4.6 DISQUALIFICATION OF THE ADMINISTRATIVE LAW JUDGE

By rule, the ALJ is directed to withdraw from participation in a contested case if the ALJ deems himself or herself disqualified for any reason.[1] The APA states that an ALJ must be free of any political or economic association that would impair the judge's ability to function officially in a fair and objective manner.[2] An ALJ is not automatically disqualified by the filing of an affidavit of prejudice; upon filing of an affidavit of prejudice the chief ALJ must determine, on the record of the case, whether the ALJ should be disqualified.[3] The affidavit must be filed no later than five days before the date set for the hearing of the contested case.[4]

The due process clause of the United States Constitution entitles a person to an impartial and disinterested tribunal.[5] The burden of establishing bias or other disqualifying interests rests on the party challenging the hearing officer.[6] Generally, the same standards that apply to judicial branch judges concerning bias, prejudice, interest, and disqualification also apply to ALJs. The right to an impartial quasi-judicial officer is a protected aspect of due process but can be waived if not timely or sufficiently raised. An objection is timely if it is raised at the first reasonable opportunity after discovery of the facts tending to establish the disqualification. In order for the motion to disqualify to be sufficient, it must be based on facts contained in an affidavit.[7] Alleged prejudice must be based on more than mere speculation or tenuous inferences.[8]

Disqualification is appropriate where the ALJ is not capable of judging a particular controversy fairly on the basis of its own circumstances.[9] One ground for disqualification is the establishment by facts of a personal prejudice or a partiality toward a party or a party's group.[10] Disqualification is also appropriate where a personal or a pecuniary interest or economic bias is shown.[11] Generally, a preconceived point of view about law or policy does

[1] Minn. R. 1400.6400 (2013).

[2] Minn. Stat. § 14.48, subd. 3 (2014).

[3] Minn. R. 1400.6400 (2013). The rule further provides that a judge must be removed upon an affirmative showing of prejudice or bias, but also states that rulings on prior cases is not a sufficient reason by itself. *Id*.

[4] *Id*.

[5] Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980).

[6] Schweiker v. McClure, 456 U.S. 188, 196 (1982).

[7] Long Beach Fed. Sav. & Loan Ass'n v. Fed. Home Loan Bank Bd., 189 F. Supp. 589, 609-12 (S.D. Cal. 1960), *rev'd on other grounds,* 295 F.2d 403 (9th Cir. 1961).

[8] Duke v. N. Texas State Univ., 469 F.2d 829, 834 (5th Cir. 1972).

[9] Anstey v. Iowa State Commerce Comm'n, 292 N.W.2d 380, 390 (Iowa 1980). The Minnesota Court of Appeals has stated that hearing examiners in non-APA teacher termination proceedings should conduct themselves in accordance with the Minnesota Code of Judicial Conduct and the principles set forth in *Safeco Ins. Co. v. Stariha,* 346 N.W.2d 663, 667 (Minn. Ct. App. 1984) (disqualification of arbitrator). Pinkney v. Indep. Sch. Dist. No. 691, 366 N.W.2d 362, 365 (Minn. Ct. App. 1985).

[10] *See* Royal v. Police & Fire Comm'n, 345 Mich. 214, 75 N.W.2d 841, 845 (1956).

[11] Gibson v. Berryhill, 411 U.S. 564, 578-79 (1973); Smith v. Dep't of Educ. & Registration, 412 Ill. 332, 342, 106 N.E.2d 722, 727 (1952); Boughan v. Bd. of Eng'g Examiners, 46 Or. App. 287, 293-94, 611 P.2d 670, 673 (1980) ; *see also* Haas v. County of San Bernadino, 45 P.3d 280, 289-90 (Cal. 2002) (concluding that a hearing officer selected and paid by the county to conduct a license revocation proceeding had financial

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not disqualify an administrative decision maker.[12] However, where the hearing officer's words or actions create a likelihood, or the appearance of a likelihood, that his or her mind is effectively closed to reason or persuasion from one side, disqualification may be appropriate.[13] An ALJ will not be disqualified merely because he or she has made rulings adverse to the filing party in prior cases. Neither will an ALJ be disqualified from sitting at a rehearing of a contested case after reversal of the ALJ's earlier ruling.[14]

interest bias because she had an incentive to decide in favor of the county and then be selected for future cases).

[12] *See* Ass'n of Nat'l Advertisers v. Fed. Trade Comm'n, 627 F.2d 1151, 1171–72 (D.C. Cir. 1979).

[13] Belsinger v. District of Columbia, 295 F. Supp. 159, 162 (D. D.C. 1969), *rev'd on other grounds*, 436 F. 2d 214 (D.C. Cir. 1970); *see also* Shockency v. Jefferson Lines, 439 N.W.2d 715, 717-18 (Minn. 1989) (stating that mere questioning of witnesses by hearing panel without more does not demonstrate bias or unfairness but where record demonstrates friction between the panel and a party the appointment of an independent hearing examiner may be warranted).

[14] NLRB v. Donnelly Garment Co., 330 U.S. 219, 236–37 (1947).

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