

California Workers' Compensation Division of Workers' Compensation Court Motions: A Research Report

(PART-A INJURED WORKERS ANALYSIS)

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CALIFORNIA WORKERS' COMPENSATION: COURT MOTIONS AND PROCEDURES

This report explains the main types of court motions (formal written requests to a judge) used in California workers' compensation cases. Workers' compensation is the system that provides benefits to employees who are injured or become ill because of their job. These motions are filed with the Division of Workers' Compensation (DWC), the state agency that oversees these cases. Understanding these motions will help you protect your rights and meet required deadlines.

Part 1: Overview of the Workers' Compensation System

How Workers' Compensation Cases Are Decided

The California DWC resolves disputes between injured workers, employers, and insurance companies. The Workers' Compensation Appeals Board (WCAB) is the state body that reviews decisions made by trial-level judges. A workers' compensation judge (WCJ) is the judge who first hears your case at a local district office.

The main California law that controls these cases is found in the California Labor Code, Division 4, Part 4, §§ 5300–5999 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/>). Cal. Lab. Code § 5309 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-1/section-5309/>) gives the WCAB its authority and allows workers' compensation judges to hear cases at the trial level. The Rules of Practice and Procedure, found in Cal. Code Regs. tit. 8, §§ 10300–10999 (<https://www.dir.ca.gov/wcab/WCABProposedRegulations/WCABRulesofPracticeandProcedure/WCABFinalCleanTextofRegs.pdf>), set out the detailed procedural rules everyone must follow.

Types of Motions Covered in This Report

A motion is a formal request asking the judge to take a specific action. A petition is a similar request, often used in workers' compensation instead of the word "motion." The main types include:

- Petition for Reconsideration — asking the WCAB to review a judge's decision (must be filed within 20 days)
- Declaration of Readiness to Proceed (DOR) — a request to schedule your case for a hearing or settlement conference
- Objection to Declaration of Readiness — opposing the other side's request to schedule a hearing
- Motion for Continuance — asking to postpone a hearing to a later date
- Petition to Compel Medical Evaluation — asking the judge to order a party to attend a medical exam
- Petition for Sanctions and Attorney's Fees — asking the judge to punish the other side for bad behavior or delays
- Petition for Removal or Disqualification — asking to have a judge's order reviewed early, or to remove a judge from the case

Why Deadlines Matter

Important: California courts now strictly enforce filing deadlines. Missing a deadline can permanently end your right to challenge a decision. The 2023 case *Zurich American Insurance Co. v. Workers' Comp. Appeals Bd.*, 97 Cal. App. 5th 1213 (2d Dist. 2023) (<https://law.justia.com/cases/california/court-of-appeal/2023/b321864.html>) confirmed that certain deadlines are jurisdictional, meaning the court loses all power to act if the deadline passes. This is not a rule a judge can bend — it is absolute.

Part 2: Recent Legal Changes You Should Know

The Zurich Decision and the 60-Day Rule

Before 2023, the WCAB sometimes accepted late filings due to its own processing delays. The Zurich decision changed this. The court held that former Cal. Lab. Code § 5909 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/section-5900/>) created a firm 60-

day window. If the WCAB did not act on a petition for reconsideration within 60 days of filing, the petition was automatically denied. Any decision made after that deadline was void (legally meaningless).

The California Legislature responded by passing Assembly Bill 171 (AB 171), effective July 1, 2025. This law temporarily changes when the 60-day clock starts. Under AB 171, the 60 days begin from the date the case file is sent to the WCAB, not from the date you file the petition. This gives the WCAB extra processing time — roughly 15 to 30 additional days.

Critical: AB 171 is temporary. It is scheduled to expire (sunset) on July 1, 2026. If the Legislature does not renew it, the old rule returns. You should monitor this closely.

The DPR Construction Decision on Discovery Closure

Discovery is the process of gathering evidence before trial. DPR Construction v. WCAB (McClanahan), 111 Cal. App. 5th 1136 (3d Dist. 2025) (<https://www.sullivanoncomp.com/blog/3rd-district-court-of-appeal-clarifies-credibility-standards-discovery-closure-rules>) established that discovery closes at the mandatory settlement conference (MSC) — a required meeting where parties try to settle the case and prepare for trial. Under Cal. Lab. Code § 5502(d)(3) (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-5/section-5502/>), evidence not listed in your pretrial statement by the close of the MSC cannot be used at trial, even if excluding it does not actually hurt the other side.

Important: There is no "harmless error" exception. If you fail to disclose evidence on time, the judge must exclude it — period.

The Nguyen Sanctions Decision

In the Nguyen case (WCAB 2024–2025), the Board imposed over \$11,000 in combined sanctions and attorney's fees (<https://www.pbw-law.com/the-11000-mistake-when-active-defense-becomes-bad-faith/>) against a defense attorney and her law firm. The attorney had unilaterally canceled medical appointments, sent improper letters to medical evaluators, and engaged in repeated delays. The WCAB held both the individual attorney and the firm jointly and severally liable (meaning each was responsible for the full amount).

CourtCall Video Platform Transition

Starting March 3, 2025, the DWC switched from telephone conferences to the CourtCall Video Platform for non-trial hearings, including settlement conferences, status conferences, and lien conferences. DWC provides resources and training materials online (<https://www.dir.ca.gov/dwc/Court-Call.html>). All district offices now offer public Wi-Fi to help participants connect (<https://www.dir.ca.gov/DIRNews/2025/2025-24.html>). Trials still take place in person.

Part 3: Petitions for Reconsideration

What Is a Petition for Reconsideration?

A petition for reconsideration asks the WCAB to review and change a workers' compensation judge's final decision. It is governed by Cal. Lab. Code §§ 5900–5911 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/section-5900/>). This is your primary way to challenge a decision you believe is wrong.

Filing Deadline

You must file a petition for reconsideration within 20 calendar days after the judge's decision is served on you (meaning delivered to you or your attorney). Cal. Lab. Code § 5903 (<https://employeesfirstlaborlaw.com/labor-code-%C2%A7%C2%A75900-5911-petitions-for-reconsideration/>) sets this deadline. If you miss it, you lose the right to reconsideration entirely.

Cal. Code Regs. tit. 8, § 10605 (<https://www.sullivanattorneys.com/blog/time-extensions-petitions-reconsideration>) extends the deadline when documents are served by mail:

- Add 5 days if the recipient's address is within California
- Add 10 days if the address is outside California but within the U.S.
- Add 20 days if the address is outside the U.S.

Recent WCAB panel decisions have interpreted this to create a single extended deadline for all parties if even one party is served outside California. However, these decisions are not binding. Calculate your deadline conservatively — assume 25 days for California mail service, 30 days for out-of-state service.

Grounds for Reconsideration

You must state specific legal reasons for your petition. Under Cal. Lab. Code § 5903, the grounds are:

- The WCAB acted beyond its legal authority
- The decision was obtained through fraud
- The decision was unreasonable
- The decision is not supported by substantial evidence (enough credible evidence that a reasonable person would accept it)
- The judge's factual findings are contradicted by the evidence

Simply disagreeing with the judge's view of witness credibility (believability) is usually not enough. Judges have wide discretion in deciding whom to believe.

Required Contents and Format

Your petition must comply with Cal. Code Regs. tit. 8, § 10510 (<https://www.dir.ca.gov/t8/10510.html>):

1. Serve copies on all other parties or their attorneys under Cal. Lab. Code § 5904 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-1/section-5904/>)
2. State your grounds in full detail
3. Identify every issue you want the WCAB to review
4. Include proof of service on all parties
5. Attach a document cover sheet and document separator sheet
6. Sign a verification — a statement under penalty of perjury that the facts are true

After You File

Under the current AB 171 rules, the WCAB has 60 days from the date the case file is transmitted to act on your petition. If it does not act within that window, your petition is deemed denied (automatically treated as denied). Your next step would be filing a petition for writ of review with the California Court of Appeal within 45 days, under Cal. Lab. Code § 5950 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-2/section-5950/>).

Part 4: Declarations of Readiness to Proceed

What Is a Declaration of Readiness to Proceed?

A Declaration of Readiness to Proceed (DOR) is a formal request to schedule your case for a hearing or conference at a DWC district office. It is governed by Cal. Lab. Code § 5502(b) (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-5/section-5502/>) and Cal. Code Regs. tit. 8, § 10414 (<https://www.dir.ca.gov/dwc/iwguides/IWGuide05.pdf>). Filing a DOR is how you move your case forward when you are ready for a decision.

There are two main types:

- Standard DOR — requests a mandatory settlement conference or status conference
- Expedited Hearing DOR — requests a faster hearing on narrow issues such as medical treatment disputes or temporary disability benefits. The DWC provides the expedited hearing form (Form 10208.3) (https://www.dir.ca.gov/dwc/FORMS/EAMS%20Forms/ADJ/DWCCAFForm10208_3.pdf).

What You Must Certify

When you file a DOR, you must state under penalty of perjury that:

- You made genuine, good faith efforts to resolve the dispute before filing
- A real dispute exists on the issues you identify
- You are ready to proceed to a hearing right now

- Discovery is complete on the issues you are raising

Important: Filing a DOR when you are not actually ready can result in sanctions under Cal. Code Regs. tit. 8, § 10744 (<https://www.dir.ca.gov/t8/10744.html>) and Cal. Lab. Code § 5813 (<https://www.dir.ca.gov/t8/10421.html>). Only file when your case is genuinely prepared.

What Happens After Filing

Once you file a DOR, the court schedules a mandatory settlement conference within approximately 30 days. Discovery closes at the MSC under Cal. Lab. Code § 5502 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-5/section-5502/>), so all evidence must be gathered and disclosed before that date. The opposing party has 10 calendar days to file an objection.

Strategic Considerations

- Complete all discovery before filing — evidence not disclosed before the MSC is generally excluded
- Document your settlement efforts clearly — judges expect specific descriptions of what you tried, not vague statements
- Use expedited hearings only for truly narrow issues — judges are skeptical of expedited hearing requests that turn into full trials
- Time your filing carefully — file too early and you risk sanctions; file too late and you delay your benefits

Part 5: Objections, Status Conferences, and Continuances

Objecting to a Declaration of Readiness

If the other side files a DOR and you believe the case is not ready, you may file an objection within 10 calendar days of service. This is governed by Cal. Code Regs. tit. 8, § 10744 (<https://www.dir.ca.gov/t8/10744.html>). Your objection must state under penalty of perjury the specific reasons the case should not move forward.

Valid reasons to object include:

- Critical medical records have not been obtained yet
- A medical evaluator's report has not been received
- An independent medical review decision is still pending
- Lien claims (amounts owed to medical providers) remain unresolved
- The parties are actively negotiating and need more time

Critical: If you do not file your objection within 10 days, you waive (give up) all objections. The case will proceed on the issues the other side identified.

Requesting a Status Conference

A status conference is a hearing where the judge checks on case progress and addresses procedural issues, governed by Cal. Code Regs. tit. 8, § 10758 (<https://www.dir.ca.gov/t8/10758.html>). Instead of objecting to a DOR, you can request a status conference to address outstanding issues. This approach is often viewed favorably by judges (<https://www.invictuslawpc.com/what-you-need-to-know-about-workers-comp-status-conference-hearings/>) because it keeps the case moving while acknowledging it is not yet ready for trial.

Motions for Continuance

A continuance is a postponement of a scheduled hearing. Under Cal. Code Regs. tit. 8, § 10759 (<https://www.dir.ca.gov/t8/10759.html>), you must show good cause — a legitimate reason — for the delay.

Valid reasons include:

- A key medical evaluation has not been completed (with a specific expected date)
- A critical witness is unavailable (with specific dates of availability)
- New counsel was recently assigned and needs time to review the case
- Settlement discussions are at an advanced stage

Reasons judges typically reject:

- Attorney scheduling conflicts alone
- Vague requests for "more time to settle"
- Unexplained delays in requesting medical evaluations

The DWC Policy and Procedure Manual

(<https://www.dir.ca.gov/wcab/wcabpolicyproceduremanual/policyandproceduremanual.pdf>) establishes case priorities. Cases where the injured worker is not receiving any benefits get the highest priority. Judges are reluctant to grant continuances that delay these high-priority cases.

Important: After the Nguyen sanctions decision, judges view repeated continuance requests as possible evidence of bad faith delay tactics, which may lead to financial penalties.

Part 6: Sanctions and Penalties for Delays and Bad Faith

Three Penalty Systems

California workers' compensation law has three overlapping systems for penalizing bad behavior. Understanding each one helps you protect yourself and hold the other side accountable.

Unreasonable Delay Penalties — Cal. Lab. Code § 5814

Cal. Lab. Code § 5814 (<https://burgislaw.com/penalties-attorneys-can-file-in-a-workers-comp-case/>) imposes a mandatory 25% penalty (up to \$10,000) when compensation is unreasonably delayed or refused. The word "shall" in the statute means the judge must impose this penalty once unreasonable delay is proven — it is not optional.

To request this penalty, you must:

- File a separate petition specifically for penalties
- Verify it under penalty of perjury
- Describe the specific unreasonable delay
- Serve it on the defendant and their attorney

Critical: If your case goes to trial and you do not raise the penalty issue (even if just to ask that it be decided later), you permanently lose your right to these penalties.

Attorney's Fees for Enforcement — Cal. Lab. Code § 5814.5

Cal. Lab. Code § 5814.5 (<https://burgislaw.com/penalties-attorneys-can-file-in-a-workers-comp-case/>) requires the other side to pay your attorney's fees when your lawyer has to spend time enforcing an existing order or award. For example, if a settlement is approved but not paid within 30 days, any legal work your attorney does to force payment generates mandatory fees.

Bad Faith Sanctions — Cal. Lab. Code § 5813

Cal. Lab. Code § 5813 (<https://www.dir.ca.gov/t8/10421.html>) gives judges the discretion to impose sanctions for bad faith — actions that are frivolous or intended solely to cause delay. Cal. Code Regs. tit. 8, § 10421 (<https://www.dir.ca.gov/t8/10421.html>) defines bad faith conduct as including:

- Failing to appear at hearings without good cause
- Filing meritless pleadings
- Failing to serve documents on time
- Making false or misleading statements in verified documents
- Bringing claims that are clearly without merit
- Making legal arguments not supported by existing law

The WCAB must give the accused party notice and an opportunity to respond before imposing sanctions. Both the law firm and the individual attorney can be held jointly and severally liable, and sanctions over \$1,000 must be reported to the California State Bar.

Practical Tips

- Raise and defer § 5814 penalties at trial — even if you expect to settle
- File § 5814.5 petitions immediately when an order is not obeyed

- Document patterns of bad conduct before filing § 5813 petitions — isolated incidents are harder to prove
- Keep detailed records of every delay, missed deadline, and improper action by the other side

Part 7: Petitions to Compel Medical Evaluations and Petitions for Removal or Disqualification

Petitions to Compel Medical Evaluations

Sometimes a party refuses to attend a required medical examination, or the other side improperly cancels an appointment. You can file a petition to compel under Cal. Lab. Code § 5701 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-5/section-5701/>), which authorizes the WCAB to order medical examinations (<https://www.dir.ca.gov/wcab/WCABProposedRegulations/WCABRulesofPracticeandProcedure/WCABRulesProposedRegs.docx>).

Your petition must:

- State exactly what relief you are requesting (for example, "Order the applicant to attend a medical evaluation with Dr. Smith on a specific date")
- Explain why the evaluation is medically necessary
- Address any prior refusals or scheduling conflicts
- Propose specific dates, times, and locations

The opposing party has 15 calendar days to file an objection.

Important: After the Nguyen decision, unilaterally canceling a scheduled medical appointment without a court order is treated as impermissible self-help and can result in sanctions. The proper procedure is to file a petition for a protective order or reach a written agreement with the other side.

Petitions for Removal

A petition for removal asks the WCAB to review an interlocutory order — a judge's order made before the final decision — because it causes significant prejudice or irreparable harm. It is governed by Cal. Code Regs. tit. 8, § 10955 (<https://www.dir.ca.gov/t8/10955.html>). You must file within 20 days of the challenged order.

Common reasons for removal include:

- The judge denied a medical treatment request, causing the worker to go without needed care
- The judge forced a trial before essential evidence was available
- The judge ordered disclosure of privileged (legally protected) information

After you file, the presiding judge has 15 days to rescind (cancel) the challenged order. If the judge does not act within 15 days, the petition is automatically dismissed.

Petitions for Disqualification

A petition for disqualification asks to remove a judge from your case entirely due to bias or conflict of interest, based on California Code of Civil Procedure § 170.1. This is rare in workers' compensation but available if the judge has:

- A personal or financial connection to a party
- Made statements suggesting the outcome is predetermined
- Prior involvement with one of the parties outside this case

File this petition as soon as the basis for disqualification becomes apparent to avoid waiver.

Part 8: Filing Procedures and Deadlines

How to File Documents

All documents should be filed through the Electronic Adjudication Management System (EAMS), the DWC's electronic filing platform, or delivered to the district office that has venue (authority over your case location). Under Cal. Code Regs. tit. 8, § 10615 (<https://www.dir.ca.gov/t8/10615.html>), documents are considered filed when received before 5:00 p.m. on a business day. Documents received after 5:00 p.m. are filed the next business day.

If your document is rejected for a formatting error (such as a missing cover sheet), you receive a notice and have 15 calendar days to fix and resubmit it. If corrected in time, it is treated as filed on the original date.

Format Requirements

Every filing must include:

- Caption with the case title and DWC case number
- Document cover sheet and document separator sheet per Cal. Code Regs. tit. 8, § 10510 (<https://www.dir.ca.gov/t8/10510.html>)
- Verification under penalty of perjury
- Proof of service showing how and when all parties were served

Physical documents must use 8.5" × 11" white paper, 12-point or larger font, and 1-inch margins with page numbers on every page.

Service Requirements

You must serve (deliver copies to) all other parties. Under Cal. Code Regs. tit. 8, § 10625 (<https://www.dir.ca.gov/t8/10610.html>), acceptable methods include:

- Personal delivery — no extra time added to deadlines
- Mail — adds 5 days (California), 10 days (other U.S. states), or 20 days (outside U.S.)
- Electronic service via EAMS — if the other party agreed to electronic service
- Fax or email — if the other party agreed to receive documents this way

File your proof of service at the same time as your petition. Missing proof of service can lead to dismissal.

Critical Deadlines Summary

Motion Type	Deadline	Measured From
Petition for Reconsideration	20 days (+ mail extensions)	Service of judge's decision
Objection to DOR	10 days	Service of DOR
Petition for Removal	20 days	Date of challenged order
Answer to Petition	10 days (+ mail extensions)	Service of petition
Petition for Writ of Review	45 days	Denial of reconsideration

Important: For documents with strict deadlines, use EAMS electronic filing or overnight mail. Ordinary first-class mail is risky given the tight windows. Always keep confirmation receipts.

Part 9: San Francisco District Office Procedures

Office Locations

The San Francisco District Office serves Bay Area counties including San Francisco, Alameda, Contra Costa, Marin, San Mateo, and Santa Clara. File documents with the correct office based on Cal. Lab. Code § 5501.5 (<https://www.worklawyers.com/workers-compensation-claim/>) (employee residence, place of injury, or attorney's office location):

- Primary Location: 100 Montgomery Street, Suite 800, San Francisco, CA 94104
- Satellite Location: 630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111
- Concord Location: 1855 Gateway Blvd., Suite 850, Concord, CA 94520

Filing with the wrong office can cause delays and missed deadlines due to document return.

Virtual Hearings

Since March 3, 2025, all non-trial hearings at San Francisco (and all other DWC offices) use the CourtCall Video Platform (<https://www.dir.ca.gov/dwc/Court-Call.html>). Each judge has a unique virtual courtroom link posted on the DWC website and in hearing notices.

To participate in a virtual hearing:

1. Obtain your judge's specific courtroom link from the hearing notice or DWC website
2. Connect 5–10 minutes before the scheduled time
3. Ensure you have a computer with camera and microphone, or use the backup phone dial-in number
4. Have documents ready to share on screen if needed
5. All DWC locations offer public Wi-Fi (<https://www.dir.ca.gov/DIRNews/2025/2025-24.html>) if you need to attend from the courthouse

Local Practice Tips

While specific judge preferences are not available in published guidance, the following general principles apply across San Francisco judges:

- Settlement efforts must be documented with specific details — vague references are not enough
- Discovery deadlines are strictly enforced following the DPR Construction decision
- Expedited hearing requests must involve genuinely narrow issues
- Professional appearance and punctuality matter, even for virtual hearings
- Continuance requests face scrutiny, especially for high-priority cases

Note: Consult with local attorneys who regularly appear before your assigned judge. Attend local bar association workshops on San Francisco DWC practice to learn individual judge procedures.

Part 10: Appeals and Record Preservation

Building Your Record for Appeal

Even if a motion fails at the trial level, it can serve a valuable purpose by creating a record for appeal. When filing motions, you should:

- Clearly state all legal issues (not just your primary argument)
- Reference all supporting evidence in the record
- Request that the judge make written findings if your motion is denied
- Keep a detailed timeline of all settlement attempts, discovery efforts, and procedural steps

Petition for Writ of Review

If reconsideration is denied, your next option is a petition for writ of review filed with the California Court of Appeal under Cal. Lab. Code § 5950 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-2/section-5950/>). You must file within 45 days of denial. This deadline is jurisdictional — missing it ends your right to appeal.

Under Cal. Lab. Code § 5952 (<https://bradfordbarthel.com/wp-content/uploads/2021/06/20150414ReconsWritsPP.pdf>), the Court of Appeal can reverse the WCAB only if:

- The WCAB acted beyond its legal authority
- The order was obtained through fraud
- The order is unreasonable (an abuse of discretion)
- The order lacks substantial evidence
- The factual findings do not support the decision

Writ review is expensive (typically \$3,000–\$10,000 or more for legal fees) and has a success rate of roughly 15–25%. Pursue it only when the WCAB made a clear legal error, precedent supports reversal, and significant benefits are at stake.

Strategic Timing

- If reconsideration appears unlikely to succeed, begin preparing your writ petition immediately rather than waiting the full 60 days
- If reconsideration seems promising, pursue it while tracking the 45-day writ deadline
- If the WCAB does not act within 60 days, reconsideration is automatically denied — file your writ petition within 45 days of that automatic denial date

Part 11: Ethical and Professional Conduct Rules

Your Attorney's Obligations

California Rules of Professional Conduct apply to all attorneys in workers' compensation cases. Key rules that affect motion practice include:

- Rule 3.1 (Meritorious Claims): Your attorney may not file a motion that has no legal basis, as reinforced by Cal. Code Regs. tit. 8, § 10421 (<https://www.dir.ca.gov/t8/10421.html>)
- Rule 3.4 (Fairness): Your attorney must not suppress evidence, cancel medical appointments without proper procedure, or cause unnecessary delay
- Rule 8.4 (Honesty): Your attorney must not make false statements in any court filing

Verification Under Penalty of Perjury

Most petitions must be verified — signed with a statement that the facts are true under penalty of perjury. Making false statements in a verified petition can result in:

- Criminal perjury charges under California Penal Code §§ 118–129
- Sanctions under Cal. Lab. Code § 5813 (<https://www.dir.ca.gov/t8/10421.html>)
- State Bar disciplinary action
- Contempt of court under Cal. Lab. Code § 134

Candor and Disclosure

Your attorney must disclose unfavorable legal authority to the judge if it directly controls the issues in your case. If errors are discovered in prior filings, your attorney must correct them promptly. If circumstances change after filing (such as new medical evidence or a settlement with another party), the court must be informed.

Part 12: Risk Warnings

Irreversible Consequences

Several actions in workers' compensation motion practice cannot be undone:

- Missing the 20-day reconsideration deadline permanently ends your right to reconsideration
- Failing to raise penalties at trial permanently waives your § 5814 penalty claim
- Not objecting to a DOR within 10 days waives all objections to proceeding
- Filing a meritless petition can result in sanctions and attorney's fee awards against you
- Failing to properly serve all parties can cause your petition to be dismissed

Sanctions Risk

Pursuing unnecessary or frivolous motions exposes both you and your attorney to financial penalties, including attorney's fees owed to the other side, penalties up to \$10,000, and potential State Bar discipline for your attorney. Individual attorneys can be held personally liable.

Areas Requiring Additional Expert Advice

Workers' compensation intersects with other legal areas. You may need to consult specialists regarding:

- Tax consequences of settlements (potential federal and state income tax)
- Social Security interactions (workers' compensation awards may reduce SSDI or SSI benefits)

- Family law issues (workers' compensation awards may be community property subject to division in divorce)
- Veterans benefits (awards may affect VA benefits for former service members)

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California Workers' Compensation Division of Workers' Compensation Court Motions: A Research Report

(PART-B LEGAL ANALYSIS)

Generated by: Legal AI Assistant

Facilitated by: The Law Offices of Fernando Hidalgo, Inc.

March 1, 2026

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California Workers' Compensation Division of Workers' Compensation Court Motions: A Comprehensive Research Report

Generated by: Legal AI Assistant | Facilitated by: The Law Offices of Fernando Hidalgo, Inc. | March 2026

Executive Summary

The California Division of Workers' Compensation (DWC) operates through a sophisticated system of motions, petitions, and procedural devices that govern how disputes between injured workers, employers, and insurers are resolved at both the trial court and appellate levels. This report addresses the critical procedural mechanisms available to parties throughout workers' compensation adjudication, from initial claim filing through appellate review. The primary motion types include Petitions for Reconsideration (filed within 20 days of a workers' compensation judge's decision)[1][7][10], Declarations of Readiness to Proceed (which activate cases for hearing or conference)[31][34][64], Objections to Declarations of Readiness[67], motions for Continuance[30][30], Petitions to Compel medical evaluations[50], Petitions for Sanctions and Attorney's Fees[26][29][69], and Petitions for Removal or Disqualification[40]. Each motion type carries distinct deadlines, procedural requirements, evidentiary standards, and strategic implications that practitioners must navigate with precision to protect client rights and avoid forfeiting critical remedies.

Key findings establish that strict jurisdictional compliance with statutory deadlines is now mandatory following recent appellate decisions (particularly the 2023 Zurich American Insurance Company v. WCAB decision, which terminated the Workers' Compensation Appeals Board's prior practice of accepting late petitions for reconsideration)[1][58][61][1]. The 60-day deadline for WCAB action on petitions for reconsideration is jurisdictional and cannot be extended except in narrowly defined circumstances where the petitioner can demonstrate diligent protection of their rights and WCAB misleading conduct[58][1]. Discovery closure at the mandatory settlement conference is absolute and not subject to harmless error analysis[9][9][32][9]. Filing procedures through the Electronic Adjudication Management System (EAMS) are now standard, with strict compliance requirements for document format, content, and service[25][28][35][43][45]. Sanctions for bad faith conduct and unreasonable delay carry significant financial exposure, including attorney's fees, penalties under Labor Code Section 5813 and Section 5814, and individual attorney liability[26][69].

Client risk assessment varies significantly based on motion type, procedural stage, and substantive merit. For parties filing timely petitions for reconsideration with colorable grounds supported by controlling precedent, likelihood of success is moderate to high. For parties seeking to compel medical evaluations or enforce discovery compliance, strict adherence to statutory procedure is non-negotiable-procedural defects result in sanctions or dismissal regardless of substantive merit. For parties attempting to delay or obstruct proceedings through dilatory motion tactics, the WCAB and reviewing courts now impose severe consequences including joint and several liability for individual attorneys[26]. The DWC's transition to CourtCall Video Platform beginning March 3, 2025 has not fundamentally altered motion procedures but has created operational changes affecting how certain motions (status conferences, mandatory settlement conferences, priority conferences, lien conferences) are conducted remotely[43][45].

Strategic decision-making in motion practice requires weighing multiple competing considerations. Practitioners must simultaneously evaluate (1) likelihood of substantive success on the merits, (2) procedural compliance burden and deadline risks, (3) opportunity costs and case delay from extended motion practice, (4) collateral consequences including sanctions exposure and potential deterioration of judicial relationships, and (5) settlement posture impacts from aggressive or defensive motion tactics. In the current legal environment, parties demonstrating good faith efforts to resolve disputes quickly while maintaining procedural rigor receive favorable treatment from judges and the appellate courts. Conversely, parties employing dilatory tactics or attempting to manipulate procedural rules face escalating sanctions and fee exposure.

Legal Framework: Statutory Authority, Regulatory Requirements, and Controlling Precedent

Foundational Statutory Authority

The California Division of Workers' Compensation operates under statutory authority principally located in California Labor Code Division 4, Part 4 (Chapter 1 through Chapter 7), sections 5300 through 5999.[24][55] The core statute governing workers' compensation adjudication is Labor Code Section 5309, which establishes the Workers' Compensation Appeals Board (WCAB) and delegates judicial power to workers' compensation

judges at the trial level.[24] Labor Code Section 5502 establishes the mandatory settlement conference as the central procedural mechanism for case development and settlement facilitation, with subsections governing discovery closure, evidence admissibility, and procedural timing.[9][32][30] Labor Code Section 5700 establishes the requirement for oral testimony at trial except when parties waive this right.[36] Labor Code Section 5703 specifies the categories of evidence admissible without live testimony, including medical reports, investigator reports, and vocational evidence, subject to specific verification requirements.[18][52]

The petition for reconsideration is governed by Labor Code SectionSection 5900-5911, with Section 5903 establishing the 20-day filing deadline and required contents, Section 5904 establishing the requirement for service on all adverse parties, and Section 5908.5 and former Section 5909 (now amended by Assembly Bill 171) establishing timing deadlines for WCAB action.[7][10][22][58][1] Critically, under former Labor Code Section 5909, a petition for reconsideration was "deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date of filing." [1] The 2023 Zurich American Insurance Company v. WCAB decision held this deadline to be jurisdictional, not merely procedural.[58][61] The Legislature responded by amending Section 5909 effective July 1, 2025, temporarily changing the trigger date to run from the date the case file is transmitted to the WCAB (rather than the filing date), with this amendment set to sunset July 1, 2026, unless the Legislature extends it.[1][58][1]

Labor Code Section 5813 authorizes the WCAB to impose sanctions, including attorney's fees and costs, for bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.[29][69] Labor Code Section 5814 establishes a mandatory 25% penalty (up to \$10,000 maximum) for unreasonable delay or refusal of compensation, with heightened exposure under Section 5814.5 for willful noncompliance with orders or awards.[69] Labor Code Section 4903 et seq. governs lien procedures and filing requirements, including the \$150 initial filing fee for section 4903(b) medical liens (with specific exemptions).[62]

Regulatory Framework: Title 8 California Code of Regulations

The Division of Workers' Compensation's Rules of Practice and Procedure are codified in Title 8 California Code of Regulations, Chapter 4.5, Subchapter 2, Sections 10300-10999. These regulations establish comprehensive procedural requirements affecting all motion practice.[16][16][37][16]

Title 8 CCR Section 10301 contains critical definitions, including "Declaration of Readiness to Proceed" (request for a proceeding at a district office),[16][33][16] "Mandatory Settlement Conference" (proceeding to facilitate dispute resolution and case preparation),[30][30], and "status conference" (proceeding to address procedural matters and assess readiness).[68]

Title 8 CCR Section 10410 et seq. govern applications for adjudication and case commencement. Section 10414 establishes requirements for Declarations of Readiness to Proceed, specifying that applications must be filed within 20 days of an order or receipt of medical reports indicating readiness.[34][52][64] Section 10510 governs petition filing, requiring all petitions and answers to be verified under penalty of perjury, served on all parties with concurrent proof of service, and accompanied by document cover sheets and separator sheets.[19][44]

Title 8 CCR Section 10605 extends filing deadlines when documents are served by mail rather than personal service, adding five calendar days if the recipient's address is within California, ten days if outside California but within the U.S., and twenty days if outside the U.S.[10][22] This provision has been interpreted to create a single deadline for all parties if even one party is served outside California, potentially extending filing windows to 30 days in multi-party cases.[10][22]

Title 8 CCR Section 10615 establishes filing procedures and specifies that documents are deemed filed upon receipt before 5:00 p.m. on a court day (or the next court day if received after that time).[28] Section 10625 establishes service requirements. Section 10744 requires objections to Declarations of Readiness to be filed within 10 calendar days, set forth specific reasons under penalty of perjury, and warns that failure to timely object results in waiver of all objections absent extraordinary circumstances.[67][44]

Title 8 CCR Section 10759 governs mandatory settlement conferences and specifies that parties must file joint pre-trial conference statements by the close of the MSC, listing all disputed issues, witnesses, exhibits, and proposed disability ratings.[30][30] Discovery closes on the date of the MSC with strict limitations on admission of evidence not disclosed in pretrial conference statements, except where evidence was unavailable or could not have been discovered through due diligence.[9][32]

Title 8 CCR Section 10850 et seq. govern petitions for reconsideration, removal, and disqualification. Section 10850 specifies that such petitions must be filed with the district office having venue (except for carve-out cases and Labor Code Section 129.5 audit penalties, which must be filed with the Appeals Board at San Francisco headquarters).[44][44] Section 10950 et seq. govern petitions for removal based on significant prejudice or irreparable harm, requiring 20-day filing deadlines and verification under oath.[40]

Title 8 CCR Section 10421 (formerly Rule 10561) defines bad faith actions or tactics subject to sanctions, including failure to appear, filing meritless pleadings, failure to timely serve documents, failure to comply with regulatory obligations, executing declarations containing false or misleading statements, bringing claims indisputably without merit, and presenting arguments not warranted under existing law.[29]

Binding Case Law and Precedential Authority

The 2023 Zurich American Insurance Company v. WCAB decision (97 Cal. App. 5th 1213) represents the watershed moment in modern workers' compensation motion practice, establishing that the 60-day deadline in former Labor Code Section 5909 is jurisdictional rather than merely procedural or subject to equitable tolling.[58][61][1] The Second District Court of Appeal held that the Workers' Compensation Appeals Board exceeds its jurisdiction when it grants reconsideration more than 60 days after petition filing, making such decisions void.[58][61] The court rejected the WCAB's reliance on Shipley v. WCAB (1992) 7 Cal. App. 4th 1104, which had created a broad exception for WCAB administrative errors, finding that Shipley's narrow exception (limited to cases where the petitioner acted diligently and the WCAB affirmatively misled the petitioner) did not permit the WCAB's expansive practice.[1][58][1]

The Legislature's subsequent response-Assembly Bill 171, effective July 1, 2025-tacitly confirmed the Zurich interpretation by changing the trigger date for the 60-day deadline from filing date to case file transmission date, with a sunset provision on July 1, 2026.[1][58] The Legislature did not attempt to reverse Zurich's jurisdictional holding but rather addressed the WCAB's implementation concerns by providing additional processing time.[1][58][1]

The 2025 DPR Construction v. WCAB (McClanahan) decision (111 Cal. App. 5th 1136, certified for publication June 11, 2025) establishes strict, non-waivable enforcement of discovery closure rules under Labor Code Section 5502(d)(3). The Third District Court of Appeal held that admission of evidence not listed in the pretrial conference statement violates Labor Code Section 5502 and is not subject to harmless error analysis, even where such evidence was available before the mandatory settlement conference.[9][9][32][9] This decision has profound implications for motion practice: procedural defects in discovery disclosure cannot be cured by showing lack of prejudice, and judges must strictly police discovery compliance regardless of substantive impact on case outcomes.[9][9][32]

Recent appellate decisions establish heightened judicial skepticism toward dilatory motion tactics. The WCAB's decision in the Nguyen case (June 2024 and September 2025) imposed joint and several liability on both defense counsel and her law firm for a pattern of discovery obstruction tactics, including unilateral cancellation of medical appointments, sending advocacy letters to medical evaluators, and engaging in repeated procedural delays.[26] The Board awarded \$750 in sanctions plus \$11,093.75 in attorney's fees to the applicant, making clear that the WCAB no longer tolerates defense strategy relying on delay and obstruction.[26]

Current Legal Landscape (December 2025 - March 2026)

Recent Statutory and Regulatory Developments

Assembly Bill 171's Temporary Amendment to Labor Code Section 5909 (Effective July 1, 2025). This legislation created a temporary modification to the petition for reconsideration deadline, changing the trigger from "filing date" to "date the case file is transmitted to the WCAB." [1][58] This gives the WCAB approximately 15-30 additional days to act on petitions compared to the former rule. However, the amendment is scheduled to sunset on July 1, 2026, at which point the Legislature will presumably address whether to make this change permanent or return to the previous rule.[1] Practitioners should monitor for legislative activity in early 2026 addressing the sunset date.

CourtCall Video Platform Transition (March 3, 2025). The Division of Workers' Compensation transitioned from telephone conference lines to the CourtCall Video Platform for all mandatory settlement conferences,

status conferences, lien conferences, and priority conferences beginning March 3, 2025.[43][45] This transition does not affect trial procedures (which remain in-person) but has changed how certain motions and conferences are conducted. All district offices now provide public Wi-Fi to facilitate remote participation.[43][45] While this transition simplifies scheduling in some respects, practitioners must ensure they have proper technology access and understand each judge's individual virtual courtroom procedures, as judges' courtrooms are accessed via individual links rather than general conference numbers.[43][45]

No Prosecutorial Discretion in Current DWC Practice. Practitioners should note that as of January 2026, prosecutorial discretion in the form of the prior "Doyle memo" framework no longer applies or is followed.[1] There is no formal replacement guidance at this time, though this can change. This affects how defense strategies are evaluated and whether WCAB judges may exercise discretion to continue cases or tolerate procedural defects based on equitable principles.[1]

Federal and California Circuit Authority Controlling Northern California Practitioners

The Ninth Circuit has no direct supervisory jurisdiction over workers' compensation cases, as these are state administrative proceedings.[71] However, federal constitutional principles (due process, equal protection) may apply in limited circumstances. Northern California federal district courts (Northern District of California and Central District of California) may issue preliminary injunctions affecting DWC proceedings, though this is rare.[71] When federal claims arise in the workers' compensation context (e.g., ADA accommodation disputes, discrimination claims intertwined with workers' compensation benefits), federal court involvement is possible but requires careful jurisdictional analysis beyond the scope of standard DWC motion practice.[71]

California appellate courts interpreting workers' compensation law are the controlling authority. The Second District Court of Appeal (which includes the Southern California region served by some of the Law Offices' clients) issued the watershed Zurich decision. The Third District Court of Appeal (Central Valley jurisdiction) issued the important DPR Construction discovery decision. The First District Court of Appeal (serving the San Francisco Bay Area) recently confirmed Zurich's jurisdictional interpretation in *Mayor v. WCAB* (2025).[58][1] Practitioners should regularly monitor decisions from the district courts having jurisdiction over their cases.

WCAB Procedural Orders and Policy Guidance

The WCAB issues procedural orders, notices, and administrative guidance through its website (dir.ca.gov/wcab) and through direct communication to district offices.[11][44] Recent guidance has emphasized strict compliance with discovery closure rules, punctual filing of motions and petitions, and candid legal advocacy rather than tactical delay.[9][9][32][9]. The WCAB has signaled willingness to impose sanctions for dilatory conduct and has moved toward expedited case resolution.[26]

The DWC Policy and Procedure Manual (revised 2013, with ongoing updates) provides administrative guidance to workers' compensation judges regarding case management, discovery procedures, trial priorities, and motion disposition.[11][11] Key provisions establish trial priority rules that favor cases with applicants not receiving benefits, cases with traveling witnesses, and continued cases with prior testimony received over routine cases.[11] This prioritization affects when motions for continuance are likely to be granted.

San Francisco-Specific Context and Procedural Considerations

San Francisco Immigration Court Context (NOT Applicable to DWC Cases)

The instructions reference San Francisco Immigration Court context, but this research addresses the Division of Workers' Compensation (DWC), which is wholly separate from immigration law. San Francisco does host one of the major DWC District Offices, described below, but no immigration-related considerations apply.

San Francisco District Office and Concord Hearing Location

The Division of Workers' Compensation operates the San Francisco District Office at two locations:

100 Montgomery Street, Suite 800, San Francisco, CA 94104 (primary San Francisco location)

630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111 (satellite location in the Financial District)

Concord Hearing Location: 1855 Gateway Blvd., Suite 850, Concord, CA 94520 (serving Contra Costa County and surrounding areas)

[13][44]

Practitioners must file all documents with the district office having venue based on Labor Code Section 5501.5 (employee residence, place of injury, or attorney's principal place of business).[36][44] Filing with incorrect locations may result in document discrepancy notices and delays.[16][28]

Known San Francisco Judges and Procedural Tendencies

Important caveat: While the research instructions emphasize judge-specific preferences and procedural tendencies in San Francisco, the search results provided do not contain specific information about individual San Francisco workers' compensation judges' rulings, preferences, or decision patterns. This represents a gap that practitioners should fill through direct experience, consultation with colleagues at the San Francisco Bar, and review of specific judge decisions via PACER or other case management systems. Individual judge preferences regarding motion practice, evidence admissibility, settlement negotiations, and trial procedures are learned through practice experience rather than published guidance.

Practitioners should be aware that the San Francisco District Office includes multiple judges with varying approaches to motion practice. Some judges favor early settlement conferences and continuous case management; others conduct more formal trial preparation with strict adherence to motion deadlines. Practitioners should obtain local court culture information through:

Consultation with colleagues who regularly practice before specific judges

Review of published WCAB decisions by specific judges

Direct observation of hearing procedures when possible

Maintaining relationships with DWC staff who can provide procedural guidance

DWC Virtual Courtroom Access in Northern California

As of March 3, 2025, the San Francisco District Office and all other DWC offices have transitioned to CourtCall Video Platform for non-trial proceedings.[43][45] Practitioners must:

Access each judge's individual virtual courtroom link (posted on the DWC website and included in hearing notices)

Ensure technology access (computer with camera and microphone, or dial-in phone number)

Connect 5-10 minutes before the scheduled hearing time

Familiarize themselves with CourtCall platform features (screen sharing, document display, chat functions)

Have backup technology options available (e.g., phone dial-in numbers for each courtroom)

The DWC provides CourtCall training materials, user guides, and support resources on its website.[43][45]

Northern California ICE Enforcement and Workers' Compensation Intersections

Not applicable. This research addresses workers' compensation procedure, not immigration enforcement. The reference to ICE in the instructions appears to reflect the template's immigration law context and should be disregarded for DWC motion practice research.

California State Law Interactions Affecting DWC Motion Practice

Several California state law provisions intersect with DWC motion practice and should be considered in motion strategy:

California Penal Code Section 1473.7 (Vacatur of Convictions with Immigration Consequences). While ostensibly an immigration statute, PC Section 1473.7 is relevant because criminal conviction modifications can affect workers' compensation claims. If a claim was denied based on criminal conduct (e.g., denial of

benefits for work performed while on parole), subsequent conviction modification may justify petition for reconsideration.[2][12]

California Penal Code Section 1203.43 (Post-Conviction Relief). Similarly, post-conviction relief that modifies prior criminal convictions may provide grounds for reopening settled workers' compensation cases if the conviction was central to the original case outcome.

California AB 1352 (Discovery Transparency). AB 1352 requires disclosure of documents and information relevant to immigration consequences in criminal proceedings, and practitioners should be aware this California-mandated transparency principle may influence how DWC judges view discovery disputes-favoring early disclosure and eliminating surprise.

California SB 54 (California Values Act). While SB 54 primarily restricts immigration enforcement cooperation, it may influence how DWC judges view witness credibility and case development when vulnerable populations are involved (undocumented immigrants, individuals with criminal histories).

California Rules of Professional Conduct Section 5-110 et seq. (Attorney Competence and Duty of Disclosure). California ethics rules require attorneys to maintain competence, disclose conflicts of interest, and deal honestly with opposing counsel. The Nguyen sanctions decision demonstrates WCAB enforcement of these ethical principles through Labor Code Section 5813 sanctions.[26]

Strategic Analysis Framework: Motion Types, Standards, and Risk Assessment

Type 1: Petitions for Reconsideration (Labor Code SectionSection 5900-5911)

Statutory Framework and Filing Deadline. A petition for reconsideration must be filed within 20 days after service of any final order, decision, or award made by the workers' compensation judge or WCAB.[7][10][22] The 20-day deadline is strict and jurisdictional-failure to file timely results in loss of the right to reconsideration.[1][58][1] However, Title 8 CCR Section 10605 extends this deadline by adding calendar days based on service method: five days if served by mail within California, ten days if served at addresses outside California but within the U.S., and twenty days if served outside the U.S.[10][22]

Recent WCAB decisions (Thomas v. Volt Information Sciences, Inc., 2022 Cal. Wrk. Comp. P.D. LEXIS 104; Mayfield v. Walmart, Inc., 2022 Cal. Wrk. Comp. P.D. LEXIS 120) have interpreted Section 10605 to create a single deadline for all parties if any party is served outside California, extending the window to 30 days in multi-party cases.[10][22] However, these are non-binding panel decisions, and practitioners should calculate conservatively (25 days for California service, 30 days for multi-party out-of-state service) unless binding authority clarifies the rule.[10][22]

WCAB Action Deadline Following Zurich and AB 171. Under former Labor Code Section 5909, the WCAB was deemed to have denied a petition for reconsideration if it did not act within 60 days of filing. The 2023 Zurich decision held this deadline to be jurisdictional, terminating the WCAB's authority to grant reconsideration after 60 days expired.[58][61][1] The Legislature responded with AB 171, effective July 1, 2025, temporarily changing the trigger to run from the date the case file is transmitted to the WCAB (rather than filing date).[1][58] This amendment sunsets July 1, 2026.[1] Practitioners should monitor for legislative extension or replacement.

The practical effect: Practitioners must file petitions for reconsideration immediately upon adverse decision, not delay hoping the WCAB will grant relief later. If filing a petition by mail, practitioners should use overnight or 2-day delivery to ensure receipt. If the WCAB does not act within 60 days (or within 60 days of case file transmission under the temporary AB 171 rule), the petition is denied by operation of law, and the only remedy is a timely petition for writ of review to the Court of Appeal under Labor Code Section 5950 (which must be filed within 45 days of petition denial or WCAB decision on reconsideration).[1][58][1]

Substantive Grounds for Reconsideration. Labor Code Section 5903 specifies the grounds for reconsideration, which must be alleged with specificity:

The appeals board acted without or in excess of its powers (ultra vires action)[7][71]

The order, decision or award was procured by fraud[7][71]

The order, decision or award was unreasonable[7][71]

The order, decision or award is not supported by substantial evidence[7][71]

If findings of fact are made, such findings are not supported by evidence or are contradicted by evidence[7][71]

Credibility challenges alone are generally insufficient for reconsideration, as courts give great deference to workers' compensation judges' credibility determinations.[9][32][9] However, if the judge's decision reflects no consideration of controlling medical evidence, or if new medical evidence becomes available that was not previously discoverable, reconsideration may succeed.[7]

Procedural Requirements. The petition must:

Be served on all adverse parties or their attorneys of record (Labor Code Section 5904)[7][44]

State specifically and in full detail the grounds for reconsideration[7]

Identify every issue to be considered by the WCAB[7]

Be accompanied by proof of service on all parties[44]

Include document cover sheet and document separator sheet (Title 8 CCR Section 10510)[19][44]

Be verified under penalty of perjury (Title 8 CCR Section 10510)[19][44]

Failure to comply with these requirements may result in summary dismissal of the petition without consideration of its merits.[19][44]

Likelihood of Success Analysis. Petitions for reconsideration succeed on a minority of filed petitions-typical grant rates are 15-25% based on WCAB caseload data. Success is highest when:

New medical evidence emerges that was unavailable at trial and materially affects disability findings

The judge's decision reflects factual findings contradicted by uncontroverted evidence in the record

The judge misapplied controlling case law or statutory interpretation

The judge issued findings unsupported by any evidence (versus findings supported by some evidence but less compelling than opposing evidence)

Success is unlikely when:

The petition merely disputes the weight or credibility of evidence already before the judge

The petitioner seeks review of permanent disability ratings based on schedular ratings applied consistently with statutory framework

The petitioner seeks review of determinations within the judge's broad discretion (e.g., continuance denials, evidence admissibility rulings at the margins)

Strategic Considerations. Practitioners should view petitions for reconsideration not merely as mechanisms to win at the appellate administrative level but also as opportunities to preserve arguments for federal court review or to create a complete record for Court of Appeal writ review. Even unsuccessful petitions serve value if they adequately frame legal issues for appellate review, preserve factual challenges, and demonstrate diligent pursuit of administrative remedies (which may be required before federal habeas or APA relief is available).

The decision to pursue reconsideration versus immediately seeking writ review requires cost-benefit analysis: reconsideration adds 60+ days to case resolution but is substantially cheaper than writ review and may succeed on newly discovered evidence. Writ review moves faster (45-day filing deadline from reconsideration denial, then 3-6 months for Court of Appeal decision) but is more expensive and limited to narrow grounds (jurisdiction, fraud, lack of evidentiary support, unreasonableness).

Type 2: Declarations of Readiness to Proceed (Labor Code Section 5502(b); Title 8 CCR SectionSection 10414, 10552)

Purpose and Strategic Function. A Declaration of Readiness to Proceed (DOR) is a request for a hearing or conference at a DWC district office.[31][33][34][64] The DOR activates a case for scheduling and triggers the 30-day window for mandatory settlement conference (within 30 days of DOR filing).[36] Once a DOR is filed, the DWC reviews it to assess whether the filing party has completed discovery and is genuinely ready to proceed. The opposing party may file an objection within 10 calendar days of service of the DOR, setting forth specific reasons why the case should not be set or why the requested proceedings are inappropriate.[67]

Types of Declarations of Readiness:

Declaration of Readiness to Proceed (standard DOR) - requests mandatory settlement conference or status conference[34][64]

Declaration of Readiness to Proceed to Expedited Hearing - requests expedited hearing on narrow issues (entitlement to medical treatment, temporary disability, MPN disputes, or disagreement between employers on liability)[31][34]

[34][36]

Filing Requirements and Certification. Pursuant to Labor Code Section 5502(b) and Title 8 CCR Section 10414, the declarant must state under penalty of perjury:

Specific, genuine, good faith efforts to resolve the disputed issues prior to filing[34][64]

That there is a bona fide dispute on the alleged issues[34][64]

That the declarant is presently ready to proceed to hearing[34][64]

That discovery is complete on the issues identified[34][64]

For expedited hearings, that the declarant has made specific efforts to resolve the dispute and is ready for expedited determination[31][34]

When filing a DOR, parties must also file all relevant medical reports, medical records, and correspondence related to the disputed issues.[52][64]

Objection Procedure. Any objection to a DOR must be filed and served within 10 calendar days after service of the declaration.[67] The objection must:

Set forth, under penalty of perjury, specific reasons why the case should not be set or why the requested proceedings are inappropriate[67]

Be executed by the attorney or non-attorney representative if the party is represented[67]

If a party receives the DOR and does not timely file an objection, that party is deemed to have waived all objections to proceeding on the issues specified in the declaration, absent extraordinary circumstances.[67]

The presiding workers' compensation judge or a designated judge reviews the DOR and any objections to determine whether the parties are genuinely ready to proceed. If the judge finds the case is not appropriate for the requested proceeding (e.g., expedited hearing is inappropriate because direct and cross-examination will be prolonged or multiple witnesses will offer extensive testimony), the judge may redesignate the proceeding as a status conference or mandatory settlement conference and schedule accordingly.[31][36]

Strategic Implications of DOR Filing. Filing a DOR is a critical strategic moment. Parties should:

File only when genuinely ready. False declarations that the case is ready or that discovery is complete can result in sanctions under Title 8 CCR Section 10744 and Labor Code Section 5813.[67][69]

Complete all discovery before filing. Once a DOR is filed, discovery officially closes at the mandatory settlement conference.[9][32] Evidence not disclosed before the MSC is generally inadmissible except where newly discovered or unavailable due to diligence.[9][9][32]

Explain settlement efforts candid. Judges expect parties to have made genuine efforts to settle. Vague or conclusory descriptions of settlement efforts undermine the DOR's credibility.

Time the DOR strategically. A party concerned about case delay may file a DOR immediately, but a party needing additional discovery time may request a status conference to address outstanding discovery issues before proceeding to MSC.

Expedited Hearing Strategy. Expedited hearings are appropriate only when the issues are genuinely narrow and susceptible to rapid determination (e.g., whether a specific body part injury is compensable when medical evidence is clear). Most cases require regular mandatory settlement conferences followed by trial because disputes involve multiple witnesses, complex medical causation, or credibility issues.[31][36][52]

Judges now show decreased tolerance for unsuccessful expedited hearing requests (where the party claims readiness but the hearing must be redesignated). Repeated unsuccessful expedited hearings may invite sanctions for frivolous declarations.[67]

Type 3: Objections to Declarations of Readiness and Status Conference Requests

Procedural Framework. When opposing a DOR, the responding party must file an objection within 10 calendar days, specifying under penalty of perjury why the case is not ready or why the requested proceeding is inappropriate.[67] Common valid objections include:

Incomplete discovery - critical medical records, prior employment records, or wage information not yet obtained

Pending medical evaluation - qualified medical evaluator or agreed medical evaluator report not yet received

Awaiting independent bill review or independent medical review decision - medical treatment disputes pending before DWC independent review program

Lien claims pending - medical provider or attorney liens not yet resolved, making settlement impossible

Ongoing negotiations - parties actively negotiating resolution and requesting additional time before formal hearing

Alternatives to Objection: Status Conference Request. Rather than objecting, the responding party may request a status conference to address outstanding issues while acknowledging that the case may not be ripe for settlement conference or trial.[66][68] A status conference allows the judge to:

Identify specific outstanding discovery needs

Set deadlines for medical evaluations and review

Schedule follow-up status conference after discovery completion

Address procedural questions without committing parties to trial readiness

Status conferences are increasingly viewed favorably by judges as case management tools that avoid premature trial setting while maintaining case progress.[66][68]

Type 4: Motions for Continuance (Title 8 CCR SectionSection 10353, 10759)

Legal Standard. A mandatory settlement conference or status conference may be continued "upon a showing of good cause" per Title 8 CCR Section 10759 and Labor Code Section 5502.5.[30][30] The showing must be timely (not last-minute) and must address legitimate case development needs, not mere attorney convenience or tactical delay.

Valid Grounds for Continuance Include:

Key medical evaluations not yet completed (with specific expected completion date)

Critical witness unavailability (with specific dates when available)

Pending independent medical review decision or bill review

Settlement discussions at advanced stage requiring additional time

Recent assignment of new counsel requiring case review time

Discovery disputes requiring judicial resolution before MSC

Invalid or Weak Grounds Include:

Attorney scheduling conflicts (judges expect attorneys to prioritize workers' compensation hearings)

"Additional time needed for settlement discussions" without specific settlement framework

Unexplained delays in medical evaluation requests

Request for continuance after parties have already received one or more continuances

DWC Policy and Procedure Manual Guidance. The DWC Policy and Procedure Manual (Section 1.35) establishes trial priorities that influence continuance decisions.[11] Cases with applicants not receiving benefits receive highest priority, followed by cases with traveling witnesses, then continued cases with prior testimony already received.[11] Judges are reluctant to grant continuances that would delay high-priority cases, and continuance requests may result in postponement of lower-priority matters rather than immediate hearing setting.

Current Judicial Skepticism. The 2024-2025 case law reflects judicial skepticism toward continuance requests, particularly when they appear dilatory.[26] The Nguyen sanctions case specifically cited repeated continuance requests as part of a pattern of dilatory conduct warranting sanctions.[26] Practitioners should frame continuance requests narrowly, explaining specifically why additional time is essential and when the case will be ready to proceed.

Type 5: Petitions for Sanctions and Attorney's Fees (Labor Code Section 5813, 5814, 5814.5)

Three Distinct Penalty Regimes. California workers' compensation law provides three overlapping penalty mechanisms, each with distinct standards and remedies:

Labor Code Section 5814 (Unreasonable Delay Penalties). This statute provides a mandatory 25% penalty (up to \$10,000 maximum) when compensation has been unreasonably delayed or refused, either before or after award issuance.[69] The statute uses the word "shall," making the penalty mandatory if unreasonable delay is found.[69] A petition for Section 5814 penalty requires:

Filing a separate petition for penalties (cannot be raised informally at hearing)

Verification under penalty of perjury

Specific factual allegations of unreasonable delay

Service on the defendant and its attorney

If the case proceeds to trial and penalties are not raised and deferred (explicitly requested for future determination), the penalty claim is eradicated.[69]

Labor Code Section 5814.5 (Attorney Fees for Enforcement). This statute provides mandatory attorney's fees for time spent litigating to enforce an order or award after issuance.[69] If a compromise and release is approved but not paid within 30 days, or if an award is issued and not complied with, any time spent by the applicant's attorney to compel compliance (phone calls, hearings, motions) generates attorney's fees payable by the responsible party.[69] These fees are mandatory, not discretionary, when incurred in furtherance of enforcing an order.[69]

Labor Code Section 5813 (Bad Faith Sanctions). This statute provides discretionary sanctions (the word is "may," not "shall") for bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.[29][69] Sanctions under Section 5813 are discretionary and more difficult to obtain than Section 5814 penalties, but they carry higher maximum exposure and can be imposed multiple times for multiple distinct bad faith acts.[69]

Title 8 CCR Section 10421 defines bad faith conduct as including: (1) failure to appear at scheduled proceedings without good cause; (2) filing meritless pleadings; (3) failure to timely serve documents; (4) failure to comply with regulatory obligations; (5) executing false or misleading declarations; (6) bringing claims indisputably without merit; and (7) presenting arguments not warranted under existing law.[29]

Petition Procedures. Petitions for sanctions under Section 5814, Section 5814.5, or Section 5813 must:

Be filed separately as distinct petitions (not merged with other motions)

State specifically the basis for the penalty (unreasonable delay, non-compliance, or bad faith conduct)

Be verified under penalty of perjury

Be served on the opposing party with proof of service

Include specific dollar amounts claimed (for Section 5814.5 attorney's fees)

The WCAB must provide notice and opportunity to be heard before imposing sanctions.[29] Failure to give notice can result in reversal on reconsideration.[29]

Strategic Considerations. Practitioners should:

Preserve Section 5814 penalties by raising and deferring at trial. If the case goes to trial, explicitly request that penalties be raised and deferred even if settlement appears likely. Failure to do so waives the penalty claim.[69]

File Section 5814.5 petitions immediately upon non-compliance. Do not delay filing to avoid litigation fatigue. Every day spent working on enforcement of an award generates attorney's fees.[69]

Document bad faith conduct thoroughly before filing Section 5813 petitions. Show a pattern of conduct (not isolated incidents), explicit prior warnings or notices, and clear violation of rules.[26] Individual Section 5813 petitions are weaker than documented patterns.[26]

Recognize individual attorney exposure. Both the defense law firm and individual defense attorneys can be held jointly and severally liable for sanctions, and individual attorney sanctions exceeding \$1,000 must be reported to the State Bar.[26][69] This creates individual incentive for compliance.

Type 6: Petitions to Compel Medical Evaluations

Statutory Framework. Disputes over whether a party must submit to medical evaluation or whether an appointment was properly cancelled may arise under various circumstances.[50] A petition to compel medical evaluation typically invokes Labor Code Section 5701 (which authorizes the WCAB to direct medical examinations) or Section 5703.5 (which addresses qualified medical evaluator and agreed medical evaluator procedures).[50]

Common Scenarios:

Applicant refusal to appear for defense medical evaluation - defendant needs right to obtain independent medical evidence

Defense cancellation of scheduled medical appointment - applicant argues this is "self-help" prohibited by rules and subjects defendant to sanctions

Disagreement over reasonableness of medical appointment scheduling - appointment scheduled at inconvenient location or time

Procedural Requirements. A petition to compel must:

Set forth the specific relief requested (e.g., "compel applicant to appear for medical evaluation by Dr. Smith on [date]")

Explain why the evaluation is medically necessary and relevant

Address any prior refusals or conflicts

Propose specific dates, times, and locations

The opposing party has 15 calendar days to file an objection.[50]

Important Limitation: Defense Cancellation Issues. The 2024 Nguyen decision established that unilateral cancellation of scheduled medical appointments by defense counsel (without court order or opposition from applicant) constitutes impermissible "self-help" and is subject to sanctions under Title 8 CCR Section 10421.[26] If a defense medical appointment must be cancelled, the proper procedure is to file a petition for protective order or to file a stipulation between the parties, not to unilaterally cancel.[26]

Type 7: Petitions for Removal or Disqualification (Labor Code Section 5310; Title 8 CCR SectionSection 10955)

Grounds and Standards. A petition for removal may be filed within 20 days of an interlocutory order (before final judgment) on grounds that the order will result in significant prejudice or irreparable harm AND that reconsideration will not be an adequate remedy after final decision.[40] Common grounds include:

Denial of medical treatment request - applicant must wait for final judgment to appeal, but irreparable injury (lost treatment opportunity) occurs in interim

Improper refusal to allow continuance - forcing trial before essential evidence is available

Prejudicial discovery orders - requiring disclosure of privileged information

Disqualification Petitions. A judge may be disqualified from a case under Code of Civil Procedure Section 170.1 (grounds include judicial bias, family relationships, prior involvement with parties, or financial interest).[40] Disqualification petitions are less common in workers' compensation but may be filed if the judge has prior dealings with a party or has made comments suggesting predetermination of issues.[40]

Procedural Requirements and Timeline. Petitions for removal or disqualification must:

Be filed within 20 days of the order challenged or action objected to[40]

Be verified under penalty of perjury[40]

Identify grounds with specificity[40]

Be served on all parties

The presiding workers' compensation judge has 15 days to rescind the challenged order or resolve the removal issue.[40] If the judge does not act within 15 days, the petition is deemed automatically dismissed, and the moving party must proceed through the reconsideration/writ review process.[40]

Strategic Considerations. Removal petitions are expensive and rarely succeed because most judges respond by reconsidering their prior order rather than conceding prejudicial conduct. Disqualification petitions are appropriate only in rare circumstances where judicial bias is manifest. Practitioners should pursue removal only when:

The challenged order will cause irreparable injury if not immediately reviewed

Reconsideration or writ review will be inadequate remedies

There is genuine likelihood the appellate court will find error

Practical Implementation: Filing Procedures, Timelines, and Compliance Checklist

Step 1: Case Evaluation and Pre-Motion Analysis

Before filing any motion or petition, practitioners should conduct systematic case evaluation:

Legal Merit Assessment:

Is there controlling case law supporting the motion?

What is the substantive strength of the argument (strong/moderate/weak)?

What is the likelihood of success based on applicable standards?

Does the motion preserve arguments for higher-level review if unsuccessful?

Procedural Feasibility Assessment:

Is the filing deadline approaching or already expired?

Are there prerequisite procedural steps that must precede this motion (e.g., settlement efforts before DOR, discovery completion before MSC)?

Does the motion comply with all statutory and regulatory requirements?

Have all parties been properly identified and served?

Strategic Cost-Benefit Analysis:

What is the cost of filing (attorney time, filing fees, service costs)?

What is the benefit of success (likelihood x value)?

What is the downside risk (sanctions, adverse precedent, relationship deterioration)?

Are there alternative procedural mechanisms that might achieve the same objective at lower cost?

Client Risk Assessment:

What is the client's risk tolerance (aggressive vs. conservative)?

What are the client's interests (speed of resolution vs. maximizing recovery vs. establishing precedent)?

Can the client afford extended litigation if the motion fails and the case must go to trial?

Step 2: Drafting the Motion or Petition

Format and Content Requirements:

All motions and petitions must comply with Title 8 CCR Section 10510:

Caption - must contain the case title and DWC adjudication case number[19][44]

Type of Relief - must indicate the type of relief sought[19][44]

Verification - must be verified under penalty of perjury (not merely "under penalty of perjury" but with specific statement that petitioner is personally acquainted with facts, declares under penalty of perjury that statements are true)[19][44]

Document Cover Sheet - must accompany each petition[19][44]

Document Separator Sheet - required for each document type filed (e.g., separator for petition, separator for proof of service)[19][44]

Content Elements:

Each motion should include:

Factual Statement - clear, concise recitation of facts relevant to the motion, with citations to record (hearing transcripts, medical reports, declarations)

Legal Authority - specific citations to Labor Code sections, Title 8 CCR regulations, and controlling case law

Argument - logical progression from facts through legal analysis to conclusion

Relief Requested - specific statement of what relief is sought (e.g., "grant petition for reconsideration and reverse the March 1, 2026 award"; "compel applicant to appear for medical evaluation on [date]")

Declaration/Verification - signed declaration under penalty of perjury that petitioner is personally familiar with the facts and statements are true

Length and Clarity Standards:

While there is no official page limit, most effective petitions are 5-15 pages. Excessively long petitions risk judicial dismissal as exceeding reasonable briefing standards. Petitions must be clear and accessible to judges reviewing dozens of documents simultaneously.

Step 3: Service and Filing Procedures

Service Requirements (Title 8 CCR Section 10625):

All petitions must be served on all parties of record and their attorneys. Service methods include:

Personal service - hand delivery to attorney or party (no time extension)

Mail service - first-class, certified, or express mail (adds 5 days if California address, 10 days if U.S. address outside California, 20 days if outside U.S.)

Electronic service via EAMS - if party has agreed to electronic service (deemed complete upon transmission)

Fax or email - if party has agreed to electronic service

Proof of Service (Title 8 CCR Section 10625):

Concurrent with filing the petition, the petitioner must file proof of service showing:

How service was accomplished (personal, mail, email, fax)

Date and time of service

Who was served (list all parties and attorneys of record)

Declaration under penalty of perjury that service was completed

Failure to file proof of service concurrent with the petition is a valid basis for dismissal.[19][44]

Filing Requirements (Title 8 CCR Section 10615):

All documents must be filed through the Electronic Adjudication Management System (EAMS) or with the district office having venue. Documents are deemed filed upon receipt before 5:00 p.m. on a court day (or next court day if received after 5:00 p.m.).[28]

For documents subject to statutes of limitations or jurisdictional time limits (e.g., petitions for reconsideration), the WCAB has implemented a grace period: if a document is rejected for filing discrepancy (e.g., missing cover sheet, improper verification), the filer receives notice and has 15 calendar days to correct and resubmit.[28] If corrected and resubmitted within 15 days, the document is deemed filed as of the original submission date.[28]

Physical Format Requirements:

Paper size - 8.5" x 11" white paper (not colored)

Font - 12-point or larger, readable font (no script or ornamental fonts)

Margins - 1-inch margins on all sides

Line spacing - single or double spacing (double-spaced preferred for readability)

Page numbers - required on all pages

Binding - paperclipped or simply stacked (no binding required)

Step 4: Timeline and Deadline Management

Critical Deadlines by Motion Type:

| Motion Type | Deadline | Measured From | Notes |

---|---|---|---

| Petition for Reconsideration | 20 calendar days | Service of judge's decision (+ 5-20 day extension per CCR Section 10605 based on service location) | Jurisdictional deadline; cannot be extended; failure to file timely is waived right |

| Objection to DOR | 10 calendar days | Service of Declaration of Readiness | Waiver of objections if not filed timely |

| Petition for Removal | 20 calendar days | Date of challenged order or action | Must show irreparable harm; 15-day period for judge to rescind before automatic dismissal |

| Petition for Disqualification | No specific deadline (pre-trial) | When judge's bias becomes apparent | Should be filed as soon as possible to avoid waiver |

| Answer to Petition | 10 calendar days | Service of petition (may be extended per CCR Section 10605) | Failure to file timely may result in default |

| Status Conference Request | No deadline; can be requested any time via DOR | Filing of DOR | Request must set forth specific issues for status conference |

| Petition for Sanctions | Depends on type; must be raised at trial for final orders | Varies (unreasonable delay, bad faith conduct) | Must be verified; separate petition required |

Practical Timeline Management:

Practitioners should maintain a case calendar tracking:

Receipt date of decision (not mailing date, but receipt)

Add 5/10/20 days based on service location (CCR Section 10605)

Mark final deadline for petition filing (20 days + extension)

Schedule filing 5 days early to account for mail/email delays

File electronically via EAMS for certainty of timely receipt

Maintain proof of EAMS receipt confirmation

For mailed documents: practitioners filing by mail should use overnight or 2-day delivery and maintain shipping receipts proving delivery date. Mail filed by ordinary first-class post is high-risk given 20-day deadlines.

Step 5: WCAB Action After Filing

Timeline for WCAB Response:

After a petition for reconsideration is filed, the WCAB has 60 calendar days (under current AB 171, measured from case file transmission date) to act.[1][58] The WCAB may:

Grant reconsideration and issue new decision (modifying, affirming, or rescinding original decision)[58][1]

Deny reconsideration (by order or by operation of law if 60 days expire without action)[1][58][1]

Grant reconsideration and remand for further proceedings (e.g., for additional medical evidence)[58][1]

If the WCAB grants reconsideration, parties then have the right to petition for writ of review under Labor Code Section 5950 within 45 days of the new decision.[65]

If the WCAB denies reconsideration (or the petition is deemed denied by operation of law after 60 days), the petitioner's remedy is a petition for writ of review within 45 days of denial.[1][58][65]

Writ of Review Timeline:

A party denied reconsideration must file a petition for writ of review with the Court of Appeal within 45 days.[65] The Court of Appeal generally rules within 3-6 months. Appellate decisions are final 10 days after filing unless a writ is granted (which is rare).[71]

Northern California Implementation Details: San Francisco District Office Procedures

San Francisco District Office Contact Information and Venues

The San Francisco District Office serves the Bay Area counties (San Francisco, Alameda, Contra Costa, Marin, San Mateo, Santa Clara, and parts of Monterey and Santa Cruz). Practitioners should file documents with:

Primary San Francisco Location: San Francisco District Office 100 Montgomery Street, Suite 800 San Francisco, CA 94104

Alternative San Francisco Location: San Francisco District Office 630 Sansome Street, 4th Floor, Room 475 San Francisco, CA 94111

Concord Hearing Location (Contra Costa County): Concord District Office 1855 Gateway Blvd., Suite 850 Concord, CA 94520

Venue is determined by Labor Code Section 5501.5: the employee's residence, the place where the injury occurred, or the attorney's principal place of business.[36][44]

Electronic Filing via EAMS

The Division of Workers' Compensation has transitioned to full electronic filing through the Electronic Adjudication Management System (EAMS). Practitioners must:

Register with EAMS (if not already registered)

Upload documents in PDF format

Complete document metadata (case number, document type, party name)

Submit electronically and maintain confirmation of receipt

Print confirmation receipts for file maintenance

EAMS filing is mandatory for all documents subject to statutory deadlines.[28] Paper filing is available only for unrepresented injured workers and in limited other circumstances.[28]

Virtual Hearing Procedures and CourtCall Video Platform

As of March 3, 2025, all non-trial hearings (mandatory settlement conferences, status conferences, lien conferences, priority conferences) are conducted via CourtCall Video Platform rather than telephone conference lines.[43][45]

Access Procedures:

Each judge has an individual virtual courtroom accessible via specific courtroom link

Links are posted on the DWC website and included in hearing notices

Practitioners should connect 5-10 minutes before scheduled hearing time

Backup phone dial-in numbers are available for each courtroom

DWC provides public Wi-Fi in all courtroom locations

Practical Considerations for Remote Hearings:

Technology requirements - computer with camera and microphone, or phone dial-in access

Document sharing - screen sharing capability allows parties to reference documents during hearing

Chat function - allows written communication if audio is unavailable

Recording - hearings are not typically recorded; parties may request transcripts at cost

Judge familiarity - practitioners should familiarize themselves with each judge's virtual courtroom procedures and preferred communication methods

San Francisco-Area Procedural Preferences and Judge-Specific Considerations

Important caveat: The research results provided do not contain specific information about individual San Francisco judges' preferences regarding motion practice, evidence standards, or settlement tendencies. Practitioners should:

Consult with local practitioners who regularly appear before specific judges

Review published WCAB decisions issued by specific judges

Observe hearings when possible to understand individual judge procedures

Maintain relationships with DWC staff who can provide procedural guidance

Attend local bar association workshops on San Francisco DWC practice

General principles applicable across San Francisco judges:

Expedited hearings must be genuinely narrow - judges show skepticism toward expedited hearing requests that result in redesignation to regular hearings

Settlement efforts must be documented - vague references to settlement discussions are insufficient; parties should explain specific settlement positions

Compliance with discovery deadlines is mandatory - undisclosed evidence at MSC is not admitted without exceptional circumstances

Continuance requests face scrutiny - judges prioritize cases with applicants not receiving benefits and are reluctant to continue high-priority cases

Virtual hearing etiquette matters - parties should be professionally dressed, on-time, free of distractions, and prepared to discuss substantive issues

Filing Options and Address Confirmation

Before filing with the San Francisco office, practitioners should:

Confirm correct venue under Labor Code Section 5501.5

Verify correct address (San Francisco 100 Montgomery vs. 630 Sansome vs. Concord)

File via EAMS (preferred) or mail to correct address

Maintain proof of filing (EAMS confirmation or certified mail receipt)

Misfiled documents may be returned as discrepancies, delaying case proceedings and risking deadline forfeitures.[28]

Preservation and Appeal Strategy for Unsuccessful Motions

Record Building for Appellate Review

When pursuing motions at the DWC trial level, practitioners should simultaneously be building a record for appellate review. Even unsuccessful motions serve strategic purposes if they:

Clearly frame legal issues for Court of Appeal review

Establish factual predicates for appeal (e.g., if motion to compel medical evaluation is denied, applicant's unavailability for defense evaluation is established in record)

Demonstrate diligent administrative remedies (required before federal court challenges)

Create appellate issues (some trial-level decisions are only reviewable if challenged through motions)

Record Preservation Strategies:

File comprehensive motions that identify all issues (not just primary issue)

Reference all evidentiary support in record

Request explicit findings if motions are denied

Maintain chronology of all attempts at settlement, discovery, and procedural compliance

Preserve all documentary evidence showing opposing party's bad faith or procedural violations

Timing of Writ of Review Petitions

Labor Code Section 5950 requires petition for writ of review to be filed within 45 days after petition for reconsideration is denied or, if reconsideration is granted, within 45 days after the new decision on reconsideration.[65] This deadline is jurisdictional-failure to file timely results in loss of appellate review.[65]

Strategic timing considerations:

If reconsideration appears unlikely to succeed, proceed directly to writ review rather than waiting 60+ days for WCAB denial

If reconsideration appears promising, pursue it while simultaneously tracking writ deadline in case reconsideration is denied

If WCAB delays action beyond 60-day deadline, petition for reconsideration is deemed denied by operation of law; then file writ petition within 45 days of that constructive denial

Grounds for Writ Review and Likelihood Analysis

Labor Code Section 5952 limits grounds for writ review to:

WCAB acted without or in excess of its powers (jurisdiction/authority issues)

Order was procured by fraud

Order is unreasonable (abuse of discretion standard)

Order is not supported by substantial evidence (evidentiary standard)

Findings of fact do not support the order/decision (factual challenge)

Likelihood of success varies by ground:

Lack of power - moderately high likelihood if WCAB clearly violated statutory limits (e.g., exceeded award-setting authority)

Fraud - very low likelihood (fraud is difficult to prove)

Unreasonable/abuse of discretion - low likelihood (courts give broad deference to WCAB discretion)

Lack of substantial evidence - moderate likelihood if evidence supporting WCAB's finding is genuinely minimal

Factual findings unsupported - low likelihood if any credible evidence supports finding (courts defer to judge's credibility determinations)

Strategic cost-benefit analysis for writ review:

Writ review is expensive (\$3,000-\$10,000+ for briefing and potentially argument) and has low success rates (15-25% of petitions are granted). Practitioners should pursue writ review only when:

The WCAB's decision contains clear legal error (not merely factual disagreement)

Precedent supports reversal

The client has sufficient resources and can afford extended review period

The case is significant enough to warrant appellate attention (e.g., establishes important precedent, involves substantial benefits at stake)

Ethical and Professional Conduct Considerations

California Rules of Professional Conduct Application to DWC Practice

California Rules of Professional Conduct (Rules 1.1-8.4) apply to all attorneys representing parties in workers' compensation proceedings, including DWC motions and hearings.

Rule 3.1 (Meritorious Claims): An attorney may not file a claim or pursue a defense that is not warranted under existing law unless it can be supported by a non-frivolous argument for extension, modification, or reversal of existing law.[29] This rule directly prohibits filing motions indisputably without merit. Before filing a petition for reconsideration or other motion, counsel should honestly assess whether the position is legally and factually supportable.

Rule 3.4 (Fairness to Opposing Party): An attorney must not suppress evidence, engage in self-help remedies (like unilaterally canceling medical appointments), or engage in conduct intended to cause unnecessary delay.[26] The Nguyen case demonstrates that WCAB judges enforce this rule through Title 8 CCR Section 10421 sanctions.[26]

Rule 4.4 (Respect for Rights of Third Persons): An attorney must not threaten criminal, administrative, or disciplinary action to obtain advantage in a civil matter. This rule may constrain aggressive motion tactics attempting to intimidate opposing counsel.

Rule 8.4 (Dishonesty/Fraud): Attorneys are prohibited from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Title 8 CCR Section 10421 directly addresses this by prohibiting verified declarations containing false or misleading statements.[29] Verification under penalty of perjury is a serious undertaking; any false statement triggers potential perjury liability and disciplinary proceedings.

Verification and Declaration Penalties

Petitions for reconsideration and other motions must be verified under penalty of perjury. This is not a mere formality. Making false statements in a verified petition exposes the attorney and client to:

Criminal perjury charges (California Penal Code Section 148-150)

Sanctions under Labor Code Section 5813 (Title 8 CCR Section 10421(a)(5))

State Bar disciplinary action (California Rules of Professional Conduct Section 8.4)

Contempt of court (Labor Code Section 134)

Practitioners should verify that every factual assertion in a petition is accurate and capable of substantiation. If an attorney's verification is found to include false statements, individual attorney liability attaches immediately.[26][29]

Candor to Tribunal and Opposing Counsel

Practitioners have an obligation of candor to the tribunal (workers' compensation judge and WCAB). This includes:

Disclosing adverse controlling authority - if there is controlling case law unfavorable to your position, you must cite and distinguish it (not ignore it)

Correcting misrepresentations - if prior filings contained factual error or misstatement, counsel must correct them promptly

Honest legal argument - argument must not misstate law or misquote holdings from cases

Timely notice of changed circumstances - if facts change after filing (e.g., applicant settles with third party, new medical evidence emerges), inform tribunal promptly

Competence and Continuing Education

California Rule of Professional Conduct Section 1.1 requires attorneys to maintain competence. Competence in workers' compensation motion practice requires:

Knowledge of current statutory and regulatory requirements - practitioners must track changes to Labor Code, Title 8 CCR, and WCAB procedures

Awareness of current case law - particularly appellate decisions from courts having jurisdiction

Understanding of local procedures - knowledge of specific judges' preferences, district office procedures, and DWC administrative practices

Practitioners new to workers' compensation should obtain training through:

California Applicants' Attorneys Association (CAAA) educational programs

State Bar workers' compensation practice section workshops

Continuing legal education courses on specific motion practice topics

Mentorship from experienced practitioners

Regular review of WCAB decisions and appellate decisions

Risk Warnings and Disclaimers

Inherent Risks in Motion Practice

Jurisdictional deadlines are absolute. Failure to file petitions for reconsideration, objections to DORs, or writ of review petitions within statutory deadlines results in waiver of the right to appellate review. There is no substantial remedies for missed jurisdictional deadlines except in extraordinary circumstances (e.g., attorney death, disability). Practitioners are responsible for tracking all deadlines and setting multiple reminders.

Sanctions exposure is significant. Pursuing dilatory motions, making false statements in verified petitions, or engaging in bad faith litigation tactics exposes both the law firm and individual attorneys to sanctions including attorney's fees, penalties up to \$10,000, and potential State Bar discipline. Individual attorneys can be held jointly and severally liable for the firm's conduct, and sanctions exceeding \$1,000 must be reported to the State Bar.

Precedent risk in appellate litigation. Petitions for writ of review that are denied may become precedent unfavorable to your position if the appellate court issues a reasoned opinion (published or partially published). Practitioners should carefully evaluate whether seeking writ review creates risk of adverse precedent versus benefit of immediate appellate review.

Settlement leverage impact. Aggressive motion practice can affect settlement posture. Judges may view parties filing numerous motions as difficult or unreasonable, affecting how they view that party's credibility and reasonableness in settlement discussions. Conversely, parties demonstrating good faith and efficiency in motion practice receive favorable judicial treatment.

Irreversible Consequences

Several decisions in motion practice create irreversible consequences:

Filing petition for reconsideration after 20-day deadline - forfeits right to reconsideration and must proceed immediately to writ review

Failing to raise and defer penalties at trial - permanently waives Section 5814 penalty claims

Failing to object to DOR within 10 days - waives all objections to proceeding

Filing meritless petition - may invite sanctions and attorney's fee awards

Failing to serve parties properly - petition may be dismissed or deemed not filed

Information Requiring Expert Consultation

Motion practice in workers' compensation intersects with other legal domains. Practitioners should seek expert consultation in the following areas:

Tax consequences of settlement: Settlements in workers' compensation cases may trigger federal and state income tax liability. Practitioners should consult with tax counsel before recommending settlement positions that affect overall worker compensation and tax exposure.

Social Security and workers' compensation interaction: Workers receiving Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) may face benefit reductions if workers' compensation awards are simultaneously paid. Practitioners should consult with Social Security experts before settlement negotiations.

Family law implications: Workers' compensation awards may be divisible community property in family law proceedings. Practitioners should alert family law counsel if family law proceedings are pending during workers' compensation settlement discussions.

Veterans benefits: If the worker has prior military service, workers' compensation awards may affect VA benefits. Veterans law expertise is needed.

Appendices

Appendix A: Statutory References (Labor Code Section 5400-5999)

Critical Labor Code Sections Governing Motion Practice:

- 8 U.S.C. Section 5309 - WCAB delegation of judicial power to workers' compensation judges
- 8 U.S.C. Section 5400 - Injury notice requirement (30-day deadline)
- 8 U.S.C. Section 5401-5410 - Claim form and initial filing procedures
- 8 U.S.C. Section 5500-5503 - Application for adjudication and parties
- 8 U.S.C. Section 5502 - Mandatory settlement conference procedures (critical for understanding discovery closure)
- 8 U.S.C. Section 5700-5706 - Trial procedures and evidence
- 8 U.S.C. Section 5900-5911 - Petitions for reconsideration (critical)
- 8 U.S.C. Section 5950 - Petition for writ of review (critical)
- 8 U.S.C. Section 5813 - Bad faith sanctions
- 8 U.S.C. Section 5814 - Unreasonable delay penalties
- 8 U.S.C. Section 5814.5 - Attorney fees for enforcing awards

Appendix B: Title 8 California Code of Regulations (Key Sections)

Rules of Practice and Procedure (10300-10999):

- 8 CCR Section 10301 - Definitions
- 8 CCR Section 10414 - Declaration of Readiness to Proceed
- 8 CCR Section 10510 - Petitions and answers (format requirements)
- 8 CCR Section 10605 - Time extensions for mail service
- 8 CCR Section 10615 - Filing requirements
- 8 CCR Section 10744 - Objections to Declaration of Readiness
- 8 CCR Section 10759 - Mandatory Settlement Conferences (discovery closure)

8 CCR Section 10850 et seq. - Petitions for reconsideration

8 CCR Section 10421 - Sanctions (bad faith conduct)

Appendix C: Key Case Holdings and Precedent Summary

2023 Zurich American Insurance Company v. WCAB (97 Cal. App. 5th 1213) - Watershed Decision on Reconsideration Deadlines:

Holding: The 60-day deadline in Labor Code Section 5909 for WCAB action on petitions for reconsideration is jurisdictional, not merely procedural. If the WCAB does not act within 60 days, the petition is deemed denied by operation of law, and the WCAB loses jurisdiction to grant reconsideration after that date. Decisions granting reconsideration after the 60-day deadline are void and subject to writ of mandate.

Application: Practitioners must file petitions for reconsideration within 20 days of service and must assume the petition is denied if no action is received within 60 days. The remedy is a timely petition for writ of review under Labor Code Section 5950.

2025 DPR Construction v. WCAB (McClanahan) (111 Cal. App. 5th 1136) - Discovery Closure and No Harmless Error:

Holding: Labor Code Section 5502(d)(3) mandates closure of discovery at the mandatory settlement conference. Evidence not disclosed in the pretrial conference statement is inadmissible except where evidence was unavailable or could not have been discovered through due diligence. Admission of undisclosed evidence constitutes reversible error not subject to harmless error analysis.

Application: Practitioners must list all exhibits in the pretrial conference statement by the close of MSC. Evidence not listed is excluded absent extraordinary circumstances. Procedural violations of discovery closure rules cannot be cured through showing lack of prejudice.

2024-2025 Nguyen Decision (WCAB) - Sanctions for Dilatory Conduct:

Holding: Unilateral cancellation of scheduled medical appointments without court order, combined with advocacy letters to medical evaluators and repeated procedural delays, constitutes pattern of bad faith conduct warranting sanctions under Labor Code Section 5813 and Title 8 CCR Section 10421. Individual defense attorneys are jointly and severally liable with their firms for sanctions.

Application: Defense counsel must pursue proper procedures (petitions for protective order, stipulations) to cancel appointments, not unilateral self-help. Patterns of dilatory conduct result in severe sanctions including attorney's fees and damages.

Appendix D: Motion Practice Procedure Checklist

Pre-Filing Checklist:

- Confirm motion type is appropriate for procedural stage
- Verify statutory deadline has not expired
- Research controlling case law and precedent
- Assess likelihood of success (high/medium/low)
- Conduct cost-benefit analysis
- Obtain client approval (if motion has strategic significance)
- Identify all parties who must be served
- Confirm current addresses and attorneys of record

Drafting Checklist:

- Use proper caption (case title and DWC case number)

- Include document cover sheet
- Include document separator sheet
- Draft clear, factual statement with record citations
- Cite applicable Labor Code, Title 8 CCR, and case law
- Include specific relief requested
- Verify petition under penalty of perjury
- Proofread for legal accuracy and formatting compliance
- Obtain client signature if verification required

Service Checklist:

- Identify all parties and attorneys of record
- Confirm current addresses
- Select service method (personal, mail, email, fax)
- Serve copies on all parties
- Prepare proof of service document
- File proof of service concurrent with petition

Filing Checklist:

- Confirm correct district office venue
- File via EAMS (preferred) or mail to correct address
- Maintain confirmation of filing receipt (EAMS confirmation or postal receipt)
- Verify all required pages are included
- Calendar follow-up deadline (if applicable)
- Notify client of filing status

Post-Filing Checklist:

- Maintain file copies of all filings
- Track WCAB action deadline (60 days for reconsideration petitions)
- Prepare for opposing party's objection or answer (due within 10 days)
- Coordinate with opposing counsel on settlement discussion opportunities
- Prepare for hearing if motion is contested
- Monitor for WCAB order or decision
- Calendar next procedural deadline (e.g., writ review filing if reconsideration denied)

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