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Once More into the Breach: The Path to Effective Workers' Compensation Reform in Oklahoma



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Executive Summary

As observers of Oklahoma's public-policy scene are keenly aware, the field of workers' compensation reform is littered with the remains of failed reforms of years past. Why do our efforts to reform the workers' compensation system repeatedly disappoint? Because we refuse to address the chief structural feature of our system—its conception and organization as a judicial system. Conceiving of workers' compensation claims as legal causes of action, rather than employee benefits administered by the administrative

branch of state government, places excessive control of the administration of the system in the hands of the judiciary. Oklahoma will not succeed in implementing the reforms necessary to reduce costs until it does what every state except Oklahoma and one other has done—transforms its system to one that is primarily administrative, with a more limited role for the judiciary. This paper lays out the best legal and structural path for finally implementing comprehensive reform in Oklahoma.

Introduction

I will never forget my introduction to the world of workers' compensation law and policy. I had already accepted, with only a vague idea of what it would entail, Speaker-to-be Todd Hiett's offer to work as his policy adviser. In one of our first meetings, a week or so after the election, my new boss told me that my first policy assignment was to learn everything I could about the state's workers' compensation system, a corner of the public policy globe, I confess, that I had not spent much time visiting. He told me not to be too anxious about it all; I had at least a month or two to put together a plan.

What I discovered, of course, is that the field of workers' compensation reform was littered with the remains of failed reforms of years past. Previous reform efforts in 1992, 1994, 1997, and 2001 had failed to slake the desire for comprehensive reform. We too—despite our Herculean efforts, culminating in the mammoth 2005 bill¹—would add to the mound of failed reforms. While we (justifiably) attributed our failure to the deliberate gutting of our reforms by the Oklahoma Supreme Court, our good intentions and well-devised schemes were of little consequence to either Oklahoma employers or the working people who rely on their prosperity.

Our failure to realize our ambition to correct once and for all the problems of our system led to additional reforms in 2005 and 2010 and, finally, to the

comprehensive revision of the 2011 legislative session. The need for this most recent reform was, to most, well documented. While the rate of compensation claims filed had dropped significantly since 1994, the amount awarded per claim had not; indeed, the latest data demonstrate that the most problematic category of awards, those for permanent partial disability claims, has risen from an average of \$14,112 in 2002 to \$28,004 in 2008 and, most recently, to \$32,453.² Another study ranked Oklahoma 14th highest in the nation for increase in workers' compensation benefits paid from 1999 to 2008, with benefits increasing a disheartening 68.11 percent, far ahead of the national average of 44.73 percent.³ The persistent cries for change are not based on imagined burdens; our problems are real.

Alas, it appears that the 2011 reforms, despite the most fervent hopes and expectations of the governor and our legislative leaders, will do little to curb the rise in costs. After its review of the 2011 bill, the National Council on Compensation Insurance (NCCI) has requested only a 1.7 percent reduction in insurance rates for Oklahoma, far below what its advocates had expected and touted.⁴ It would seem, at best, that the new bill will mitigate, but not come close to solving, our workers' compensation problems.

Why do our efforts to reform the workers' compensation system repeatedly disappoint? In this paper, I will

demonstrate that our failures stem from our refusal to address the chief structural feature of our system—its conception and organization as a judicial system. Conceiving workers’ compensation claims as legal causes of action, as opposed to employee benefits administered by the administrative branch of state government, places excessive control of the administration of the system in the hands of the judiciary. Given the prevailing culture of the segment of the Oklahoma legal profession that currently holds a commanding majority on the Oklahoma Supreme Court—a culture rooted in the state’s populist, anti-business tradition—the Court will not countenance the changes necessary to stop the cycle of inflated claims and adversarial conflict leading to the expensive and delayed resolution of claims. Oklahoma will

not succeed in implementing the reforms necessary to reduce costs until, as every state has except Oklahoma and one other, it transforms its system to one that is primarily administrative, with a more limited role for the judiciary.

In making my argument, I will first survey the principal components of workers’ compensation systems, with an eye toward identifying and describing the aspects of the system that lead to escalating costs. Second, I will explain the particular challenges to reform raised by particular provisions of the Oklahoma Constitution and, more importantly, the prevailing interpretation of these provisions by our Supreme Court. Finally, I will sketch the best legal and structural path for surmounting these obstacles and finally implementing comprehensive reform.

Workers’ Compensation: A Primer

For all the infamous legal and structural complexity of workers’ compensation, the idea behind the system is simple. Before the advent of workers’ compensation laws, if a worker was injured or killed on the job, the employer was not responsible for any damages caused by the accident unless the employee or his or her heirs could prove the employer was at fault. Believing that the regular tort law regime was too harsh toward employees and, at the end of the day, self-defeating for employers, state legislatures enacted workers’ compensation laws requiring employers to provide employees injured on the job with medical treatment, including payment of rehabilitation expenses; temporary disability pay for time missed at work; and compensation for any permanent disability, whether partial (for example, the loss of a limb or diminished capacity to engage in certain physical activities) or total.

Claimants, therefore, are not required to prove that an employee’s injury or death was caused by the negligence of the employer; they merely need to prove that the accidental injury or death arose in the course of employment.⁵ In return for this reduced burden of proof, the laws provide that, with the exception of the

rare case of intentional harm, this more generous remedy replaces any potential tort action an employee may have against the employer. In legal parlance, the workers’ compensation claim is the “exclusive remedy” for the employee’s injury or death.⁶ In order to guarantee that employees receive their entitled benefits, the statutes require that employers purchase insurance to cover the costs of employee compensation. It is the high cost of this insurance, driven by the estimated costs of defending and paying off employee claims, that drives the call for reform of the workers’ compensation system.

The promise of the workers’ compensation system is that, if the system works as designed, everyone will be better off. Employees will receive quick and effective medical treatment for their injuries, allowing them to get back on the job as soon as possible, with disability pay to tide them over while they are recovering. If they suffer permanently disabling injuries, they receive compensation for these injuries without having to go through a costly and lengthy legal proceeding. Employers, on the other hand, will have the incentive to do what is best for them (and the larger economy)—get employees healthy and back on the job as soon as

possible—while saving significant litigation costs. After all, the theory goes, once employer fault is taken out of the equation, there should not be much to argue about. It should be clear in almost all cases whether an injury took place in the course of employment, and it should not be difficult for doctors, given the objective nature of medical science, to determine both the proper course of treatment and the extent of any permanent disability.

But, of course, the system has never worked this way. It turns out that employers and employees find plenty to argue about after an employee files a claim for compensation. Employers, for example, often argue that the injury, illness, or disabling condition was not caused by the employment, but instead was caused by the normal ravages of age or a preexisting condition of the employee and is therefore not “compensable” under the law. If the employer concedes that the employee has suffered a compensable injury, the parties may argue over the proper medical treatment for the injury; for example, is surgery required or not? The employer may also argue that the employee’s health has sufficiently improved so that he or she can come back to work, thereby rendering the employee no longer entitled to temporary disability pay. The employee, as one would predict, may disagree and believe that he or she needs more time to recover. Last, and (in Oklahoma particularly) not least, the employer and employee may argue over the nature and extent of any permanent impairment of the employee.

As one might expect given the litigious nature of Americans and the economic appetite of our large legal profession, both employers and employees hire lawyers to represent them in the resolution of these disputes. The involvement of lawyers necessarily makes the parties’ relationship more adversarial and increases the difficulty and cost of reaching an amicable settlement. The problems caused by the inherently adversarial nature of lawyers are compounded by the incentives built into our nation’s attorney

compensation practices. Attorneys who represent claimants are generally paid through contingency fees, meaning that the claimant’s legal fees are paid out of the money obtained from the employer. (Keep in mind that the employer’s position is represented by the insurance company’s attorney, who is paid by the hour, giving that lawyer less incentive to resolve disputes efficiently.) For example, if an employer denies that a compensable injury has occurred, and an employee hires a lawyer who successfully argues that the employee is entitled to compensation, the lawyer will receive a portion of the disability pay received by the employee. More importantly, if the claimant’s lawyer persuades either the employer or the workers’ compensation court that the employee has suffered a per-

manent impairment entitling the claimant to compensation, the lawyer will receive a portion of that cash award. It is in the lawyer’s interest, therefore, to dispute the employer’s assessment of the employee’s

medical condition and argue that more compensation is appropriate.

These disputes, it is apparent, turn on the evaluation of medical testimony. Aside from the vital matter of providing the proper medical treatment to employees (which is also the subject of litigation), there are four major categories of workers’ compensation claims: temporary partial disability (TPD), temporary total disability (TTD), permanent total disability (PTD) (for which one may be entitled to federal government benefits), and permanent partial disability or impairment (PPD). All of these claims depend upon medical diagnosis and testimony.

This entwining of the medical and legal explains why workers’ compensation disputes are often described as battles between “dueling doctors.” Workers’ compensation claimants and their attorneys have an enormous incentive to substitute the doctor supplied by the employer with their own. Claimants want their own treating physician (or, depending on the nature of the injury, multiple physicians, including

Why do our efforts to reform the workers’ compensation system repeatedly disappoint? Because it is organized as a judicial system.

specialists) to ensure that they receive not only proper medical treatment (at the cost of the employer, it should be noted) but also a favorable evaluation of the extent of their temporary disability and permanent impairment, the core components of all four categories of awards. Employers, on the other hand, want the body resolving the claim to rely upon the evaluation of their doctors, not those supplied by the claimants.

Therefore, workers' compensation disputes are framed by the conflicting medical evaluations offered by each party. It is this conflict that leads to the spiraling costs in workers' compensation. If we accept the claimant's assertions that he or she is entitled to additional medical treatment, costs go up. If we accept the employee's claims that he or she can't go back to work and is entitled to additional disability pay, costs go up. And if we accept, in the face of a conflicting evaluation by the treating physician, that the claimant has suffered a permanent impairment and is therefore entitled to a cash award, costs go up. It is this last scenario that is of particular concern in Oklahoma, because our high costs are driven by excessive PPD awards. For example, the claimant who has suffered a back injury will offer medical testimony that he or she has suffered a permanent 40 percent impairment. The treating physician—supplied by the employer—finds no permanent impairment. The judge compromises, as we human beings are wont to do, and settles on a finding of 20 percent impairment. Let's say for the sake of argument that a truly objective evaluation would have found 10 percent impairment. The costs, therefore, of resolving this claim ended up twice as high as they should have been—increased costs that must be factored into insurance rates. Multiply this case many times over and we have our state's workers' compensation system.

The key, then, to reducing workers' compensation costs is to ensure that claims are resolved on the basis of a fair, accurate, and efficient evaluation of the claimant's medical condition with regard both to the proper treatment and the extent of any temporary or permanent disability. Ideally, the system would be designed so that all parties are satisfied with, and willing

to accept the evaluation of, the treating physician supplied by the employer, so that no "dueling doctor" is needed. One way to allay the concerns of the employee about the competence or objectivity of the physician (or physicians) supplied by the employer is to provide a process for employees to request a new treating physician. As long as the process provides some assurance to the employer that the new treating physician is both competent and objective (as opposed to one of the infamous "doctors for hire" that allegedly inundate the system), the employer should be willing to accept the evaluation of the new physician. The court then should be required, absent extraordinary circumstances, to rely upon the evaluation of the treating physician.

If, even after choosing the treating physician with care, either party wants to challenge the evaluation of the treating physician, they should not be able to hire their own doctor and, therefore, in some sense, manufacture the proof for their case. In these circumstances, the law should permit the court to appoint a truly qualified and independent medical expert who can render a fair evaluation of the claimant's medical condition. This independent medical expert or examiner ought to be appointed from a specific list of physicians, maintained by the system's administrative body, all with proven qualifications and objectivity. The judge should, then, be required to rely upon the evaluation of the treating physician, that of the expert, or perhaps something in between the two. What we cannot do is allow the judge to go outside the range of these evaluations—if we do, it will invite each party to supply its own biased medical evidence, and we will continue to be caught in the morass of the "dueling doctors" problem.

The key, then, to reducing workers' compensation costs is to ensure that all claims are resolved, as much as humanly possible, on the basis of a genuinely objective evaluation of the medical evidence. The hope is that, once both parties understand that they will not be able to use their own experts to game the system, they will reach fair and expeditious settlements, reducing both excessive awards and litigation costs.

Legal Obstacles to Reform

At bottom, it seems, workers' compensation reform should be a straightforward matter of instructing the judges hearing these claims to base their judgments upon the evaluation of the treating physician or, if that evaluation is challenged, upon the opinion of a truly qualified and independent medical examiner. Unfortunately, our state judiciary and its workers' compensation jurisprudence, heavily influenced by our state's populist tradition, pose serious obstacles to reform. These obstacles are the product of the toxic combination of our court-centered workers' compensation system (one, it bears repeating, of only two in the nation) and the Oklahoma Supreme Court's interpretation of particular provisions of our state's constitution.

Two provisions of our state's constitution have played an important role in the Court's workers' compensation jurisprudence. The first is Article II, section 6, which states, "The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice." The second is Article IV, section 1, which states, "The powers of the government of the State of Oklahoma shall be divided into three separate departments: The Legislative, Executive, and Judicial; and except as provided in this Constitution, the Legislative, Executive, and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others."

At first blush, both of these provisions appear to be innocuous, almost boilerplate statements of well-settled principles. The first provision, drawn from the language of Magna Carta and known as the "access to courts" provision, guarantees each person equal access to the state's courts to pursue remedies provided by law. The second codifies the principle of

separation of powers that has characterized American state governments since the country's founding. Our state Supreme Court, however, has interpreted these provisions to mean far more than is commonly understood. The Court contends that the judicial power protected by the constitution entails an independent authority to judge legal claims in the manner in which it sees fit; the legislature may, in its exercise of its legislative power, grant or take away legal causes of action, but it may not prescribe how these causes of actions are adjudicated. In other words, once the legislature decides to grant a legal remedy for a harm, how that remedy is administered is solely

the province of the judiciary. As the Court has put it, "The power to adjudicate is the power to determine questions of fact or law framed by a controversy and this power is exclusively a judicial power."⁷

The legislature, therefore, may not prescribe how the judges find facts or determine the law. Once one conceives, as our statutory scheme does, a workers' compensation claim as a legal cause of action that is adjudicated by judges, the legislature may not instruct judges on how to decide the claims. The limitation poses a severe obstacle to the implementation of necessary reforms because, under these principles, the legislature cannot require judges to rely upon the opinion of a particular kind of witness in rendering their decisions. Judges, the argument goes, must be able, in making their decisions, to rely on any competent evidence presented to them; if a judge wants to rely on the medical testimony presented by the claimant, even testimony from a doctor who was neither the treating physician nor a registered independent examiner, he or she may do so. In our system, then, litigation featuring "dueling doctors" is not a problem—it is a permanent fixture.

The legal fate of the core provisions of the 2005 reforms illustrates the potency of these legal principles.

Workers' compensation claims ought to be resolved initially by an administrative agency established in the executive branch of government.

The 2005 bill required the court, in deciding claims, to apply a rebuttable presumption in favor of the opinion of the treating physician. However, if the parties objected to the opinion of the treating physician, they could request the appointment of an independent medical examiner (IME). The IME would then review the evaluation of the treating physician and advise the court whether that evaluation was supported by objective medical evidence. If it was not, the IME would then offer his or her own opinion. Finally, the court was instructed, in rendering its decision, to pick among three options: to rely on the opinion of the treating physician, to rely on the opinion of the IME, or to establish its own opinion within the range of the opinions of the treating physician and the IME.

In 2007, in *Conaghan v. Riverfield Country Day School*, the Court, relying on its 2005 opinion in *Yocum v. Greenbriar Nursing Home*, invalidated these provisions.⁸ It found that the legislature's attempt to require judges to follow the opinions of the treating physician or the IME was unconstitutional under the separation of powers principles of the constitution. The Court concluded that "These restrictions attempt to predetermine the range of the adjudicative facts and impermissibly invade the judiciary's exclusive constitutional prerogative of fact-finding."⁹ Judges, the Court made clear, must be able to rely on the opinion of any expert that they please. The legislature's plan, then, for remedying the problem of "dueling doctors" lay in tatters, as did the larger cause of workers' compensation reform.

In the 2011 comprehensive revision of state workers' compensation law, the legislature, doubtless aware of the Court looking over its shoulder, made only a weak attempt to solve the "dueling doctors" problem. Like the 2005 bill, the 2011 bill relies heavily on the use of independent medical examiners, both to substitute for original treating physicians¹⁰ and to judge the need for continuing medical treatment.¹¹ On the central question of which medical opinions judges are authorized to rely upon in cases where the opinion of the treating physician is disputed, the bill states that "[t]he opinion of the independent medical examiner shall be followed unless there is clear and convincing

evidence to the contrary," and that, if the court finds such evidence, it "shall set out its reasons for deviating from the opinion of the independent medical examiner."¹²

This language may appear to require judges to follow the opinion of the IME, but any lawyer will admit that, when we look at the words closely, it is clear that, with just a bit of work, any judge can rely on any opinion he or she wishes. As long as the judge is willing to explain why he or she found clear and convincing evidence that the opinion of the IME should not be followed, the judge may follow any medical opinion he or she finds persuasive, including, for example, that presented by a doctor testifying on behalf of the claimant. The world of "dueling doctors" and, consequently, of high litigation costs and potentially excessive awards, is alive and well. The cause of genuine workers' compensation, on the other hand, seems rather sickly.

Defenders of the 2011 bill argue, with some justification, that the bill's language does provide judges who are inclined to reject parties' purchased evidence, in favor of an independent expert, the tools and encouragement to do so. At the end of the day, they argue, there is no substitute for sensible judges who will render fair judgments. A significant portion of the bill seeks to facilitate, through changes in the court's structure, the appointment of better judges.¹³ The appointment of good judges, however, relies upon the unpredictable winds of politics; there is no guarantee either that we will elect governors who support sensible workers' compensation laws or that these governors will choose good judges. The impossibility of predicting how judges will decide cases makes it difficult to measure the economic effect of sound judging on awards, thus minimizing how much changes in judicial selection can lower costs.

The surrender to the courts on the central issue of "dueling doctors" reform led the legislature, in its fervent desire to reduce the costs of the system, to effect a series of marginal changes, all of which may help to reduce costs but will not alter the underlying dynamic of our litigious system. The 2011 bill, for example, seeks to reduce the fees paid to medical providers,

and, more importantly, requires that treating physicians follow established and sensible guidelines for both the provision of treatment and the evaluation of impairment.¹⁴ In the hope that claims will be resolved without costly litigation, the bill also expands and strengthens the system's mediation program.¹⁵ These

The Path to Reform

Those of us who seek meaningful workers' compensation reform seem to be caught in a trap with no hope of escape. In order to solve the "dueling doctors" problem that leads to higher medical expenses, excessive awards, and inflated litigation costs, the legislature must instruct the judges on how to decide workers' compensation cases. The Oklahoma Supreme Court, however, has held that the state constitution does not allow the legislature to tell judges which testimony or other evidence they are permitted to rely upon in making their decisions. As long as workers' compensation cases are decided by members of the judicial branch, the legislature will not be able to exercise sufficient control over the decision-making process to ensure efficient and sensible resolution of disputes.

What should we do? We should do what the vast majority of states have done—find ourselves a different kind of judge. Instead of the current workers' compensation court, which is an established part of the judicial branch of government,¹⁶ workers' compensation claims ought to be resolved initially by an administrative agency established in the executive branch of government. It is well established that legislatures possess the authority to prescribe the manner of the administration or execution of the laws; in other words, the legislature has far more authority to tell an administrative law judge how to do his or her job than to tell a member of the judicial branch. The legislature, then, should have no problem instructing an administrative law judge on which medical opinions he or she may rely upon in making decisions.

It is important to clarify, however, that I am not suggesting that the judiciary should be cut entirely out of

provisions, as well as many others in the bill, should help to reduce costs, but none of them attack the central cost drivers of our system. It is no surprise that the estimated amount of savings attributed to the bill is so disappointing.

the process for resolving these claims. A complete elimination of the role of the judiciary in resolving workers' compensation disputes would be an unconstitutional infringement on the judicial power. However, the judges should be instructed, by statute, to afford workers' compensation orders the same deferential review they provide other agency orders. Decisions of the proposed workers' compensation agency should be reversed only when the agency acts without or in excess of its legal authority or if an order was procured by fraud or was against the clear weight of the evidence.¹⁷ Application of this reduced level of scrutiny by the courts should ensure that the vast majority of the decisions made by the administrative agency under the newly reformed laws will be enforced as rendered.

But, it should be asked, won't the judiciary object to the removal of the primary responsibility for hearing claims from the branch that the constitution requires to be open for the "speedy and certain remedy" of every wrong and injury? Don't both the "access to court" and the separation of powers provisions in the constitution require that workers' compensation claims be resolved exclusively by the judiciary? The first, and best, response to this question is that while the constitutions of several other states have provisions similar to both our access to courts and separation of powers provisions, the courts of these states have upheld the delegation of the initial authority to resolve workers' compensation claims to an administrative body.¹⁸ As long as the state's courts are afforded the opportunity to review agency decisions, the state constitution's separation of powers principles are not violated.¹⁹ This is true even if the level of judicial scrutiny is limited.²⁰

Is there any indication that our state's courts would accept a limited role in the resolution of workers' compensation disputes? A small grain of hope can be spotted in the otherwise disheartening *Yocum* case. In that case, the Court, almost in passing, remarked that "The body of public law that governs workers' compensation is entirely statutory."²¹ The Court's characterization of workers' compensation law as public law, established entirely by statute, suggests that it, like other areas of public law, is an appropriate field to be administered by an executive agency. The exclusively statutory nature of this body of law also suggests that the legislature may exercise primary control over the operation of this area of law.

Of course, it is possible that, when presented with these suggested reforms, our Supreme Court justices will not see workers' compensation law as similar to other areas of public law; they may see it more analogous to private law. In that case, they may refuse to accept these proposed limitations on the power of the judiciary to adjudicate these claims, and we will end up where we started. But given our serial failures in reforming the system as currently conceived, isn't it time we tried an entirely new idea? After all, what do we have to lose? ❖

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Endnotes

¹ After a contentious and often bitter struggle during the regular session, the comprehensive reform bill was passed in a special session. Senate Bill No. 1X (2005 Okla. Sess. Laws, ch. 1, 1st Extraordinary Session).

² Mike Seney, "Key Legislative Principles: Workers' Compensation," http://www.okstatechamber.com/additional/whitepapers/KEYLEGISLATIVEPRINCIPLES_WorkersCompensation.pdf

³ Naomi Lopez Bauman, "Time to Make Workers' Compensation Reform a Priority," *Perspective*, Oklahoma Council of Public Affairs, February 2011.

⁴ "Filing Aims to Reduce Oklahoma Workers' Comp Rates," *Insurance Journal* (August 29, 2011), www.insurancejournal.com/news/southcentral/2011/08/29/212779.htm. Compare this modest reduction to the 10.5 percent reduction requested by NCCI after the passage of the 2005 reform package—cost savings that did not materialize because of the Oklahoma Supreme Court's neutering of the bill's chief provisions.

⁵ 2011 Okla. Sess. Laws, Senate Bill No. 878 (hereinafter SB 878), Sec. 10(A) ("Every employer subject to the provisions of the Workers' Compensation Code shall pay or provide benefits according to the provisions of this act for the accidental injury or death of an employee arising out of and in the course of his or her employment.").

⁶ SB 878, Sec. 2(A) ("The liability prescribed in this act shall be exclusive and in place of all other liability of the employer and any of his or her employees, at common law or otherwise, for such injury, loss of services, or death, to the employee, or the spouse, personal representative, parents, or dependents of the employee, or any other person, except in the case of an intentional tort, of where the employer has failed to secure the payment of compensation for the injured employees.").

⁷ *Conaghan v. Riverfield Country Day School*, 163 P.3d 557, 564 (Okla. 2007).

⁸ See *Conaghan*, 163 P.3d 557, 564, and *Yocum v. Greenbriar Nursing Home*, 130 P.3d 213 (Okla. 2005).

⁹ *Conaghan*, 163 P.3d at 565.

¹⁰ SB 878, Sec. 26(E).

¹¹ SB 878, Sec. 26(F).

¹² SB 878, Sec. 29(J).

¹³ The bill expands the number of workers' compensation judges to ten, provides that they may serve a maximum of two eight-year terms, and requires that each judge is experienced in this area of law. SB 878, Sec. 3.

¹⁴ SB 878, Sec. 26, 27, and 33.

¹⁵ SB 878, Sec. 20.

¹⁶ SB 878, Sec. 3(E) (providing that "The Court is hereby designated and confirmed as court of record . . .").

¹⁷ See, for example, House Bill No. 1224, proposed during the 2011 legislative session.

¹⁸ See, for example, *Allison v. Industrial Claims Appeals Office*, 884 P.2d 1113, 1119 (Colo. 1994) (holding, interpreting the Colorado "access to courts" provision, that the requirements of the provision are satisfied by judicial review of agency action.). See also, *Alaska Public Interest Research Group v. State of Alaska*, 137 P.3d 27, 39 (Alaska 2007) (citing decisions of other states).

¹⁹ See *Kline v. Berg Drywall, Inc.*, 686 N.W.2d 12, 21 (Minn. 2004).

²⁰ *Allison*, 884 P.2d at 1121 n. 14.

²¹ *Yocum*, 130 P.3d at 221 n. 35.



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