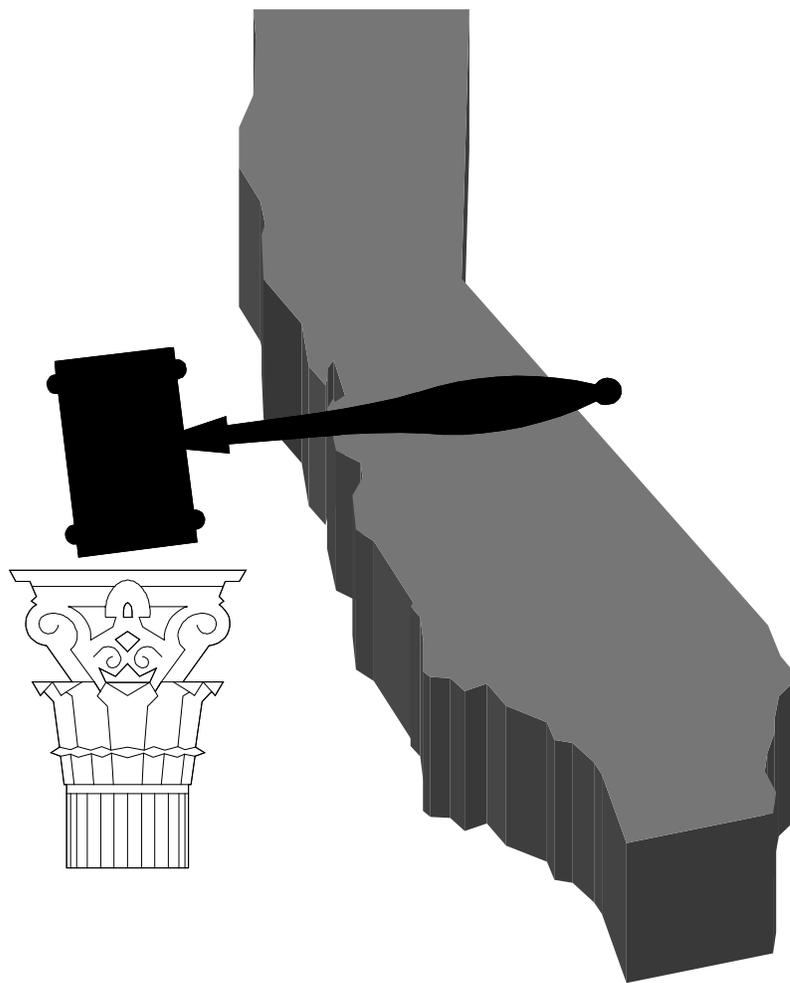


**State of California
Department of Industrial Relations**

**WORKERS' COMPENSATION ETHICS
ADVISORY COMMITTEE**



**2013
ANNUAL REPORT**

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I. The Ethics Advisory Committee: A Profile

A. The Committee's Functions

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

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

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

B. Committee Membership

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

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

Member of the Ethics Advisory Committee

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

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

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

II. Complaint Procedures

A. Filing a Complaint

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

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

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

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

B. Investigation by the Chief Judge or Administrative Director

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

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

III. Complaint Digest

A. Complaint Statistics for Calendar Year 2013

1. Number of Workers' Compensation Administrative Law Judges

The Division of Workers' Compensation has 24 district office locations, each with a Presiding Judge (PJ). In 2013, the DWC had authority over 167 active judges.

WCALJ Positions (As of December 31, 2013)	
Number of presiding judges.....	24
Number of judges serving.....	143
Total number of judges serving.....	167

2. New Complaints

The EAC considered a total of 34 of the 37 new complaints it received in the calendar year of 2013, in addition to 3 complaints pending from 2012. There are 4 complaints filed in 2013 that are pending ongoing investigation and 3 pending complaints filed after the EAC final calendar meeting for 2013. The complaints set forth a wide variety of grievances. A substantial portion of the complaints alleged legal error not involving judicial misconduct or expressed dissatisfaction with a judge's decision.

Ongoing complaints for which investigations have been requested and the investigations not yet been concluded are classified as complaints "pending ongoing investigation." Complaints for 2013 that were received by the EAC after its final meeting for calendar year 2013 are classified as "pending."

2013 Complaint Caseload

New Complaints filed in 2013	37
Complaints pending from 2012	3
New Complaints considered in 2013	34
Total Complaints resolved in 2013	33
Complaints filed in 2013 pending ongoing investigation in 2013	4
Complaints Received after EAC's final calendar meeting for 2013	3

3. Groups within the Workers' Compensation Community That Filed Complaints

The workers' compensation community is composed of a variety of groups including, but not limited to, attorneys, injured workers, claims administrators, hearing representatives and lien claimants (medical providers). A wide variety these parties filed new complaints during 2013.

**Groups within the Workers' Compensation Community
That Filed Complaints in 2013**

Employees represented by attorneys	6 complaints
Employees not represented	24 complaints
Anonymous	1 complaint
Applicant attorneys	2 complaints
Defense attorneys	2 complaints
Claims administrators	0 complaints
Hearing representatives	0 complaints
Lien claimants (medical providers)	1 complaint
Attorneys representing a lien claimant	1 complaint

4. Digest of Actions Taken on Complaints

In 2013, 37 new complaints were filed by the workers' compensation community, of which the Committee considered 34; the 3 complaints not yet considered were filed after the last EAC meeting. Of the 34 new complaints considered, the Committee resolved 30, and 4 complaints remain under investigation. The 3 complaints filed at the end of 2012 were investigated and resolved this year, for a total of 33 complaints resolved in 2013 (For summaries of these complaints, see Section IV, A, Complaints Resolved in 2013, in this report). Of the 33 resolved complaints, the EAC identified one complaint resulting in judicial misconduct and recommended further action by the Chief Judge or the Administrative Director. Of the 34 new complaints considered, 15 resulted in investigations, of which 11 were concluded. The 3 complaints filed at the end of 2012 also led to investigations conducted this year, making a total of 18 complaints that the Committee investigated in 2013.

Digest of Actions Taken on Complaints in 2013	
New complaints filed	37
New complaints considered	34
New complaints resolved.....	30
New complaints pending ongoing investigation.....	4
New complaints pending consideration (filed after last meeting)	3
Total complaints resolved (filed in 2012 and 2013)	33
Complaints resulting in finding of no misconduct	32
Complaints resulting in finding of misconduct	1
Total complaints investigated in 2013	18
Complaint investigations filed in 2013	15
Complaint investigations filed in 2012	3

IV. Description of Complaints and Actions Taken

A. Complaints Resolved in 2013 (33 total)

1. Complainant, an unrepresented applicant, alleged that the judge was discriminatory against complainant when the judge threatened sanctions on the complainant for not showing up to a deposition. Complainant also alleged that the judge falsely accused complainant of harassing a doctor and the judge would not allow complainant to take the deposition of the doctor.

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

2. Complainant, a hearing representative, alleged the judge violated applicant's confidentially rights under the Americans with Disabilities Act (ADA) by having ex-parte communications and failed to dispose of judicial matters fairly, promptly, and efficiently. Complainant alleged that the judge failed to disclose the judge's temporary assignment as the Presiding Judge, made false accusations in order to clear the judge's calendar, intentionally delayed an expedited hearing due to the judge's staff's error, and suppressed information of the ethics complaint against the judge. Complainant also alleged the judge's participation in a continuing education program for QMEs was evidence of the judge having formed or expressed an unqualified opinion or belief as to the merits of the case.

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

3. Complainant, an unrepresented applicant, alleged that the judge at a Mandatory Settlement Conference (MSC) treated the complainant with disrespect. The judge yelled at complainant for no reason, and complainant felt “like a piece of garbage.” Complainant was accused of lying and was told all credibility was lost thus making the judge’s decision biased. In addition to accusing complainant of lying and embarrassing complainant in front of everyone, the judge allegedly spoke rudely to complainant. The complainant approached the bench and handed letters from doctors to the judge. Complainant remained standing while the judge read the letters, and the judge, in a harsh and loud voice, yelled at complainant to “sit down.”

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.

4. Complainant, a claims adjuster through counsel, alleged that the judge infringed on the parties’ right to due process by preventing access to the WCAB through the reconsideration process. The parties proceeded to trial before the judge and a ruling issued. Thereafter, complainant filed a Petition for Reconsideration. After filing of the Petition for Reconsideration, the judge submitted an order vacating and rescinding the order and set the case for an MSC. At the MSC, the parties requested that the parties be able to present expert testimony, which was denied. Complainant alleged that the judge did not even read the Petition for Reconsideration. The judge explained that the judge waited for the attorneys to “do the work” before reading anything on the case. Trial proceeded for the second time, and the parties requested 30 days to file supplemental briefs. After the trial, the parties submitted the briefs, and the trial judge ruled against defendant. The defendant filed a Petition for Reconsideration again. Duplicating the same issues previously raised, the judge filed an Order Vacating and Rescinding the Order. In order to avoid further delay, the parties reluctantly agreed to settlement.

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

5. Complainant, an unrepresented applicant, alleged that a judge and three commissioners blocked access to the court and discriminated against complainant based upon disability and indigence. Complainant alleged that the judge and commissioners changed and misrepresented facts which prejudiced complainant's case. Complainant alleged that complainant was forced to present a stale claim. Complainant alleged that the judge and three commissioners are signatory to fraud of the facts and circumstances, evidence, and falsified documentation.

Prior to the hearing, complainant requested additional accommodations, one for telephonic appearance and the other for appointment of counsel. Both requests were denied by the DWC and the complainant appeared in person on the day of the hearing. Complainant argued to the judge that complainant's ADA rights were violated and that complainant had not been provided proper court access. Despite these issues, complainant complained that the court attempted to force the matter to trial. Without counsel, complainant tried to appeal the denial of disability rights and denial under the regulations. Complainant alleged that the judge's Report and Recommendation left out pertinent facts and misrepresented complainant's position. Complainant stated that the appeal was dismissed and the Petition for Removal was denied, thereby sanctioning the denial of complainant's rights as a disabled and indigent person.

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. Complainant, an unrepresented applicant, alleged that complainant was discriminated against by the judge and that there was an abuse of power. The

complainant appeared at a hearing with complainant's attorney and defense attorney before the judge. Complainant told the judge that complainant was treated badly by both attorneys and that complainant was going to sue complainant's attorney and the doctors in Superior Court. Complainant presented 600 pages of evidence to the judge. Complainant alleged that the judge was going to assist the parties but instead lied and sent in an Information and Assistance (I&A) Officer. Complainant further alleged that the judge granted the attorney's petition to be relieved as counsel over complainant's objection and that this was tantamount to discrimination and abuse.

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. Complainant, an unrepresented applicant, alleged that the judge did not enforce the judge's own order. The complainant complained that defendant was ordered to pay medical mileage and for medications and if the defendant did not pay was ordered to state the reason. The complainant had not received payment for medical mileage and the defendant did not authorize the medications.

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. Complainant, an unrepresented applicant, alleged that the judge lied before the applicant and three other attorneys when the judge admitted that all cases were "fixed" by intermeddling from the District Attorney and later by the California Attorney General's Office. Complainant alleged that the judge then later committed perjury by denying the above statement at complainant's criminal trial resulting in complainant being sent to prison.

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. Complainant, an unrepresented applicant, alleged impropriety and a lack of impartiality on the part of the judge. Complainant alleged that the judge was indulging the defendant's desire to take away the complainant's award. Complainant informed the judge that complainant will not surrender the award under any circumstances and yet the judge kept scheduling frivolous hearings to harass complainant. The complainant alleged that the judge was once a defense attorney for the defendant in the case, and thus, the judge is now ready to help defendant rob the complainant of complainant's life award and judgment.

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.

10. Complainant, a represented applicant, alleged that the judge demonstrated prejudicial bias when the judge made comments which the complainant took as negative, belittling, derogatory, and abusive. Complainant alleged that the judge acted with malice adversely, affecting the complainant's right to a fair hearing.

Complainant appeared at a hearing at which the judge admonished the complainant for having "organized" paperwork and verbally stated in a derogatory tone that there was nothing wrong with complainant. Complainant alleged that when complainant informed the judge about the concerns over not having income and possibly becoming homeless, the judge's response was to get a "P.O. Box" and "file for welfare."

Complainant appeared again before the judge, and the issues of settlement and further discovery were presented to the judge. The judge reacted by making direct

verbal accusations from the bench inferring that complainant was a fraud, and the judge admonished defense for not having private investigators conduct surveillance upon complainant in a fraud investigation.

Complainant further alleged that a phone conference was conducted by the judge without the complainant being given proper notification of the conference or the opportunity to be in the conference, in violation of due process rights. Complainant alleged that the judge had ex-parte communications based solely upon a series of false accusations and hearsay.

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

11. Complainant, an unrepresented applicant, alleged that the judge violated California Code of Regulations, title 8, section 9721.32 by failing to report an ethics violation.

Complainant happened to stop by the District Office and found the judge present and available to talk. The judge found how distraught complainant was and went into the office to talk. The judge pulled up the case on the computer and stated that complainant was represented by counsel. Complainant explained that current counsel was substituted out for a different attorney because the prior counsel was misrepresenting complainant. When complainant asked the judge for advice, the judge informed complainant to seek expert litigators with expertise in employment law with good working knowledge of workers' compensation law. Complainant alleged that complainant never received any explanation or closure through this nightmare of a workers' compensation case.

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

12. Complainant, a represented applicant, alleged that the judge's Decisions, Findings and Opinions: 1) made a medical diagnoses; 2) changed the facts, testimony, and added the judge's own facts; 3) constantly misstated the facts; 4) partnered with the doctor to lower complainant's rating, denying benefits; 5) refused to consider all the documented physical evidence; 6) violated the Health and Insurance Portability and Accountability Act of 1996 (HIPAA) by sending someone else's medical records to the Agreed Medical Evaluator (AME); 7) libeled and maligned complainant's character; 8) lost documented medical reports of the complainant's physical injuries; and 9) used inadmissible evidence.

In the judge's Opinion and Decision, complainant claimed that the judge changed all the facts and testimony and added the judge's own facts. In the Opinion, complainant alleged that the judge maligned and libeled the complainant's character repeatedly, particularly regarding the complainant's credibility by using words such as "extraordinarily inconsistent, egregiously incredible, improbable, unrealistic, biased and untrustworthy." Complainant also alleged that the judge and the AME partnered together to lower the rating.

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.

13. Complainant, an unrepresented applicant, alleged that the judge said that if medications and physical therapy did not cure the injuries that we should stop everything now; when the complainant asked if the judge meant no medications and no physical therapy anymore, the judge allegedly replied, "yes."

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. Complainant, an unrepresented applicant, alleged that the judge was biased and discriminated against the complainant based upon race. Complainant alleged that the judge's Findings and Award failed to protect the complainant's right to 100% permanent disability and covered up wrongful terminations that were racially motivated.

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

15. Complainant, an unrepresented applicant, alleged that the judge discriminated against the complainant. Complainant submitted evidence about the fraud, malpractice, felony, and discrimination of several doctors. At an expedited hearing, the judge allowed the doctors to act fraudulently by sending complainant back to "those corrupt doctors."

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. Complainant, an unrepresented applicant, alleged that the judge violated complainant's constitutional rights and denied due process. Complainant alleged that the judge asked to see the evidence and when the judge did not like the evidence, the judge told complainant that if complainant proceeded to trial, the judge would declare complainant a vexatious litigant. The judge then asked the I&A Officer to take the complainant out of the room to talk the complainant into not proceeding to a hearing. Under the threat of being declared a vexatious litigant and having to pay penalties and sanctions, complainant signed a stipulation stating that all disputes the complainant alleged against defendant were resolved.

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.

17. Complainant, an attorney for the applicant, alleged that the judge was disrespectful and dismissive of a serious claim of racial and religious discrimination by a QME. Complainant alleged that at the MSC, the judge stated "we can hear the whole dog and pony show." Complainant believes that the petition to remove the QME was well thought out and not part of some "dog and pony show."

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. Complainant, an unrepresented applicant, alleged that the judge was rude and denied complainant's due process rights. During trial, complainant wanted to dismiss complainant's attorney but the judge used intimidation to persuade the complainant not to dismiss the attorney before trial began. Eventually, complainant was allowed to dismiss the attorney. Prior to trial beginning, complainant asked to have time to obtain a new attorney but the judge replied that the matter would be proceeding whether the complainant stayed in the courtroom or not. At the trial proceeding, the judge began to ask complainant questions and seemed upset when complainant replied "I don't understand." The judge appeared irritated, and the complainant was denied the ability to seek representation.

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. Complainant, an unrepresented applicant, alleged that the judges are corrupt and have discriminated against complainant and violated complainant's civil rights.

The complainant contended that the court refused to provide copies of court documents. One of the judges did not answer the complainant's requests and complainant wonders if the documents are not reviewed but thrown instead thrown in the trash. The complainant said that another judge falsely argued that the judge needed time to rule in the complainant's case, stating that the judge had a sore finger. Complainant also contended that at one of the hearings, complainant's attorney appeared late in court and drunk. Complainant asked that the attorney be dismissed but the judge refused.

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

20. Complainant, an attorney for the defendant, alleged that the Presiding Judge (PJ) participated in ex-parte communications with opposing counsel during the course of a lien conference scheduled before a different judge. Complainant alleged that a lien conference was scheduled, and complainant was prepared to discuss the issue of payment of the lien activation fee. However, counsel for lien claimant left the courtroom only to emerge an hour later with a handwritten Motion to Withdraw Lien and Order Granting Withdrawal of Lien signed by the PJ, which was acquired after opposing counsel and the PJ engaged in ex-parte communications.

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. Complainant, an unrepresented applicant, alleged that the judge denied complainant the right to appear at an expedited hearing. Complainant's attorney failed to represent complainant properly and told complainant to find a new attorney. The attorney quit and kept the file for two months. The attorney was supposed to

appear at a hearing on the issue of penalties and sanctions, but instead the judge allowed the attorney the latitude to petition to be relieved as counsel.

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.

22. Complainant, an unrepresented applicant, alleged that the PJ was made aware of the conduct of the I&A Officer who in collaboration with another judge manipulated and put the complainant on the second floor with complainant's nurse and service dog, thereby denying the right to appear or inquire about a hearing. Complainant sent six letters to the PJ. There was no response or reply.

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

23. Complainant, a represented lien claimant, alleged that the judge discriminated against the complainant and violated complainant's civil rights. Complainant believes a fair trial is not possible before this judge. Complainant provided a Petition for Benefits to the judge stemming from unpaid interpreting services. Complainant's representative appeared before a different judge at a lien conference. However, the matter was taken off calendar for further discovery. Approximately a year later, complainant stopped by the judge's office and inquired into the status of the petition complainant had filed. Complainant stated that the judge was obviously upset and in an irate matter told complainant that the judge was too busy. The judge did not offer to look into the matter and practically threw complainant out of the office.

Complainant appeared at a hearing and the matter was set for trial before the judge. At trial, the judge told complainant that it was of the lowest priority to go to trial because complainant was a lien claimant and injured workers took precedence when it came to determining which cases to hear.

Complainant believes that the judge was prejudicial, would never proceed to trial, and would force the parties to a settlement despite defendant not offering anything substantial. The judge spent more time arguing the case in chambers than going forward with trial.

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.

24. Complainant, a represented applicant, alleged that the judge threatened to remove complainant from court. Complainant met with complainant's attorney in the cafeteria on the day of the hearing and spoke about what might happen at the hearing. When the attorney told complainant that there was not much the attorney could do for the complainant, the complainant was devastated and cried and told the attorney that complainant no longer wanted to be represented by the attorney. To complainant's surprise, the judge, without giving any sort of greeting, wanted to know why complainant no longer wanted to be represented by the attorney. The complainant explained why and the judge stated that the attorney is a great lawyer. The judge further stated that, if the complainant were to say another word, complainant would be removed from the hearing room and the case would proceed without complainant.

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.

25. Complainant, an employee of a lien claimant, alleged that the judge ordered complainant to appear at a lien conference and used the judge's authority to confine complainant in the courthouse.

Complainant, a recently hired employee of the lien claimant, was not a witness nor a hearing representative. While at work, complainant received a call from the hearing representative indicating that the judge ordered the owner or principal to appear from lien claimant's company. Complainant called the owner who was unavailable so complainant agreed to come if necessary. Complainant was told to come down because the judge ordered it.

Complainant claimed that the judge, without inquiring about the duties or responsibilities for the company, began to ask legal questions about the lien and the case and in general about WCAB procedures. Complainant was informed by the judge that complainant would be personally sanctioned because complainant could not satisfactorily answer all of the judge's questions, was ordered to stay and make a list of approximately 200 documents that the judge wanted, and given 20 minutes to complete the task.

Complainant felt confined under color of authority. Complainant requested a court reporter to record the verbal remarks but was denied. Complainant felt that the judge's conduct was an abuse of power.

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.

26. Complainant, an unrepresented applicant, alleged that the judge violated Canon 3 of the Code of Judicial Ethics by failing to perform the duties of judicial office impartially, competently, and diligently.

Complainant complained that the judge failed to dispose of all judicial matters promptly by failing to issue a decision for seven months after the trial because the

judge could not made a decision and vacated submission of the case. After trial took place, the judge needed clarification on the QME's medical opinions and determinations. The judge attached proposed interrogatories and set the matter for a status conference. The complainant was represented by counsel. The parties agreed to the interrogatories being sent to the QME. Complainant had no contact with the attorney for two months and received notice that the complainant was scheduled for a re-evaluation with the QME. The complainant then dismissed counsel.

Complainant alleged that defense counsel communicated "off the record" with the judge in absence of complainant and complainant's attorney. Complainant complained that the judge had further ex-parte communications regarding the deposition of the QME. Complainant expressed concerns regarding the notice of deposition of the QME. Defense counsel assured complainant that defense counsel had spoken to the judge regarding the deposition over the phone.

The deposition of the QME took place but did not finish. Defense counsel indicated that the deposition would not be completed. Complainant filed a Declaration of Readiness to Proceed (DOR) and the matter was set for a status conference. At the hearing, the judge ordered the complainant to attend another examination by the QME and accepted the transcript of the partially completed deposition into evidence. The judge told complainant to continue with the deposition at the time of complainant's psychiatric examination. The judge also stated that the judge was doing complainant a favor because defense would not be at the deposition as it would be taking place at the evaluation. Complainant questioned whether these two procedures can happen simultaneously. Complainant told the judge that complainant would probably have to record the deposition unless the defendant was going to pay for a court reporter and the QME would find it ridiculous. The judge became angry and told complainant "arguments are over" and left the chambers.

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.

27. Complainant, a represented applicant, alleged the judge violated complainant's due process rights by failing to develop the record regarding complainant's injuries. Complainant claims that the judge accepted false evidence, false appeals, false videos, and false medical reports into evidence.

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. Complainant, an unrepresented applicant, alleged the judge tampered with the testimonies (i.e., court transcripts) of each of the seven witnesses that testified in complainant's workers' compensation case. Complainant went to the DWC office to request a transcript of one of the witnesses. The complainant asked for a supervisor and the supervisor showed up half an hour later with a California Highway Patrol (CHP) officer. The supervisor asked complainant to come back in six days but the CHP officer told the supervisor that complainant was entitled to the transcript. The complainant continued to wait. The judge came in and told the complainant that complainant needed to come back in two weeks. The judge came back with papers, and complainant provided the name of the witness. The judge told complainant how much the transcript cost. The complainant gave the money to the judge but was 3 cents over and the complainant told the judge to keep the change. The judge got angry and told complainant to come in a month when complainant had the right amount of money.

Complainant and the CHP officer went to the cafeteria to get the proper amount of money. They both returned and gave the money to the judge. The judge told complainant it would take 7 to 10 days for the transcript. Complainant then returned

10 days later and got the transcript. Complainant read the transcript and noticed that it was tampered with.

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

29. Complainant, an unrepresented applicant, alleged that the judge committed fraud by ante-dating the Minutes of Hearing. The complainant alleged that the hearing was scheduled for February 23, 2011. That morning the judge was not going to be in so the complainant and the defense attorney signed the minutes of hearing and were told that complainant would receive a copy in the mail after the judge returned. The copy of the Minutes of Hearing that complainant received in the mail were dated February 24, 2010 (one year prior to the hearing date.) At the next hearing which was held on March 16, 2011, the date indicated on the Minutes of Hearing was March 15, 2011.

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

30. Complainant, a represented applicant, alleged that complainant previously filed an ethics complaint against a judge, and the Ethics Committee recommended that an investigation take place. The investigating judge called the complainant and asked if there was anything complainant would like to add to the ethics complaint. The complainant responded that complainant did not have anything to add except that it was peculiar that the judge complained about had retired just three days prior to the Ethics Committee meeting and expressed concern about the possibility that the defendant county exerted unethical or illegal influence on the retired judge. Complainant noted that this was the scope of the investigation interview conducted by the investigating judge. The investigating judge failed to disclose that this judge knew the other judge and that the investigating judge was also an acting workers'

compensation judge. Complainant complained that this represented a conflict of interest and requested an ethics investigation into the original complaint and against the investigating 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.

31. Complainant, an unrepresented applicant, complained that the judge threatened and harassed the complainant, felt that complainant's well-being was in danger, and thus, the complainant was unable to properly render defense. Complainant attached the transcript of the hearing wherein the judge stated, "if you interrupt me one more time, you will deeply regret it. I have been sitting trying to say things, and you have been constantly interrupting me. I am on the bench, and I will suffer no more interruptions." Complainant alleged that the judge said this in a very loud voice.

Following its review of the complaint, the Committee identified an ethical violation of the Code of Judicial Ethics. Based upon that conclusion, the Committee has recommended further action. Appropriate action has taken place.

32. Complainant, an unrepresented applicant, alleged that the judge acted with bias and discrimination regarding self-representation and, in a room full of witnesses, refused to hear complainant after seven years of waiting for complainant's day in court. After Complainant had been verbally abused and slandered by defense counsel, the judge finally agreed to move the case to trial. However, complainant alleged that the judge lied because the trial was later changed to a conference.

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

33. Complainant, a defense attorney, alleged that the judge consistently exhibited unprofessional and unethical behavior toward defendant and complainant. Despite repeated petitions for removal and disqualification, the judge has refused to recuse and continues to act inappropriately.

The parties appeared for trial on the issue of defendant's entitlement to a subsequent deposition of the applicant. During the trial, prior to going on the record, the judge made several inflammatory statements about the defendant and defense counsel as follows:

- 1) Defendant has a bad reputation for delaying cases, for which they are repeatedly audited;
- 2) The defense counsel on this case have deliberately delayed the case;
- 3) Complainant did not believe prior counsel did an adequate job on the prior deposition of the applicant and complainant was trying to fix the problems via subsequent deposition;
- 4) That complainant was committing billing fraud and wanted a subsequent deposition of the applicant strictly for billing purposes.

Complainant further alleged that at the MSC, the judge, at times, refused to permit defense counsel to state positions and arguments, and was condescending while allowing applicant's attorney to state arguments without interruption. At a subsequent hearing, complainant requested a court reporter, but the judge refused and told complainant that the judge did not appreciate complainant's personal attacks, speaking in a threatening tone, and declined the request for a court reporter.

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.

B. Complaints Pending Ongoing Investigation (4 total)

1. Complainant, an attorney for the applicant, alleged that the judge attempted to strong-arm complainant into compromising the applicant's rights. This matter came before the judge based upon defendant's DOR on the sole issue of the need for further treatment as the panel QME did not find the need for further treatment necessary, but the injured worker continued medical treatment with the treating physician. Complainant alleged that at the MSC, the judge inquired as to why the case could not be settled. Complainant alleged that the judge became frustrated and chastised the complainant for using delaying tactics and failing to diligently work up the file. Complainant alleged that the WCALJ threatened to cut off discovery even though it could not be legally cut off. Complainant reminded the judge that complainant undertook representation of the applicant only 6 weeks prior to the MSC and that the applicant was deposed only 12 days ago.

After some discussion, the judge continued the matter for a further MSC, to which complainant objected because the matter would not be ripe for settlement in the near future. The judge responded by stating "we've got nothing better to do here than to set hearings." Complainant alleged that the judge was retaliating against complainant for disagreeing as to how the matter should proceed. Complainant alleged that the judge went on to comment that complainant had been practicing for more than 20 years, began scolding complainant for impertinence, and said that everything the judge had heard about complainant from the other judges was clearly true.

The Committee concluded that this complaint should be investigated.

2. Complainant, a represented applicant, complained that the judge was unethical because the judge was unfair to the complainant's side at trial. The judge rushed the complainant's attorney many times and did not seem to respect the complainant's lawyer. The judge relied upon a disputed report from a QME and believed obvious lies from the defendants. The judge also joked with the other lawyer about complainant's lawyer. The judge joked that if the complainant only got \$25,000 for rape, then what did the complainant expect to get from this case.

The Committee concluded that this complaint should be investigated.

3. Complainant, an unrepresented injured worker, called to speak with a DWC employee. The DWC employee sensed that the injured worker was emotionally upset. The complainant stated that a hearing was set for Monday before the judge but complainant had a calendar conflict due to a medical appointment. On Friday, complainant went to the I&A Officer, who helped prepare a letter. In the letter, the complainant requested that the hearing be postponed due to the medical appointment and expressed the desire for more time to hire an attorney. The letter was left for the judge's secretary and copies were sent to all parties listed on the address record. The complainant also called the Division's call center on Monday morning at 7:40 a.m. and was assured that someone would email the judge and the secretary directly. The complainant also called the number on the Notice of Hearing which was the direct line to the judge, left a detailed message, and informed the judge that defense counsel did not have any objections to the continuance.

On the date of the hearing, the judge telephoned the complainant and in a very stern voice, the judge said "you do not ever miss one of my hearings." The judge stated that both lawyers were present and it was not appropriate for the injured worker to not be there. When complainant explained that there was a medical appointment, the judge replied that unless you are hospitalized or dead or close to that, you don't make the decision as to whether you should attend or not. The judge also said that

the judge could have a CHP officer go pick up and arrest the injured worker. The complainant explained to the judge how the complainant did not know the procedures but spoke with the I&A officer and wrote a letter. The judge stated the judge sometimes doesn't have time to read things and nobody cancels hearing except the judge. The judge concluded by stating that the judge did not ever want to see or hear this again. For now, nothing is going to happen but in the future, the judge could have the injured worker arrested or cited.

The Committee concluded that this complaint should be investigated.

4. Complainant, an attorney for the lien claimant, alleged that the judge violated the Canons of Judicial Ethics by failing to uphold the integrity and independence of the judiciary, failing to avoid impropriety and the appearance of impropriety, and failing to perform the judge's duties impartially and diligently. Complainant alleged that the judge denied complainant's client's due process rights because the judge would not proceed without complainant paying the lien activation fee. A DOR was filed on behalf of a lien claimant and a hearing scheduled, but the judge would not proceed with the calendared trial without complainant paying the lien activation fee. Complainant paid the activation fee. The judge would still not proceed forward with trial and ordered lien claimant to personally appear the next day or face the possibility of being sanctioned. The lien trial proceeded the following day, and lien claimant appeared and provided testimony.

Complainant alleged that the judge issued a decision that did not accurately reflect the existence of off-the-record commentary by the judge that influenced the trial decisions of complainant. Complainant stated that the applicant was not afforded due process notice that all issues would be decided. Complainant argued that the matter was submitted for one limited issue of whether good cause existed for applicant to treat outside the Medical Provider Network (MPN) and "all other issues are deferred." Complainant was denied a proper record upon which they would

need to pursue judicial review of the trial court decisions in this matter. The record did not indicate that the judge repeatedly went off record and held discussions with the parties, including threatening to sanction complainant for attempting to introduce newly discovered evidence.

Complainant complained that the judge made an inaccurate statement in the Opinion on Decision by writing “in order to obtain as complete a record as possible, the Court has allowed into evidence all documents offered by the parties.” The complainant enclosed declarations by multiple witnesses that reflect the off-the-record admonitions and threats of sanction that were made to the complainant. Complainant asserts that the undocumented off-the-record threats of sanction prevented the petitioner from admitting documents into evidence in support of the issue at trial.

Another hearing representative who was also present for the lien trial obtained documents relating to the case (including objection letters by the defendant) and provided the documents to complainant on the day of trial. Complainant requested that these documents be listed as evidence, but the judge denied the request. The judge turned to defense counsel and asked, “Would you stipulate that these letters are a mistake made by a stupid secretary/clerk for the carrier, right?” referring to the objection letters.

The hearing representative complained that the judge went on and off-the-record repeatedly, threatened sanctions, and made rude comments to complainant. The hearing representative stated that at one point the defense attorney asked if the parties were on or off-the-record. The judge laughed and said the court reporter has worked with the judge for 20 years and knows when to go on and off the record.

The Committee concluded the complaint should be investigated.

C. Pending Complaints Filed after the Final EAC Meeting of 2013 (3 total)

1. Complainant, an unrepresented applicant, complained the judge violated the Code of Judicial Ethics by demonstrating bias through the judge's conduct, in disrespectful language, statements, and gestures. The judge also committed to a specific ruling on information not presented at a lien trial, further demonstrating impropriety and bias.

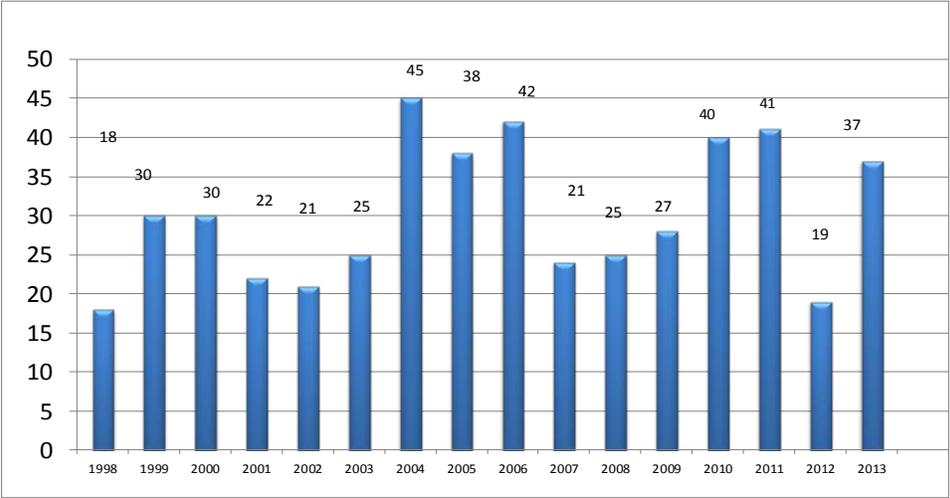
Complainant claimed that an attorney fraudulently filed a lien in the complainant's underlying workers' compensation case for legal services. The complainant claimed that the judge ignored complainant's verbal and written disputes to have the attorney provide a substitution of attorney or a contract signed by complainant for representation and has been denied the right to a fair and impartial trial. The judge demonstrated impropriety by continuing to allow the attorney to repeatedly ignore the WCAB's requests for documentation and inexcusably extending or postponing trial dates only for the attorney. The judge showed extreme patience, courtesy, and kindness to the attorney. The judge repeatedly stated the judge's decision on the final determination of the lien trial without examining the entire scope of the lien. At a settlement conference, the judge told complainant that it is not a question of whether complainant will pay the attorney, but rather how much.

2. Complainant, an unrepresented applicant, complained that the Presiding Judge (PJ) retaliated against complainant because of the prior complaints the complainant had made to the Ethics Advisory Committee. The PJ has now become more harassing and abusive and complainant has asked the judge to stop calling and criticizing the merits of the complainant's claim. The judge showed extreme prejudice and discrimination and has extorted \$2,500 by sanctioning the complainant.

3. An anonymous complainant complained the judge acted unprofessionally during hearings in the courtroom. At a hearing, a brand new attorney, accompanied by a senior member of the firm, was making a first appearance before the judge. When the young attorney was introduced, the judge loudly questioned the young attorney in front of all parties present as to whether or not the attorney had been informed by other members of the bar that the WCALJ is a “real bitch.” Parties in the courtroom were shocked and dismayed by the judge’s unprofessional behavior. The complaint was made anonymously because of the fear of retaliation by the judge.

Table 1: Complaints of Misconduct Filed with the Ethics Advisory Committee

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1998–2013

**2013
COMMITTEE MEMBERSHIP**

HON. ALICE VILARDI

Chair

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

HON. TIMOTHY HAXTON

Workers' Compensation Judge
Workers' Compensation Appeals Board
Salinas

HON. PAIGE LEVY

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

HON. JOYCE CRAM

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

ROBERT RUBY, ESQ.

Former Defense Attorney
Workers' Compensation Law

MICHAEL McCLAIN, ESQ.

California Workers' Compensation Institute
Representing Insurers

JIM ZELKO

Kaiser Foundation Health Plan
Representing Self-Insurers

STEVEN SIEMERS, ESQ.

Member Representing
Organized Labor

KENNETH PETERSON

Former Applicants' Attorney
Workers' Compensation Law

DWC STAFF

Richard Newman

Chief Judge

Karen Pak

DWC Attorney

Ursula Jones

Adm. Assistant

Acronyms

AME	Agreed Medical Evaluator
DOR	Declaration of Readiness
DWC	Division of Workers' Compensation
EAC	Ethics Advisory Committee
HIPAA	Health and Insurance Portability and Accountability Act
I&A	Information and Assistance
MPN	Medical Provider Network
MSC	Mandatory Settlement Conference
PJ	Presiding Judge
QME	Qualified Medical Evaluator
WCALJ	Workers' Compensation Administrative Law Judges