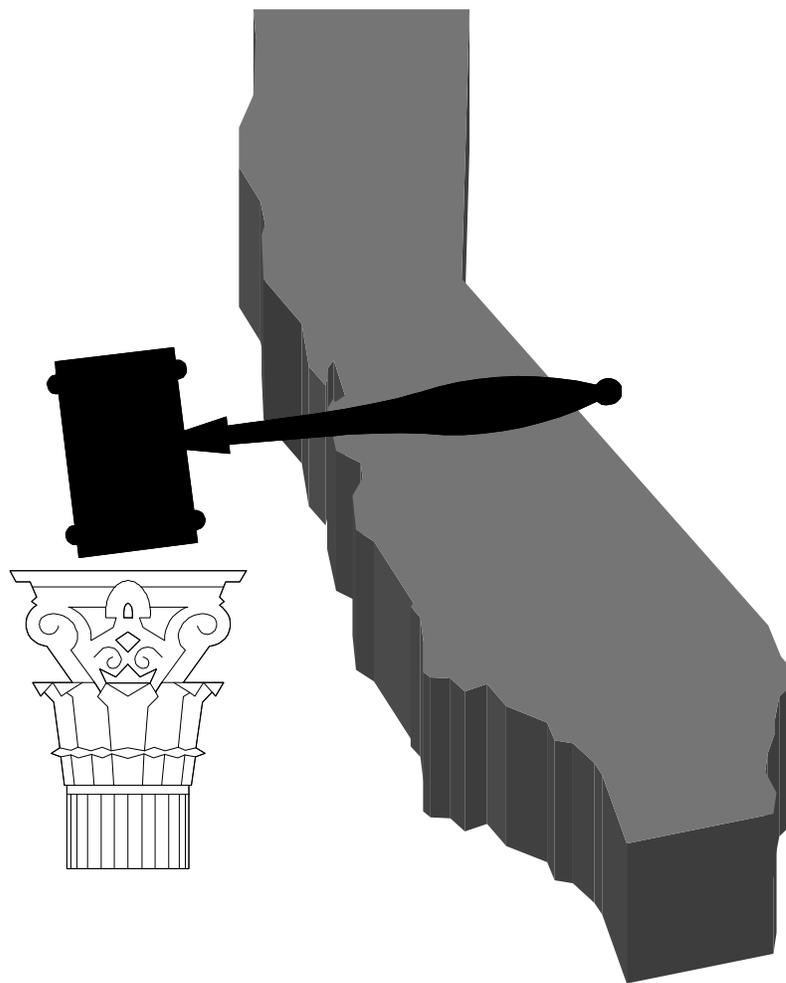


**State of California
Department of Industrial Relations**

**WORKERS' COMPENSATION ETHICS
ADVISORY COMMITTEE**



**2011
ANNUAL REPORT**

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I. 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 (DWC). The Committee is charged with reviewing and monitoring complaints of misconduct filed against workers' compensation administrative law judges (WCALJs or judges).

As civil servants, the WCALJs 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 Supreme, Superior and Appellate courts. The EAC's authority and duties are set forth in the California Code of Regulations, title 8, sections 9722 through 9723.

The EAC meets at regular intervals to review complaints of judicial misconduct and to make recommendations to the Chief Judge and the Administrative Director of the DWC if a complaint warrants a formal investigation by the Administrative Director's staff.

B. Committee Membership

Pursuant to California Code of Regulations, title 8, section 9722, the Ethics Advisory Committee is composed of nine members, each appointed by the Division of Workers' Compensation's Administrative Director for a term of four years.

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

Member of the Ethics Advisory Committee

- (1) A member of the public representing organized labor;
- (2) A member of the public representing insurers;
- (3) A member of the public representing self-insured employers;
- (4) An attorney who formerly practiced before the Workers' Compensation Appeals Board and who usually represented insurers or employers;
- (5) An attorney who formerly practiced before the Workers' Compensation Appeals Board and who usually represented applicants (injured workers);
- (6) A presiding judge;
- (7) A judge or retired judge, and;
- (8) Two members of the public outside the workers' compensation community.

The EAC meets four times each year at the DWC Headquarters located at 1515 Clay Street, in Oakland, California. 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 EAC is assisted in carrying out its functions by an attorney and secretary on the staff of the DWC.

II. 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 EAC will accept anonymous complaints.

An EAC case is typically opened as a result of receipt by the Division of Workers' Compensation of 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 DWC and the complaint alleges ethical misconduct by the WCALJ. DWC sends a letter to the complainant acknowledging that the complaint was received by the EAC.

Each complaint that alleges misconduct by a judge is formally reviewed by the EAC. The EAC reviews the complaint without the names of the complainant, WCALJ, or witnesses because it adopted a policy requiring that the names as well as the specific DWC office where the alleged misconduct occurred be redacted from the copies of complaints reviewed at each meeting. This assures objectivity from the reviewing members on the EAC.

All complaints which fail to allege facts that constitute WCALJ misconduct are forwarded to the Chief Judge with a recommendation that no further action be taken on the complaint. The complainant is advised in writing that the EAC considered the complaint and, inasmuch as no misconduct was either alleged or established, the EAC decided no further action is appropriate and the matter has been closed.

B. Investigation by the Chief Judge or Administrative Director

Where a complaint makes allegations which if true would constitute misconduct by a workers' compensation administrative law judge, the Ethics Advisory Committee will recommend that the Chief Judge conduct an investigation. When the Chief Judge's staff has completed its investigation, the EAC is briefed on the investigation's findings, as well as any disciplinary or other remedial action taken. The complainant is advised in writing that appropriate corrective action has been taken and the matter has been closed.

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

III. Complaint Digest

A. Complaint Statistics for Calendar Year 2011

1. Number of Workers' Compensation Administrative Law Judges

The Division of Workers' Compensation has 24 district office locations, each with a Presiding Judge. In 2011, the DWC had authority over 150 active judges.

WCALJs Positions (As of December 31, 2011)	
Number of presiding judges (includes 1 retired annuitant).....	22
Number of judges serving (includes 5 retired annuitants).....	128
Total number of judges serving.....	150

2. New Complaints

The Ethics Advisory Committee (EAC) received 41 new complaints in the calendar year of 2011. The EAC considered a total of 38 new complaints, in addition to 2 complaints pending from 2010. There are 3 complaints that are pending under ongoing investigation and 3 complaints which were filed after the EAC final calendar meeting for 2011, and thus pending. The complaints set forth a wide variety of grievances. A substantial portion of the complaints alleged legal error not involving judicial misconduct or expressed dissatisfaction with a judge's decision.

Ongoing complaints for which investigations have been requested, and the investigations have not yet been concluded, are classified as pending complaints. Complaints for 2011 that were received by the EAC after its final meeting for calendar year 2011 are ongoing, and as such, are also classified as pending complaints.

2011 Complaint Caseload	
New Complaints filed in 2011	41
Complaints Pending from 2010.....	2
Complaints Considered in 2011.....	38
Complaints Concluded in 2011.....	37
Complaints Pending on Investigation in 2011	3
Complaints Received after EAC Final Calendar Meeting for 2011.....	3

3. Groups within the Workers' Compensation Community that Filed Complaints

The workers' compensation community is composed of a variety of groups including, but not limited to, attorneys, injured workers, claims administrators,

hearing representatives and lien claimants (medical providers). A wide variety of persons from the workers' compensation community filed new complaints during 2011.

Groups within the Workers' Compensation Community that Filed Complaints in 2011	
Employees represented by attorneys	5 Complaints
Employees not represented.....	20 Complaints
Anonymous	2 Complaints
Applicant attorneys	6 Complaints
Defense attorneys	5 Complaints
Claims Administrators	0 Complaints
Hearing Representatives	2 Complaints
Lien Claimants (medical providers).....	0 Complaints
Attorneys representing a lien claimant.....	3 Complaints

3. Complaints' Actions Taken Digest

In 2011, 41 new complaints were filed by the workers' compensation community. Out of the 41 new complaints, 18 complaints resulted in investigations. Of the 18 complaints which resulted in investigations, 2 complaints were pending on investigations from complaints filed in 2010 and 3 complaints presently remain pending and under investigation from complaints filed in 2011. There were 3 complaints filed after the last meeting of the Ethics Advisory Committee in 2011. The Ethics Advisory Committee identified no judicial misconduct in 29 complaints, and recommended further action by the Chief Judge or the Administrative Director on 8 complaints.

Complaints' Actions Taken Digest

New Complaints filed in 2011	41
Investigated Complaints in 2011.....	18
Complaints Investigations from 2010	2
Pending Complaints Investigations in 2011.....	3
Pending Complaints Filed After EAC Last Meeting in 2011	3
Complaints Resulting in No Misconduct.....	29
Complaints Resulting in Misconduct.....	8

IV. Description of Complaints and Actions Taken

A. Investigations Resolved in 2011

1. A defense attorney complained the judge pre-judged a Labor Code section 132(a) (discrimination) case because the judge stated on three occasions before the trial was completed, that if the defendant did not settle, the applicant would prevail in the case. On the first occasion, before the trial commenced, the judge allegedly said if the defendant did not settle it would lose the case. On the second occasion, after the conclusion of testimony of the applicant and when the parties were considering stipulating to testimony to be offered by a defense witness, the judge allegedly said if the parties stipulated to the anticipated testimony of the defense witness, the applicant would prevail in the case. On the third occasion, six months later, after a second day of trial and after closing the record, the judge again advised the parties the judge thought defendant's actions were wrong, and the defense should reconsider settlement before a decision issued. The judge issued a decision finding for the applicant, and the

Complainant eventually prevailed on reconsideration. Complainant alleged the judge's attempt to "strong-arm" a settlement by threatening the defendant with an adverse outcome reflected bias and was not proper.

The Committee concluded the complaint should be investigated. Following its review of the investigation, the Committee recommended further action by the Administrative Director. The Administrative Director has taken appropriate corrective action.

2. An applicant's attorney alleged the judge criticized complainant in front of the client by making the suggestion in open court that perhaps complainant should consider retirement.

The Committee concluded the complaint should be investigated. Following its review of the investigation, the Committee recommended further action by the Administrative Director. The Administrative Director has taken appropriate corrective action.

3. An unrepresented employee alleged that in proceedings where complainant requested a qualified medical evaluator (QME) be removed, the judge refused to look at the evidence presented, and instead ordered complainant's deposition be taken. Complainant further alleged that at another conference six months later, the judge refused to review the presented evidence on the issues of the QME removal and defendant's refusal to provide authorized treatment, and instead ordered complainant to prepare a brief, outlining the reasons why the QME should be removed. Complainant also alleged at the same hearing, the judge denied complainant's request for appointment of a QME panel of chiropractors.

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.

4. An unrepresented employee alleged the judge was inconsiderate of complainant's rights by not allowing complainant to participate in a telephone conference, but only announced the decision after the telephone connection was made. The complainant further alleged the judge had an imperious attitude when speaking to complainant; announced the complainant had abandoned the case with regard to the liens; announced the matter had been set for a lien hearing; and said the complainant had the choice to attend or not attend. The complainant claimed the judge stopped the complainant from speaking by cutting complainant off without allowing complainant to pose questions. Complainant alleged the entire phone call took one minute and twenty seconds. The complainant further alleged that although in the month of December the judge denied complainant's request for an afternoon hearing and a request for a postponement until after the holidays, the judge granted an attorney's request to postpone a hearing until late morning, showing favoritism.

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.

5. An unrepresented employee complained the judge denied a request for a continuance to allow complainant to obtain representation. Complainant alleged that after arguing several points at a hearing, complainant presented a number of documents which complainant offered as evidence. The judge asked the complainant to give the judge the documents, but complainant refused to give the documents to the judge until complainant had an attorney, and unless the defendant gave the complainant copies of certain documents. The judge accepted as evidence documents listed by the complainant for which judicial notice could be taken, and refused to accept into evidence the documents complainant refused to hand in at the time of hearing. Complainant also claimed

that some of the remarks made by the judge at two different conferences were racist (by implication).

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.

6. An applicant's attorney complained that at a hearing, the judge allowed the defense attorney to be verbally abusive toward complainant, and took no action to stop the abusive behavior. The complainant allegedly made an oral motion for sanctions against the defense attorney, and the judge denied the motion. The judge allegedly was also verbally abusive towards the complainant. The complainant also alleged that after submission of the minutes of hearing, the defense attorney and the judge engaged in an ex parte conversation lasting over ten minutes, which the complainant was able to witness through a glass partition.

The Committee concluded the complaint should be investigated. Following its review of the investigation, the Committee concluded the allegations of the complaint were not factually supported.

7. A defense attorney complained that at an appearance at a mandatory settlement conference on a lien claim, the parties requested the judge issue a ruling on whether the case would be set for trial. Complainant alleged the judge told the attorneys the judge was retiring at the end of the month, stamped the judge's name on the pre-trial conference statement, yelled at the attorneys that the judge did not care what the parties did, and refused to make a ruling on the parties' request. The judge lectured the parties that the judge would normally find a way to deny liens, but the case was no longer the judge's problem. The attorneys left and were given a trial date by the secretary. The complainant further alleged the parties realized they needed another ruling and returned to the judge to ask if additional time would be allowed for the service of documents.

The complainant indicated time was needed to review the documents and prepare for trial. The complainant alleges the judge became furious and stated how long the complainant needed to review the documents would depend on how good an attorney the complainant was. The judge allegedly asked several times in a yelling tone: “How good an attorney is the complainant?” The complainant became emotional and could not control the tears. The judge allegedly made further comments about the complainant not being able to handle cases without crying. The judge allegedly stated in a contemptuous manner, “I don’t think you girls are capable of trying any case.” The judge is alleged to have stood up in a violent manner, throwing a small object onto the desk, yelling at the lien claimant’s attorney to give the documents to complainant right then and there, and never issuing a ruling on the request.

The Committee concluded the complaint should be investigated. Following its review of the investigation, the Committee recommended further action by the Administrative Director. The Administrative Director has taken appropriate corrective action.

8. A represented applicant complained the judge exhibited bias against the complainant. The complainant alleged that in January, the judge issued a decision, which was “favorable” to the complainant, and then six months later issued a one-sided, unfair order “favoring the defendant.”

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.

9. An applicant’s attorney alleged the judge exhibited bias and displayed conduct that was disturbing to the complainant. Complainant alleged complainant has had unpleasant and biased results from the judge before, and as a practice avoided the judge. Complainant claimed that on the few occasions complainant appeared

before the judge, complainant has requested the judge be recused on the basis of bias but the judge has refused. Complainant alleged complainant appeared before the judge on a mandatory settlement conference, and before complainant said a word, the judge allegedly turned to complainant and told the complainant the judge had no bias or ill will towards the complainant in front of opposing counsel. Complainant stated the statement was unsolicited, uncalled for, unprofessional, and solidified the bias the judge has against complainant. Complainant alleges complainant and the opposing counsel went to the presiding judge to relate the comment, and indicated the presiding judge may have nodded or blinked. Complainant requested the judge be investigated.

The Committee concluded that the complaint should be investigated. Following its review of the investigation, the Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

10. An unrepresented applicant complained the judge committed perjury and was biased and prejudiced against the complainant. The complainant alleged the judge was helping the defendant overcome a report issued by a Qualified Medical Examiner, which found the complainant 100% permanently disabled. Complainant claimed defendant forged a primary treating physician's report, and the judge was aware of the forgery and did nothing to correct the record but relied on the forged report to issue decisions adverse to the complainant. The complaint further alleged complainant filed a Petition for Reconsideration, seeking reconsideration of the judge's decision but the judge intentionally failed to forward the petition to the Reconsideration Unit causing the dismissal of the petition. Complainant also alleged the judge lied about the content of complainant's medical reports in order to rule in favor of the defense.

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 with respect to the allegation concerning the petition for

reconsideration, and the allegation the judge lied about the content of complainant's medical reports. However, the Committee concluded the complaint should be investigated with regard to the allegation a primary treating physician's report was forged, and the judge was aware of the forgery. Following its review of the investigation, the Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

11. An applicant's attorney alleged a judge exhibited bias and prejudice against the complainant's law firm by retaliating in the form of awarding unusually low deposition fees when compared to deposition fees awarded to other law firms in the same area by the same judge.

The Committee concluded the complaint should be investigated. Following its review of the investigation, the Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

12. The same applicant's attorney as in the complaint above, filed a second complaint alleging that a different judge exhibited bias and prejudice against the complainant's law firm by retaliating in the form of awarding unusually low deposition fees when compared to deposition fees awarded to other law firms in the same area by the same judge.

The Committee concluded the complaint should be investigated. Following its review of the investigation, the Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

13. An unrepresented employee claimed the judge was prejudiced against the complainant because the judge did not allow the case to go forward. The complainant requested the Ethics Advisory Committee "help this case get on the right track." The Division wrote back to the complainant and asked for the details of the allegations against the judge. The complainant did not respond.

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.

14. A represented applicant complained against a judge, stating: “[r]uling case on hearing and change judge dispute other judge [sic].” The complainant also raised allegations about doctors and attorneys involved in the case. The Division wrote back to the complainant and asked for the details of the complaint against the judge. The complainant did not respond.

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.

15. A represented applicant complained against a judge, stating: “[w]rong Judge conducting facts—made wrong decisions, discrimination and corruptions [sic].” The complainant also raised allegations about attorneys involved in the case. The Division wrote back to the complainant and asked for the details of the complaint against the judge. The complainant did not respond.

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.

16. A defense attorney alleged the judge had an apparent ex parte communication with the applicant's attorney. The alleged ex parte communication took place when the applicant's attorney made an unauthorized ex parte appearance on a “walk-through” basis on a Labor Code section 5710 petition for attorney's fees without notice to the defense attorney. The complainant further alleged it appeared the applicant's attorney engaged in some

sort of ex parte communication with the judge relating to the subject matter of the case in order to procure the Order. The communication was allegedly evidenced by the Minutes of Hearing, in which the boxes “Dispute Resolved by Agreement,” and “No Issues Pending” were marked on the Minutes of Hearing. The complainant stated there was no such agreement as a dispute was very much at issue.

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.

17. An unrepresented employee filed a complaint against a judge and the commissioners of the Reconsideration Unit of the Workers’ Compensation Appeals Board. The complainant filed an ethics complaint addressed to the Reconsideration Unit. The judge treated the document as a petition, and forwarded the document to the Reconsideration Unit. The Reconsideration Unit denied the complainant’s petition as skeletal. It appeared that the Reconsideration Unit’s decision contained a clerical error wherein the decision stated that the complainant referenced Labor Code section 4069, when the correct reference was to “Labor Code section 4068.” The complainant filed two separate ethics complaints. The first complaint, filed against the commissioners of the Reconsideration Unit, alleged that the commissioners applied incorrect legal principles in reviewing the petition for reconsideration. The second complaint, filed against the judge, raised similar allegations which were raised and addressed in a previous complaint against the same judge. The complainant alleged that in adjudicating the case, the judge discovered conduct that appeared to constitute fraud by both lawyers and the treating physician, and the judge failed to take appropriate corrective action.

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 complainant was further notified the Committee does not have jurisdiction over the commissioners of the Workers' Compensation Appeals Board.

18. An unrepresented employee complained the judge exhibited bias and was prejudiced against the complainant. The complainant alleged the bias was exhibited by the judge's failure to appear at a scheduled hearing even though the judge was present at work on that day; the judge pressured the complainant to settle the case insisting that the complainant put aside a fraud claim; the judge allowed the defense attorney to file false pleadings, and did not take steps to discipline the attorney; and the judge issued a decision denying a change of venue request without good cause. Complainant also alleged prejudice because complainant went to the Board with a recorder and a video recording to file documents, and was stopped by security. Security stated the complainant needed to be accompanied to file the documents in order to ensure that there was no disturbance. Complainant was escorted and the documents were filed.

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.

19. An unrepresented employee complained the judge exhibited bias and was prejudiced against the complainant. The complainant alleged the bias was evidenced by the judge making complainant sign the Minutes of Hearing immediately when the complainant entered the court room and before the hearing started; by the judge's refusal to address the issues raised in the Minutes of Hearing; and by the judge telling the complainant in connection with the complainant's psyche claim that it would take a super lawyer to prove the psyche claim as the claimant was not employed with the employer over six months. The complainant further alleged bias and/or fraud by the judge because the judge encouraged the complainant to select an agreed medical examiner for evaluation

and upon further research it was determined the physician was a defense doctor. The complainant also alleged bias against the complainant because the judge allowed the defense attorney to file false pleadings and did not take steps to discipline the attorney.

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.

20. An unrepresented employee complained the judge was biased against the complainant by insisting the complainant put aside a fraud claim. Complainant alleged that defendant's attorney offered to settle the case, and when complainant rejected the settlement offer, the defendant's attorney became upset, pushed the complainant's companion and attempted to take their files. Complainant allegedly became very upset screaming and crying, and the CHP and the judge did nothing. Complainant further alleges the defendant's attorney ran to the judge's chambers, and following an ex parte communication an order issued compelling the complainant to attend a deposition. The complainant alleged the judge made false statements in the Minutes of Hearing by allowing the defense attorney to file false pleadings.

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.

21. An unrepresented employee alleged the judge violated the Code of Judicial Ethics by (1) threatening complainant with dismissal of the case when complainant wrote on a blank medical release form and refused to sign the blank form; (2) by subjecting the complainant to humiliating and threatening remarks when in response to complainant's request for explanation of a statement, the judge responded: "a six-year-old can understand," and by forcing complainant to

put down the pen or the judge would not speak, preventing the complainant from taking notes at the hearing; (3) by, on one occasion, having completed and signed the Minutes of Hearing before the hearing started; (4) by demanding at a hearing information from the complainant as to all concerns, and then scheduling a conference no less than an hour later to provide all the information; (5) by indicating in the minutes of hearing that complainant was present at a hearing when complainant was not; and (6) by, in discussing the election of a primary treating physician, stating the proposed doctor was no longer treating, because the judge had learned the information outside of the court room. Complainant further alleged the judge and the defense attorney had a good old boys relationship reflected by the judge allowing the defense attorney to discuss the case in chambers without the presence of complainant.

The Committee concluded that the complaint should be investigated. Following its review of the investigation, the Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

22. An unrepresented employee alleged the complainant is a victim of hate, harassment, and discrimination by the judge. The complainant further alleged that throughout the history of the case, the judge constantly continued the case and refused to address the issue of unpaid temporary total disability indemnity benefits. Complainant claimed that on one occasion, the complainant went to the Information and Assistant Officer to complain about the judge's continuing the case, and the Information and Assistant Officer went to discuss the matter with the judge. Complainant claimed that in less than 10 minutes the judge came to the Information and Assistance Office with a security guard, and the judge did not have to see complainant unless the complainant wanted to settle the case. The complainant alleged the event reflected the judge's discriminatory conduct and bias in forcing complainant to settle the case.

The Committee concluded that the complaint should be investigated. Following its review of the investigation, the Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

23. An unrepresented applicant alleged the judge was rude by speaking in a raised voice, hitting the desk, and throwing the pen down because the complainant talked too fast. Complainant also alleged the judge showed preference for the defense side by attempting to force the complainant to accept a settlement offer. The Division of Workers' Compensation wrote to the complainant and asked for specific details of the ethical complaint against the judge. The complainant did not respond to the Division's inquiry.

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.

24. An unrepresented employee complained the judge exhibited bias against the complainant. The complainant requested an African American judge to hear the case, but was assigned a non-African American judge. Complainant alleged the judge denied the complainant due process and the right to a fair hearing throughout the case. Complainant alleged the judge's bias was evidenced by the judge's questioning complainant's credibility throughout the proceedings. The complainant further alleged the judge discriminated against the complainant on the basis of race because the judge determined the complainant was not credible.

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.

25. An unrepresented employee alleged the judge heard a petition of complainant's attorney to withdraw from complainant's case ex parte, and granted the petition against complainant's wishes. Complainant alleged the judge hung up on complainant. The complainant complained directly to the former Court Administrator who immediately asked the presiding judge to investigate it instead of having to wait for the next quarterly meeting with the Ethics Advisory Committee.

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

26. An unrepresented employee complained the judge violated complainant's due process and civil rights. Complainant alleged the judge issued an Order granting a petition for change of venue without considering the complainant's objection to the request. The complainant also argued the merits of the objection to the request for the change of venue.

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.

27. An applicant's attorney alleged the complainant appeared at a scheduled hearing on the issue of attorney's fees before the judge. At the hearing, the judge signed an order approving a lien settlement. Complainant insisted the judge sign an order with respect to the complainant's lien claim. Complainant alleged the judge approached the complainant in the hallway with an intimidating face expression and, without warning, physically removed documents from complainant's person. The complainant was offended, intimidated and frightened by the judge's behavior.

The Committee concluded the complaint should be investigated. Following its review of the investigation, the Committee recommended further action by the Administrative Director. The Administrative Director has taken appropriate corrective action.

28. An anonymous complaint was filed stating the judge conducted proceedings in an informal, noisy, disruptive, and unprofessional manner. The complainant allegedly experienced difficulty working because of the loud noise coming from the judge's office. The complainant further alleged the complainant observed the judge raising the voice at parties appearing before the judge, and frequently losing the composure and berating members of the public. Complainant further alleged this caused a disruptive, unpleasant work environment.¹

The Committee concluded the complaint should be investigated. Following its review of the investigation, the Committee recommended further action by the Administrative Director. The Administrative Director has taken appropriate corrective action.

29. A defense attorney complained the judge acted in an inappropriate manner in handling a settlement case by personally meeting with the disability evaluation rater to arrive at a rating different from the rating which formed the basis for the settlement. Complainant alleged that on a different day, the judge was Officer of the Day, handling walk-through settlements. Complainant stated the judge allegedly spent approximately thirty minutes engaged in casual conversation with a member of the public known to the judge, while a number of other people waited to conduct business. Complainant claimed the complainant appeared before the judge on a different occasion and during the proceedings, the judge asked the complainant a question unrelated to the legal matter at hand, which complainant believed to be inappropriate. Complainant also alleged that on a

¹ This complaint is against the same judge in Paragraph No. 27.

different date, while the court was in session, the judge became upset thinking the book was stolen. Complainant alleged the judge inquired from the parties present in the courtroom “who had stolen the book.” Allegedly, the complainant suggested to the judge that someone may have borrowed and taken the book to a different courtroom to negotiate a settlement. Complainant claimed the judge responded the judge did not care and persisted in finding the person who “stole” the book emphasizing that “heads will roll.” Complainant alleged the judge left the courtroom and walked up and down the corridor asking about the book.²

The Committee concluded the complaint should be investigated. Following its review of the investigation, the Committee recommended further action by the Administrative Director. The Administrative Director has taken appropriate corrective action.

30. An anonymous complaint was filed alleging the judge, who was already assigned to the case, approached the parties while they were completing a Pre-Trial Conference Statement, and inquired whether the judge could assist the parties. The judge then proceeded to discuss the merits of case and tell the parties how the judge would rule on the case.³

The Committee concluded the complaint should be investigated. Following its review of the investigation, the Committee recommended further action by the Administrative Director. The Administrative Director has taken appropriate corrective action.

31. An unrepresented employee complained the judge and the presiding judge had mishandled complainant’s case. Complainant indicated the complainant entered into a Compromise and Release (C&R) agreement in September 2001. Complainant alleged the complainant had problems with the defendant paying

² This complaint is against the same judge in Paragraphs No. 27 and 28.

³ This complaint is against the same judge in Paragraphs No. 27, 28, and 29.

pursuant to the C&R, and requested a hearing but defendant did not appear. The complainant claimed the judge “has since ordered a ‘gag’ on anyone with EDD, not to discuss the situation [sic]” with complainant. Complainant further alleged the presiding judge rescheduled another hearing without complainant’s permission; instead of ruling on the “statute of limitation” issue.

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.

32. An attorney representing lien claimants complained the judge violated the Code of Judicial Ethics by submitting a comment in connection with a formal rulemaking which was being conducted by the DWC.

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.

33. An unrepresented employee claimed the judge acted in a biased and prejudiced manner against the complainant. Complainant alleged that at proceedings, the judge engaged in humor, gestures and satirist remarks while conducting the proceedings. Complainant also alleged the judge ignored the complainant, did not allow offered evidence to be entered into the record; and coerced the complainant into agreeing to have the deposition taken. Complainant also alleged the manner in which the judge conducted the proceedings demonstrated that the judge and the defense attorney had had an ex parte communication regarding the case.

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.

34. Defense attorney called the presiding judge and complained the judge assigned to the case received an ex parte communication from the applicant, and had the judge's secretary contact one of the attorneys in the law firm with questions on the case. The complainant alleged the judge had the secretary read the ex parte communication and the judge's handwritten notes to the attorney and, via the secretary, indicated the content of the letter was the basis for setting the matter for a status conference.

Following its review of the complaint, the Committee recommended further action by the Administrative Director. The Administrative Director has taken appropriate corrective action.

35. An unrepresented employee alleged a defense attorney admitted liability in the workers' compensation case, but the complainant has not been yet compensated for the injury. The complainant requested the Committee ensure collection of the funds. Complainant further alleged the judge was prejudiced and exhibited bias against complainant because the judge ignored complainant's allegations of fraud; denied complainant's due process rights; and allowed the dismissal of complainant's lawyer.

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.

36. An unrepresented employee claimed the judge exhibited bias against complainant because the judge awarded permanent disability indemnity at the incorrect rate. The complainant alleged the complainant presented arguments with evidence supporting the higher rate, but the judge refused to listen to the evidence. Complainant further alleged that in refusing to listen to the evidence,

the judge failed to be faithful to the law. The complainant claimed the judge showed favoritism towards the insurance company and defense attorney.

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.

37. A lien claimant representative complained that at two separate hearings on different liens, the judge demonstrated that the judge had pre-judged the cases by stating that the judge had already decided the issue in question in another case. In the first case, the judge is claimed to have asked counsel if they had seen the judge's recent decisions on interpreter liens and when neither party said they had, the judge printed copies for both the complainant and the defense attorney. Complainant alleged that after the judge handed out copies of the decision to counsel, the judge told them, "Look at my decision. That is exactly how I will rule." Complainant further alleges that in the second case, the only issue raised by defendant counsel prior to trial was "failure to comply per Section 4628." Complainant claims that the judge sua sponte stated there were additional issues which should be raised by the defendant, namely certification of the interpreters and an agency holding on market rate versus the interpreter establishing their own market rate. Complainant claims the judge printed copies of the prior decisions and handed them to the defendant. The judge then allegedly said to complainant, "You know what my position is, and how I ruled before, and how I will rule now."

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.

B. Complaints Pending on Ongoing Investigations

1. An unrepresented employee claimed the judge exhibited bias against the complainant because the judge did not allowed all of complainant's documents to be filed into the computer filing system. Complainant further alleged the judge may have had an ex parte communication with the defense attorney because while waiting for a deposition to start, the judge said to the defense attorney, "If you need me, ... call me, you have my number." Complainant claimed the judge was favoring the defense attorney. Complainant alleged the judge may be biased against the class to which complainant belongs, either ethnic or sexual, although complainant provided no reason for the belief. The remaining details of the complaint address the defense attorney and the defendants.

The Committee concluded that this complaint should be investigated.

2. An attorney for a lien claimant alleged the judge exhibited bias against the complainant. The complainant claimed that at a set hearing, the judge issued an order taking the matter off calendar (OTOC) because the notice required all of the lien claimants to appear. The complainant alleged that complainant was the only one who actually appeared because the other lien claimant (who requested the hearing) had settled its lien. Complainant further alleged the judge OTOC many hearings because the complainant requested the cases either be continued or be set for trial. Complainant claims that in one case, the judge held up a proposed \$700,000 compromise and release agreement because the complainant was involved. The judge's action allegedly delayed an expedited hearing for medical treatment, even though the injured worker was in a "total back brace." Complainant claimed that when the complainant informed the presiding judge of the judge's actions, the matter was reassigned and the compromise and release agreement was approved in 10 minutes. Complainant also claimed the judge once charged the complainant with contempt, and then personally heard the matter of the contempt. Complainant alleged the judge once

refused to sign a lien stipulation, and told the complainant to go see the presiding judge, because the judge was refusing to do anything with this complainant. Complainant further alleged that once, three years ago, the complainant stopped the judge in the hallway to ask a question, and the judge replied, "If I don't say hello to you, it is because I do not like you."

The Committee concluded that this complaint should be investigated.

3. A hearing representative alleged that at a lien trial set for 9:00 a.m., the judge allowed the defense counsel to leave the court room because the lawyer forgot the file. The defense counsel allegedly returned before lunch and the judge ordered the parties to return in the afternoon. At the afternoon session, the judge allegedly told the parties to get their exhibits ready, left the courtroom and did not return back until 2:15 p.m. Complainant claims that thereafter the parties asked to go on the record, and the judge went to get a court reporter. The judge, however, did not return to the court room until 3:15 p.m., indicating that there was no court reporter available, and requested the parties return the next day. The complainant allegedly objected due to prior engagements, and the judge indicated the judge was tired of the complainant wanting to go on the record, threatened complainant with contempt sanctions, and set the matter for hearing on the contempt sanctions.

The complainant also alleged that on a second occasion, complainant appeared before the judge for a lien trial on behalf of a client. Complainant claims the parties were arguing the merits of the case and specifically one physician's referral of the applicant to another physician. Complainant argued the referral was in the body of the narrative of one of the medical reports. The judge allegedly insisted the complainant personally show the judge exactly where the referral was, and threaten the complainant with contempt sanctions. Complainant apparently asked the judge to review the entire medical report in context, and the judge allegedly replied in front of people present: "Do you not understand what I

am saying? I do not speak Spanish, so do you need an interpreter?” Complainant thought the commentary about needing an interpreter was a racist remark based upon complainant’s last name (Hispanic). Complainant also alleges that upon the judge’s statement that the judge would issue an order reducing the amount of the lien and complainant’s objection to the proposed order and desire to file an appeal, the judge replied that if complainant’s client were to appeal, the Judge would sanction complainant and the client. The judge allegedly went ahead and signed an order reducing the lien, and noted that sanctions would be reserved if an appeal was filed.

Complainant further alleged that on a third occasion, the judge refused to accept complainant’s exhibits and threw them on the floor, insisting it was not the judge’s job to go through all the paperwork. Complainant claims the judge indicated the judge would hold a separate trial for complainant’s clients to provide points and authorities to show the connection between doctors because the judge was not going to read over complainant’s exhibits. Complainant alleged the Judge stated the complainant would be sanctioned personally \$100 for every report the judge had to read. Complainant claimed at the end of the hearing, the judge told complainant the case would be continued, and complainant would be sanctioned \$2,500.00 (both personally and the client) as the judge alleged the exhibits were not EAMS compliant even though complainant believed them to be compliant.

The Committee concluded that this complaint should be investigated.

C. Pending Complaints Filed After the Last Ethics Advisory Committee Meeting

1. A lien claimant’s attorney complained the judge used premeditated, improper and unethical methods to obtain jurisdiction to hear and make an order on a matter not originally assigned to the judge without request by the parties. Complainant alleged the judge used the threat of sanctions as a scare tactic to

influence the parties' negotiations and to force complainant to involuntarily respond to questions for the sole purpose of humiliating and embarrassing complainant in front of 10-20 attorneys, lien representatives, and hearing representatives. Complainant further alleged the judge used the court reporter to manipulate the record by going off the record to threaten complainant's license when complainant attempted to object to the judge's rulings on the record. Complainant claimed the alleged manipulation of the record was because the complainant could not make an adequate record as the judge threatened sanctions for every statement made in the amount of \$1,001, with full knowledge that an attorney must report sanctions to the State Bar in excess of \$1,000.

2. A represented employee complained (1) the Summary of Evidence did not coincide with the Transcript of Proceedings as the judge changed statements made by the witnesses and statements made by the claimant in the Summary of Evidence; (2) during direct examination the parties took one break in the morning, a second break for lunch and a third break in the afternoon but during cross-examination the judge allowed numerous breaks; (3) complainant's attorney was not allowed proper time for re-direct as the judge constantly interrupted the applicant's attorney "butting heads" with the attorney; (4) the judge disallowed admittance into the record as evidence a 4-page document, accusing the attorney of using "tactical advantages" on the defendant; (5) the judge allowed the testimony of a witness who indicated the witness did not participate in conducting an accident investigation pursuant to a false statement of the defense attorney who stated to the judge the witness was one of the people who conducted the accident investigation; (6) the judge was biased in favor of the defense and this was reflected in the Summary of Evidence; and (7) the judge appeared to be unethically assisting the defense in its case. Complainant requested that all the judge's cases be reviewed claiming that it will be discovered the judge does not follow the law because the judge is "unethical" and "lacks morals."

3. A represented applicant alleged the complainant was not allowed in the courtroom when the case was being heard as the courtroom had a coded keypad lock and only attorneys were allowed in the courtroom. Complainant further alleged the complainant's attorney denied complainant's multiple requests to be present when the trial was being heard, and believes mistakes were made in the case because complainant was not allowed in the courtroom. Complainant requested that this practice be discontinued. Complainant also raised complaints regarding the manner in which the complainant's attorney handled the case, and substantive issues pertaining to the case.

Complaints of Misconduct Filed with the Ethics Advisory Committee

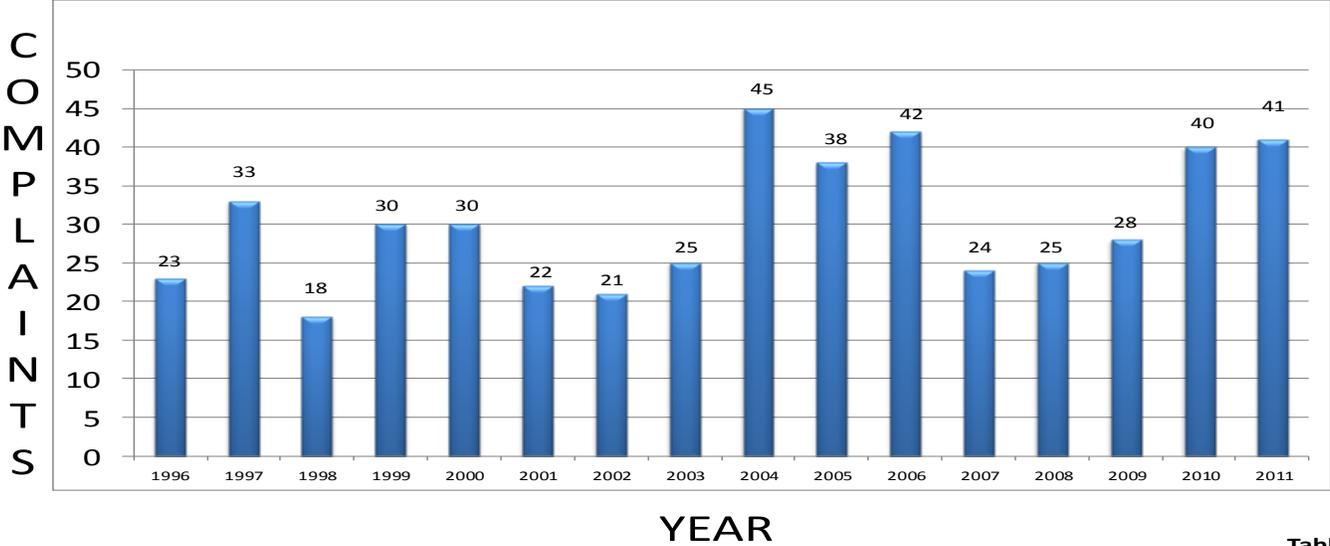


Table 1

**2011
COMMITTEE MEMBERSHIP**

HON. ALICE VILARDI

Chair

Judge, Alameda County Superior Court
Member of the Public from Outside the
Workers' Compensation Community

HON. TIMOTHY HAXTON

Workers' Compensation Judge
Workers' Compensation Appeals Board
Salinas

HON. NORMAN DELATERRE

Presiding Workers' Compensation Judge
Workers' Compensation Appeals Board
Santa Ana

VACANT POSITION

Member of the Public from Outside
The Workers' Compensation Community

ROBERT RUBY, ESQ.

Former Defense Attorney
Workers' Compensation Law

MICHAEL McCLAIN, ESQ.

California Workers' Compensation Institute
Representing Insurers

JIM ZELKO

Kaiser Foundation Health Plan
Representing Self-Insurers

STEVEN SIEMERS, ESQ.

Member Representing
Organized Labor

GORDON GAINES, ESQ.

Former Applicants' Attorney
Workers' Compensation Law

DWC STAFF

Richard Newman

Acting Chief Judge

Minerva Krohn

DWC Attorney

Ursula Jones

Adm. Assistant