

FILED

2016 FEB 23 P 12:41

HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

LEO J. DRISCOLL,

Application for Hearing.

Docket No. 16-0002

OIC'S RESPONSE TO
APPLICANT'S MOTION TO
AMEND DEMAND FOR
HEARING

The Office of the Insurance Commissioner ("OIC") does not oppose the Applicant's amended language to the Demand for Hearing, however the OIC does oppose the Applicant's demand that he not be required to file an amended pleading. The OIC requests that the Hearings Officer enter an Order requiring the Applicant to file an Amended Demand for Hearing that contains these amendments prior to entry of an order denying or granting the Applicant's Motion to Amend.

I. ARGUMENT AND AUTHORITY

Mr. Driscoll, a retired attorney, has filed a Motion to Amend the Applicant's Demand for Hearing. In that motion, Mr. Driscoll requested that he not be required to file an Amended Demand for Hearing. The OIC opposes this request because the Washington Administrative Procedure Act (APA) indicates that a Demand for Hearing

1 should contain the entire demand and because Washington's Civil Rule 15 requires an
2 amended pleading be filed with a party's motion to amend.

3 Washington's APA requires that the application for an adjudicative proceeding
4 should specify the issue to be decided in the proceeding. *See* WAC 10-08-035. Mr.
5 Driscoll seeks to amend the pleaded facts and the issues to be decided by the Hearings
6 Officer, but desires not to file an amended pleading. If this request were to be granted,
7 the Applicant's Demand for Hearing would not specify the issues and facts to be
8 decided. Rather, the Demand for Hearing would contain only part of that information
9 with the remaining information contained in a completely separate document that is not
10 even referenced in the Demand for Hearing, violating the pleading requirements of
11 Washington's APA.
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13 Washington's Civil Rule 15 also operates to ensure that complete and accurate
14 records are maintained in the case file. This rule provides that "[i]f a party moves to
15 amend a pleading, a copy of the proposed amended pleading, denominated "proposed"
16 and unsigned, shall be attached to the motion. If a motion to amend is granted, the
17 moving party shall thereafter file the amended pleading and, pursuant to rule 5, serve a
18 copy thereof on all other parties." While Civil Rule 15 has not been specifically adopted
19 for OIC's administrative proceedings, it has also not been specifically excluded.
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21 Furthermore, a motion to amend a demand for hearing is also not specifically
22 provided for in the APA or OIC's specifically adopted civil rules. The only place that it
23 is provided for is in Washington's Civil Rule 15. As a result, the Applicant's Motion to
24 Amend was filed pursuant to Washington's Civil Rule 15, therefore all parts and
25
26

1 requirements of Civil Rule 15 should apply, including the requirement that an amended
2 pleading be filed with a motion to amend. For a motion to amend to be considered, a
3 party must file an amended pleading, failure to do so creates an incomplete filing that
4 cannot be considered by a Hearings Officer.

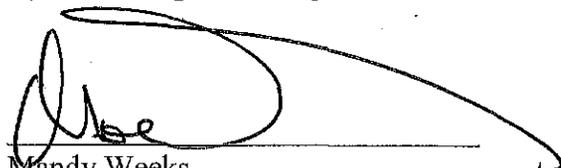
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6 These rules exists to preserve an accurate record. Allowing an applicant to
7 amend the pleadings without filing an amended pleading not only creates a confusing
8 administrative record, but it would also violate Washington's APA, and Civil Rule 15.

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11 **II. CONCLUSION**

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13 For these reasons, OIC staff requests that the Applicant be ordered to file an
14 Amended Demand for Hearing prior to granting or denying the Applicant's Motion to
15 Amend.

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17
18 DATED this 23rd day of February, 2016.

19
20 **MIKE KREIDLER**
Insurance Commissioner
21 By and through his designee

22
23 
24 Mandy Weeks
Insurance Enforcement Specialist
25 Legal Affairs Division
26

CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing OIC'S RESPONSE TO APPLICANT'S MOTION TO AMEND DEMAND FOR HEARING on the following individuals in the manner indicated:

Leo Driscoll and Mary Driscoll
4511 E. North Glenngrae Ln.
Spokane, WA 99223
oleod1@msn.com (Parties have electronic service agreement)
Via U.S. Mail and Email

OIC Hearings Unit
Presiding Hearings Officer
Washington State Insurance Commissioner
5000 Capitol Blvd
Tumwater, WA 98501
hearings@oic.wa.gov
Via Hand Delivery and Email

SIGNED this 23rd day of February, 2016, at Tumwater, Washington.


Christine M. Tribe