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STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

In re

Seattle Children's Hospital's Appeal of OIC's  
Approvals of HBE Plan Filings

DOCKET NO. 13-0293

REPLY TO SEATTLE CHILDREN'S  
HOSPITAL'S RESPONSE TO  
PREMERA'S MOTION TO VACATE  
CHIEF PRESIDING OFFICER  
PETERSEN'S ORDERS

I. INTRODUCTION

Seattle Children's Hospital's Response to Premera's Motion to Vacate boils down to a single argument: the request to vacate should be denied because Premera has failed to show that the rulings were in error. That faulty argument puts the cart before the horse because the issue raised by Premera, and uncontested by Seattle Children's Hospital ("SCH"), is that Judge Petersen's impartiality had been compromised before she entered any rulings in this case. Applying the applicable standard set forth in *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847 (1988), Premera is entitled to have its dispositive motions reviewed by an impartial arbiter. The current judge has not considered the record that was before Judge Petersen, and he must now reconsider Judge Petersen's rulings on Premera's and the OIC's prior motions.

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PREMERA'S MOTION TO VACATE CHIEF PRESIDING OFFICER  
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1 trial court recused, the standard announced by the Court should apply to prior interlocutory  
2 rulings as well.”). As SCH notes, the current judge may reconsider interlocutory orders at  
3 any time. Opp. at 1.

4 As is clear from Premera’s opening brief, Premera seeks reconsideration only of the  
5 motion for summary judgment submitted by Premera and the other intervenors and the  
6 motion to dismiss submitted by the OIC. The current judge need not revisit all of Judge  
7 Petersen’s prior rulings. *See El Fenix de Puerto Rico v. M/Y JOHANNY*, 36 F.3d 136, 142  
8 (1st Cir. 1994) (“Both the need for finality and a common-sense aversion to frittering scarce  
9 judicial resources militate against an inflexible rule invalidating all prior actions of a judge  
10 disqualified under § 455(a).”). “In fashioning retrospective relief [following judicial  
11 recusal], a court should do so with an eye toward accomplishing a just result.” *Cool Light*  
12 *Co., Inc. v. GTE Products Corp.*, 832 F. Supp. 449, 459 (D. Mass. 1993) *aff’d*, 24 F.3d 349  
13 (1st Cir. 1994).

14 SCH argues that Premera’s Motion to Vacate fails to “show why a different result is  
15 warranted.” Opp. at 2. This is misplaced. The current judge has not considered the record  
16 that was before Judge Petersen, and he must now must reconsider Judge Petersen’s prior  
17 rulings on Premera’s and the OIC’s dispositive motions on the entire record submitted by the  
18 parties. The question before the Hearings Unit is whether Judge Petersen’s orders on the  
19 Intervenor’s and the OIC’s dispositive motions should be vacated for bias, and then  
20 reconsidered on the merits based on the whole record including the briefs submitted to Judge  
21 Petersen.

22 **B. Judicial Economy Supports the Relief Requested by Premera.**

23 In the interest of judicial economy, the current judge should reconsider the  
24 Intervenor’s and the OIC’s dispositive motions. *See Rohrbach v. AT & T Nassau Metals*  
25 *Corp.*, 915 F. Supp. 712, 718 (M.D. Pa. 1996) (“The relief should be that which ameliorates  
26 the risk of injustice from a tainted decision while preserving, to the extent practicable, the

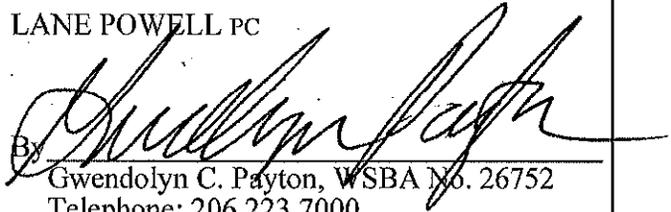
1 investment of the parties and the court's resources in the litigation."). If successful, the  
2 Intervenor and the OIC's dispositive motions would obviate the need for expensive and  
3 burdensome discovery and a five day trial. "There is little to lose and much to be gained by  
4 letting a different judge examine the parties' motions for summary judgment." *Tierney v.*  
5 *Four H Land Co. Ltd. P'ship*, 281 Neb. 658, 672-73, 798 N.W.2d 586, 597 (2011).

6 **III. CONCLUSION**

7 SCH does not deny that Judge Petersen's decision-making was tainted by ex parte  
8 contacts. The current judge must vacate and reconsider Judge Peterson's orders on  
9 Intervenor's and the OIC's dispositive motions. Further, the parties may ignore Judge  
10 Petersen's May 5, 2014 letter.

11  
12 DATED: June 23, 2014

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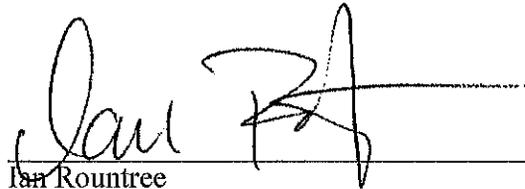
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**CERTIFICATE OF SERVICE**

I, Ian Rountree, hereby certify under penalty of perjury of the laws of the State of Washington that on June 23, 2014, I caused to be served a copy of the attached document to the following person(s) in the manner indicated below at the following address(es):

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Ian Rountree

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