From: Noah Davis <nd@inpacta.com>
Sent: Wednesday, July 28, 2021 11:08 AM
To: OIC Rules Coordinator <RulesC@oic.wa.gov>
Subject: RE 2021-09 Administrative Hearings (OIC attempting to limit the rights of the appellant)

External Email

I write in opposition to the proposed change to WAC 284-02-070(2) which has been submitted as "R 2021-09 Administrative Hearings" by the OIC.

The proposed changes of the OIC should be rejected. The proposal seeks to severely limit the rights of "the accused", requiring licensee/appellants to have to justify the discovery they are entitled to (and this against the backdrop of the great "deference" that is given to agency action.

When an insurance agent is accused of wrongdoing, the OIC REQUIRES them to comply with investigative requests or face suspension or revocation. They have to provide discovery or face additional charges or worse -- they have little choice but to lay down discovery.

The OIC then has a team of investigators, lawyers, money and time to complete a full investigation before it brings forth a charge and penalty. Once the OIC finishes its investigation and holds a review meeting, it issues an initial order.

The licensee/accused hasn't yet mounted any defense of their own, because there are no rules that allow them to.

The licensee/accused then has to appeal the OIC initial decision (i.e. the penalty is excessive or the licensee denies wrongdoing) and this after months of stress related to sometimes exhaustive investigations or overbearing investigators that interfere with business/customers and employees of the licensee.

When the appeal is filed, the Administrative Procedure Act (APA) provides some basic due process rights to the appellant, which includes discovery under the Civil Rules. A chance at leveling the playing field.

But now, the OIC seeks to take away that great leveler, to insulate their decisions from any questioning, from any collateral attack (and do away with transparency through discovery).

Recent cases that I've been counsel in (in opposing OIC actions) demonstrate how unfair OIC's proposal is. From the discovery I obtained (which very importantly and materially included depositions), we learned how informal, off the cuff and subjective the OIC penalty process was, how the "review" board was more or less a formality to try and create a process that "looked"

formal when it wasn't. The OIC penalty review and implementation process was an unregulated and unmitigated disaster and the OIC knew it. But it wasn't until depositions revealed just how bad that process was that the OIC took action to insulate their inside dealings from any legal oversight.

It's not surprising that an agency like this would try and cover up how it operates since it could call into question its integrity and hundreds and hundreds of prior decisions.

In the end, what the OIC proposed rule change does is seek to OVERRULE the APA. Despite the national working groups behind the APA's decades long drafting and hearing (model law) process, in just a few short months' time, someone at the OIC decided they knew better than the Rules of Civil Procedure, the Constitution, and the APA and could delete rights of the accused and protect itself from the messy process of having to make its employees available for deposition or to answer discovery.

The OIC wants to be above the law and that is not acceptable for a government accountable to its people, or a Commissioner that prides on protecting all Washingtonians (which includes protecting those against improper OIC decision-making)

And, importantly, there is already a process in place to "protect" the OIC from abusive litigants. Instead of this archaic rule change, what the OIC SHOULD do in APA cases is move for a protective order if it believes that in any one case there is an overreaching discovery request. That the OIC has failed to do so is no fault of the licensee/accused, and no fault of the thousands of future licensee/appellants that would have their rights checked at the door because the OIC failed to take any action in past individual cases and now wishes to institute a blanket rule of protection.

This rule change (the OIC Blanket special protective order) is just not acceptable for a State like Washington. A State that seeks to protect the accused, to provide rights to a civil defendant, to provides rights to an administrative law appellant.

If the OIC does not abandon/reject this proposed rule, then legal action must be taken to prevent it from become part of the Washington Administrative Code. I'm flatly and frankly embarrassed that the OIC has sought to implement this change. We go from a government accountable to its people to an agency looking to control every aspect of its decision making from public oversight.

Noah Davis | IN PACTA PLLC
☎ **206.709.8281 | F 206.860.0178**
☎ **206.734.3753 (Direct)**
✉ **nd@inpacta.com | www.inpacta.com**
33530 1st Way S. Suite 102
Federal Way WA 98003