

**Workers' Compensation Ethics Advisory Committee
Annual Report, 2017**



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Table of Contents

I.	The Ethics Advisory Committee: A Profile	2
A.	The Committee’s Function	2
B.	Committee Membership and Meetings	2
II.	Complaint Procedures.....	3
A.	Filing a Complaint	3
B.	Investigation by the Chief Judge or Administrative Director	3
III.	Complaint Digest	4
A.	Complaint Statistics for Calendar Year 2017	4
1.	Workers’ Compensation Administrative Law Judges.....	4
2.	Complaints	4
3.	Complainants.....	5
B.	Description of Complaints and Actions Taken	5
1.	Complaints Resolved in 2017 (31 total).....	5
2.	New Complaint Pending Ongoing Investigation (1 total).....	18
3.	New Complaints Pending Consideration (2 total).....	18
IV.	Appendices.....	20
A.	Number of Misconduct Complaints Filed with the EAC, 2003-2017	20
B.	Committee Membership and Staff	21
C.	Acronyms.....	22

I. The Ethics Advisory Committee: A Profile

A. The Committee's Function

The Workers' Compensation Ethics Advisory Committee (EAC or committee) is a state committee independent of the Division of Workers' Compensation (DWC or division). The EAC's authority and duties are set forth in the California Code of Regulations (CCR), Title 8, sections 9722 through 9723.

As civil servants, workers' compensation administrative law judges (WCALJs or judges) are not subject to review by the California Commission on Judicial Performance, the agency responsible for investigating misconduct complaints against supreme, superior, and appellate court judges. Instead, it is the EAC that monitors and reviews complaints of judicial misconduct filed against WCALJs.

The EAC meets at regular intervals to review complaints. If a complaint warrants a formal investigation, the committee recommends investigation to the Director and the Chief Judge (CJ).

B. Committee Membership and Meetings

Pursuant to CCR, Title 8, section 9722, the EAC is composed of nine members, each appointed by the DWC administrative director for a term of four years. Reflecting the various constituencies within the California workers' compensation community, the EAC consists of the following:

- 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 (WCAB) and who usually represented insurers or employers
- An attorney who formerly practiced before the WCAB and who usually represented applicants (injured workers)
- A presiding judge (PJ)
- A judge or retired judge
- Two members of the public outside the workers' compensation community

The committee is assisted in carrying out its function by an attorney and secretary on the DWC staff.

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

II. Complaint Procedures

A. Filing a Complaint

Anyone may file a complaint with the EAC. Complaints may be submitted anonymously but must be in writing. Typically, a complaint is submitted in the form of a letter from an injured worker, attorney, or lien claimant (i.e., medical provider) who has been a party to a proceeding before a WCALJ, and the complaint alleges ethical misconduct by that judge.

On receipt of the complaint, the EAC opens a case, and the DWC sends a letter to the complainant acknowledging that the complaint was received by the committee. Each complaint that alleges misconduct by a judge is formally reviewed by the EAC. To ensure the objectivity of the reviewing members, the names of the complainant, WCALJ, witnesses, and the DWC office where the alleged misconduct occurred are redacted from complaint copies.

A complaint that fails to allege facts that constitute WCALJ misconduct is forwarded to the CJ with a recommendation that no further action be taken. In such a case, the complainant is advised in writing that the EAC considered the complaint, found that no misconduct was either alleged or established, decided that no further action was appropriate, and closed the file.

B. Investigation by the Chief Judge or Administrative Director

When a complaint makes allegations that, if true, would constitute misconduct by a WCALJ, the EAC recommends that the CJ or Administrative Director conduct an investigation. After the investigation is complete, the EAC is briefed on the findings and determines whether an ethical violation occurred. If no ethical violation is found, the EAC recommends no further action. If the EAC finds an ethical violation, it recommends corrective action by the CJ. Complainant is advised in writing that appropriate corrective action has been taken and that the matter has been closed.

Any disciplinary action taken against a WCALJ by the CJ or Administrative Director is in the form required by Government Code section 19574 or 19590(b). The right of the CJ or the Administrative Director under CCR, 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 CJ or the Administrative Director and the 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 2017

1. *Workers' Compensation Administrative Law Judges*

The DWC has 22 district office locations, each with a PJ, as well as 2 satellite offices. As of December 31, 2017, the DWC had authority over 169 active judges, including 147 serving judges and 22 PJs.

2. *Complaints*

The EAC's caseload consists of complaints still pending at the end of the prior year and newly filed complaints. The total caseload for 2017 was 34 complaints. (See Table 1.)

Table 1. 2017 Complaint Caseload

2016 complaints pending ongoing investigation	9
2016 complaints pending consideration (filed after the last 2016 meeting)	5
New complaints filed	20
Total complaints	34

In calendar year 2017, the EAC considered and resolved 14 complaints from 2016 – 9 pending ongoing investigation (meaning that an investigation was requested and did not conclude by the end of the year) and 5 pending consideration (meaning that the complaint was filed after the last meeting of the year). Of the 5 complaints pending consideration, 1 led to an investigation. Of 20 new complaints received in 2017, the EAC considered 18 and resolved 17. Of those considered, 7 resulted in investigations, 6 of which were concluded. A total of 31 complaints were resolved. One complaint is pending ongoing investigation, and 2 are pending consideration. (See Table 2.)

The complaints set forth a wide variety of grievances. A large proportion alleged legal error not involving judicial misconduct or expressed dissatisfaction with a judge's decision. Of the 31 resolved complaints, 5 resulted in findings of judicial misconduct for which the committee recommended further action by the CJ or the administrative director. (See Table 2.)

Table 2. 2017 Disposition of Complaints

2016 complaints considered	14
Investigations filed based on 2016 complaints	1
New complaints considered	18
Investigations filed based on new complaints	7
Total complaints investigated	8
2016 complaints resolved	14
New complaints resolved	17
Total complaints resolved	31
Findings of no misconduct	26

Findings of misconduct	5
New complaints pending ongoing investigation	1
New complaints pending consideration (filed after the last 2017 meeting)	2

3. Complainants

The workers' compensation community is composed of a variety of groups, including but not limited to injured workers, attorneys, hearing representatives, claims administrators, and lien claimants (medical providers). Many types of complainants filed new complaints during 2017, but unrepresented employees made up by far the largest group. (See Table 3.)

Table 3. Complaints Filed in 2017, by Type of Complainant

Employees represented by attorneys	3
Employees not represented	9
Employers	0
Applicant attorneys	2
Defense attorneys	3
Hearing representatives	3
Claims administrators	0
Lien claimants (medical providers)	0
Attorneys representing lien claimants	0
Anonymous	0

B. Description of Complaints and Actions Taken

1. Complaints Resolved in 2017 (31 Total)

(1) Complainant, an unrepresented applicant, alleged that on November 2, 2015, complainant had appeared in court before the judge with the defense attorney and an interpreter. On that day, before the judge arrived at his desk, the defense attorney pulled out a packet and an envelope and placed them on the judge's desk. When the judge arrived at his desk, complainant tried to explain, through the interpreter, that the defense attorney had placed the things on the desk. Complainant asked the judge if the judge would tell complainant what information was in the packet. The judge then became upset and responded that complainant had the right to know some of the information but not all. Complainant alleged that the judge then got up from the desk and walked over to where complainant was sitting with only the packet in hand, not the envelope. The judge left the packet next to the interpreter. Complainant complained that the only thing complainant was looking for was transparency. Complainant alleged that information that was supposed to be provided to the court did not appear. Complainant believed that someone removed some information intentionally. In addition, complainant alleged that the judge had admonished complainant for filing the documents in Spanish.

The EAC concluded that the complaint should be investigated. Based on 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) Complainant, an unrepresented applicant, alleged that, in complainant's absence, the defense attorney had told the judge that complainant was an "adjuster abusing the system." Complainant claimed that the judge had been biased by this statement. Complainant also alleged that the judge had accused complainant of making false claims of injury and yelled at complainant. The judge had denied complainant's rights to benefits and to view the case file.

The EAC concluded that the complaint should be investigated. Based on 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) Complainant, a represented employer, alleged that the judge had been biased in favor of the applicant because the judge had not allowed the employer in the hearing room and the judge had changed the facts to fit the judge's desired ruling. Complainant complained that the judge had made comments to discredit the video evidence that was presented in the case. Specifically, the judge had said that the clock on the judge's home VCR was never right, so the judge was not going to believe the time stamp on the security videos proving that the accident had not happened. The judge did not ask how the time stamp was put on the videos and was only concerned with discrediting the evidence.

The EAC concluded that the complaint should be investigated. Based on its review of the investigation, the committee did not identify any violations of the California Code of Judicial Ethics or the division's ethics regulations.

(4) Complainant, an unrepresented applicant, alleged the following:

The judge lost the evidence of the timeliness of the appeal. This was verified by opposing counsel, and the judge angrily acknowledged that the evidence was lost.

The judge questioned the authenticity of complainant's primary treating physician's signature despite the fact that the same signature had been on the prescriptions every six weeks for 22 years. The judge asked, "Why isn't he here?" According to complainant, both complainant and the doctor lived in Oregon, and the doctor had not been summoned to be present.

The judge criticized complainant's lack of legal and procedural knowledge. Complainant had received a J.D. (Juris Doctor) but never actually practiced law and had been on inactive status with the California State Bar since 1982.

The judge knew the parties were discussing settlement but failed to facilitate the discussion.

The judge entered the court on one of the appearance days and said to complainant, "I looked you up." Complainant felt this statement was purposefully intimidating and unethical.

On another occasion at the start of trial, the judge entered the room and, again looking at complainant, said that a new case had come down that morning that did not look good for

complainant. Complainant asked what the name of that case was, and the judge refused to say. Complainant claims this shows bias, prejudice, and a miscarriage of justice.

The judge criticized complainant's evidence for not being "clean" because it had whiteout on it and told complainant to come back after lunch with a clean copy.

On another trial date, complainant pointed out a mistake in the trial minutes, and the judge angrily said that the stenographer never made mistakes. When complainant pointed to the transcript, the judge agreed that the minutes could be corrected. It was obvious that the judge was not pleased about being corrected.

Complainant claimed that the hearing minutes dated April 26, 2016, showed that opposing counsel was allowed to interact with the judge regarding the case without complainant being present.

Complainant complained that, when the stenographer was present at the end of the day, the judge would constantly go on and off the record, to the point that it was hard to keep track of anything. In addition, the stenographer was present for such a short amount of time that the majority of the trial was never recorded, including constant verbal attacks on complainant.

Complainant claimed that the judge lost very important evidence that proved that complainant's treatments had been approved to dates beyond the denial date.

After four long trial appearances, the judge had not given complainant an opportunity to completely present the case. Complainant claimed that a sixth day of trial was needed because complainant had not been allowed to make any comment in full without an abusive remark from the judge. The judge had constantly interrupted complainant, usually in an "attacking, abusive" manner so that little got accomplished.

Complainant noted that the judge was previously a private defense attorney, which brought into question the judge's ability to be impartial. The judge's lack of impartiality was evidenced by the judge's repeated conversations with opposing counsel without complainant present.

The EAC concluded that the complaint should be investigated. Based on 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) Complainant, an unrepresented applicant, alleged that the judge had proceeded with trial despite objections by complainant. Complainant, who had recently undergone surgery, requested a postponement due to pain and was denied.

Complainant appeared at trial and explained that complainant objected to being forced to appear. The judge told complainant, "I don't care, and we are here to have a trial, and we are having a trial."

Complainant also told the judge that someone at the court had removed papers from complainant's file and then lost the papers for years, and that complainant had not been allowed access to them. Complainant asked the judge if the judge had the lost papers. The judge then looked at complainant angrily, got up, walked to the door, grabbed a small box, and slammed it

down on the desk in front of complainant, then, without saying a word, went back and grabbed a second box and slammed it down on the desk in front of complainant.

Complainant told the judge that complainant was in so much pain that complainant could not talk and that, if the judge forced complainant to stay, the judge would have to call an ambulance. The judge stated that they were having a trial. Complainant said that complainant had to go and left.

Complainant submitted an objection to the trial based on the fact that no documentary evidence from complainant had been considered. The judge denied the objection and sent the report to be rated.

Complainant then received a new trial date, which complainant understood meant a new opportunity to submit documents. Complainant arrived at the hearing room and saw two attorneys. Complainant had documents ready to submit, but the judge refused to accept any documents. Complainant objected.

The judge asked the rater to come into the room and swore in the rater. Complainant requested that the rater swear on a Bible, but the judge refused to allow it. Complainant complains that, because the person claiming to be the rater did not have an ID, complainant could not know whether the person actually was the rater. Complainant asked the rater a question, but the judge answered instead.

Complainant then asked about the judge's qualifications, and the judge got upset and started "going off" on complainant.

The EAC concluded that the complaint should be investigated. Based on 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.

(6) Complainant, an unrepresented applicant, alleged that the judge, the insurance company, and three attorneys had taken advantage of complainant's mental state and disability by making complainant sign papers that complainant had not known much about. Complainant had thought signing the papers was the procedure necessary for receiving settlement money.

Based on 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) Complainant, a represented applicant, alleged that the judge had been prejudiced against the complainant during trial.

Complainant complained that as soon as the judge saw complainant's spouse, before asking any other questions, the judge asked, "Do we need an interpreter?" Complainant's spouse felt insulted by being regarded as a non-English-speaking person based solely upon the spouse's appearance and perceived race.

Also, during trial, complainant suffered a cramp just below the right knee. Complainant did not bend fully over to rub the leg. However, the judge noted in the minutes that complainant was able to bend fully over while sitting in the chair to rub the ankle and leg. Complainant claimed that this statement was false.

During complainant's testimony, the judge constantly objected. Complainant said that the judge was acting as the defense attorney and therefore was prejudiced against complainant in favor of the insurance company.

During trial, complainant asked the judge's permission to stand up, and the judge responded in a very sarcastic manner, "You are not chained to the chair." Complainant asked again out of respect, and the judge responded, "I said you are not chained to the chair." Complainant felt intimidated and reluctant to ask again.

At several points during the trial, the judge stopped the proceedings and requested to go off the record. Complainant complained that, with arms flailing, the judge used a loud voice directed at complainant and complainant's attorney.

After complainant finished testifying, complainant's spouse was called to testify. The judge encouraged the defense attorney to object. On at least three occasions, the judge reminded the defense attorney of the right to object to the spouse's testimony.

Finally, the judge had vacated submission of the case for decision and instead ordered further development of the record.

The EAC concluded that the complaint should be investigated. Based on its review of the investigation, the committee identified violations of Canons 2A, 3B(7) and 3B(8) of the Code of Judicial Ethics and recommended to the CJ that appropriate action be taken.

(8) Complainant, an applicant's attorney, complained that the judge was prejudiced against the attorney's firm. The judge stopped direct examination of the applicant by the applicant's attorney and demanded to know whether the attorney was following a script, or asking questions that had been written down earlier. The attorney answered in the affirmative, and the judge became angry and asked how much longer the direct examination was going to take. At one point, the judge said the testimony would be able to continue "when the associate is done with the script." The judge made this statement to indicate continued displeasure with the fact that the attorney had written down the direct examination questions.

During the trial, the judge often instructed the court reporter to stop recording the proceedings while the judge went off record, at which time the judge would scold the applicant's attorney in front of the applicant and the defense. The judge's diatribes concerned what the judge thought the applicant's firm had done incorrectly in the past. The attorney continually reminded the judge that the attorney could not answer for any actions by the firm about which the attorney had no firsthand knowledge. The judge's diatribes led the defense attorney to allege improper notice in other cases the defense attorney had with the applicant's firm, cases that the defense attorney felt showed a pattern of improper notice relevant to the case at bar.

The judge's disrespect for the applicant's counsel was so overt that it carried over to the court reporter, who stopped the direct examination of the applicant to tell the judge, "I can't do this because the applicant's attorney is not even asking a question." Apparently, the court reporter thought the attorney's line of questioning was objectionable and, rather than allow the defense attorney to object, took it upon herself to do so. The judge failed to admonish the court reporter and, instead, demanded that the applicant's attorney get to the point. The attorney states that the

judge's conduct showed prejudice against the attorney's law firm and all the applicants represented by the firm. The judge failed to be dignified and courteous and to uphold the integrity of the judiciary.

Complainant also complained of impropriety by the same judge in the following cases:

In the matter of E.H.

The case was set for an expedited hearing. The parties were able to resolve the matter after meeting at 8:30 a.m. The attorneys waited for the judge until 9:30 a.m. Because the judge did not arrive, the attorneys went to the PJ. The PJ inquired as to the reason the attorneys had come and learned that the judge had not arrived by 9:30 a.m.

In the matter of P.K.

On the third day of trial in this case, the applicant's attorney arrived late to the courtroom because the attorney had dropped the case file and papers had been scattered all over the parking lot. Without first determining that the applicant was in the waiting room, the judge went on the record at 8:40 a.m., issued a notice of intent to dismiss the case, and invited the defense attorney to file a motion for sanctions. The attorney immediately filed an opposition to the petition, and the judge put the matter back on calendar for additional trial dates. All this achieved was delay, denying the applicant the right to a speedy trial. It appeared that the judge was retaliating against the applicant's attorney for informing the PJ that the judge had been one hour late in the matter of E.H.

During the first couple of days of this trial, the judge was critical of the applicant's attorney and acted unprofessionally. The applicant's attorney had trouble asking questions in a way that the judge approved. The defense attorney repeatedly objected, and the judge also objected. Finally, the judge slammed both hands down on the bench (which the judge did often) and said, "That's it, in my chambers now!" When they went into the judge's chambers, the judge started yelling at the applicant's attorney about leading the witness. Sometime during the tirade, the judge realized that the judge had left the defense attorney in the courtroom and went out to get the defense attorney.

The applicant's attorney brought two witnesses to testify before the applicant. The judge belittled the attorney for doing this and lectured the attorney about the order of witnesses.

During the trial, the defense attorney advised that the defense would change the employer representative at trial to the person whose discriminatory activities had given rise to the 132(a) claim. This was an attempt to intimidate the applicant. When the applicant's attorney objected, the judge said that the defense was entitled to an employee representative. When the attorney tried to explain the situation, the judge jumped up, spun around, flew into the judge's office, slammed the door, and did not come back for at least five minutes.

In the matter of D.L.

The applicant's attorney filed a petition to vacate the trial date and develop the record. While arguing over this petition, the applicant's attorney was interrupted by the defense attorney, and

the applicant's attorney said, "Excuse me, can I speak?" The judge then screamed "That's it!" and slammed the judge's hands on the desk, slammed the evidence packet shut and shoved it across to the applicant's attorney, and yelled, "Get out!" The judge ushered the attorney out of the courtroom and slammed the door behind the attorney.

When the attorney came back to the courtroom, the attorney's briefcase was gone. The attorney later learned that the judge had taken it back to the judge's office and given it to the judge's secretary. Complainant further complained that the judge spent 45 minutes working on other cases and then came back, took the matter off calendar, and ordered the parties to further develop the record.

In the matter of G.O.

In this matter, the applicant's attorney argued that the report of the panel qualified medical examiner (QME) did not constitute substantial medical evidence. The defense argued that the report of the primary treating physician did not constitute substantial medical evidence.

The judge stated that the case might be dismissed if the applicant's attorney tried to set it for trial. When the parties failed to reach an agreement, they went to the judge's office and told the judge they were ready to set the matter for trial. The judge yelled, "You don't say when you're ready; I decide if the case is ready for trial." Complainant complained that, rather than develop the record, the judge essentially forced the parties to settle based on the medical reports to which they objected.

In the matter of L.I.

When the parties appeared for trial, the judge brought up other cases in which the applicant's attorney's firm had filed petitions and the judge had not liked the way in which the firm had drafted its pleadings.

In the matter of P.S.

The applicant's attorney planned to use a videotaped deposition in lieu of live testimony. Defendant claimed not to have received notice of the deposition. The judge indicated that live court testimony was necessary. When the applicant's attorney explained that depositions were accepted routinely for out-of-state applicants, the judge threatened to impose sanctions on the applicant's attorney for violating the obligation not to mislead the court.

In another instance, during a diatribe, the judge pointed at the judge's chest and said, "I have a lot of power."

The EAC concluded that the complaint should be investigated. Based on its review of the investigation, the committee identified violations of the Code of Judicial Ethics and recommended to the CJ that appropriate action be taken.

(9) Complainant, a hearing representative, alleged that the judge was practicing law. Specifically, complainant alleged that the judge shared a law firm with someone who was an active member of the bar and did business with a firm whose name included the judge's last name. The law office that had the judge's last name took the role of representative for workers'

compensation matters utilizing the Department of Industrial Relations' uniform assigned name. Complainant stated that unusual behavior of the judge "felt like competitive behavior," leading complainant to request an investigation into whether the judge was actually practicing workers' compensation law.

The EAC concluded that the complaint should be investigated. Based on its review of the investigation, the committee identified violations of the Code of Judicial Ethics and recommended to the CJ that appropriate action be taken.

(10) Complainant, an unrepresented applicant, alleged that the judge had allowed the defense attorney to change complainant's evidence while it was in the judge's hands. On the day of trial, the judge had a deposition transcript belonging to complainant. The defense attorney claimed to have the original transcript and was therefore allowed to exchange it for complainant's transcript.

The EAC concluded that the complaint should be investigated. Based on 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) Complainant, the spouse of an unrepresented applicant, alleged that the judge had committed fraud in the proceeding. Complainant alleged that the court documents demonstrated that the judge had showed prejudice, abuse of discretion, and/or willful ignorance of the law in facilitating the "nut and slut game" against the injured worker.

Court documents indicate that defendant filed an application for adjudication of claim on behalf of the injured worker. The worker sought to have the application dismissed. Complainant complained that the judge had usurped the injured workers' civil right to dismiss one's own case. Complainant objected to defendant's petition seeking to have the injured worker reopen the case.

Based on 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) Complainant, an unrepresented applicant, alleged that medical reimbursement money had been paid to the judge. Complainant claimed that liens for self-procured medical bills had been filed by complainant's former attorney in 1988. After 29 years, complainant had not yet been reimbursed by defendant. Complainant believed that several judges had stolen complainant's money and that complainant's attorney had signed a secret agreement with the defense attorney that an agreed medical evaluator would decide disputed medical issues. Complainant complained that the judge had ordered complainant to undergo a medical examination by a doctor chosen by the defense. The judge had suspended all medical treatment and benefits for two years, and complainant had been unable to obtain psychiatric treatment and become "psychotic." The attorney had not filed an appeal because "it was planned carefully."

Based on its review of the complaint, the committee did not identify any violations of the California Code of Judicial Ethics or the division's ethics regulations.

(13) Complainant, an unrepresented applicant, alleged that the judge had taken over three weeks to authorize the rating of the most recent QME report. Complainant claimed that complainant had had over 25 hearings before the judge. The judge was biased and did not have the injured

worker's interests in mind. The judge only worried about what could be done to prolong complainant's cases. Complainant complained of becoming homeless again while waiting for a rating for over two years. Complainant would like a new trial because complainant was intoxicated at the trial, and the judge knew and yet decided in favor of the attorneys and insurance carriers. Complainant had been in front of the judge for 18 years, and the judge had professed dislike for complainant and complainant's continued presence.

Based on its review of the complaint, the committee did not identify any violations of the California Code of Judicial Ethics or the division's ethics regulations.

(14) Complainant, an unrepresented applicant, had a complaint related to the attorney who represented the employer in a civil matter (not with respect to the workers' compensation claim). Complainant alleged that the defense attorney's wife, who was a WCAB judge, had encouraged a California Highway Patrol (CHP) officer to harass complainant as complainant engaged in lawful business. A CHP lieutenant advised complainant that this officer would not have approached complainant unless told by a judge to do so. Complainant asked for the judge's name, but the officer declined to provide it. Complainant did not know this judge.

Based on 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) Complainant, a represented applicant, alleged that complainant had been told by complainant's attorney that the judge had accused complainant of "stalking" the judge on July 21, 2016. Complainant did not know the face of this judge or even the judge's gender. The judge had falsely accused complainant, resulting in an incorrect action requiring complainant to speak in front of the security person. Complainant complained that this was wrong and discriminatory.

Based on its review of the complaint, the committee did not identify any violations of the California Code of Judicial Ethics or the division's ethics regulations.

(16) Complainant, a defense attorney, alleged that the judge had been rude, biased, discourteous, and condescending. In chambers, the judge corrected the applicant attorney's errors respectfully, but with complainant's errors, the judge rolled his eyes and made subtle insults, such as asking, "How many trials have you done?" and stating, "It's amazing some people can read." The judge continually rolled his eyes and made rude facial gestures toward complainant but not toward the applicant's attorney. The judge got the witness testimony wrong and made an "asked and answered" objection, and then made an angry face when complainant politely corrected the judge. Once, when complainant was in another judge's courtroom, the judge came up close to complainant, looked at complainant's leather motorcycle jacket, and shook his head.

The EAC concluded that the complaint should be investigated. Based on 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.

(17) Complainant, an unrepresented applicant, alleged that complainant had been treated unfairly at a hearing on January 31, 2017. The judge did not wait the two or three minutes for the interpreter to arrive to begin the conference. Also, complainant did not request that the matter be taken off calendar, nor that the issue be "joint," as indicated in the hearing minutes. The issue of

taking the matter off calendar was never mentioned with either the judge or the information and assistance (I&A) officer.

Complainant complained that he did not understand most of the conversation between the defense attorney and the judge and did not have the chance to watch or discuss with the judge what was being marked on the conference statement. Complainant complained about not having an opportunity to speak to the judge and about the I&A officer. The judge did not provide complainant an opportunity to read complainant's requests. While complainant was taking out the written statement from his bag, the judge handed the hearing minutes to the defense attorney and told the attorney to give a copy to complainant, concluding the hearing.

The EAC concluded that the complaint should be investigated. Based on its review of the investigation, the committee did not identify any violations of the California Code of Judicial Ethics or the division's ethics regulations.

(18) Complainant, an unrepresented applicant, alleged that the judge had been unprofessional at a hearing. Complainant appeared at a hearing with an interpreter, an Employment Development Department representative, and the defense attorney. After the hearing, complainant stood up to leave the room and held the door open for everyone else to leave. When complainant turned around to thank the judge, complainant saw that the defense attorney was pointing two fingers toward the judge and whispering to the judge. The judge then allegedly saw complainant and looked disturbed because complainant had caught the judge in an improper act. Complainant did not know what was going on behind complainant's back but thought the judge's behavior was unprofessional and wanted an investigation into the matter.

Based on its review of the complaint, the committee did not identify any violations of the California Code of Judicial Ethics or the division's ethics regulations.

(19) Complainant, a lien hearing representative, alleged that the judge had engaged in a general practice of denying lien claimants due process and a fair hearing.

Complainant complained that a notice of intent to dismiss a lien was filed because complainant had failed to appear at the October 21, 2016, hearing due to an illness. The notice was issued that day and the hearing was continued to February 16, 2017.

At the February hearing, the matter was taken off calendar to give complainant an opportunity to respond to the notice of intent to dismiss. However, later in the day, before a period of time adequate for response had elapsed, the judge issued a final order dismissing the lien. The order noted that no response from the lien claimant appeared in EAMS and that the judge was dismissing the lien because excuses tendered by email on October 21, 2016, were inconsistent with each other and not credible.

Complainant filed a petition for removal and a petition for reconsideration on the order dismissing the lien. The judge's report and recommendation on the petition for removal indicated that the parties had offered differing accounts of their interaction outside of the courtroom regarding service of the notice of intent. Complainant wanted to proceed on the merits of the lien, denying receipt of the notice of intent to dismiss despite the proof of service presented by the defendant. Complainant was not willing to proceed on the issue of good cause to dismiss the

lien, as complainant would present testimony as to non-receipt in defense of any motion to dismiss. Defendant advised that the remaining lien might or might not resolve.

The judge advised the parties that, if the defendant was seeking dismissal, complainant would be allowed to present evidence of non-receipt of the notice to dismiss, and that all issues regarding the last remaining lien would be heard together. The judge denied the request to issue an order dismissing the lien and advised that the other remaining lien would be heard if not settled, and the matter was taken off calendar. Complainant objected to the matter going off calendar.

The petition for removal was denied on appeal.

Based on 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) Complainant, an unrepresented applicant, complained that the judge should be taken off of complainant's case because the judge was prejudiced against complainant. Complainant complained to the PJ that the judge had behaved unethically and should recuse.

Complainant claimed that, at the first hearing, the judge ignored the fact that the defense attorney had lied to the judge by omission. The judge allowed the hearing to go forward despite complainant telling the judge that the defense had used fraudulent or perjured verification that falsely stated that the defense attorney represented the employer when in fact the attorney represented the insurance company.

Complainant complained that the judge allowed the defense attorney to have hearings on two petitions without filing a declaration of readiness (DOR), but that, when complainant asked for petitions to be heard, the judge told complainant to file a DOR. During the hearing, the judge said that the judge had been doing this for more than 30 years and could do whatever the judge wanted to do. The judge knew that a complaint had been filed against the judge and still would not recuse. Complainant did not believe complainant would get a fair hearing because of the judge's attitude toward complainant. Complainant did not know why the judge had such disdain for complainant.

Based on 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) Complainant, an attorney, alleged unwelcome attention and conduct by the judge.

The EAC concluded that the complaint should be investigated. Based on its review of the investigation, the committee identified violations of the Code of Judicial Ethics and recommended to the CJ that appropriate action be taken.

(22) Complainant, an unrepresented applicant, alleged that the judge had expressed prejudice and harassed complainant with threats and sanctions. Complainant complained of having no hearings set despite filing two DORs. Complainant received a notice from the judge that the judge would impose sanctions against complainant for engaging in ex parte communications even though complainant had sent the same documents to opposing counsel. The judge assisted the defense

by refusing to discuss anything that had happened 20 years ago. Complainant questioned why complainant could not get a court date at this district office.

Based on 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) Complainant, a represented applicant, complained that the judge had violated the Code of Judicial Ethics at a hearing on May 3, 2017, by belittling and yelling at complainant's attorneys and treating them like children. The judge refused to allow complainant's attorneys to enter evidence and allowed the defense to ask questions that complainant's attorneys were denied. The judge's constant yelling and getting upset at one of complainant's attorneys made complainant think that the judge had no respect for the attorney or for women generally. When the attorney asked the judge if the attorney could submit a trial brief, the judge said that it could be submitted but that the judge would not read it. The judge treated complainant's case as if it had no value, and complainant felt like the judge had already made a decision on the case without all the facts.

The EAC concluded that the complaint should be investigated. Based on 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.

(24) Complainant, a medical lien representative, alleged that the judge had failed to comply with Canon 3 by declining to voluntarily recuse when the judge found out that the judge's spouse had previously represented defendant in the pending lien matter. The parties and the judge first learned that the judge's spouse had been the attorney in the matter at a hearing on March 13, 2017, after organizing for trial. Complainant discussed this matter with his client over the lunch hour, and, when the hearing reconvened, complainant requested and was granted leave to file a petition for disqualification. Although the judge asked the parties to waive the disqualification, the lien claimant was not willing to do this, so the judge ordered the matter off calendar to allow complainant to file the petition. The petition indicated that the judge's spouse could be called as a material witness in the matter. The WCAB granted the petition for disqualification.

The EAC concluded that the complaint should be investigated. Based on its review of the investigation, the committee identified violations of the Code of Judicial Ethics and recommended to the CJ that appropriate action be taken.

(25) Complainant, an unrepresented applicant, alleged that the judge had harassed and treated complainant badly. The judge brought a CHP officer to intimidate complainant and disallowed an interpreter. The judge also yelled at complainant to stop talking and slammed the judge's hands on the desk. The judge allegedly screamed at complainant to go to the doctor chosen by the judge. Complainant refused and told the judge to stop harassing complainant. The judge told complainant to sit down or the judge would get the CHP officer to force complainant to sit down.

The EAC concluded that the complaint should be investigated. Based on its review of the investigation, the committee did not identify any violations of the California Code of Judicial Ethics or the division's ethics regulations.

(26) Complainant, an unrepresented applicant, alleged that, although complainant's first appearance before the judge was relatively pleasant, the second appearance was horrible. The

judge was unprofessional and threatening, and complainant could not make out what the judge wrote on the hearing minutes. The case number was incorrect and the judge gave complainant only 30 days to complete years of mileage and prescription forms for reimbursement. The judge would not even look at the hospital bills resulting from complainant's reaction to Celebrex. The amount of \$37,000 should have been paid by workers' compensation but was billed to complainant's private health insurance. Complainant did not want this judge on the case.

Based on its review of the complaint, the committee did not identify any violations of the California Code of Judicial Ethics or the division's ethics regulations.

(27) Complainant, an applicants' attorney, alleged that the judge had violated Canons 1, 2A, and 3(B)(4) by shouting at complainant to ask the client about the client's employment status with the defendant employer. While shouting, the judge also snatched the pre-trial conference statement out of complainant's hands. This interaction occurred in front of other attorneys and opposing counsel, leaving complainant feeling shocked, embarrassed, and confused.

After complainant spoke with the client about the judge's request, the judge informed complainant that the judge had gotten angry because complainant should not have told the judge to ask the client the question himself. Complainant informed the judge that complainant believed the judge had misheard and that complainant had not told the judge to ask the client himself. Despite having been informed that the judge may have misheard what complainant had said, the judge memorialized in the notes attached to the hearing minutes that complainant had said, "I don't know. You should go ask him yourself." Complainant felt that if any other judge or party were to review the notes, complainant's client would be unduly prejudiced. Accordingly, complainant wrote a letter to the judge memorializing complainant's memory of events at the hearing.

The EAC concluded that the complaint should be investigated. Based on 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.

(28) Complainant, a medical lien representative, alleged that the judge had made material misstatements of fact to the WCAB in a March 6, 2017, report and recommendation. Complainant claimed that the judge had reviewed documentary evidence that conclusively established the falsity of these misstatements, but failed to correct them. It appeared that the judge had deliberately attempted to impugn the integrity of complainant by attacking complainant's credibility using false facts, thereby eroding public confidence in the integrity and impartiality of the judiciary in violation of Code of Juridical Ethics Canon 2(A). The alleged misstatements concerned the timing of emails complainant had sent to the court regarding being sick and unable to attend a conference. Also, the judge incorrectly stated the time when complainant had arrived at the hearing.

Based on 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) Complainant, an unrepresented applicant, complained that the judge had interfered with the judicial process by refusing to issue a final decision on complainant's change of venue request of

June 27, 2017. At the last hearing, the judge told complainant, “I will try your case!” In other words, the case was not going to another venue no matter what. Complainant’s petitions for reconsideration were allegedly dismissed as a result.

The judge conducted all of complainant’s trials primarily off the record and went on the record with a summary that did not include all pertinent facts. The judge took many other objectionable actions as well, but they are hard to prove as they occurred off the record. Complainant attended trial alone for confidentiality so had no witnesses.

Based on 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) Complainant, an unrepresented applicant, complained that he had been called to attend a mandatory settlement conference set by the judge with the intention of retaliating against complainant for a petition for reconsideration that had been granted in part. Complainant stated that it was “enough for the judge to make responsible of a crime,” but now the defense had retaliated, causing complainant to lose the rights to medical treatment, an interpreter, and transportation.

Based on 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) Complainant, a represented applicant, complained that the judge had caused complainant to be afraid of being unfairly treated. Complainant could not “get justice based on the truth from the judge.” Complainant claimed that the judge suggested complainant should get some money but that some would be used to satisfy child support liens.

Based on 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. *New Complaint Pending Ongoing Investigation (1 Total)*

Complainant, an applicants’ attorney, complained that, despite the fact that the applicant had been represented by competent counsel who had already explained the panel process to the applicant, the judge had become irate while walking through a compromise and release because no panel QME waiver had been included. When complainant told the judge that that complainant had never before been required to submit such a waiver on a represented case, the judge replied, “You’re full of [expletive]!” When complainant asked the judge not to use expletives, the judge said, “If you don’t like it, file a complaint.”

The Committee concluded that this matter should be investigated.

3. *New Complaints Pending Consideration (2 Total)*

(1) Complainant, an attorney, alleged that complainant had been to the courthouse four times and would have to return again for a matter which, if handled correctly, would have already been long behind the client.

On the third visit, the judge asked for complainant's trial exhibits but said that the computer was not working so they could not move forward. On the fourth visit, the trial, scheduled to start at 8:30 a.m., started at 11:40 a.m. and concluded ten minutes later. On both occasions, complainant brought the client and a witness, and they waited for over six hours with no indication from the judge why they were being forced to wait or what would happen next. Complainant claimed that, because the case was still unresolved, they would have to go back to court again.

On the third visit, the judge acknowledged that the claim was spurious. Nonetheless, the judge took no active responsibility in managing the trial or the case and instead bent over backwards for the other law firm. The judge did not act impartially, but demonstrated favoritism to the other lawyers, who regularly appeared in the judge's courtroom, and the disparity in treatment was extreme. Complainant had never witnessed any conduct by a professional as unprofessional and uncivil as that exhibited by opposing counsel, except the judge's conduct, which was even more uncivil. The judge yelled at complainant, indicated that complainant should not produce her exhibits while on the record prior to seeking their admission, insulted complainant, and humiliated complainant in front of opposing counsel. With opposing counsel, the judge smiled, talked about weekend plans, and complimented counsel's appearance. Complainant's impression was that the other side had the upper hand.

Complainant also alleged that the judge intimidated her off the record with respect to exhibits. The judge told complainant that none of complainant's exhibits was relevant and admissible but refused to provide proper authority for excluding them. When complainant asked the judge to put that position on the record, the judge demanded to know why. When complainant informed the judge that the client might appeal, the judge lost all composure and the belittlement and rage continued.

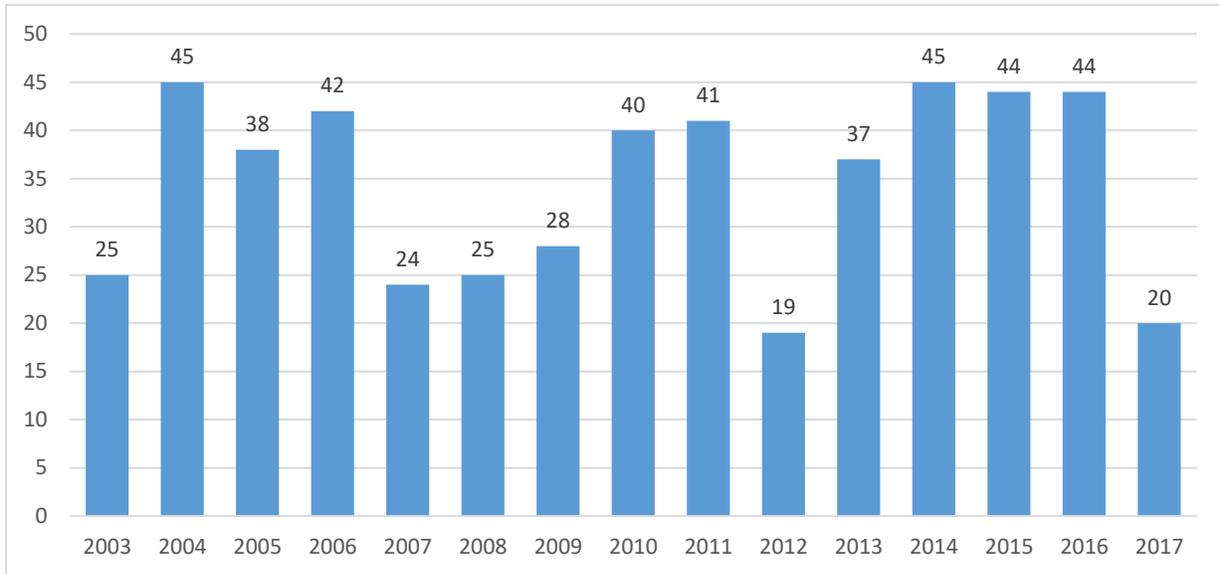
On several occasions, complainant had no choice but to ask the judge what complainant could do differently to calm the judge down and take responsibility for the uncivil atmosphere. The judge refused to respond to complainant civilly but, head in hands, told complainant repeatedly, "You just don't get it." The judge admitted to being "cranky," but was actually angry and frightening. Complainant said, "Your Honor, please tell me what the problem is so that I understand what you are trying to say to me." The judge was rude and behaved in a way that can only be described as a series of outbursts and tantrums. Having witnessed this behavior, complainant's client was embarrassed for complainant and now believes that the whole system is broken.

(2) Complainant, an unrepresented applicant, complained that the judge, without regard to complainant's opposition or resulting repercussions, had allowed complainant's attorney to withdraw. Complainant felt that the case was too complicated for complainant to handle, and obtaining a new attorney was not possible.

Complainant claimed that the judge and I&A officer misled complainant into believing that help would be readily available through the I&A officer, including help obtaining a new attorney, all of which turned out to be untrue. The judge's decision to allow the attorney to withdraw at the beginning of the settlement phase in spite of knowing full well that complainant could not handle the case was unethical and showed complete disregard for fairness.

IV. Appendices

A. Number of Misconduct Complaints Filed with the EAC, 2003-2017



B. Committee Membership and Staff

2017 Ethics Advisory Committee Members

Vacant
Chair

Hon. Joyce Cram

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

Steven Siemers, Esq.

Member Representing Organized Labor

Ellen Sims Langille, Esq.

California Workers' Compensation Institute
Representing Insurers

Hon. Jamie Spitzer

Presiding Workers' Compensation Judge
Workers' Compensation Appeals Board,
Anaheim

Jim Libien, Esq.

Former Defense Attorney
Workers' Compensation Law

Hon. Deborah Whitcomb

Workers' Compensation Judge
Workers' Compensation Appeals Board,
Salinas

Kenneth Peterson, Esq.

Former Applicants' Attorney
Workers' Compensation Law

Jim Zelko

Kaiser Foundation Health Plan
Representing Self-Insurers

Vacant

Member of the Public from Outside the
Workers' Compensation Community

Division of Workers' Compensation Staff

Hon. Paige Levy

Chief Judge

Karen Pak

DWC Attorney

Ursula Jones

Administrative Assistant

C. Acronyms

CCR	California Code of Regulations
CHP	California Highway Patrol
CJ	Chief Judge
DOR	Declaration of readiness
DWC	Division of Workers' Compensation
EAC	Ethics Advisory Committee
I&A	Information and assistance
PJ	Presiding judge
QME	Qualified medical evaluator
WCAB	Workers' Compensation Appeals Board
WCALJ	Workers' compensation administrative law judge