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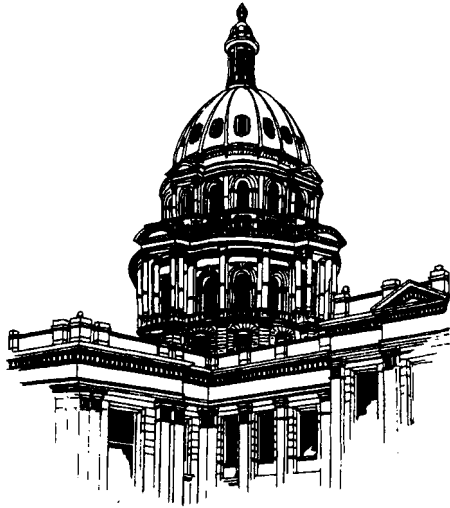
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0458 Study of Administrative Law Judges



Study of Administrative

Law Judges

Report to the
COLORADO
GENERAL ASSEMBLY

Colorado Legislative Council
Research Publication No. 458
November 1999

RECOMMENDATIONS FOR 2000

**STUDY OF ADMINISTRATIVE
LAW JUDGES**

**Report to the
Colorado General Assembly**

**Research Publication No. 458
November 1999**

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November 1999

To Members of the Sixty-second General Assembly:

Submitted herewith is the final report of the Study of Administrative Law Judges. The interim committee was created by the Legislative Council, at its June 4, 1999, meeting to develop any legislative or regulatory changes necessary to improve the use of administrative law judges for workers' compensation cases and improve the hearing process in such cases.

At its meeting on November 15, 1999, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2000 session was approved.

Respectfully submitted,

/s/ Senator Ray Powers
Chairman
Legislative Council

RP/LT/pw

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STUDY OF ADMINISTRATIVE LAW JUDGES

Members of the Committee

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Representative Richard Decker
Representative Bob Hagedorn
Representative Mark Larson
Representative Jennifer Veiga**

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Senator David Owen
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Research Assistant**

Office of Legislative Legal Services

**Bart Miller
Senior Attorney**

EXECUTIVE SUMMARY

Committee Charge

The Executive Committee of Legislative Council, at its June 4, 1999, meeting, created the Interim Committee on Administrative Law Judges. The committee was directed to develop any legislative and regulatory changes necessary to improve the use of administrative law judges for workers' compensation cases and improve the hearing process in such cases.

Committee Activities

The committee held five meetings during the 1999 interim and heard testimony from a number of individuals concerning their experiences in hearings before an administrative law judge (ALJ). Suggestions were provided for improvements to the ALJ hearing process. Those suggestions were drawn from respondents' and claimants' attorneys, employers and employees, as well as organizations which represent claimants (Workers' Compensation Education Association) and respondents (Workers' Compensation Coalition). Representatives of the Division of Workers' Compensation and the Division of Administrative Hearings also commented on the ALJ hearing process.

At its first meeting, an overview of the workers' compensation system was provided by the director of the Division of Workers' Compensation. At a subsequent hearing, representatives of the Colorado Bar Association and the Judicial Department explained current procedures for the selection, evaluation, and retention of state court judges.

Committee Recommendations

As a result of committee discussion and deliberation, the committee recommends four bills for consideration in the 2000 legislative session.

Bill A — Requirement That Administrative Law Judges Comply with the Colorado Code of Judicial Conduct and Creating the Administrative Law Judge Performance Advisory Committee. Bill A creates the Administrative Law Judge Performance Advisory Committee in the office of the executive director of the Department of Personnel. The duties of the performance committee include advising the executive director of the Department of Personnel on the development of techniques for evaluating ALJs on relevant performance criteria. The bill also makes ALJs in the Division of Administrative Hearings subject to the Colorado Code of Judicial Conduct.

Bill B — Issuance of Written Findings of Fact in Workers' Compensation Cases. Bill B requires, for all workers' compensation hearings, the issuance of written orders with specific findings of fact by the presiding ALJ or the director of the Division of Administrative Hearings. Such orders are required to be issued within 30 calendar days of the completion of the hearing.

Bill C — Determinations of the Amount of Disfigurement Benefits in Workers' Compensation Cases. The director of the Division of Workers' Compensation or the director's designee is required, pursuant to Bill C, to make disfigurement determinations in workers' compensation cases. The director is required to adopt a schedule for such determinations.

Bill D — Transfer of Responsibility for Conducting Prehearing Conferences in Workers' Compensation Cases. Bill D transfers the statutory authority for the conduct of prehearing conferences in workers' compensation cases from the Division of Workers' Compensation to the Division of Administrative Hearings. Pursuant to this bill, all prehearing ALJs would also be transferred to the Division of Administrative Hearings.

AUTHORITY AND RESPONSIBILITIES

The Executive Committee of Legislative Council, at its June 4, 1999, meeting, created the Interim Committee on Administrative Law Judges. The eleven-member committee was assigned the following duties:

- receive testimony from representatives of the Division of Administrative Hearings, the Division of Workers' Compensation, the business community, organized labor, and such other organizations as the committee deems appropriate;
- study and evaluate the overall effectiveness of administrative law judges in workers' compensation cases; and
- develop any legislative and regulatory changes necessary to improve the use of administrative law judges for workers' compensation cases and improve the hearing process in such cases.

COMMITTEE ACTIVITIES

Description of the Division of Administrative Hearings

The Division of Administrative Hearings, a division within the Department of Personnel/General Support Services, was statutorily created in 1976. The purpose of the Division is to provide an easily accessible, independent, and cost-effective administrative law adjudication system to be utilized by customer agencies. The Division serves more than 50 state departments, agencies, and boards. The customer agencies most frequently using the services provided by the 16.0 FTE administrative law judges are: the Division of Workers' Compensation in the Department of Labor and Employment; the Department of Human Services; the Department of Health Care Policy and Financing; and the Department of Regulatory Agencies.

Colorado uses a central panel structure for administrative hearings. The central panel hearings system differs from other administrative law decision-making forums in that administrative law judges are independent from the agencies for which they conduct hearings.

Workers' compensation hearings provide a formal way to decide workers' compensation claim disputes arising between employees, insurance carriers, and employers. For fiscal year 1997-98, contested workers' compensation cases comprised approximately 86 percent of the Division's caseload. The two types of workers' compensation hearings are as follows:

Merit Hearings. — These are hearings in which witnesses are sworn in and testimony is taken. The average length of a merit hearing is 1.5 hours and such hearings result in one or more merit decisions.

Procedural Hearings. — These hearings are for procedural matters and no witnesses are sworn in. Procedural hearings take an average of approximately 15 minutes and such hearings result in one or more procedural decisions.

Workers' compensation hearings are held face-to-face in Denver, Boulder, Greeley, Fort Collins, Colorado Springs, Durango, Grand Junction, and Glenwood Springs. Hearings must be held within 80 to 100 days from the application. Decisions by ALJs are final and are appealable to the Industrial Claim Appeal Panel in the Department of Labor and Employment. The Court of Appeals is the next step in the appeals process.

Public Testimony on Performance of Administrative Law Judges

The committee heard testimony from a number of individuals concerning their experiences in hearings before an ALJ. A number of suggestions were provided for improvements to the ALJ hearing process. Those suggestions were drawn from respondents' and claimants' attorneys, employers and employees, as well as organizations which represent claimants (Workers' Compensation Education Association) and respondents (Workers' Compensation Coalition). Representatives of the Division of Workers' Compensation and the Division of Administrative Hearings also commented on the ALJ hearing process.

There was a consensus in the testimony provided that additional funds need to be appropriated for the training of ALJs. For example, ALJs should be updated on changes in the workers' compensation statutes and the legislative intent of such statutes. A substantial number of persons testifying noted the need for ongoing evaluations of ALJs by those persons who appear before ALJs. Such evaluations are essential to both the perception of fairness and improvement of ALJ proficiency. Testimony indicated that there are varying levels of professionalism and competence among ALJs. Concerns were expressed that some ALJs are prejudging a case before it is actually heard. There was a broadly based perception that the hearing process is tilted in favor of the claimants (i.e., injured employees). A number of testifiers did point out that the enactment of Senate Bill 91-218 has resulted in hearings being conducted in a more timely manner. Consequently, decisions are being rendered sooner than they had been prior to the passage of Senate Bill 91-218.

A number of specific suggestions were provided for ALJ improvements. Those suggestions included:

- implement a full rotation of ALJs hearing workers' compensation cases;
- provide additional training for ALJs;
- consolidate pre-hearing judges in the Division of Workers' Compensation with merit hearing ALJs in the Division of Administrative Hearings;
- revise the performance evaluation process to make it more similar to performance evaluations in the Judicial Department;
- create an independent review board to assess the performance of ALJs;
- require ALJs to prepare specific findings of fact;
- require all ALJs in the Division of Administrative Hearings to be subject to the Colorado Code of Judicial Conduct;
- do more to encourage alternative dispute resolution (e.g., settlement conferences);
- mandate the delivery of medical records to ALJs before the actual hearing;
- implement the centralization of workers compensation files; and

- require ALJs assigned to workers' compensation cases to pass a minimum proficiency exam related to workers compensation.

Recommendations. The committee concurred with several of the recommendations for improvement in ALJ performance. In response to these concerns, the committee recommends Bills A (performance evaluations), B (written findings of fact), and D (consolidation of ALJ functions). The committee also requested that the Joint Budget Committee appropriate an additional \$21,000 in fiscal year 2000-01 to the Division of Administrative Hearings for ALJ training.

Performance Evaluations for State Court Judges and Administrative Law Judges

As a follow-up to testimony that more comprehensive performance evaluation procedures be developed for administrative law judges, the committee received a briefing from a representative of the Colorado Judicial Department and a spokesman for the Colorado Bar Association. The briefing covered current procedures for the selection, evaluation, and retention of state court judges.

Testimony by the representative of the Colorado Judicial Department indicated that the State Commission on Judicial Performance has developed a process for the evaluation of district and county judges, justices of the Supreme Court, and judges of the Court of Appeals. The evaluation criteria include, but are not limited to: integrity; knowledge and understanding of substantive, procedural, and evidentiary law; communication skills; preparation, attentiveness, and control over judicial proceedings; sentencing practices; docket management and prompt case disposition; administrative skills; punctuality; effectiveness in working with participants in the judicial process; and service to the profession and the public. The purpose of the evaluations is to provide voters with fair, responsible, and constructive evaluations of trial and appellate judges and justices seeking retention in general elections. The results of the evaluations also provide judges with information that can be used to improve their professional skills as judicial officers.

To date, 469 judges and justices have been evaluated by approximately 600 citizen volunteers who have served on district commissions on judicial performance. Of the 469 judges reviewed, there have been:

- 452 recommendations to retain;
- 10 recommendations not to retain;
- 7 no opinions; and
- 4 judges who have not been retained.

A spokesman for the Colorado Bar Association noted that his organization, in conjunction with the Division of Administrative Hearings, is developing a survey to evaluate the performance of administrative law judges. Items to be addressed in the survey include:

demeanor of the judges, timeliness of decisions, knowledge of the workers' compensation laws, the completeness of decisions, and the timeliness of written orders. All of the ALJs who are evaluated will receive feedback on the results of the performance evaluation.

Recommendation. The committee concluded that enhanced performance evaluations are needed for administrative law judges. The committee recommends Bill A which creates the Administrative Law Judge Performance Advisory Committee in the office of the executive director of the Department of Personnel.

SUMMARY OF RECOMMENDATIONS

As a result of the committee's activities, the following bills are recommended to the Colorado General Assembly.

Bill A — Requirement That Administrative Law Judges Comply with the Colorado Code of Judicial Conduct and Creating the Administrative Law Judge Performance Advisory Committee

The committee heard public comments about unprofessional conduct by ALJs including courtroom behavior, inadequate knowledge of the workers' compensation statutes, and insufficient preparation for hearing. Concerns were also expressed about the adequacy of current performance evaluation procedures for ALJs. As a result of these concerns, the committee recommends Bill A.

Bill A creates the Administrative Law Judge Performance Advisory Committee in the office of the executive director of the Department of Personnel. The committee consists of ten members appointed by the governor with the consent of the Senate. Five of the members are attorneys and five are nonattorneys. The duties of the performance committee include advising the executive director of the Department of Personnel on the development of techniques for evaluating ALJs on relevant performance criteria. The committee is also directed to recommend judicial performance evaluation forms to be used by peers and other persons who have direct contact with administrative law judges. The bill specifies that the performance committee sunsets July 1, 2007.

The bill makes ALJs in the Division of Administrative Hearings subject to the Colorado Code of Judicial Conduct. All Colorado state court judges are currently subject to that code. The committee believes that ALJs should also comply with that standard.

This bill is assessed as having no fiscal impact.

Bill B — Issuance of Written Findings of Fact in Workers' Compensation Cases

Bill B requires, for all workers' compensation hearings, the issuance of written orders with specific findings of fact by the presiding ALJ or the director of the Division of Administrative Hearings. Such orders are required to be issued within 30 calendar days of the completion of the hearing. ALJs now issue written orders with specific findings of fact for other subject areas (e.g., human services cases).

Testimony indicated that findings of fact in workers' compensation cases are now prepared by the prevailing party rather than the ALJ. Requiring an ALJ to prepare findings of fact would make the ALJ more accountable for his or her work.

This bill is assessed as having no fiscal impact.

Bill C — Determinations of the Amount of Disfigurement Benefits in Workers' Compensation Cases

Bill C requires that the director of the Division of Workers' Compensation or the director's designee make disfigurement determinations in workers' compensation cases. The director is required to adopt a schedule for such determinations. The schedule will be final and not subject to review.

Testimony provided to the committee indicated that the current ALJ process for making disfigurement awards is costly, inconsistent, and subjective. To determine the amount of the award, an ALJ must look at the claimant (in person or by photographs) and evaluate the size and severity of the scar. Statutes do not provide guidelines for these awards. The use of a written schedule to assess disfigurement awards could result in savings in annual billings to the Division of Workers' Compensation and provide more consistency in awards.

For FY 2000-01, the fiscal note implies that the Department of Labor and Employment should receive an appropriation which reduces expenditures from the Workers' Compensation Cash Fund by \$28,188 CFE and adds 0.3 FTE. The Department of Personnel should receive an appropriation which reduces moneys received from the Department of Labor and Employment by \$41,528 CFE and 0.3 FTE.

Bill D — Transfer of Responsibility for Conducting Prehearing Conferences in Workers' Compensation Cases

Bill D transfers the statutory authority for the conduct of prehearing conferences in workers' compensation cases from the Division of Workers' Compensation to the Division of Administrative Hearings. Pursuant to this bill, all pre-hearing ALJs would also be transferred to the Division of Administrative Hearings. The bill also directs the executive director of the Department of Personnel to adopt rules authorizing the rotation of cases heard by administrative law judges in the Division of Administrative Hearings. The rules would address the rotation of prehearing conference functions in workers' compensation cases as well as the geographic rotation of ALJs.

The transfer of prehearing ALJs to the Division of Administrative Hearings would increase the number of ALJs available to hear workers' compensation cases and would reduce some of the duplication of responsibilities of the prehearing and merit ALJs. The bill

will also be helpful in the implementation of a rotation of judges deciding workers' compensation cases.

For FY 2000-01, the fiscal note implies that the Department of Labor and Employment should receive an appropriation of \$500,719 CF from the Workers' Compensation Cash Fund to purchase necessary services from the Department of Personnel and would require 8.0 less FTE. The Department of Personnel, Division of Administrative Hearings, should receive a cash fund exempt transfer of \$500,719 in addition to 8.0 FTE.

RESOURCE MATERIALS

The resource materials listed below were provided to the committee or developed by Legislative Council Staff during the course of the study. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver. For a limited period of time, the meeting summaries and materials developed by Legislative Council Staff are available on our web site at:

www.state.co.us/gov_dir/leg_dir/lcsstaff/1999/99interim.

Meeting Summaries

Topics Discussed

August 2, 1999	Overview of workers' compensation system; update on recent changes at the Division of Administrative Hearings; performance audit of Division of Administrative Hearings; overview of the Colorado Compensation Insurance Authority.
August 24, 1999	Public testimony on administrative law judge hearings and the performance of administrative law judges.
September 23, 1999	Review of procedures for selection, evaluation, and retention of state court judges; proposals by the Division of Workers' Compensation and the Division of Administrative Hearings to improve administrative law judge performance; committee consideration of possible administrative law judge legislative proposals.
October 4, 1999	Find committee action on draft legislation and the selection of bill sponsors.

Memoranda and Reports

Legislative Council Staff memoranda titles:

Background Information on the Division of Administrative Hearings and Administrative Law Judges

Reports provided to the committee:

Division of Administrative Hearings - Performance Audit, Office of State Auditor, May 1997

Division of Administrative Hearings - Management Review, Department of Personnel/General Support Services, June 1998

Procedures for Personnel Complaints About Administrative Law Judges, Division of Administrative Hearings, January 1999

1997-1999 CCIA Claim and Litigation Volume Trends, Colorado Compensation Insurance Authority, August 24, 1999

Commissions on Judicial Performance Fact Sheet, Colorado Judicial Department, January 1999

Bill A

BY SENATORS Owen, Anderson, and Andrews;
also REPRESENTATIVES Larson, Clapp, Decker, and T. Williams

A BILL FOR AN ACT

CONCERNING THE CONDUCT OF ADMINISTRATIVE LAW JUDGES IN THE DIVISION
OF ADMINISTRATIVE HEARINGS IN THE DEPARTMENT OF PERSONNEL,
AND, IN CONNECTION THEREWITH, REQUIRING THAT SUCH
ADMINISTRATIVE LAW JUDGES COMPLY WITH THE COLORADO CODE
OF JUDICIAL CONDUCT AND CREATING THE ADMINISTRATIVE LAW
JUDGE PERFORMANCE ADVISORY COMMITTEE.

Bill Summary

"Conduct Of Administrative Law Judges"

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Administrative Law Judge Study. Makes administrative law judges in the division of administrative hearings in the department of personnel subject to the Colorado code of judicial conduct.

Creates the administrative law judge performance advisory committee ("performance committee") in the office of the executive director of the department of personnel. Sets forth a legislative declaration regarding the desirability of having a performance committee to advise the executive director of the department of personnel on the judicial performance of administrative law judges. Specifies that the performance committee sunsets July 1, 2007.

Provides for the appointment of members of the performance committee by the governor, with the consent of the senate. Establishes that the performance committee shall be comprised of attorney and nonattorney members. Establishes the term of office of members of the performance committee. Makes members of the performance committee and employees of the department of personnel providing assistance to the committee immune

from legal action for official acts performed in good faith as members of and staff to the performance committee.

Sets forth the powers and duties of the performance committee to include advising the executive director of the department of personnel on the development of techniques for evaluating the performance of administrative law judges and developing surveys and other vehicles for obtaining input from lawyers, litigants, and agency personnel regarding administrative law judge performance.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 24-30-1003 (4), Colorado Revised Statutes, is amended to read:

24-30-1003. Administrative law judges - appointment - qualifications - standards of conduct. (4) (a) Administrative law judges appointed pursuant to this section shall be subject to the standards of conduct set forth in the COLORADO code of judicial conduct. ~~for administrative law judges of the state central panels adopted by the division of administrative hearings of the department of personnel.~~ The performance review plan for each administrative law judge shall include this COLORADO code of judicial conduct. ~~for administrative law judges.~~

(b) A complaint alleging a violation of the COLORADO code of judicial conduct ~~for administrative law judges of the state central panels, adopted by the division of administrative hearings of the department of personnel,~~ shall be referred to the executive director of the department of personnel who shall investigate the complaint and determine if the administrative law judge violated any canons of the code. Such administrative law judge shall be subject to the disciplinary procedures set forth in rules adopted by the state personnel board.

(c) If the decision is unsatisfactory to any party, an appeal may be made to the board of ethics for the executive branch of state government in the office of the governor.

(d) If the administrative law judge is found by the executive director or the board of ethics to have acted in violation of the canons of the COLORADO code of judicial conduct, ~~for administrative law judges of the state central panels;~~ then the decision shall be made a part of the personnel file of the administrative law judge against whom the complaint was filed.

SECTION 2. Part 10 of article 30 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-30-1004. Administrative law judge performance advisory committee - creation - appointment of members - powers and duties - legislative declaration - repeal. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT, PURSUANT TO SECTION 13 OF ARTICLE XII OF THE STATE CONSTITUTION AND THE LAWS AND RULES GOVERNING THE STATE PERSONNEL SYSTEM, IT IS IN THE PUBLIC INTEREST TO ESTABLISH A SYSTEM OF EVALUATING JUDICIAL PERFORMANCE OF ADMINISTRATIVE LAW JUDGES TO PROVIDE THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL WITH FAIR, RESPONSIBLE, AND CONSTRUCTIVE INFORMATION ABOUT JUDICIAL PERFORMANCE AND TO PROVIDE ADMINISTRATIVE LAW JUDGES WITH USEFUL INFORMATION CONCERNING THEIR OWN PERFORMANCES.

(2) (a) (I) THERE IS HEREBY ESTABLISHED IN THE OFFICE OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL THE ADMINISTRATIVE LAW JUDGE PERFORMANCE ADVISORY COMMITTEE, HEREINAFTER REFERRED TO AS THE "PERFORMANCE COMMITTEE". THE PERFORMANCE COMMITTEE SHALL CONSIST OF TEN MEMBERS APPOINTED BY

THE GOVERNOR WITH THE CONSENT OF THE SENATE. FIVE OF SUCH MEMBERS SHALL BE ATTORNEYS AND FIVE SHALL BE NONATTORNEYS. ALL MEMBERS OF THE PERFORMANCE COMMITTEE SHALL SERVE TERMS OF FOUR YEARS; EXCEPT THAT, OF THOSE FIRST APPOINTED, FOUR SHALL SERVE FOR A TERM OF TWO YEARS. ALL INITIAL APPOINTMENTS SHALL BE COMPLETED BY JANUARY 1, 2001. THE TERM OF ANY MEMBER OF THE PERFORMANCE COMMITTEE SHALL EXPIRE ON NOVEMBER 30 OF THE YEAR IN WHICH THE TERM IS SCHEDULED TO EXPIRE. THE TERM OF ANY MEMBER APPOINTED TO REPLACE A MEMBER OF THE PERFORMANCE COMMITTEE AT THE END OF HIS OR HER TERM SHALL COMMENCE ON DECEMBER 1 OF THE YEAR IN WHICH THE PREVIOUS MEMBER'S TERM IS SCHEDULED TO EXPIRE.

(II) ANY VACANCY ON THE PERFORMANCE COMMITTEE SHALL BE FILLED BY THE GOVERNOR, WITH THE CONSENT OF THE SENATE, BUT NO MEMBER SHALL SERVE MORE THAN TWO FULL TERMS PLUS ANY BALANCE REMAINING ON AN UNEXPIRED TERM IF THE INITIAL APPOINTMENT WAS TO FILL A VACANCY. WITHIN FIVE DAYS AFTER A VACANCY ARISES ON THE PERFORMANCE COMMITTEE, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL SHALL NOTIFY THE GOVERNOR OF THE VACANCY, AND THE GOVERNOR SHALL MAKE AN APPOINTMENT WITHIN FORTY-FIVE DAYS AFTER THE DATE OF THE VACANCY.

(b) THE CHAIR OF THE PERFORMANCE COMMITTEE SHALL BE ELECTED BY ITS MEMBERS EVERY TWO YEARS.

(c) IN ADDITION TO OTHER POWERS CONFERRED AND DUTIES IMPOSED UPON THE PERFORMANCE COMMITTEE BY THIS SECTION, THE PERFORMANCE COMMITTEE HAS THE FOLLOWING POWERS AND DUTIES:

(I) TO ADVISE THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL ON THE DEVELOPMENT OF TECHNIQUES FOR EVALUATING ADMINISTRATIVE LAW JUDGES ON RELEVANT PERFORMANCE CRITERIA, WHICH INCLUDE, BUT ARE NOT LIMITED TO: INTEGRITY; KNOWLEDGE AND UNDERSTANDING OF SUBSTANTIVE, PROCEDURAL, AND EVIDENTIARY LAW; COMMUNICATION SKILLS; PREPARATION, ATTENTIVENESS, AND CONTROL OVER JUDICIAL PROCEEDINGS; DOCKET MANAGEMENT AND PROMPT CASE DISPOSITION; ADMINISTRATIVE SKILLS; JUDICIAL ETHICS; EFFECTIVENESS IN WORKING WITH PARTICIPANTS IN THE ADMINISTRATIVE JUDICIAL PROCESS; AND SERVICE TO THE LEGAL PROFESSION AND THE PUBLIC;

(II) TO DEVELOP METHODS TO EVALUATE ADMINISTRATIVE LAW JUDGE PERFORMANCE, INCLUDING TECHNIQUES THAT MAY INCLUDE, BUT NOT BE LIMITED TO, SURVEYS FOR LAWYERS, LITIGANTS, AND AGENCY PERSONNEL; DETERMINE THE STATISTICAL VALIDITY OF COMPLETED SURVEYS; REPORT TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL ON THE STATISTICAL VALIDITY OF THE SURVEYS; SPECIFY WHEN AND HOW STATISTICALLY INVALID SURVEYS MAY BE USED; AND RECOMMEND JUDICIAL PERFORMANCE EVALUATIONS BY PEERS AND OTHERS WHO HAVE DIRECT AND CONTINUING CONTACT WITH ADMINISTRATIVE LAW JUDGES;

(III) TO PREPARE ALTERNATIVES TO SURVEYS WHERE SAMPLE POPULATIONS ARE INADEQUATE TO PRODUCE VALID RESULTS;

(IV) TO DEVELOP AND DETERMINE THE VALIDITY OF COMPREHENSIVE EVALUATION PROFILES FOR ADMINISTRATIVE LAW JUDGES;

(V) TO RECOMMEND THE DEVELOPMENT OF CRITERIA AND STANDARDS THAT ARE TO BE UTILIZED IN DETERMINING THE SATISFACTORY OR UNSATISFACTORY PERFORMANCE OF ADMINISTRATIVE LAW JUDGES.

(3) MEMBERS OF THE PERFORMANCE COMMITTEE AND EMPLOYEES OF THE DEPARTMENT OF PERSONNEL PROVIDING STAFF ASSISTANCE TO THE COMMITTEE SHALL BE IMMUNE FROM SUIT IN ANY ACTION, CIVIL OR CRIMINAL, BASED UPON OFFICIAL ACTS PERFORMED IN GOOD FAITH AS MEMBERS OF SUCH PERFORMANCE COMMITTEE AND EMPLOYEES OF THE DEPARTMENT OF PERSONNEL PROVIDING STAFF ASSISTANCE TO THE COMMITTEE.

(4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2007.

SECTION 3. 2-3-1203 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

2-3-1203. Sunset review of advisory committees. (3) The following dates are the dates for which the statutory authorization for the designated advisory committees is scheduled for repeal:

(t) JULY 1, 2007: THE ADMINISTRATIVE LAW JUDGE PERFORMANCE ADVISORY COMMITTEE CREATED IN SECTION 24-30-1004, C.R.S.

SECTION 4. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

DRAFT

Bill A

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 00-0122

Date: December 6, 1999

Prime Sponsor(s): Sen. Owen
Rep. Larson

Bill Status: ALJ Interim Committee

Fiscal Analyst: Will Meyer (303-866-4976)

TITLE: CONCERNING THE CONDUCT OF ADMINISTRATIVE LAW JUDGES IN THE DIVISION OF ADMINISTRATIVE HEARINGS IN THE DEPARTMENT OF PERSONNEL, AND, IN CONNECTION THEREWITH, REQUIRING THAT SUCH ADMINISTRATIVE LAW JUDGES COMPLY WITH THE COLORADO CODE OF JUDICIAL CONDUCT AND CREATING THE ADMINISTRATIVE LAW JUDGE PERFORMANCE ADVISORY COMMITTEE.

Summary of Assessment

This bill would make administrative law judges (ALJs), Division of Administrative Hearings, Department of Personnel, subject to the Colorado Code of Judicial Conduct and create an administrative law judge performance advisory committee to advise the executive director, Department of Personnel, on the judicial performance of administrative law judges.

The bill would require the Governor to appoint ten members to the committee: five attorneys and five non attorneys. The committee would meet regularly to: advise the executive director on the development of techniques for evaluating ALJs on relevant performance criteria; develop methods to evaluate ALJ performance, including techniques that may include surveys for lawyers, litigants, and agency personnel; determine the statistical validity of completed surveys and report to the executive director on the statistical validity of the surveys; prepare alternatives to surveys where sample populations are inadequate; develop and determine the validity of comprehensive evaluation profiles for ALJs; and recommend the development of criteria and standards to be utilized in determining the satisfactory or unsatisfactory performance of ALJs. The advisory committee would sunset on July 1, 2007. The bill would become effective ninety days following the adjournment of the General Assembly, unless a referendum petition is filed.

In testimony before the interim committee, the Colorado Bar Association - Workers' Compensation Section - testified that they are in the process of developing such a survey; and therefore, it is believed that there should not be any cost to the state to develop the survey. It is assumed that the advisory committee would meet approximately six times a year. The Department of Personnel would administer and evaluate the surveys and staff the committee meetings within existing appropriations. The bill does not provide for per diem or reimbursement of member expenses. The bill would not have a fiscal impact on the state, or any unit of local government. Therefore, the bill is assessed as having no fiscal impact.

Departments Contacted

Personnel

Bill B

BY REPRESENTATIVES Veiga, Clapp, Decker, Larson and T. Williams;
also SENATORS Owen and Andrews.

A BILL FOR AN ACT

CONCERNING A REQUIREMENT FOR THE ISSUANCE OF WRITTEN FINDINGS OF
FACT AND CONCLUSIONS OF LAW WITHIN A CERTAIN PERIOD OF TIME
AFTER THE CONCLUSION OF HEARINGS IN WORKERS' COMPENSATION
CASES.

Bill Summary

"Written Workers' Comp Findings"

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Administrative Law Judge Study. In workers' compensation cases, requires the issuance of written orders with specific findings of fact and conclusions of law within 30 calendar days after the conclusion of a hearing. Removes the authority for administrative law judges to make summary rulings without written orders in such cases.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 8-43-215, Colorado Revised Statutes, is amended to read:

8-43-215. Orders. Any hearing conducted under this article shall be completed within one hundred twenty days, or in the case where an extension of time of sixty days is allowable under the provisions of section 8-43-209, one hundred sixty days, after a request therefor pursuant to section 8-43-211 (2).

At the conclusion of a hearing, the administrative law judge or director shall ~~make a summary~~ ISSUE A WRITTEN order allowing or denying said claim. ~~without being required to make specific findings of fact.~~ SUCH WRITTEN ORDER SHALL CONTAIN SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW. If compensation benefits are granted, ~~it shall be sufficient to~~ SUCH WRITTEN ORDER SHALL specify the amounts thereof, the disability for which compensation benefits are granted, by whom and to whom such benefits shall be paid, and the method and time of such payments. SUCH WRITTEN ORDER SHALL BE ISSUED ~~within fifteen working~~ THIRTY CALENDAR days after the conclusion of such hearing, ~~the administrative law judge or director shall reduce such order to writing;~~ AND a certificate of mailing and a copy of such WRITTEN order shall be mailed to each of the parties in interest OR THEIR ATTORNEYS OF RECORD, the original of which shall be a part of the records in said case. Said SUCH WRITTEN order shall be entered as the final award of the administrative law judge or director subject to review as provided in this article. ~~Any party dissatisfied with a summary order may request specific findings of fact and conclusions of law in writing within fifteen days after the date of the certificate of mailing of the summary order.~~ Such request shall be a prerequisite to a ~~petition to review under section 8-43-301,~~ and such request shall stay the time ~~within which to file a petition to review until after the mailing of the specific findings and conclusions.~~ Thereafter, time limits shall be governed by section 8-43-301. ~~Specific findings of fact and conclusions of law requested pursuant to this section shall be completed within twenty-five days after such request.~~

SECTION 2. Effective date - applicability. This act shall take effect upon passage and shall apply to workers' compensation claims filed or pending on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Bill B

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 00-0227

Date: November 30, 1999

Prime Sponsor(s): Rep. Veiga
Sen. Owen

Bill Status: ALJ Interim Committee

Fiscal Analyst: Will Meyer (303-866-4976)

TITLE: CONCERNING A REQUIREMENT FOR THE ISSUANCE OF WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW WITHIN A CERTAIN PERIOD OF TIME AFTER THE CONCLUSION OF HEARINGS IN WORKERS' COMPENSATION CASES.

Summary of Assessment

This bill would require administrative law judges (ALJs) to issue findings of fact and conclusions of law within 30 days after the conclusion of each "merit" hearing in workers' compensation cases. It also would remove the authority of ALJs to make summary rulings without written orders in such cases. The bill would become effective upon signature of the Governor.

Under current law and practice, summary rulings in workers' compensation cases are issued by the ALJ following each merit hearing. If the summary ruling is appealed, the attorney for the prevailing party prepares the findings of fact and conclusions of law for the ALJs review and signature. In the case of other - nonworkers' compensation - merit hearings, ALJs issue findings of fact.

This bill would require ALJs in all workers' compensation cases to issue findings of fact and conclusions of law within 30 days after the conclusion of each merit hearing. This could be accomplished within existing appropriations. This bill would not affect any other agencies of the state, or unit of local government. Therefore, the bill is assessed as having no fiscal impact.

Departments Contacted

Labor and Employment

Personnel

Bill C

BY SENATORS Andrews and Anderson;
also REPRESENTATIVES Clapp, Decker, Larson, and T. Williams.

A BILL FOR AN ACT

CONCERNING A REQUIREMENT THAT DETERMINATIONS OF THE AMOUNT OF
DISFIGUREMENT BENEFITS IN WORKERS' COMPENSATION CASES BE
MADE BY THE DIVISION OF WORKERS' COMPENSATION.

Bill Summary

"Workers' Comp Disfigure Determinations"

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Administrative Law Judge Study. Specifies that disfigurement determinations in workers' compensation cases shall be made exclusively by the director of the division of workers' compensation in the department of labor and employment or the director's designee. Requires the director to adopt a schedule for such determinations and specifies that such determinations shall be final.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 8-42-108, Colorado Revised Statutes, is amended to read:

8-42-108. Disfigurement - additional compensation. If any employee is seriously, permanently disfigured about the head, face, or parts of the body normally exposed to public view, the director OR THE DIRECTOR'S DESIGNEE, in addition to all other compensation benefits provided in this

article, may allow such sum for compensation on account thereof as the director OR THE DIRECTOR'S DESIGNEE may deem just, not exceeding two thousand dollars. SUCH DETERMINATION SHALL BE MADE BY THE DIRECTOR OR THE DIRECTOR'S DESIGNEE PURSUANT TO SECTION 8-43-218. THE DIRECTOR SHALL ADOPT A SCHEDULE FOR THE DETERMINATION OF SUCH SUMS. THE DIRECTOR'S ORDER SHALL BE FINAL AND NOT SUBJECT TO REVIEW.

SECTION 2. Effective date - applicability. This act shall take effect upon passage and shall apply to workers' compensation claims filed or pending on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Bill C

Colorado Legislative Council Staff

STATE
FISCAL IMPACT

Drafting Number: LLS 00-0433
Prime Sponsor(s): Sen. Andrews
Rep. Clapp

Date: November 30, 1999
Bill Status: ALJ Interim Committee
Fiscal Analyst: Will Meyer (303-866-4976)

TITLE: CONCERNING A REQUIREMENT THAT DETERMINATIONS OF THE AMOUNT OF DISFIGUREMENT BENEFITS IN WORKERS' COMPENSATION CASES BE MADE BY THE DIVISION OF WORKERS' COMPENSATION.

Fiscal Impact Summary	FY 2000/2001	FY 2001/2002
State Revenues		
Cash Fund Exempt	(\$41,528)	(\$41,528)
State Expenditures		
Cash Fund	(\$28,188)	(\$28,188)
Cash Fund Exempt	(\$41,528)	(\$41,528)
FTE Position Change	0.0 FTE	0.0 FTE
Other State Impact: None		
Effective Date: Upon signature of the Governor.		
Appropriation Summary for FY 2000-2001:		
Department of Labor and Employment - (\$28,188) (Workers' Compensation Cash Fund) and 0.3 FTE; and Department of Personnel - (\$41,528) (Division of Administrative Hearings CFE) and (0.3 FTE).		
Local Government Impact: None		

Summary of Legislation

This bill would move the responsibility for making disfigurement determinations in workers' compensation cases from the administrative law judge (ALJ), Division of Administrative Hearings (DOAH), Department of Personnel, to the director of the Division of Workers' Compensation (DOWC), Department of Labor and Employment, or the director's designee. The bill would require the director to adopt a schedule for such determinations and would specify that such determinations are final.

State Revenues

The operational costs of the Division of Workers' Compensation are paid for by a surcharge on workers' compensation insurance premiums paid by insured and self-insured employers. The

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Bill C

surcharge is adjusted annually to reflect the changes in operational costs of the DOWC, and reflects the total dollar amount of workers' compensation insurance premiums paid. Currently, the Workers' Compensation Cash Fund has a cash fund reserve which is in excess of the targeted balance, and the DOWC plans to reduce the surcharge until the targeted balance is achieved. Therefore, while the provisions of this bill will decrease the operational costs of the DOWC, the passage of this bill would not directly affect the amount of the surcharge or the amount of revenues received. The bill would result in a \$41,528 cash fund exempt revenue savings to the Department of Personnel.

State Expenditures

Current Practice. Under current law, an injured employee may be compensated for any serious disfigurement to any part of the body exposed to public view. The amount of such awards are determined by an ALJ, DOAH. It is estimated that it requires 0.2 FTE ALJ and 0.1 FTE Administrative Assistant III to conduct disfigurement reviews each year. The cost of determining the amount of the award is paid by the DOWC to the DOAH. The DOWC pays the DOAH for approximately 400 hours to review disfigurement cases at \$103.82 per hour for a total cost of \$41,528 per year.

Under the provisions of this bill, any such award would be made as part of an administrative claim process *directly* by the director of the DOWC, rather than based on a review by a judge. The amount of the award would be based on a compensation schedule. It is estimated that the DOWC will require 0.3 FTE to conduct an estimated 1,331 disfigurement evaluations at a cost of \$13,340, including personal services costs of \$12,945 and operating costs of \$395 per year beginning in FY 2000-01. The net savings to the DOWC would be \$28,188 (\$41,528 minus \$13,340).

Expenditures Not Included

Pursuant to the Joint Budget Committee's budget policies, the following expenditures have not been included in this fiscal note:

- health and life insurance and short-term disability of \$687; and
- indirect costs of \$2,793.

State Appropriations

For FY 2000-01, this fiscal note implies that the Department of Labor and Employment should receive an appropriation which reduces expenditures from Workers' Compensation Cash Fund by \$28,188 CFE and adds 0.3 FTE. The Department of Personnel should receive an appropriation which reduces moneys received from the Department of Labor and Employment by \$41,528 CFE and 0.3 FTE.

Departments Contacted

Personnel Labor and Employment

Bill D

BY REPRESENTATIVES T. Williams, Clapp, Decker, and Larson;
also SENATORS Anderson and Andrews.

A BILL FOR AN ACT

CONCERNING ADMINISTRATIVE PROCEDURES RELATING TO THE ACTIVITIES OF ADMINISTRATIVE LAW JUDGES IN THE DIVISION OF ADMINISTRATIVE HEARINGS IN THE DEPARTMENT OF PERSONNEL, AND, IN CONNECTION THEREWITH, TRANSFERRING RESPONSIBILITY FOR CONDUCTING PREHEARING CONFERENCES IN WORKERS' COMPENSATION CASES FROM THE DIVISION OF WORKERS' COMPENSATION IN THE DEPARTMENT OF LABOR AND EMPLOYMENT TO THE DIVISION OF ADMINISTRATIVE HEARINGS, REQUIRING THE ADOPTION OF PROCEDURAL RULES GOVERNING HEARINGS BEFORE SUCH ADMINISTRATIVE LAW JUDGES, AND REQUIRING THE ADOPTION OF RULES FOR THE ROTATION OF CASES HEARD BY SUCH ADMINISTRATIVE LAW JUDGES.

Bill Summary

"ALJ Administrative Procedures"

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Administrative Law Judge Study. Requires the executive director of the department of personnel to adopt rules: To permit the rotation of cases heard before administrative law judges in the division of administrative hearings, including the rotation of prehearing conference functions in workers' compensation cases; for the geographic rotation of administrative law judges;

and for procedures for hearings before administrative law judges in the division of administrative hearings.

Transfers statutory authority for the conduct of prehearing conferences in workers' compensation cases from the division of workers' compensation in the department of labor and employment to the division of administrative hearings in the department of personnel. Specifically transfers employees and property necessary to implement the provisions of this bill.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 8-43-207.5, Colorado Revised Statutes, is amended to read:

8-43-207.5. Prehearing conferences. (1) Notwithstanding any provision of articles 40 to 47 of this title to the contrary, at any time not less than ten days prior to the formal adjudication on the record of any issue before the director or an administrative law judge in the division of administrative hearings, any party to a claim may request a prehearing conference before a ~~prehearing~~ AN administrative law judge in the division of ~~workers' compensation~~ ADMINISTRATIVE HEARINGS for the speedy resolution of or simplification of any issues and to determine the general readiness of remaining issues for formal adjudication on the record. The issues addressed in such prehearing conference shall be limited to: Ripeness of legal, but not factual, issues for formal adjudication on the record before the director or an administrative law judge in the division of administrative hearings; discovery matters; and evidentiary disputes. The filing of an application for hearing with the division of administrative hearings shall not be a prerequisite to a request for a prehearing conference under this section. The director and the administrative law judges in the division of administrative hearings may also request a prehearing conference under this section.

(2) ~~"Prehearing administrative law judge" means a qualified person appointed by the director pursuant to section 8-47-101 to preside over prehearing conferences pursuant to this section, to approve settlements pursuant to section 8-43-204, to conduct settlement conferences pursuant to section 8-43-206, and to conduct arbitrations pursuant to section 8-43-206.5. Such prehearing administrative law judges~~ ADMINISTRATIVE LAW JUDGES ACTING UNDER THE PROVISIONS OF THIS SECTION shall have authority to: Order any party to participate in a prehearing conference; issue interlocutory orders; issue subpoenas in the name of the division for production of documentary evidence which shall be served in the same manner as subpoenas in the district court; make evidentiary rulings; permit parties to cause depositions to be taken; determine the competency of any party to a claim to enter into a settlement agreement; and strike the application for hearing of a party for failure to comply with any provision of this section.

(3) An order entered by a prehearing administrative law judge shall be an order of the director and binding on the parties. Such an order shall be interlocutory. Prehearing conferences need not be held on the record; however, any party to a claim may request in advance that a record be made of the prehearing conference, either taken verbatim by a court reporter provided and paid for by the requesting party or electronically recorded by the division.

(4) The ~~director~~ EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL shall adopt rules and regulations as may be necessary to implement the provisions of this section.

SECTION 2. 8-47-107, Colorado Revised Statutes, is amended to read:

8-47-107. Adoption of rules and regulations. The director has the power to adopt reasonable and proper rules and regulations relative to the administration of articles 40 to 47 of this title and proper rules and regulations to govern proceedings and hearings of the division. ~~and the director has the discretion to amend said rules and regulations from time to time.~~ No such rule shall limit the jurisdiction of an administrative law judge in the division of administrative hearings to hear and decide all matters arising under articles 40 to 47 of this title. THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL HAS THE POWER TO ADOPT REASONABLE AND PROPER RULES TO GOVERN PROCEDURES FOR HEARINGS IN WORKERS' COMPENSATION CASES BEFORE AN ADMINISTRATIVE LAW JUDGE IN THE DIVISION OF ADMINISTRATIVE HEARINGS. Such rules and regulations shall be promulgated in accordance with section 24-4-103, C.R.S.

SECTION 3. 24-30-1001, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

24-30-1001. Division of administrative hearings. (3.5) (a) ON AND AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (3.5) THE DIVISION OF ADMINISTRATIVE HEARINGS SHALL EXECUTE, ADMINISTER, PERFORM, AND ENFORCE THE RIGHTS, POWERS, DUTIES, FUNCTIONS, AND OBLIGATIONS VESTED IN THE DIVISION OF WORKERS' COMPENSATION RELATING TO PREHEARING CONFERENCES UNDER SECTION 8-43-207.5, C.R.S., PRIOR TO SAID DATE. ON THE EFFECTIVE DATE OF THIS SUBSECTION (3.5), ALL EMPLOYEES OF THE DIVISION OF WORKERS' COMPENSATION WHOSE PRINCIPAL DUTIES ARE CONCERNED WITH THE DUTIES AND FUNCTIONS TRANSFERRED TO THE DIVISION OF ADMINISTRATIVE HEARINGS AND WHOSE EMPLOYMENT IN THE DIVISION OF

ADMINISTRATIVE HEARINGS IS DEEMED NECESSARY BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL TO CARRY OUT THE FUNCTIONS UNDER SECTION 8-43-207.5, C.R.S., SHALL BE TRANSFERRED TO THE DIVISION OF ADMINISTRATIVE HEARINGS AND SHALL BECOME EMPLOYEES THEREOF. SUCH EMPLOYEES SHALL RETAIN ALL RIGHTS TO THE STATE PERSONNEL SYSTEM AND RETIREMENT BENEFITS UNDER THE LAWS OF THIS STATE, AND THEIR SERVICES SHALL BE DEEMED TO HAVE BEEN CONTINUOUS. ALL TRANSFERS AND ANY ABOLISHMENT OF POSITIONS IN THE STATE PERSONNEL SYSTEM SHALL BE MADE AND PROCESSED IN ACCORDANCE WITH STATE PERSONNEL SYSTEM LAWS AND RULES.

(b) ON THE EFFECTIVE DATE OF THIS SUBSECTION (3.5), ALL ITEMS OF PROPERTY, REAL AND PERSONAL, INCLUDING OFFICE FURNITURE AND FIXTURES, BOOKS, DOCUMENTS, AND RECORDS OF THE DIVISION OF WORKERS' COMPENSATION PERTAINING TO THE DUTIES AND FUNCTIONS TRANSFERRED TO THE DIVISION OF ADMINISTRATIVE HEARINGS PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3.5) ARE TRANSFERRED TO THE DIVISION OF ADMINISTRATIVE HEARINGS AND SHALL BECOME THE PROPERTY THEREOF.

(c) WHENEVER THE DIVISION OF WORKERS' COMPENSATION IS REFERRED TO OR DESIGNATED BY ANY CONTRACT OR OTHER DOCUMENT IN CONNECTION WITH THE DUTIES AND FUNCTIONS TRANSFERRED TO THE DIVISION OF ADMINISTRATIVE HEARINGS UNDER THIS SUBSECTION (3.5), SUCH REFERENCE OR DESIGNATION SHALL BE DEEMED TO APPLY TO THE DIVISION OF ADMINISTRATIVE HEARINGS. ALL CONTRACTS ENTERED INTO BY THE SAID DIVISION OF WORKERS' COMPENSATION PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (3.5) IN CONNECTION WITH THE DUTIES AND FUNCTIONS

TRANSFERRED TO THE DIVISION OF ADMINISTRATIVE HEARINGS UNDER THIS SUBSECTION (3.5) ARE HEREBY VALIDATED, WITH THE DIVISION OF ADMINISTRATIVE HEARINGS SUCCEEDING TO ALL THE RIGHTS AND OBLIGATIONS OF SUCH CONTRACTS. ANY APPROPRIATIONS OF FUNDS FROM PRIOR FISCAL YEARS OPEN TO SATISFY OBLIGATIONS INCURRED UNDER SUCH CONTRACTS ARE HEREBY TRANSFERRED AND APPROPRIATED TO THE DIVISION OF ADMINISTRATIVE HEARINGS FOR THE PAYMENT OF SUCH OBLIGATIONS.

(5) IN ORDER TO PERFORM THE DUTIES AND FUNCTIONS SET FORTH IN THIS PART 10, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL SHALL, IN RELATION TO DEPARTMENTS, INSTITUTIONS, AND AGENCIES OF THE EXECUTIVE BRANCH:

(a) ADOPT RULES TO PERMIT THE ROTATION OF CASES HEARD BEFORE ADMINISTRATIVE LAW JUDGES IN THE DIVISION OF ADMINISTRATIVE HEARINGS, INCLUDING THE ROTATION OF PREHEARING CONFERENCE FUNCTIONS IN WORKERS' COMPENSATION CASES UNDER SECTION 8-43-207.5, C.R.S.;

(b) ADOPT RULES TO GOVERN THE GEOGRAPHIC ROTATION OF ADMINISTRATIVE LAW JUDGES IN THE DIVISION OF ADMINISTRATIVE HEARINGS;

(c) ADOPT RULES GOVERNING HEARING PROCEDURES FOR HEARINGS BEFORE ADMINISTRATIVE LAW JUDGES IN THE DIVISION OF ADMINISTRATIVE HEARINGS.

SECTION 4. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an

item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to the conduct of hearings by administrative law judges in the division of administrative hearings in the department of personnel on or after the applicable effective date of this act.

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Bill D

Colorado Legislative Council Staff

STATE
FISCAL IMPACT

Drafting Number: LLS 00-0119
Prime Sponsor(s): Rep. Williams T.
Sen. Anderson

Date: December 3, 1999
Bill Status: ALJ Interim Committee
Fiscal Analyst: Will Meyer (303-866-4976)

TITLE: CONCERNING ADMINISTRATIVE PROCEDURES RELATING TO THE ACTIVITIES OF ADMINISTRATIVE LAW JUDGES IN THE DIVISION OF ADMINISTRATIVE HEARINGS IN THE DEPARTMENT OF PERSONNEL, AND, IN CONNECTION THEREWITH, TRANSFERRING RESPONSIBILITY FOR CONDUCTING PREHEARING CONFERENCES IN WORKERS' COMPENSATION CASES FROM THE DIVISION OF WORKERS' COMPENSATION IN THE DEPARTMENT OF LABOR AND EMPLOYMENT TO THE DIVISION OF ADMINISTRATIVE HEARINGS, REQUIRING THE ADOPTION OF PROCEDURAL RULES GOVERNING HEARINGS BEFORE SUCH ADMINISTRATIVE LAW JUDGES, AND REQUIRING THE ADOPTION OF RULES FOR THE ROTATION OF CASES HEARD BY SUCH ADMINISTRATIVE LAW JUDGES.

Fiscal Impact Summary	FY 2000/2001	FY 2001/2002
State Revenues General Fund		
State Expenditures Cash Fund	\$500,719	\$500,719
FTE Position Change	0.0 FTE	0.0 FTE
Other State Impact: None		
Effective Date: Ninety days after adjournment of the Legislature, unless a referendum petition is filed.		
Appropriation Summary for FY 2000-2001: Department of Labor and Employment - \$500,719 (Workers' Compensation Cash Fund) and (8.0) FTE; and Department of Personnel - \$500,719 (CFE Transfer) and 8.0 FTE.		
Local Government Impact: None		

Summary of Legislation

This bill would require the executive director of the Department of Personnel to adopt rules to permit rotation of cases heard before administrative law judges (ALJs). The bill also would transfer the statutory authority for the conduct of prehearing conferences in workers' compensation

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Bill D

cases from the Division of Workers' Compensation (DOWC), Department of Labor and Employment, to the Division of Administrative Hearings (DOAH), Department of Personnel.

State Revenues

The operational costs of the Division of Workers' Compensation are paid for by a surcharge on workers' compensation insurance premiums paid by insured and self-insured employers. The surcharge is adjusted annually to reflect the changes in operational costs of the DOWC, and reflects the total dollar amount of workers' compensation insurance premiums paid. Currently, the Workers' Compensation Cash Fund has an uncommitted fee reserve balance of \$6,308,843, that is in excess of the targeted balance and is available to fund the bill's requirements. The DOWC plans to reduce the surcharge until the targeted balance is achieved. Therefore, while the provisions of this bill will increase the operational costs of the DOWC, the passage of this bill would not directly affect the amount of the surcharge or the amount of revenues received.

State Expenditures

The transfer of the statutory authority to conduct prehearing conferences in workers' compensation prehearing cases would require the transfer of 5.0 FTE ALJ's and 3.0 FTE Legal and Administrative Support staff from the Department of Labor and Employment to the Department of Personnel.

Currently, the DOWC provides prehearing conferences in workers' compensation prehearing cases utilizing staff employed by the DOWC (5.0 FTE ALJ's and 3.0 FTE legal and administrative support staff). The DOWC estimates that it currently costs the division \$514,229 a year to provide these services, as follows:

CURRENT COSTS OF THE DOWC TO PROVIDE PREHEARING CONFERENCES		
	FY 2000/2001	FY 2001/2002
Personal Services: 8.0 FTE	\$499,429	\$499,429
Operating Expenses	14,800	14,800
Total Expenses	\$514,229	\$514,229

Under the provisions of this bill, the DOWC would purchase these services from the Department of Personnel, DOAH at an estimated cost of \$1,014,948 a year consisting of \$934,380 for ALJ services (5.0 FTE times 1,800 billable hours times \$103.82 per hour) plus \$80,568 for paralegal services (1.0 FTE time 1,800 billable hours times \$44.76 per hour).

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Bill D

It is estimated that it would cost the Division of Workers' Compensation \$500,719 CFE (\$1,014,948 minus \$514,229) to implement the provisions of this bill.

Expenditures Not Included

Pursuant to the Joint Budget Committee's budget policies, the following expenditures have not been included in this fiscal note:

- Pursuant to the Joint Budget Committee's budget policies, the following expenditures have not been included in this fiscal note:
 - health and life insurance and short-term disability of \$25,127
 - inflationary cost factors;
 - leased space; and
 - indirect costs of \$74,480.

State Appropriations

For, FY 2000-01, this fiscal note implies that the Department of Labor and Employment should receive an appropriation of \$500,719 CF from the Workers' Compensation Cash Fund to purchase necessary services from the Department of Personnel and would require 8.0 less FTE. The Department of Personnel, Division of Administrative Hearings, should receive a cash fund exempt transfer of \$500,719 in addition to 8.0 FTE.

Departments Contacted

Labor and Employment

Personnel