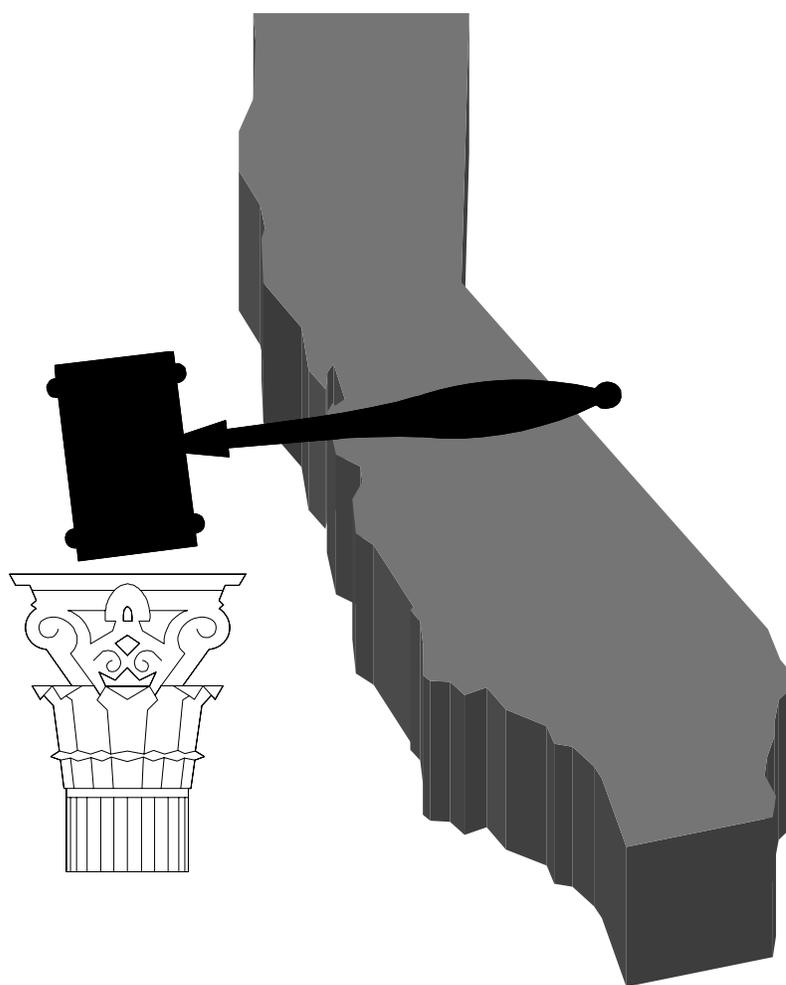


**State of California
Department of Industrial Relations**

**WORKERS' COMPENSATION ETHICS
ADVISORY COMMITTEE**



**2008
ANNUAL REPORT**

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1. The Ethics Advisory Committee: A Profile

A. The Committee's Functions

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

As civil servants, Workers' Compensation Administrative Law Judges are not subject to review by the California Commission on Judicial Performance, the agency which is responsible for investigating misconduct complaints directed at judges serving on the Superior and Appellate courts. The Committee's authority and duties are set forth in Title 8, California Code of Regulations, sections 9720.1 through 9723.

The Committee meets at regular intervals to review complaints of judicial misconduct and to recommend to the Court Administrator of the Division of Workers' Compensation (DWC) if a complaint warrants a formal investigation by the Court Administrator or Administrative Director's staff.

A. Committee Membership

Pursuant to Title 8, California Code of Regulations, section 9722, the Ethics Advisory Committee is composed of nine members, each appointed by the DWC Administrative Director for a term of four years.

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

- a member of the public representing organized labor;
- a member of the public representing insurers;
- a member of the public representing self-insured employers;

- an attorney who formerly practiced before the Workers' Compensation Appeals Board and who usually represented insurers or employers;
- an attorney who formerly practiced before the Workers' Compensation Appeals Board and who usually represented applicants (injured workers);
- a presiding judge;
- a judge or retired judge; and;
- two members of the public outside the workers' compensation community.

Committee member The Honorable Julie Conger, retired Alameda County Superior Court Presiding Judge, is currently the Chair of the Committee.

The EAC meets four times each year at the Division of Workers' Compensation Headquarters located at 1515 Clay Street, 17th Floor, Oakland, CA 94612. Although EAC meetings are open to the public, the Committee meets in executive session when it engages in the review and discussion of actual complaints, and that portion of the proceedings is closed to the public.

The Committee is assisted in carrying out its functions by an attorney and secretary on the staff of the Division of Workers' Compensation.

2. Complaint Procedures

A. Filing a Complaint

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

Persons aggrieved by the conduct of a workers' compensation administrative law judge are not limited to, or required to pursue, a complaint before the EAC. The EAC has adopted an official complaint form, and a sample is available on-line through the DWC web page. While use of the complaint form is not mandatory, its use is encouraged since the form contains helpful examples of judicial misconduct, and it advises complainants that a decision by a judge which contains legal error does not constitute the basis of an ethical violation. The complaint form contains a notice advising complainants that it is unlawful to knowingly make a false or fraudulent material statement.

Generally, a Committee case is opened with 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 Division of Workers' Compensation. After a complaint is received, the Committee's staff attorney reviews the complaint to determine if it concerns a workers' compensation administrative law judge or other DWC employee. All complaints concerning judges are entered in the official log and assigned a case number and file folder. The complainant is then advised in writing that his or her complaint has been received, and that it will be presented to the Committee at the next scheduled meeting.

Each complaint received by the EAC that alleges misconduct by a judge is formally reviewed by the Committee. In order to assure objectivity in its deliberations and recommendations, the Committee has adopted a policy requiring that the names of the complainant, the judge in question, as well as

the specific DWC office where the alleged misconduct occurred, be redacted from the copies of complaints reviewed at each meeting.

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

B. Investigation by the Court Administrator or Administrative Director

Where a complaint makes allegations which if true would constitute misconduct by a judge, the Committee will recommend that the Court Administrator conduct an investigation. Should a complaint substantially allege criminal conduct, invidious discrimination, sexual harassment, or other serious acts that might require immediate action, it is referred to the Court Administrator and/or the Administrative Director on a priority basis.

Normally, the investigation of a complaint is conducted by the DWC Associate Chief Judge responsible for the DWC district office where the judge in question is employed. The course of the investigation is monitored by the Court Administrator. During the investigation, the DWC case file may be reviewed, witnesses may be interviewed, written statements may be taken, and additional information may be solicited from the complainant. Should the investigation disclose facts establishing improper, fraudulent, or unprofessional conduct on the part of other parties to the workers' compensation case, such as an attorney or physician, the findings are reported to the State Bar of California, the Medical Board, or other appropriate disciplinary forum.

Any disciplinary action taken against a judge by the Court Administrator or Administrative Director is in the form required by Government Code Sections

19574 or 19590(b). The right of the Court Administrator or the Administrative Director under Title 8, California Code of Regulations, Section 9720.1 et seq. to enforce ethical standards among judges does not replace or reduce a judge's procedural rights under the State Civil Service Act (Government Code Section 18500 et seq.). Furthermore, the rights and obligations of the Court Administrator or the Administrative Director and judges concerning the probationary period mandated by Government Code Sections 19170 through 19180 are not affected.

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

3. Complaint Digest

A Complaint Statistics For Calendar Year 2008

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

- Number of presiding judges 23
- Number of judges serving (includes 4 retired annuitants) 161
- Total number of judges serving 184

Including complaints from prior years, a total of 28 complaints were resolved by the Committee in 2008. There were 25 complaints filed in 2008. There are 4 complaints that are ongoing.

Complaints for 2008 that were received by the Ethics Advisory Committee after its final meeting for calendar year 2008 are ongoing, and as such are classified as unresolved. Ongoing complaints for which investigations have been requested, but for which the investigations are on hold until after the underlying workers' compensation case has been resolved, are still under investigations and also classified as unresolved.

The following groups within the workers' compensation community filed complaints during that were reviewed by the EAC in 2008:

- Employees represented by attorneys before the WCAB 1 Complaint
- Employees not represented before the WCAB 23 Complaints
- Anonymous 0 Complaints
- Applicant attorneys practicing before the WCAB 0 Complaints
- Defense attorneys practicing before the WCAB 5 Complaints
- Claims Administrators 1 Complaint
- Hearing Representative 0 Complaints
- Lien Claimants (medical providers) 2 Complaints
- Attorney representing a lien claimant 0 Complaints

B. Description of Complaints and Actions Taken

1. Investigations Resolved in 2008

1. An unrepresented employee, whose previous complaint had been determined by the Committee after investigation not to have been factually supported, added a new allegation arising out of the same case, this time against a former judge who was no longer employed by the Division.

The complainant alleged that at a conference in 2004, he arrived about 20 minutes before the scheduled conference. The judge approached him and the defense attorney when they were in the hallway. The judge asked that they follow him. He led the complainant and the defense attorney out of the office building and into an adjacent building. The judge unlocked this building, turned on the lights, led them into a room, locked the door. The judge then began to scold the complainant for a conversation between the complainant and the defense attorney, of which the defense attorney had informed the judge. The complainant told the judge that he had been recording this conversation, and the judge began laughing hysterically.

Following its review of the complaint, the Committee concluded that the allegations of the complaint were not factually supported.

2. This was the sixth complaint by this complainant against the same judge (the Committee had found that no ethical violations were identified in his previous five complaints). In a 33-page handwritten complaint, the unrepresented employee complained that the judge's decisions were "fraudulent," "designed to cause maximum stress," and "defied medical science." The rest of the complaint either repeated the facts of his case or reiterated previous allegations, including that the judge had taken a bribe from the defendants.

One month before filing this complaint, the complainant received an unfavorable decision from the W.C.A.B. on his petition for Reconsideration/Disqualification. In the petition, complainant challenged the judge's decisions on bias grounds and made the allegation that the judge had accepted more than \$100,000 in bribes from the defendant. Alleged bribery and bias were also the grounds for the complainant's last three ethics complaints. The W.C.A.B. denied the Petition, finding that the allegations were completely without foundation and not credible. The decision stated that any further repetition of the unsupported and unjustified allegations would result in the imposition of sanctions.

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

3. A formerly represented employee complained that at a mandatory settlement conference, the judge (and her lawyer) said she was "crazy" to make a demand for \$350,000 to settle her case. At her first mandatory settlement conference, the employee alleged that she was told by the judge, her former lawyer, and the defense attorney that she should accept the \$20,000 settlement offered by the defendant, because that was all she would receive under the workers' compensation system. After she was no longer represented, there were several settlement discussions among her, the defense attorney, and the judge.

The complainant alleged that she and the defense attorney discussed settling her case for \$70,000 plus a settlement of medical liens. When they went into the judge's chambers, the defense attorney and the judge started discussing together the employee's agreement to settle for \$65,000, which was not correct. The employee said that she wanted to know how much additional the defendant would offer in order to buy out the medical claim, and the judge replied that the \$65,000 included the medical claim.

The employee asked the judge, "How in the world did you figure that, since I had barely talked to the defense attorney, and we had just walked into the judge's chambers?" The judge said that he and the defense attorney had discussed the subject already.

During this conference with the judge, the defense attorney said that he wanted to include the "serious and willful" claim in the \$65,000 settlement, and the judge agreed to that. The defense attorney then replied, "OK, thank you, your honor," and the judge then replied, "You're welcome."

The applicant told the judge that the inclusion of a serious and willful claim had not yet been discussed, and that when she asked her former attorney if it were included the attorney did not answer. She told the judge that now that she knew the serious and willful claim was included, she did not want it to be included. The judge replied that he had already done it. The applicant complained at this, and the judge told her that he had already done it, "and I can do it if I want to."

There were discussions of what medical bills would be paid or included in the settlement. At one point the judge told her that if she had not fired her attorney, she would have won, which the judge later corrected to, "that the attorney would have finished the case."

The Division wrote to the complainant, and asked her to provide some details on each of her complaints. The complainant did not respond. Following its review of the complaint, the Committee concluded that the allegations of the complaint were not factually supported.

4. An unrepresented employee settled his case by way of compromise and release. He later moved to have the compromise and release set aside. After a hearing, the motion was denied, and the employee sought reconsideration of that denial from the W.C.A.B. Most of this employee's complaint argued that he was entitled to greater compensation than that awarded to him under

the compromise and release. He also alleged that the insurer acted in bad faith and made misrepresentations of fact. The employee alleged that the judge entered into a conspiracy with the insurer to defeat the employee's motion to have the compromise and release set aside.

The employee also complained that when the judge wrote his report and recommendation on reconsideration and recommended that reconsideration be denied, he stepped out of his judicial role and became an advocate for the insurer. The employee did not allege any specific facts that would tend to substantiate his claims, either of conspiracy or of the judge advocating the position of a party.

Following its review of the complaint and of the reconsideration documents, the Committee concluded that the allegations of the complaint were not factually supported.

5. This was the second complaint filed by this unrepresented employee against the same judge. The Committee had found several months earlier that no ethical violations had been identified in the first complaint. The employee had filed four petitions for reconsideration, all of which had been denied by the W.C.A.B. The employee filed four petitions for writ of review, all of which were summarily denied. In its most recent decision, the court stated that if further groundless petitions were filed, the complainant would be liable to pay attorneys fees and costs.

This complaint was essentially duplicative of the first one. It revolved around the employee's allegations that the judge had a secret meeting with the Qualified Medical Evaluator (QME) and instructed the QME what to write in his report. In this second complaint, the employee asked to "reopen" the previous complaint, and also complained that the judge had *ex parte* conversations with the person she called the "friend of the court" (who was the same person who successfully petitioned the judge to have someone

appointed as the employee's *guardian ad litem* at a time when she appeared to be mentally incompetent.) In substantiation of her new complaint, the employee offered two letters that she wrote to the QME and to the judge. The complaint asked that the committee question the QME about a conversation she claimed he had had with the judge. She also stated that in his deposition, the QME referenced a "hypothetical injured worker," which she claimed was a reference to herself.

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

6. An unrepresented employee complained that the judge had "not helped with fair and ethical treatment," was "totally corrupt," and had engaged in fraud and misconduct. The complaint offered no specifics of any of these charges. The Division wrote to the complainant and asked for details which might substantiate the complaint, stating that without further details the Committee would not be able to investigate his complaint. The complainant did not respond.

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

7. An unrepresented employee complained of the judge: "Harassment, discrimination, misleading and deceiving tactics." The complainant believed that the defense attorney persuaded the judge to make decisions against her without a trial. She stated that under the rulings of a previous judge, since deceased, her case would be allowed to remain off calendar until she had finished all her treatments, and she would not have to present her case-in-chief until her treatments were finished. She complained that this judge changed those guidelines. At an MSC, the judge told her that she should

obtain a psychological report. She complained that a claims administrator had denied her psychiatric treatment, but then said she could have treatment if she went to a psychologist on a list provided by the administrator. She complained that someone in the DWC Medical Unit had asked the claims administrator to write to the selected physician to inquire if he were eligible to write reports, but that the claims administrator never wrote to the physician.

She also complained that after the judge ordered her to give her deposition, the defense attorney who deposed her engaged in bad faith tactics, was totally unaware of her case situation, and asked many irrelevant questions. She asked for a change of venue.

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

8. A formerly represented employee complained that after a recent reconsideration decision which rescinded all the decisions of the judge, the judge set the case for a status conference instead of setting a new trial. The employee complained that a reporter was called in at the end of the conference to record what the judge dictated, but that the dictated minutes did not contain an accurate record of what was said at the conference; the minutes contained items that were not discussed at the conference when the employee was present and did not include important items that were discussed at the conference. The employee complained that instead of the judge issuing a determination of new and further disability as prescribed by the decision on reconsideration, the judge's minutes stated that the recent report of the AME (agreed to by the defense and her former attorney) was to be amended. (The defense had not objected to the AME report at the time of the trial.) The employee complained that neither a new examination by the AME nor an amending of his report was discussed at the conference. She

complained that the judge stated in the minutes that the AME report needed to be modified.

The employee also complained that because the judge's decision (which was the subject of the reconsideration petition) terminated her permanent disability payments, she asked at the status conference that he order that permanent disability payments be reinstated. The employee stated that the judge said at the status conference that he would have to research the issue of whether she was entitled to either permanent or temporary disability, and that he would advise her of his decision. The employee complained that this was not covered in the minutes of conference.

The employee also complained that the judge refused to order the defendant to pay for testing for her back, even though no testing had ever been done, and complained that the records that the judge ordered to be sent to the AME did not include any record of testing of her back.

The employee also complained that, "the judge is a master at creating confusion, being intimidating and making unnecessary remarks."

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

9. A lien claimant filed the following brief complaint: "Without due cause or process she sided with [the insurance carrier] in releasing a lien. She did not grant a proper hearing, nor did she respond to several letters mailed to her at her request, plus phone calls, which her and her staff failed to respond to, as promised."

The Division wrote to the Complainant, asking that he provide further details about the complaint, and advised that if he did not provide more detail before the next meeting of the Committee, the Committee would not be able to

investigate the complaint, and that it would close its file. The complainant did not respond.

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

10. An unrepresented employee complained that a presiding judge "covered up" improper acts of a judge and did not report unethical behavior on the part of the judge. At the time of consideration of this complaint, the presiding judge no longer worked for the Division of Workers' Compensation. The essence of this complaint was that the presiding judge took no corrective action in regard to various complaints that the employee had filed with him, alleging improper rulings on the part of the assigned judge, until the complainant filed a petition to disqualify the assigned judge.

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

11. The unrepresented employee in the previous complaint filed a second complaint against the same judge. In this rambling, incoherent complaint, the employee alleged that the judge allowed the defense to send an "advocacy letter to the AME under Labor Code section 4062.3(c)," and that the judge made up the term, "advocacy letter." The employee also complained that the judge allowed the defense to send a copy of her deposition to the AME.

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

12. A formerly represented employee complained that the judge could not have been fair and impartial, because the judge did not allow him to present

evidence which he had told the judge his former attorney did not present. He also complained that the judge did not allow rehabilitation experts who attended the trial to give their professional testimony to support his case. The judge did not accept medical reports and discovery offered by employee. The judge also gave the defense too much time to produce proof of payments made by the carrier, and that even when given additional time, the defense could not produce the proof of the payments. Eventually, the judge allowed the defense to rely on copies of carrier payment history which were illegible or blank. The judge did not read the depositions of various witnesses and failed to discern that the depositions substantiated the employee's claims of work-related injury. Finally, the employee complained that the judge allowed the defense attorney to produce a "ballpark figure" so that the judge could "form a decision around it."

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

13. An unrepresented employee complained that the trial judge was not impartial, showed a disregard for the law, and denied him due process, as evidenced by the judge:

- Having preconceived notions about how he would rule.
- Disregarding the statutory meaning of "date of injury."
- Refusing to permit the applicant to cross examine adverse witnesses.
- Delaying evidentiary rulings until after the trial.
- Producing a highly distorted summary of evidence.
- Refusing to correct any errors in the summary of evidence.
- Denying all of the applicant's claims. [Actually, the judge found five separate injuries, but no permanent disability or temporary disability.]
- Basing conclusions in the Opinion on Decision upon an inadequate medical history and upon speculation.

- In his report and recommendation on reconsideration, falsely representing that the petitioner failed to raise at trial questions of the reliability of QME reports.

The employee filed two successive petitions for reconsideration, which were denied, and a petition in the Court of Appeal, which was also denied.

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

14. A defense attorney complained that the judge improperly appointed the applicant's attorneys as guardians *ad litem* for the totally disabled applicant. This occurred after the applicant petitioned to rescind a negotiated compromise and release. The judge vacated the order approving, the defendants petitioned for reconsideration, and the board remanded for consideration of fraud. The complainant contended that an attorney who serves as guardian *ad litem* for a client is in violation of the Rules of Professional Conduct for attorneys, by being in a business relationship with the client.

The complainant stated that he believed that the attorneys had received financial gain from the applicant by renting him real property (where the employee apparently resided).

The complainant further alleged that the judge improperly allowed the employee's attorneys to testify on contested issues of adequacy of the compromise and release and the existence of mutual mistake and fraud. Complainant stated that he believed that the judge's thinking was clouded by affinity for the two applicant attorneys.

Subsequent to the original complaint, the complainant later alleged that the judge, in his report and recommendation on petition for disqualification, recommended that the complainant be reported to the State Bar for filing the

petition for disqualification, although without stating which Rule of Professional Conduct the judge believed the Complainant had violated.

The judge in this case was no longer employed by the Division when the Committee considered the complaint. Although the Committee concluded there was a probable ethical violation in the appointment of an attorney as guardian *ad litem*, because the judge was no longer employed, no action could be taken, and the Committee closed its file.

15. A formerly represented employee alleged that although he had to wait six weeks for an expedited hearing, which he had requested in order to complain about a discriminatory discharge and the employer's refusal to furnish medical treatment, the judge did not give him a chance to say anything at the hearing. At the same time, the judge seemed to focus attention on the employer's attorney. The employee also complained that his former attorney was present in the hearing room, and was smiling at the judge.

The Division wrote to the complainant, asking him to elaborate on his statement that the judge did not give him a chance to say anything, and to give the names of any other persons who were present to witness the judge's demeanor. The complainant did not respond.

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

16. An unrepresented employee complained that at a continued MSC, he presented his typewritten summary of the case to the judge, but the judge would not read it. The judge said, "Mr. X, I don't need to look at it, and I am not going to look at it." The complainant alleged that the judge's voice was hostile. The complainant stated that the judge did not ask him at all about the settlement offers, but allowed the claims adjuster to speak for a long time about lien issues. He also complained that the judge would not let him speak

about many of his issues. Also, the judge did not take any action when the claims adjuster lied in stating that he had attended the last settlement conference, when in fact he had not attended the conference. When the complainant tried again to mention the settlement offers and their implications, the judge said again, "Mr. X, I don't need to look at it, and I am not going to look at it, and please be quiet and listen."

Complainant further alleged that when he tried to bring up the matter of the perjurious nature of 95% of the medical reports in his case, the judge refused to look at the medical reports, and asked, "Mr. X, why have you wasted all your time collecting all those medical reports and records when they have nothing to do with settling your case?" The judge allegedly yelled this question.

When the complainant attempted to tell the judge of various instances in which the defense had violated the Labor Code, the judge would not allow him to proceed, cutting him off with the statement, "Mr. X, what happened in the past is in the past. It has nothing to do with your case now."

When the claims adjuster declared that they were not there to settle his case at the MSC, because it had already been settled by stipulation a year before, the complainant objected that he had never stipulated to any settlement. The complainant alleged that when he repeatedly told the judge that he had never signed stipulations with request for award, the judge again refused to look at any of the papers that the complainant wanted to present, and again told him, "Mr. X, I don't need to look at it, and I am not going to look at it. Please be quiet and listen, you don't know how to listen."

When the complainant again tried to assert that the parties were there to discuss settlement, the judge became upset and said, "Mr. X, drop it. Your case was already settled with stipulations with request for award as the

defense claimed, and we are done now.” The judge also told the complainant that he needed to obtain an attorney.

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

17. An unrepresented employee complained that the judge did not read the Declaration of Readiness he had filed, despite being aware that English was the second language of the applicant.

A review of the file revealed that there had been an MSC at which the applicant requested a change of panel QME. The MSC was continued, but the minutes contained the judge’s notation: “The applicant verified in open court that he is able to adequately communicate with the interpreter and no issues exist regarding her ability to correctly translate from English to Spanish and from Spanish to English.”

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

18. A defense attorney complained that the judge prohibited him from developing a defense during cross-examination. At the conclusion of a morning trial session, when the defense attorney had not yet completed his cross examination of the lien claimant (moving party), the judge adjourned court for lunch until 1:30 P.M. When the defense attorney returned at 1:15 P.M. the door was locked. The defense attorney stated that he returned again at 1:31 P.M., according to the clock in the courtroom, and the judge then stated that he was late, and that the matter had been submitted. The judge did not allow the defense attorney to put on his prepared defense.

A preliminary inquiry revealed that the courtroom door may be locked during the lunch hour for security purposes, and that the complainant denied that the judge was impolite or brusque. The judge issued a Findings and Order the same day as the trial, finding that the lien claimant had not established a prima facie case, and thus further cross examination by the defense was not necessary.

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

19. An unrepresented employee sent a copy of petition for reconsideration to the Administrative Director. Included among the allegations was a complaint that the judge took 91 or 92 days to issue a decision after a hearing. The Committee requested that the complaint be investigated.

After investigation, the Committee concluded that the delay in submission of the case was prima facie evidence of a violation of the Code of Judicial Ethics by a failure to make decisions promptly, and recommended that the Administrative Director and or Court Administrator take appropriate action.

20. A claims examiner complained that a judge improperly crossed out language in a printed compromise and release form and inserted the judge's own language in the *Order* portion, to the effect that interest would be payable beginning the day after the date of approval. 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.

21. A defense attorney complained that the judge set a mandatory settlement conference with a notation on the hearing notice that read:

SET RE: SANCTIONS, ADJUSTER _____ IS ORDERED TO APPEAR.
COMPROMISE AND RELEASE ALREADY DISAPPROVED.

The hearing notice was served 14 days before the hearing. Two days before the hearing, the complainant attorney wrote to the judge stating that she had noted the sanctions reference on the hearing notice, and that after having reviewed the file, she could find no possible sanctions issue except “the word-processing error on page 17 of the PQME report of Dr.”

The letter advised the judge that the complainant was requesting the presence of a court reporter for the hearing, and that if the judge were considering sanctions against her, she requested the judge to so advise her so that she could bring another attorney to represent her. The letter continued with the statement that her claims department had contacted the judge’s secretary to ascertain the basis for the sanctions reference and the order for the claims adjuster to appear, but that the secretary had not been able to provide any information.

Complainant alleged that at the hearing the judge said that the sanctions language on the notice of hearing was just to “rattle the saber” to get the defendant to offer more money on the compromise and release.

An Order Disapproving Compromise and Release Agreement had been issued three months earlier, which included: “Upon review of the medical file . . . the compromise and release . . . is disapproved, as it is not adequate.”

The Minutes of Hearing included: “Notice of Sanctions Withdrawn.” The complainant alleged that the compromise and release was eventually approved for the same dollar amount as originally submitted. (The Minutes show that the compromise and release was approved after the applicant spoke with the Information and Assistance Officer.)

The Committee requested that the complaint be investigated. The judge in this case was no longer employed by the Division when the Committee

considered the results of the investigation. Following its review of the investigation, although the Committee concluded there were probable ethical violations, because the judge was no longer employed, no action could be taken, and the Committee closed its file.

22. An unrepresented employee alleged that the judge "intimidated" him. The complainant did not state how this was done. The judge arranged for a police officer to be present in the courtroom. The complainant alleged the judge made him "cry like a baby at the trial." Complainant believed that the judge hated him because he speaks with a foreign accent. Complainant stated that although his doctor said he was "totally temporarily disabled," he was forced to travel 1,100 miles from Oklahoma for a conference on December 19, 2007, that was cancelled without prior notice to him. The complainant alleged the judge caused him to lose all of his benefits for a two year period.

The Committee requested that the Division investigate why the hearing was cancelled, whether there was notice of the cancelled hearing, and how notice was given to the applicant. Following its review of the investigation, the Committee did not identify any violations of the California Code of Judicial Ethics or the Division's ethics regulations.

23. An unrepresented employee complained that a judge assigned for a conference did not disclose that the judge used to work for the employer. (In this case, the judge had worked as an attorney employee of a government agency, but not of the legally separate authority which was the actual employer.) Complainant objected that a conference was set over her objection that the declaration of readiness contained false statements about efforts to resolve issues. (The declaration of readiness contained the statement, "Defendants need assistance of the WCAB to have employee appear at a medical appointment. Either an IME has to be appointed or employee needs to be compelled to appear at AME re-examination.") The judge noted employee's objection to holding the status conference in the

minutes of conference. The employee also complained that the original declaration of readiness was never served on her, and that the judge took no action after she complained to the judge about the lack of service.

The employee also alleged that that the defense attorney's letter to the judge in response to the employee's objection to the "false" declaration of readiness, was not mailed to the complainant, and did not contain a declaration of service or statement of transmittal showing that it was mailed to the complainant. Complainant alleged that the judge neither took action against the attorney for filing an *ex parte* letter, nor had the *ex parte* letter served on her by the district office as required by the Policy and Procedure Manual.

The employee also complained that the judge acted improperly by issuing an "Order Suspending Action on Petition for Penalties, Sanctions and Fees," instead of setting a hearing. The employee also complained that the judge's conduct throughout showed a bias in favor of this defense attorney.

The Committee requested that the Division investigate the handling of the *ex parte* letter to the judge. 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. The Committee recommended that the judge be instructed on the proper handling of *ex parte* communications received at the district office.

24. This was the third complaint filed by this unrepresented employee against the same judge. The Committee had found that no ethical violations had been identified in the first two complaints.

This complaint was essentially duplicative of the two earlier complaints. It revolved around the employee's allegations that the judge had had a secret meeting with the Qualified Medical Evaluator (QME), and had instructed the QME what to write in his report.

In this latest iteration of her complaints of *ex parte* contact, she offered a copy of a deposition of the QME. In his deposition the QME (a dentist) was asked if he had ever spoken to or met with the judge about this case. The QME testified that he did have a meeting with the judge about a “hypothetical injured worker,” but that this complainant’s name was not mentioned in the conversation, and that the conversation with the judge did not deal with the complainant, but that the conversation was about a “hypothetical situation.” The QME testified that he did not recall the issues discussed with the judge, and said the complainant’s case “was a very complicated case, and there were some issues that I had to go over and get explained to me because I was trying to do the best job I could.” The QME testified that he selected a secondary QME (an orthopedist) to write a report. He was asked if he contacted anyone to ask if he had authority to select a secondary QME, and he testified that he might have asked this judge. He did not recall, but testified that if he did contact this judge, it was about the hypothetical situation of whether he would have authority to select a secondary QME. This is the only testimony in the deposition about possible contact by the QME with this judge.

Because of the deposition, the Committee requested that the Division investigate the alleged *ex-parte* contact. Following its review of the investigation, the Committee concluded that the allegations of the complaint were not factually supported.

25. Complainant lien representative stated that its client filed a declaration of readiness before engaging complainant to represent it. The complainant alleged it was retained by its client nine days before a status conference and wrote the judge the next day requesting the matter go off calendar, because settlement negotiations were ongoing. Four days before the scheduled status conference, the defendant faxed a signed settlement agreement to complainant. Three days before the status conference, the judge faxed to complainant a minute order stating that complainant is “specifically required to

appear, and to be prepared to discuss the filing of the Declaration of Readiness to proceed and efforts to resolve the lien.” The same day, the complainant wrote back to the judge that in light of the settlement, the complainant would not appear, but would be available telephonically.

The committee concluded that the judge may not have followed the law (W.C.A.B. Regulation §10548(b)), which provided: “When the parties represent to the Workers' Compensation Appeals Board that a case has been settled, the case shall be taken off calendar and no appearance shall be required.” The Committee requested the complaint be investigated.

Following its review of the investigation, the Committee concluded that although there were extenuating circumstances, in that this lien representative had filed declarations of readiness when it was not in fact ready to proceed, there was nevertheless a technical violation of the Code of Judicial Ethics. The Committee recommended that the Administrative Director or Court Administrator take appropriate action.

26. An unrepresented employee alleged that three days before a scheduled hearing, the hearing was cancelled without notice and that venue was changed to an office 90 miles away, although he lived near the previous venue. The employee alleged he had earlier been given time to find an attorney, but that his chosen attorney would not represent him at the distant district office. The committee concluded the complaint should be investigated.

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

27. An unrepresented employee alleged that the judge violated her constitutional right to free exercise of religion by the manner in which the case was handled. Employee also alleged the judge made an incorrect decision on whether her termination was based on a good faith personnel action, and on whether she sustained psychiatric injury arising out of her employment.

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

28. An unrepresented employee complained that Judge 1 subjected her to continuing threats and harassment, yelled at her, and inappropriately asked her "why the \$25,000 settlement was not enough?"

She complained that Judge 2 did not grant an expedited hearing within 30 days of filing a DOR, threatened to dismiss the case without cause, had a "conflictual" relationship with the defense attorney, permitted the defense attorney to use "racially inappropriate language" during cross examination, "threatened" her, and "assisted and helped to create an unethical litigative atmosphere" from March 2004 thru 2007.

Although the complaint described the entire legal nature of her case and what she sought to achieve, she provided no details on any of the complaints listed above. The Division wrote to the complainant, and asked her to provide some details on each of her complaints, which were bare allegations. The complainant did not respond.

Following its review of the complaint, the Committee concluded that the allegations of the complaint were not factually supported.

2. Ongoing Investigations

1. A represented employee complained that the judge allowed the defense attorney to add a provision to the stipulations with request for award after the stipulations had been signed. The judge also did not permit the employee to be present at a conference that occurred in chambers at the time of a scheduled trial. The employee further complained that even though the defendants had admitted in writing in 2002 that they owed temporary disability for a three year period from 1989 through 1992 but refused to pay unless the

employee signed stipulations waiving penalties and interest, in March 2008 the judge refused to set the case for trial for a second time on the issues of temporary disability, penalties, interest, and VRTD, because the issues of permanent disability and apportionment were not yet ready for trial, and because the defense attorney wanted to depose the AME for a third time. [The case once had been set on these applicant issues only, but it was taken off calendar after the stipulations were signed but before employee learned that the stipulations had been altered and before employee's petition for reconsideration to rescind the stipulated award.] The Committee requested that the complaint be investigated.

2. An unrepresented employee complained that the judge acted improperly, and in an injudicious manner at a conference. The entire brief complaint is quoted below:

In the pre-trial of my hearing, when we were stating reasons to be allowed a trial, in which took almost 10 minutes just to be allowed. Judge [name] stated that "I don't know why you are here anyway. Dr. [name] is so revered that I'm probably just going with his decisions anyway." The judge stated again later he would be using his decisions only. He is the reason I was asking for a hearing in the first place, and the judge's statements gave a very clear advantage to him.

The judge also stated that he hoped the matters wouldn't take too long because there was a junior symphony board meeting to attend to. The judge later attempted to back track that comment, bring it up more than once. I felt the judge was not being committed to my trial.

I in no way feel I was listened to, as some of my statements were turned backwards in the minutes and I don't believe the judge acted unbiased in her decisions.

The Committee concluded that this complaint should be investigated.

3. A defense attorney complained that a judge improperly submitted a report and recommendation on reconsideration on a case that was not assigned to the judge, that the report was made to the W.C.A.B. *ex parte*,

and that the judge was disqualified to act in the case in relation to one of the attorneys.

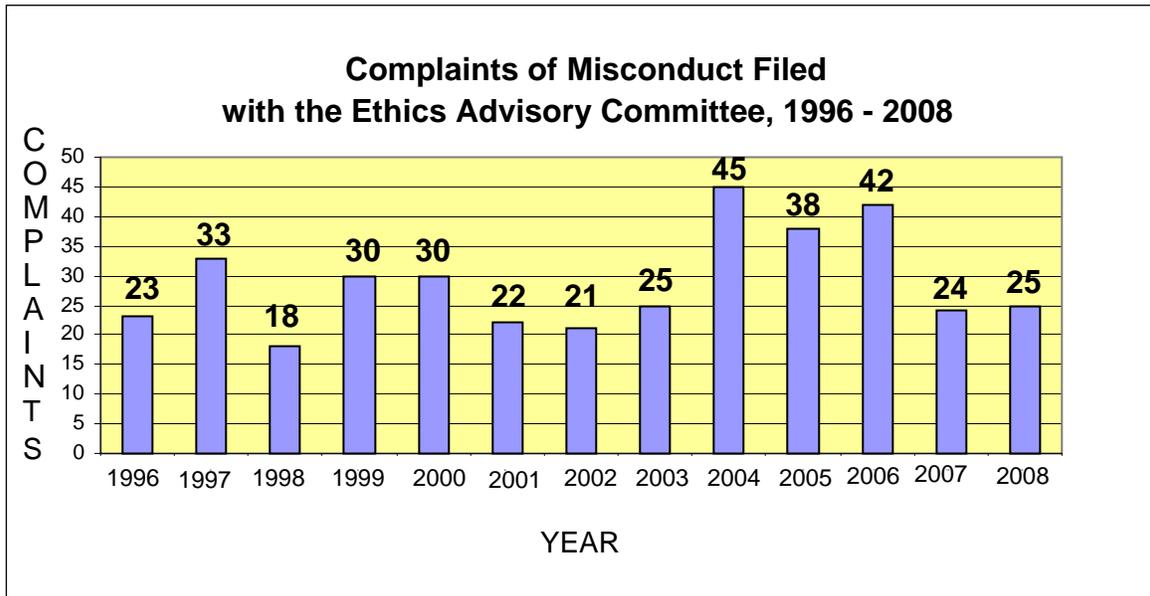
The committee concluded the complaint should be investigated.

4. The complainant, a defense attorney, made a written request to the presiding judge asking to have California Highway Patrol (CHP) officers present at a hearing that involved a previously diagnosed mentally disturbed employee who had written a letter accusing the complainant of being dishonest and referring to complainant as the "evil enemy." The presiding judge arranged to have CHP officers present. The complainant states that the trial judge "was not happy" to find the police in her courtroom. The employee had requested a continuance, and did not appear. Complainant stated that when he expressed an apology to the judge for causing the judge to become upset, the judge screamed at him, "You are not sorry at all." The judge at some point wrote on the minutes of hearing, "CHP present, two officers, at Mr. [name of complainant's] request."

Complainant stated that the judge, by putting this statement in the minutes, placed him in danger because the employee would read the minutes and become upset. When the complainant thanked the judge for his time, the judge screamed, "Just stop it." After the hearing, another attorney from the office of the complainant attempted to speak to the judge and explain how the officers came to be in the court room, but the judge would not speak to him, and the judge did not permit the attorney to copy the minutes of hearing at that time.

The committee concluded the complaint should be investigated.

Table 1



2008

COMMITTEE MEMBERSHIP

HONORABLE JULIE CONGER

Chair

Alameda Superior Court Judge

KATHRYN RINGGOLD, ESQ.

Former Applicants' Attorney
Worker's Compensation Law

HONORABLE NORMAN DELATERRE

Workers' Compensation Judge
Workers' Compensation Appeals Board
Santa Ana

HONORABLE DAVID BROTMAN

Presiding Workers' Compensation Judge
Workers' Compensation Appeals Board
Oxnard

MICHAEL McCLAIN, ESQ.

California Workers' Compensation Institute
Representing Insurers

ROBERT RUBY, ESQ.

Former Defense Attorney
Workers' Compensation Law

MR. JIM ZELKO

Kaiser Foundation Health Plan
Representing Self-Insurers

STEVEN SIEMERS, ESQ.

Committee Member Representing
Organized Labor

GORDON GAINES, ESQ.

Committee Member from Outside the
Workers' Compensation Community

DWC STAFF

Keven Star

Court Administrator

Richard Starkeson

DWC Attorney

Ursula Jones

Admin Assistant
