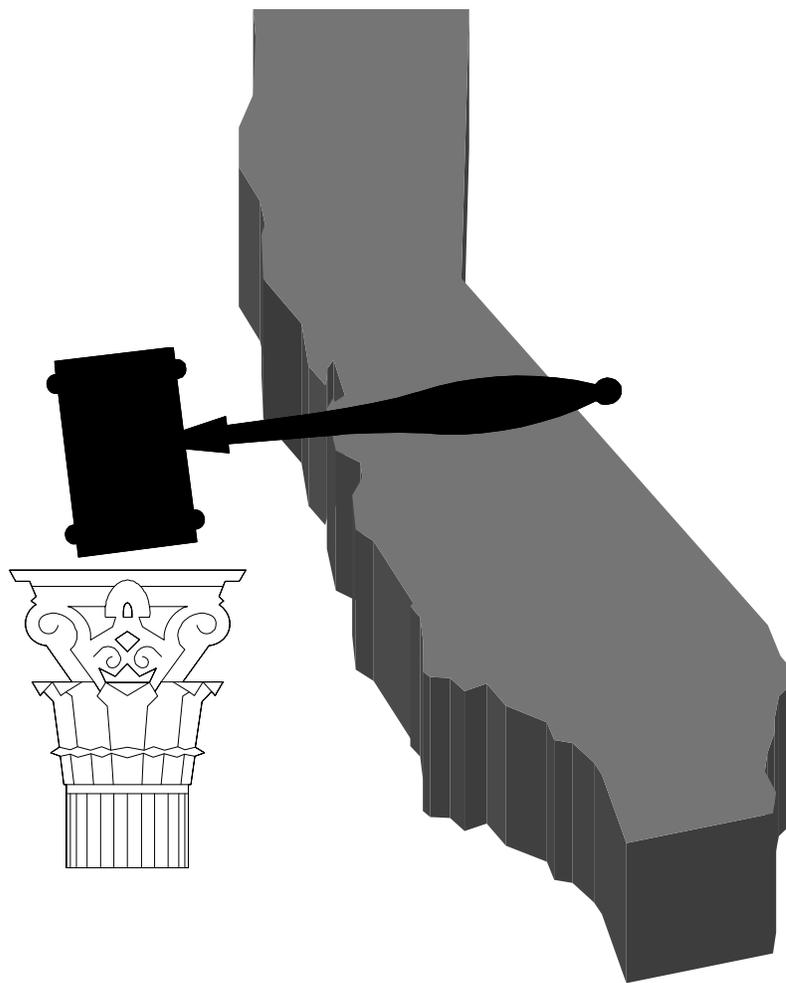


**State of California
Department of Industrial Relations**

**WORKERS' COMPENSATION ETHICS
ADVISORY COMMITTEE**



**2009
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 (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 Superior and Appellate courts. The Committee's authority and duties are set forth in Title 8, California Code of Regulations sections 9722 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 or Administrative Director's staff.

A. 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.

The EAC meets four times each year at the Division of Workers' Compensation 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 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.

A Committee case is typically opened as a result of receipt by DWC of a letter from an injured worker, an attorney, or lien claimant who has been a party to a proceeding before a WCALJ employed by the Division of Workers' Compensation and the complaint alleges ethical misconduct by the WCALJ. DWC sends a receipt acknowledging to the complainant that his or her complaint was received by the EAC.

Each complaint that alleges misconduct by a judge is formally reviewed by the Committee. The Committee reviews the complaint without the names of the complainant, judge, 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 people on the Committee.

All complaints which fail to allege facts that 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 considered the complaint and, inasmuch as no misconduct was either alleged or established, the Committee decided 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. 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.

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.

3. Complaint Digest

A Complaint Statistics For Calendar Year 2009

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

- Number of presiding judges (includes 1 retired annuitant) 25
- Number of judges serving (includes 6 retired annuitants) 157
- Total number of judges serving 182

Including complaints from prior years, a total of 23 complaints were resolved by the Committee in 2009. There were 28 complaints filed in 2009. There are 9 complaints that are ongoing.

Complaints for 2009 that were received by the EAC after its final meeting for calendar year 2009 are ongoing, and as such are classified as unresolved. Ongoing 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 still under investigation and also classified as unresolved.

The following groups within the workers' compensation community filed new complaints during 2009:

- Employees represented by attorneys 4 Complaints
- Employees not represented 20 Complaints
- Anonymous 0 Complaints
- Applicant attorneys 2 Complaints
- Defense attorneys 2 Complaints
- Claims Administrators 0 Complaints
- Hearing Representatives 0 Complaints
- Lien Claimants (medical providers) 0 Complaints
- Attorneys representing a lien claimant 0 Complaints

B. Description of Complaints and Actions Taken

1. Investigations Resolved in 2009

1. A represented employee complained that the judge allowed the defense attorney to add a provision to stipulations with request for award after the stipulations had been signed. The judge also did not permit the employee to be present at a conference that occurred in chambers at the time of a scheduled trial. The employee further complained that even though the defendants admitted in writing in 2002 that they owed temporary disability for a three year period from 1989 through 1992 but refused to pay unless the employee signed stipulations waiving penalties and interest, the judge refused to set the case for trial for a second time on the issues of temporary disability, penalties, interest, and vocational rehabilitation temporary disability, because the judge said the issues of permanent disability and apportionment were not yet ready for trial, and because the defense attorney wanted to depose the Agreed Medical Evaluator (AME) for a third time. The complainant stated that the case had once been set on his issues only, but was taken off calendar after the stipulations were signed but before the employee learned that the stipulations had been altered, and before the employee's petition for reconsideration to rescind the stipulated award.

The Committee requested and the complaint was investigated. Subsequent to review of the investigation, the Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

2. A defense attorney made a written request to the presiding judge asking that California Highway Patrol (CHP) officers be 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 stated that the trial judge "was not happy" to find the police in her courtroom. The employee did not appear at the

hearing. 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 [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 and 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.

The Committee requested that the complaint be investigated. The judge in this case was no longer employed by the Division when the Committee considered the results of the investigation. Following its review of the investigation, although the Committee concluded there were possible ethical violations, because the judge was no longer employed, no action could be taken, and the Committee closed its file.

3. An 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 that this 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.

4. An unrepresented applicant alleged that the judge "showed complete bias against" him and "acted more as a defense attorney." Complainant stated that the judge came into the hearing room 30 minutes late, and complained about the amount of documentary evidence that complainant had submitted. The judge asked the applicant to go through his exhibits and choose those which were relevant to his claims. The judge "constantly complained" as the applicant was handing over his exhibits to the judge, and "showed no respect for him," while treating the defense attorney as if the judge "was his guardian." The judge did not allow the applicant to remain in the hearing room during the lunch hour. When court resumed, the judge said none of the applicant's "witness requests" or "document requests" were applicable to that day's hearing, and also told the applicant that the serious and willful claim would be heard "if it was proven by the AME and QME reports."

The applicant told the judge that his first heart claim had been accepted four years earlier, and that his second heart claim was the same as the pre-existing claim. He said that the employer did not have a defense to these claims, "so the judge spoke for them." When the defense attorney and the applicant disagreed about the playing of a claimed illegal tape recording for the QME and the submission of the recording as an exhibit, the judge said, "I'll decide," which the applicant complained was ignoring his argument and

ignoring case law. At the close of the hearing, the applicant asked the judge whom he should consult about all the people who were dying as a consequence of their entering his employer's 50 year old building, and the judge responded, "I don't know," allegedly with an "I don't care attitude."

The Division wrote to the complainant and asked for details which might substantiate the complaint, stating that without further details the Committee would not be able to investigate his complaint. 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.

5. An unrepresented applicant complained that a hearing was not held even though the judge was present, because the judge decided to take the case off calendar. He also complained that a Stipulation with Request for Award was "full of fraud and perjury." He claimed that he was 100% disabled according to a Social Security evaluation, but that he could not obtain a resolution of his case. He claimed that the Information and Assistance Officer advised him to go to federal court. He requested a trial hearing, "because there are so many inconsistencies."

The Division wrote the complainant asking him for more information, and for copies of the documents he referred to. He did not write back, but did telephone the Division. He was unable to provide any further explanation, and continued to insist that the Information and Assistance Officer had directed him to federal court for information.

Following its review of the complaint and absent the requested information from the complainant, the Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

6. An unrepresented applicant complained that the judge would not let her speak at a conference, but let the defense attorney do all the talking, allowed the defense attorney to pick the AMEs, and told the defense attorney to take another deposition. The complainant believed the judge treated her unfairly and sided with the defense. Complainant perceived from the questions which the judge had asked the defense attorney that the judge had not read over her case materials before the conference. Applicant also complained that she tried to speak to the judge, but that the judge would not talk to her.

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 Committee recommended that all WCALJs receive additional training on the need to be to be overly conscious of tact, courtesy and patience in dealing with *in pro per* applicants.

7. An applicant's attorney complained that at an MSC where the defendant had failed to arrange for an attorney to be present and had made no appearance, he had to wait an entire hour while the judge refused to let him see the court file, refused to call his case, while 6 to 8 other cases were called. The complainant says he wanted to continue the case. Complainant stated that when he asked the judge for the reasons for not calling his case, the judge became defensive, and took the case off calendar.

The complainant believed that the judge's taking the case off calendar without good cause instead of continuing the matter, is the product of the judge's bias against him. Complainant related that he had a similar problem with this judge twelve years ago, that the intervention of the presiding judge at that time took care of the problem, and that the judge had not ignored him for the succeeding twelve years. As soon as that presiding judge had left, this judge's bias resurfaced.

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

8. The very brief complaint of this unrepresented employee is quoted verbatim:

This is the copy of the document [a request form for a QME] I showed to the honorable Judge of the court on March 9, 2009 and were show how the Insurance Company and my first lawyer do not sent it to the department of Industrial Medical Council. I explain to the Judge how their Doctor Evaluator made all the Medical Results in favor of the Insurance Company, and I explain why they deny my rights to be evaluated by Certified QME like by law.

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. This unrepresented employee complained, that although the judge ordered the employer to "straighten out temporary disability," provide medical treatment, and provide medical evaluations, none of these orders had been complied with by the next hearing two months later, and then "nothing happened." He also complained that for the next hearing he "filed two subpoenas," but the subpoenaed parties did not appear. He also complained that a year later, those two subpoenas were not in the file. He stated that other documents are missing from the file. He lastly complained that the judge had been delaying his obtaining medical treatment.

The Committee asked the Division to write the complainant and ask him if he could provide details on how the judge delayed his medical treatment. Although the complainant responded with several letters, the letters did not address this issue. Following its review of the complaint and the response of

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

10. A represented employee complained that the judge had not made a decision in his case in over six years. He believed the judge was being unfair. The Division wrote to him asking him to explain what actions taken by the judge were unfair, and that if he did not write back in 30 days, the Committee would not be able to consider his complaint. He was also advised that he could contact his attorney to inquire as to the reasons for the delay in his case resolution. The complainant did not respond.

In reviewing the complaint, the Committee concluded the complaint should be investigated to determine if the case had been in a submitted status for six years. Otherwise the Committee identified no possible ethical violations. Following its review of the investigation, the Committee concluded that the allegations of the complaint were not factually supported.

11. An unrepresented applicant alleged that the judge failed to take action when she complained against the defense attorney who had arranged to have *sub rosa* surveillance films done on her movements. The complainant stated that the attorney falsely denied to the judge that surveillance videos had been taken of her. She stated she was very aware of the surveillance, because she noticed the airplanes and helicopters that had been following her around. There would be no reason for these aircraft to be following her, if it were not for conducting surveillance of her. The complainant was convinced that the judge was engaging in a conspiracy or fraud with the insurance company, which engaged in "manufacturing" a psychiatric medical report on her with the cooperation of a nurse. The complainant denied to the judge that she had any psychiatric injuries, and the judge did nothing to prevent this medical report from being admitted in her 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.

12. An unrepresented applicant alleged that the judge refused to sanction the employer's attorney for failing to appear without notice on two occasions. Although the complainant documented that the employer did not deny liability for benefits until 240 days after notification of the injury, the judge refused to recognize this. The complainant tried to show the documents to the judge, but the judge refused to look at them. The judge also refused to "recognize" the complainant's documentation which established that the employer did not furnish medical treatment within one day of injury. The judge dismissed one of the claims because of an incorrect date of injury. The judge dismissed a petition for change of venue.

The complainant stated that the judge refused to let the complainant see the court's file at hearings. The judge just kept telling him to re-submit his application, DWC-1 form, serious and willful application, 132A application and medicals, even though he had submitted them at least five times at great expense for copying and mailing.

At the last hearing, over the objections of the complainant, the judge heard a petition regarding vexatious litigant status. The complainant stated he had not been furnished copies of the petition. The judge refused to explain to the complainant what the petition meant. The judge also allowed the employer's attorneys to file a petition for penalties and sanctions.

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.

13. An unrepresented employee, in his third complaint against the same judge this year, alleged that the judge forced him to sign a “release,” saying that if he did not sign the release, “they would take \$14,000 off what the company offered.” The judge allegedly stated that the complainant was not going to like the findings and award.

The Division wrote to the complainant, asking him to clarify what he meant by his statement that the judge “forced him to sign a release,” and by his statement that “\$14,000 would be taken off the employer’s offer. The complainant did not respond to the letter.

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. An applicant’s attorney complained that the judge falsely accused the complainant of yelling at the defense attorney and at the judge, of knocking over furniture and storming out of the courtroom, and of continuing to yell at the judge. The complainant stated that in a discussion about Qualified Medical Evaluator (QME) exams, where the complainant was seeking the issuance of an order, the defense attorney accused the complainant of yelling at him, stating, “you don’t have to yell at me like I am your child.” The complainant said he was not yelling. At that point, the judge, allegedly showing obvious bias, said “Yes, you are.” The complainant stated that at that point he decided to leave the courtroom, stood up, and the chair in which he was sitting “fell down.” He states he left the courtroom. The complainant stated that the judge chased him down the hallway yelling, “You are in contempt.” The complainant responded, “No, I’m not. You have not given me any order yet.” The judge is alleged to have said that she wanted the complainant out of her courtroom. The complainant later met with the defense

attorney, and read an order the judge had issued, which he claimed contained false accusations about his behavior.

Sanctions proceedings were subsequently brought against the complainant in regard to the actions which were the subject of the complaint. The complainant agreed, in exchange for the sanctions hearing being held in abeyance and complainant serving a successful probationary period, that complainant would pay \$990 in sanctions to the client of the defense attorney mentioned in this complainant.

The Committee concluded the complaint should be investigated to determine if there was any substance to the claim that judge chased the complainant down the hallway. Otherwise, no other possible ethics violations were identified. Following its review of the investigation, the Committee concluded that the allegations of the complaint were not factually supported.

15. An unrepresented employee complained that she had supporting evidence to prove her case, but the judge would never look at it. The judge would ask the defendants, "What do you think of this?" The complainant frequently asked the judge if she could go to trial, and, without even looking at the evidence, the judge would respond that she could not. Complainant alleged that the judge yelled at her and made her sign a stipulations form. Complainant believed the judge was waiting for the defendants to obtain some evidence to use against her before letting her go to trial. The Division wrote to the complainant, asking her to provide details about the claim of the judge yelling at her and forcing her to sign stipulations.

The Committee concluded that it should await any response to the letter from the Division to the complainant requesting more information. 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. An unrepresented employee complained that he did not "get a fair pre-trial, and that the defendant was "guilty of a workers' compensation check crime." The Division wrote to the complainant, and asked him to provide details of his claim that he did not get a "fair pre-trial." The Committee concluded that it should await any response to the letter from the Division to the complainant requesting more information. 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.

17. The guardian *ad litem* of a represented employee complained that the judge denied them due process by granting excessive continuances over the eleven year period of the case. The guardian also complained that the judge never advised him that one of the three attorneys he had employed was not licensed to practice law for various periods of time. He also complained that although a different judge had appointed him guardian *ad litem*, this judge appointed a different guardian *ad litem* a year later, without any notice to him. He also complained that the judge had been biased in this case, since the employee had "never gotten any relief."

The Committee concluded the complaint should be investigated to determine if there were any ethical issues that contributed to the eleven year duration of the case. Otherwise the Committee identified no possible ethical violations. 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.

18. A represented employee complained that he had obtained a serious and willful award against an insurance company in 1996. At some point a second judge changed the award to be against the employer directly, instead of against the insurer, on the basis of "clerical error." Several years later, after the corporate employer had dissolved, the employee claimed that the judge in question, a third judge, ruled that the employer could not be held liable because it had not participated in the trial. The employee complained that he has been the victim of many years of delay because of judge errors. A review of the case revealed that in fact the employee had been seeking to have the shareholders of the dissolved corporation held liable under an *alter ego* theory, and the judge had ruled the shareholders were not liable. The appeals board had denied reconsideration.

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. This unrepresented employee obtained a findings and award in 1955. In 1997, he filed a petition to reopen his award for new and further disability. The judge denied his petition to reopen on the ground that the appeals board no longer had jurisdiction to amend the award. The employee complained that the judge's decision in denying the petition to reopen was based in "criminal intent" of the judge. The judge complained against had since retired. 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 that the judge denied him a priority conference hearing because he was not an attorney. He also complained that although the judge told him that the Information and Assistance Officer was on vacation, another employee told him that the

Information and Assistance Officer was assigned to work on EAMS. He also complained that the Information and Assistance Officer was unavailable to speak to him for three weeks. He also complained that although the judge told him that the Information and Assistance Officer was on vacation, the judge told a different *in pro per* applicant to see the Information and Assistance Officer about an improperly drafted letter, and thereafter approved a compromise and release for the other *in pro per*. He also complained that the judge was insensitive by setting the case for trial because the complainant had signed a declaration of readiness, even though there were unresolved discovery issues relating to medical reports.

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. The unrepresented employee in complaint No. 20 also complained that the Presiding Judge should have, but did not ensure that an Information and Assistance Officer would be available at the district office. 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, but recommended that the Division evaluate the availability of Information and Assistance personnel.

22. A formerly represented employee complained that the judge was biased and negligent in handling his case. He complained that the judge did not file, but should have filed a complaint with the State Bar about the defense attorney. He complained that the defense attorney insulted the complainant, verbally attacked him at a deposition, dishonestly denied his claim, and obtained and distributed personal records without his authorization. The defense attorney also threatened to have his case dismissed if he did not answer personal questions. He claimed that the judge gave preferential

treatment to the defense attorney, by allowing him to re-schedule the second part of his deposition for a fifth time. The 30 page complaint provided no detail on any of the allegations against the judge. It was principally a history of his employment and of his injury claim.

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.

23. An unrepresented employee complained without any explanation that there were "violations of 4055, 4068, State Bill 4610 Utilization Review Board, California Employment Laws," and that there was perjury by two people on declarations of readiness to proceed.

The Division wrote to the complainant asking for an explanation of what he was complaining about, and advised that if he did not provide further information, the Committee would not be able to consider his complaint. He responded with a letter which spent several pages quoting and giving opinions about various canons in the Code of Judicial Ethics. His only response relating to the alleged perjury was:

"4-14-2006 Declaration to Proceed and September 20, 2006 correspondence by Mr. M. – The rating was only 19% with Ms. [name]."

His response also discussed an alleged "fraudulent misrepresentation" by an AME.

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. Ongoing Investigations

1. A defense attorney complained that a WCALJ improperly submitted a report and recommendation on reconsideration on a case which 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. The committee concluded the complaint should be investigated.

2. An unrepresented employee complained that she had been “harassed “by the judge to hire an attorney.” The WCALJ allegedly told her that her case was complicated, and that the judge could foresee the case being in the same posture a year hence if the employee did not hire an attorney. The employee complained that the judge sided with the defense attorney when the question arose of entitlement to a deposition fee for a deposition attorney, if the attorney had not also represented her in her case in chief. The judge is said to have remarked at the time, “This is why we go to law school.”

The employee also complained that the judge failed to protect her from unreasonable demands of the defense attorney. The defendants asked for an order, which the judge issued, for her to be evaluated by the QME in four additional areas of medicine. The defendants had not objected to permanent and stationary reports of treating physicians. The judge rejected the employee’s requests to appear at conferences by telephone, even though she lives in Nevada and had to purchase air tickets for each conference. The employee complained that the judge delayed for two years resolution of her requests for an expedited hearing on the issue of unpaid temporary disability. The employee also complained that the defense attorney and the judge had an *ex parte* conversation about choosing additional medical evaluators. During a phone conference (arranged by another judge), the judge is alleged to have said that she

would set the next hearing to be a Mandatory Settlement Conference, decide all issues, and decide the case on the then current record. At the scheduled MSC, the judge converted it into a conference, no issues were resolved, and the entire time was devoted to a discussion of the employee' pending deposition, which she says had been arranged weeks before the hearing. She stated that the judge issued an order requiring her to appear at her deposition, and barring her right to proceed and suspending benefits if she did not appear. The employee complained that this was improper, as she had not previously failed to attend a deposition. (Actually, the order did not contain a provision barring the right to proceed or suspending benefits.) The complainant filed a petition for reconsideration to contest the order, and an order requiring her attendance at further med exams. The appeals board denied her petition for reconsideration, finding that the judge was properly developing the medical record. The Committee concluded that this complaint should be investigated.

3. An unrepresented applicant alleged that the presiding judge sent to the judge assigned to hear her case (judge #2) a letter that she wrote to the presiding judge (intended to have been a confidential complaint about the performance of employees of the court), thus destroying the confidentiality of her complaint. She also complained that Judge #2 sent the confidential letter to all the parties in this case, along with a letter stating that the judge would disregard the letter as an improper *ex parte* communication. The Committee concluded that this complaint should be investigated.

4. An unrepresented applicant alleged that over a ten year period, the judge made orders he would not enforce. These were orders to the defendant to make payments and provide medical treatment. When the orders were not complied with, the complainant would file a declaration of readiness, and submit documents regarding the failure of the defendant to

pay. The documents which the complainant filed never seemed to be entered into the court records.

The complainant alleged that the judge also forced the complainant to settle his cases and sign a compromise and release in 2001, which was for an amount which was inadequate for the injuries. The judge later refused in 2005 to hear the complainant's petitions to set aside the compromise and release and to reopen the case. At every hearing, there was a California Highway Patrol officer present. Over the years the complainant has had to file copies of his documents several times, because they were never in the court file. He believed that the judge must have either arranged to have the material lost or mislaid, or had not properly supervised his office staff, or the documents would not always have turned out to be lost. The Committee concluded that this complaint should be investigated.

5. An unrepresented employee complained that a judge took more than 90 days to issue a decision. In fact, the case had been available for decision for 83 days after being returned from the appeals board. The Committee concluded that this complaint should be investigated.

6. An unrepresented applicant alleged that on the date of hearing, the assigned judge was not present, and this judge was hearing the case. The complainant requested a continuance to hire an attorney, and the judge told him that the case had to be heard that day, or the whole case would be dismissed. When the judge appeared, the complainant did not know who he was, and the judge did not have a nameplate on the desk, so he had to ask who the judge was. The judge told him, reluctantly, after he had asked the judge several times. The judge also told the reporter not to record several conversations that the complainant thought were important, telling the reporter that the conversations were off the record. On more

than one occasion, when the defense attorney was called to the side to confer with the judge, the complainant was not included in the conversations.

During trial, the judge mentioned to the complainant that a video showed him to be climbing a ladder, although the person who shot the video said that the complainant was not the person shown in the video. The judge later advised the complainant that he had won his case, and would send a letter advising him of the amount of the award. However, the judge later sent a letter stating that he would not receive any money because of attorney fees. The Committee concluded that this complaint should be investigated.

7. A formerly represented employee complained that the judge “released my attorney without hearing my side.” He claimed he did not receive notice on the hearing on the issue of the attorney’s lien for fees, and that the attorney (a replacement for an attorney who had withdrawn due to illness) did not do the necessary work on his case. The Committee concluded that this complaint should be investigated to determine if the complainant received appropriate notice regarding the lien and hearing.

8. A defense attorney complained that at a conference hearing on a petition for \$25,000 in credit, the judge said he would defer the petition until after the case in chief was resolved. When complainant objected, and asked if defendant’s obligations could be deferred until the petition for credit were decided, the judge said that the defendant must continue to pay benefits until the judge said otherwise, and that if he wanted to, the judge could hold the decision on credit until 2011. The judge said that the \$25,000 credit was a “drop in the bucket” compared to the case value of \$100,000 to \$200,000. Complainant stated that the judge had no basis for evaluating the case as being worth \$100,000 to \$200,000, because no

evidence had been submitted, and the estimate was based on the applicant's attorney's stated estimate of case value.

The complainant argued to the judge that the defendant's view of the case was that it was worth much less than applicant asserted, and thus the credit petition should be ruled on. The judge reiterated that that the defendant was entitled to credit when the judge would say so, and that he could hold the credit issue as long as he wanted to. When complainant asked that the credit issue be set for trial so that the judge could view the evidence, the judge replied that he "could see in [her] eyes" that the complainant was "emotionally involved" in the case. During the ensuing discussion, the judge allegedly said three times, "Counsel, you're emotionally involved in this case. You are not objective," and "I can see it in your eyes."

When the defense attorney explained that the employee's MRI did not show any serious problem, the applicant's attorney stated, "Oh, so now she's a doctor." The judge did not say anything about this remark. Complainant stated that the remark was "highly inappropriate." The judge then turned toward the complainant, and said that he would not allow a "catfight" in his courtroom, and that if the attorneys wanted to engage in a catfight, it should not be done in the courtroom, but outside. The judge also told complainant that, "for the benefit of the client," complainant should have her associate take over the case. Complainant filed a petition for removal, which was denied, and a petition to disqualify the judge, which was pending.

The Committee concluded that this complaint should be investigated.

9. A defense attorney complained that the judge "knowingly, deliberately, maliciously, and publically" accused her of leaving "a *pro per* sitting all

morning.” Complainant stated that she has practiced at this DWC District office for five years, and in that time has missed only one appearance, out of over 1,200, and that one time was because of a personal emergency. She has complained against a judge only once before, and that complaint was made after obtaining an appellate reversal of the judge's decision for abuse of discretion.

In this case, complainant filed a DOR to approve a compromise and release, but the file was transferred to a new attorney in her firm before the hearing. The new attorney, apparently not knowing that *pro per* employee's waited in a location other than where the judges' hearing rooms were located and on a different floor, appeared before the judge at 9:30, advised the judge that the employee had not appeared, and had the case continued. The judge allegedly asked the new attorney why the complainant was not appearing on that case, and the new attorney explained to the judge that the case had been transferred to him. Complainant alleged that the judge knew that the attorney was new to that DWC District office, knew or should have known that this was a *pro per* case because there was no attorney of record for the employee, and yet did not ask the attorney if he had checked downstairs to see if the employee were present.

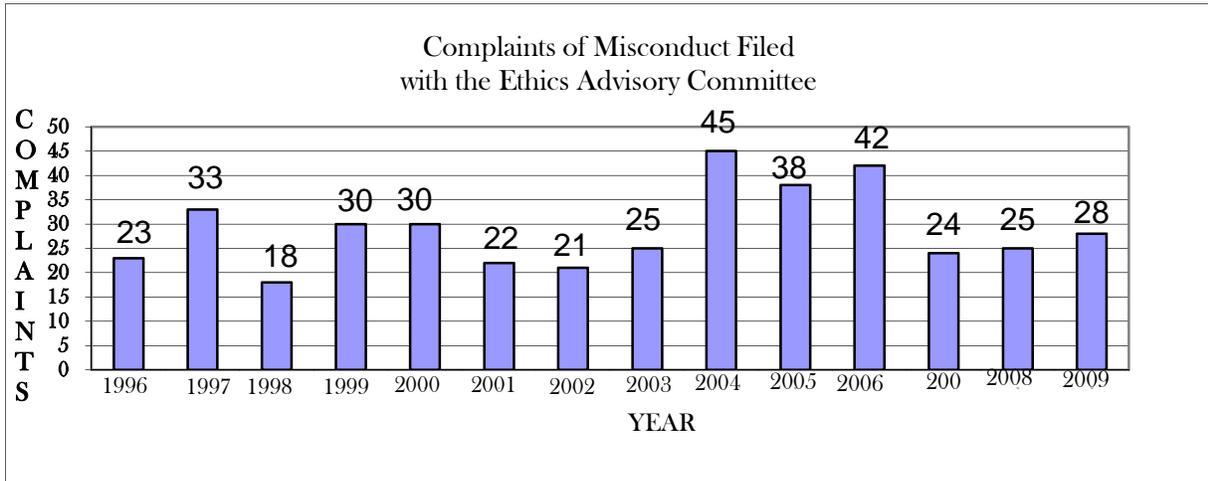
The complainant was occupied that morning with two other cases, one of which was before this judge. After disposing of one case and reaching settlement agreements with three of four lien claimants on the case set before this judge, at approximately 11:40 am, the fourth lien claimant decided to ask that the case be taken off calendar, and complainant appeared before the judge to obtain this disposition. The judge inquired of the status of every lien in the file, and at approximately noon the judge signed the disposition, but asked that complainant check with an interpreter downstairs. The complaint noticed that a man wearing blue

jeans, which later turned out to be the missing *pro per*, entered the courtroom.

The complainant entered a conference room where others were present to look into an issue that the judge raised. About five minutes after the complainant left the courtroom; the judge came to the doorway of the conference room and “belligerently” said to the complainant: “You left a *pro per* sitting all morning.” The complainant advised the judge that she had two cases that she had been working on all morning. The judge demanded that she get a 4906(g) declaration for the employee. The complainant went back into the judge's courtroom to assist the *pro per* employee.

The Committee concluded that this complaint should be investigated.

Table 1



2009

COMMITTEE MEMBERSHIP

HONORABLE JULIE CONGER

Chair

Alameda Superior Court Judge

KATHRYN RINGGOLD, ESQ.

Former Applicants' Attorney
Worker's Compensation Law

HONORABLE DAVID BROTMAN

Presiding Workers' Compensation Judge
Workers' Compensation Appeals Board
Oxnard

MICHAEL McCLAIN, ESQ.

California Workers' Compensation Institute
Representing Insurers

ROBERT RUBY, ESQ.

Former Defense Attorney
Workers' Compensation Law

STEVEN SIEMERS, ESQ.

Committee Member Representing
Organized Labor

MR. JIM ZELKO

Kaiser Foundation Health Plan
Representing Self-Insurers

GORDON GAINES, ESQ.

Former Applicants' Attorney
Workers' Compensation Law

VACANT POSITION

Committee Member from Outside the
Workers' Compensation Community

DWC STAFF

Keven Star

Court Administrator

Richard Starkeson

DWC Attorney

Ursula Jones

Admin Assistant

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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 (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 Superior and Appellate courts. The Committee's authority and duties are set forth in Title 8, California Code of Regulations sections 9722 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 or Administrative Director's staff.

A. 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.

The EAC meets four times each year at the Division of Workers' Compensation 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 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.

A Committee case is typically opened as a result of receipt by DWC of a letter from an injured worker, an attorney, or lien claimant who has been a party to a proceeding before a WCALJ employed by the Division of Workers' Compensation and the complaint alleges ethical misconduct by the WCALJ. DWC sends a receipt acknowledging to the complainant that his or her complaint was received by the EAC.

Each complaint that alleges misconduct by a judge is formally reviewed by the Committee. The Committee reviews the complaint without the names of the complainant, judge, 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 people on the Committee.

All complaints which fail to allege facts that 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 considered the complaint and, inasmuch as no misconduct was either alleged or established, the Committee decided 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. 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.

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.

3. Complaint Digest

A Complaint Statistics For Calendar Year 2009

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

- Number of presiding judges (includes 1 retired annuitant) 25
- Number of judges serving (includes 6 retired annuitants) 157
- Total number of judges serving 182

Including complaints from prior years, a total of 23 complaints were resolved by the Committee in 2009. There were 28 complaints filed in 2009. There are 9 complaints that are ongoing.

Complaints for 2009 that were received by the EAC after its final meeting for calendar year 2009 are ongoing, and as such are classified as unresolved. Ongoing 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 still under investigation and also classified as unresolved.

The following groups within the workers' compensation community filed new complaints during 2009:

- Employees represented by attorneys 4 Complaints
- Employees not represented 20 Complaints
- Anonymous 0 Complaints
- Applicant attorneys 2 Complaints
- Defense attorneys 2 Complaints
- Claims Administrators 0 Complaints
- Hearing Representatives 0 Complaints
- Lien Claimants (medical providers) 0 Complaints
- Attorneys representing a lien claimant 0 Complaints

B. Description of Complaints and Actions Taken

1. Investigations Resolved in 2009

1. A represented employee complained that the judge allowed the defense attorney to add a provision to stipulations with request for award after the stipulations had been signed. The judge also did not permit the employee to be present at a conference that occurred in chambers at the time of a scheduled trial. The employee further complained that even though the defendants admitted in writing in 2002 that they owed temporary disability for a three year period from 1989 through 1992 but refused to pay unless the employee signed stipulations waiving penalties and interest, the judge refused to set the case for trial for a second time on the issues of temporary disability, penalties, interest, and vocational rehabilitation temporary disability, because the judge said the issues of permanent disability and apportionment were not yet ready for trial, and because the defense attorney wanted to depose the Agreed Medical Evaluator (AME) for a third time. The complainant stated that the case had once been set on his issues only, but was taken off calendar after the stipulations were signed but before the employee learned that the stipulations had been altered, and before the employee's petition for reconsideration to rescind the stipulated award.

The Committee requested and the complaint was investigated. Subsequent to review of the investigation, the Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

2. A defense attorney made a written request to the presiding judge asking that California Highway Patrol (CHP) officers be 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 stated that the trial judge "was not happy" to find the police in her courtroom. The employee did not appear at the

hearing. 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 [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 and 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.

The Committee requested that the complaint be investigated. The judge in this case was no longer employed by the Division when the Committee considered the results of the investigation. Following its review of the investigation, although the Committee concluded there were possible ethical violations, because the judge was no longer employed, no action could be taken, and the Committee closed its file.

3. An 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 that this 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.

4. An unrepresented applicant alleged that the judge "showed complete bias against" him and "acted more as a defense attorney." Complainant stated that the judge came into the hearing room 30 minutes late, and complained about the amount of documentary evidence that complainant had submitted. The judge asked the applicant to go through his exhibits and choose those which were relevant to his claims. The judge "constantly complained" as the applicant was handing over his exhibits to the judge, and "showed no respect for him," while treating the defense attorney as if the judge "was his guardian." The judge did not allow the applicant to remain in the hearing room during the lunch hour. When court resumed, the judge said none of the applicant's "witness requests" or "document requests" were applicable to that day's hearing, and also told the applicant that the serious and willful claim would be heard "if it was proven by the AME and QME reports."

The applicant told the judge that his first heart claim had been accepted four years earlier, and that his second heart claim was the same as the pre-existing claim. He said that the employer did not have a defense to these claims, "so the judge spoke for them." When the defense attorney and the applicant disagreed about the playing of a claimed illegal tape recording for the QME and the submission of the recording as an exhibit, the judge said, "I'll decide," which the applicant complained was ignoring his argument and

ignoring case law. At the close of the hearing, the applicant asked the judge whom he should consult about all the people who were dying as a consequence of their entering his employer's 50 year old building, and the judge responded, "I don't know," allegedly with an "I don't care attitude."

The Division wrote to the complainant and asked for details which might substantiate the complaint, stating that without further details the Committee would not be able to investigate his complaint. 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.

5. An unrepresented applicant complained that a hearing was not held even though the judge was present, because the judge decided to take the case off calendar. He also complained that a Stipulation with Request for Award was "full of fraud and perjury." He claimed that he was 100% disabled according to a Social Security evaluation, but that he could not obtain a resolution of his case. He claimed that the Information and Assistance Officer advised him to go to federal court. He requested a trial hearing, "because there are so many inconsistencies."

The Division wrote the complainant asking him for more information, and for copies of the documents he referred to. He did not write back, but did telephone the Division. He was unable to provide any further explanation, and continued to insist that the Information and Assistance Officer had directed him to federal court for information.

Following its review of the complaint and absent the requested information from the complainant, the Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

6. An unrepresented applicant complained that the judge would not let her speak at a conference, but let the defense attorney do all the talking, allowed the defense attorney to pick the AMEs, and told the defense attorney to take another deposition. The complainant believed the judge treated her unfairly and sided with the defense. Complainant perceived from the questions which the judge had asked the defense attorney that the judge had not read over her case materials before the conference. Applicant also complained that she tried to speak to the judge, but that the judge would not talk to her.

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 Committee recommended that all WCALJs receive additional training on the need to be to be overly conscious of tact, courtesy and patience in dealing with *in pro per* applicants.

7. An applicant's attorney complained that at an MSC where the defendant had failed to arrange for an attorney to be present and had made no appearance, he had to wait an entire hour while the judge refused to let him see the court file, refused to call his case, while 6 to 8 other cases were called. The complainant says he wanted to continue the case. Complainant stated that when he asked the judge for the reasons for not calling his case, the judge became defensive, and took the case off calendar.

The complainant believed that the judge's taking the case off calendar without good cause instead of continuing the matter, is the product of the judge's bias against him. Complainant related that he had a similar problem with this judge twelve years ago, that the intervention of the presiding judge at that time took care of the problem, and that the judge had not ignored him for the succeeding twelve years. As soon as that presiding judge had left, this judge's bias resurfaced.

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

8. The very brief complaint of this unrepresented employee is quoted verbatim:

This is the copy of the document [a request form for a QME] I showed to the honorable Judge of the court on March 9, 2009 and were show how the Insurance Company and my first lawyer do not sent it to the department of Industrial Medical Council. I explain to the Judge how their Doctor Evaluator made all the Medical Results in favor of the Insurance Company, and I explain why they deny my rights to be evaluated by Certified QME like by law.

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. This unrepresented employee complained, that although the judge ordered the employer to "straighten out temporary disability," provide medical treatment, and provide medical evaluations, none of these orders had been complied with by the next hearing two months later, and then "nothing happened." He also complained that for the next hearing he "filed two subpoenas," but the subpoenaed parties did not appear. He also complained that a year later, those two subpoenas were not in the file. He stated that other documents are missing from the file. He lastly complained that the judge had been delaying his obtaining medical treatment.

The Committee asked the Division to write the complainant and ask him if he could provide details on how the judge delayed his medical treatment. Although the complainant responded with several letters, the letters did not address this issue. Following its review of the complaint and the response of

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

10. A represented employee complained that the judge had not made a decision in his case in over six years. He believed the judge was being unfair. The Division wrote to him asking him to explain what actions taken by the judge were unfair, and that if he did not write back in 30 days, the Committee would not be able to consider his complaint. He was also advised that he could contact his attorney to inquire as to the reasons for the delay in his case resolution. The complainant did not respond.

In reviewing the complaint, the Committee concluded the complaint should be investigated to determine if the case had been in a submitted status for six years. Otherwise the Committee identified no possible ethical violations. Following its review of the investigation, the Committee concluded that the allegations of the complaint were not factually supported.

11. An unrepresented applicant alleged that the judge failed to take action when she complained against the defense attorney who had arranged to have *sub rosa* surveillance films done on her movements. The complainant stated that the attorney falsely denied to the judge that surveillance videos had been taken of her. She stated she was very aware of the surveillance, because she noticed the airplanes and helicopters that had been following her around. There would be no reason for these aircraft to be following her, if it were not for conducting surveillance of her. The complainant was convinced that the judge was engaging in a conspiracy or fraud with the insurance company, which engaged in "manufacturing" a psychiatric medical report on her with the cooperation of a nurse. The complainant denied to the judge that she had any psychiatric injuries, and the judge did nothing to prevent this medical report from being admitted in her 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.

12. An unrepresented applicant alleged that the judge refused to sanction the employer's attorney for failing to appear without notice on two occasions. Although the complainant documented that the employer did not deny liability for benefits until 240 days after notification of the injury, the judge refused to recognize this. The complainant tried to show the documents to the judge, but the judge refused to look at them. The judge also refused to "recognize" the complainant's documentation which established that the employer did not furnish medical treatment within one day of injury. The judge dismissed one of the claims because of an incorrect date of injury. The judge dismissed a petition for change of venue.

The complainant stated that the judge refused to let the complainant see the court's file at hearings. The judge just kept telling him to re-submit his application, DWC-1 form, serious and willful application, 132A application and medicals, even though he had submitted them at least five times at great expense for copying and mailing.

At the last hearing, over the objections of the complainant, the judge heard a petition regarding vexatious litigant status. The complainant stated he had not been furnished copies of the petition. The judge refused to explain to the complainant what the petition meant. The judge also allowed the employer's attorneys to file a petition for penalties and sanctions.

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.

13. An unrepresented employee, in his third complaint against the same judge this year, alleged that the judge forced him to sign a “release,” saying that if he did not sign the release, “they would take \$14,000 off what the company offered.” The judge allegedly stated that the complainant was not going to like the findings and award.

The Division wrote to the complainant, asking him to clarify what he meant by his statement that the judge “forced him to sign a release,” and by his statement that “\$14,000 would be taken off the employer’s offer. The complainant did not respond to the letter.

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. An applicant’s attorney complained that the judge falsely accused the complainant of yelling at the defense attorney and at the judge, of knocking over furniture and storming out of the courtroom, and of continuing to yell at the judge. The complainant stated that in a discussion about Qualified Medical Evaluator (QME) exams, where the complainant was seeking the issuance of an order, the defense attorney accused the complainant of yelling at him, stating, “you don’t have to yell at me like I am your child.” The complainant said he was not yelling. At that point, the judge, allegedly showing obvious bias, said “Yes, you are.” The complainant stated that at that point he decided to leave the courtroom, stood up, and the chair in which he was sitting “fell down.” He states he left the courtroom. The complainant stated that the judge chased him down the hallway yelling, “You are in contempt.” The complainant responded, “No, I’m not. You have not given me any order yet.” The judge is alleged to have said that she wanted the complainant out of her courtroom. The complainant later met with the defense

attorney, and read an order the judge had issued, which he claimed contained false accusations about his behavior.

Sanctions proceedings were subsequently brought against the complainant in regard to the actions which were the subject of the complaint. The complainant agreed, in exchange for the sanctions hearing being held in abeyance and complainant serving a successful probationary period, that complainant would pay \$990 in sanctions to the client of the defense attorney mentioned in this complainant.

The Committee concluded the complaint should be investigated to determine if there was any substance to the claim that judge chased the complainant down the hallway. Otherwise, no other possible ethics violations were identified. Following its review of the investigation, the Committee concluded that the allegations of the complaint were not factually supported.

15. An unrepresented employee complained that she had supporting evidence to prove her case, but the judge would never look at it. The judge would ask the defendants, "What do you think of this?" The complainant frequently asked the judge if she could go to trial, and, without even looking at the evidence, the judge would respond that she could not. Complainant alleged that the judge yelled at her and made her sign a stipulations form. Complainant believed the judge was waiting for the defendants to obtain some evidence to use against her before letting her go to trial. The Division wrote to the complainant, asking her to provide details about the claim of the judge yelling at her and forcing her to sign stipulations.

The Committee concluded that it should await any response to the letter from the Division to the complainant requesting more information. 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. An unrepresented employee complained that he did not "get a fair pre-trial, and that the defendant was "guilty of a workers' compensation check crime." The Division wrote to the complainant, and asked him to provide details of his claim that he did not get a "fair pre-trial." The Committee concluded that it should await any response to the letter from the Division to the complainant requesting more information. 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.

17. The guardian *ad litem* of a represented employee complained that the judge denied them due process by granting excessive continuances over the eleven year period of the case. The guardian also complained that the judge never advised him that one of the three attorneys he had employed was not licensed to practice law for various periods of time. He also complained that although a different judge had appointed him guardian *ad litem*, this judge appointed a different guardian *ad litem* a year later, without any notice to him. He also complained that the judge had been biased in this case, since the employee had "never gotten any relief."

The Committee concluded the complaint should be investigated to determine if there were any ethical issues that contributed to the eleven year duration of the case. Otherwise the Committee identified no possible ethical violations. 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.

18. A represented employee complained that he had obtained a serious and willful award against an insurance company in 1996. At some point a second judge changed the award to be against the employer directly, instead of against the insurer, on the basis of "clerical error." Several years later, after the corporate employer had dissolved, the employee claimed that the judge in question, a third judge, ruled that the employer could not be held liable because it had not participated in the trial. The employee complained that he has been the victim of many years of delay because of judge errors. A review of the case revealed that in fact the employee had been seeking to have the shareholders of the dissolved corporation held liable under an *alter ego* theory, and the judge had ruled the shareholders were not liable. The appeals board had denied reconsideration.

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. This unrepresented employee obtained a findings and award in 1955. In 1997, he filed a petition to reopen his award for new and further disability. The judge denied his petition to reopen on the ground that the appeals board no longer had jurisdiction to amend the award. The employee complained that the judge's decision in denying the petition to reopen was based in "criminal intent" of the judge. The judge complained against had since retired. 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 that the judge denied him a priority conference hearing because he was not an attorney. He also complained that although the judge told him that the Information and Assistance Officer was on vacation, another employee told him that the

Information and Assistance Officer was assigned to work on EAMS. He also complained that the Information and Assistance Officer was unavailable to speak to him for three weeks. He also complained that although the judge told him that the Information and Assistance Officer was on vacation, the judge told a different *in pro per* applicant to see the Information and Assistance Officer about an improperly drafted letter, and thereafter approved a compromise and release for the other *in pro per*. He also complained that the judge was insensitive by setting the case for trial because the complainant had signed a declaration of readiness, even though there were unresolved discovery issues relating to medical reports.

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. The unrepresented employee in complaint No. 20 also complained that the Presiding Judge should have, but did not ensure that an Information and Assistance Officer would be available at the district office. 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, but recommended that the Division evaluate the availability of Information and Assistance personnel.

22. A formerly represented employee complained that the judge was biased and negligent in handling his case. He complained that the judge did not file, but should have filed a complaint with the State Bar about the defense attorney. He complained that the defense attorney insulted the complainant, verbally attacked him at a deposition, dishonestly denied his claim, and obtained and distributed personal records without his authorization. The defense attorney also threatened to have his case dismissed if he did not answer personal questions. He claimed that the judge gave preferential

treatment to the defense attorney, by allowing him to re-schedule the second part of his deposition for a fifth time. The 30 page complaint provided no detail on any of the allegations against the judge. It was principally a history of his employment and of his injury claim.

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.

23. An unrepresented employee complained without any explanation that there were "violations of 4055, 4068, State Bill 4610 Utilization Review Board, California Employment Laws," and that there was perjury by two people on declarations of readiness to proceed.

The Division wrote to the complainant asking for an explanation of what he was complaining about, and advised that if he did not provide further information, the Committee would not be able to consider his complaint. He responded with a letter which spent several pages quoting and giving opinions about various canons in the Code of Judicial Ethics. His only response relating to the alleged perjury was:

"4-14-2006 Declaration to Proceed and September 20, 2006 correspondence by Mr. M. – The rating was only 19% with Ms. [name]."

His response also discussed an alleged "fraudulent misrepresentation" by an AME.

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. Ongoing Investigations

1. A defense attorney complained that a WCALJ improperly submitted a report and recommendation on reconsideration on a case which 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. The committee concluded the complaint should be investigated.

2. An unrepresented employee complained that she had been “harassed “by the judge to hire an attorney.” The WCALJ allegedly told her that her case was complicated, and that the judge could foresee the case being in the same posture a year hence if the employee did not hire an attorney. The employee complained that the judge sided with the defense attorney when the question arose of entitlement to a deposition fee for a deposition attorney, if the attorney had not also represented her in her case in chief. The judge is said to have remarked at the time, “This is why we go to law school.”

The employee also complained that the judge failed to protect her from unreasonable demands of the defense attorney. The defendants asked for an order, which the judge issued, for her to be evaluated by the QME in four additional areas of medicine. The defendants had not objected to permanent and stationary reports of treating physicians. The judge rejected the employee’s requests to appear at conferences by telephone, even though she lives in Nevada and had to purchase air tickets for each conference. The employee complained that the judge delayed for two years resolution of her requests for an expedited hearing on the issue of unpaid temporary disability. The employee also complained that the defense attorney and the judge had an *ex parte* conversation about choosing additional medical evaluators. During a phone conference (arranged by another judge), the judge is alleged to have said that she

would set the next hearing to be a Mandatory Settlement Conference, decide all issues, and decide the case on the then current record. At the scheduled MSC, the judge converted it into a conference, no issues were resolved, and the entire time was devoted to a discussion of the employee' pending deposition, which she says had been arranged weeks before the hearing. She stated that the judge issued an order requiring her to appear at her deposition, and barring her right to proceed and suspending benefits if she did not appear. The employee complained that this was improper, as she had not previously failed to attend a deposition. (Actually, the order did not contain a provision barring the right to proceed or suspending benefits.) The complainant filed a petition for reconsideration to contest the order, and an order requiring her attendance at further med exams. The appeals board denied her petition for reconsideration, finding that the judge was properly developing the medical record. The Committee concluded that this complaint should be investigated.

3. An unrepresented applicant alleged that the presiding judge sent to the judge assigned to hear her case (judge #2) a letter that she wrote to the presiding judge (intended to have been a confidential complaint about the performance of employees of the court), thus destroying the confidentiality of her complaint. She also complained that Judge #2 sent the confidential letter to all the parties in this case, along with a letter stating that the judge would disregard the letter as an improper *ex parte* communication. The Committee concluded that this complaint should be investigated.

4. An unrepresented applicant alleged that over a ten year period, the judge made orders he would not enforce. These were orders to the defendant to make payments and provide medical treatment. When the orders were not complied with, the complainant would file a declaration of readiness, and submit documents regarding the failure of the defendant to

pay. The documents which the complainant filed never seemed to be entered into the court records.

The complainant alleged that the judge also forced the complainant to settle his cases and sign a compromise and release in 2001, which was for an amount which was inadequate for the injuries. The judge later refused in 2005 to hear the complainant's petitions to set aside the compromise and release and to reopen the case. At every hearing, there was a California Highway Patrol officer present. Over the years the complainant has had to file copies of his documents several times, because they were never in the court file. He believed that the judge must have either arranged to have the material lost or mislaid, or had not properly supervised his office staff, or the documents would not always have turned out to be lost. The Committee concluded that this complaint should be investigated.

5. An unrepresented employee complained that a judge took more than 90 days to issue a decision. In fact, the case had been available for decision for 83 days after being returned from the appeals board. The Committee concluded that this complaint should be investigated.

6. An unrepresented applicant alleged that on the date of hearing, the assigned judge was not present, and this judge was hearing the case. The complainant requested a continuance to hire an attorney, and the judge told him that the case had to be heard that day, or the whole case would be dismissed. When the judge appeared, the complainant did not know who he was, and the judge did not have a nameplate on the desk, so he had to ask who the judge was. The judge told him, reluctantly, after he had asked the judge several times. The judge also told the reporter not to record several conversations that the complainant thought were important, telling the reporter that the conversations were off the record. On more

than one occasion, when the defense attorney was called to the side to confer with the judge, the complainant was not included in the conversations.

During trial, the judge mentioned to the complainant that a video showed him to be climbing a ladder, although the person who shot the video said that the complainant was not the person shown in the video. The judge later advised the complainant that he had won his case, and would send a letter advising him of the amount of the award. However, the judge later sent a letter stating that he would not receive any money because of attorney fees. The Committee concluded that this complaint should be investigated.

7. A formerly represented employee complained that the judge “released my attorney without hearing my side.” He claimed he did not receive notice on the hearing on the issue of the attorney’s lien for fees, and that the attorney (a replacement for an attorney who had withdrawn due to illness) did not do the necessary work on his case. The Committee concluded that this complaint should be investigated to determine if the complainant received appropriate notice regarding the lien and hearing.

8. A defense attorney complained that at a conference hearing on a petition for \$25,000 in credit, the judge said he would defer the petition until after the case in chief was resolved. When complainant objected, and asked if defendant’s obligations could be deferred until the petition for credit were decided, the judge said that the defendant must continue to pay benefits until the judge said otherwise, and that if he wanted to, the judge could hold the decision on credit until 2011. The judge said that the \$25,000 credit was a “drop in the bucket” compared to the case value of \$100,000 to \$200,000. Complainant stated that the judge had no basis for evaluating the case as being worth \$100,000 to \$200,000, because no

evidence had been submitted, and the estimate was based on the applicant's attorney's stated estimate of case value.

The complainant argued to the judge that the defendant's view of the case was that it was worth much less than applicant asserted, and thus the credit petition should be ruled on. The judge reiterated that that the defendant was entitled to credit when the judge would say so, and that he could hold the credit issue as long as he wanted to. When complainant asked that the credit issue be set for trial so that the judge could view the evidence, the judge replied that he "could see in [her] eyes" that the complainant was "emotionally involved" in the case. During the ensuing discussion, the judge allegedly said three times, "Counsel, you're emotionally involved in this case. You are not objective," and "I can see it in your eyes."

When the defense attorney explained that the employee's MRI did not show any serious problem, the applicant's attorney stated, "Oh, so now she's a doctor." The judge did not say anything about this remark. Complainant stated that the remark was "highly inappropriate." The judge then turned toward the complainant, and said that he would not allow a "catfight" in his courtroom, and that if the attorneys wanted to engage in a catfight, it should not be done in the courtroom, but outside. The judge also told complainant that, "for the benefit of the client," complainant should have her associate take over the case. Complainant filed a petition for removal, which was denied, and a petition to disqualify the judge, which was pending.

The Committee concluded that this complaint should be investigated.

9. A defense attorney complained that the judge "knowingly, deliberately, maliciously, and publically" accused her of leaving "a *pro per* sitting all

morning.” Complainant stated that she has practiced at this DWC District office for five years, and in that time has missed only one appearance, out of over 1,200, and that one time was because of a personal emergency. She has complained against a judge only once before, and that complaint was made after obtaining an appellate reversal of the judge's decision for abuse of discretion.

In this case, complainant filed a DOR to approve a compromise and release, but the file was transferred to a new attorney in her firm before the hearing. The new attorney, apparently not knowing that *pro per* employee's waited in a location other than where the judges' hearing rooms were located and on a different floor, appeared before the judge at 9:30, advised the judge that the employee had not appeared, and had the case continued. The judge allegedly asked the new attorney why the complainant was not appearing on that case, and the new attorney explained to the judge that the case had been transferred to him. Complainant alleged that the judge knew that the attorney was new to that DWC District office, knew or should have known that this was a *pro per* case because there was no attorney of record for the employee, and yet did not ask the attorney if he had checked downstairs to see if the employee were present.

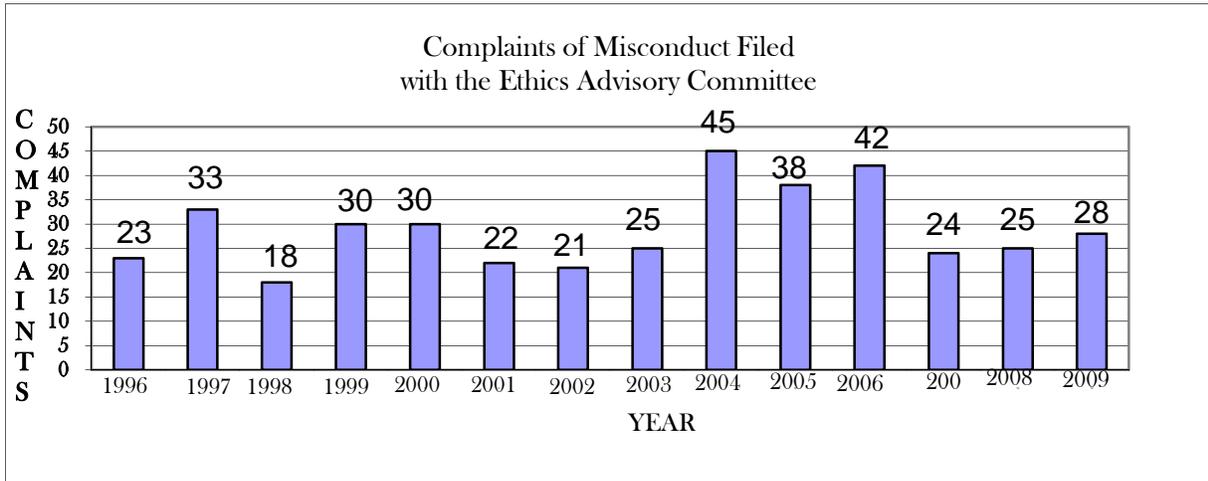
The complainant was occupied that morning with two other cases, one of which was before this judge. After disposing of one case and reaching settlement agreements with three of four lien claimants on the case set before this judge, at approximately 11:40 am, the fourth lien claimant decided to ask that the case be taken off calendar, and complainant appeared before the judge to obtain this disposition. The judge inquired of the status of every lien in the file, and at approximately noon the judge signed the disposition, but asked that complainant check with an interpreter downstairs. The complaint noticed that a man wearing blue

jeans, which later turned out to be the missing *pro per*, entered the courtroom.

The complainant entered a conference room where others were present to look into an issue that the judge raised. About five minutes after the complainant left the courtroom; the judge came to the doorway of the conference room and “belligerently” said to the complainant: “You left a *pro per* sitting all morning.” The complainant advised the judge that she had two cases that she had been working on all morning. The judge demanded that she get a 4906(g) declaration for the employee. The complainant went back into the judge's courtroom to assist the *pro per* employee.

The Committee concluded that this complaint should be investigated.

Table 1



2009

COMMITTEE MEMBERSHIP

HONORABLE JULIE CONGER
Chair
Alameda Superior Court Judge

KATHRYN RINGGOLD, ESQ.
Former Applicants' Attorney
Worker's Compensation Law

HONORABLE DAVID BROTMAN
Presiding Workers' Compensation Judge
Workers' Compensation Appeals Board
Oxnard

MICHAEL McCLAIN, ESQ.
California Workers' Compensation Institute
Representing Insurers

ROBERT RUBY, ESQ
Former Defense Attorney
Workers' Compensation Law

STEVEN SIEMERS, ESQ.,
Committee Member Representing
Organized Labor

MR. JIM ZELKO
Kaiser Foundation Health Plan
Representing Self-Insurers

GORDON GAINES, ESQ.
Former Applicants' Attorney
Workers' Compensation Law

VACANT POSITION
Committee Member from Outside the
Workers' Compensation Community

DWC STAFF

Keven Star
Court Administrator

Richard Starkeson
DWC Attorney

Ursula Jones
Admin Assistant
