



719 SW Van Buren St., Ste. 222, Topeka KS 66603
Phone: 785-232-7756
Fax: 785-232-7730
www.ksaj.org

To: Representative Anthony Brown, Chairman
House Commerce & Economic Development Committee

From: Jeff K. Cooper, Cooper & Lee Law Offices, Topeka
On Behalf of the Kansas Association for Justice

Date: February 9, 2012

RE: HB 2558 Recusal of an administrative law judge (OPPOSED)

The Kansas Association for Justice (KsAJ) is a professional association of attorneys. KsAJ opposes the provisions within HB 2558 amending 2011 K.S.A. 44-523 relating to recusal of administrative law judges (ALJs). KsAJ believes it is fair and appropriate to allow parties to request the review of the district court if they believe an ALJ is unable to afford them a fair hearing, a process which is permitted under current law.

Request for recusal of an ALJ on the basis that an ALJ cannot afford a party a fair hearing, is not a frequent occurrence. There must be **legally sufficient grounds** to reassign a case under such circumstances. Under the current law, "...the recital of previous rulings or decisions by the administrative law judge on legal issues or concerning prior motions for change of administrative law judge filed by counsel or such counsel's law firm, pursuant to this subsection, **shall not be deemed legally sufficient** for any believe [sic] that bias or prejudice exist," 2011 K.S.A. 44-523(e)(4).

Under current law, when a party believes an ALJ cannot afford a party a fair hearing, the party first requests that the ALJ recuse him or herself. Then the party requests the district court to determine if there is **legal sufficiency** to require the director of the division to reassign the case. The grounds that may be alleged that necessitate a recusal are set out in 2011 K.S.A. 44-523 (e)(3) as follows:

- The ALJ has been engaged as counsel in the case prior to the appointment as ALJ.
- The ALJ is otherwise interested in the case.
- The ALJ is related to either party in the case.

- The ALJ is a material witness in the case.
- The party or a party's attorney filing the affidavit has cause to believe and does believe that on account of the personal bias, prejudice or interest of the ALJ such party cannot obtain a fair and impartial hearing.

Under the current law, the director of the division may reassign an ALJ without the order of the district court. The current law is the correct balance of flexibility and fairness. It assures administrative efficiency while allowing parties to seek the review of the district court if they feel that fairness requires it.

Justice requires that parties have recourse outside of the Department of Labor if they feel there is legal sufficiency for reassignment of a case. HB 2558 removes the opportunity to appeal to an independent and impartial judge of facts. There are reasons why the director may be reluctant to reassign an ALJ, and in some instances, too close to make an unbiased determination regarding legal sufficiency. The director is responsible for providing assignment of cases to ALJs. Reassignment of a judge adds costs and inconvenience, including potentially hiring a Special ALJ or paying travel costs. The director and ALJs have a relationship that may be collegial and supportive that could bias the director's impressions.

Permitting a party the fail-safe of seeking the review of the district court protects all parties and the director if a party feels the court could more objectively review the facts and the grounds that necessitate a recusal in 2011 K.S.A. 44-523 (e)(3).

The Kansas Association for Justice respectfully requests that the committee take no further action on Section 3 amending 2011 K.S.A. 44-523 of HB 2558 relating to recusal of judges.