

**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**

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# EXECUTIVE SUMMARY

## **Committee Charge**

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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**

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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**

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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**

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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**

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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**

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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**

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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**

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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](http://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