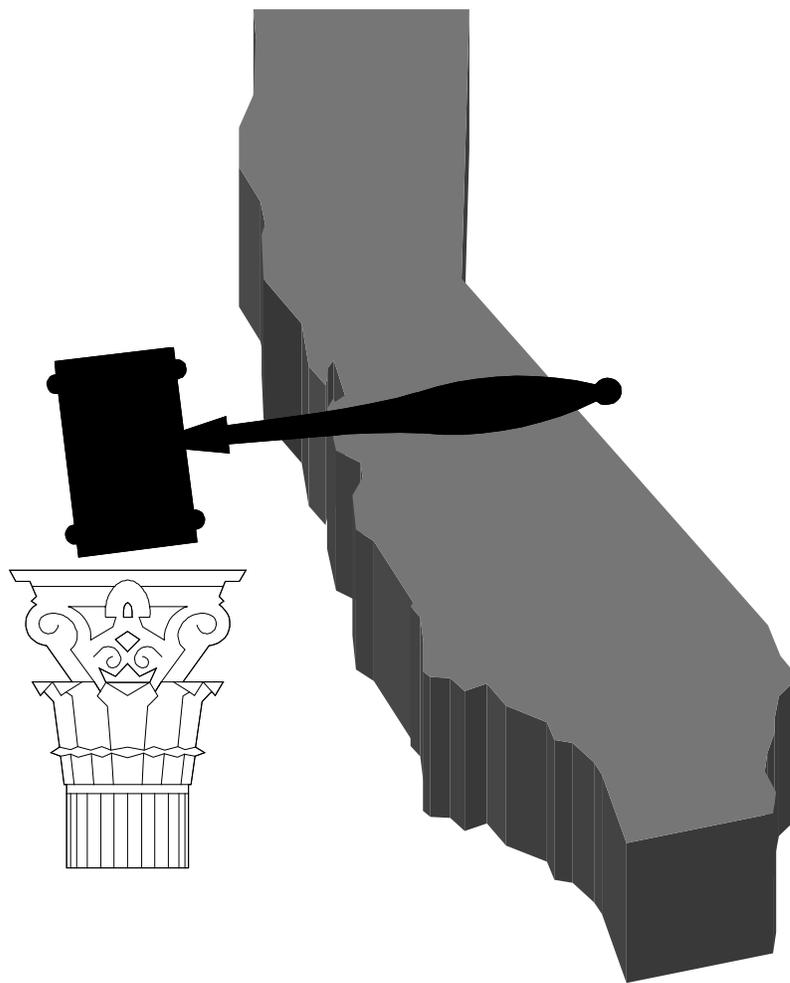


**State of California  
Department of Industrial Relations**

**WORKERS' COMPENSATION ETHICS  
ADVISORY COMMITTEE**



**2012  
ANNUAL REPORT**

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## **I. The Ethics Advisory Committee: A Profile**

### **A. The Committee's Functions**

The Workers' Compensation Ethics Advisory Committee (EAC) is a state committee independent of the Division of Workers' Compensation (DWC). The Committee is charged with reviewing and monitoring complaints of misconduct filed against workers' compensation administrative law judges (WCALJs or judges).

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

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

### **B. Committee Membership**

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

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

### **Member of the Ethics Advisory Committee**

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

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

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

## **II. Complaint Procedures**

### **A. Filing a Complaint**

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

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

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

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

## **B. Investigation by the Chief Judge or Administrative Director**

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

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

### **III. Complaint Digest**

#### **A. Complaint Statistics for Calendar Year 2012**

##### **1. Number of Workers' Compensation Administrative Law Judges**

The Division of Workers' Compensation has 24 district office locations, each with a Presiding Judge. In 2012, the DWC had authority over 168 active judges.

<b>WCALJs Positions</b> (As of December 31, 2012)	
Number of presiding judges.....	24
Number of judges serving .....	144
Total number of judges serving.....	168

## 2. New Complaints

The Ethics Advisory Committee (EAC) received 19 new complaints in the calendar year of 2012. The EAC considered a total of 12 new complaints, in addition to 3 complaints pending from 2011. There are 3 complaints that are pending under ongoing investigation and 2 complaints which were filed after the EAC final calendar meeting for 2012, and thus pending. The complaints set forth a wide variety of grievances. A substantial portion of the complaints alleged legal error not involving judicial misconduct or expressed dissatisfaction with a judge's decision.

Ongoing complaints for which investigations have been requested, and the investigations have not yet been concluded, are classified as pending complaints. Complaints for 2012 that were received by the EAC after its final meeting for calendar year 2012 are ongoing, and as such, are also classified as pending complaints.

<b>2012 Complaint Caseload</b>	
<b>New Complaints filed in 2012 .....</b>	<b>19</b>
<b>Complaints Pending from 2011.....</b>	<b>3</b>
<b>Complaints Considered in 2012.....</b>	<b>12</b>
<b>Complaints Concluded in 2012.....</b>	<b>10</b>
<b>Complaints Pending on Investigation in 2012 .....</b>	<b>3</b>
<b>Complaints Received after EAC Final Calendar Meeting for 2012.....</b>	<b>2</b>

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

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

hearing representatives and lien claimants (medical providers). A wide variety of persons from the workers' compensation community filed new complaints during 2012.

<b>Groups within the Workers' Compensation Community that Filed Complaints in 2012</b>	
<b>Employees represented by attorneys .....</b>	<b>3 Complaints</b>
<b>Employees not represented.....</b>	<b>9 Complaints</b>
<b>Anonymous .....</b>	<b>0 Complaints</b>
<b>Applicant attorneys .....</b>	<b>0 Complaints</b>
<b>Defense attorneys .....</b>	<b>1 Complaints</b>
<b>Claims Administrators .....</b>	<b>0 Complaints</b>
<b>Hearing Representatives .....</b>	<b>1 Complaints</b>
<b>Lien Claimants (medical providers).....</b>	<b>1 Complaints</b>
<b>Attorneys representing a lien claimant.....</b>	<b>1 Complaints</b>

### **3. Complaints' Actions Taken Digest**

In 2012, 19 new complaints were filed by the workers' compensation community. Out of the 19 new complaints, 6 complaints resulted in investigations. Of the 6 complaints which resulted in investigations, 3 complaints presently remain pending and under investigation from complaints filed in 2012. There were 3 complaints pending on investigations from complaints filed in 2011. There were 2 complaints filed after the last meeting of the Ethics Advisory Committee in 2012. The Ethics Advisory Committee identified no judicial misconduct in 15 complaints, and did not recommended further action by the Chief Judge or the Administrative Director on any complaints.

## **Complaints' Actions Taken Digest**

<b>New Complaints filed in 2012 .....</b>	<b>19</b>
<b>Investigated Complaints in 2012.....</b>	<b>6</b>
<b>Complaints Investigations from 2011 .....</b>	<b>3</b>
<b>Pending Complaints Investigations in 2012.....</b>	<b>3</b>
<b>Pending Complaints Filed After EAC Last Meeting in 2012 .....</b>	<b>2</b>
<b>Complaints Resulting in No Misconduct.....</b>	<b>15</b>
<b>Complaints Resulting in Misconduct.....</b>	<b>0</b>

### **IV. Description of Complaints and Actions Taken**

#### **A. Investigations Resolved in 2012**

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

The complainant also alleged that on a second occasion, complainant appeared before the judge for a lien trial on behalf of a client. Complainant claims the parties were arguing the merits of the case and specifically one physician's referral of the applicant to another physician. Complainant argued the referral was in the body of the narrative of one of the medical reports. The judge allegedly insisted the complainant personally show the judge exactly where the referral was, and threatened the complainant with contempt sanctions. Complainant apparently asked the judge to review the entire medical report in context, and the judge allegedly replied in front of people present: "Do you not understand what I am saying? I do not speak Spanish, so do you need an interpreter?" Complainant thought the commentary about needing an interpreter was a racist remark based upon complainant's last name (Hispanic). Complainant also alleged that complainant objected to the judge's proposed order and desired to file an appeal, but the judge replied that if complainant's client were to appeal, the judge would sanction complainant and the client. The judge allegedly went ahead and signed an order reducing the lien, and noted that sanctions would be reserved if an appeal was filed.

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

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

**2.** A lien claimant's attorney complained the judge used premeditated, improper and unethical methods to obtain jurisdiction to hear and make an order on a matter not originally assigned to the judge without request by the parties. Complainant alleged the judge used the threat of sanctions as a scare tactic to influence the parties' negotiations and to force complainant to involuntarily respond to questions for the sole purpose of humiliating and embarrassing complainant in front of 10-20 attorneys, lien representatives, and hearing representatives. Complainant further alleged the judge used the court reporter to manipulate the record by going off the record to threaten complainant's license when complainant attempted to object to the judge's rulings on the record. Complainant claimed the alleged manipulation of the record was because the complainant could not make an adequate record as the judge threatened sanctions for every statement made in the amount of \$1,001, with full knowledge that an attorney must report sanctions to the State Bar in excess of \$1,000.

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

**3.** A represented employee complained (1) the Summary of Evidence did not coincide with the Transcript of Proceedings as the judge changed statements made by the witnesses and statements made by the claimant in the Summary of Evidence; (2) during direct examination the parties took one break in the morning, a second break for lunch and a third break in the afternoon but during cross-examination the judge allowed numerous breaks; (3) complainant's attorney was not allowed proper time for re-direct as the judge constantly

interrupted the applicant's attorney "butting heads" with the attorney; (4) the judge disallowed admittance into the record as evidence a 4-page document, accusing the attorney of using "tactical advantages" on the defendant; (5) the judge allowed the testimony of a witness who indicated the witness did not participate in conducting an accident investigation pursuant to a false statement of the defense attorney who stated to the judge the witness was one of the people who conducted the accident investigation; (6) the judge was biased in favor of the defense and this was reflected in the Summary of Evidence; and (7) the judge appeared to be unethically assisting the defense in its case. Complainant requested that all the judge's cases be reviewed claiming that it will be discovered the judge does not follow the law because the judge is "unethical" and "lacks morals."

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

**4.** A represented applicant complained that complainant was not allowed in the court room when the complainant's case was being heard as the court room has a coded keypad lock and only attorneys are allowed in the courtroom. Complainant alleged that complainant's attorney denied complainant's multiple requests to be present when the case was being heard. Complainant believes that mistakes were made in the case because complainant was not present. Complainant requested the practice of not allowing non-attorneys into the court room be discontinued.

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

**5.** A non-represented applicant filed a complaint, alleging that the judge declined to rule on the documents put before the judge, contempt of court, crimination [sic], perjury, life time medical, rehabilitate [sic], or permanent disability. The complainant requested that all court orders be enforced.

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

**6.** A non-represented applicant<sup>1</sup> complained that the judge, after letting the case go off calendar for four years, made damages and an outrageous ruling that the applicant did not sustain injury to back. The complainant requests that all court orders be enforced.

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 defense attorney complained the judge suggested that complainant could not handle the case appropriately due to the gender of the complainant. Complainant and applicant's attorney appeared before the judge at an expedited hearing. In response to arguments made before the judge, the judge indicated that complainant should transfer the file to another attorney in the office and that reference was made to the "old boys' network." Complainant perceived the opinions of the judge to be inappropriate, discriminatory and unprofessional.

The Committee concluded that additional facts were necessary from complainant to make a decision on the complaint. The complaint was advised to forward information to the Committee which supports the allegations in the complaint. No additional information was provided to the Committee. Due to the lack of

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<sup>1</sup> This complainant is the same complainant as in Paragraph No. 5.

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

**8.** A represented employee complained that the judge yelled at complainant and talked to complainant in a manner that was disrespectful. Complainant alleged the judge came out of the office and yelled in a loud voice to the complainant: "Why don't you want to settle this case?" The judge apparently proceeded to tell the complainant the defense attorney came all the way from another city, and probably was going to have to spend the night in a hotel. The judge asked the complainant if the complainant was going to pay for the defense attorney's hotel out of complainant's pocket. The complainant apparently replied to the judge that the judge did not have any right to address the complainant in that manner. Complainant alleged that the judge yelled at everyone to get into his office.

When in the judge's office, complainant alleged the judge told the complainant the judge had gone to school to study criminal law. Apparently, the judge made references to complainant's alleged criminal past. Complainant further alleged the judge guaranteed complainant would not receive one more penny on that day than complainant would get at another hearing.

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

**9.** An attorney for a lien claimant complained that the judge set forth defamatory and demeaning language in the public record about claimant in an Opinion on Decision and in the Report and Recommendation on Petition for Reconsideration.

In the Opinion on Decision, the judge indicated that complainant ignored and failed to cite and/or distinguish a case that was on point. The judge indicated the court will not do complainant's job. The judge proceeded to state in his Opinion:

The ostrich is a noble animal, but not a proper model for an ...advocate. The 'ostrich-like tactic of pretending that potentially dispositive authority against a litigant's contention does not exist is as unprofessional as it is pointless.' ” (*Gonzalez-Servin v. Ford Motor Co.* (2011) 662 F.3d 931 (emphasis in original, citations omitted.)

The complainant was offended by the judge's equating complainant's "actions ... to an animal," e.g., " 'ostrich'." The complainant believed "the judge stepped way over the line in personalizing a claim which appears to show some type of bias."

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.** A lien claimant complained that the judge did the bidding of an insurance representative who wanted to punish complainant for the judge's own reasons. Complainant was attempting to procure payments for interpreting services on this case which was venued at X District Office. Complainant had 15 other liens and included this lien in a petition for consolidation and set two hearings at a different district office because that is where consolidation matters are handled. Complainant stated that defendant failed to appear at the first hearing. The defendant apparently arrived two hours late to the second hearing but by that time the hearing had already concluded and the consolidation judge issued a Conditional Order ("CO") to pay lien claimant.

After the CO was served, defendant filed an objection along with a petition for attorney's fees and sanctions. The consolidation judge set another hearing but defendant refused to attend stating that another judge had set a hearing on his petition at the X District Office and that the CO was null and void as an objection was filed.

A hearing was held at X District office before the judge against whom the ethical violations were alleged. Complainant stated that it became clear during this hearing that in early December of 2007 the judge had ex parte communications with defendant and set it for a hearing despite the CO issued by the other judge. Complainant alleged that the defendant and the judge accused complainant of forging the CO and was strongly advised to withdraw the lien.

The matter was then set for trial before the judge. The judge told complainant that complainant would be fined if the lien was not withdrawn. The trial judge repeated the opinion that the complainant probably forged the CO. The trial did not take place because the presiding judge at the X District office returned the case to the consolidation judge.

The parties then appeared before the consolidation judge. All of the cases in the consolidated matters were resolved except the lien in the case and the consolidation judge returned this case back to the original X District Office.

Defendant filed a Declaration of Readiness to Proceed at the X District Office along with a petition for sanctions and costs because complainant filed the CO in Superior Court. A hearing was set before a different workers' compensation judge but the matter sent back to the trial judge. Complainant alleged that the judge appeared annoyed and told complainant to withdraw the lien again because complainant probably forged the signature. By this time, complainant alleged that the CO was certified by the presiding judge at the other district office.

The matter proceeded to trial and defendant raised the issue that complainant recorded their conversations. The trial judge told complainant that it was probably a violation of federal law and complainant should be ready to have Miranda rights read if complainant wanted to proceed to trial. At the start of trial, complainant stated that the trial judge raised a trial issue of his own, i.e., the validity of the CO. Complainant objected and the trial judge threatened to disallow the lien.

Complainant alleged defendant made derogatory comments towards complainant during a break in trial. When complainant reported this to the judge, the judge shrugged it off. Complainant further alleged that complainant was not allowed to cross-examine the defendant. The trial judge prompted defendant to object when called as a witness by complainant which trial judge then sustained.

Thereafter, complainant received the Minutes and Summary of Evidence and complainant alleged it showed statements and conclusions which were erroneous. The trial judge ruled that the complainant engaged in forum shopping; questioned the validity of the conditional order; and indicated that there was an agreement in place to resolve the lien for payment of \$250.00. The trial judge found Complainant not credible and complainant's actions in the pursuit of the lien undertaken for the purposes of abusing the system. The trial judge awarded defendant attorney fees and sanctions.

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

**11.** An unrepresented applicant, alleged that the trial judge committed fraud and that the presiding judge failed to correct the fraud despite the presiding judge's knowledge of the fraud. Complainant stated complainant is entitled to three years back pay that the defendant and the trial judge collaborated to defraud complainant. Complainant made substantive allegations regarding complainant's case and stated that the Board was corrupt. Complainant alleged that the presiding judge threatened to punch complainant with the presiding judge's fist clenched and told Complainant to get out or the police would be called. Complainant also alleged that the presiding judge told complainant not to file any more documents with the Board and refused to correct the fraud.

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

**12.** A represented applicant complained that the judge breached the Code of Judicial Ethics when the judge's facts were "not truthful in an attempt to show that I am a liar and dishonest person."

Complainant alleged that the judge took deliberate liberties with complainant's testimony and facts of the case. Complainant pointed out that on page 3 of the Findings and Award, the judge found applicant's contention that home exercises were not provided to be unfounded. Complainant pointed out that the testimony should reflect that complainant testified to having home exercises.

Complainant alleged that the judge's decision was and is biased. Complainant believed that the judge formed a biased opinion based upon a medical report that stated applicant had an antalgic gait in the office but was observed walking to the car with no observable limp. Complainant questioned whether the judge read the deposition transcript and whether it was offered into evidence.

Complainant alleged that the judge "found me not credible, actually he's calling me a liar." Complainant alleged the judge was not credible and factual in the decision. Complainant alleged that if the judge's "decision was based on an incorrect understanding of the evidence I can only conclude that his decision is tainted with bias!"

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

## **B. Complaints Pending on Ongoing Investigations**

1. An unrepresented applicant complained that the judge was discriminatory against complainant by threatening sanctions for not showing up to a deposition. Complainant stated that this was not true and that complainant was able to get a ride to the deposition. Complainant also alleged that the judge falsely accused complainant of harassing a doctor and the judge would not allow complainant to take the deposition of the doctor.

Following its review of the complaint, the committee concluded that additional facts were necessary in order to make a decision on the complaint. The complainant was advised to forward information to the Committee which supported the allegations in the complaint.

2. An unrepresented applicant complained the judge at a mandatory settlement conference (MSC) treated the complainant with disrespect. The judge yelled at complainant for no reason and complainant felt like a piece of garbage. Complainant was accused of lying and was told all credibility was lost thus making the judge's decision biased. Complainant stated that the judge did not remember telling defense counsel at the prior hearing not to wait for the Qualified Medical Evaluator (QME) but to pay the temporary disability. Instead, the judge stated that the judge would never have said such a thing and complainant was accused of lying. Complainant acknowledges that the only thing she may have misunderstood was that it might have been a recommendation and not an order.

However, in addition to accusing complainant of lying and embarrassing complainant in front of everyone, the judge allegedly spoke rudely to complainant. The complainant approached the bench and handed letters from doctors to the judge, complainant stood there while the judge read the letters and the judge, in a harsh and loud voice yelled at complainant to "sit down."

Complainant appeared previously at an October 9, 2007 MSC before the judge regarding temporary disability. Complainant presented evidence and the judge told the defense attorney that upon receipt of complainant's medical records, if there was no evidence found that the psych disability was caused by non-work causes to not wait for the QME but to pay complainant temporary disability. At the conference, complainant presented evidence from various treating doctors that stated they were noticing depression as a result of chronic pain from the work injuries.

The Committee concluded that this complaint should be investigated.

**3.** A hearing representative complained the judge violated applicant's ADA confidentiality by having ex-parte communications in violation of Canon 3B(7) and failed to dispose of judicial matters fairly, promptly, and efficiently in violation of Canon 8. Complainant alleges that the judge failed to disclose the judge's temporary assignment as the Presiding Judge, made false accusations in order to clear the judge's calendar, intentionally delayed an expedited hearing due to the judge's staff's error, and suppressed information of the ethics complaint against the judge. Complainant also alleges that the judge's participation in a continuing education program for Qualified Medical Evaluators (QMEs) as evidence of the judge having formed or expressed an unqualified opinion or belief as to the merits of the case.

Complainant made a disability accommodation request to change venue from one district to another. This request was denied but the client was allowed to appear telephonically. The matter came before another judge who eventually granted the change of venue but the expedited hearing was taken off calendar. The expedited hearing was eventually rescheduled to February of 2012 with a 10:30 a.m. start time as a disability accommodation. The complainant emailed concerns to the judge's secretary that the new time was not showing up in Electronic Adjudication Management System (EAMS) and that complainant also

needed to subpoena witnesses. The judge informed the secretary that the communication was an improper ex parte communication that the defendant should get a copy of the email, that the court does not subpoena witnesses, but that blank signed subpoenas are available. The judge also instructed the secretary that due to the number of witnesses, the expedited hearing should be converted to a status conference so that parties can discuss which witnesses are to appear and that the case would be reassigned to another judge because this judge would not be hearing trials for the foreseeable future.

As a result, complainant filed a complaint with the presiding judge. At that time, she complained that the judge failed to comply with the disability accommodations and was now biased by providing confidential information to defense and making allegations about complainant's conduct which were not true. However, it turned out that the presiding judge was no longer the presiding judge and that the judge whom this complaint is made against was the acting presiding judge and thus aware of the ethics complaint. Complainant alleges that the judge intentionally delayed the conducting of an ethics investigation.

The matter eventually came before this judge for a hearing in February of 2012 wherein complainant alleges the judge failed to disclose the conflict of interest (appointment as acting Presiding Judge) and failed to disclose that there was an ethics complaint against the judge.

The Committee concluded that this complaint should be investigated.

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

1. An unrepresented applicant complained the judge is not enforcing the judge's own orders. The complainant alleged that the defendant was ordered to pay medical mileage and for medications. The complainant alleged defendant failed to pay for medical mileage and has not authorized the medications.

2. An unrepresented applicant complained that the judge blocked access to the court and discriminated against complainant based upon disability and diligence. Complainant alleged that by failing to provide counsel and by changing and misinterpreting the facts, complainant's case was prejudice.

## Complaints of Misconduct Filed with the Ethics Advisory Committee

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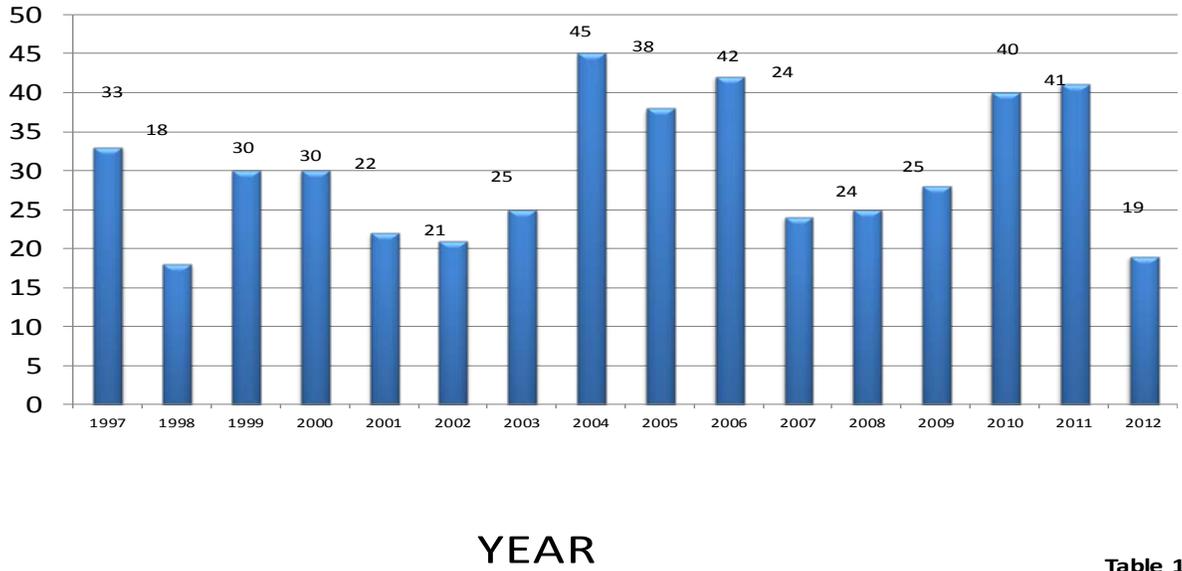


Table 1

**2012  
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

**VACANT POSITION**

Former Applicants' Attorney  
Workers' Compensation Law

**DWC STAFF**

**Richard Newman**

Chief Judge

**Karen Pak**

DWC Attorney

**Ursula Jones**

Adm. Assistant