

**TESTIMONY OF KANSAS AFL-CIO
IN OPPOSITION TO
HB 2558
PRESENTED TO SENATE JUDICIARY**

**JOHN M. OSTROWSKI
McCULLOUGH, WAREHEIM & LaBUNKER, P.A.
TOPEKA, KS
785/233-2323**

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Mr. Chairman and Members of the Committee:

The Kansas AFL CIO opposes the passage of House Bill 2558 as it relates to the recusal procedure of judges (page 4, lines 1-19). The Kansas AFL-CIO believes this is a uniquely judicial function and should not be controlled by a political appointee nor an administrative officer.

Recusal proceedings have been a part of this country's judicial process since very early in our history. Judges are specifically trained in this area of law and are ethically bound by precedent, the Canons of Judicial Ethics, and any statutory requirements. In addition, they handle such actions from a neutral perspective.

This is not an issue which often arises in workers compensation. For many years, there was no procedure within the Act, simply because of its infrequent occurrence. More than 10 years ago the Kansas legislature adopted the existing procedure, and in doing so, followed a well traveled road. Since adoption of the new procedure, we are unaware of a singular case going through the process.

The director represents a political appointee, and is not bound by judicial procedure, judicial precedent, or the Canon of Judicial Ethics. The director is also in a quasi-employment relationship with the judges. The director also has budget concerns which could impact the decision. These and other factors may influence any decision relative to recusal. There is simply not the appearance of impartiality.

Under the current law, there is no concern of forum shopping. The county is predetermined by the place of accident. If either party disagrees with the decision of the district court, there is a procedure in place for appeal to the Court of Appeals and/or the Supreme Court.

Furthermore, as amended, if the Director issues a decision which either party disagrees with, an appeal is only permitted to the Court of Appeals. Currently, an appeal to the Court of Appeals is not only cost prohibitive, there is extreme delay. At a minimum, it will take over a year simply to determine which Judge should hear the case. A direct appeal to the Kansas Court of Appeals from an adverse opinion is simply unworkable and represents justice denied for the aggrieved party.

In summary, we believe this is a judicial proceeding by its very nature and belongs to the courts. The courts are best equipped to handle these matters for a variety of reasons, some of which are expressed above. Furthermore, an appeal to the Court of Appeals is not a remedy.

The Kansas AFL-CIO would urge rejection of the proposed changes relative to recusal of judges.

Respectfully submitted,

KANSAS AFL-CIO