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September 29, 2016

**VIA FACSIMILE: 208-334-2125**

Senator Steve Vick  
Legislative Services Office  
P.O. Box 83720  
Boise, ID 83720-0054

Representative Gary Collins  
Legislative Services Office  
P.O. Box 83720  
Boise, ID 83720-0054

Re: Administrative Hearing Office Committee – SCR 151 (2016)

Honorable Sen. Steve Vick, Co-Chair  
Honorable Rep. Gary Collins, Co-Chair:

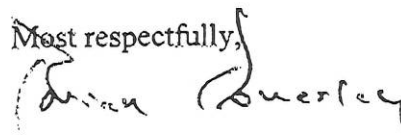
Thank you for hearing my testimony on SCR 151 on September 20, 2016. By way of follow-up, I wish to summarize observations and recommendations offered in testimony as follow:

- Hearing officers are often biased to the State agency that hires them due to that they are paid by the State agency. Hearing officers wish to be retained for future cases.
- Hearing officers are often persons known to agency administrators and attorneys and may have personal and professional conflicts in contested cases.
- Administrative law has evolved into broad application in executive, legislative and judicial functions, which is contrary to the balance of powers defined in State and Federal Constitutions.

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- Administrative hearing officers should be removed from the purview of the Executive Branch. They should be subject to conflict of interest rules, such as, for example, those identified in the Idaho State Bar, Idaho Rules of Professional Conduct, Standards for Civility and Professional Conduct, and most specifically with regard to conflict of interest.
- Independent, quasi-judicial procedures could be developed through the legislative branch, possibly administered by the Judicial Council or the Idaho Supreme Court. Hearing officers should be attorneys who do not have personal or professional history with the parties and who are not affiliated with a law firm that does no business with any agency party involved in a contested case.
- The statutes pertaining to judicial review should be amended to provide that the district court may take further and additional evidence in any contested case, in the discretion of the court, including the power to order a de novo hearing for good cause shown.
- Any agency which is a party to a contested case should be subject to an award of costs, including attorney fees, pursuant to I.C. 12-117 for any agency actions and not reasonably based in law or fact.
- Each agency party should be responsible for the cost of a hearing officer in a contested case. This would discourage unreasonable agency appeals.
- The Idaho Administrative Procedures Act and rules promulgated by any agency or by the Idaho Attorney General as Rules of Practice and Procedure should be amended to eliminate the power of the head of any agency to issue any order contrary to the findings of the hearing officer. The hearing officer should issue final orders constituting final agency action.
- Finally, private hearing officers could be hired by contract pursuant to a reasonable screening process administered by guidelines developed by statute.

Again, I very much appreciate the opportunity to address these matters before you.

Most respectfully,  


Brian Donesley

BD/sa

cc: Katharine Gerrity, Office of the Legislative Counsel (via facsimile: 208-334-2125)