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January 13, 2015

Judge George Finkle, Ret.
Hearings Unit
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

In re: Charles D. Oliver and American Equity Advisory Group, OIC Matter No. 14-0229

Dear Judge Finkle,

You asked me to provide the OIC's position concerning whether or not you have the authority to issue the remaining relief requested in Mr. Oliver and American Equity Advisory group's demand for hearing. As I understand it, the remaining requested relief is an order requiring a blog post issued by the Commissioner to be "removed". As long as the relief granted is limited removal of the blog post from the internet, and not its deletion, the OIC agrees that you have the authority to issue that relief.

However, the Commissioner cannot be ordered to delete a public record, including a blog post, in a manner that is inconsistent with the retention schedule assigned to that record. This blog post falls under the "General Office Operations (Non-Executive) Correspondence – Program" series in the state State Government General Records Retention Schedule. Records that fall under that series, it must be retained for 2 years after they are provided. According to the series, a records is "provided" for as long as it is made available online. Per WAC 434-662-040, electronic records must be kept in an electronic format for the entirety of their retention period.

Practically speaking this means that even if the blog post is ordered to be removed from the internet, it must be retained, in an electronic format, by the OIC, for two years from the date the blog is removed. Therefore, the blog post itself would remain available to the public for anyone who requests a copy, for the two years following the removal.

Although I have not conferred with counsel for Mr. Oliver, the demand for hearing requested that the post be "removed" and not "deleted." Therefore I believe that this limitation is consistent with the relief requested, and there is no other bar to your jurisdiction.

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However, while you have the authority to issue this relief, there are several legal and policy reasons why the staff believe this relief would be inappropriate. Further we believe consideration of these issues, that would preclude the need for a hearing. In looking at my notes of our prehearing conference, it does not appear that a dispositive motion deadline was set. Therefore I would like to request a briefing schedule for dispositive motions in this matter.

Sincerely,



MARTA DELEON
Assistant Attorney General

CC: Gulliver Swenson, counsel for Charles Oliver and American Equity Advisory Group.

MD:da