

TALMADGE/FITZPATRICK  
2775 HARBOR AVENUE SW  
3RD FLOOR, SUITE C  
SEATTLE, WASHINGTON 98126  
(206) 574-6661 (206) 575-1397 FAX

MEMORANDUM

TO: Concerned Citizens

FROM: Philip Talmadge, Tom Fitzpatrick, Ed Younglove

DATE: July 23, 2014

RE: OIC Whitewash Report on Patricia Petersen

We are lawyers representing Judge Patricia Petersen who is the Chief Hearing Officer (administrative law judge) for the Office of the Insurance Commissioner ("OIC"). Commissioner Mike Kreidler and his Chief Deputy Jim Odiorne are pursuing discipline, and possible job loss, against this respected judge. She has served with distinction for almost thirty years, conducting OIC hearings under three different Insurance Commissioners including those from different political parties.

Today we are disclosing the investigator's report, as well as our detailed point-by-point refutation of it. We hope the Commissioner will rethink his intent to discipline Judge Petersen.

The OIC's fundamental basis for taking job action against Patricia Petersen is because she stood up for judicial independence and every citizen's right to have their case decided by an impartial judge. That is exactly what OIC promises the public on its website, copy attached, and what the law requires. Petersen's job description expressly provides that she is to act *independently* and to *judge each issue and make the final determination in each case without ex parte input on the merits from any OIC staff or other individuals*. However, when Judge Petersen recently began making rulings that displeased the higher ups at OIC, all of a sudden independence and impartiality are apparently out the window. Instead, the new rule is that the OIC hearing officer *must* rule in favor of the Commissioner. When Judge Petersen followed the law and disclosed that Deputy Commissioner Odiorne had engaged in communications with her designed to have her rule the way he and Commissioner Kreidler wanted, she was placed on administrative leave and her employment threatened the

day after she filed a whistleblower complaint. The justifications for discipline in the investigator's report are crafted long after these events.

Equally weak are the after-the-fact assertions by the investigator that Judge Petersen's hours were insufficient or that she contacted one of the attorneys in Seattle Children's Hospital case improperly. The refutation of the investigator's report clearly explains how the investigator refused to address seriously Judge Petersen's explanations and why he was simply wrong.

Now Kreidler/Odiorne are attempting to justify their conduct through a \$400 an hour taxpayer funded "investigation" which was billed as being independent but is sadly a whitewash. A Public Records Act request on behalf of Judge Petersen was filed to obtain all of the materials describing OIC's directions to this investigator and contacts between OIC and him. The initial response from OIC is that will take until the end of the month, after the report becomes public, for OIC to produce its contract and communications with the investigator. Stalling to produce these documents, including a contract apparently entered into weeks ago, is cause for suspicion.

The OIC investigation report cites anonymous sources (except when the citation to actual sources suits its purposes), and is replete with simple factual errors. The report is transparently contrived. It cherry picks facts and talks out of both sides of the mouth so it can have it both ways. For instance, it cites to the Code of Ethics for administrative law judges at a different agency than OIC to suggest that Judge Petersen should have disclosed in the Seattle Children's Hospital case that her husband had worked there thirty two years ago. The notion that because one's spouse worked somewhere three decades ago creates an "economic interest" and a potential conflict of interest is, on its face, preposterous. Even OIC's own counsel determined this was not a conflict of interest for Judge Petersen. The Code section relied upon by the investigator does not support OIC's contentions. But that does not stop OIC from trying to have it both ways. If that Code of Ethics is applicable, *its provisions clearly prohibit the very ex parte contact by Deputy Commissioner Odiorne the report tries to justify*. It is ironic that the investigator report insists nothing impermissible was going on as to Odiorne's contacts, yet Judge Petersen is blamed for ostensibly not reporting what was going on earlier.

Obviously, the investigator did not carefully assess the real world implications of Odiorne's conduct. When a supervisor tells a hearing officer she is not ruling often enough for OIC and then conducts a special

interim job evaluation, the pressure on such a hearing officer is *tangible*: rule for us or lose your job.

The really important thing is not just the waste of taxpayer dollars and the political/bureaucratic games being played upon a respected jurist who has never been overturned on appeal. Of overarching concern is how Kreidler/Odiorne are trying to destroy the ability of the public to get a fair hearing from an impartial judge. That is what due process is all about. If the judge *always* has to rule for the agency, any OIC hearing will essentially be an expensive sham. A person needs to go to a hearing because of what the agency has done. If the agency always wins, what's the point? It is as if the cop who writes you a ticket also gets to be the judge when you want to contest it. Although eventually a person can get a court to review what OIC decided, agency decisions are given great deference by the courts and there is no way to collect attorney fees in the administrative process.

The threat to independence and impartiality of the administrative judiciary is a threat to the rights and freedom of *every* Washingtonian. Treating citizens fairly in government proceedings is not partisan, and is what the public is entitled to expect. Judge Petersen should not have her career threatened simply because she chose to enforce the laws which are written to ensure that individuals and entities who appeal acts of the Insurance Commissioner receive a fair hearing and a decision from an impartial judge, not a judge who has already been told in the back room by the Commissioner how to decide each case.