

Cairns, Kelly (OIC)

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**From:** Singer, Alan (OIC)  
**Sent:** Tuesday, April 01, 2014 3:55 PM  
**To:** Cairns, Kelly (OIC)  
**Cc:** parker@carneybadley.com  
**Subject:** Edmund Scarborough motion to quash - OIC response to Judge Patricia Petersen's 3/25/14 letter  
**Attachments:** 20140401154107445.pdf

FILED

2014 APR 01 11:58 AM  
OIC HEARINGS UNIT  
PATRICIA D. PETERSEN  
CHIEF PRESIDING OFFICER

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Hi Kelly,

I write this email as a response to Judge Petersen's March 25, 2014 letter, asking whether she could take judicial notice of a memo by Nicholas Brown. I was not aware of the memo prior to receiving it from Judge Peterson, and have no objection to her taking notice.

Mr. Brown's memo is issued by him in his role as "General Counsel to the Governor". As a result, the memo is not an executive order and is not precedent. The legal analysis in the memo is not an adjudicative fact which under Rule of Evidence 201(a), is 'a controlling or operative fact . . . that concerns the parties to a judicial or administrative proceeding and that helps the court or agency determine how the law applies to those parties.'" *In re Disciplinary Proceeding Against Sanai*, 177 Wn.2d 743, 753 at fn. 2, 302 P.3d 864 (2013) *Id.*, citing *BLACK'S LAW DICTIONARY* 669 (9th ed. 2009). Rather, Mr. Brown's memo is a restatement of Washington's law on agency representation that has already been presented to you in the briefing.

Nevertheless, the principles expressed in Mr. Brown's memorandum are consistent with the OIC's Opposition to Scarborough's Motion to Quash. The OIC understands and agrees that its staff enjoy no attorney-client privilege. There is no evidence before you of confusion, inconsistency, or a position contrary to state interests. Indeed, as Mr. Brown notes on the second page of his memorandum, "with approval of the Attorney General's Office, agency staff, including attorneys, have come to handle certain administrative hearings." This is precisely what is occurring here.

As Assistant Attorney General Marta DeLeon indicates in her attached declaration, OIC staff have handled administrative hearings like this one, and staff members are doing so in this case, with the Attorney General's Office's express knowledge and approval.

Thanks,

Alan

Alan Michael Singer

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2014 APR -2 A 9 58

*In re the Matter of:*

**EDMUND C. SCARBOROUGH and  
WALTER W. WOLF,**

*Respondents.*

) Docket No. 13-0084

) **DECLARATION OF  
MARTA U. DELEON**

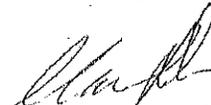
) OIC HEARINGS UNIT  
) PATRICIA D. PETERSEN  
) CHIEF PRESIDING OFFICER

I, Marta U. DeLeon, am over the age of eighteen (18) years, and am competent and authorized to testify to the matters set forth herein, on the basis of first hand personal knowledge. I declare as follows:

1. I am an Assistant Attorney General with the Washington State Attorney General's Office. I am the lead attorney assigned to advise and represent the Washington State Insurance Commissioner, Mike Kreidler, and the Washington State Office of the Insurance Commissioner ("OIC"). I have been the lead counsel to the Commissioner and the OIC since February 2009.
2. During the time I have been lead counsel and before that time to my knowledge, the OIC has handled administrative hearings before the Insurance Commissioner through delegated OIC staff, with the approval of the Attorney General's Office.
3. Delegated OIC staff have the approval of the Attorney General's Office to handle this administrative hearing.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED this 1st day of April, 2014 at Olympia, Washington.

  
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 Marta U. DeLeon, WSBA #35779  
 Assistant Attorney General