.

3. Within 10 days of the Board Chair's receipt of the complaint, written acknowledgment of such receipt will be provided to the complainant.

4. Within 10 days after receipt of a complaint, the PALJ shall provide a copy of the complaint to the subject ALJ, unless the allegations involve a case which is pending before the ALJ. If the case is pending before the ALJ, the ALJ shall receive notice of the complaint no more than 35 days after the complaint is received by the PALJ. During this 35-day period, no committee shall be formed and no investigation/inquiry shall occur. If the record has not been closed, the PALJ may remove the subject ALJ from the case and assign it to another ALJ and cause the investigation to proceed. The provisions in this paragraph are inapplicable when an ALJ removal request has been made pursuant to paragraph 5 below.

5. If, at the time of filing the complaint or at any subsequent time, the complaining party requests removal of the subject ALJ from all pending and future cases involving the complaining party, the PALJ shall effect such removal and the

removal shall remain in effect pending the Agency's final resolution of the complaint. The PALJ shall provide a copy of the complaint to the subject ALJ as soon as practicable, but not later than 10 days after receipt of the complaint.

6. No provision in this policy shall be construed in a way that will impair the Agency's ability to manage its ALJ employees with respect to the assignment/reassignment of cases based upon the needs of the Agency.

7. If the Board Chair forms a complaint inquiry committee, the PALJ shall provide a copy of the complaint to each member of the committee. Written notification shall be provided to the subject ALJ that the committee has been formed and will be investigating the complaint. Information about the ALJ's status during the investigation of the complaint shall be included in the notice.

8. The committee's investigation shall include (but is not limited to) reviewing relevant records and contacting persons alleged to have knowledge that is both relevant and material to the complaint.

9. The committee may, at any time, recommend to the Board Chair that the complaint or any part thereof be dismissed without further investigation.

10. After gathering the preliminary information, and after interviewing the complainant and others who may have relevant information, the committee shall provide the subject ALJ with a written report identifying the allegations that remain under investigation, and provide the ALJ with the underlying information it has obtained that is relevant to those allegations, and provide the identity of the source of such information, except where such disclosure would be prohibited by state or federal law. The ALJ shall be provided with an opportunity to respond either orally or in writing to each of those allegations. This response must be provided within a reasonable time as specified by the committee.

11. After receiving and considering the information provided by the subject ALJ, the committee may elect to collect additional information. The ALJ shall be afforded an opportunity to respond to all additional relevant and material information considered by the committee.

12. The subject ALJ's entitlement to additional information obtained by the committee but not deemed to be material or relevant to the allegations shall be governed by Oregon's Public Records law.

13. After completing the investigation and considering all of the information, the committee shall report the results of its investigation to the Board Chair.

14. Within 30 days after receiving the committee's final report, the Board Chair, after consulting with the Board Members, shall determine whether the complaint has merit. If it is determined that the complaint does not have merit, the Board Chair

shall so notify the subject ALJ and the complaint shall be dismissed. If a preliminary determination is made that the complaint has merit, the Board Chair shall provide notice to the ALJ of said preliminary determination and the specific information in support of the determination. The Board Chair shall provide the subject ALJ with an opportunity to appear personally before the Board Chair and fully respond to the preliminary determination within 30 days of notice of such determination. After considering all of the information, the Board Chair, after consulting with the Board Members, will issue a final decision in writing. Any decision made on a complaint, other than a termination decision, shall be final. If a termination decision is made, the ALJ has the right, pursuant to ORS 656.724(3)(c) and ORS 240.560, to appeal the decision to the Employment Relations Board.

15. A copy of the complaint, its final disposition, and the ALJ's written response, if any, shall be made a part of the ALJ's official personnel file only if the Board Chair, after consulting with the Board Members, determines that formal disciplinary action is warranted.