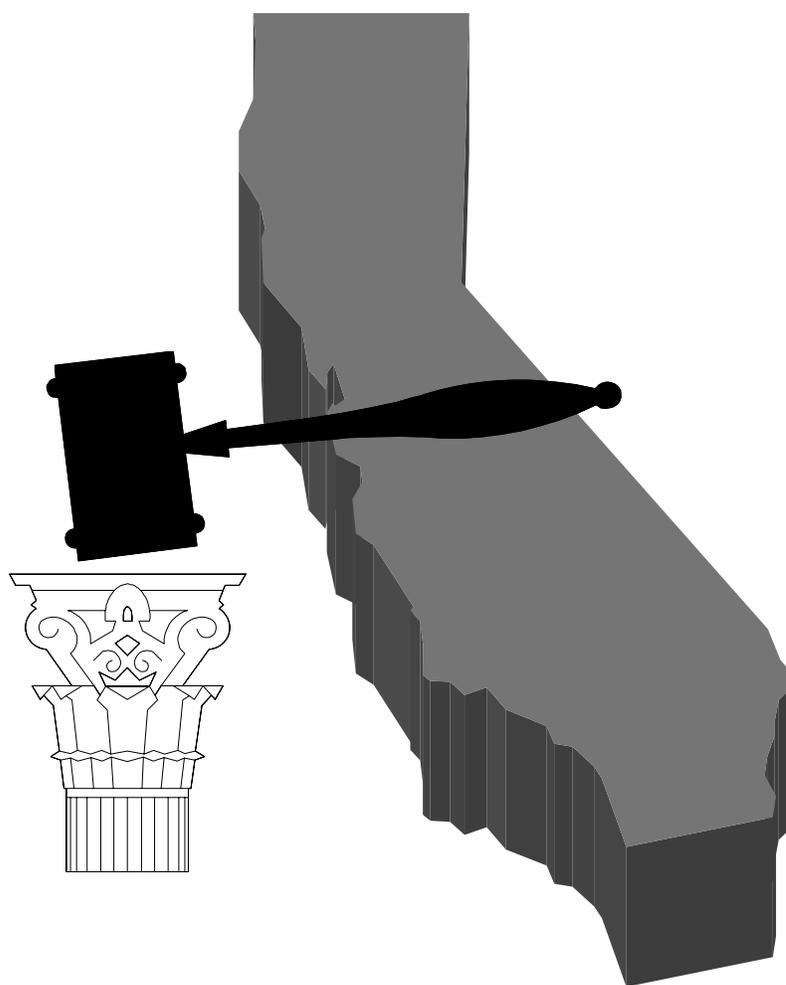


**State of California
Department of Industrial Relations**

**WORKERS' COMPENSATION ETHICS
ADVISORY COMMITTEE**



**2007
ANNUAL REPORT**

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1. The Ethics Advisory Committee: A Profile

A. The Committee's Functions

The Workers' Compensation Ethics Advisory Committee (EAC) is a state committee independent of the Division of Workers' Compensation. The Committee is charged with reviewing and monitoring complaints of misconduct filed against workers' compensation administrative law judges. As civil servants, workers' compensation administrative law judges are not subject to review by the California Commission on Judicial Performance, the agency which is responsible for investigating misconduct complaints directed at judges serving on the Superior and Appellate courts. The Committee's authority and duties are set forth in Title 8, California Code of Regulations, Sections 9720.1 through 9723.

The Committee meets at regular intervals to review complaints of judicial misconduct and to recommend to the Court Administrator of the Division of Workers' Compensation (DWC) if a complaint warrants a formal investigation by the Court Administrator's staff.

B. Committee Membership

Pursuant to Title 8, California Code of Regulations, Section 9722, the Ethics Advisory Committee is composed of nine members, each appointed by the DWC Administrative Director for a term of four years.

The Committee's composition reflects the constituencies within the California workers' compensation community, and is composed of the following members:

- a member of the public representing organized labor;
- a member of the public representing insurers;

- a member of the public representing self-insured employers;
- an attorney who formerly practiced before the Workers' Compensation Appeals Board and who usually represented insurers or employers;
- an attorney who formerly practiced before the Workers' Compensation Appeals Board and who usually represented applicants (injured workers);
- a presiding judge;
- a judge or retired judge; and;
- two members of the public outside the workers' compensation community.

Committee member The Honorable Julie Conger, Alameda County Superior Court Presiding Judge, is currently the Chair of the Committee.

The EAC meets four times each year at the Division of Workers' Compensation Headquarters located at 1515 Clay Street, 17th Floor, Oakland, CA 94612. Although EAC meetings are open to the public, the Committee meets in executive session when it engages in the review and discussion of actual complaints, and that portion of the proceedings is closed to the public.

The Committee is assisted in carrying out its functions by an attorney and secretary on the staff of the Division of Workers' Compensation.

2. Complaint Procedures

A. Filing a Complaint

Any person may file a complaint with the Ethics Advisory Committee. Complaints must be presented in writing and the Committee will accept anonymous complaints.

Persons aggrieved by the conduct of a workers' compensation administrative law judge are not limited to, or required to pursue, a complaint before the EAC. The EAC has adopted an official complaint form, and a sample is available on-line through the DWC web page. While use of the complaint form is not mandatory, its use is encouraged since the form contains helpful examples of judicial misconduct, and it advises complainants that a decision by a judge which contains legal error does not constitute the basis of an ethical violation. The complaint form contains a notice advising complainants that it is unlawful to knowingly make a false or fraudulent material statement.

Generally, a Committee case is opened with a letter from an injured worker, an attorney, or lien claimant who has been a party to a proceeding before a Workers' Compensation Administrative Law Judge employed by the Division of Workers' Compensation. After a complaint is received, the Committee's staff attorney reviews the complaint to determine if it concerns a workers' compensation administrative law judge or other DWC employee. All complaints concerning judges are entered in the official log and assigned a case number and file folder. The complainant is then advised in writing that his or her complaint has been received, and that it will be presented to the Committee at the next scheduled meeting.

Each complaint received by the EAC that alleges misconduct by a judge is formally reviewed by the Committee. In order to assure objectivity in its deliberations and recommendations, the Committee has adopted a policy requiring that the names of the complainant, the judge in question, as well as the specific DWC office where the alleged misconduct occurred, be redacted from the copies of complaints reviewed at each meeting.

All complaints which fail to allege facts that might constitute judge misconduct are forwarded to the Court Administrator with a recommendation that no further action be taken on the complaint. The complainant is then advised in writing that the Committee has considered the complaint and, inasmuch as no misconduct was either alleged or established, the Committee has decided that no further action is appropriate.

B. Investigation by the Court Administrator or Administrative Director

Where a complaint makes allegations, which if true would constitute misconduct by a judge, the Committee will recommend that the Court Administrator conduct an investigation. Should a complaint substantially allege criminal conduct, invidious discrimination, sexual harassment, or other serious acts that might require immediate action, it is referred to the Court Administrator and/or the Administrative Director on a priority basis. Normally, the investigation of a complaint is conducted by the DWC Associate Chief Judge responsible for the DWC district office where the judge in question is employed. The course of the investigation is monitored by the Court Administrator. During the investigation, the DWC case file may be reviewed, witnesses may be interviewed, written statements may be taken, and additional information may be solicited from the complainant. Should the investigation disclose facts establishing improper, fraudulent, or

unprofessional conduct on the part of other parties to the workers' compensation case, such as an attorney or physician, the findings are reported to the State Bar of California, the Medical Board, or other appropriate disciplinary forum.

Any disciplinary action taken against a judge by the Court Administrator or Administrative Director is in the form required by Government Code Sections 19574 or 19590(b). The right of the Court Administrator or the Administrative Director under Title 8, California Code of Regulations, Section 9720.1 et seq. to enforce ethical standards among judges does not replace or reduce a judge's procedural rights under the State Civil Service Act (Government Code Section 18500 et seq.). Furthermore, the rights and obligations of the Court Administrator or the Administrative Director and judges concerning the probationary period mandated by Government Code Sections 19170 through 19180 are not affected.

When the Court Administrator's staff has completed its investigation, the Committee is briefed on the investigation's findings, as well as any disciplinary or other remedial action taken.

3. Complaint Digest

A. Complaint Summary For Calendar Year 2007

The Division of Workers' Compensation has 24 district office locations, each with a Presiding Judge.

▪ Number of presiding judges	24
▪ Number of judges serving (includes 17 retired annuitants)	180
▪ Total number of judges serving	204

Including complaints from prior years, a total of 27 complaints were resolved by the Committee in 2007. There are 11 complaints that are unresolved.

Complaints for 2007 that were received by the Ethics Advisory Committee after its final meeting for calendar year 2007 are classified as unresolved. Complaints for which investigations have been requested, but for which the investigations are on hold until after the underlying workers' compensation case has been resolved, are also classified as unresolved or still under investigation.

The following groups within the workers' compensation community filed complaints that were reviewed by the EAC during 2007:

▪ Employees represented by attorneys before the WCAB	5 Complaints
▪ Employees not represented before the WCAB	20 Complaints
▪ Anonymous	0 Complaints
▪ Applicant attorneys practicing before the WCAB	2 Complaints
▪ Defense attorneys practicing before the WCAB	2 Complaints
▪ Lien Representative	5 Complaints
▪ Lien Claimants (physicians)	2 Complaints
▪ Attorney representing a lien claimant	2 Complaints

B. Description of Complaints and Actions Taken

I. Investigations resolved in 2007

1. An employee's attorney complained that the judge spoke disrespectfully about him to the attorney's hearing representative. The entire brief complaint is quoted below:

I walked into Judge [name]'s office to submit to her a request for an increase in attorney's fee. I said to her "I know you are not doing 'walk-thrus' today but can you please look at this request for an increase in attorney's fees?"

Judge [name] took the request and said "What is this in regard?" - and before she could finish her questions, and after she saw the name of either the Applicant or the Attorney on the front page of the request, she immediately stated, "Oh no, I am not increasing this fee." I asked, "Please have a look - the client was quite difficult...", and she then interrupted me and said, "The Attorney was also very difficult and arrogant - No, I am not going to sign this." I replied, "Thank you for your time," and as I began to leave her office, she then continued, "If I was you, I wouldn't learn anything from him, keep that under your hat." I replied "Okay, thank you for your time Judge" and then proceeded to leave. As I was leaving she said "Just leave that (request) in the file" and I replied "Okay, thank you."

Following review of the complaint, the Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

2. An unrepresented employee alleged that the judge did not correctly find permanent disability, despite all the doctors having found disability, and despite the insurance carriers and employers having accepted the case. The employee also alleged that the rating in the case was incorrect. The employee filed a petition for reconsideration, which was denied. Following its review of the complaint, the Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

The next complainant is an unrepresented employee who has filed 3 complaints against one judge in the past. The following two new complaints (#3 and #4) were submitted by this complainant, closely in time, against the same judge.

3. This is the fourth complaint by this complainant against this judge; the Committee had found that no ethical violations were identified in his three earlier complaints. This unrepresented employee made the new allegation:

“I, [name], seen *[sic]* with my own eyes and heard with my own eye *[sic]* Judge [name] asked Mrs. [name] [the defense attorney] for \$50,000 and/or a Mercedes Benz . . .”

In the previous complaint this complainant made against this judge, he alleged that the judge accepted “gifts” and other “economic incentives” in exchange for performing official acts “to get the insurers off the hook,” and that the judge “decided to work in concert with the insurer’s” through their attorneys.

In the rest of this complaint, the earlier issues were re-alleged that the judge decided various matters incorrectly.

The complainant provided no facts or details to substantiate or explain these claims. The Division wrote the complainant asking for facts and details to substantiate this complaint of soliciting a bribe. The complainant did not respond to the request. The Committee did not identify any violations of the California Code of Judicial Ethics or the Division’s ethics regulations.

4. This complaint is the fifth filed by this complainant against this judge. It was identical to complaint No. 3, above, except that the complainant added vague allegations of unspecified payments and gifts, and no longer mentioned the specific solicitation of a \$50,000 bribe. It was almost identical to one of the prior complaints. The committee found that no ethics violations were identified in the first three complaints. The Division wrote to the complainant, asking for further details

of the complaint. The complainant did not respond to the request. The Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

5. A represented employee alleged that the judge was biased against her because she filed a previous complaint against the judge when he had not issued a decision within 90 days. She asked that a different judge be assigned to her case. There had not been a resolution of that complaint when this complaint was filed.

The employee also alleged that during her trial testimony, the judge would not allow her to explain her answers. The judge told her to speak only when spoken to, and not to interrupt. She was told she could only answer questions with a *Yes* or *No*. She complained that while the judge so limited her testimony, he allowed defense witnesses to testify in a narrative mode, without interruptions, and did not restrict them to *Yes* or *No* answers.

The employee also alleged that in this seven year old case, a hearing was continued on one day's notice at the request of the defendant, because the defendant was on vacation. Although the hearing was reset for one week later, it was again continued at the request of the defendant. For this continuance, the complainant did not receive notice of the new trial date until after the scheduled date of trial. The Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

6. A represented employee, who had settled his case by stipulated findings and award, complained that his award was inadequate. The entire text of the complaint reads:

"I am disable for life N this Judge give me \$680 per month for 2 years only. Please review my case. I'm not work since 4/8/99. I need justice."

The Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

7. A previously represented employee complained that the judge was biased, and that the judge intimidated her. The employee complained that when she entered the hearing room, the defense attorney asked her if she had done what the prior judge had asked her to do "on the settlement." The complainant replied, "No, you told me not to do that because I was going on social security disability." Complainant alleged the judge replied, "We can go around that." The complainant believed the judge and the defense attorney were trying to force her to settle her claim. What was scheduled to be a hearing turned out to be merely a discussion reviewing what had previously happened in the case. When the complainant tried to bring up the question of a medical treatment that had first been authorized, but then denied at the time of treatment, the judge would not allow her to continue because it was not the proper time to be discussing that issue. This happened a second time. The complainant felt confused, angry, and annoyed, and believed that the judge was very pushy and would not listen to anything she had to say. When the judge did listen, the judge gave a "completely backward response."

The Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

8. A previously represented employee complained in a 30 page unsigned document that a judge (not named) and the commissioners (on reconsideration) incorrectly granted a petition filed by her former attorneys seeking to be relieved as counsel. There were no other complaints in the document. The Division wrote to the complainant, advising her that it had no jurisdiction over complaints against commissioners, and that if she had any complaints against a judge other than this allegedly incorrect decision, if she would put those complaints on a complaint form, naming a specific judge, and sign and return the complaint form, the Committee would consider those complaints. There was no response from the complainant.

The Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

9. An unrepresented employee complained that she was treated differently by the judge than attorneys were, and that the attorneys were allowed to act as if the courtroom were their social club. When the judge entered the room and began to speak to complainant's case, the judge did not refer to her by name, but merely asked if "**you** want the courtroom cleared?" (Complainant previously asked the Information and Assistance Officer if she could have the courtroom cleared, because of another disability that she had.) The complainant asserted that the judge should have addressed her as "Mrs. [name]," rather than merely as "you."

At the beginning of the conference, complainant's husband stood to address the court. He was told to sit down, even though attorneys had been allowed to stand when addressing the judge. Complainant further alleged that although the defense attorney was allowed to distribute documents not previously mailed to complainant, when she tried to introduce documents, they were rejected by the judge.

The Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

10. This unrepresented employee previously filed a complaint against a presiding judge for not taking action against an attorney who had allegedly suborned perjury in other, non-W.C.A.B. proceedings. The complainant asked the presiding judge to review the transcripts. After a review of an analysis of those transcripts, the Committee found no ethical violations. The same complainant then filed this almost identical complaint against a trial judge, after having submitted the two transcripts of the prior proceedings (by which complainant claimed that the perjury would be proved) as part of his evidence in his case. The employee complained that the judge made a finding of "no perjury" at a status conference instead of holding a fact finding hearing while a reporter was present.

The Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

11. A formerly represented employee complained that records of the district office were incorrect in many instances concerning orders that had or had not been approved. The employee also complained that on two occasions the judge mistakenly approved settlements of which the employee was not aware and had not signed. He also complained that he had not received the benefits he was awarded, and had been unable to get the judge to set hearings on this discrepancy.

The complainant alleged that on one occasion he was present for a status conference when the attorneys were discussing the division of attorney fees, but that the judge refused to listen to him, saying that, "This is a lien conference." The judge refused to look at the complainant's "notice," and said that he should not be talking to the complainant. On another occasion, when the judge said the conference was a "lien conference," the judge refused to hear or examine complainant's evidence. The complainant stated that the judge raised his voice and said that he was not going to hear anything about fraud, although the judge also said there was no documentation of fraud in the file.

On another occasion, complainant stated that at a trial, while he was trying to make himself heard, the judge allowed the defense attorney to leave the courtroom with another man who wanted to speak with him, over the objection of the complainant.

The Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

12. An unrepresented employee stated that she received an electronic version of a report of a Qualified Medical Evaluator ("QME") from someone who was a stranger to her case. She named this person. Later in her complaint, she stated

that this person, a friend of the court, told her that the judge had a secret meeting with the QME for the purpose of guiding the physician to include key phrases and terms in the QME report, so that the judge could act on the report. She also stated that the friend of the court met with the judge, and that the judge instructed this person on what language should be included in the QME report. She stated that the friend of the court told her that the judge knew of the contents of the draft QME report, suggested changes to the content of the report, and relied upon the friend of the court to make changes in the report on behalf of the QME physician.

Claimant filed four petitions for reconsideration in this case; all were denied by the W.C.A.B. She filed four petitions for writ of review, all of which had been summarily denied. In the most recent decision, the court stated that if further groundless petitions were filed, the complainant would be liable to pay attorneys' fees and costs.

The person who was named in the complaint as the "friend of the court" was contacted by DWC and interviewed. The person named as the friend of the court denied making any of the statements attributed to him by the complainant.

The Committee concluded that the allegations of the complaint were not factually supported.

13. An unrepresented employee complained that the judge was biased against people who suffer accidental injuries. Complainant did not give any reason why she thought the judge was biased, except that the judge ruled against the complainant in dismissing the complainant's case without notifying the complainant that the case would be dismissed. The employee further complained that the judge needed to consider the complainant's objection to the dismissal, or to send to her information on how to appeal. The complainant did not state whether or not she actually filed an objection to the dismissal of her case.

The Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

14. Attorney complainant alleged that at a lien conference the judge was sarcastic, and became visibly and excessively angry. The complainant further alleged that the judge made unsupported accusations about the attorney's conduct at the hearing and refused to hear the attorney's explanation, and made false entries into the minutes and then refused to correct them.

Complainant stated that, when preparing for a trial setting for three unsettled liens, the judge directed him to put his exhibits on a separate backing, which the judge handed to him. Sitting in the same courtroom, the attorney began removing lien documents from their portion of the file in one of the cases to be tried, while the judge discussed a related case with another attorney. The judge asked for the case file with which this attorney was working, and he handed it to the judge, telling the judge that he still had some of the exhibits which he was in the process of transferring as she requested. The judge took the file, and then asked, "*What happened to the legal file?*" The attorney asked the judge what she was referring to. The judge replied, allegedly in a sneering, sarcastic tone, "*You know; the legal file. It has an application, a DWC-1, things like that.*" The complainant replied that he did not know what happened to the "legal file," and that he had not been working with it.

The complainant alleged that the judge then became upset, and that the judge's face turned red. The judge then asked the complainant where the "rest" of the legal file was, and accused him of removing documents from the legal file. The complainant replied that he did not know what she was talking about, that he had not been working with the legal file, that he had not removed anything from it, and that he had been doing as the judge instructed – arranging his exhibits on a separate backing. He also told the judge that he was not the only person who had handled the case file that morning.

The complainant alleged that the judge indicated in the minutes that he had taken the legal file apart, and “not returned same.” The judge also wrote in the minutes that the complainant said that “others on the case may have same,” which complainant said was not true; he only said that he was not the only person to handle the file.

While the judge was out of the courtroom for a few minutes, the complainant composed a handwritten statement of his account of what had transpired, and had it stamped “filed” by the clerk. When the judge returned with the copies of the minutes, the complainant stated he wanted to put the statement in the W.C.A.B. file. The judge told him he could not touch the file, and directed him to place the filed statement in the judge's in-basket in her office. The judge then instructed the complainant to serve a copy of the minutes on all parties, including the complainant's client.

The complaint was investigated. The Committee concluded that there were ethical violations, and recommended that the Court Administrator consider disciplinary action. The judge was given a written counseling memorandum.

15. An attorney for a lien claimant complained that the judge made unjustified and intemperate accusations against him in the minutes of conference. Although the handwritten minutes were almost entirely illegible, the following statement could be made out: “Mr. [name]'s pet [petition] for sanctions reference [sic] WCJ ruling on his motion is false representation of fact known to Mr. [name] to be false.”

Complainant's almost equally illegible hand-printed petition sought sanctions against the defendant, related to some document which the defendant filed in relation to defendant's Notice to Produce, which Notice to Produce had been the subject of complainant's Motion to Quash. It was not possible to determine the judge's ruling on the Motion to Quash, neither from complainant's typewritten but disorganized letter of complaint nor from the illegible petition and minutes. It

appears that complainant alleged in the motion that the Notice to Produce was either never served or was never filed.

Complainant continued by alleging that the judge's statement in the Minutes that he had filed a document containing false representations was just the last occurrence of a pattern of harassing actions of the judge against him. As to the judge's stated conclusion, first orally, and then written in the minutes, that complainant had made false representations, complainant stated that he had orally denied to the judge "multiple times" during the conference that he had lied.

Complainant alleged that in another case on the same day, before the conference discussed above, the judge accused the complainant in open court of having put paper clips on papers within the board's case file, which the complainant had earlier examined (this complaint is No. 14 in this report). The complainant immediately denied the accusation. The judge is alleged to have said that the file went, "From [the judge's] hands to [the judge's] secretary's hands, to your hands." The judge is alleged to have then stated that the file was not organized in the same order in which it had been organized when it was given to complainant. Complainant stated that he then apologized to the judge, but said that he had not re-arranged the file. The judge then said that on all future occasions when complainant wished to review files assigned to this judge, he would have to do it in the courtroom in the judge's presence. Complainant stated that he "accepted" that comment of the judge, but now wishes to withdraw that acceptance, and he should no longer be so restricted in reviewing files assigned to this judge.

The Committee asked that the complaint be investigated. Following its review of the complaint and investigation, the Committee concluded that an ethical violation had been identified. However, because the ethical violation, if it occurred, arose prior to the issuance of the written counseling memorandum to the judge for another violation (see discussion of complaint No. 14, above), the Committee

found that no further action was warranted at that time, and recommended that no discipline be imposed.

16. Represented employee complained that the judge took more than 90 days to make a decision in this case. After this was brought to his attention, the judge stated he would send out his decision by the end of the week. The complainant stated that the quick issuance of the decision was based on the judge's time limit for receiving pay, and that the judge did not use the 90 days thoroughly to consider the issues in the case.

Labor Code §5313 requires that decisions be issued within 30 days after a case is submitted, although this deadline is not always met. Labor Code § 123.5 provides that a judge may not receive salary, if on the salary payment date any cases remain undecided more than 90 days after submission. C.C.R., Title 8, §9714 requires judges to submit an affidavit on or before each pay date, stating that no cases remain undecided which were submitted more than 90 days earlier. In this case, as of his next salary payment date, the judge did not have any cases undecided for more than 90 days.

The complaint was investigated. The Committee concluded that the late submission of the case, even if the judge did not have any undecided cases for more than 90 days before his salary payment date, was an ethical violation. The judge was informally counseled about the late submission.

Nos. 17, 18, & 19:

The complainant is a representative for lien claimants in each case underlying related complaints 17 through 19. In each case the complainant alleged that the judge forced the lien claimant to appear at hearings, although the lien claimant had in each case notified the judge before the hearing date that it had settled the liens in question.

17. In this case, complainant stated that at a pre-trial lien conference, the judge set the matter for trial. The day before the trial, lien claimant settled the lien claim with defendant, and defendant agreed to take the settlement agreement to court along with defendant's letter to the judge stating that the parties had reached the enclosed settlement agreement, and that the lien claimant would not appear because of the 400 mile travel distance involved. At the hearing, the judge issued an order to show cause why the lien claimant should not be liable for sanctions for not appearing, and set the sanctions matter for a hearing at a future time. The complainant also alleged that the judge issued minutes of hearing which incorrectly stated that the original hearing was set because lien claimant had filed a lien claim in an incorrect amount.

The minutes of the hearing reflect that the day before the scheduled hearing, the judge faxed to defendant and to complainant an order denying a continuance, which specifically stated, "No appearances are excused. Sanctions will be addressed." The minutes also reflect that in the afternoon of the day before the trial, complainant called the judge's office, informing that the lien had been settled, and requesting that the lien claimant not be required to appear. The minutes do not state whether or not complainant's representative actually spoke with the judge.

18. In this case, complainant stated that the judge acted improperly by issuing an order to show cause why complainant should not pay sanctions (and later imposing sanctions) for failure to appear at a lien conference. Complainant stated that it faxed a request to the judge that the matters go off calendar. Complainant also stated that it never received a response to its request. The complainant also wrote the judge that it would not appear at the conference.

19. Complainant alleged that sanctions were imposed against it (in addition to being imposed against a health care provider) although complainant had never entered its appearance for the health care provider. [Originally, the health care provider was ordered to appear at a lien conference, after it informed DWC, one

working day before the conference, that the case had been settled, and the order stated that sanctions would be discussed.] An employee of the health care provider was ordered to serve the minutes on the parties. Complainant stated that this individual had never been its employee. Complainant stated that although not having entered an appearance for the health care provider because the provider had advised that the lien had already been satisfied, complainant did in fact file a "Notice of Payment and Withdrawal of Lien" on behalf of the provider. The complaint did not state when this document was filed.

Each of Complaints 17, 18 and 19 were investigated. The Committee concluded that there was an ethical violation in each, although technical, in that the judge was intentionally proceeding contrary to the Workers' Compensation Appeals Board's rules about appearances when a case had been settled.

20. An applicant's attorney complained that the judge made inappropriate and disrespectful remarks in court to a paralegal. Complainant stated that the judge asked of the paralegal, "Are you ever going to pass the bar?" The paralegal is said to have responded, "I have not been to law school and I don't think it is necessary to do my job." The judge is claimed to have responded, "Until you get into trial and need the Evidence Code." Complainant also alleged that the judge had made similar disrespectful remarks to other paralegals and hearing representatives at other times. The complaint was investigated.

The Committee concluded that the allegations of the complaint were not factually supported.

21. A represented employee complained that the judge was a partner in the law firm of one of the defendants in this case, and believed that before becoming a judge he was associated with the specific attorney in that firm who was handling the defense in this case. Complainant stated that the former association to the firm and the defense attorney were never disclosed to him. Complainant stated that the

judge was the only judge he knew to have been associated with his case since it was filed. Complainant believed that when he was in the judge's chambers, he saw a group photo of the judge pictured with members of his former firm, including the attorney now representing the defendant. Complainant was concerned that the judge had shown favoritism to the former firm or to the attorney, because although his case was then more than seven years old, the defendants were allowed yet another QME examination, and had obtained, over his objection, a continuance of a scheduled mandatory settlement conference. Complainant was concerned that these decisions of the judge may have been retaliation against him because of another ethics complaint filed earlier in the year. The complaint was investigated.

The Committee concluded that the allegations of the complaint were not factually supported.

22. The sister-in-law lay representative of an employee attempted to represent the sister-in-law by telephone appearance. This lay representative states that she was disabled and lived 200 miles from the city where the case was being heard, and therefore requested the telephone appearance. The representative alleged that the judge refused to allow her to participate in conferences by telephone. She alleged that the judge told the employee at a conference that the judge had a problem, "dealing with a non-attorney who sits on the sofa and watches too much TV, and thinks they know the law." Complainant alleged that the judge also told the employee that she needed to hire a "real attorney." The judge's comments about non-attorney representatives were said to go on for several minutes.

Complainant alleged that at an earlier conference another judge had ordered that she could appear at future conferences by telephone. Complainant stated she called the office's disability accommodation coordinator to arrange the telephone conference for a status conference scheduled for the next day. She stated that the information was relayed to the judge's secretary, because the judge was not in the office that day. The secretary told the complainant that she or the judge would call

her on the day of the conference. Neither the judge nor the secretary called her on that day. The disability accommodation coordinator did call the morning of the conference for more information, and assured the complainant that the telephone conference would not be a problem. The complainant alleged that at the conference, both the employee and the employer's counsel advised the judge of the telephone conference agreement. The judge stated that she was unaware of these arrangements. It was at this time that the judge made the remarks about being represented by non-attorneys. The judge refused to initiate a phone call to bring the complainant representative into the conference.

Complainant alleged that during the conference, the employee objected to defendant's request that the employee be ordered to be re-evaluated by a Qualified Medical Evaluator ("QME"). The basis of the objection was that the defendants had engaged in *ex parte* communications with the QME. The employee informed the judge that the complainant (who was not present) was in possession of a copy of the *ex parte* communication. The judge then agreed to make a telephone call to the complainant, but said that she would discuss with the complainant only what the complainant thought was an *ex parte* communication. The judge then made an attempt to call the complainant, but said she was unable to complete the call because of caller ID blocking. Complainant stated that the prior judge did not have any difficulty in reaching her at the previous conference, and that had the judge followed the electronic instructions delivered when a call was blocked, the call could have been completed.

Complainant alleged that after the failed attempt to make the phone call, the judge repeated her discourse on the problems of dealing with non-attorney representatives, and stated that defendant's counsel was "good." Complainant further alleged that the judge then said that the employee and the complainant were the reasons that the resolution of the employee's case had been so long delayed. Complainant further alleged that the record of the status conference incorrectly reflected that the complainant appeared by telephone, and that the

judge had ignored the complainant's requests to have the minutes changed to reflect the true state of affairs.

The Committee found there would be an ethical violation if the remarks had been made. Investigation was done to ascertain if the remarks were made. The Committee also found that it appeared that the judge went out his/her way to accommodate the out of area representative. The remainder of the complaint was investigated.

The Committee concluded that the allegations of the complaint were not factually supported.

23. A medical lien claimant alleged that before encountering this judge, he had been warned of the judge's "surly demeanor" and apparent bias against chiropractors and lien claimants. He stated that he attempted to be business-like and courteous in his appearance before this judge. However, although the conference began on a cordial note, the complainant noticed that the judge did not give the appearance of neutrality. He complained that the judge repeatedly interrupted the complainant when he began stating his case, and made comments similar to those a defense attorney would make. Complainant stated that the judge prompted the defense attorney. Complainant alleged that when the defense attorney would make comments, the judge would not interfere, and the judge would follow the defense attorney's comments with comments of his own, to the effect of saying that the complainant was "out of luck," and his arguments were unfounded.

The complainant offered two examples:

1. When he began to explain why the utilization review (U.R.) doctor's report was not substantial evidence, because the U.R. doctor quoted from the "acute" chapter of A.C.O.E.M. in relation to a chronic injury, the judge responded:

“Are you an A.C.O.E.M. expert? You have no idea what the A.C.O.E.M. experts were intending when they put that document together.”

2. The complainant was discussing aspects of the case with the defense attorney, including the application of A.C.O.E.M., U.R., and other medical issues. The defense attorney said his position was, “If utilization review denies it, we ain’t paying.” The complainant replied that that was the reason he had to file lien claims. At that point the judge, “promptly, loudly, and in a somewhat threatening tone” said, “If you’re looking for a payday, it ain’t gonna happen here!” The complainant stated that denials of treatment are very common, often based on partial quotations from records and out-of-context information, and that this kind of claims-handling by utilization review doctors caused otherwise needless appearances on behalf of lien claimants. Complainant thought that the judge inferred merely from the complainant’s appearance at the W.C.A.B. that the complainant was out to “game the system,” and that this inference was the explanation for the hostile attitude of the judge.

The complainant added that the judge was “surly, rude, and condescending.” Complainant believed the judge was “biased against lien claimants, chiropractors in general, or both.”

The Committee concluded that possible ethical violations had been identified, and the complaint was investigated. The Committee concluded that the allegations of the complaint were not factually supported.

24. An unrepresented employee alleged that while his case was “on appeal” to the Court of Appeal, the judge scheduled a conference and refused to take it off calendar. On the day of the conference, the defense attorney did not appear, but the judge nevertheless issued an order in the case. The employee told the judge that the judge did not at that time have power to issue an order, because the employer did not appear, and because the case was on appeal. The employee

stated that the judge became angry that his decision had been appealed, and began “taking verbal lashes at” him. The judge said that because he was a judge, he could do whatever he wanted, and that the employee should not be telling him how to do his job. The employee stated that the judge “yelled,” asking why the employee had appealed the order. The employee alleged that the judge then told him to take his briefcase and to “have a seat on a certain chair.” The employee asked if the judge told him to take a seat because the judge wanted to discuss the case further after he was finished with the other cases, and the judge said, “no”, and told him to “get out of his face” and leave.

The Committee concluded investigation should be undertaken on the following points: Was inappropriate action taken while the case was on appeal (when a writ had been sought) or at reconsideration level Did the judge take any *ex parte* action in regard to issuing orders? Did the judge display anger when addressing the complainant?

The Committee concluded no ethical violations had been identified.

25. An unrepresented employee complained that when conferences were held on several occasions, the judge met with the defendant’s attorney before the conference, and on at least one occasion met for more than one half hour.

The complainant also alleged that after one decision was issued, both he and the defendants filed petitions for reconsideration. The employee complained that the judge did not forward his petition for reconsideration to Workers’ Compensation Appeals Board in San Francisco. A review of the file indicated that the judge had addressed both petitions for reconsideration in his report, and that the W.C.A.B. addressed both petitions in its decision.

The complainant also alleged that the board scheduled a telephone conference, but that he was not called or contacted at the time of the conference and therefore

was not able to participate in by telephone. The employee also complained that a settlement conference was cancelled, and he was not notified of the cancellation, causing him to make an unnecessary 700 mile trip to California from Arkansas. At a subsequent conference, the employee stated that he asked the judge why he was not informed of the cancellation of the conference, and that the judge replied, "Shit happens."

The Committee concluded that the allegations of the complaint were not factually supported.

26. A lien representative alleged that the judge denied the representative his rights under the Americans with Disabilities Act. One representative had a hearing impairment and another had diabetes. The complainant alleged that the judge refused to continue the case despite a doctor's note concerning the representative's travel restrictions. Complainant also alleged that the judge refused to allow a second representative to assist the first, who was tired due to his disability, and that the judge also refused to allow them to explain why the first representative needed help. The complainant alleged that the judge did not allow "tag teaming," would not accommodate the hearing problem, and complained when the representative's assistant whispered information to him. The judge asked "Do you not understand what I said, or do you not hear me?" In another case, the representative alleged his witness was unable to attend a trial date due to a back injury, and that although the defense counsel agreed to a continuance, the judge refused a continuance and then had an *ex parte* conversation with defense counsel about the matter.

The Committee concluded that the allegations of the complaint were not factually supported.

27. An unrepresented employee complained that the defense attorney interfered with the production of medical and legal records, had *ex parte* communications

with the Qualified Medical Evaluator, and tried to prevent her from seeing the Qualified Medical Evaluator. The complainant believed that the defense attorney met *ex parte* with this judge and persuaded the judge that the complainant was a “dangerous person.”

The employee complained that the judge had a search made of a criminal database. The judge discovered that a bench warrant was outstanding for the arrest of the complainant and arranged for the complainant to be arrested in the courtroom pursuant to the outstanding bench warrant, thus embarrassing her in front of her father, who was present. The employee alleged that the bench warrant did not appear on her “record” until the day before the day of her arrest in this judge’s courtroom.

The employee also alleged that judge took her case off calendar after a trial, when the judge was supposed to be deciding her case. The employee stated that members of the Highway Patrol, who took her to the county jail, told her that this judge can’t stand her and did not want to hear her case. The employee also alleged that the judge met *ex parte* with the defense attorney to discuss the case, and to discuss the defense attorney’s claims that the employee was a dangerous person. The employee stated she believed that the judge was attempting to stage the appearance of the employee as a dangerous person, so that the judge would not have to rule on her case.

The Committee concluded that the allegations of the complaint were not factually supported.

2. Investigations that remain open

1. A chiropractor and lien claimant complained that the judge used intemperate and slanderous language in discussing chiropractors in front of attorneys and hearing representatives. The complainant performed a QME evaluation and wrote a report. He alleged that the judge said in relation to his report that: “chiropractors are not real doctors;” that “there is no such thing as a chiropractic orthopedist;” and that “chiropractors are not qualified to evaluate extremities and hands for impairment ratings.”

The complainant stated that it is the position of the Division that a chiropractor can evaluate a hand disability. Complainant also stated that orthopedic evaluations performed by chiropractors are superior to most orthopedic evaluations performed by medical doctors, and that the education offered in medical schools is inferior to that taught in chiropractic colleges. The committee concluded the complaint should be investigated.

2. The unrepresented employee complained that the judge acted improperly and in an injudicious manner at a conference. The entire brief complaint is quoted below:

In the pre-trial of my hearing, when we were stating reasons to be allowed a trial, in which took almost 10 minutes just to be allowed. Judge [name] stated that “I don’t know why you are here anyway. Dr. [name] is so revered that I’m probably just going with his decisions anyway.” The judge stated again later he would be using his decisions only. He is the reason I was asking for a hearing in the first place, and the judge's statements gave a very clear advantage to him.

The judge also stated that he hoped the matters wouldn’t take too long because there was a junior symphony board meeting to attend to. The judge later attempted to back track that comment, bring it up more than once. I felt the judge was not being committed to my trial.

I in no way feel I was listened to, as some of my statements were turned backwards in the minutes and I don't believe the Judge acted unbiased in her decisions.

The committee concluded the complaint should be investigated.

3. An unrepresented employee, previously represented, alleged that the newly assigned judge in the case was a friend of the defense attorney and did not disclose this fact. In a six page single-spaced narrative, complainant stated that: two defense attorneys were allowed to stand behind the judge; the judge took a file from complainant's hand, but never looked at it; the judge may have read a folded piece of paper that a defense attorney had in his hand before giving the judge the court file (but which was no longer in his hand after giving the judge the file); and the judge opened the hearing by stating: "I know [name] [the defense attorney], and if he tells you that he will do something, he makes sure that it gets done." Complainant also makes various complaints about evaluating physicians in her case.

After the employee complained to the judge that she had not received various letters and medical reports (she had received several boxes of papers), the judge allegedly said: "You need to go home and check off the reports that you received from the defendants against what reports Dr. [name] used in both of his reports. If you are missing any reports you can file your DOR and come back here." Complainant stated that this statement was a direct quote from a letter which the defense attorney had written to the judge.

At a hearing in October, 2005, a defense attorney took a page from a February medical report and inserted into an October report of the same doctor. This was allegedly done when the judge allowed the defense attorney to remove the DWC file from the courtroom. The defense attorney stepped up to the judge's desk, picked up the court file, thumbed through it, pointed to a particular page, and whispered to the judge. The judge started reading aloud from the report, and the

complainant asked him from what page he was reading. The complainant recognized the judge was reading from the February report. The judge said he was reading from the October report. The defense attorney stepped up to the judge's desk again, pointed to the top of the page the judge was reading, and again whispered to the judge, "what the defense attorney wanted the judge to tell me." The judge stated that all the pages had the October date at the top. The complainant told the judge, "That is because [defense] attorney copied them that way for your benefit." The complainant told the judge that the October report had nothing to do with back surgery, and that it was about injuries to the knees and feet. The complainant told the judge that he should look at a specific issue in the earlier conference minutes. The complainant stated: "Judge [name] threw his hand up at me saying, '*you better watch out,*' and put his hand down." The complainant then asked the judge to please read the referenced page in the February report in the file that the complainant had handed to the judge earlier, and the judge said, "No." The defense attorney was standing where he could not be seen by the judge, he had the actual report which he had removed from the court file, he was waving it back and forth, and he was smiling at the complainant.

The complainant stated there was a dispute as to unpaid permanent disability, EDD's claims for reimbursement, and reimbursement which the defendants claimed for medical treatment they provided and to which the defendants claimed the employee was not entitled. The complainant stated that EDD claimed it was entitled to \$11,000 in interest. The complainant stated that at a conference, the judge told her that she had received the payments, and that she should pay the interest. The complainant stated that she told the judge that the previous (retired) judge had ordered the carrier to pay the interest in 1999. The judge responded that the complainant needed to call EDD and find out who is supposed to pay the interest. The complainant alleged that the judge was repeating what a defense attorney had written in a letter to the board. At the conclusion of the conference, the judge told the defense attorney to "pay the money if they owed it."

Complainant alleged the judge said, regarding a rating, that the complainant was “only to get a little bit,” and he showed her what a “little bit” meant by pinching his thumb and index finger together, and also said the complainant was not intended to be able to live on it. The judge then turned to the defense attorney and asked, “Is that what you wanted?”, and the defense attorney said “Yes.”

Complainant alleged that the judge said that the complainant needed to get things ready for a trial, if she planned on getting the current issues cleaned up as well as old issues remaining from a 1999 trial. The complainant told the judge that she had everything ready for a long time and wanted to go to trial then. The judge said he would not let her go to trial then, and that she could not win at trial. The judge said that he wanted the complainant to confer with the Information and Assistance Officer before the next conference, but did not say why. The judge returned her file of papers, without ever looking at it, although he had earlier put a note on it indicating that it was for the board’s file.

In a subsequent letter, the complainant stated that the judge showed favoritism to the defense throughout the case, which was indicated by his rulings in favor of the defense, regardless of what issue was presented, and because the judge parroted the letters and statements of the defense attorney. The complaint also claimed favoritism, evidenced by the judge not enforcing rulings which had been made previously by the prior judge in the case. The complaint did not specify what rulings of the prior judge were not upheld.

The complaint stated that she believed the judge was biased in favor of the defense attorney, because the judge “felt compelled to bring up his name,” when he made the statement, “I know [name] ...,” referenced above. The complainant also claimed the defense attorney told her that the prior judge had retired, and that a new judge would be taking over the cases on a part time basis. The complaint believed that this was evidence that the defense attorney and the judge must have had a discussion about her case.

The complainant also claimed that the judge failed in his duty by not ensuring that the defense attorney had given copies to the complainant of all documents that were submitted to DWC. The complainant also alleged that during a hearing, with the defense attorney standing behind the judge, the judge turned around and whispered a question to the defense attorney, so that no one else could hear him. At this time the defense attorney still held in his hand the folded piece of paper mentioned in the beginning of the complaint.

4. A represented employee alleged that at a conference hearing, while his attorney was out of the courtroom preparing to watch a video which was to be offered in evidence by the defense, the judge had an *ex parte* conversation with the defense attorney about substantive issues in the case. The complainant stated that he was in a room adjacent to the courtroom, but in a position where he could hear the judge's conversation through an open door to the courtroom. He alleged that during the conversation, the defense attorney explained what was in the video and discussed the difference in opinions of the complainant's treating physician and of the reporting Qualified Medical Evaluator ("QME"). Complainant stated that the conversation between the judge and the defense attorney would cease at times when the complainant's attorney would enter the courtroom.

The complainant's attorney requested the judge order that a new QME be allowed, based on the improper specialty of the reporting QME. The judge immediately refused the request, stating that this case had gone on long enough and that he was closing all discovery. The Judge then requested that the complainant be present in the court room. When the complainant entered the courtroom, he was asked what he expected in order to settle the case. The judge asked (in a sarcastic tone) if the complainant were aware of existing video surveillance. Complainant stated that he had never been provided the video and that his attorney was not able to play it on his computer. The judge expressed surprise that complainant had not been able to view the video, and suggested it would be in his interest to view it. The judge pointed out that since the video contradicted his alleged disability and

the QME reported that the complainant was the person depicted in the videos, the complainant needed to ask himself if he was the person in the video, and to “keep in mind” whatever monetary award he might receive could be taken by Social Security. The judge sternly warned complainant that if the case went to trial, he was gambling his medical coverage by not accepting the offer made by the defense prior to trial. The complainant attempted to discuss what he called the lies made by the defense throughout his case, and stated that the description of video surveillance was incorrect. The judge's response was that he was not there to discuss such issues, and was only interested in settling the case at that time. The judge asked the complainant, “How much money do you expect?”

5. The complainant, a defense attorney, made a written request to the presiding judge asking to have California Highway Patrol (CHP) officers present at a hearing that involved a previously diagnosed mentally disturbed employee who had written a letter accusing the complainant of being dishonest and referring to complainant as the “evil enemy.” The presiding judge arranged to have CHP officers present. The complainant states that the trial judge “was not happy” to find the police in her courtroom. The employee had requested a continuance, and did not appear. Complainant stated that when he expressed an apology to the judge for causing the judge to become upset, the judge screamed at him, “You are not sorry at all.” The judge at some point wrote on the minutes of hearing, “CHP present, two officers, at Mr. [name of complainant's] request.”

Complainant stated that the judge, by putting this statement in the minutes, placed him in danger because the employee would read the minutes and become upset. When the complainant thanked the judge for his time, the judge screamed, “Just stop it.” After the hearing, another attorney from the office of the complainant attempted to speak to the judge to explain how the officers came to be in the court room, but the judge would not speak to him, and the judge did not permit the attorney to copy the minutes of hearing at that time.

6. In this case the complainant, a lien services company, stated that its client filed a declaration of readiness before engaging the complainant and alleged that it was retained by this client nine days before a status conference. Complainant stated he wrote the judge the next day requesting the matter go off calendar, because settlement negotiations were ongoing. Four days before the scheduled status conference the defendant faxed a signed settlement agreement to complainant. Three days before the status conference the judge faxed to complainant a minute order stating that complainant was “specifically required to appear, and to be prepared to discuss the filing of the Declaration of Readiness to proceed and efforts to resolve the lien.” That same day, complainant wrote back to the judge that in light of the settlement, the complainant would not appear, but would be available by telephone.

7. An unrepresented employee complained that the judge acted disrespectfully towards him, and had a contemptuous demeanor. The complainant alleged that at an expedited hearing where the employee asked for a continuance, the judge scolded the employee for not properly completing the form requesting an expedited hearing, and that the judge never explained the errors to the employee. The employee alleged that at the expedited hearing, the judge threatened the employee with sanctions if he ever showed up again unprepared, and although the judge granted the continuance, he never asked the employee why he was seeking the continuance. The employee stated he had valid reasons for a continuance – his lack of evidence because of the employer’s unreasonable refusal to attend depositions and produce evidence. The employee also complained that the judge berated him for discharging his attorney, asked him in a sarcastic and unpleasant tone why he had dismissed his attorney, and pointed out that the discharged attorney was a former judge at that district office.

8. An unrepresented employee alleged that a hearing was cancelled without notice three days before the date it was scheduled to occur, and that venue was changed to an office 90 miles away. The employee lived near the original venue.

Employee alleged he had earlier been given time to find an attorney, but that his chosen attorney would not represent him at the distant district office.

9. An unrepresented employee alleged that the judge violated her constitutional right to free exercise of religion by the manner in which the case was handled. Employee also alleged the judge made an incorrect decision on whether her termination was based on a good faith personnel action, and on whether she sustained psychiatric injury arising out of her employment.

10. A defense attorney complained that a judge improperly submitted a report and recommendation on reconsideration on a case that was not assigned to the judge, that the report was made to the W.C.A.B. *ex parte*, and that the judge was disqualified to act in the case in relation to one of the attorneys.

11. An unrepresented employee alleged that the judge subjected her to continuing threats and harassment, and that the judge had a “conflictual” [*sic*] relationship with the defense attorney. The employee alleged that the judge permitted the defense attorney to use “racially inappropriate language” during examination. The employee also alleged that the judge failed to respond to a declaration of readiness, and threatened to dismiss the case without cause.

Table 1



2007 COMMITTEE MEMBERSHIP

HONORABLE JULIE CONGER

Chair
Alameda Superior Court Judge

KATHRYN RINGGOLD, ESQ.

Former Applicants' Attorney
Worker's Compensation Law

HONORABLE NORMAN DELATERRE

Workers' Compensation Judge
Workers' Compensation Appeals Board
Santa Ana

HONORABLE SUSAN HAMILTON

Presiding Workers' Compensation Judge
Workers' Compensation Appeals Board
San Francisco

MICHAEL McCLAIN, ESQ.

California Workers' Compensation
Institute
Representing Insurers

ROBERT RUBY, ESQ.

Former Defense Attorney
Workers' Compensation Law

MR. JIM ZELKO

Kaiser Foundation Health Plan
Representing Self-Insurers

STEVEN SIEMERS, ESQ.

Committee Member Representing
Organized Labor

GORDON GAINES, ESQ.

Committee Member from Outside the
Workers' Compensation Community

DWC STAFF

Keven Star

Court Administrator

Richard Starkeson

DWC Attorney

Ursula Jones

Admin Assistant