



OFFICE OF
INSURANCE COMMISSIONER

HEARINGS UNIT
Fax: (360) 664-2782

Patricia D. Petersen
Chief Presiding Officer
(360) 725-7105

Kelly A. Cairns
Paralegal
(360) 725-7002
KellyC@oic.wa.gov

FILED
2014 APR 23 A 11:46
OIC HEARINGS UNIT
PATRICIA D. PETERSEN
CHIEF PRESIDING OFFICER

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of)	Docket No. 13-0084
)	
EDMUND C. SCARBOROUGH and)	ORDER DENYING RESPONDENT
WALTER W. WOLF,)	EDMUND C. SCARBOROUGH'S
)	MOTION FOR RECONSIDERATION
Respondents.)	OF ORDER DENYING MOTION TO
)	QUASH

TO: Walter W. Wolf
7903 E. Broadway
Spokane Valley, WA 99212

James A. McPhee, Esq.
Workland & Witherspoon PLLC
601 W. Main Avenue, Suite 714
Spokane, WA 99201

Michael Miles, Esq.
Duane Morris LLP
100 North City Parkway, Suite 1560
Las Vegas, NV 89106-4617

Timothy J. Parker, Esq.
Carney Badley Spellman, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104-7010

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Alan Michael Singer, Staff Attorney, Legal Affairs Division
AnnaLisa Gellermann, Esq., Deputy Commissioner, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

On March 8, 2013, the Washington State Insurance Commissioner (OIC) issued a Notice of Request for Hearing for Imposition of Fines to Edmund C. Scarborough and Walter W. Wolf (collectively, "Respondents"). Said Notice of Request for Hearing proposes that the OIC take



ORDER DENYING SCARBOROUGH'S
MOTION FOR RECONSIDERATION

13-0084

Page - 2

disciplinary action against the Respondents for alleged violations of the Insurance Code involving the issuance of individual surety bonds. On January 21, 2014, Respondent Scarborough filed Respondent Edmund C. Scarborough's Motion to Quash the Commissioner's Notice of Request for Hearing, arguing that the OIC's Notice of Request for Hearing must be dismissed because it was not initiated by the Attorney General as required by WASH. CONST. art 3, Sec. 21 and implementing statutes included in chapter 23.10 RCW. After consideration of the parties' memoranda and supporting documents, the undersigned entered the Order Denying Respondent Scarborough's Motion to Quash ("Order") which was served on the parties on April 10, 2014. On April 21, 2014, by electronic mail, Respondent Scarborough filed Respondent Edmund C. Scarborough's Motion for Reconsideration of Order Denying Motion to Quash (the hard copy was received and filed April 22, 2014).

Motions for Reconsideration are governed by RCW 34.05.470. This section provides, in pertinent part:

- (1) *Within ten days of the service of a final order, any party may file a petition for reconsideration,*
- ...
- (3) *... The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either: (a) Dispose of the petition; or (b) serve the parties with a written notice specifying the date by which it will act on the petition.*
- (4) *... The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.*

Scarborough's Motion for Reconsideration misstates some of the undersigned's determinations in her Order Denying Motion to Quash. For example: 1) while Scarborough's assertion that [t]he presiding officer recognized that this is a "proceeding" under RCW 43.10.040 [referencing said Order at pages 6-7] is correct, Scarborough's next assertion that the presiding officer determined that this proceeding *requires that an agency be represented by the attorney general and not by its own "staff attorneys"* [referencing said Order at pages 6-7] is not correct. In addition, 2) Scarborough's assertion that *The presiding officer further recognized that OIC staff attorneys have, in this proceeding and other similar proceedings, represented the OIC and performed legal functions such as writing motions an briefs, arguing motions, presenting opening and closing statements, examining and cross-examining witness, and representing witnesses by interposing objections – all of which are "reserved for legal counsel" to be provided by the attorney general under RCW 43.10.040* [referencing said Order at page 8] is not correct.

However, Scarborough's assertion that *the presiding officer concluded that OIC staff attorneys may "handle" this administrative hearing based on approval from the attorney general's office* [referencing said Order at page 9] is correct. As said Order recites, the OIC filed a Declaration of Marta U. DeLeon, Assistant Attorney General, dated April 1, 2014. This Declaration attests that she has been the lead attorney assigned to advise and represent the Commissioner and the agency since February 2009, that *During the time I have been lead counsel ..., the OIC has*

ORDER DENYING SCARBOROUGH'S
MOTION FOR RECONSIDERATION

13-0084

Page - 3

handled administrative hearings before the Insurance Commissioner through delegated OIC staff, with the approval of the Attorney General's Office. Delegated OIC staff has the approval of the Attorney General's Office to handle this administrative hearing. As Scarborough argues and the Order recites, under WASH. CONST. art 3, Sec. 21, [t]he Attorney General [is] the legal adviser of the state officers, Assistant Attorney General DeLeon is an Assistant Attorney General representing the Attorney General and she has been the lead attorney assigned by the Attorney General to provide legal advice to the Commissioner since February 2009. As such, the Commissioner is as entitled to rely upon her advice as he is entitled to rely upon the advice of the Attorney General himself that the OIC has handled administrative hearings before the Insurance Commissioner through delegated OIC staff, with the approval of the Attorney General's Office. The Commissioner is also entitled to rely upon her advice that Delegated OIC staff has the approval of the Attorney General's Office to handle this administrative hearing. In addition, as the Washington Governor's letter dated December 20, 2013 cited in the Order reflects, the Governor acknowledges the Washington Constitution and implementing statutes included in chapter 43.10 RCW (which are precisely the legal authorities upon which Scarborough bases his Motion to Quash) and specifically states I also know that with approval of the Attorney General's Office, agency staff, including attorneys, have come to handle certain administrative hearings. These sorts of pre-approved arrangements raise far fewer concerns. ... If your agency has been approved to handle certain administrative hearings internally, [his only concern is that agencies] make sure that you are doing so within the bounds of the approval provided by the Attorney General's Office.

After consideration of the Respondent Scarborough's Motion to Quash; the OIC's Response to Respondent Scarborough's Motion to Quash; Respondent Scarborough's Reply thereto; the undersigned's Order Denying Respondent Scarborough's Motion to Quash; and the entire hearing file, it is hereby concluded that the Commissioner is entitled to rely, and did reasonably rely, on the advice provided by the Attorney General by and through Assistant Attorney General DeLeon. While not entirely necessary, the Governor's letter dated December 20, 2013 also considers the provisions of the Washington Constitution and the precise implementing statutes upon which Scarborough bases his Motion to Quash, specifically acknowledges that agency staff have come to handle certain administrative hearings and condones this practice on the condition that the Attorney General has pre-approved the arrangement. The Commissioner has done precisely that: as evidenced in Declaration of Assistant Attorney General Marta U. DeLeon filed herein, the Commissioner has obtained and is entitled to rely on the advise of the Attorney General on this issue, and the Commissioner has also obtained the Attorney General's pre-approval for OIC delegated staff to handle this administrative proceeding. For these reasons, Respondent Edmund C. Scarborough's Motion for Reconsideration of Order Denying Motion to Quash should be denied.

ORDER DENYING SCARBOROUGH'S
MOTION FOR RECONSIDERATION

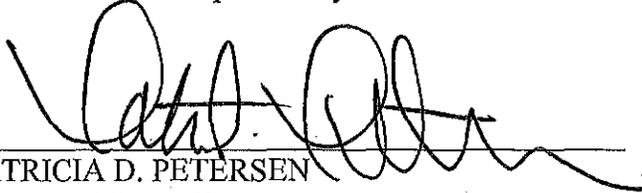
13-0084

Page - 4

Based upon the above activity,

IT IS HEREBY ORDERED that Respondent Edmund C. Scarborough's Motion for Reconsideration of Order Denying Motion to Quash is denied.

ENTERED AT TUMWATER, WASHINGTON, this 23rd day of April, 2014, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN
Chief Presiding Officer

ORDER DENYING SCARBOROUGH'S
MOTION FOR RECONSIDERATION

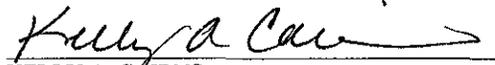
13-0084

Page - 5

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Walter W. Wolf, James A. McPhee, Esq., Michael Miles, Esq., Timothy J. Parker, Esq., Mike Kreidler, James T. Odiorne, John F. Hamje, Esq., AnnaLisa Gellermann, Esq. and Alan Singer, Esq.

DATED this 28th day of April, 2014.


KELLY A. CAIRNS