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Hearings Unit, DIC  
Patricia A. Anderson  
Chief Hearing Officer

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BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF WASHINGTON

In the Matter of

CHARLES D. OLIVER, AMERICAN EQUITY  
ADVISORY GROUP, LLC, AND "THE CHUCK  
OLIVER TEAM,"

Respondents.

NO. 13-0108

MEMORANDUM IN SUPPORT OF  
RESPONDENTS' RCW 34.12  
REQUEST

FACTS

Charles D. Oliver ("Oliver") is a Florida resident. His wholly owned company, American Equity Advisory Group, LLC ("American Equity") is a foreign limited liability company. Both Oliver and American Equity have, in the past, held Washington non-resident licenses although neither does now.

The Commissioner has issued a cease and desist order against both Oliver and American Equity relating to certain isolated events occurring in 2009. Oliver and American Equity dispute that they violated any Washington insurance statutes. Rather than ignore the cease & desist order and in an effort to clear their names, Oliver and American Equity both requested a fair hearing and made a separate written request that an administrative law judge be assigned under RCW 34.12. The written request referenced RCW 48.04.010(5) which provides:

A licensee under this title may request that a hearing authorized under this section be presided over by an administrative law judge assigned under

ORIGINAL



1 Chapter 34.12 RCW. Any such request shall not be denied. (Emphasis  
2 supplied).

3 Following receipt of respondents' written request for the appointment of an RCW  
4 34.12 administrative law judge ("ALJ"), OIC Hearing Examiner Patricia Petersen initiated a  
5 "scheduling conference" during which she questioned respondents' right to appointment of  
6 the requested administrative law judge to preside over the hearing of the dispute. Hearing  
7 Examiner Petersen implied: (1) whether the respondents were entitled to an appointment of an  
8 RCW 34.12 administrative law judge was within the discretion of the Insurance  
9 Commissioner, not a matter of right; (2) that if respondents were not licensees at the time of  
10 their request, that RCW 48.04.010(5) did not apply to them; and further (3) that no other  
11 authority entitled them to the requested appointment. Hearing Officer Petersen indicated that  
12 she was inclined to disallow respondents' request and proceed forward with scheduling a  
13 hearing before her, but allowed respondents to submit a brief on the subject if they did so  
14 within four days. Request for a short time extension was denied. This Memorandum is  
15 intended as respondents' response.

## 16 LAW

### 17 A. **Impartiality and the avoidance of the appearance of partiality are integral to the 18 integrity of administrative proceedings.**

19 If respondents right to contest the charges brought by the Washington State Insurance  
20 Commissioner ("Department" or "Commissioner") in an administrative hearing exists, then  
21 the exercise of that right entitles them to a proceeding that is fundamentally fair and free from  
22 all appearance of impartiality. The right to administrative hearings involving governmental  
23 adjudicative actions is rooted in constitutional due process considerations. Where, as here,  
24 state agencies are empowered to administratively enforce statutes or impose sanctions against  
25 individuals, those persons aggrieved by such action are entitled to a hearing. This action is an  
26



1 adjudicative hearing. *See* RCW 34.05.010(1)(2) and (3). Adjudicative actions in Washington  
2 are governed by the Washington Administrative Procedures Act ("APA"). RCW 34.05 *et seq.*

3 The cease and desist order issued by the Commissioner here expressly provided:

4 Respondents have the right to demand a hearing pursuant to RCW 48.04 and  
5 34.05. Cease and Desist Order dated April 4, 2013

6 Respondents timely exercised their right and demanded a hearing.

7 Implicit in the hearing process is the concept that an aggrieved persons who dispute  
8 the allegations made against them have an opportunity to present their case with the  
9 expectations that a trier of fact will receive all the evidence without preconditioned views and  
10 independently and fairly decide the matter. An adjudicative proceeding which does not  
11 ensure impartiality and avoidance of partiality is no hearing at all.

12 Several circumstances and facts underlying the cease and desist order and the  
13 Department's actions to date have raised concerns about its impartiality and fairness. We  
14 believe respondents' concerns are well grounded in fact. Given these concerns, having the  
15 Commissioner's own hearing examiner preside over the hearing seems antithetic to traditional  
16 notions of fairness. This is especially so inasmuch as our legislators have provided a  
17 mechanism to avoid any appearance of partiality.

18 **B. RCW 34.12 ensures independence and impartial administrative proceedings.**

19 RCW 34.010 was enacted to ensure the appearance of impartiality. The legislative  
20 history surrounding this statute makes clear the state's intent to make available hearing  
21 officers independent of state administrative agencies to hear matters pertaining to adjudicative  
22 actions of those agencies. *See* Exhibit A (ESHB 101). The statute was the result of a  
23 Washington State Bar Association task force study and recommendation which concluded that  
24 the creation of an independent office of administrative hearings was "essential" to avoid  
25 conduct which "violates the appearance of fairness and is contrary to basic concepts of fair  
26



1 play.” See Exhibit B (WSBA Task Force presentation to the House of Representatives  
2 regarding House Bill 101, by Robert A. Felthous, Chairman at p. 6). The Independent  
3 Business Association reached the same conclusion:

4 The need for disinterested and objective third parties to gather facts and issue  
5 an objective opinion on a contested case is essential to equitable justice.  
6 Independent Business Association letter submission dated January 27, 1981.  
See Exhibit C.

7 **C. RCW 48.04.010 does not selectively limit availability of RCW 34.12 ALJ’s only to**  
8 **current licensees.**

9 On its face, RCW 34.12 applies to all adjudicative proceedings of state administrative  
10 agencies<sup>1</sup> without regard to the class or particular attributes of persons against whom agencies  
11 have taken adjudicative type actions. Persons aggrieved by state administrative actions which  
12 give rise to rights to a hearing do not have to meet any personal prerequisites in order to be  
13 entitled to the protections of RCW 34.12.

14 The Commissioner argues that these respondents are not entitled to appointment of a  
15 RCW 34.12 ALJ because respondents are not now licensees, and alleges that they were not  
16 licensed at the time of the events alleged in the cease and desist order which respondents  
17 contest. This argument is flawed. It misses both the point and purpose of RCW 34.12. If, by  
18 mere allegations, the Commissioner could disqualify the respondents from RCW 34.12  
19 protections, then the very purpose of the statute could be circumvented. There are numerous  
20 scenarios under which aggrieved persons can vindicate themselves and disprove allegations  
21 made by the Department which is the purpose of an impartial hearing on the merits. What if,  
22 contrary to the allegations of the cease and desist order, an aggrieved person was properly  
23 licensed? What if the actual facts ultimately demonstrated no license was required? What if  
24 the allegations underlying the Department’s action were substantively wrong, or barred by the

25 \_\_\_\_\_  
26 <sup>1</sup> Note: By express exclusion, a few agencies are exempt from RCW 34.12. The Department,  
however, is not exempt.



1 statute of limitations? Any of these outcomes would vindicate the person aggrieved at a  
2 hearing. Requiring proof and weighing evidence of licensing status of respondents at this  
3 stage is wrong. It renders illusory the protections of RCW 34.12 and undermines the notion  
4 of fair play that the statute was intended to secure.

5 RCW 48.04.010 does not limit RCW 34.12.010. Any person aggrieved "by any,  
6 threatened act, or failure of the Commissioner to act" is entitled to a fair hearing so long as  
7 such failure is deemed an act under any provision of the insurance code.  
8 RCW 48.04.010(1), (2). The statute is generically partly entitled: "Hearings." Nothing about  
9 the title of the statute supports the proposition that RCW 34.12 appointed ALJ's are not  
10 available in all adjudicative proceedings of the Department.

11 Narrowly construing RCW 48.04.010(5) to mean that only aggrieved persons who are  
12 also licensees are entitled to appointment of RCW 34.12 administrative law judges is contrary  
13 to all legislative history, the language of RCW 34.12 itself, numerous provisions of the APA  
14 and fundamental notions of fairness. Such construction would essentially give the  
15 Commissioner the power to prosecute individuals after their licenses lapse without providing  
16 the protections and rights available to all other aggrieved persons. No judicial rational  
17 supports this conclusion. No case or other precedential authority has so held to the best of our  
18 knowledge. Subsection (5) speaks to other hearings "authorized under this Section." By  
19 doing so, the clear intent was inclusive rather than exclusive. Licensees as well as other  
20 aggrieved persons were included within the scope of RCW 34.12 protections. To be certain  
21 that the Commissioner not act in a partial manner over licensees, the legislature emphasized  
22 "any such request shall not be denied." *Id.*

23 **D. Request for RCW 34.12 ALJs are not discretionary.**

24 Implicit in the hearing examiner's hesitancy to transfer this case to the Office of Fair  
25 Hearings is the concept that the Commissioner has authority to deny respondents' request.  
26



1 We are aware of no legislative grant or judicial authority that supports this concept. In fact,  
2 construing RCW 34.12 as being subject to the prior approval or acquiescence of the  
3 Commissioner flies in the fact of the underpinnings of the statute. The Washington State Bar  
4 Association task force, as well as many other organizations, all expressed concern that when  
5 administrative agencies get to appoint their own hearing examiners, the appearance of  
6 impartiality fundamental to notions of fair play is lost.

7  
8 **CONCLUSION**

9 The hearing examiner should immediately transfer this matter for appointment of an  
10 RCW 34.12 administrative law judge to preside over the above entitled case without delay.

11 DATED this 10<sup>th</sup> day of June, 2013.

12 Respectfully submitted,

13 RYAN, SWANSON & CLEVELAND, PLLC

14  
15 By 

16 Jerry Kindinger, WSBA # 5231  
17 Attorneys for Respondents

18 1201 Third Avenue, Suite 3400  
19 Seattle, Washington 98101-3034  
20 Telephone: (206) 464-4224  
21 Facsimile: (206) 583-0359  
22 kindinger@ryanlaw.com  
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**EXHIBIT A**

ESHB 101

BRIEF TITLE: Creating an office of administrative hearings.

SPONSORS: House Committee on Ethics, Law and Justice  
(Originally Sponsored By House Committee on Ethics, Law and Justice and Representatives Ellis and Ehlers)

INITIAL HOUSE COMMITTEE: Ethics, Law and Justice

ADDITIONAL HOUSE COMMITTEE: Ways and Means

SENATE COMMITTEE: Judiciary

Staff: Bill Gales (753-7719)

Committee Hearing Dates (Session): April 6, 1981; April 9, 1981

Majority Report (DPA) signed by: Senators Clarke, Hemstad, Hayner, Hughes, Newhouse, Pullen, Shinpoch, Talmadge and Woody

SYNOPSIS AS OF APRIL 13, 1981

BACKGROUND:

Individual state agencies may employ or contract for hearing officers to conduct contested case hearings under the Administrative Procedure Act. Some individuals have questioned whether an appearance of impartiality can be maintained when the hearing officer is an employee of the agency which is a party to the hearing.

SUMMARY:

An independent office of administrative law judges (ALJ's) is created. The head of the office is a chief ALJ appointed by the Governor. The chief ALJ may appoint additional ALJ's as employees of the office and may contract with persons to act as ALJ's in specific hearings. Current hearing officers and support personnel in individual agencies are transferred to the ALJ office. Administrative law judges may be disciplined and terminated, for cause, by the chief ALJ. Employees of the office other than the ALJ's are subject to the state civil service law.

Certain agencies are exempted from the bill. Those agencies are the Pollution Control Hearings Board, the Shorelines Hearings Board, the Forest Practices Appeals Board, the Environmental Hearings Office, the Board of Industrial Insurance Appeals, the State Personnel Board, the Higher Education Personnel Board, the Public Employment Relations Commission, and the Board of Tax Appeals.

Any contested case hearing not heard by agency officials responsible for the final decision in the case must be heard by an ALJ. The chief ALJ is to assign ALJ's to agencies on a long-term basis whenever practical.

Uniform procedural rules for all agencies are to be adopted by the chief ALJ. The chief ALJ may allow for variations for individual agencies as needed.

The chief ALJ is subject to the reporting requirements of the Public Disclosure Act.

New Rule Making Authority: The chief administrative law judge is granted rule-making authority.

Effective Date: An emergency is declared with respect to certain provisions of the bill. The appropriation and appointment of the chief administrative law judge take effect immediately. The remainder of the bill takes effect July 1, 1982.

Appropriation: \$120,000 is appropriated from the general fund to the office of the chief administrative law judge.

Revenue: none

Fiscal Note: available

#### SENATE COMMITTEE AMENDMENTS:

The amendments drop three amendatory sections from the House bill: one which conflicts with a provision in another bill; and two which require the appointment of administrative law judges for the Department of Ecology and local school districts.

#### ARGUMENTS AND TESTIMONY AT SENATE COMMITTEE HEARING(S)

Arguments For: Contested hearings in administrative agencies should be conducted by impartial hearings officers. The appearance of impartiality is hard to maintain when the hearings officer is an employee of the agency involved. Creating an independent agency of administrative law judges to conduct hearings is a necessary step.

Arguments Against: The list of agencies which are exempt from the bill should be increased. Employment Security felt it should because its hearings examiners were already segregated from the agency and they were under severe federal time constraints for their proceedings. The Utilities and Transportation Commission said that its hearings examiners functioned more as advisors to the Commission and that relationship should be maintained.

Testified For: Bill Gissberg, Washington Bar Association; Robert Felthous, Washington Bar Association; Nat Washington, Pollution Control Hearings Board; Ann Sandstrom; Frank Homan, Washington State Hearings Office

Testified Against: David Reis, Utilities and Transportation; Eudora Peters, Employment Security Department

**EXHIBIT B**

RE: HOUSE BILL 101

ROUGH DRAFT

Mr. Chairman, Representatives, Ladies and Gentlemen:

My name is Bob Felthous and I am speaking in support of House Bill #101. About a year and a half ago, the Washington State Bar Association appointed a special Task Force and charged it with the duty to examine the general question of fairness in the State's administrative process. This seven-member task force is composed of the Honorable Robert Hunter, a retired Supreme Court Justice; Professor William Andersen, a University of Washington law professor with special expertise in administrative law; three practicing lawyers, Peter Francis, a former State Senator, John Rupp and Dean Little, both with a broad background in practice before numerous Federal and State agencies; Ann Sandstrom, a non-lawyer with extensive public and civic service. I am the seventh member, a lawyer and the Chairperson.

As an initial point of focus, the Task Force looked at the role of the administrative law judge in quasi-judicial proceedings. The Task Force sought input from knowledgeable sources. We started with conferences in Olympia with administrative law judges and hearing examiners, assistant attorney generals, and then the agencies. We found some agencies describe the person conducting hearings as "administrative law judge"; other agencies describe the same person as a "hearing examiner". To avoid confusion, and for clarity, the Task Force uses the term "administrative law judge", or "ALJ". We also believe it is more descriptive of the functions performed.

Perhaps at this time, a general description as to why and how administrative hearings are conducted would be of help. I am certain you appreciate that, when

one attempts to summarize in a few words a function as complex and varied as administrative hearings conducted by numerous different agencies, exceptions can be found. But basically, this is how it works:

A State agency issues an order. The person or persons involved disagree with the order and, if the rules applicable to that particular agency are properly followed, the aggrieved is granted a hearing. The agency assigns an ALJ to conduct the hearing. In most cases, the ALJ is an employee of the agency. In many cases, the hearing is conducted in the agency facility. Sometimes the agency is represented by an assistant attorney general. His duty is to defend the agency order. The assistant attorney general is employed by the attorney general. The hearing is conducted in a manner similar to a superior court trial. The same basic rules of evidence apply, but generally an administrative hearing is more informal. Witnesses are sworn, testimony given, evidence and exhibits received and, generally, a record of the proceeding made. The ALJ rules on objections and admissibility of evidence and usually prepares written findings and conclusions. To the participants, the ALJ appears to be the judge. However, the final decision -- the order that counts -- is made by the agency, which may or may not follow the ALJ's proposed order.

Prior to the establishment of the Task Force, House Bill 986 had been filed. It created a new office, provided that the ALJs (it termed them "hearing examiners") of each agency with support staff and equipment be transferred to the new office. Some legislative hearings were had. I was advised that no further hearings would be conducted pending the Task Force recommendations.

To assist in obtaining input, the Task Force composed a questionnaire consisting of five general questions. These questions served as an outline for our interviews and conferences. Condensed, the five questions are as follows:

1. Is it appropriate for agencies for which administrative law judges hear cases to control the salaries and promotions of such ALJs?

2. Does the location of the hearing room and the offices of the ALJs in the agency facilities threaten the objectivity of the judges or the appearance of objectivity?

3. Are the really decisive principles and policies fully known in advance to all participants?

4. Are all findings based exclusively on record evidence, properly used presumptions and inferences of which the agency may appropriately take official notice?

5. Do other agency personnel participate in inappropriate ways in formulating the administrative law judge's findings and conclusions?

These questions were published in the Washington State Bar monthly newsletter and responses invited. Responses indicated clearly that problems existed in all areas. Only one response, out of about one hundred from that circulation, stated "no problem".

The ALJs, at our conferences in Olympia, were more specific. They related examples demonstrating a definite need for reform, but we found many of them reluctant to talk with us, expressing fear of agency retaliation. Here is an example of that fear: Just prior to one of our conferences, an ALJ was relating an incident of pressure by agency personnel, when an agency attorney approached. The ALJ said, "Excuse me", and disappeared. He was back in a minute, apologized and explained he did not want to be seen talking to a Task Force member. To overcome this problem; we gave assurance that no effort would be made to tie comments with the person making the comment. With that assurance of confidentiality, we obtained valuable input.

For example: A citizen we'll call "Mary" has a dispute with a state agency over how much money she has coming. She has a choice: She can either concede to the agency position, or request a hearing. She requests a hearing, and, in due time, she is advised of the date, time and place of the hearing. She arrives alone, without an attorney, to testify and present her case. She finds that the hearing room is in the center of this agency's office building. It is an area set aside from the rest of the offices simply by glass partitions. In order to get there, she has to walk by desks of case workers and other employees of this particular agency. The witness chair which she occupies is adjacent to a window, and, from that window in plain view, can be seen the very case worker Mary thinks is the cause of all her trouble. If Mary is not completely satisfied with the final decision in this case, is there any way of convincing her that she has had a fair hearing? Is there any way of proving that she has not had a fair hearing?

Another example: A small businessman -- let's call him "Joe" -- operates a regulated business. In order to survive, he must have a license from the State. One day he receives a letter from the regulatory State agency telling him that his license is in jeopardy and he should show just cause as to why it should not be cancelled, suspended, or a fine levied. Understandably, he is greatly concerned. This is his livelihood, that of several members of his family and four or five other employees. Joe immediately goes to Olympia, seeks a conference with the man whose name appears on the order. He is told that, while the name on the order is that of the head of the agency, he should see the enforcement officer. He finds the enforcement officer in the coffee mess. He meets him and, seated next to him at the coffee table, is a man who is introduced to Joe as "Judge so-and-so". He doesn't remember his name. Later, Joe is informed by the enforcement officer that he must defend himself at a hearing as the agency is going to press the matter. Some weeks later, Joe arrives

at the hearing and there is the enforcement officer, ready to testify against him; and at the head of the table is the judge who is going to decide the case. The judge is the same person who was having coffee with the enforcement officer when Joe was in Olympia. Later, Joe learns that the judge is a subordinate employee of the same agency that employs the enforcement officer. Now, is Joe ever going to be convinced that he had a fair hearing if the final decision is not completely satisfactory to him? Is there any way of proving that he has not had a fair hearing?

Another example: An administrative law judge and an assistant attorney general travel in separate State cars from Olympia to eastern Washington to conduct a hearing. To maintain the appearance of fairness at hearings, and insulate against conflict of interest, separate modes of transportation of the judge to hear the cause, and the attorney to represent the agency, is an official policy. But the assistant attorney general, whose duty it is to represent the agency, and defend the agency's orders, is employed by the attorney general of the State of Washington; while the administrative law judge, the person that appears to the public as the one that's going to make the decision, which may be critical of the agency, is an employee of that same agency.

Another state agency which does not conduct a large number of hearings provides that, when a dispute arises between the director of the agency and a citizen involved with the agency, the director then appoints one of the staff of his agency to conduct a fair hearing. Care is exercised, however, to see that the staff person, now acting as a judge, as far as the public is concerned in this matter, is from a different section of the agency than the section involved in the dispute.

What is the difference between that situation and the hypothetical case of the prosecuting attorney calling me up and saying that he has information which will require

him to issue a warrant for my arrest? I claim my innocence; I go to his office; he shows me the information that he has; I deny it. He says, "Well, then you want a fair hearing, don't you?" I agree, so he says, "We will give you a fair hearing." He then calls in one of his deputies (one from the civil division of his office) and says to him, "Would you be the judge in this case and give this citizen a fair hearing?"

Even if we assumed that the end result in each one of these cases related was fair, that still is not the answer, because such conduct violates the appearance of fairness and is contrary to our basic concept of fair play.

The Task Force had a total of five conferences in Olympia; two with the ALJs, two with the assistant attorney generals, and one session devoted to input from the agencies. Unfortunately, only four of the agencies appeared at that conference, so the Task Force submitted a letter to forty-four agencies (names and addresses being provided by House Staff) requesting input. We had six written responses. Several were non-committal; the others indicated no need for reform within their specific agency.

The Task force, with the information received, concludes that changes are essential and the removal of the ALJs from the agencies and insulating them by placing them in a separate office is necessary. The ALJs should clearly not be the employees of the very same agencies they are called upon to judge.

HB 101 has an added bonus. The Task Force firmly believes it will be cost effective. Under the provisions of this Bill, the existing administrative law judges in the various agencies will be transferred to this new office. Most new agencies are created to perform a new function. Not so here. This office simply consolidates the existing administrative hearing process of many agencies into one. The dollar

economies which this Bill will produce are of four types:

1. The pool economy
2. Travel efficiency
3. More efficient use of talent
4. Improvement of morale

The first three mentioned economies can be confirmed by statistical information. The efficiency of the concept of pool economy has been proven through the years. An example of the pool economy concept is the State's inter-agency car pool. At one time each State agency had its own vehicles. For efficiency and economy, the Motor Transport Division was created which provides cars for many agencies.

The peak case loads of agencies come at different times. A steady work load is much more efficient. Accelerations and decelerations are inefficient and wasteful. By consolidating and pooling the administrative hearing process of many agencies, the public will be better served and there will be less delays. Informal statistics which we have received from the Employment Security Department and DSHS demonstrate this principle. The peak case load of the Employment Security Department in 1980 came in the summer months of July and August. In the same year, the peak hearing load of DSHS was high in March and April, low in the summer months and peaked in October.

The cost of travel is going to increase. It is in the public's best interest that, where possible, hearings be held in various locations convenient to the public. So the practice of conducting public hearings by the agencies out of the Olympia area should be encouraged. At the present time, each State agency schedules and conducts its own hearings out of Olympia, sending its own ALJs, its own court reporter. A consolidation of this function will allow one ALJ and one court reporter to hear cases involving a number of agencies. Let me give you a hypothetical example: Let us

assume that in the month of January, DSHS, Employment Security and Utilities and Transportation all have hearings scheduled for Port Angeles. Under the existing rules, each agency would send its own ALJ and its own court reporter, with no inter-agency coordination of hearing schedules. There is no reason why a properly trained and experienced ALJ could not hear the proceedings of all three agencies. Some agencies feel that specialization of an ALJ's function is such that ALJs can hear only a single agency's case. This is a misconception. Agencies handle a variety of cases themselves. One of the best examples is the Utilities and Transportation, where the ALJs in that agency hear transportation cases and utility cases, two types of cases that are probably as opposite and different as one can find in the administrative process.

A third area of economy is more efficient use of talent. Cases differ in complexity. Pooling brings about greater flexibility. The availability for assignment of ALJs of differing experience, qualifications and ability to fit each case will increase efficiency and reduce costs.

A final bonus will be the improvement of morale of the ALJs resulting in better decisions and attracting more qualified ALJs. Numerous ALJs told the Task Force of their frustration in making decisions critical of their own agency. Direct and indirect pressure from agency heads and staff is often felt by the ALJs prior to specific decisions. After a decision against their own agency, ALJs experience a cooling of relations, not only with their superiors, but also with agency staff who feel a loyalty to the agency. A supervisory ALJ of a large agency told us of the boredom with accompanying reduction of quantity and quality of decisions experienced by his ALJs. Although this agency conducts many different types of hearings, it is still insufficient to provide the new learning experiences that capable and ambitious ALJs should have.

The Task Force concludes that the creation of this new office will definitely be

cost effective and represent a saving to the State of Washington.

In summary, the Task Force concluded that reform is necessary and sought then a Bill that would accomplish these six general objectives:

1. Create an open door, full disclosure policy with state agency administrative hearings and decisions.
2. Increase the fairness, quality, uniformity and consistency of the administrative hearing process.
3. Improve, simplify, and increase the accessibility of the administrative hearing process with the public.
4. Expedite and speed up the administrative hearing and decision process. Cut red tape.
5. Reduce the cost of the administrative hearing process.
6. Improve the appearance of fairness in the entire administrative hearing process.

We believe that HB 101 accomplishes these objectives.

**EXHIBIT C**



**INDEPENDENT  
BUSINESS  
ASSOCIATION**

1644 - 116th N.E.  
Bellevue, Washington 98005  
Phone (206) 453-8621

January 27, 1981

The Honorable Skeeter Ellis  
Chairman  
House Ethics, Law and Justice Committee  
Olympia, WA 98504

Dear Chairman Ellis and Members of House Ethics, Law and Justice  
Committee:

Independent Business Association of Washington wishes to express its support for HB 101, establishing an office of administrative hearings. Small businesses have found the existing situation of having the agency being challenged also deciding on the challenge very concerning.

Small businesses understand that they may appeal a decision of any agency through the judicial system under the administrative procedures act. However, small businesses are also keenly aware of the congestion in the courts and the cost involved in such an appeal. Such an appeal is both costly and maybe delayed too long to provide the relief needed by the challenging small business.

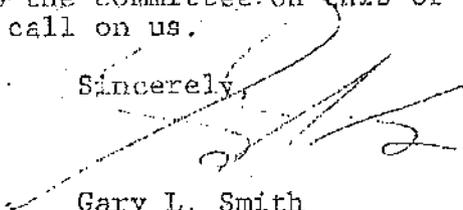
There are numerous examples of where decisions on contested cases by an agency needed an appeal in the mind of the small business. One example that clearly describes the broad interpretation used by an agency is where a firm was found to be in violation of the regulations dealing with the application of pesticides. The agency responsible for enforcing the regulation also issued the violation and arbitrarily decided to withhold the enforcement of the penalty until the peak business season of the business. The penalty was a suspension of the pesticide applicators license. This arbitrary decision severely harmed the small business and was unjustifiable in the particular case. However an appeal of this decision could not be timely enough to save this business from this harm.

The need for a disinterested and objective third party to gather the facts and issue an objective opinion on a contested case is essential to equitable justice. This is also needed to reduce to the greatest degree possible costs in bringing contested cases, and to reduce court congestion.

Page two

For these reasons, IBA supports the intent of HB 101. If IBA can be of further assistance to the committee on this or any other issue, please feel free to call on us.

Sincerely,



Gary L. Smith  
Executive Director

FILED

2013 JUN 19 A 9:47  
*18 KAC*

Hearings Unit, DIC  
Patricia D. Petersen  
Chief Hearing Officer

BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF WASHINGTON

In the Matter of

CHARLES D. OLIVER, AMERICAN EQUITY  
ADVISORY GROUP, LLC, AND "THE CHUCK  
OLIVER TEAM,"

Respondents.

NO. 13-0108

**DECLARATION OF SERVICE**

I hereby declare as follows:

1. I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within action. I am employed by the law firm of Ryan, Swanson & Cleveland, PLLC, 1201 Third Avenue, Suite 3400, Seattle, Washington, 98101-3034.

2. On the 18<sup>th</sup> day of June, 2013, I caused to be served upon the following individuals, at the address and in the manner described below, the following documents:

MEMORANDUM IN SUPPORT OF RESPONDENTS' RCW 34.12  
REQUEST

DECLARATION OF SERVICE

Original to:

Office of the Insurance Commissioner  
Attn: Patricia D. Petersen  
Chief Hearing Officer  
Hearings Unit  
PO Box 40255  
Olympia, WA 98504-0255

U.S. Mail  
Hand Delivery  
E-mail (KellyC@oic.wa.gov)  
Facsimile  
Federal Express

DECLARATION OF SERVICE - 1

**ORIGINAL**



Ryan, Swanson & Cleveland, PLLC  
1201 Third Avenue, Suite 3400  
Seattle, WA 98101-3034  
206.464.4224 | Fax 206.583.0359

1 Copy to:  
2 Andrea Philhower  
3 Staff Attorney  
4 Office of Insurance Commissioner  
5 of Washington  
6 PO Box 40255  
7 Olympia, WA 98504-0255

<input checked="" type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Hand Delivery
<input checked="" type="checkbox"/>	E-mail (AndreaP@oic.wa.gov)
<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Federal Express

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

10 DATED this 18<sup>th</sup> day of June, 2013 at Seattle, Washington.

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12 \_\_\_\_\_  
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