MIKE KREIDLER
STATE INSURANCE COMMISSIONER

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 of a true copy of this document to Mr. Kindinger, M. Stickler + A. Singer
DATED this 14th day of April 2008 at Tumwater, Washington.
Signed: Wendy Galloway

STATE OF WASHINGTON

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April 14, 2008

Mr. Jerry Kindinger
Ryan Swanson Cleveland PLLC
1201 Third Avenue, Suite 3400
Seattle, Washington 98101-3034

Ms. Marcia Stickler and Mr. Alan Singer
OIC Legal Affairs Division
P.O. Box 40255
Olympia, Washington 98504-0255

Re: Commonwealth Land Title Insurance Co., D07-310, D07-306
Lawyers Title Insurance Corporation, D07-304

Dear Messrs. Kindinger, Stickler and Singer:

This letter is in response to Mr. Kindinger's question presented during prehearing conference held on the above-referenced cases on February 29, 2008. I very much appreciate Mr. Kindinger's question and the manner in which he presented it. While I respect Mr. Singer's suggestion that Mr. Kindinger file a motion to determine this matter, indicating that the Commissioner will oppose a motion for e.g. recusal, I understand that Mr. Kindinger has not taken a position in the matter himself, but instead just wishes to explore the possibility of bias or prejudice in hearing and determining these cases. In this regard, I agreed to render an informal opinion as to whether I remember any contact with this issue I might have had in the past and whether – based upon that information – I thought I might be potentially biased or prejudiced based upon that information.

Specifically, Mr. Kindinger's concern is based upon a November 1, 1989, letter I wrote to David R. Porter, President of Transamerica Title Insurance Company based in Dublin, California, in my then position as a Deputy Insurance Commissioner. In this letter, I purported to interpret WAC 284-30-800 as it was written at that time. In addition, as I read this letter, it states *In addition to my continuing work in handling substantive title insurance cases, in August of this year* [1989] *Commissioner Marquardt assigned to me the responsibility of enforcing this illegal inducement regulation* [WAC 284-30-800].

As shown in the rulemaking of WAC 284-30-800, it was written by Commissioner Marquardt, Deputy Commissioner Robert E. Johnson and Deputy Commissioner June Mulcahey in 1988. As the letter reflects, in August 1989, I was assigned the duty to interpret and enforce this regulation and in that capacity I wrote the subject letter. Because in the course of this interpretation I came to agree with the title insurers that the then $12 limitation was far too small, and I amended the regulation in 1990 only insofar as to raise the limit from $12 to $25; I made no other changes to this regulation.

In 1991, the Office of the Insurance Commissioner hired an attorney, James Tompkins, from the title industry, who took over all title matters including interpretation and enforcement of WAC 284-30-800. Mr. Tompkins kept this area as his responsibility for some 13 years and has recently handed it to someone else; I am not certain who is now responsible for interpretation, enforcement and other involvement concerning this regulation. I have had no involvement with the interpretation or enforcement of this regulation for at least these past 16 years and am unfamiliar with the activities which have lead up to the activities which generated the subject investigation and enforcement leading up to the current disciplinary proceedings at issue here. Further, I have not conducted any investigation and/or enforcement of any kind in the Office of the Insurance Commissioner for many years and strictly observe the clear and detailed requirements of Title 34 RCW, the Administrative Procedure Act, and the Code of Judicial Conduct.

RCW 34.05.425 provides that there must be evidence of prejudice, and provides that even a general predilection toward a result is not sufficient to establish prejudice. Under the ruling of Kendall v. Reid, 93 Wash.App. 1050, Not Reported in P.2d, 1999 WL 7828 (1999), the Court ruled that *In Order to show bias, Kendall must make an affirmative showing of prejudice other than a general predilection toward a given result. Medical Disciplinary Bd. v. Johnston, 99 Wash. 2d 466, 474-75, 663 P.2d 457 (1983).*
I have no preconceived notions or even general feelings one way or the other regarding the issues involved in the subject cases.

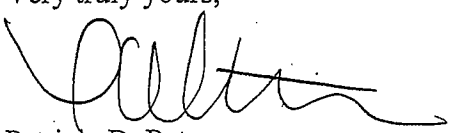
Further, an examination of the Code of Judicial Conduct reveals that the closest factually to this situation is Ethics Advisory Committee Opinion 00-19, found at *http://www.courts.wa.gov/programs_orgs/pos_ethics/?fa=pos_ethics.dispopin&mode-0019*. In this opinion, the judge is allowed to hear and decide the case in question. As a review of this opinion and the facts articulate, it is not grounds for disqualification to have taken certain positions on a similar issue in past jobs or past cases.

In this instant situation, I have had no activity and taken no position, and made no interpretation of the regulation, or any title matters (aside from handling the adjudicative proceedings), in many years. I also have no familiarity with any particular title insurance company(ies) for many years, and no knowledge of current enforcement actions or case law. Additionally, the only piece of the regulation which I drafted was in 1990 when I merely changed the $12 limitation to $25.

Pursuant to Mr. Kindinger's request, I have taken the time to very carefully review and consider the matter as promised, as detailed above, and I have concluded that there is no basis upon which I will not be able to hear and determine the instant cases. Further, I have consulted with my privately appointed Assistant Attorney General, who does not represent the Insurance Commissioner but is only available to me for questions concerning procedural matters arising in adjudicative proceedings which I hear and decide; she also concludes that there is no basis upon which I will not be able to hear and determine the instant cases.

Again, I thank Mr. Kindinger for presenting his question to me. I will ask that Wendy Galloway, my Paralegal, schedule a second prehearing conference to include all parties in these three cases.

Very truly yours,



Patricia D. Petersen
Chief Hearing Officer