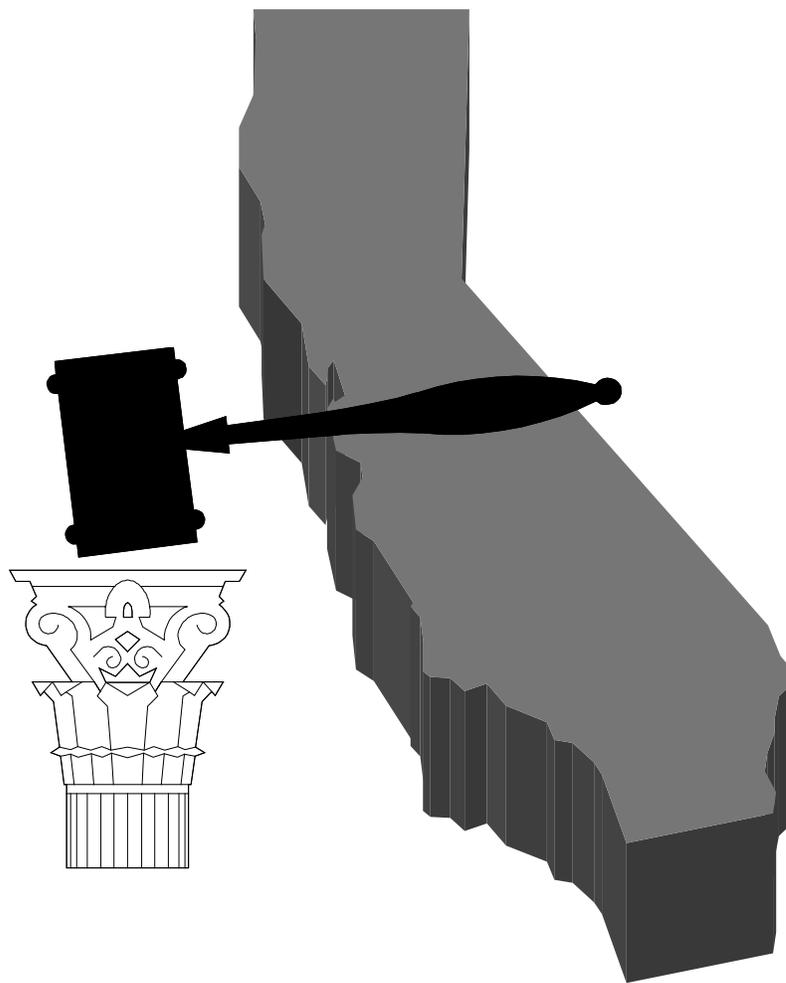


**State of California
Department of Industrial Relations**

**WORKERS' COMPENSATION ETHICS
ADVISORY COMMITTEE**



**2010
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 (DWC). The Committee is charged with reviewing and monitoring complaints of misconduct filed against workers' compensation administrative law judges (WCALJs or judges).

As civil servants, the WCALJs are not subject to review by the California Commission on Judicial Performance, the agency which is responsible for investigating misconduct complaints directed at judges serving on the Superior and Appellate courts. The EAC's authority and duties are set forth in the California Code of Regulations, title 8, sections 9722 through 9723.

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

A. Committee Membership

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

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

- 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 DWC Headquarters located at 1515 Clay Street, in Oakland, California. Although EAC meetings are open to the public, the Committee meets in executive session when it engages in the review and discussion of actual complaints, and that portion of the proceedings is closed to the public.

The EAC is assisted in carrying out its functions by an attorney and secretary on the staff of the DWC.

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 EAC will accept anonymous complaints.

An EAC case is typically opened as a result of receipt by the Division of Workers' Compensation of a letter from an injured worker, an attorney, or lien claimant who has been a party to a proceeding before a workers' compensation administrative law judge employed by the DWC and the complaint alleges ethical misconduct by the WCALJ. DWC sends a 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 EAC. The EAC reviews the complaint without the names of the complainant, WCALJ, or witnesses because it adopted a policy requiring that the names as well as the specific DWC office where the alleged misconduct occurred be redacted from the copies of complaints reviewed at each meeting. This assures objectivity from the reviewing members on the EAC.

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

B. Investigation by the Chief Judge or Administrative Director

Where a complaint makes allegations which if true would constitute misconduct by a workers' compensation administrative law judge, the Ethics Advisory Committee will recommend that the Chief Judge conduct an

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

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

3. Complaint Digest

A Complaint Statistics For Calendar Year 2010

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

▪ Number of presiding judges (includes 1 retired annuitant)	24
▪ Number of judges serving (includes 7 retired annuitants)	146
▪ Total number of judges serving	160

Including complaints from prior years, a total of 42 complaints were resolved by the Ethics Advisory Committee in 2010. There were 40 complaints filed in 2010. There are 3 complaints that are ongoing.

Complaints for 2010 that were received by the EAC after its final meeting for calendar year 2010 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 2010:

▪ Employees represented by attorneys	6 Complaints
▪ Employees not represented	25 Complaints
▪ Anonymous	2 Complaints
▪ Applicant attorneys	1 Complaints
▪ Defense attorneys	4 Complaints
▪ Claims Administrators	0 Complaints
▪ Hearing Representatives	0 Complaints
▪ Lien Claimants (medical providers)	0 Complaints
▪ Attorneys representing a lien claimant	2 Complaints

B. Description of Complaints and Actions Taken

1. Investigations Resolved in 2010

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

The employee also alleged the judge had failed to protect her from unreasonable demands of the defense attorney. The defendants asked for an order, which the judge issued, for the employee to be evaluated by the Qualified Medical Evaluator (QME) in four additional areas of medicine, even though the defendants had not objected to permanent and stationary reports of treating physicians. The judge had rejected her 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 defense attorney and the judge had an *ex parte* conversation about choosing additional medical evaluators.

During a phone conference in November, the judge said the next hearing would be set as a Mandatory Settlement Conference (MSC), all issues would be decided, and the case would be decided on the 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 her pending deposition, which the employee said had been arranged weeks before the hearing.

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

2. An unrepresented employee alleged the presiding judge sent to a judge assigned to hear her case a letter that the employee had written to the presiding judge (intended to have been a confidential complaint about the performance of employees of the court), thus destroying the confidentiality of the complaint. The employee also alleged that the judge sent the confidential letter to all the parties in this case, 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. Following its review of the investigation, the Committee concluded that the allegations of the complaint were not factually supported.

3. An unrepresented employee alleged that over a ten year period, the judge made orders the judge would not enforce. These were orders to the defendant to make payments and provide medical treatment. When the orders were not complied with, the employee would file a declaration of readiness to proceed, and submit documents regarding the failure of the defendant to pay. The documents which the employee filed never seemed to be entered into the court records. Over the years, the employee has had to file copies of his documents several times, because they were never in the court file. The employee believed the judge must have either arranged to have the material lost or mislaid, or had not properly supervised the office staff, because the documents were always lost.

In 2001, the judge also forced the employee to settle his cases and sign a compromise and release agreement, which was for an amount which was inadequate for the injuries. The judge later refused in 2005 to hear his petitions

to set aside the compromise and release and to reopen the case. At every hearing, there was a California Highway Patrol officer present.

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

4. An unrepresented employee complained that a judge took more than 90 days to issue a decision.

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

5. An unrepresented employee complained that on the date of the hearing, the assigned judge was not present, and another judge was hearing the case. The employee requested a continuance to hire an attorney, and the judge told him the case had to be heard that day, or the whole case would be dismissed. When the judge appeared, the employee did not know who the judge was, and the judge did not have a nameplate on the desk. The employee asked for the judge's name. The judge told him, reluctantly, after the employee had asked the judge several times. The judge also told the reporter not to record several conversations that the employee 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 employee was not included in the conversations. During the trial, the judge mentioned to the employee that a video showed him to be climbing a ladder, although the person who shot the video said that he was not the person shown in the video. The judge later advised the employee that he had won the case, and would send him a letter advising him of the amount of the

award. However, the judge later sent a letter stating he would not receive any money because of attorney fees.

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

6. A defense attorney claimed the judge ruled on a request which was not properly before the judge, refused to note objections on the record, refused to call for a court reporter, and prepared minutes which did not include the rulings or the defense attorney's objections.

The employee submitted a declaration of readiness to proceed (DOR) relating to discovery – the taking of the deposition of the qualified medical evaluator (QME). The defense attorney had already written to the Medical Director, requesting a new panel QME be assigned, because the QME would not make an appointment for his deposition within 120 days. The defense attorney objected to the DOR. The judge took defense attorney's request for a new panel QME as a motion, and denied it. The defense attorney alleged that this "motion" was not before the judge, but that the issue should first have been decided by the Medical Director, before a judge could have heard an appeal of the Medical Director's decision. The judge also overruled the defense attorney's objection to the DOR, and took the case off calendar, pending completion of a deposition of the QME. When the defense attorney requested his objections be noted on the minutes, or that a court reporter be called to record them, the judge responded: "Sir, you are very close to trying my patience." At another point the judge allegedly said, "I am not going to bring in a court reporter."

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.

7. A person complained anonymously that the judge officiated at a wedding in the courtroom during business hours. It was also complained that the judge officiated at other weddings, including the wedding of an attorney who was a friend of the judge, who frequently appeared before the judge.

The Committee concluded that the complaint should be investigated. Following its review of the investigation, the Committee recommended further action by the Administrative Director, and the recommendation was addressed by the Administrative Director. The judge was provided counseling and re-trained on the Canons of Judicial Ethics.

8. A represented employee complained the judge was biased in favor of the defendant's QME, because the judge used to be a defense attorney and had used this QME before in his own cases as a defense attorney. The employee said that her attorney had told her that at a conference the judge had stated that the QME in question "writes excellent reports." After the employee's attorney had submitted her second QME report, the defense attorney was given 90 days to submit a rebuttal report by the defense QME. Six months after the due date for the defense QME rebuttal report, it had not yet been submitted, and the defense attorney deposed the complainant's QME. The defendant's QME report was submitted at a settlement conference, approximately 11 months after it was originally due to be filed.

The represented employee alleged that at the trial, the judge acted like a defense attorney, and helped the defense attorney with his questions. The judge eventually based his decision on the report of the defendant's QME, and the decision did not discuss the employee's evidence. On reconsideration, the judge's decision was overturned, and according to the employee, the reversal was based on the lack of substantiality of the conclusions of the defendant's QME. The case was returned to the judge. At a subsequent settlement

conference, the judge expressed his desire that the parties settle the case, but no agreement was reached. The judge issued a second decision, in which he limited the award to an injury date not including all the injury dates claimed by the employee, and “ignoring” some of the conclusions of the employee’s QME. After a second reconsideration, the board concluded that the complainant had met her burden of proof, and made an award of all benefits that would be supported by the employee’s QME’s report.

The employee is convinced that the judge’s errors in relying on the improperly based report of the defendant’s QME, was based on his bias in favor of this particular QME, and an overall bias in favor of defendants.

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

9. An unrepresented employee complained the judge was biased. The employee alleged that at a 2008 hearing, the judge did not have possession of the case files for this case. The minutes reflected that the files were “missing,” and the judge offered no other explanation. For a Mandatory Settlement Conference, the complainant received notice only one week before the date of the conference, the conference had been rescheduled, and the employee assumes this was because the files of his cases remained lost.

The employee stated the judge expressed bias in favor of the defendants when he said at a hearing that the employee “had an uphill battle,” in proving his case. The complainant also believed there was a strong favoritism by the judge towards the defendant. The Division wrote the complainant and asked him to provide an explanation of how the judge showed this favoritism. He was asked to provide examples of any words or actions of the judge which showed favoritism toward the defendants. 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.

10. An unrepresented employee complained the judge has been assisting the defense attorney in committing insurance fraud in the case. The fraud arises in that the defendants used "deceptive techniques" in completing their paperwork to indicate that the injury claim was not approved, in order to avoid paying for mileage and medical expenses. The judge allowed the introduction into evidence of employee's medical records without the use of a subpoena. The employee also alleged the judge showed favoritism toward the defendants. The Division wrote to the employee, and asked him to provide an explanation of how the judge showed favoritism, and how the judge assisted the defense attorney in committing insurance fraud. He was asked to provide examples of any words or actions of the judge which showed favoritism toward the defendants. The letter advised that the Committee would not be able to investigate these claims if he could not provide further explanation. The employee 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.

11. A represented employee complained the judge was acting improperly at a trial. The employee's attorney told him that the trial would be mostly about which QME report would be considered more appropriate for his case. During the trial, the defense attorney asked the employee questions about his psychiatric history, to which his attorney objected. The judge instructed the employee to answer the questions, and the employee states that he was very traumatized by this. The employee was also asked a question about the contents of the report of one of the QMEs. The judge asked him to review the report, which he had not seen,

before answering. The employee alleged he was not given enough time to read and study this report, and that his answer was cut short by the judge. The employee alleged he should never have been asked questions about his psychiatric history, since there was no psychiatric claim made in his workers' compensation case. The complainant also complained that he cannot get his attorney to answer any of his questions about the case.

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

12. An unrepresented employee complained the judge allowed an accepted case, in which the defendants are advancing permanent disability, to continue for seven years, without resolving disputes about medical treatment. The complaint alleges the judge had a "friendly relationship" with the defense firm, but did not disclose this until a trial was set, three years into the case. The employee believes that the bias in favor of the defense firm has resulted in decisions in favor of the defendants.

In one "ruling," the judge forced her to compromise a claim of unpaid temporary disability by accepting half of the amount, which she accepted, because she desperately needed the money.

The complainant alleged the judge allowed the defendants many opportunities to escape the requirements of the Labor Code. He allowed the defendants to obtain QME reports that they were not entitled to have, and the defendants were allowed to deny treatment recommended by those medical reports. The employee also complained that on one occasion, the defense attorney was allowed to obtain a hearing by hand delivering a DOR and schedule the hearing date, all without the employee's knowledge. The judge allowed the defense

attorney “to blurt out ridiculous statements” in his presence, such as, “I always advise my clients not to pay medical mileage reimbursement.”

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

13. An attorney for lien claimants complained the presiding judge does not spend enough time in the courtroom. The judge has a calendar set for 10:30 a.m. for lien conferences and expedited hearings, but rarely arrives in the courtroom before 11:00 a.m. The judge “closes” the calendar at 12:30 p.m., and orders all parties that have not disposed of their cases to return at 1:30 p.m. The attorney for lien claimants states that most defense attorneys cannot contact their clients between 11:00 a.m. and 12:30 p.m., and thus many cases are continued unnecessarily into the afternoon calendar.

The attorney for lien claimants claimed the judge is often impatient, discourteous, and undignified to litigants, and has berated lien claimant hearing representatives for not having gone to law school. The judge has told one interpreter that the interpreter was filing too many DORs, and that she would be sanctioned if she did not stop. The judge has refused to set trials for liens of small amounts, saying it would waste the court’s time, leaving the litigants with no remedy. On one occasion, the judge told a lien claimant hearing representative, “look what I do with your DOR” and threw it into a wastebasket.

The attorney for lien claimants stated that on more than one occasion, when parties could not settle a lien, the judge ordered the lien paid in a certain amount, and told the parties that if any one objected without good cause, sanctions would be imposed. On one occasion, the attorney for lien claimants represented a lien claimant, and the defense attorney stated that the lien had been paid per the fee scheduled guidelines, and the attorney for lien claimant disputed that. The judge

said that if the defendant were correct, she would impose sanctions. When the attorney for lien claimant asked if sanctions would be imposed against the defendant if the attorney for lien claimant were correct, the judge said no.

On courtroom management, the attorney for lien claimants stated that the judge “will not release minutes of hearing for the parties to sign in” until the parties have found each other and approach the judge with a disposition. The judge has removed all forms for “Stipulation and Order to Pay Lien Claim” from the courtroom, and requires the parties to request them singularly. The judge has removed all chairs from the courtroom, forcing the representatives to stand. On more than one occasion, the lien conference calendar, the judge has announced, “Only licensed attorneys can be in this courtroom right now; everyone else, get out.” The judge has on occasion instructed people in the courtroom that “attorneys with real cases” are to line up in one place, while others, with lien-related cases, must assemble in another area. The judge schedules all lien conferences in this judge’s court, so that all the representatives on more than 25 cases have to squeeze into one 10 feet x 17 feet room and an adjoining 10 feet x 12 feet room.

The Committee concluded that the complaint should be investigated. Following its review of the investigation, the Committee concluded that the conduct described in the complaint was an ethics violation. The Committee recommended further action by the Administrative Director and the recommendation was addressed by the Administrative Director.

14. An unrepresented employee claimed in a complaint written in Spanish, that at a conference “the lady” (presumably the judge) was asked through the interpreter if the complainant could use the bathroom, and the judge ignored him. The employee complained that after the time set for the conference in his case, nothing had happened. He was not sure whether the “lady” was the judge, the claims adjuster, or possibly a defense attorney. He said it looked like “the lady”

was with the adjuster, because she never said anything and only asked for his address. He stated that he thought he was there to “get an agreement, and that he thought it was the “the lady’s” responsibility to try to get an agreement, but she did not even say, “I will offer you this or that,” that “the lady” and “the caseworker” . . . “were talking far away.” He also complained that his wife was not allowed to talk to him, “because my wife told her that I forget many things.”

A review of the EAMS documents revealed that there were several conference hearings before a female judge about which the complainant could have been writing, but no hearings at which testimony was taken. The Division telephoned and wrote to the complainant and asked for details which might substantiate the 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.

15. An unrepresented employee complained the judge was impolite. The employee claimed the judge said he “would throw me out on my head,” if the employee came to the courtroom again. The employee had filed a petition and DOR in relation to unpaid temporary disability. At the hearing, the judge said the employee was trying to re-litigate her case. The employee told the judge that her case was over and that there was no dispute, and she was only attempting to get the defendants to continue paying temporary disability that it had agreed to pay. The complaint alleged attempts to locate files either in the DWC office or in the vehicle of the defense attorney, but there were none. The defense attorney could not produce a ledger showing payment. The employee insisted on obtaining an expedited hearing. At this point, the judge became “upset,” and told her, “Stop this. You are trying to re-litigate your case.” He also said, “You think you know more than me – If you come down here again, I will throw you out on your head and sanction you.”

The minutes of hearing (on the record) show the judge asked the employee if the reason she filed a request for expedited hearing was her belief that she was entitled to continuing total disability payments, and she replied that was true. The judge then read into the record a 2006 order issued by another judge, imposing sanctions on the employee and ruling that the defendant's petition to bar her from filing further documents in this closed case was granted; that the employee was ordered not to file any documents or otherwise attempt to bring these cases before the Board to re-litigate previously determined issues; and that if the clerk should inadvertently set a hearing based on improperly filed documents, the Board may summarily order the hearing off calendar, and that this may be done on the telephone or other conveniently made request of the defendants.

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

16. An unrepresented employee complained that during the trial the judge exhibited bias by allowing defendants to pursue irrelevant issues, and verbally ordering the employee to prepare a post-trial brief within 20 days after the trial. The judge further excluded the employee's witness from the courtroom, but did not exclude the defendants from the courtroom during testimony. The Division wrote to the employee, asking her to provide examples or an explanation of how the judge exhibited bias against her. The employee 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. An unrepresented employee complained that the judge expressed bias or prejudice towards the employee during a conference, and also allowed the

defendants to submit a response to a declaration of readiness four months after the complainant had submitted the document. The Division wrote to the employee, asking her to provide an explanation of how the judge exhibited bias against her during this conference. The employee 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.

18. An anonymous person complained that the judge exhibited grossly inappropriate conduct and demeanor in handling a case. The complainant states that an attorney and two lien hearing representatives had a hearing before the judge. The parties were in line until 12:30 p.m., at which time the judge walked out the door without saying anything to the parties in line. The parties waited ten minutes and realized the judge would not be returning. The parties returned at 1:30 p.m. to have the lien settlement approved. Upon returning the parties could not locate the judge, so they approached another judge to approve the settlement. This judge informed the parties that they were not allowed to approve lien stipulations, and the parties telephoned the judge's secretary to determine whether the judge would be available. The parties were informed that the judge was now available, and returned to the line. When the parties' turn came, the judge told them, she would not approve the lien settlement because the parties were not there at 12:30 p.m. The judge further told the attorney that the lien claimant representatives had set the attorney up to be yelled at by the judge. The attorney tried to explain the situation to the judge, but the judge would not hear his side of the story. The judge then started ranting about how one of the lien claimant representatives was using her body attributes to get the attorneys to settle her lien claims. At that point another attorney entered the court room, caught part of the conversation, and then received another tongue-lashing by the judge.

The complainant indicated that the attorneys are reticent to report the judge's inappropriate and unprofessional conduct because they have to represent their clients before the judge, and they are fearful of retaliation, which has occurred in the past. Other judges are also fearful of the judge's vindictive and retaliatory nature, which the judge has exhibited in the past.

The Committee concluded that the complaint should be investigated. Following its review of the investigation, the Committee concluded that the conduct described in the complaint was an ethics violation. The Committee recommended further action by the Administrative Director, and the recommendation was addressed by the Administrative Director.

19. A represented employee complained:

A represented employee complained that at the time of the hearing, he told the judge through an interpreter, "I need one arbitrator for justice." The judge is said to have replied, "There is no justice here." When the case later came to trial, the employee's attorney told him to wait in the cafeteria. At the hearing, the parties stipulated to some facts, and agreed to have the case decided on the record. The employee feels betrayed because the minutes show he was not present when he was there. He believes the judge acted in a retaliatory manner because the complainant had written to the White House.

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. A represented employee complained the judge had an *ex parte* meeting with the defense attorney. The employee states that when his attorney was not in the hearing room, the employee saw the defense attorney approach the judge and said to the judge: "I would like to ask you a favor. I would like to ask you for a character reference in a case." The judge responded, "Yes, but we should not

talk here. Let's go to my chambers." The judge and the defense attorney then left the room together. When the employee's attorney returned, he saw the judge and the defense attorney re-enter the hearing room together, and ask the judge, "Your honor, what's going on?" The employee states that the judge replied that if the attorney did not like her actions, he could ask to have the judge recused, and the case would go on for another ten years.

The employee also complained that the defense engaged in "witness tampering" and "obstructed justice" by preventing defendant corporation's employees from being served subpoenas by the county sheriff. The employee states that the inability to serve hostile witnesses, and the failure of other hostile witnesses to comply with subpoenas served on them was brought to the attention of the court, but the judge did nothing about it.

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

21. An attorney for a lien claimant complained that at a lien conference set on the Declaration of Readiness (DOR) of another lien claimant, the defense attorney told the judge that he had filed a petition to compel depositions of several lien claimant employees. The judge asked if the depositions had previously been noticed, and the defense attorney said that they had been. The judge told the defense attorney to prepare the order and that she would sign it. The lien claimant attorney objected on the basis that the defense attorney had not filed the DOR, and that the issue of the depositions was not on the DOR, and thus not subject to adjudication. The lien claimant attorney asked the judge if the deposition petition was in the file or in EAMS, and the judge replied that she did not need to review the petition.

When the defense attorney later presented the order for the judge's signature, the lien claimant attorney expressed doubt as to the judge's authority to issue the order at that time. The judge allegedly replied sarcastically, "Really? Well ma'am, you should take the bench." The lien claimant attorney informed the judge that she did not believe that the lien claimant (the corporate employer of the deponents) had been afforded due process under the circumstances. In response, the judge said that lien claimant attorney was very close to making her lose her temper and that "you don't want to do that." The judge then said that if the lien claimant attorney thought that filing a petition for removal would "get rid of her," the lien claimant attorney was mistaken. The lien claimant attorney states that this was said in a threatening manner. The judge then said that filing a petition for removal would only result in her retaining the case until the liens were resolved, and warned, "I would think very carefully about that before filing your petition, if I were you."

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

22. The unrepresented employee complained the judge failed to give him a private hearing. The judge allowed other persons, who were not related to the hearing, to be present in the room. The employee believed this was "unfair" to him. The judge also failed to keep order in the courtroom during the hearing, by allowing other attorneys to talk among themselves. The employee believed the noisiness of the hearing room prevented the judge from concentrating on the issues the employee was presenting.

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. The unrepresented employee complained that, at a hearing at which the employee did not attend, the judge improperly issued an order stating that \$500 in sanctions would be imposed if the employee did not attend his deposition, with the defense attorney directed to schedule the deposition at a mutually convenient time. The employee also complained that the judge refused to order that the defense firm send a different attorney to further proceedings, and refused to order that a particular defense attorney would be barred from appearing. The employee complained that the attorney in question had made threats against him. The judge also refused to compel a deposition of the employee's former supervisor.

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

24. The unrepresented employee complained that the judges have been assisting the employee's attorneys and the Uninsured Employers Fund (UEF). The employee alleges that the judges, attorneys, and UEF are conspiring to defraud him, deny him equal protection of the laws, and "manipulate the system." The employee alleged a judge has referred to him in racial terms. The judge repeatedly called him by an incorrect last name, which was the last name of a famous deceased member of the same race as the complainant, who shared the same first name. The employee alleged that this is evidence that the judge was classifying him by his race. The employee further alleged that the case has proceeded for six years, but jurisdiction has never been established. The employee also alleged that the DWC does not have jurisdiction over an incident allegedly occurring in the state of Mississippi, although the judge has ruled that the DWC does have jurisdiction over the alleged incident occurring in Mississippi.

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

25. The unrepresented employee complained the judge was biased or prejudiced. The employee alleged the judge had an *ex parte* conversation with the defense attorney. The employee also alleged the judge allowed the defense attorney to raise an issue that had already been decided by the Administrative Director, and issued an opinion that contradicted the earlier decision of the Administrative Director on this issue.

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

26. A defense attorney complained that while at the district office appearing on another case, this judge approached him, poked him in the chest, and said, "I do not appreciate you claiming that I did not appear at conferences on [a] case." The defense attorney states that he did not appear at a conference in this case because of a calendaring mistake by his office staff. The judge issued a Notice of Intention to submit the case on the record. The defense attorney filed an objection, in which he explained how his office had miss-calendared that hearing, and also stating that both the employee's attorney and the judge had been late for, or missed various appearances in this case. His complaint states that "the record" shows there were numerous occasions when the judge did not appear to conduct his calendars, and various instances where the employee had the case continued on short notice.

The Committee concluded that the complaint should be investigated. Following its review of the investigation, the Committee concluded that the conduct described in the complaint was an ethics violation. The Committee recommended

further action by the Administrative Director, and the recommendation was addressed by the Administrative Director.

27. In her fourth complaint against this judge (and her fifth complaint in this closed case), the unrepresented employee alleged the judge engaged in “fraud, violation of due process, and misconduct.” In the employee’s last complaint filed in 2006, the employee complained that the judge had participated in fraud when approving the compromise and release which terminated her case. The Committee at that time decided that it would not consider more complaints from this employee unless new violations and facts were alleged.

In this complaint, the employee stated the judge possibly had a conflict of interest as shown by his assistance to the defense counsel in the case. No other details of her complaint against the judge are offered.

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.

28. The unrepresented employee complained that after she filed a “request for Pre-Trial Discovery Conference,” the judge wrote back to her, and that the judge’s response letter was “a refusal to intercede.” The employee alleged the judge knew all the statements in the judge’s letter were “deliberate lies,” and “criminal acts by an officer of the court.” The employee also alleged the judge continues (with others) to deny her rights to due process and equal protection, by denying her requests for discovery pursuant to Labor Code section 5502. The employee stated, without specificity, “deliberate, willful and unethical acts of deceit, and lying; deliberate and willful false statements of law; deliberate unethical statements to cause the employee harm; and aiding and abetting another judge.”

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.

29. An unrepresented employee complained the judge ignored his email to the local Division office, sent at the time of a scheduled expedited hearing that he would be late because of taking his father to the doctor, and might not be able to attend the hearing until the afternoon. The employee also left phone messages that he would be late with the presiding judge's secretary and with the defense attorney's office. When the employee did arrive at the hearing room, the judge informed him that the case had been taken off calendar at the request of the defense attorney. The employee also complained the presiding judge ignored his written request to have the hearing returned to the trial calendar. The employee alleged he was discriminated against, in that the defense attorney and a lien representative were allowed into the calendar clerk's area, but that he was prohibited from entering that area by order of the presiding judge. The employee was told that only attorneys were allowed into this area, although the lien representative was not an attorney. The employee has made three previous complaints, for all of which the Committee did not identify ethical violations.

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.

30. A represented employee complained the judge denied the employee due process of law by allowing the attorney to dismiss the Labor Code section 132(a) complaint, not allowing the employee to be present in the courtroom, not ascertaining whether or not the employee was present in court that day, and allowing the employee's attorney to commit perjury on the nature of the attorney's representation. The employee alleged the attorney stated to the court that the employee was not present that day, the employee could not be located,

that the 132(a) claim was filed late, and that the attorney represented complainant on the 132(a) claim. The employee alleged that some of the attorney's representations were false – that the employee was in the court's waiting room that day, and he did not agree to dismiss the 132(a) claim. Later, the attorney told the employee he did not represent the employee on the 132(a) 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.

31. An unrepresented employee complained the judge falsely stated in his Opinion on Decision that the employee terminated his attorney relationship with his second attorney, when the judge, and not the employee, discharged the attorney. The employee had sent the court a letter in which he related difficulties with his attorney and an inability to travel from Oregon to attend a forthcoming trial, which the judge interpreted as a request to dismiss the attorney. The judge dismissed the attorney at a trial at which the employee did not appear. The employee stated that because of the discharge of his attorney, and the split of fees between the two attorneys, there was not sufficient money left in any potential award to entice any third successive attorney to represent him. The employee also alleged that the judge did not properly apply apportionment law. The employee also claimed the judge was dishonest, and this was part of the basis for a petition to disqualify, which was denied.

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

32. The unrepresented employee complained the judge frowned at him, and that the judge "was tripping." The Division wrote to the employee for clarification.

The employee responded with several letters containing many pages. From these it could be discerned that the employee alleged that the judge issued an order relating to a Qualified Medical Evaluator examination or report which implied that the employee was suicidal, and the employee asserted that by issuing the order, the judge “was playing with” him. Also, the employee alleged the judge “made fun of” the employee. The employee furnished no detail on how the judge may have been making fun of him, but the employee implied that the judge was making fun of him by the judge's manner of handling the whole adjudication of this workers' compensation claim. Finally, at some point, the judge frowned at the complainant.

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

33. A defense attorney complained that the judge improperly refused to submit a legal issue for decision, and then raised the issue of penalties *sua sponte*. The judge allegedly said that the court was inclined to award penalties, because “something should have been paid,” and that if the matter should proceed to trial, the court would be inclined to award penalty attorney fees for two expedited hearings as well as the trial. The judge also stated that the court would order the claims adjuster to testify on the penalty issue.

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

34. The unrepresented employee complained that the judge blackmailed the insurance carrier to find that illegal aliens were injured in the course of their employment in 1987.

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.

35. The unrepresented employee complained that the judge refused his request for a change of venue from a district office where the employee had determined that all of the judges were corrupt, and had tried to report their corruption.

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

36. The unrepresented employee complained that the judge refused to let him represent himself in *pro per*. The employee also complained that the judge ignored every attempt by the employee to assert his rights, because not doing so would have led to the discovery of the corruption of the judges in civil service. The employee also complained that the judge helped hide the fact that a judge in another complaint blackmailed the insurance carrier into bribing another judge.

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

37. The unrepresented employee complained that the judge refused to hold an MSC for which the employee had filed a DOR, because the judge thought she had failed to appear, when in fact she had signed in and had been discussing settlement with the defense attorney, and after an *ex parte* conversation with the defense attorney in which the judge was told she had not appeared, the judge took the case off calendar. In addition, the judge appeared to be impolite in talking to the complainant.

The Committee concluded that the complaint should be investigated. Following its review of the investigation, the Committee concluded that the conduct described in the complaint was an ethics violation. The Committee recommended further action by the Administrative Director, and the recommendation was addressed by the Administrative Director.

38. A represented employee complained that the judge libeled the employee by finding that there was a pre-existing personality disorder, which the employee states was not documented in the medical records. The judge also incorrectly subtracted 20% from the rating, which was not justified. The judge at some point, in “a nasty tirade” said the employee had lied on more than once occasion.

The employee also alleged the judge has delayed many decisions. Regarding one decision, the judge had stated that it would be issued by August 10, 2010. The employee stated her attorney found the decision on the judge's secretary's desk in late September, and it had never been sent out. The employee stated that although trial began in March 2010, there had not yet been any decision. The complaint also stated the judge relied on inadmissible evidence. At one point in the Summary of Evidence, the judge wrote that a witness had said that the employee was “stressed,” when in fact the witness had said that the witness was “concerned.” The employee also stated the judge now cannot find crucial medical evidence that was submitted seven months ago.

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.

39. An unrepresented employee complained that at a hearing in December 2003, the judge said, “[The employee] does not look like he is any pain to me.”

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.

40. The unrepresented employee alleged the judge took away her constitutional rights and committed fraud by making "willful and blatant lies" and by allowing the defense attorney to refer to a DWC regulation that "did not exist." These allegations are essentially the same as in the employee's last complaint, which was considered by the Committee. The employee also alleged that in an October 19, 2010 letter to the employee, the judge requested that the employee not come into the DWC offices or file additional papers in her cases until after the Workers' Compensation Appeals Board issued its decisions in her pending petitions for reconsideration. A review of the judge's letter reflected that the judge stated that the reason for this request was that as long as her petitions for reconsideration were pending, only the Workers' Compensation Appeals Board, and not the local DWC office, had jurisdiction over any aspect of her cases.

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.

41. An unrepresented employee complained that required documents were not contained within the DWC file, and the judge asked the employee to arrange exhibits for filing, but she was unable to do this because of "falsification of files numbering, and liens."

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.

42. An unrepresented employee complained that in relation to denying the employee's request that a qualified medical evaluator (QME) be removed, the judge refused at a conference to look at the evidence the employee presented, and instead ordered a deposition be taken. At another conference six months later, the judge again refused to review evidence the employee presented on the issue of the QME, and on the issue of a refusal to provide ordered treatment, but instructed the employee to prepare a brief, outlining the reasons why the QME should be removed and another panel QME selected. At the same hearing, the employee requested the appointment of a QME panel of chiropractors. The judge denied this request. When the employee suggested that a particular chiropractor would not recommend chiropractic care if it posed a risk of harm to the patient, the judge allegedly said, "Oh yes he would."

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.

2. Ongoing Investigations

1. The unrepresented employee complained the judge would not allow the papers the employee had presented for filing to be entered into the DWC's computer system. The employee filed a petition to disqualify this judge (which was pending at time of filing) and the employee complained the judge in his Report on Petition for Disqualification denied that he had any bias against the employee, and said the employee had not stated any incidents, events, facts, or allegations which might give rise to the implication that the judge was biased against her.

The employee believes the judge is biased against her because he has not allowed all her document to be filed into the DWC computer filing system. The employee believes the judge may have had *ex parte* communications with the defense attorney, because while waiting for her deposition to start, which was

scheduled at the DWC office, the judge said to the defense attorney, "If you need me, Chris, call me; you have my number." The employee also believes that the judge may be biased against the class to which she belongs, either ethnic or sexual, although she gives no reason for this belief. The employee believes the judge is favoring the defense attorney.

The Committee concluded that this complaint should be investigated.

2. A defense attorney complained that the judge pre-judged the Labor Code section 132(a) (discrimination) case, as evidenced by the judge stating on three occasions before trial was completed, that if the defendant did not settle, the employee would prevail in the case. On the first occasion, before a trial commenced, the judge is alleged to have said that if the defendant did not settle, he would lose the case. On the second occasion, after the conclusion of testimony of the employee and when the parties were considering stipulating to testimony to be offered by a defense witness, the judge is alleged to have said that if the parties stipulated to the anticipated testimony of the defense witness, the employee would prevail in the case. On the third occasion, six months later, after a second day of trial, and after closing the record, the judge again advised the parties that he thought defendant's actions were wrong, and that the defense should reconsider settlement before the Opinion on Decision issued. The defense attorney stated that in the Opinion on Decision, the judge used the fact of a potentially missing Return to Work Notice, (which had never been offered in evidence nor referred to) as grounds for finding discrimination against the defendant. On reconsideration, the judge's Report and Recommendation incorrectly stated that the employee had answered the petition. The defendant prevailed on reconsideration. The defense attorney concludes that the judge's attempt to "strong-arm" a settlement by threatening the defendant with an adverse outcome indicated bias and was improper.

The Committee concluded that this complaint should be investigated.

3. An employee's attorney complained that the judge criticized him in front of his client by making the suggestion in open court that perhaps he should consider retirement. This was the judge's response after the complainant said he wanted to review the DWC file after the conference, the judge replied that there was no paper file, and the complainant replied, "Of course, that is right – everything is now electronic."

The Committee concluded that this complaint should be investigated.

Table 1



**2010
COMMITTEE MEMBERSHIP**

HON. ALICE VILARDI

Chair

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

HON. TIMOTHY HAXTON

Workers' Compensation Judge
Workers' Compensation Appeals Board
Salinas

HON. NORMAN DELATERRE

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

VACANT POSITION

Member of the Public from Outside
The Workers' Compensation Community

ROBERT RUBY, ESQ.

Former Defense Attorney
Workers' Compensation Law

MICHAEL McCLAIN, ESQ.

California Workers' Compensation Institute
Representing Insurers

JIM ZELKO

Kaiser Foundation Health Plan
Representing Self-Insurers

STEVEN SIEMERS, ESQ.

Member Representing
Organized Labor

GORDON GAINES, ESQ.

Former Applicants' Attorney
Workers' Compensation Law

DWC STAFF

Richard Newman

Chief Judge

Richard Starkeson

DWC Attorney

Ursula Jones

Admin. Assistant

Minerva Krohn

DWC Attorney
