The State Bar of California

OFFICE OF CHIEF TRIAL COUNSEL

845 South Figueroa Street, Los Angeles, CA 90017

800-843-9053
Fax: 213-765-1168

DISCIPLINE REFERRAL FORM

To file a discipline referral, please fill out the online form to be used by a judicial officer or court staff when reporting attorney misconduct, or violations of any provision of the Rules of Professional Conduct, pursuant to Judicial Canon 3(D)(2); or when complying with mandatory court reporting requirements pursuant to Business and Professions Code sections 6086.7, 6086.8 subdivision (a), 6101 subdivision (c), and California Rules of Court, rules 10.609 and 10.1071. For questions call 800-843-9053.

Please send completed form to the State Bar of California - Intake Unit, at the above address or fax number.

The judicial officer named below will be identified as the complainant and will be regularly apprised of the complaint status and disposition.

1. Report Submitted by/on Behalf of:

Title: Hon.		
First Name: Kristin	Middle Name: L	
Last Name: Rosi		
Address: [redacted]		
City: [redacted]	State: [redacted]	Zip Code: [redacted]
Email: [redacted]	Primary Phone:	Other Phone:

If you prefer to communicate by email, please provide an email address.

Will there be a point of contact other than the person referenced above?

☐ Yes ☑ No

Point of Contact

Enter the name and contact information of the person to contact for further information.

Title:		
First Name:	Middle Name:	
Last Name:		
Address:		
City:	State:	Zip Code:
Email:	Primary Phone:	Other Phone:

2. Attorney's Information

CA Bar License #: 199772		
First Name: Lucy	Middle Name:	
Last Name: Fong Wang		
Address: [redacted]		
City: [redacted]	State: [redacted]	Zip Code: [redacted]
Email: [redacted]	Work Phone: [redacted]	Website:

To better achieve the State Bar's mission to protect the public, please answer the following questions:

Select whether this is a Reportable Action required under Business and Professions Code sections 6101, 6086.7, or 6086.8 or a Complaint of Other Professional Misconduct.

☐ Reportable Action ☑ Complaint

To your knowledge, is the attorney who is the subject of the referral represented by counsel?

☐ Yes ☑ No

Attorney's Counsel Information
If yes, enter attorney's counsel information

CA Bar License #:		
First Name:	Middle Name:	
Last Name:		
Address:		
City:	State:	Zip Code:
Email:	Work Phone:	Website:

Does this complaint involve allegations of theft?

☐ Yes ☑ No

Does this complaint involve allegations of attorney misconduct where a person 65 years of age or older is victimized?

☐ Yes ☑ No

Does this complaint involve allegations of attorney misconduct where a person who is incapacitated, infirm, disabled, incarcerated, an immigrant, or a minor was victimized?

☐ Yes ☑ No

Does this complaint involve allegations that the attorney has abandoned a client?

☐ Yes ☑ No

Reportable Actions

Please check the applicable boxes of the court decision or order containing the action being reported.

☐ A judgment against an attorney for fraud, misrepresentation, breach of fiduciary duty, or gross professional negligence. (Business and Professions Code, § 6086.8, subd. (a).)

☐ A final order of contempt against an attorney that may warrant discipline. (Business and Professions Code § 6086.7, subd. (a)(1).)

☐ The modification or reversal of a judgment based in whole or in part on attorney misconduct or incompetence. (Business and Professions Code, § 6086.7, subd. (a)(2).)

☐ The imposition of judicial sanctions, except for failure to make discovery or sanctions under $1,000. (Business and Professions Code, § 6086.7, subd. (a)(3).)

☐ The imposition of a civil penalty upon an attorney pursuant to section 8620 of the Family Code regarding adoption of children with Indian tribal affiliations. (Business and Professions Code, § 6086.7, subd. (a)(4).)

☐ The finding of bad faith by a prosecuting attorney in withholding exculpatory evidence. (Business and Professions Code, § 6086.7, subd. (a)(5).)

☐ The conviction of an attorney. (Business and Professions Code, § 6101, subd. (c).)

Other Professional Misconduct

Please describe the nature of the attorney's conduct which may warrant disciplinary action. In the Attachments section, attach copies of pertinent documents such as a court decision, the order that contains the action being reported, or document filed by the attorney that is the subject of the misconduct.

Signature: _____ Date: 1/30/2025

The following is based on personal knowledge and credible documentary evidence in the possession of judicial officers.

In accordance with the ethical obligations under the California Code of Judicial Ethics Canon 3(D)(2) and Rule 8.3 of the Rules of Professional Conduct, the following report is made to the California State Bar regarding California attorney Lucy Wang, State Bar No. 199772.

As outlined in detail below, the more than 50 allegations of misconduct are particularly egregious, pervasive, and have continued despite multiple attempts at corrective action. In addition, the conduct has caused significant harm to the administration of justice, eroded confidence in a state regulatory agency, violated the due process rights of litigants and implies the ability to improperly influence a state agency and judicial officers.

Attorney Wang serves as the Deputy Commissioner/Special Counsel at the California Department of Insurance. In that role, Special Counsel Wang serves as an attorney and advisor to the California Insurance Commissioner and his Chief Deputy Commissioner. In addition, under some circumstances, Attorney Wang serves as a final decision-maker reviewing decisions of Administrative Law Judges. In this blended role of Special Counsel and final decision-maker, Special Counsel Wang supervises her own staff and directs the work of other Departmental employees.

I. Relevant Organizational Background & Statutory Separation of Functions

The Department of Insurance is a party in each of the relevant proceedings discussed herein. The remaining parties are consumer advocates and insurance carriers.

The Department's Executive Branch consists of Insurance Commissioner Ricardo Lara, Chief Deputy Commissioner Michael Martinez, and the Office of the Special Counsel, managed by Special Counsel Wang. The Commissioner has delegated review of administrative decisions to the Special Counsel.

The Department's Legal Branch serves as the Department's prosecutorial division, representing the Department in external litigation and internal proceedings. As such, applicable law provides that it must maintain separation from the Department's Executive Branch and its Administrative Hearing Bureau.[1] The Legal branch is supervised by the Department's General Counsel, and attorneys are assigned to one of several insurance-specific divisions. At all times relevant herein, the Department's General Counsel was Teresa Campbell.

The Department's Administrative Hearing Bureau (AHB), codified by Insurance Code section 21.5, is effectively the special administrative court charged with the responsibility of neutral adjudication of certain Insurance Code and other disputes. Accordingly, it is statutorily walled off from the agency's other regulatory functions performed by the Legal and Executive branches. Insulating AHB even more outright than the separation of functions expected by the Government

[1] *Department of Alcohol Beverage Control v. Alcohol Beverage Control Appeal Board* (2006) 40 Cal.4th 1 (the Administrative Procedures Act strictly limits contacts between an agency's prosecutor and the officers the agency selects to preside over hearings and ultimately decide adjudicative matters). See also, Gov. Code, sec. 11430.10.

Code and constitutional principles of due process, Insurance Code sections 7 and 21.5 prohibit the Commissioner, his deputies, and the Legal branch from any direct or indirect supervision of the Administrative Law Judges.[2] Administrative Law Judges are bound by both the Government Code's Administrative Procedures Act and the Code of Judicial Ethics to require compliance with these limitations.[3] Violation of either constitutes misconduct on the part of the ALJ, and may result in discipline.[4]

As in all California administrative agencies, the separation of functions is paramount. The separation of functions safeguards the fairness and impartiality of decision-making by preventing individuals involved in investigating or prosecuting cases from also participating in the adjudicative process, thus ensuring that the decision-maker remains objective and unbiased, ultimately protecting the rights of those affected by agency actions. It promotes public confidence in the justice system and ensures bias does not enter into final decision-making. This mandate is so crucial that the Government Code's Administrative Procedures Act sets forth clear guard rails meant to ensure a separation between final decision makers and all other Departmental staff.[5]

In addition to the Administrative Procedures Act's provisions mandating the separation of functions within a state agency, the Supreme Court's holding in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board*, (2006) 40 Cal.4th 1, further instructs the Department on the compulsory separation between agency decision-makers and prosecutorial staff. Therein, the Supreme Court expressly states that "the APA sets out a clear rule: an agency prosecutor cannot secretly communicate with the agency decision maker or the decision maker's advisor about the substance of the case prior to issuance of a final decision."[6] Violations of these rules constitutes misconduct under multiple statutes, including the Rules of Professional Conduct, the Government Code and the Code of Judicial Ethics.

II. Statement of Facts

In May 2024, the Department's Administrative Law Judges issued a briefing order in eight targeted separate Request for Compensation proceedings from among those RFCs then pending, in which there was an identified pattern of concern in the underlying rate approval history. The briefing order instructed all parties to address whether the Department of Insurance was processing and settling insurance rate increase applications in accordance with the Insurance

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[2] Ins. Code, sec. 21.5, subdivision (b) provides "An administrative law judge appointed by the commissioner pursuant to civil service rules shall be employed within the administrative law bureau and shall not be supervised directly by the commissioner or supervised directly or indirectly by an employee in the legal branch of the department.)

[3] Gov. Code, sec. 11475.20.

[4] Gov. Code, sec. 11475.50.

[5] Gov. Code, sec. 11430.10 et seq.

[6] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at p. 10. See also, *Morongo Band of Mission Indians v. State Water Res. Control Bd.*, (2009) 45 Cal.4th 731, 737 ("[P]rocedural fairness does not mandate the dissolution of unitary agencies, but it does require some internal separation between advocates and decision makers to preserve neutrality.")

Code and its applicable Regulations. All three parties to the proceedings, i.e. the Department of Insurance, insurance carrier and consumer advocates filed briefs responding to the ALJs' Orders.

On October 3, 2024, at 1:30 p.m., Special Counsel Wang met secretly with Department General Counsel Teresa Campbell, Attorney Nikki McKennedy and Chief Deputy Commissioner Michael Martinez, via the Microsoft Teams meeting platform, to discuss the impending administrative decisions in the above-mentioned proceedings. During this meeting, Special Counsel Wang and others in attendance circulated and edited a document intended to instruct the Administrative Law Judges on how to interpret the Insurance Code and its regulations. The issues discussed in this document were the exact legal issues then currently being litigated in front of the ALJs. This meeting did not include representatives from the consumer group or the insurance carriers, all of whom were parties to the respective case. Further, Special Counsel Wang did not subsequently disclose this private, ex parte meeting to the remaining litigants, nor did she insist on the statutory separation of functions between Department staff.

On October 18, 2024, the Chief Judge issued eight RFC decisions. Nearly identical in analysis, the Decisions find that the underlying rate proceedings had not concluded because of the Department's failure to follow the statutory and regulatory requirements regarding the review of insurance rate applications. Specifically, the Decisions note the Department refused to hold statutorily-mandated hearings, employed underground regulations in lieu of those provided for by law, and circumvented settlement transparency regulations by failing to present settlements to the ALJs for review and decision. The RFCs were granted, but relied upon alternate grounds other than that the rate proceedings were concluded properly.

Shortly after the issuance of these decisions, the Department's Legal and Executive branches began meeting secretly to discuss the Legal branch's intended request for reconsideration. Specifically, on November 4, 2024, at 2:30 p.m., Special Counsel Wang, Attorney McKennedy, General Counsel Campbell, Deputy General Counsel Heather Hoesterey and Chief Deputy Commissioner Michael Martinez conducted a secret meeting, via the Microsoft Teams meeting platform, to address "the AHB Rulings." This meeting between the Department's legal team, once again a party to the underlying proceedings, and the Department's final decision-maker, did not include representatives from the consumer advocates or the insurance carriers; the other two parties to the proceeding. No subsequent notice disclosing the ex parte communication(s) was provided to the other litigant parties and filed by Special Counsel Wang or any of the attorneys in attendance, despite the Department's failure to adhere to the statutory provisions regarding separation of functions.

Immediately after the November 4, 2024 meeting, Attorney McKennedy filed a Request for Reconsideration with Special Counsel Wang and the Insurance Commissioner. The Department's Legal branch also requested the Commissioner stay the RFC decisions pending resolution of the Request for Reconsideration. Attorney McKennedy cited to the formal administrative proceeding rules, specifically Government Code section 11521, in making this request.

On November 5, 2024, the consumer advocacy group filed a response objecting to the Department's Request for Reconsideration. In so objecting, the consumer advocates stated, "Ms.

McKennedy' s request is unprecedented in the modern history of the California Department of Insurance. The Decisions are in effect and should not be disturbed. To do otherwise would undermine the integrity of the agency, the authority and independence of the administrative law judges, and the laws that you are required to uphold."

On November 14, 2024, at 2:00 p.m., Commissioner Lara, Special Counsel Wang, General Counsel Campbell, Attorney McKennedy and Chief Deputy Commissioner Martinez met secretly, via the Microsoft Teams meeting platform, to discuss the Legal branch's Request for Reconsideration and the "Delegation" document previously drafted by Special Counsel Wang. As explained above, the document specially addresses the legal issues pending reconsideration by the Commissioner. This meeting between the Department's Legal branch, a party to the proceedings under review by the Commissioner, and the Commissioner and his legal team, did not include representatives from the consumer advocates or the insurance carriers, and therefore constituted an ex parte communication. No subsequent notice of this meeting has been provided to the other party litigants and of which no subsequent notice disclosing the ex parte communication was filed by Special Counsel Wang or any of the attorneys in attendance.

On November 15, 2024, one day after meeting privately with the Department's prosecutorial branch, Special Counsel Wang issued an "Order Granting Stay of Expiration of Power to Order Reconsideration of Decisions Awarding Compensation", as requested by the Department, and over the objection of at least one other party to the proceeding. Special Counsel Wang cited to Government Code section 11521 in issuing such an order.

On November 21, 2024, the Commissioner sent a letter to the Chief Administrative Law Judge (CALJ), with copies to the General Counsel Campbell, Special Counsel Wang, Deputy Commissioner Laurie Menchaca and Chief Deputy Commissioner Martinez. The letter, titled a "Delegation pursuant to civil service rules," informs the ALJs that they can only hear matters in accordance with the Commissioner's letter. Included among the "delegations," is an instruction to interpret the statues and regulations in accordance with the Commissioner's directions therein. This instruction is contrary to clear statutory and regulatory authority, as well as the ALJs legal analysis in the aforementioned decisions. The letter also included an instruction that the ALJs "get on board" with the Commissioner's plan and added a thinly veiled threat of discipline and removal. This letter is identical, in all relevant aspects, to the document drafted, circulated and edited by Special Counsel Wang, General Counsel Campbell and Attorney McKennedy. Although this letter purports to apply to all pending proceedings, the letter was not served on the consumer advocates or the insurance carrier. Therefore, it constituted an impermissible ex parte communication, and further violated the statutory separation of functions outlined by the Government Code and the California Supreme Court.

On November 22, 2024, at 3:00 p.m., General Counsel Campbell, Chief Deputy Commissioner Martinez, and Deputy Commissioner Menchaca and Deputy Commissioner Michael Soller met, via the Microsoft Teams meeting platform, to discuss "AHB Procedures." This meeting between the Department's Legal branch, a party to the proceedings under review by the Commissioner, and the Chief Deputy Commissioner, did not include representatives from the consumer advocates or the insurance carriers, although the Department's intent was to address the decisions

issued by the Chief Judge. No subsequent notice of this meeting was provided to the other party litigants by the Chief Deputy Commissioner or an attorneys present.

On November 25, 2024, the Commissioner issued an Order Granting the Department's Request for Reconsideration. Therein, the Commissioner indicated he would issue new decisions "authorizing payments to Consumer Watchdog and striking out the portions of dicta which (1) contain improper advisory opinions regarding Proposition 103, (2) conflict with longstanding Department policies and procedures, and (3) contain erroneous legal interpretations." As counsel to the Commissioner, Special Counsel Wang drafted the Order Granting Reconsideration. The Order does not disclose the private meetings Special Counsel Wang had with the Department's litigation team prior to granting the Order they requested.

On December 3, 2024, the ALJs issued Notice of Ex Parte Communications in all pending RFC matters, pursuant to Government Code section 11430.50, regarding the Commissioner's November 21, 2024, letter to the CALJ.[7] The Notice informed the parties of their statutory right to respond to the ex parte communication, and provided a hearing date should any party request an opportunity to publicly respond.

Shortly after receiving the Notice of Ex Parte Communication, at approximately 5:30 p.m. on December 3, 2024, Special Counsel Wang, General Counsel Campbell, Chief Deputy Commissioner Martinez and Deputy Commissioner Menchaca and Deputy Commissioner Michael Soller met, via the Microsoft Teams meeting platform, to discuss the Notice of Ex Parte Communication. These same parties met privately again, via the Microsoft Teams meeting platform, on December 5, 2024, at 9:25 a.m. and 12:30 p.m. to continue their private discussion on the pending proceedings. At no time were the remaining parties to the proceeding informed of these secret meetings, nor was subsequent notice disclosing the ex parte communications provided to the other litigant parties by Special Counsel Wang or other attorneys present during the meeting. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the statutory separation of functions which ensure transparency and fairness in administrative proceedings.

On December 6, 2024, Chief Deputy Commissioner Martinez sent an email to the CALJ regarding the Notice of Ex Parte Communication. The email, sent at 11:01 a.m., states that the pending RFC matters do not constitute "adjudicatory proceedings" and thus the Notice of Ex Parte Communication must be rescinded. This argument is in direct contradiction to Special Counsel Wang's Order Granting Reconsideration. The email further states "Based on the foregoing facts, I ask that you – in your role as Supervising Administrative Law Judge – issue subsequent Orders which (1) clarify there are no adjudicative proceedings pending before AHB, (2) inform parties there is no need to address the Delegation, nor present evidence, and (3) vacate the December 13, 2024 case calendar calls. Please issue these subsequent orders by the end of

[7] Government Code section 11430.80, subdivision (a) provides "There shall be no communication, direct or indirect, while a proceeding is pending regarding the merits of any issue in the proceeding, between the presiding officer and the agency head or other person or body to which the power to hear or decide in the proceeding is delegated." At the time of the Notice of Ex Parte Communication, the ALJs had approximately 18 pending RFC proceedings on their dockets.

business today (Friday, December 6, 2024). If you have any questions, please do not hesitate to contact me by email or telephone." This communication was drafted by Special Counsel Wang in her role as the Commissioner's legal counsel, and ignored separation of functions between the presiding officer (the Chief Judge) and the agency head or final decision-maker. This communication was not served on the consumer advocates or the insurance carriers, all of whom were parties in the pending proceedings. The CALJ refused to take the ordered actions without comment. The staff ALJ concurred.

Also on December 6, 2024, Special Counsel Wang issued a revised decision in one of the RFC cases, and awarded compensation to Consumer Watchdog. Special Counsel Wang's decision did not address the legal issues raised by the CALJ, nor did Special Counsel Wang's decision disclose the numerous secret meetings she held with the Department's litigation team; a party to the proceeding.

On December 9, 2024, at 12:30 p.m., Special Counsel Wang, Chief Deputy Commissioner Martinez, General Counsel Campbell and Deputy Commissioner Menchaca met, via the Microsoft Teams meeting platform, to discuss the CALJ's refusal to rescind the Notice of Ex Parte Communication. At no time were the remaining parties to the proceeding informed of these secret meetings, nor was subsequent notice disclosing the ex parte communications provided to the other litigant parties by Special Counsel Wang or other attorneys present during the meeting. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the statutory separation of functions which ensure transparency and fairness in administrative proceedings.

One hour later, on December 9, 2024, at 1:54 p.m., Deputy Commissioner Menchaca sent an email to the CALJ instructing the judge to rescind the Notice of Ex Parte Communication. The email message, instructing the CALJ to violate the Government Code and the Code of Judicial Ethics, was also sent to Special Counsel Wang, General Counsel Campbell, Deputy General Counsel Hoesterey and Chief Deputy Commissioner Martinez. The email message was not served on the remaining litigants and at no time did Special Counsel Wang or any other attorney provide the remaining litigants with notice of the ex parte communication.

The CALJ did not respond to Deputy Commissioner Menchaca's communication. Shortly thereafter, the Commissioner issued an Order Withdrawing Notices of Ex Parte Communication and Vacating Hearing. The Commissioner's Order purported to withdraw notice of his own improper communication with the presiding judge, and to cancel the parties' right to a due process hearing. The Order, drafted by Special Counsel Wang, states the Commissioner's communication is not an ex parte communication because it pertains to procedural issues. The Commissioner's Order contains both factual and legal misrepresentations, which Special Counsel Wang knew when she drafted the document. The Order also fails to include any disclosure of the secret meetings between the Department's legal team and its executive team leading up to the issuance of the Order.

On December 10, 2024, consumer advocates sent an email addressed to the CALJ indicating its intent to present an in-person response to the Commissioner's ex parte communication, as is

permitted under in Government Code section 11430.50. This communication was served on all parties. Special Counsel Wang responded to the email addressed to the CALJ, indicating the hearing had been vacated.

On December 11, 2024, consumer advocates filed an Objection to the Commissioner's Order withdrawing the Notices of Ex Parte Communications with the CALJ. In response, the ALJs issued a Notice of Opportunity to Respond, providing all parties the occasion to address Consumer Watchdog's objections. No party offered any response to the ALJs' Notice.

On December 11, 2024, at 12:00 p.m., Special Counsel Wang, General Counsel Campbell, Deputy Commissioner Menchaca and Soller and Chief Deputy Commissioner Martinez met, via the Microsoft Teams meeting platform, to discuss the scheduled ex parte hearing and potential disciplinary action for the ALJs for refusal to comply with the Commissioner's Order. At no time were the remaining parties to the proceeding informed of the private meeting, nor was subsequent notice disclosing the ex parte communication provided to the other litigant parties by Special Counsel Wang or other attorneys present during the meeting. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the statutory separation of functions which ensure transparency and fairness in administrative proceedings.

On December 11, 2024, the ALJs also issued a Second Notice of Ex Parte Communication, which attached Chief Deputy Commissioner Martinez's December 6, 2024 email. Immediately thereafter, at 4:15 p.m., Special Counsel Wang, General Counsel Campbell, Chief Deputy Commissioner Martinez and Deputy Commissioners Soller and Menchaca met, via the Microsoft Teams meeting platform, to discuss the Second Notice of Ex Parte Communication. At no time were the remaining parties to the proceeding informed of this secret meeting, nor was subsequent notice disclosing the ex parte communications provided to the other litigant parties by Special Counsel Wang or other attorneys present during the meeting. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the statutory separation of functions which ensure transparency and fairness in administrative proceedings.

On December 12, 2024, the ALJs issued rulings sustaining Consumer Watchdog's objections and confirming the December 13, 2024 calendar call.

Also on December 12, 2024, consumer advocates filed a written response to the December 3, 2024 Notice of Ex Parte Communication. Therein, the litigants argued the Commissioner's conduct violated Insurance Code section 21.5, as unlawful supervision of the ALJs, and Government Code provision 11430.80 regarding ex parte communications between an agency head and a presiding officer.

On December 13, 2024, the ALJs held a calendar call on all noticed RFC cases regarding the Commissioner's November 21, 2024 ex parte communication. Consumer advocates appeared at the hearing and provided comment supplementing their written filing regarding the impropriety of the Department's actions and the Commissioner's instructions. On that same date, at 2:00 p.m., General Counsel Campbell, Special Counsel Wang, Attorney Jeresa Ewell, and Deputy Commissioner Menchaca met, via the Microsoft Teams meeting platform, with a representative from the Department of Justice to discuss disciplining the ALJs for their refusal to violate the

Code of Judicial Ethics and Government Code provisions. At no time were the remaining parties to the proceeding informed of this secret meeting, nor was subsequent notice disclosing the ex parte communication provided to the other litigant parties by Special Counsel Wang or other attorneys present during the meeting. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the statutory separation of functions, which ensure transparency and fairness in administrative proceedings.

On December 13, 2024, in accordance with Regulations section 2656.1, consumer advocates filed a proposed stipulated settlement in a pending rate application proceeding, and requested the ALJ issue a proposed decision adopting the settlement.

On December 17, 2024, the Commissioner issued a letter to the CALJ purportedly removing all then pending RFCs from AHB. This letter was served on all parties. Although there is no statutory authority for the removal of these cases, the ALJs have not taken any action on those remaining cases.

On December 18, 2024, the CALJ issued a Notice of Proposed Settlement to all relevant parties. The Notice set a status conference and provided the parties with an opportunity to object to the proposed settlement in accordance with Regulations section 2656.1.

On December 19, 2024, consumer advocates filed a response to the Second Notice of Ex Parte Communication. The parties again argued the Chief Deputy Insurance Commissioner violated Insurance Code section 21.5, regarding supervision of ALJs, and Government Code section 11430.10 and 11430.80. The consumer advocates also noted Special Counsel Wang's role in drafting the second ex parte communication.

On December 23, 2024, Human Resource Director Jenny Ruth directly emailed the CALJ regarding the Notice of Proposed Settlement. Director Ruth advised that she was acting under the authority of the Commissioner and as the agent for Deputy Commissioner Menchaca. Director Ruth, a non-attorney, stated that the CALJ's Notice violated the Commissioner's November 21, 2024 "Delegation" order and instructed the CALJ to "cancel this status conference in writing and advise me that it was been cancelled by no later than 5PM today (12/23/2024)." The CALJ continued the status conference. This communication was not served on the parties to that proceeding.

On December 27, 2024, the CALJ issued a third Notice of Ex Parte Communication regarding Director Ruth's December 23, 2024 email message.

III. Alleged Ethical Violations

Based on the foregoing facts, and in accordance with Canon 3(D) and Rule 8.3, Special Counsel Wang's conduct violates Rules 1.2.1, 3.3, 3.5, 4.1 and 8.4 of the Rules of Professional Conduct, as well as Business and Professions Code sections 6068, 6103 and 6106. The repeat nature of the violations, even after appropriate corrective action and instruction, and the collusion between the Department's prosecutorial and executive branches, sadly demonstrates purposeful intent to violate ethics rules and has caused significant damage to the administration of justice and the public's confidence in the legal system.

A. October 3, 2024 Meeting

On October 3, 2024, at 1:30 p.m., Special Counsel Wang met secretly with Department General Counsel Teresa Campbell, Attorney Nikki McKennedy and Chief Deputy Commissioner Michael Martinez, via the Microsoft Teams meeting platform, to discuss the impending administrative decisions in the above-mentioned proceedings.

Meeting with the Department's Legal branch without the presence of all parties involved constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter. Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, Special Counsel Wang's initiation of the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. That the concealment and dishonestly was undertaken by a senior attorney, who supervises other Department attorneys, makes the conduct even more egregious and more concerning.

It must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly, the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

B. November 4, 2024 Meeting

on November 4, 2024, at 2:30 p.m., Special Counsel Wang, Attorney McKennedy, General Counsel Campbell, Deputy General Counsel Heather Hoesterey and Chief Deputy Commissioner Michael Martinez conducted a meeting, via the Microsoft Teams meeting platform, to address "the AHB Rulings."

Meeting with the Department's Legal branch without the presence of all parties involved constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer

from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter. Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, Special Counsel Wang's initiation of the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. These violations are particularly egregious given that, immediately following the meeting, Attorney McKennedy filed a Request for Reconsideration for Special Counsel Wang's review, further disadvantaging the other parties. Such misconduct severely compromises the integrity of the proceedings and prejudices the remaining litigants. That the concealment and dishonestly was undertaken by a senior attorney, who supervises other Department attorneys, makes the conduct even more shocking and more concerning.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly, the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

C. November 14, 2024 Meeting

On November 14, 2024, at 2:00 p.m., Commissioner Lara, Special Counsel Wang, General Counsel Campbell, Attorney McKennedy and Chief Deputy Commissioner Martinez met secretly, via the Microsoft Teams meeting platform, to discuss the Legal branch's Request for Reconsideration and the "Delegation" document previously drafted by Special Counsel Wang.

Meeting with the Department's Legal branch without the presence of all parties involved constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter. Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory

processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant, strikes at the heart of the fair administration of justice and procedural due process.

In addition, Special Counsel Wang's initiation of the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. This is an especially egregious violation considering that the following day, Special Counsel Wang issued an Order Granting the Request for Reconsideration, as requested by the Department's Legal branch, and contested by at least on other party to the proceeding. This failure to abide by the statutory divisions within the Department constitutes misconduct and is highly prejudicial to the remaining parties in the proceeding. That the concealment and dishonestly was undertaken by a senior attorney, who supervises other Department attorneys, makes the conduct even more shocking and more concerning.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly, the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

D. November 21, 2024 Ex Parte Communication to Chief Judge

On November 21, 2024, Insurance Commissioner Lara sent an email message directly to the Chief Judge. Therein, the Commissioner suggested the judges needed to "get on board" with his regulatory plan, and further instructed the ALJs on how to rule on questions of law and fact pertaining to the Insurance Code and its applicable regulations. The email concluded with a thinly-veiled threat to the Chief Judge about elimination of the position.

Special Counsel Wang drafted this email, and its attachment and provided it to her client to send to the Chief Judge. Special Counsel Wang undertook this action willfully and knowingly, in contravention of Government Code section 11430.80, which prohibits any communication between the agency head and a presiding officer. Such conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. It further constitutes an impermissible ex parte communication in violation of Rule 3.5, subdivision (b), which prohibits ex parte communications with judicial officers. The ex parte communication, drafted by Special Counsel Wang, directly addresses the merits of a contested matter pending before the ALJs.

Special Counsel Wang's conduct, in drafting and facilitating the ex parte communication, similarly violates Insurance Code section 21.5, which prohibits the Insurance Commissioner, his deputies and the Department's Legal branch, from directly or indirectly supervising the Administrative Law Judges. By issuing a document that instructs the ALJs to interpret the law in accordance with the Commissioner's wishes, Special Counsel Wang facilitated an improper

supervisory directive to the ALJs, and engaged in conduct that is prejudicial to the administration of justice.

Additionally, Special Counsel Wang's actions appear to violate Rule 1.2.1, subdivision (a), as she counseled her client, namely the Insurance Commissioner, to engage in conduct she knew violated Government Code section 11430.80 and Insurance Code section 21.5. As a licensed attorney, Special Counsel Wang was well aware of the prohibition against ex parte communication, yet counseled her client to engage in such improper conduct nonetheless.

The communication similarly violates Rule 3.3, subdivision (a), as the letter includes knowingly false statements of fact and law. Therein, Special Counsel Wang states the Commissioner may limit the ALJs legal interpretation and jurisdiction through fiat. The letter ignores, however, California Code of Regulation, title 10, section 2654.1, subdivision (a) which specifically grants the ALJs authority to rule on the validity of settlement agreements, and California case law affirming.[8] By failing to disclose controlling legal authority, and by making knowingly false factual and legal statements, Special Counsel Wang intended to unlawfully secure judicial compliance and mislead the judicial officers into adjudicating proceedings in the Department's favor.[9]

Finally, Special Counsel Wang's conduct is drafting the ex parte communication, and facilitating its improper communication constitutes an attempt to influence a judicial officer by unlawful means. The Code of Judicial Ethics, Canon1 mandates that a judge observe such standards that the integrity and independence of the judiciary are preserved. Special Counsel Wang's conduct directly attacks the ALJs judicial independence, which is indispensable to justice in this state. Similarly, Canon 3(B)(2) requires that a judge be faithful to the law regardless of partisan interests, public clamor, or fear of criticism. Special Counsel Wang's communication orders the ALJs to be faithful to a political officer, and ignore statutory and case law to the contrary. By instructing the ALJs how to interpret the statute and regulations and threatening discipline for failure to do so, Special Counsel Wang violated Rule 8.4, subdivision (e).

E. December 3, 2024 Meeting

On December 3, 2024, immediately after the CALJ issued a Notice of Ex Parte Communication, Special Counsel Wang, General Counsel Campbell, Chief Deputy Commissioner Martinez and Deputy Commissioner Menchaca and Deputy Commissioner Michael Soller met to discuss the Notice and their planned response. This meeting did not include representatives from the consumer advocates or insurance carriers.

Meeting with the Department's Legal branch without the presence of all parties involved constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no

[8] Cal. Code Regs., tit. 10, sec. 2654.1, subd (a) ("To the extent not otherwise specified by law or regulation, the administrative law judge shall: control the course of proceedings; grant or deny requests for continuances; . . . recommend to the Commissioner approval or disapproval of proposed stipulations and settlements".) See also, *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029.)

[9] See, *Davis v. State Bar* (1983) 33 Cal.3d 231, 239-240.

communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter. Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, Special Counsel Wang's initiation of the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. These violations are particularly egregious given that the discussion centered upon the CALJ's statutorily-mandated disclosure and methods to deny the remaining litigants their statutory due process right to be heard on the ex parte communication. That the concealment and dishonestly was undertaken by a senior attorney, who supervises other Department attorneys, makes the conduct even more shocking and more concerning.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly, the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

F. December 5, 2024 Meetings

On December 5, 2024, Special Counsel Wang, General Counsel Campbell, Chief Deputy Commissioner Martinez and Deputy Commissioner Menchaca and Deputy Commissioner Michael Soller met, via the Microsoft Teams meeting platform, on two separate occasions to continue their discussion of the pending proceedings. These meetings did not include representatives from the consumer groups or insurance carriers, and no subsequent disclosure has been made.

Meeting with the Department's Legal branch without the presence of all parties involved constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter. Such actions not only breach legal protocol, but

they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, Special Counsel Wang's initiation of the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. The violation is particularly egregious given that following the meeting, Special Counsel Wang drafted, and had sent, a second improper ex parte communication (see below.). Such misconduct severely compromises the integrity of the proceedings and prejudices the remaining litigants. That the concealment and dishonestly was undertaken by a senior attorney, who supervises other Department attorneys, makes the conduct even more shocking and more concerning.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly, the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

G. December 6, 2024 Ex Parte Communication to Chief Judge

On December 6, 2024, Chief Deputy Commissioner Martinez sent an email to the CALJ regarding the Notice of Ex Parte Communication. The email, drafted by Special Counsel Wang, states that the pending RFC matters do not constitute "adjudicatory proceedings" and thus the Notice of Ex Parte Communication must be rescinded. This argument is in direct contradiction to Special Counsel Wang's Order Granting Reconsideration.

Special Counsel Wang drafted this email, provided it to her client to send to the Chief Judge. Special Counsel Wang undertook this action willfully and knowingly, in contravention of Government Code section 11430.10, which prohibits any communication between the agency employees and a presiding officer. Such conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. It further constitutes an impermissible ex parte communication in violation of Rule 3.5, subdivision (b), which prohibits ex parte communications with judicial officers. The ex parte communication, drafted by Special Counsel Wang, directly addresses the actions of the CALJ; actions taken in accordance with the Government Code and the Code of Judicial Ethics.

Special Counsel Wang's conduct, in drafting and facilitating the ex parte communication, similarly violates Insurance Code section 21.5, which prohibits the Insurance Commissioner, his deputies and the Department's Legal branch, from directly or indirectly supervising the Administrative Law Judges. By issuing an email that orders the judge to violate the Government

Code and the Code of Judicial Ethics, Special Counsel Wang facilitated an improper supervisory directive to the ALJs, and engaged in conduct that is prejudicial to the administration of justice.

Additionally, Special Counsel Wang's actions appear to violate Rule 1.2.1, subdivision (a), as she counseled her client, namely the Chief Deputy Commissioner Martinez, to engage in conduct she knew violated Government Code section 11430.10 and Insurance Code section 21.5. As a licensed attorney, Special Counsel Wang was well aware of the prohibition against ex parte communication, yet counseled her client to engage in such improper conduct nonetheless, despite being previously admonished for this conduct.

The communication similarly violates Rule 3.3, subdivision (a), as the letter includes knowingly false statements of fact and law. In the December 9, 2024, ex parte communication, Special Counsel Wang falsely asserted that the pending proceedings were not adjudicatory, and therefore the communication was not unlawful. This claim directly contradicts Special Counsel Wang's own Order Granting Reconsideration, which cited Government Code section 11512 as the legal authority. Section 11512 applies exclusively to formal administrative adjudicatory proceedings. Similarly, Special Counsel Wang's statement ignored Government Code section 11430.20, which explicitly defines adjudicatory proceedings. By failing to disclose controlling legal authority, and by making knowingly false factual and legal statements, Special Counsel Wang intended to unlawfully secure judicial compliance and mislead the judicial officers into adjudicating proceedings in the Department's favor.[10]

Finally, Special Counsel Wang's conduct is drafting the ex parte communication, and facilitating its improper communication constitutes an attempt to influence a judicial officer by unlawful means. The Code of Judicial Ethics, Canons 1, 2 and 3(D), prohibit a judge from considering any political pressure and mandate integrity and impartiality in making their rulings. By instructing the ALJs how to interpret the statute and regulations and threatening discipline for failure to do so, Special Counsel Wang violated Rule 8.4, subdivision (e). That this improper and unlawful communication was undertaken by a senior attorney, who supervises other Department attorneys, and who had been previously admonished for such communications, makes the conduct even more shocking and more concerning.

H. December 9, 2024 Meeting

On December 9, 2024, at 12:30 p.m., Special Counsel Wang, Chief Deputy Commissioner Martinez, General Counsel Campbell and Deputy Commissioner Menchaca met, via the Microsoft Teams meeting platform, to discuss the CALJ's refusal to rescind the Notice of Ex Parte Communication. Representatives from the consumer groups and insurance carriers were not in attendance.

Meeting with the Department's Legal branch without the presence of all parties involved constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer

[10] See, *Davis v. State Bar* (1983) 33 Cal.3d 231, 239-240.

from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter. Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, Special Counsel Wang's initiation of the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. The violation is particularly egregious given that, immediately following the meeting, Special Counsel Wang drafted an Order interfering with the due process rights of the other litigants. Such misconduct severely compromises the integrity of the proceedings and prejudices the remaining litigants. That the concealment and dishonestly was undertaken by a senior attorney, who supervises other Department attorneys, makes the conduct even more shocking and more concerning.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly, the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

I. December 9, 2024, Email to Chief Judge

On December 9, 2024, at 1:54 p.m., Deputy Commissioner Menchaca sent an email to the CALJ instructing the judge to rescind the Notice of Ex Parte Communication. The email message, instructing the CALJ to violate the Government Code and the Code of Judicial Ethics, was also sent to Special Counsel Wang, General Counsel Campbell, Deputy General Counsel Hoesterey and Chief Deputy Commissioner Martinez. The email message was not served on the remaining litigants and at no time did Special Counsel Wang or any other attorney provide the remaining litigants with notice of the ex parte communication.

Special Counsel Wang had knowledge of the improper ex parte communication and took no remedial action to ensure Departmental compliance with the Government Code's strict prohibition against communicating with the presiding officer. Such conduct constitutes misconduct under the Government Code and violates Rules 3.5 and 8.4 of the Rules of Professional Conduct. In addition, Special Counsel Wang understood the communication from the Deputy Commissioner to be an instruction that the Chief Judge violate the Code of Judicial Ethics and the Government Code by denying the litigants their opportunity to be heard. Such conduct violates Insurance Code section 21.5 and serves as an attempt to improperly influence a

judicial officer, in violation of Rule 8.4, subdivisions (e) and (f). That Special Counsel Wang took no action to counsel her client against future improper ex parte communication, and failed to provide notice to the remaining litigants severely compromises the integrity of the proceedings and harms the public's confidence in state regulatory agencies.

J. December 9, 2024, Order Withdrawing Ex Parte Notice

On December 9, 2024, the Insurance Commissioner issued an Order purporting to withdraw the Chief Judge's Notice of Ex Parte Communication. The Order, drafted by Special Counsel Wang, violates Rule 8.4, subdivisions (a), (d), (e) and (f). Through the act of another, Special Counsel Wang knowingly interfered with the administration of justice, attempted to deny litigants their statutory right to be heard under Government Code section 11430.50, and attempted to improperly influence a judicial officer into violating the Code of Judicial Ethics. Such conduct severely compromises the integrity of proceedings in front of the Department, and prejudiced the litigants who wished to exercise their statutory rights.

Special Counsel Wang's actions also appear to violate Rule 1.2.1, subdivision (a), as she counseled her client, namely the Insurance Commissioner, to engage in conduct she knew violated Government Code section 11430.50.

Special Counsel Wang's actions also violate Rule 4.1, subdivision (a), which prohibits making false statements of fact or law. In the December 9, 2024, ex parte communication, Special Counsel Wang falsely asserted the November 21 communication was procedural in nature, and therefore was not unlawful under the Government Code. This claim, however, contradicts Special Counsel Wang's December 6 communication and is grossly misrepresents the law regarding ex parte communications. First, Special Counsel Wang misrepresented the nature of the November 21 communication. The communication specifically ordered the ALJs to interpret the statute and regulations in accordance with the Commissioner's wishes. The Order withdrawing the ex parte notice overlooks this material fact and distorts the communication. Second, Government Code section 11430.80 expressly prohibits the agency head from communicating with a president officer. No exception is made for procedural communications; a fact Special Counsel Wang was aware of. By misrepresenting this critical point to the parties, Special Counsel Wang knowingly made a false statement, attempted to deny the litigants their due process rights, and further undermined the integrity of the process.

K. December 10, 2024 Email Response to all Parties

On December 10, 2024, consumer advocates sent an email addressed to the CALJ indicating its intent to present an in-person response to the Commissioner's ex parte communication, as is called for in Government Code section 11430.50. This communication was served on all parties. Special Counsel Wang responded to the email addressed to the CALJ, indicating the hearing had been vacated.

Special Counsel Wang's actions violate Rule 8.4, subdivision (e), as the email response to all parties implies the ability to speak on behalf of the Chief Judge. By responding to an email not directed to her, Special Counsel Wang gave the appearance that she could improperly influence a

judicial officer, and instruct the judicial officer to violate the Government Code. Such conduct severely interferes with the administration of justice and gives the appearance that the judge takes direction from the Special Counsel and Commissioner.

L. December 11, 2024 12:00 p.m. Meeting

On December 11, 2024, at 12:00 p.m., Special Counsel Wang, General Counsel Campbell, Deputy Commissioner Menchaca and Soller and Chief Deputy Commissioner Martinez met, via the Microsoft Teams meeting platform, to discuss the scheduled ex parte hearing and potential disciplinary action for the ALJs for refusal to comply with the Commissioner's Order. This meeting did not include representatives from the consumer advocates or the insurance carriers; the other two parties to the proceeding.

Meeting with the Department's Legal branch without the presence of all parties involved constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter. Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, Special Counsel Wang's initiation of the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. The violation is particularly egregious given that at least one party expressed serious concern over the ex parte communications to the Chief Judge, further disadvantaging the other parties. Such misconduct severely compromises the integrity of the proceedings and prejudices the remaining litigants. That the concealment and dishonestly was undertaken by a senior attorney, who supervises other Department attorneys, makes the conduct even more shocking and more concerning.

Special Counsel Wang's actions in threatening discipline also constitute a violation of Rule 8.4, subdivision (e), as Special Counsel Wang counseled the Department to attempt to improperly influence a judicial officer. Such conduct severely interferes with the rule of law and the administration of justice.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly,

the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

M. December 11, 2024, 4:15 p.m. Meeting

On December 11, 2024 at 4:15 p.m., Special Counsel Wang, General Counsel Campbell, Chief Deputy Commissioner Martinez and Deputy Commissioners Soller and Menchaca met, via the Microsoft Teams meeting platform, to discuss the Second Notice of Ex Parte Communication. At no time were the remaining parties to the proceeding informed of this secret meeting, nor was subsequent notice disclosing the ex parte communications provided to the other litigant parties by Special Counsel Wang or other attorneys present during the meeting.

Meeting with the Department's Legal branch without the presence of all parties involved constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter. Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, Special Counsel Wang's initiation of the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. The violation is particularly egregious given that at least one party expressed serious concern over the ex parte communications to the Chief Judge, further disadvantaging the other parties. Such misconduct severely compromises the integrity of the proceedings and prejudices the remaining litigants. That the concealment and dishonestly was undertaken by a senior attorney, who supervises other Department attorneys, makes the conduct even more shocking and more concerning.

Special Counsel Wang's actions in threatening discipline also constitute a violation of Rule 8.4, subdivision (e), as Special Counsel Wang counseled the Department to attempt to improperly influence a judicial officer. Such conduct severely interferes with the rule of law and the administration of justice.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly,

the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

N. December 13, 2024 Meeting

On December 13, 2024, General Counsel Campbell, Special Counsel Wang, Attorney Jeresa Ewell, and Deputy Commissioner Menchaca met, via the Microsoft Teams meeting platform, with a representative from the Department of Justice to discuss taking adverse action the ALJs for their refusal to violate the Code of Judicial Ethics and Government Code provisions in the pending proceedings. This meeting did not include representatives from the consumer advocates or the insurance carriers; the other two parties to the proceeding.

Meeting with the Department's Legal branch without the presence of all parties involved constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter. Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, Special Counsel Wang's initiation of the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. The violation is particularly egregious given that at least one party expressed serious concern over the ex parte communications to the Chief Judge, further disadvantaging the other parties. Such misconduct severely compromises the integrity of the proceedings and prejudices the remaining litigants. That the concealment and dishonestly was undertaken by a senior attorney, who supervises other Department attorneys, makes the conduct even more shocking and more concerning.

Special Counsel Wang's actions in threatening discipline also constitute a violation of Rule 8.4, subdivision (e), as Special Counsel Wang counseled the Department to attempt to improperly influence a judicial officer. Such conduct severely interferes with the rule of law and the administration of justice.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly,

the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

O. December 23, 2024 Ex Parte Communication

On December 23, 2024, Human Resource Director Jenny Ruth directly emailed the CALJ regarding the Notice of Proposed Settlement. Director Ruth indicated the CALJ's Notice violated the Commissioner's November 21, 2024 "Delegation" order and instructed the CALJ to cancel a status conference in the pending proceeding. This improper ex parte communication was not served on the other parties to the proceeding.

Drafting the ex parte communication, facilitating its improper communication, and repeatedly advancing efforts to intimidate the ALJs through these communications and threats of termination constitute an attempt to influence a judicial officer by unlawful means. Such conduct sought to directly thwart the ALJs adherence the Code of Judicial Ethics, Canons 1, 2, 3, and 5, inclusive of the prohibition against a judge considering any political pressure or influence in making their rulings. We urge the State Bar to investigate who ordered and drafted this ex parte communication. If Special Counsel Wang is found to be the instigator or author of the communication, we urge the State Bar to take appropriate action as discussed above.

IV. Conclusion

In conclusion, the more than 50 alleged violations of the Rules of Professional Conduct outlined above represent a pattern of willful and continuous misconduct that has significantly interfered with the fair administration of justice. By colluding with the Department's prosecutorial branch, Special Counsel Wang's actions not only undermine the integrity of the proceedings but also erode public trust in the legal system.

The persistent and unrelenting nature of these violations reflects a systemic failure within the Department to uphold its legal and ethical obligations. Despite repeated efforts to address and correct these egregious actions, the Special Counsel Wang has continuously ignored or actively circumvented corrective measures, allowing the misconduct to persist unabated. This ongoing pattern of disregard for accountability is further compounded by a covert and troubling collusion among Department officials, who have secretly coordinated to obstruct due process and deprive litigants of their fundamental rights. These coordinated efforts to deny justice and manipulate outcomes undermine the integrity of the entire legal process. It is clear that this behavior is not an isolated incident, but rather a pervasive issue that calls into question Special Counsel Wang and the Department's commitment to the rule of law. To protect the public and preserve the credibility of our courts, immediate intervention is required to end this cycle of misconduct and ensure that such flagrant violations do not continue unchecked. Without such measures, the public's trust in the justice system will be irreparably damaged, and the very foundations of fairness and transparency will remain at risk.

Given the alarming pattern of misconduct already revealed, it is imperative that a thorough and comprehensive investigation be conducted to ensure there are no other violations lurking beneath the surface. The scope of these actions suggests the possibility of additional, yet undiscovered,

transgressions that could further compromise the integrity of the legal process. The Department's repeated failure to respond to corrective measures and the ongoing covert collusion among its officials raise serious concerns that there may be more extensive wrongdoing hidden from scrutiny. To safeguard the public's trust and protect the fairness of the judicial system, a full investigation is necessary to uncover the complete extent of these violations and to ensure that no further misconduct has been allowed to go unchecked. Without this deeper inquiry, the true scale of the corruption and abuse may remain obscured, continuing to undermine the rights of litigants and the credibility of the Department and the legal profession.

We, therefore, urge the State Bar to impose a level of discipline that is fully commensurate with the gravity of the violations uncovered. The extent of dishonesty and misconduct demonstrated by Special Counsel Wang and the Department's attorneys—evident in their repeated, reckless disregard for ethical standards and due process—requires a response that sends a clear and unequivocal message. Such egregious behavior, so casually embraced and perpetuated within the Department, cannot be allowed to go unpunished. The public's trust in the legal system depends on a firm, consistent commitment to holding attorneys accountable for actions that undermine the integrity of the profession. The discipline imposed must reflect the serious harm caused by these actions and serve as a deterrent against future misconduct, ensuring that similar violations are not allowed to continue unchecked.

The following is based on personal knowledge and credible documentary evidence in the possession of judicial officers.

In accordance with the ethical obligations under the California Code of Judicial Ethics[1] Canon 3(D)(2) and Rule 8.3 of the Rules of Professional Conduct, the following disciplinary referral is made to the California State Bar regarding California attorney Heather Hoesterey, State Bar No. 201254.

As outlined in detail below, the numerous allegations of misconduct are particularly egregious, pervasive, and have continued despite multiple attempts at corrective action. In addition, the conduct has caused significant harm to the administration of justice, eroded confidence in a state regulatory agency, violated the due process rights of litigants and implies the ability to improperly influence a state agency and judicial officers.

Attorney Hoesterey serves as the Deputy General Counsel – Litigation at the California Department of Insurance. In that role, Hoesterey serves as the head of the Department's litigation unit, a division of the Department's Legal branch, supervising attorneys in the Rate Enforcement Bureau which represents the Department in rate and request for compensation proceedings.

I. Relevant Organizational Background & Statutory Separation of Functions

The Department of Insurance is a party in each of the relevant proceedings discussed herein. The remaining parties are consumer advocates and insurance carriers.

The Department's Executive Branch consists of Insurance Commissioner Ricardo Lara, Chief Deputy Commissioner Michael Martinez, and the Office of the Special Counsel, managed by Special Counsel Lucy Wang.[2] The Commissioner has delegated review of administrative decisions to the Special Counsel.

The Department's Legal Branch serves as the Department's prosecutorial division, representing the Department in external litigation and internal proceedings. The Legal Branch litigates enforcement actions, reviews and analyzes insurance policies to determine whether they should be approved for sale to consumers, and analyzes and reviews rate filings to ensure they comply with the requirements of Proposition 103. As such, applicable law provides that it must maintain separation from the Department's Executive Branch and its Administrative Hearing Bureau.[3] The Legal branch is overseen by the Department's General Counsel, and attorneys are assigned to one of several insurance-specific divisions. At all times relevant herein, the Deputy General Counsel Heather Hoesterey served as the Department's chief of litigation and the direct supervisor for Assistant Chief Counsel Nikki McKennedy, and represented the Department in the

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[1] Gov. Code, §§ 11475.10, subd. (a)(1), 11475.20; Cal. Jud. Ethics, canon 3D(2).

[2] Pursuant to Canon 3(D) and Rule 8.3, the judges previously filed disciplinary referrals with the State Bar of California regarding Special Counsel Lucy Wang, General Counsel Teresa Campbell and Assistant Chief Counsel Nikki McKennedy, outlining numerous violations stemming from the same set of facts described herein. Deputy Chief Counsel Hoesterey's conduct is part of a larger systemic problem within the Department of Insurance.

[3] *Department of Alcohol Beverage Control v. Alcohol Beverage Control Appeal Board* (2006) 40 Cal.4th 1 (the Administrative Procedures Act strictly limits contacts between an agency's prosecutor and the officers the agency selects to preside over hearings and ultimately decide adjudicative matters). See also, Gov. Code, sec. 11430.10.

underlying proceedings discussed herein. At all times relevant herein, General Counsel Teresa Campbell served as Deputy General Counsel Hoesterey's direct supervisor.

The Department's Administrative Hearing Bureau (AHB), codified by Insurance Code section 21.5, is effectively the special administrative court charged with the responsibility of neutral adjudication of certain Insurance Code and other disputes. Accordingly, it is statutorily walled off from the agency's other regulatory functions performed by the Legal and Executive branches.[4] Insulating AHB even more outright than the separation of functions expected by the Government Code and constitutional principles of due process, Insurance Code sections 7 and 21.5 prohibit the Commissioner, his deputies, and the Legal branch from any direct or indirect supervision of the Administrative Law Judges.[5] Administrative Law Judges are bound by both the Government Code's Administrative Procedures Act and the Code of Judicial Ethics to require compliance with these limitations.[6] Violation of either constitutes misconduct on the part of the ALJ, and may result in discipline.[7]

As in all California administrative agencies, the separation of functions is paramount. The separation of functions safeguards the fairness and impartiality of decision-making by preventing individuals involved in investigating or prosecuting cases from also participating in the adjudicative process, thus ensuring that the decision-maker remains objective and unbiased, ultimately protecting the rights of those affected by agency actions. It promotes public confidence in the justice system and ensures bias does not enter into final decision-making. This mandate is so crucial that the Government Code's Administrative Procedures Act sets forth clear guard rails meant to ensure a separation between decision makers and all other Departmental staff.[8]

In addition to the Administrative Procedures Act's provisions mandating the separation of functions within a state agency, the Supreme Court's holding in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board*, (2006) 40 Cal.4th 1, further instructs the Department on the compulsory separation between agency decision-makers and prosecutorial staff. Therein, the Supreme Court expressly states that "the APA sets out a clear rule: an agency prosecutor cannot secretly communicate with the agency decision maker or the decision maker's advisor about the substance of the case prior to issuance of a final decision."[9]

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[4] Gov. Code, sec. 11425.10, subd. (a)(4). ("(a) The governing procedure by which an agency conducts an adjudicative proceeding is subject to all of the following requirements: (4) The adjudicative function shall be separated from the investigative, prosecutorial, and advocacy functions within the agency as provided in Section 11425.30.")

[5] Ins. Code, sec. 21.5, subdivision (b) provides "An administrative law judge appointed by the commissioner pursuant to civil service rules shall be employed within the administrative law bureau and shall not be supervised directly by the commissioner or supervised directly or indirectly by an employee in the legal branch of the department.)

[6] Gov. Code, sec. 11475.20.

[7] Gov. Code, sec. 11475.50.

[8] Gov. Code, sec. 11430.10 et seq.

[9] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at p. 10. See also, *Morongo Band of Mission Indians v. State Water Res. Control Bd.*, (2009) 45 Cal.4th 731, 737 ("[P]rocedural fairness does not mandate the dissolution of unitary agencies, but it does require some internal separation between advocates and decision makers to preserve neutrality.")

Violations of these rules constitutes misconduct under multiple statutes, including the Rules of Professional Conduct, the Government Code and the Code of Judicial Ethics.

II. Statement of Facts

In May 2024, the Department's Administrative Law Judges issued a briefing order in eight targeted separate Request for Compensation proceedings from among those RFCs then pending, in which there was an identified pattern of concern in the underlying rate approval history. The briefing order instructed all parties to address whether the Department of Insurance was processing and settling insurance rate increase applications in accordance with the Insurance Code and its applicable Regulations. All three parties to the proceedings, i.e. the Department of Insurance's legal branch, insurance carrier and consumer advocates filed briefs responding to the ALJs' Orders. Attorney McKennedy responded on behalf of the Department of Insurance.

On October 3, 2024, at 1:30 p.m., Attorney McKennedy met secretly with Department Special Counsel Lucy Wang, General Counsel Teresa Campbell and Chief Deputy Commissioner Michael Martinez, via the Microsoft Teams meeting platform, to discuss the impending administrative decisions in the above-mentioned proceedings. During this meeting, Attorney McKennedy and others in attendance circulated and edited a document intended to instruct the Administrative Law Judges on how to interpret the Insurance Code and its regulations. The issues discussed in this document were the exact legal issues then currently being litigated in front of the ALJs. Attorney McKennedy made numerous changes to the document and understood the document would be sent ex parte to the Chief Judge. McKennedy also requested that her name be removed from the list of attorneys copied on the communication. This meeting between the Department's prosecutors and members of the executive branch serving as final decision makers, did not include representatives from the consumer group or the insurance carriers, all of whom were parties to the respective case. Further, Attorney McKennedy did not subsequently disclose this private, ex parte meeting to the remaining litigants, nor did she insist on the statutory separation of functions between Department staff.

On October 18, 2024, the Chief Judge issued eight RFC decisions. Nearly identical in analysis, the Decisions find that the underlying rate proceedings had not concluded because of the Department's failure to follow the statutory and regulatory requirements regarding the review of insurance rate applications. Specifically, the Decisions note the Department refused to hold statutorily-mandated hearings, employed underground regulations in lieu of those provided for by law, and circumvented settlement transparency regulations by failing to present settlements to the ALJs for review and decision. The RFCs were granted, but relied upon alternate grounds other than that the rate proceedings were concluded properly.

Shortly after the issuance of these decisions, the Department's Legal and Executive branches began meeting secretly to discuss the Legal branch's intended request for reconsideration. Specifically, on November 4, 2024, at 2:30 p.m., Deputy General Counsel Heather Hoesterey met secretly with Special Counsel Wang, General Counsel Campbell, Attorney McKennedy and Chief Deputy Commissioner Michael Martinez, via the Microsoft Teams meeting platform, to address "the AHB Rulings." This meeting between the Department's legal team, once again a

party to the underlying proceedings, and the Department's final decision-maker, did not include representatives from the consumer advocates or the insurance carriers; the other two parties to the proceeding. No subsequent notice disclosing the ex parte communication(s) was provided to the other litigant parties and filed by any of the attorneys in attendance, despite the Department's failure to adhere to the statutory provisions regarding separation of functions.

Immediately after the November 4, 2024 meeting, Attorney McKennedy filed a Request for Reconsideration with Special Counsel Wang and the Insurance Commissioner on behalf of the Department's legal branch. The Department's Legal branch also requested the Commissioner stay the RFC decisions pending resolution of the Request for Reconsideration. Attorney McKennedy cited to the formal administrative proceeding rules, specifically Government Code section 11521, in making this request. Deputy General Counsel Hoesterey did not disclose the November 4, 2024 meeting to the parties either during or subsequent to the filing.

On November 5, 2024, the consumer advocacy group filed a response objecting to the Department's Request for Reconsideration. In so objecting, the consumer advocates stated, "Ms. McKennedy' s request is unprecedented in the modern history of the California Department of Insurance. The Decisions are in effect and should not be disturbed. To do otherwise would undermine the integrity of the agency, the authority and independence of the administrative law judges, and the laws that you are required to uphold."

On November 14, 2024, at 2:00 p.m., Attorney McKennedy met privately with Commissioner Lara, General Counsel Campbell, Special Counsel Wang, and Chief Deputy Commissioner Martinez, via the Microsoft Teams meeting platform, to discuss the Legal branch's Request for Reconsideration and the "Delegation" document previously edited by Attorney McKennedy. As explained above, the document specially addresses the legal issues pending reconsideration by the Commissioner. This meeting between the Department's Legal branch, a party to the proceedings under review by the Commissioner, and the Commissioner and his legal team, did not include representatives from the consumer advocates or the insurance carriers, and therefore constituted an ex parte communication. No subsequent notice of this meeting has been provided to the other party litigants and of which no subsequent notice disclosing the ex parte communication was filed by Attorney McKennedy or any of the attorneys in attendance.

On November 15, 2024, one day after meeting privately with the Department's prosecutorial branch, Special Counsel Wang issued an "Order Granting Stay of Expiration of Power to Order Reconsideration of Decisions Awarding Compensation", as requested by the Department, and over the objection of at least one other party to the proceeding. Special Counsel Wang cited to Government Code section 11521 in issuing such an order.

On November 21, 2024, the Commissioner sent a letter to the Chief Administrative Law Judge (CALJ), with copies to the General Counsel Campbell, Special Counsel Wang, Deputy General Counsel Heather Hoesterey, Deputy Commissioner Laurie Menchaca and Chief Deputy Commissioner Martinez. The letter, titled a "Delegation pursuant to civil service rules," informs the ALJs that they can only hear matters in accordance with the Commissioner's letter. Included among the "delegations," is an instruction to interpret the statues and regulations in accordance

Insurance Code section 21.5, regarding supervision of ALJs, and Government Code section 11430.10 and 11430.80. The consumer advocates also noted Special Counsel Wang's role in drafting the second ex parte communication.

On December 23, 2024, Human Resource Director Jenny Ruth emailed the CALJ directly regarding the Notice of Proposed Settlement. Director Ruth advised that she was acting under the authority of the Commissioner and as the agent for Deputy Commissioner Menchaca. Director Ruth, a non-attorney, stated that the CALJ's Notice violated the Commissioner's November 21, 2024 "Delegation" order and instructed the CALJ to "cancel this status conference in writing and advise me that it was been cancelled by no later than 5PM today (12/23/2024)." The CALJ continued the status conference. This communication was not served on the parties to that proceeding.

On December 27, 2024, the CALJ issued a third Notice of Ex Parte Communication regarding Director Ruth's December 23, 2024 email message.

III. Alleged Ethical Violations

Based on the foregoing facts, and in accordance with Canon 3(D) and Rule 8.3, General Counsel Campbell's conduct violates Rules 1.2.1, 3.3, 3.5, 4.1, 5.1, 8.3 and 8.4 of the Rules of Professional Conduct, as well as Business and Professions Code sections 6068, 6103 and 6106. The repeat nature of the violations, even after appropriate corrective action and instruction, and the collusion between the Department's prosecutorial and executive branches, sadly demonstrates purposeful intent to violate ethics rules and has caused significant damage to the administration of justice and the public's confidence in the legal system.

A. October 3, 2024 Meeting

On October 3, 2024, at 1:30 p.m., Attorney McKennedy met secretly with Special Counsel Wang, General Counsel Campbell, Chief Deputy Commissioner Michael Martinez, via the Microsoft Teams meeting platform, to discuss legal issues raised in the impending administrative decisions in the above-mentioned proceedings.

Meeting with the Department's executive branch final decision-makers without the presence of all parties involved constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter.[11] Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems.

[11] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at pp. 9-10. See also, Gov. Code, sec. 11430.70, subd. (a).

with the Commissioner's directions therein. This instruction is contrary to clear statutory and regulatory authority, as well as the ALJs legal analysis in the aforementioned decisions. The letter also included an instruction that the ALJs "get on board" with the Commissioner's plan and added a thinly veiled threat of discipline and removal. This letter is identical, in all relevant aspects, to the document drafted, circulated and edited by Special Counsel Wang, General Counsel Campbell and Attorney McKennedy. Although this letter purports to apply to all pending proceedings, the letter was not served on the consumer advocates or the insurance carrier. Therefore, it constituted an impermissible ex parte communication, and further violated the statutory separation of functions outlined by the Government Code and the California Supreme Court case law.

On November 22, 2024, at 3:00 p.m., General Counsel Campbell, Chief Deputy Commissioner Martinez, Deputy Commissioner Menchaca and Deputy Commissioner Michael Soller again met secretly, via the Microsoft Teams meeting platform, to discuss "AHB Procedures." This meeting between the Department's Legal branch, a party to the proceedings under review by the Commissioner, and the Chief Deputy Commissioner, did not include representatives from the consumer advocates or the insurance carriers, although the Department's intent was to address the decisions issued by the CALJ. No subsequent notice of this meeting was provided to the other party litigants by the General Counsel Campbell or an attorneys present and no certificate of service evidencing notice disclosing the ex parte communication was filed by them.

On November 25, 2024, the Commissioner issued an Order Granting the Department's Request for Reconsideration. Therein, the Commissioner indicated he would issue new decisions "authorizing payments to Consumer Watchdog and striking out the portions of dicta which (1) contain improper advisory opinions regarding Proposition 103, (2) conflict with longstanding Department policies and procedures, and (3) contain erroneous legal interpretations." As counsel to the Commissioner, Special Counsel Wang drafted the Order Granting Reconsideration. The Order does not disclose the private meetings Special Counsel Wang had with General Counsel Campbell, Attorney McKennedy or other members of the Department's litigation team prior to granting the Order they requested, nor communicates in any way that the aforementioned procedural steps, taken with Attorney McKennedy's input, participation, and consent, had been orchestrated to facilitate a pre-determined outcome as agreed upon in the secret meetings.

On December 3, 2024, the ALJs issued Notice of Ex Parte Communications in all pending RFC matters, pursuant to Government Code section 11430.50, regarding the Commissioner's November 21, 2024, letter to the CALJ.[10] The Notice informed the parties of their statutory right to respond to the ex parte communication, and provided a hearing date should any party request an opportunity to publicly respond.

[10] Government Code section 11430.80, subdivision (a) provides "There shall be no communication, direct or indirect, while a proceeding is pending regarding the merits of any issue in the proceeding, between the presiding officer and the agency head or other person or body to which the power to hear or decide in the proceeding is delegated." At the time of the Notice of Ex Parte Communication, the ALJs had approximately 18 pending RFC proceedings on their dockets.

Shortly after receiving the Notice of Ex Parte Communication, at approximately 5:30 p.m. on December 3, 2024, Special Counsel Wang, General Counsel Campbell, Chief Deputy Commissioner Martinez and Deputy Commissioner Menchaca and Deputy Commissioner Michael Soller met, via the Microsoft Teams meeting platform, to discuss the Notice of Ex Parte Communication. These same parties met privately again, via the Microsoft Teams meeting platform, on December 5, 2024, at 9:25 a.m. and 12:30 p.m. to continue their private discussion on the pending proceedings. At no time were the remaining parties to the proceeding informed of these secret meetings, nor was subsequent notice disclosing the ex parte communications provided to the other litigant parties by General Counsel Campbell or other attorneys present during the meeting. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the statutory separation of functions which ensure transparency and fairness in administrative proceedings.

On December 6, 2024, Chief Deputy Commissioner Martinez sent an email to the CALJ, with copies to the General Counsel Campbell, Special Counsel Wang, Deputy Commissioner Laurie Menchaca and Deputy General Counsel Heather Hoesterey, regarding the Notice of Ex Parte Communication. The email, sent at 11:01 a.m., states that the pending RFC matters do not constitute "adjudicatory proceedings" and thus the Notice of Ex Parte Communication must be rescinded. This argument is in direct contradiction to Special Counsel Wang's Order Granting Reconsideration. The email further states "Based on the foregoing facts, I ask that you – in your role as Supervising Administrative Law Judge – issue subsequent Orders which (1) clarify there are no adjudicative proceedings pending before AHB, (2) inform parties there is no need to address the Delegation, nor present evidence, and (3) vacate the December 13, 2024 case calendar calls. Please issue these subsequent orders by the end of business today (Friday, December 6, 2024). If you have any questions, please do not hesitate to contact me by email or telephone." This communication was not served on the consumer advocates or the insurance carriers, all of whom were parties in the pending proceedings. Upon receiving this second ex parte communication, Deputy General Counsel Hoesterey took no action to prevent further violations of the Government Code, nor did she provide notice of the improper communication to the remaining litigants. The CALJ refused to take the ordered actions without comment. The staff ALJ concurred.

On December 6, 2024, Special Counsel Wang issued a revised decision in one of the RFC cases, and awarded compensation to Consumer Watchdog, in accordance with Attorney McKennedy's request. Special Counsel Wang's decision did not address the legal issues raised by the CALJ, nor did Special Counsel Wang's decision disclose the numerous secret meetings she held with the Department's litigation team and Attorney McKennedy; a party to the proceeding.

On December 9, 2024, at 1:54 p.m., Deputy Commissioner Menchaca sent an email to the CALJ instructing the judge to rescind the Notice of Ex Parte Communication. The email message, instructing the CALJ to violate the Government Code and the Code of Judicial Ethics, was also sent to Special Counsel Wang, General Counsel Campbell, Deputy General Counsel Hoesterey and Chief Deputy Commissioner Martinez. The email message was not served on the remaining

litigants and at no time did Deputy General Counsel Hoesterey or any other attorney provide the remaining litigants with notice of the ex parte communication.

The CALJ did not respond to Deputy Commissioner Menchaca's communication. Shortly thereafter, the Commissioner issued an Order Withdrawing Notices of Ex Parte Communication and Vacating Hearing. The Commissioner's Order purported to withdraw notice of his own improper communication with the presiding judge, and to cancel the parties' right to a due process hearing. The Order, drafted by Special Counsel Wang, states the Commissioner's communication is not an ex parte communication because it pertains to procedural issues. The Commissioner's Order contains both factual and legal misrepresentations, which Special Counsel Wang knew when she drafted the document. The Order also fails to include any disclosure of the secret meetings between Deputy General Counsel Hoesterey, the Department's legal team and its executive team leading up to the issuance of the Order.

On December 10, 2024, consumer advocates sent an email addressed to the CALJ indicating its intent to present an in-person response to the Commissioner's ex parte communication, as is permitted under in Government Code section 11430.50. This communication was served on all parties. Special Counsel Wang responded to the email addressed to the CALJ, indicating the hearing had been vacated.

On December 11, 2024, consumer advocates filed an Objection to the Commissioner's Order withdrawing the Notices of Ex Parte Communications with the CALJ. In response, the ALJs issued a Notice of Opportunity to Respond, providing all parties the occasion to address Consumer Watchdog's objections. No party offered any response to the ALJs' Notice.

On December 11, 2024, at 12:00 p.m., General Counsel Campbell, Special Counsel Wang, Deputy Commissioner Menchaca and Soller and Chief Deputy Commissioner Martinez met secretly, via the Microsoft Teams meeting platform, to discuss the scheduled ex parte hearing and potential disciplinary action for the ALJs for refusal to comply with the Commissioner's Order. At no time were the remaining parties to the proceeding informed of the private meeting, nor was subsequent notice disclosing the ex parte communication provided to the other litigant parties by General Counsel Campbell or other attorneys present during the meeting. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the statutory separation of functions which ensure transparency and fairness in administrative proceedings.

On December 11, 2024, the ALJs also issued a Second Notice of Ex Parte Communication, which attached Chief Deputy Commissioner Martinez's December 6, 2024 email. Immediately thereafter, at 4:15 p.m., General Counsel Campbell, Special Counsel Wang, Chief Deputy Commissioner Martinez and Deputy Commissioners Soller and Menchaca met privately, via the Microsoft Teams meeting platform, to discuss the Second Notice of Ex Parte Communication. At no time were the remaining parties to the proceeding informed of this secret meeting, nor was subsequent notice disclosing the ex parte communications provided to the other litigant parties by General Counsel Campbell or other attorneys present during the meeting. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the

statutory separation of functions which ensure transparency and fairness in administrative proceedings.

On December 12, 2024, the ALJs issued rulings sustaining Consumer Watchdog's objections and confirming the December 13, 2024 calendar call.

Also on December 12, 2024, consumer advocates filed a written response to the December 3, 2024, Notice of Ex Parte Communication. Therein, the litigants argued the Commissioner's conduct violated Insurance Code section 21.5, as unlawful supervision of the ALJs, and Government Code provision 11430.80 regarding ex parte communications between an agency head and a presiding officer.

On December 13, 2024, the ALJs held a calendar call on all noticed RFC cases regarding the Commissioner's November 21, 2024 ex parte communication. Consumer advocates appeared at the hearing and provided comment supplementing their written filing regarding the impropriety of the Department's actions and the Commissioner's instructions. On that same date, at 2:00 p.m., General Counsel Campbell, Special Counsel Wang, Attorney Jeresa Ewell, and Deputy Commissioner Menchaca met privately, via the Microsoft Teams meeting platform, with a representative from the Department of Justice to discuss disciplining the ALJs for their refusal to violate the Code of Judicial Ethics and Government Code provisions, and removal of the proceedings from the neutral adjudicators. At no time were the remaining parties to the proceeding informed of this secret meeting, nor was subsequent notice disclosing the ex parte communication provided to the other litigant parties by General Counsel Campbell or other attorneys present during the meeting. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the statutory separation of functions, which ensure transparency and fairness in administrative proceedings.

On December 13, 2024, in accordance with Regulations section 2656.1, consumer advocates filed a proposed stipulated settlement in a pending rate application proceeding, and requested the ALJ issue a proposed decision adopting the settlement.

On December 17, 2024, the Commissioner issued a letter to the CALJ purportedly removing all then pending RFCs from AHB. This letter was served on all parties. Although there is no statutory authority for the removal of these cases, the ALJs have not taken any action on those remaining cases. The letter conferring jurisdiction over the pending RFC cases to the Commissioner and his delegate, Special Counsel Wang, fails to inform the remaining litigants of the extensive ex parte communications that occurred between the Department's legal branch and the final decision-makers before the issuance of this letter. Similarly, Deputy General Counsel Hoesterey failed to disclose the ex parte communications.

On December 18, 2024, the CALJ issued a Notice of Proposed Settlement to all relevant parties. The Notice set a status conference and provided the parties with an opportunity to object to the proposed settlement in accordance with Regulations section 2656.1.

On December 19, 2024, consumer advocates filed a response to the Second Notice of Ex Parte Communication. The parties again argued the Chief Deputy Insurance Commissioner violated

Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, Attorney McKennedy's participation in the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. That the concealment and dishonestly was undertaken by a senior attorney and bureau chief, who supervises other Department attorneys and represented the Department in the underlying proceedings, makes the conduct even more egregious and more concerning. Moreover, Attorney McKennedy's written request to have her name removed from the document infers her awareness that her participation was improper. This deliberate attempt to erase any trace of her involvement in the unlawful meeting suggests an intent to deceive both the judges and the remaining litigants. Such actions not only demonstrate a calculated effort to mislead, but also constitute a knowing violation of the Rules of Professional Conduct, further underscoring her disregard for legal and ethical standards.

Deputy General Counsel Hoesterey's failure to report the professional misconduct committed by Attorney McKennedy, Special Counsel Wang, General Counsel Campbell and other attorneys present constitutes a direct violation of Rule 8.3, subdivision (a), which mandates that lawyers report any conduct involving dishonesty or deceit to the State Bar or appropriate tribunal. Deputy General Counsel Hoesterey was fully aware that the ex parte meeting was improperly initiated and conducted by Special Counsel Wang, and that it was deliberately concealed from the other litigants. Despite this clear knowledge of intentional deceit and dishonesty, Deputy General Counsel Hoesterey took no action to fulfill her ethical duty to report this misconduct to the State Bar. By willfully neglecting her obligation to act, she not only condoned this behavior but also undermined the integrity of the legal process, failing to uphold the standards required of all attorneys.

Deputy General Counsel Hoesterey's actions also appear to violate Rule 5.1, which governs the responsibilities of supervisory attorneys. As previously stated, Attorney McKennedy participated in the ex parte meeting and was actively involved in drafting the document discussed during that session. This conduct breaches Government Code section 11430.10. As Attorney McKennedy's supervisor, Deputy General Counsel Hoesterey was fully aware of the improper communication and McKennedy's involvement, yet she not only failed to intervene but effectively ratified the misconduct by attending the meeting herself and neglecting to inform all parties who were not present about it afterward. By condoning and failing to address this improper conduct, General Counsel Campbell's actions directly contravene the ethical obligations set forth in Rule 5.1.

It is crucial to emphasize that, to this day, the remaining litigants are unaware that the Department's prosecutorial and executive branches secretly colluded to manipulate the outcome of these proceedings. This orchestration was designed to create the illusion of a fair process, one that seemingly upheld the separation of functions, but in reality, it was a deceptive façade. Such misconduct undermines the integrity of the process and perpetuates a pattern of concealment and bad faith that continues unchecked. Therefore, full disclosure and immediate disciplinary action

E. December 6, 2024 Ex Parte Communication

On December 6, 2024, Chief Deputy Commissioner Martinez sent an email to the CALJ, with copies to the General Counsel Campbell, Special Counsel Wang, Deputy Commissioner Laurie Menchaca and Deputy General Counsel Heather Hoesterey, regarding the Notice of Ex Parte Communication. Deputy General Counsel Hoesterey received a copy of this ex parte communication and knew the communication was not served on all litigants.

Deputy General Counsel Hoesterey's failure to report the professional misconduct committed by Special Counsel Wang in drafting and directing the improper ex parte communication constitutes a direct violation of Rule 8.3, subdivision (a), which mandates that lawyers report any conduct involving dishonesty or deceit to the State Bar or appropriate tribunal. Deputy General Counsel Hoesterey was fully aware that the ex parte communication violated Government Code section 11430.80 and Rule 3.5 of the Rules of Professional Conduct, and that it was deliberately concealed from the other litigants. Despite this clear knowledge of intentional deceit and dishonesty, Deputy General Counsel Hoesterey took no action to fulfill her ethical duty to report this misconduct to the State Bar. By willfully neglecting her obligation to act, she not only condoned this behavior but also undermined the integrity of the legal process, failing to uphold the standards required of all attorneys.

The communication similarly violates Rule 3.3, subdivision (a), as the letter includes knowingly false statements of fact and law that Deputy General Counsel Hoesterey failed to correct. In the December 6, 2024, ex parte communication, Chief Deputy Commissioner Martinez falsely asserted that the pending proceedings were not adjudicatory, and therefore the communication was not unlawful. This claim directly contradicts Special Counsel Wang's own Order Granting Reconsideration, which cited Government Code section 11521 as the legal authority. Section 11521 applies exclusively to formal administrative adjudicatory proceedings. Similarly, Chief Deputy Martinez's statement ignored Government Code section 11430.20, which explicitly defines adjudicatory proceedings. By failing to disclose controlling legal authority, by making knowingly false factual and legal statements and by failing to correct those false statements, Deputy General Counsel Hoesterey intended to unlawfully secure judicial compliance and mislead the judicial officers into adjudicating proceedings to correspond with the Department's predetermined outcomes.[16]

Finally, Deputy General Counsel Hoesterey's conduct in facilitating the ex parte improper communication constitutes an attempt to influence a judicial officer by unlawful means. The Code of Judicial Ethics, Canon 1 mandates that a judge observe such standards that the integrity and independence of the judiciary are preserved. The communication directly attacks the ALJs judicial independence, which is indispensable to justice in this state. Similarly, Canon 3(B)(2) requires that a judge be faithful to the law regardless of partisan interests, public clamor, or fear of criticism. The communication orders the ALJs to be faithful to a political officer, and ignore statutory and case law to the contrary. By instructing the ALJs how to interpret the statute and

[16] See, *Davis v. State Bar* (1983) 33 Cal.3d 231, 239-240.

are not just warranted—they are essential to safeguard the rights of the litigants and protect the public trust in the system.

B. November 4, 2024 Meeting

on November 4, 2024, at 2:30 p.m., Deputy General Counsel Heather Hoesterey met with Attorney McKennedy, General Counsel Campbell, and Chief Deputy Commissioner Michael Martinez conducted a private meeting, via the Microsoft Teams meeting platform, to address the legal findings in "the AHB Rulings."

Meeting with the Department's executive branch designees, without the presence of all parties involved, constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter [12] Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, Deputy General Counsel Hoesterey's participation in the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. These violations are particularly egregious given that, immediately following the meeting, Attorney McKennedy filed a Request for Reconsideration for Special Counsel Wang's review, further disadvantaging the other parties. Such misconduct severely compromises the integrity of the proceedings and prejudices the remaining litigants. That the concealment and dishonestly was undertaken by a senior attorney and bureau chief, who supervises other Department attorneys and represented the Department in the underlying proceedings, makes the conduct even more shocking and more concerning.

Deputy General Counsel Hoesterey's failure to report the professional misconduct committed by General Counsel Campbell and other attorneys present constitutes a direct violation of Rule 8.3, subdivision (a), which mandates that lawyers report any conduct involving dishonesty or deceit to the State Bar or appropriate tribunal. Deputy General Counsel Hoesterey was fully aware that the ex parte meeting was improperly initiated and conducted by General Counsel Campbell, and that it was deliberately concealed from the other litigants. Despite this clear knowledge of intentional deceit and dishonesty, Deputy General Counsel Hoesterey took no action to fulfill her

[12] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at pp. 9-10. See also, Gov. Code, sec. 11430.70, subd. (a).

ethical duty to report this misconduct to the State Bar. By willfully neglecting her obligation to act, she not only condoned this behavior but also undermined the integrity of the legal process, failing to uphold the standards required of all attorneys.

Deputy General Counsel Hoesterey's actions also appear to violate Rule 5.1, which governs the responsibilities of supervisory attorneys. As previously stated, Attorney McKennedy participated in the ex parte meeting. This conduct breaches Government Code section 11430.10. As Attorney McKennedy's supervisor, Deputy General Counsel Hoesterey was fully aware of the improper communication and McKennedy's involvement, yet she not only failed to intervene but effectively ratified the misconduct by attending the meeting herself and neglecting to inform all parties who were not present about it afterward. By condoning and failing to address this improper conduct, General Counsel Campbell's actions directly contravene the ethical obligations set forth in Rule 5.1.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly, the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

C. November 14, 2024 Meeting

On November 14, 2024, at 2:00 p.m., Commissioner Lara, Special Counsel Wang, General Counsel Campbell, Attorney McKennedy and Chief Deputy Commissioner Martinez met secretly, via the Microsoft Teams meeting platform. to discuss the Legal branch's Request for Reconsideration and the "Delegation" document previously drafted by Special Counsel Wang.

Meeting with the Department's final decision-maker and agency head, without the presence of all parties involved, constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter.[13] Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant, strikes at the heart of the fair administration of justice and procedural due process.

In addition, Attorney McKennedy's participation in the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful

[13] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at pp. 9-10. See also, Gov. Code, sec. 11430.70, subd. (a).

misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. This is an especially egregious violation considering that the following day, Special Counsel Wang issued an Order Granting the Request for Reconsideration, as requested by Attorney McKennedy, and contested by at least one other party to the proceeding. This failure to abide by the statutory divisions within the Department constitutes misconduct and is highly prejudicial to the remaining parties in the proceeding. That the concealment and dishonestly was undertaken by a senior attorney and bureau chief, who supervises other Department attorneys and represented the Department in the underlying proceedings, makes the conduct even more shocking and more concerning.

Deputy General Counsel Hoesterey's failure to report the professional misconduct committed by Attorney McKennedy, Special Counsel Wang, General Counsel Campbell and other attorneys present constitutes a direct violation of Rule 8.3, subdivision (a), which mandates that lawyers report any conduct involving dishonesty or deceit to the State Bar or appropriate tribunal. Deputy General Counsel Hoesterey was fully aware that the ex parte meeting was improperly initiated and conducted by Special Counsel Wang, and that it was deliberately concealed from the other litigants. Despite this clear knowledge of intentional deceit and dishonesty, Deputy General Counsel Hoesterey took no action to fulfill her ethical duty to report this misconduct to the State Bar. By willfully neglecting her obligation to act, she not only condoned this behavior but also undermined the integrity of the legal process, failing to uphold the standards required of all attorneys.

Deputy General Counsel Hoesterey's actions also appear to violate Rule 5.1, which governs the responsibilities of supervisory attorneys. As previously stated, Attorney McKennedy participated in the ex parte meeting and was actively involved in drafting the document discussed during that session. This conduct breaches Government Code section 11430.10. As Attorney McKennedy's supervisor, Deputy General Counsel Hoesterey was fully aware of the improper communication and McKennedy's involvement, yet she not only failed to intervene but effectively ratified the misconduct by attending the meeting herself without taking steps to stop it or withdraw from representation, and neglecting to inform all parties who were not present about it afterward. By condoning and failing to address this improper conduct, General Counsel Campbell's actions directly contravene the ethical obligations set forth in Rule 5.1.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly, the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

D. November 21, 2024 Ex Parte Communication to Chief Judge

On November 21, 2024, Insurance Commissioner Lara sent an email message directly to the Chief Judge. Therein, the Commissioner suggested the judges needed to "get on board" with his regulatory plan, and further instructed the ALJs on how to rule on questions of law and fact pertaining to the Insurance Code and its applicable regulations. The email concluded with a thinly-veiled threat to the Chief Judge about elimination of the position. This letter is identical,

in all relevant aspects, to the document drafted, circulated and edited by Special Counsel Wang, General Counsel Campbell and Attorney McKennedy. Deputy General Counsel Hoesterey received a copy of this ex parte communication and knew the communication was not served on all litigants.

Deputy General Counsel Hoesterey's failure to report the professional misconduct committed by Special Counsel Wang, Attorney McKennedy and General Counsel Campbell in drafting and directing the improper ex parte communication constitutes a direct violation of Rule 8.3, subdivision (a), which mandates that lawyers report any conduct involving dishonesty or deceit to the State Bar or appropriate tribunal. Deputy General Counsel Hoesterey was fully aware that the ex parte communication violated Government Code section 11430.80 and Rule 3.5 of the Rules of Professional Conduct, and that it was deliberately concealed from the other litigants. Despite this clear knowledge of intentional deceit and dishonesty, Deputy General Counsel Hoesterey took no action to fulfill her ethical duty to report this misconduct to the State Bar. By willfully neglecting her obligation to act, she not only condoned this behavior but also undermined the integrity of the legal process, failing to uphold the standards required of all attorneys.

The communication similarly violates Rule 3.3, subdivision (a), as the letter includes knowingly false statements of fact and law that Deputy General Counsel Hoesterey failed to correct. Therein, the Commissioner indicates he may limit the ALJs legal interpretation and jurisdiction through fiat. The letter ignores, however, California Code of Regulation, title 10, section 2654.1, subdivision (a) which specifically grants the ALJs authority to rule on the validity of settlement agreements, and California case law affirming.[14] By failing to disclose controlling legal authority, and by failing to correct knowingly false factual and legal statements, Deputy General Counsel Hoesterey intended to unlawfully secure judicial compliance and mislead the judicial officers into adjudicating proceedings in the Department's favor.[15]

Finally, Deputy General Counsel Hoesterey's conduct in facilitating the ex parte improper communication constitutes an attempt to influence a judicial officer by unlawful means. The Code of Judicial Ethics, Canon 1 mandates that a judge observe such standards that the integrity and independence of the judiciary are preserved. The communication directly attacks the ALJs judicial independence, which is indispensable to justice in this state. Similarly, Canon 3(B)(2) requires that a judge be faithful to the law regardless of partisan interests, public clamor, or fear of criticism. The communication orders the ALJs to be faithful to a political officer, and ignore statutory and case law to the contrary. By instructing the ALJs how to interpret the statute and regulations and threatening discipline for failure to do so, Deputy General Counsel Hoesterey violated Rule 8.4, subdivision (e).

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[14] Cal. Code Regs., tit. 10, sec. 2654.1, subd (a) ("To the extent not otherwise specified by law or regulation, the administrative law judge shall: control the course of proceedings; grant or deny requests for continuances; . . . recommend to the Commissioner approval or disapproval of proposed stipulations and settlements".) See also, *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029.)

[15] See, *Davis v. State Bar* (1983) 33 Cal.3d 231, 239-240.

E. December 6, 2024 Ex Parte Communication

On December 6, 2024, Chief Deputy Commissioner Martinez sent an email to the CALJ, with copies to the General Counsel Campbell, Special Counsel Wang, Deputy Commissioner Laurie Menchaca and Deputy General Counsel Heather Hoesterey, regarding the Notice of Ex Parte Communication. Deputy General Counsel Hoesterey received a copy of this ex parte communication and knew the communication was not served on all litigants.

Deputy General Counsel Hoesterey's failure to report the professional misconduct committed by Special Counsel Wang in drafting and directing the improper ex parte communication constitutes a direct violation of Rule 8.3, subdivision (a), which mandates that lawyers report any conduct involving dishonesty or deceit to the State Bar or appropriate tribunal. Deputy General Counsel Hoesterey was fully aware that the ex parte communication violated Government Code section 11430.80 and Rule 3.5 of the Rules of Professional Conduct, and that it was deliberately concealed from the other litigants. Despite this clear knowledge of intentional deceit and dishonesty, Deputy General Counsel Hoesterey took no action to fulfill her ethical duty to report this misconduct to the State Bar. By willfully neglecting her obligation to act, she not only condoned this behavior but also undermined the integrity of the legal process, failing to uphold the standards required of all attorneys.

The communication similarly violates Rule 3.3, subdivision (a), as the letter includes knowingly false statements of fact and law that Deputy General Counsel Hoesterey failed to correct. In the December 6, 2024, ex parte communication, Chief Deputy Commissioner Martinez falsely asserted that the pending proceedings were not adjudicatory, and therefore the communication was not unlawful. This claim directly contradicts Special Counsel Wang's own Order Granting Reconsideration, which cited Government Code section 11521 as the legal authority. Section 11521 applies exclusively to formal administrative adjudicatory proceedings. Similarly, Chief Deputy Martinez's statement ignored Government Code section 11430.20, which explicitly defines adjudicatory proceedings. By failing to disclose controlling legal authority, by making knowingly false factual and legal statements and by failing to correct those false statements, Deputy General Counsel Hoesterey intended to unlawfully secure judicial compliance and mislead the judicial officers into adjudicating proceedings to correspond with the Department's predetermined outcomes.[16]

Finally, Deputy General Counsel Hoesterey's conduct in facilitating the ex parte improper communication constitutes an attempt to influence a judicial officer by unlawful means. The Code of Judicial Ethics, Canon 1 mandates that a judge observe such standards that the integrity and independence of the judiciary are preserved. The communication directly attacks the ALJs judicial independence, which is indispensable to justice in this state. Similarly, Canon 3(B)(2) requires that a judge be faithful to the law regardless of partisan interests, public clamor, or fear of criticism. The communication orders the ALJs to be faithful to a political officer, and ignore statutory and case law to the contrary. By instructing the ALJs how to interpret the statute and

[16] See, *Davis v. State Bar* (1983) 33 Cal.3d 231, 239-240.

regulations and threatening discipline for failure to do so, Deputy General Counsel Hoesterey violated Rule 8.4, subdivision (e).

F. December 9, 2024 Email to Chief Judge

On December 9, 2024, at 1:54 p.m., Deputy Commissioner Menchaca sent an email to the CALJ instructing the judge to rescind the Notice of Ex Parte Communication. The email message, instructing the CALJ to violate the Government Code and the Code of Judicial Ethics, was also sent to Special Counsel Wang, General Counsel Campbell, Deputy General Counsel Hoesterey and Chief Deputy Commissioner Martinez. The email message was not served on the remaining litigants and at no time did Deputy General Counsel Hoesterey or any other attorney provide the remaining litigants with notice of the ex parte communication.

Deputy General Counsel Hoesterey had knowledge of the improper ex parte communication and took no remedial action to ensure Departmental compliance with the Government Code's strict prohibition against communicating with the presiding officer. Such conduct constitutes misconduct under the Government Code and violates Rules 3.5 and 8.4 of the Rules of Professional Conduct. In addition, Deputy General Counsel Hoesterey understood the communication from the Deputy Commissioner to be an instruction that the Chief Judge violate the Code of Judicial Ethics and the Government Code by denying the litigants their opportunity to be heard. Such conduct violates Insurance Code section 21.5 and serves as an attempt to improperly influence a judicial officer, in violation of Rule 8.4, subdivisions (e) and (f). That the Deputy General Counsel took no action to counsel the Department against future improper ex parte communication, and failed to provide notice to the remaining litigants severely compromises the integrity of the proceedings and harms the public's confidence in state regulatory agencies.

G. December 9, 2024, Order Withdrawing Ex Parte Notice

On December 9, 2024, the Insurance Commissioner issued an Order purporting to withdraw the Chief Judge's Notice of Ex Parte Communication. The Order, drafted by Special Counsel Wang, violates Rule 8.4, subdivisions (a), (d), (e) and (f). Through the act of another, Special Counsel Wang knowingly interfered with the administration of justice, attempted to deny litigants their statutory right to be heard under Government Code section 11430.50, and attempted to improperly influence a judicial officer into violating the Code of Judicial Ethics. Such conduct severely compromises the integrity of proceedings in front of the Department, and prejudiced the litigants who wished to exercise their statutory rights. Deputy General Counsel Hoesterey knew of this action and took no remedial steps to prevent the statutory violations.

Deputy General Counsel Hoesterey's actions also violate Rule 4.1, subdivision (a), which prohibits making false statements of fact or law. In the December 9, 2024 Order, Special Counsel Wang falsely asserted the November 21 communication was procedural in nature, and therefore was not unlawful under the Government Code. This claim, however, contradicts Special Counsel Wang's December 6 communication and is grossly misrepresents the law regarding ex parte communications. First, Special Counsel Wang misrepresented the nature of the November 21 communication. The communication specifically ordered the ALJs to interpret the statute and

regulations in accordance with the Commissioner's wishes. The Order withdrawing the ex parte notice overlooks this material fact and distorts the communication. Second. Government Code section 11430.80 expressly prohibits the agency head from communicating with the ALJs, as the presiding officer(s). No exception is made for procedural communications; a fact Deputy General Counsel Hoesterey was aware of. By failing to correct this critical point to the parties, Deputy General Counsel Hoesterey knowingly perpetuated a false statement, attempted to deny the litigants their due process rights, and further undermined the integrity of the process.

Deputy General Counsel Hoesterey's failure to report the professional misconduct committed by Special Counsel Wang in drafting the invalid and misleading order also constitutes a violation of Rule 8.3, subdivision (a), which mandates that lawyers report any conduct involving dishonesty or deceit to the State Bar or appropriate tribunal. Deputy General Counsel Hoesterey was fully aware that the order included false statements of law and denied the parties their due process right to be heard under Government Code section 11430.50. Despite this clear knowledge of intentional deceit and dishonesty, Deputy General Counsel Hoesterey took no action to fulfill her ethical duty to report this misconduct to the State Bar. By willfully neglecting her obligation to act, she not only condoned this behavior but also undermined the integrity of the legal process, failing to uphold the standards required of all attorneys.

IV. Conclusion

In conclusion, the flagrant and numerous violations of the Rules of Professional Conduct outlined above represent a pattern of willful and continuous misconduct that has significantly interfered with the fair administration of justice. By colluding with the Department's executive branch and final decision-makers, Deputy General Counsel Hoesterey's actions not only undermine the integrity of the proceedings but also erode public trust in the legal system.

The persistent and unrelenting nature of these violations reflects a systemic failure within the Department to uphold its legal and ethical obligations.[17] Despite repeated efforts to address and correct these egregious actions, Deputy General Counsel Hoesterey has continuously ignored or actively circumvented corrective measures, allowing the misconduct to persist unabated. This ongoing pattern of disregard for accountability is further compounded by a covert and troubling collusion among Department officials, who have secretly coordinated to obstruct due process and deprive litigants of their fundamental rights. These coordinated efforts to deny justice and manipulate outcomes undermine the integrity of the entire legal process. It is clear that this behavior is not an isolated incident, but rather a pervasive issue that calls into question Deputy General Counsel Hoesterey's and the Department's commitment to the rule of law. To protect the public and preserve the credibility of our courts, immediate intervention is required to end this cycle of misconduct and ensure that such flagrant violations do not continue unchecked. Without such measures, the public's trust in the justice system will be irreparably damaged, and the very foundations of fairness and transparency will remain at risk.

[17] See also, Disciplinary Referrals of Special Counsel Lucy Wang, General Counsel Teresa Campbell and Assistant Chief Counsel Nikki McKennedy.

Given the alarming pattern of misconduct already revealed, it is imperative that a thorough and comprehensive investigation be conducted to ensure there are no other violations lurking beneath the surface. The scope of these actions suggests the possibility of additional, yet undiscovered, transgressions that could further compromise the integrity of the legal process. The Department's repeated failure to respond to corrective measures and the ongoing covert collusion among its officials raise serious concerns that there may be more extensive wrongdoing hidden from scrutiny. To safeguard the public's trust and protect the fairness of the judicial system, a full investigation is necessary to uncover the complete extent of these violations and to ensure that no further misconduct has been allowed to go unchecked. Without this deeper inquiry, the true scale of the corruption and abuse may remain obscured, continuing to undermine the rights of litigants and the credibility of the Department and the legal profession.

There is no mechanism available to monitor and uncover, let alone remediate, the types of misconduct addressed above. The public instead relies on attorneys in public service to comply with their ethical obligations and follow the law. We, therefore, urge the State Bar to impose a level of discipline that is fully commensurate with the gravity of the violations uncovered. The extent of dishonesty and misconduct demonstrated by Deputy General Counsel Hoesterey and the Department's other attorneys—evident in their repeated, reckless disregard for ethical standards and due process—requires a response that sends a clear and unequivocal message. Such egregious behavior, so casually embraced and perpetuated within the Department, cannot be allowed to go unpunished. The public's trust in the legal system depends on a firm, consistent commitment to holding attorneys accountable for actions that undermine the integrity of the profession. The discipline imposed must reflect the serious harm caused by these actions and serve as a deterrent against future misconduct, ensuring that similar violations are not allowed to continue unchecked.

The following is based on personal knowledge and credible documentary evidence in the possession of judicial officers.

In accordance with the ethical obligations under the California Code of Judicial Ethics Canon 3(D)(2) and Rule 8.3 of the Rules of Professional Conduct, the following disciplinary referral is made to the California State Bar regarding California attorney Teresa Campbell, State Bar No. 162105.

As outlined in detail below, the more than 50 allegations of misconduct are particularly egregious, pervasive, and have continued despite multiple attempts at corrective action. In addition, the conduct has caused significant harm to the administration of justice, eroded confidence in a state regulatory agency, violated the due process rights of litigants and implies the ability to improperly influence a state agency and judicial officers.

Attorney Campbell serves as the Deputy Commissioner/General Counsel at the California Department of Insurance. In that role, Campbell serves as the head of the Department's Legal Division, supervising more than 100 attorneys and making policy and litigation decisions for Department, as a whole.

I. Relevant Organizational Background & Statutory Separation of Functions

The Department of Insurance is a party in each of the relevant proceedings discussed herein. The remaining parties are consumer advocates and insurance carriers.

The Department's Executive Branch consists of Insurance Commissioner Ricardo Lara, Chief Deputy Commissioner Michael Martinez, and the Office of the Special Counsel, managed by Special Counsel Lucy Wang.[1] The Commissioner has delegated review of administrative decisions to the Special Counsel.

The Department's Legal Branch serves as the Department's prosecutorial division, representing the Department in external litigation and internal proceedings. The Legal Branch litigates enforcement actions, reviews and analyzes insurance policies to determine whether they should be approved for sale to consumers, and analyzes and reviews rate filings to ensure they comply with the requirements of Proposition 103. As such, applicable law provides that it must maintain separation from the Department's Executive Branch and its Administrative Hearing Bureau.[2] The Legal branch is supervised by the Department's General Counsel, and attorneys are assigned to one of several insurance-specific divisions. At all times relevant herein, the Department's General Counsel was Teresa Campbell.

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[1] Pursuant to Canon 3(D) and Rule 8.3, the judges previously filed a disciplinary referral with the State Bar of California regarding Special Counsel Lucy Wang, outlining numerous violations stemming from the same set of facts described herein.

[2] Gov. Code, § 11425.10, subd. (a)(4); *Department of Alcohol Beverage Control v. Alcohol Beverage Control Appeal Board* (2006) 40 Cal.4th 1 (the Administrative Procedures Act strictly limits contacts between an agency's prosecutor and the officers the agency selects to preside over hearings and ultimately decide adjudicative matters). See also, Gov. Code, sec. 11430.10.

The Department's Administrative Hearing Bureau (AHB), codified by Insurance Code section 21.5, is effectively the special administrative court charged with the responsibility of neutral adjudication of certain Insurance Code and other disputes. Accordingly, it is statutorily walled off from the agency's other regulatory functions performed by the Legal and Executive branches. Insulating AHB even more outright than the separation of functions expected by the Government Code and constitutional principles of due process, Insurance Code sections 7 and 21.5 prohibit the Commissioner, his deputies, and the Legal branch from any direct or indirect supervision of the Administrative Law Judges.[3] Administrative Law Judges are bound by both the Government Code's Administrative Procedures Act and the Code of Judicial Ethics to require compliance with these limitations.[4] Violation of either constitutes misconduct on the part of the ALJ, and may result in discipline.[5]

As in all California administrative agencies, the separation of functions is paramount. The separation of functions safeguards the fairness and impartiality of decision-making by preventing individuals involved in investigating or prosecuting cases from also participating in the adjudicative process, thus ensuring that the decision-maker remains objective and unbiased, ultimately protecting the rights of those affected by agency actions. It promotes public confidence in the justice system and ensures bias does not enter into final decision-making. This mandate is so crucial that the Government Code's Administrative Procedures Act sets forth clear guard rails meant to ensure a separation between decision makers and all other Departmental staff.[6]

In addition to the Administrative Procedures Act's provisions mandating the separation of functions within a state agency, the Supreme Court's holding in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board*, (2006) 40 Cal.4th 1, further instructs the Department on the compulsory separation between agency decision-makers and prosecutorial staff. Therein, the Supreme Court expressly states that "the APA sets out a clear rule: an agency prosecutor cannot secretly communicate with the agency decision maker or the decision maker's advisor about the substance of the case prior to issuance of a final decision."[7] Violations of these rules constitutes misconduct under multiple statutes, including the Rules of Professional Conduct, the Government Code and the Code of Judicial Ethics.

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[3] Ins. Code, sec. 21.5, subdivision (b) provides "An administrative law judge appointed by the commissioner pursuant to civil service rules shall be employed within the administrative law bureau and shall not be supervised directly by the commissioner or supervised directly or indirectly by an employee in the legal branch of the department.)

[4] Gov. Code, sec. 11475.20.

[5] Gov. Code, sec. 11475.50.

[6] Gov. Code, sec. 11430.10 et seq.

[7] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at p. 10. See also, *Morongo Band of Mission Indians v. State Water Res. Control Bd.*, (2009) 45 Cal.4th 731, 737 ("[P]rocedural fairness does not mandate the dissolution of unitary agencies, but it does require some internal separation between advocates and decision makers to preserve neutrality.")

II. Statement of Facts

In May 2024, the Department's Administrative Law Judges issued a briefing order in eight targeted separate Request for Compensation proceedings from among those RFCs then pending, in which there was an identified pattern of concern in the underlying rate approval history. The briefing order instructed all parties to address whether the Department of Insurance was processing and settling insurance rate increase applications in accordance with the Insurance Code and its applicable Regulations. All three parties to the proceedings, i.e. the Department of Insurance's legal branch, insurance carrier and consumer advocates filed briefs responding to the ALJs' Orders.

On October 3, 2024, at 1:30 p.m., General Counsel Campbell met secretly with Department Special Counsel Lucy Wang, Attorney Nikki McKennedy and Chief Deputy Commissioner Michael Martinez, via the Microsoft Teams meeting platform, to discuss the impending administrative decisions in the above-mentioned proceedings. During this meeting, General Counsel Campbell and others in attendance circulated and edited a document intended to instruct the Administrative Law Judges on how to interpret the Insurance Code and its regulations. The issues discussed in this document were the exact legal issues then currently being litigated in front of the ALJs. This meeting between the Department's prosecutors and members of the executive branch serving as final decision makers, did not include representatives from the consumer group or the insurance carriers, all of whom were parties to the respective case(s). Further, General Counsel Campbell did not subsequently disclose this private, ex parte meeting to the remaining litigants, nor did she insist on the statutory separation of functions between Department staff.

On October 18, 2024, the Chief Administrative Law Judge (CALJ) issued eight RFC decisions. Nearly identical in analysis, the Decisions find that the underlying rate proceedings had not concluded because of the Department's failure to follow the statutory and regulatory requirements regarding the review of insurance rate applications. Specifically, the Decisions note the Department refused to hold statutorily-mandated hearings, employed underground regulations in lieu of those provided for by law, and circumvented settlement transparency regulations by failing to present settlements to the ALJs for review and decision. The RFCs were granted, but relied upon alternate grounds other than that the rate proceedings were concluded properly.

Shortly after the issuance of these decisions, the Department's Legal and Executive branches began meeting secretly to discuss the Legal branch's intended request for reconsideration. Specifically, on November 4, 2024, at 2:30 p.m., Special Counsel Wang, Attorney McKennedy, General Counsel Campbell, Deputy General Counsel Heather Hoesterey and Chief Deputy Commissioner Michael Martinez conducted a secret meeting, via the Microsoft Teams meeting platform, to address "the AHB Rulings." This meeting between the Department's legal team, once again a party to the underlying proceedings, and the Department's final decision-maker, did not include representatives from the consumer advocates or the insurance carriers; the other two parties to the proceeding. No subsequent notice disclosing the ex parte communication(s) was

provided to the other litigant parties and filed by any of the attorneys in attendance, despite the Department's failure to adhere to the statutory provisions regarding separation of functions.

Immediately after the November 4, 2024 meeting, Attorney McKennedy filed a Request for Reconsideration with Special Counsel Wang and the Insurance Commissioner. The Department's Legal branch also requested the Commissioner stay the RFC decisions pending resolution of the Request for Reconsideration. Attorney McKennedy cited to the formal administrative proceeding rules, specifically Government Code section 11521, in making this request.

On November 5, 2024, the consumer advocacy group filed a response objecting to the Department's Request for Reconsideration. In so objecting, the consumer advocates stated, "Ms. McKennedy' s request is unprecedented in the modern history of the California Department of Insurance. The Decisions are in effect and should not be disturbed. To do otherwise would undermine the integrity of the agency, the authority and independence of the administrative law judges, and the laws that you are required to uphold."

On November 14, 2024, at 2:00 p.m., Commissioner Lara, General Counsel Campbell, Special Counsel Wang, Attorney McKennedy and Chief Deputy Commissioner Martinez met secretly, via the Microsoft Teams meeting platform, to discuss the Legal branch's Request for Reconsideration and the "Delegation" document previously drafted by Special Counsel Wang. As explained above, the document specially addresses the legal issues pending reconsideration by the Commissioner. This meeting between the Department's Legal branch, a party to the proceedings under review by the Commissioner, and the Commissioner and his legal team, did not include representatives from the consumer advocates or the insurance carriers, and therefore constituted an ex parte communication. No subsequent notice of this meeting has been provided to the other party litigants and no certificate of service evidencing notice disclosing the ex parte communication was filed by General Counsel Campbell or any of the attorneys in attendance.

On November 15, 2024, one day after meeting privately with the Department's prosecutorial branch, Special Counsel Wang issued an "Order Granting Stay of Expiration of Power to Order Reconsideration of Decisions Awarding Compensation", as requested by the Department, and over the objection of at least one other party to the proceeding. Special Counsel Wang cited to Government Code section 11521 in issuing such an order.

On November 21, 2024, the Commissioner sent a letter to the CALJ, with copies to the General Counsel Campbell, Special Counsel Wang, Deputy Commissioner Laurie Menchaca and Chief Deputy Commissioner Martinez. The letter, titled a "Delegation pursuant to civil service rules," informs the ALJs that they can only hear matters in accordance with the Commissioner's letter. Included among the "delegations," is an instruction to interpret the statues and regulations in accordance with the Commissioner's directions therein. This instruction is contrary to clear statutory and regulatory authority, as well as the ALJs legal analysis in the aforementioned decisions. The letter also included an instruction that the ALJs "get on board" with the Commissioner's plan and added a thinly veiled threat of discipline and removal. This letter is identical, in all relevant aspects, to the document drafted, circulated and edited by Special Counsel Wang, General Counsel Campbell and Attorney McKennedy. Although this letter

purports to apply to all pending proceedings, the letter was not served on the consumer advocates or the insurance carrier. Therefore, it constituted an impermissible ex parte communication, and further violated the statutory separation of functions outlined by the Government Code and the California Supreme Court.

On November 22, 2024, at 3:00 p.m., General Counsel Campbell, Chief Deputy Commissioner Martinez, Deputy Commissioner Menchaca and Deputy Commissioner Michael Soller again met secretly, via the Microsoft Teams meeting platform, to discuss "AHB Procedures." This meeting between the Department's Legal branch, a party to the proceedings under review by the Commissioner, and the Chief Deputy Commissioner, did not include representatives from the consumer advocates or the insurance carriers, although the Department's intent was to address the decisions issued by the CALJ. No subsequent notice of this meeting was provided to the other party litigants by the General Counsel Campbell or an attorneys present and no certificate of service evidencing notice disclosing the ex parte communication was filed by them.

On November 25, 2024, the Commissioner issued an Order Granting the Department's Request for Reconsideration. Therein, the Commissioner indicated he would issue new decisions "authorizing payments to Consumer Watchdog and striking out the portions of dicta which (1) contain improper advisory opinions regarding Proposition 103, (2) conflict with longstanding Department policies and procedures, and (3) contain erroneous legal interpretations." As counsel to the Commissioner, Special Counsel Wang drafted the Order Granting Reconsideration. The Order does not disclose the private meetings Special Counsel Wang had with General Counsel Campbell or other members of the Department's litigation team prior to granting the Order they requested, nor communicates in any way that the aforementioned procedural steps, taken with General Counsel Campbell's input, participation, and consent, had been orchestrated to facilitate a pre-determined outcome as agreed upon in the secret meetings.

On December 3, 2024, the ALJs issued Notice of Ex Parte Communications in all pending RFC matters, pursuant to Government Code section 11430.50, regarding the Commissioner's November 21, 2024, letter to the CALJ.[8] The Notice informed the parties of their statutory right to respond to the ex parte communication, and provided a hearing date should any party request an opportunity to publicly respond.

Shortly after receiving the Notice of Ex Parte Communication, at approximately 5:30 p.m. on December 3, 2024, Special Counsel Wang, General Counsel Campbell, Chief Deputy Commissioner Martinez and Deputy Commissioner Menchaca and Deputy Commissioner Michael Soller met, via the Microsoft Teams meeting platform, to discuss the Notice of Ex Parte Communication. These same parties met privately again, via the Microsoft Teams meeting platform, on December 5, 2024, at 9:25 a.m. and 12:30 p.m. to continue their private discussion on the pending proceedings. At no time were the remaining parties to the proceeding informed of

[8] Government Code section 11430.80, subdivision (a) provides "There shall be no communication, direct or indirect, while a proceeding is pending regarding the merits of any issue in the proceeding, between the presiding officer and the agency head or other person or body to which the power to hear or decide in the proceeding is delegated." At the time of the Notice of Ex Parte Communication, the ALJs had approximately 18 pending RFC proceedings on their dockets.

these secret meetings, nor was subsequent notice disclosing the ex parte communications provided to the other litigant parties by General Counsel Campbell or other attorneys present during the meeting. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the statutory separation of functions which ensure transparency and fairness in administrative proceedings.

On December 6, 2024, Chief Deputy Commissioner Martinez sent an email to the CALJ, with copies to the General Counsel Campbell, Special Counsel Wang, Deputy Commissioner Laurie Menchaca and Deputy General Counsel Heather Hoestery, regarding the Notice of Ex Parte Communication. The email, sent at 11:01 a.m., states that the pending RFC matters do not constitute "adjudicatory proceedings" and thus the Notice of Ex Parte Communication must be rescinded. This argument is in direct contradiction to Special Counsel Wang's Order Granting Reconsideration. The email further states "Based on the foregoing facts, I ask that you – in your role as Supervising Administrative Law Judge – issue subsequent Orders which (1) clarify there are no adjudicative proceedings pending before AHB, (2) inform parties there is no need to address the Delegation, nor present evidence, and (3) vacate the December 13, 2024 case calendar calls. Please issue these subsequent orders by the end of business today (Friday, December 6, 2024). If you have any questions, please do not hesitate to contact me by email or telephone." This communication was not served on the consumer advocates or the insurance carriers, all of whom were parties in the pending proceedings. Upon receiving this second ex parte communication, General Counsel Campbell took no action to prevent further violations of the Government Code, nor did she provide notice of the improper communication to the remaining litigants. The CALJ refused to take the ordered actions without comment. The staff ALJ concurred.

Also on December 6, 2024, Special Counsel Wang issued a revised decision in one of the RFC cases, and awarded compensation to Consumer Watchdog. Special Counsel Wang's decision did not address the legal issues raised by the CALJ, nor did Special Counsel Wang's decision disclose the numerous secret meetings she held with the Department's litigation team; a party to the proceeding, or communicate in any way that the aforementioned procedural steps, taken with General Counsel Campbell's input, participation, and consent, had been orchestrated to facilitate a pre-determined outcome as agreed upon in the secret meetings.

On December 9, 2024, at 12:30 p.m., Special Counsel Wang, Chief Deputy Commissioner Martinez, General Counsel Campbell and Deputy Commissioner Menchaca met, via the Microsoft Teams meeting platform, to discuss the CALJ's refusal to rescind the Notice of Ex Parte Communication. At no time were the remaining parties to the proceeding informed of these secret meetings, nor was subsequent notice disclosing the ex parte communications provided to the other litigant parties by General Counsel Campbell or other attorneys present during the meeting. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the statutory separation of functions which ensure transparency and fairness in administrative proceedings.

One hour later, on December 9, 2024, at 1:54 p.m., Deputy Commissioner Menchaca sent an email to the CALJ instructing the judge to rescind the Notice of Ex Parte Communication. The

email message, instructing the CALJ to violate the Government Code and the Code of Judicial Ethics, was also sent to Special Counsel Wang, General Counsel Campbell, Deputy General Counsel Hoesterey and Chief Deputy Commissioner Martinez. The email message was not served on the remaining litigants and at no time did General Counsel Campbell or any other attorney provide the remaining litigants with notice of the ex parte communication or file a certificate of service evidencing notice disclosing the email.

The CALJ did not respond to Deputy Commissioner Menchaca's communication. Shortly thereafter, the Commissioner issued an Order Withdrawing Notices of Ex Parte Communication and Vacating Hearing. The Commissioner's Order purported to withdraw notice of his own improper communication with the presiding judge, and to cancel the parties' right to a due process hearing. The Order, drafted by Special Counsel Wang, states the Commissioner's communication is not an ex parte communication because it pertains to procedural issues. The Commissioner's Order contains both factual and legal misrepresentations, which Special Counsel Wang knew when she drafted the document. The Order also fails to include any disclosure of the secret meetings between General Counsel Campbell, the Department's legal team and its executive team leading up to the issuance of the Order, or communicate in any way that the aforementioned procedural steps, taken with General Counsel Campbell's input, participation, and consent, had been orchestrated to facilitate a pre-determined outcome as agreed upon in the secret meetings.

On December 10, 2024, consumer advocates sent an email addressed to the CALJ indicating its intent to present an in-person response to the Commissioner's ex parte communication, as is permitted under in Government Code section 11430.50. This communication was served on all parties. Special Counsel Wang responded to the email addressed to the CALJ, indicating the hearing had been vacated.

On December 11, 2024, consumer advocates filed an Objection to the Commissioner's Order withdrawing the Notices of Ex Parte Communications with the CALJ. In response, the ALJs issued a Notice of Opportunity to Respond, providing all parties the occasion to address Consumer Watchdog's objections. No party offered any response to the ALJs' Notice.

On December 11, 2024, at 12:00 p.m., General Counsel Campbell, Special Counsel Wang, Deputy Commissioner Menchaca and Soller and Chief Deputy Commissioner Martinez met secretly, via the Microsoft Teams meeting platform, to discuss the scheduled ex parte hearing and potential disciplinary action for the ALJs for refusal to comply with the Commissioner's Order. At no time were the remaining parties to the proceeding informed of the private meeting, nor was subsequent notice disclosing the ex parte communication provided to the other litigant parties by General Counsel Campbell or other attorneys present during the meeting. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the statutory separation of functions which ensure transparency and fairness in administrative proceedings.

On December 11, 2024, the ALJs also issued a Second Notice of Ex Parte Communication, which attached Chief Deputy Commissioner Martinez's December 6, 2024 email. Immediately thereafter, at 4:15 p.m., General Counsel Campbell, Special Counsel Wang, Chief Deputy

Commissioner Martinez and Deputy Commissioners Soller and Menchaca met privately, via the Microsoft Teams meeting platform, to discuss the Second Notice of Ex Parte Communication. At no time were the remaining parties to the proceeding informed of this secret meeting, nor was subsequent notice disclosing the ex parte communications provided to the other litigant parties by General Counsel Campbell or other attorneys present during the meeting, and no certificate of service evidencing notice disclosing the ex parte communication was filed by them. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the statutory separation of functions which ensure transparency and fairness in administrative proceedings.

On December 12, 2024, the ALJs issued rulings sustaining Consumer Watchdog's objections and confirming the December 13, 2024 calendar call.

Also on December 12, 2024, consumer advocates filed a written response to the December 3, 2024 Notice of Ex Parte Communication. Therein, the litigants argued the Commissioner's conduct violated Insurance Code section 21.5, as unlawful supervision of the ALJs, and Government Code provision 11430.80 regarding ex parte communications between an agency head and a presiding officer.

On December 13, 2024, the ALJs held a calendar call on all noticed RFC cases regarding the Commissioner's November 21, 2024 ex parte communication. Consumer advocates appeared at the hearing and provided comment supplementing their written filing regarding the impropriety of the Department's actions and the Commissioner's instructions. On that same date, at 2:00 p.m., General Counsel Campbell, Special Counsel Wang, Attorney Jeresa Ewell, and Deputy Commissioner Menchaca met privately, via the Microsoft Teams meeting platform, with a representative from the Department of Justice to discuss disciplining the ALJs for their refusal to violate the Code of Judicial Ethics and Government Code provisions, and removal of the proceedings from the neutral adjudicators. At no time were the remaining parties to the proceeding informed of this secret meeting, nor was subsequent notice disclosing the ex parte communication provided to the other litigant parties by General Counsel Campbell or other attorneys present during the meeting. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the statutory separation of functions, which ensure transparency and fairness in administrative proceedings.

On December 13, 2024, in accordance with Regulations section 2656.1, consumer advocates filed a proposed stipulated settlement in a pending rate application proceeding, and requested the ALJ issue a proposed decision adopting the settlement.

On December 17, 2024, the Commissioner issued a letter to the CALJ purportedly removing all then pending RFCs from AHB. This letter was served on all parties. Although there is no statutory authority for the removal of these cases, the ALJs have not taken any action on those remaining cases.

On December 18, 2024, the CALJ issued a Notice of Proposed Settlement to all relevant parties. The Notice set a status conference and provided the parties with an opportunity to object to the proposed settlement in accordance with Regulations section 2656.1.

On December 19, 2024, consumer advocates filed a response to the Second Notice of Ex Parte Communication. The parties again argued the Chief Deputy Insurance Commissioner violated Insurance Code section 21.5, regarding supervision of ALJs, and Government Code section 11430.10 and 11430.80. The consumer advocates also noted Special Counsel Wang's role in drafting the second ex parte communication.

On December 23, 2024, Human Resource Director Jenny Ruth directly emailed the CALJ regarding the Notice of Proposed Settlement. Director Ruth advised that she was acting under the authority of the Commissioner as the agent for Deputy Commissioner Menchaca. Director Ruth, a non-attorney, stated that the CALJ's Notice violated the Commissioner's November 21, 2024 "Delegation" order and instructed the CALJ to "cancel this status conference in writing and advise me that it was been cancelled by no later than 5PM today (12/23/2024)." The CALJ continued the status conference. This communication was not served on the parties to that proceeding although given its content, General Counsel Campbell and other attorneys under her supervision must have been aware or it contemporaneously with issuance, or became aware thereafter.

On December 27, 2024, the CALJ issued a third Notice of Ex Parte Communication regarding Director Ruth's December 23, 2024 email message.

III. Alleged Ethical Violations

Based on the foregoing facts, and in accordance with Canon 3(D) and Rule 8.3, General Counsel Campbell's conduct violates Rules 1.2.1, 3.3, 3.5, 4.1, 5.1, 8.3 and 8.4 of the Rules of Professional Conduct, as well as Business and Professions Code sections 6068, 6103 and 6106. The repeat nature of the violations, even after appropriate corrective action and instruction, and the collusion between the Department's prosecutorial and executive branches, sadly demonstrates purposeful intent to violate ethics rules and has caused significant damage to the administration of justice and the public's confidence in the legal system.

A. October 3, 2024 Meeting

On October 3, 2024, at 1:30 p.m., General Counsel Campbell met secretly with Special Counsel Wang, Attorney Nikki McKennedy and Chief Deputy Commissioner Michael Martinez, via the Microsoft Teams meeting platform, to discuss legal issues raised in the impending administrative decisions in the above-mentioned proceedings.

Meeting with the Department's executive branch final decision-makers without the presence of all parties involved constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter.[9] Such actions not only breach legal protocol, but

[9] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at pp. 9-10. See also, Gov. Code, sec. 11430.70, subd. (a).

they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, General Counsel Campbell's participation in the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. That the concealment and dishonestly was undertaken by the Department's chief counsel, who supervises other Department attorneys, makes the conduct even more egregious and more concerning.

General Counsel Campbell's failure to report the professional misconduct committed by Special Counsel Wang and other attorneys present constitutes a direct violation of Rule 8.3, subdivision (a), which mandates that lawyers report any conduct involving dishonesty or deceit to the State Bar or appropriate tribunal. General Counsel Campbell was fully aware that the ex parte meeting was improperly initiated and conducted by Special Counsel Wang, and that it was deliberately concealed from the other litigants. Despite this clear knowledge of intentional deceit and dishonesty, General Counsel Campbell took no action to fulfill her ethical duty to report this misconduct to the State Bar. By willfully neglecting her obligation to act, she not only condoned this behavior but also undermined the integrity of the legal process, failing to uphold the standards required of all attorneys.

General Counsel Campbell's actions also appear to violate Rule 5.1, which governs the responsibilities of supervisory attorneys. As previously stated, Attorney McKennedy participated in the ex parte meeting and was actively involved in drafting the document discussed during that session. This conduct breaches Government Code section 11430.10. As Attorney McKennedy's supervisor, General Counsel Campbell was fully aware of the improper communication and McKennedy's involvement, yet she not only failed to intervene but effectively ratified the misconduct by attending the meeting herself and neglecting to inform all parties who were not present about it afterward. By condoning and failing to address this improper conduct, General Counsel Campbell's actions directly contravene the ethical obligations set forth in Rule 5.1.

It is crucial to emphasize that, to this day, the remaining litigants are unaware that the Department's prosecutorial and executive branches secretly colluded to manipulate the outcome of these proceedings. This orchestration was designed to create the illusion of a fair process, one that seemingly upheld the separation of functions, but in reality, it was a deceptive façade. Such misconduct undermines the integrity of the process and perpetuates a pattern of concealment and bad faith that continues unchecked. Therefore, full disclosure and immediate disciplinary action are not just warranted—they are essential to safeguard the rights of the litigants and protect the public trust in the system.

B. November 4, 2024 Meeting

on November 4, 2024, at 2:30 p.m., General Counsel Campbell, Attorney McKennedy, Deputy General Counsel Heather Hoesterey and Chief Deputy Commissioner Michael Martinez conducted a private meeting, via the Microsoft Teams meeting platform, to address the legal findings in "the AHB Rulings."

Meeting with the Department's executive branch designees, without the presence of all parties involved, constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter [10] Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, General Counsel Campbell's participation in the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. These violations are particularly egregious given that, immediately following the meeting, Attorney McKennedy filed a Request for Reconsideration for Special Counsel Wang's review, further disadvantaging the other parties. Such misconduct severely compromises the integrity of the proceedings and prejudices the remaining litigants. That the concealment and dishonestly was undertaken by the Department's chief counsel, who supervises other Department attorneys, makes the conduct even more shocking and more concerning.

General Counsel Campbell's actions also appear to violate Rule 5.1, which governs the responsibilities of supervisory attorneys. As previously stated, Attorneys Hoesterey and McKennedy participated in the ex parte meeting and was actively involved in the underlying litigation. Their participation and conduct breaches Government Code section 11430.10. As Attorneys Hoesterey and McKennedy's supervisor, General Counsel Campbell was fully aware of the improper communication and attorney involvement, yet she not only failed to intervene but effectively ratified the misconduct by attending the meeting herself and neglecting to inform all parties about it afterward. By condoning and failing to address this improper conduct, General Counsel Campbell's actions directly contravene the ethical obligations set forth in Rule 5.1.

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[10] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at pp. 9-10. See also, Gov. Code, sec. 11430.70, subd. (a).

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly, the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

C. November 14, 2024 Meeting

On November 14, 2024, at 2:00 p.m., Commissioner Lara, Special Counsel Wang, General Counsel Campbell, Attorney McKennedy and Chief Deputy Commissioner Martinez met secretly, via the Microsoft Teams meeting platform, to discuss the Legal branch's Request for Reconsideration and the "Delegation" document previously drafted by Special Counsel Wang.

Meeting with the Department's final decision-maker and agency head, without the presence of all parties involved, constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter.[11] Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant, strikes at the heart of the fair administration of justice and procedural due process.

In addition, General Counsel Campbell's participation in the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. This is an especially egregious violation considering that the following day, Special Counsel Wang issued an Order Granting the Request for Reconsideration, as requested by the Department's Legal branch, and contested by at least on other party to the proceeding. This failure to abide by the statutory divisions within the Department constitutes misconduct and is highly prejudicial to the remaining parties in the proceeding. That the concealment and dishonestly was undertaken by a senior attorney, who supervises other Department attorneys, makes the conduct even more shocking and more concerning.

General Counsel Campbell's failure to report the professional misconduct committed by Special Counsel Wang and other attorneys present constitutes a direct violation of Rule 8.3, subdivision (a), which mandates that lawyers report any conduct involving dishonesty or deceit to the State Bar or appropriate tribunal. General Counsel Campbell was fully aware that the ex parte meeting

[11] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at pp. 9-10. See also, Gov. Code, sec. 11430.70, subd. (a).

was improperly initiated and conducted by Special Counsel Wang, and that it was deliberately concealed from the other litigants. Despite this clear knowledge of intentional deceit and dishonesty, General Counsel Campbell took no action to fulfill her ethical duty to report this misconduct to the State Bar. By willfully neglecting her obligation to act, she not only condoned this behavior but also undermined the integrity of the legal process, failing to uphold the standards required of all attorneys.

General Counsel Campbell's actions also appear to violate Rule 5.1, which governs the responsibilities of supervisory attorneys. As previously stated, Attorney McKennedy participated in the ex parte meeting and was actively involved in drafting motions in the underlying litigation. As such, Attorney McKennedy's conduct breaches Government Code section 11430.10. As Attorney McKennedy's supervisor, General Counsel Campbell was fully aware of the improper communication and McKennedy's involvement, yet she not only failed to intervene but effectively ratified the misconduct by attending the meeting herself and neglecting to inform all parties about it afterward. By condoning and failing to address this improper conduct, General Counsel Campbell's actions directly contravene the ethical obligations set forth in Rule 5.1.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly, the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

D. November 21, 2024 Ex Parte Communication to Chief Judge

On November 21, 2024, Insurance Commissioner Lara sent an email message directly to the Chief Judge. Therein, the Commissioner suggested the judges needed to "get on board" with his regulatory plan, and further instructed the ALJs on how to rule on questions of law and fact pertaining to the Insurance Code and its applicable regulations. The email concluded with a thinly-veiled threat to the Chief Judge about elimination of the position. General Counsel Campbell was copied on the communication and was aware the communication was not served on all parties in the underlying litigation.

General Counsel Campbell assisted in drafting the attachment and knew it would be sent to the Chief Judge privately, and without service on all parties in the underlying litigation. General Counsel Campbell knew this action violated Government Code section 11430.80, which prohibits any communication between the agency head and a presiding officer, yet took no action to prevent the communication or subsequently disclose the communication. Such conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. It further constitutes an impermissible ex parte communication in violation of Rule 3.5, subdivision (b), which prohibits ex parte communications with judicial officers. The ex parte communication directly addresses the merits of a contested matter pending before the ALJs.

General Counsel Campbell's conduct in drafting and facilitating the ex parte communication, similarly violates Insurance Code section 21.5, which prohibits the Insurance Commissioner, his deputies and the Department's Legal branch, from directly or indirectly supervising the

Administrative Law Judges. By issuing a document that instructs the ALJs to interpret the law in accordance with the Commissioner's wishes, General Counsel Campbell facilitated an improper supervisory directive to the ALJs, and engaged in conduct that is prejudicial to the administration of justice.

Additionally, General Counsel Campbell's actions appear to violate Rule 1.2.1, subdivision (a), as she counseled her client, namely the Insurance Commissioner, to engage in conduct she knew violated Government Code section 11430.80 and Insurance Code section 21.5. As a licensed attorney, General Counsel Campbell was well aware of the prohibition against ex parte communication, yet failed to counseled her client against such improper conduct nonetheless.

The communication similarly violates Rule 3.3, subdivision (a), as the letter includes knowingly false statements of fact and law that General Counsel Campbell failed to correct. Therein, the Commissioner indicates he may limit the ALJs legal interpretation and jurisdiction through fiat. The letter ignores, however, California Code of Regulation, title 10, section 2654.1, subdivision (a) which specifically grants the ALJs authority to rule on the validity of settlement agreements, and California case law affirming.[12] By failing to disclose controlling legal authority, and by failing to correct knowingly false factual and legal statements, General Counsel Campbell intended to unlawfully secure judicial compliance and mislead the judicial officers into adjudicating proceedings in the Department's favor.[13]

General Counsel Campbell's failure to report the professional misconduct committed by Special Counsel Wang in drafting and directing the improper ex parte communication also constitutes a direct violation of Rule 8.3, subdivision (a), which mandates that lawyers report any conduct involving dishonesty or deceit to the State Bar or appropriate tribunal. General Counsel Campbell was fully aware that the ex parte communication violated Government Code section 11430.80 and Rule 3.5 of the Rules of Professional Conduct, and that it was deliberately concealed from the other litigants. Despite this clear knowledge of intentional deceit and dishonesty, General Counsel Campbell took no action to fulfill her ethical duty to report this misconduct to the State Bar. By willfully neglecting her obligation to act, she not only condoned this behavior but also undermined the integrity of the legal process, failing to uphold the standards required of all attorneys.

Finally, General Counsel Campbell's conduct is drafting the ex parte communication, and facilitating its improper communication constitutes an attempt to influence a judicial officer by unlawful means. The Code of Judicial Ethics, Canon 1 mandates that a judge observe such standards that the integrity and independence of the judiciary are preserved. The communication directly attacks the ALJs judicial independence, which is indispensable to justice in this state. Similarly, Canon 3(B)(2) requires that a judge be faithful to the law regardless of partisan interests, public clamor, or fear of criticism. The communication orders the ALJs to be faithful to

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[12] Cal. Code Regs., tit. 10, sec. 2654.1, subd (a) ("To the extent not otherwise specified by law or regulation, the administrative law judge shall: control the course of proceedings; grant or deny requests for continuances; . . . recommend to the Commissioner approval or disapproval of proposed stipulations and settlements".) See also, *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029.)

[13] See, *Davis v. State Bar* (1983) 33 Cal.3d 231, 239-240.

a political officer, and ignore statutory and case law to the contrary. By instructing the ALJs how to interpret the statute and regulations and threatening discipline for failure to do so, General Counsel Campbell violated Rule 8.4, subdivision (e).

E. November 22, 2024 Meeting

On November 22, 2024, at 3:00 p.m., General Counsel Campbell initiated a private meeting with Chief Deputy Commissioner Martinez, Deputy Commissioner Menchaca and Deputy Commissioner Michael Soller, via the Microsoft Teams meeting platform, to discuss "AHB Procedures" despite clear statutory authority prohibiting the supervision of AHB by the Department's legal or executive branches.

Meeting with the Department's executive branch designees, without the presence of all parties involved, constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter [14] Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, General Counsel Campbell's initiation of the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. These violations are particularly egregious given that following the meeting, the Commissioner granted the legal branch's Request for Reconsideration, further disadvantaging the other parties. Such misconduct severely compromises the integrity of the proceedings and prejudices the remaining litigants. That the concealment and dishonestly was undertaken by the Department's chief counsel, who supervises other Department attorneys, makes the conduct even more shocking and more concerning.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly, the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

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[14] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at pp. 9-10. See also, Gov. Code, sec. 11430.70, subd. (a).

F. December 3, 2024 Meeting

On December 3, 2024, immediately after the CALJ issued a Notice of Ex Parte Communication, Special Counsel Wang, General Counsel Campbell, Chief Deputy Commissioner Martinez and Deputy Commissioner Menchaca and Deputy Commissioner Michael Soller met to discuss the Notice and their planned response. This meeting did not include representatives from the consumer advocates or insurance carriers.

Meeting with the Department's final decision-maker, without the presence of all parties involved, constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter.[15] Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, General Counsel Campbell's participation in the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. These violations are particularly egregious given that the discussion centered upon the CALJ's statutorily-mandated disclosure and methods to deny the remaining litigants their statutory due process right to be heard on the ex parte communication. That the concealment and dishonestly was undertaken by the Department's chief counsel, who supervises other Department attorneys, makes the conduct even more shocking and more concerning.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly, the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

G. December 5, 2024 Meetings

On December 5, 2024, General Counsel Campbell initiated two private meetings with Special Counsel Wang, Chief Deputy Commissioner Martinez, Deputy Commissioner Menchaca and Deputy Commissioner Michael Soller met, via the Microsoft Teams meeting platform, to

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[15] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at pp. 9-10. See also, Gov. Code, sec. 11430.70, subd. (a).

continue their discussion of the pending proceedings. These meetings did not include representatives from the consumer groups or insurance carriers, and no subsequent disclosure has been made.

Meeting with the Department's final decision-maker, without the presence of all parties involved, constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter.[16] Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, General Counsel Campbell initiation of the ex parte communications and failure to provide subsequent notice of the ex parte meetings to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. The violation is particularly egregious given that following the meeting, Special Counsel Wang drafted, and had sent, a second improper ex parte communication (see below.). Such misconduct severely compromises the integrity of the proceedings and prejudices the remaining litigants. That the concealment and dishonestly was undertaken by the Department's chief counsel, who supervises other Department attorneys, makes the conduct even more shocking and more concerning.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly, the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

H. December 6, 2024 Ex Parte Communication to Chief Judge

On December 6, 2024, Chief Deputy Commissioner Martinez sent an email to the CALJ regarding the Notice of Ex Parte Communication. The email, drafted by Special Counsel Wang, states that the pending RFC matters do not constitute "adjudicatory proceedings" and thus the Notice of Ex Parte Communication must be rescinded. This argument is in direct contradiction to Special Counsel Wang's Order Granting Reconsideration. General Counsel Campbell and

[16] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at pp. 9-10. See also, Gov. Code, sec. 11430.70, subd. (a).

Deputy General Counsel Hoesterey were both copied on this communication, and were aware the communication was not served on all parties in the underlying proceedings.

General Counsel Campbell had prior knowledge of the communication and knew it would be sent to the CALJ privately, and without service on all parties in the underlying litigation. General Counsel Campbell knew the communication was in contravention of Government Code section 11430.10, which prohibits any communication between the agency employees and a presiding officer. Such conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. It further constitutes an impermissible ex parte communication in violation of Rule 3.5, subdivision (b), which prohibits ex parte communications with judicial officers. The ex parte communication, drafted by Special Counsel Wang, directly addresses the actions of the CALJ; actions taken in accordance with the Government Code and the Code of Judicial Ethics.

General Counsel Campbell's prior knowledge and facilitation of the ex parte communication, similarly violates Insurance Code section 21.5, which prohibits the Insurance Commissioner, his deputies and the Department's Legal branch, from directly or indirectly supervising the Administrative Law Judges. By issuing an email that orders the judge to violate the Government Code and the Code of Judicial Ethics, General Counsel facilitated an improper supervisory directive to the ALJs, and engaged in conduct that is prejudicial to the administration of justice.

Additionally, General Counsel Campbell's actions appear to violate Rule 1.2.1, subdivision (a), as she counseled her client, namely the Insurance Commissioner, to engage in conduct she knew violated Government Code section 11430.80 and Insurance Code section 21.5. As a licensed attorney, General Counsel Campbell was well aware of the prohibition against ex parte communication, yet failed to counseled her client against such improper conduct nonetheless.

The communication similarly violates Rule 3.3, subdivision (a), as the letter includes knowingly false statements of fact and law that General Counsel Campbell failed to correct. In the December 6, 2024, ex parte communication, Chief Deputy Commissioner Martinez falsely asserted that the pending proceedings were not adjudicatory, and therefore the communication was not unlawful. This claim directly contradicts Special Counsel Wang's own Order Granting Reconsideration, which cited Government Code section 11521 as the legal authority. Section 11521 applies exclusively to formal administrative adjudicatory proceedings. Similarly, Chief Deputy Martinez's statement ignored Government Code section 11430.20, which explicitly defines adjudicatory proceedings. By failing to disclose controlling legal authority, by making knowingly false factual and legal statements and by failing to correct those false statements, General Counsel Campbell intended to unlawfully secure judicial compliance and mislead the judicial officers into adjudicating proceedings in the Department's favor.[17]

General Counsel Campbell's failure to report the professional misconduct committed by Special Counsel Wang in drafting and directing the improper ex parte communication also constitutes a direct violation of Rule 8.3, subdivision (a), which mandates that lawyers report any conduct involving dishonesty or deceit to the State Bar or appropriate tribunal. General Counsel

[17] See, *Davis v. State Bar* (1983) 33 Cal.3d 231, 239-240.

Campbell was fully aware that the ex parte communication violated Government Code section 11430.10 and Rule 3.5 of the Rules of Professional Conduct, and that it was deliberately concealed from the other litigants. Despite this clear knowledge of intentional deceit and dishonesty, General Counsel Campbell took no action to fulfill her ethical duty to report this misconduct to the State Bar. By willfully neglecting her obligation to act, she not only condoned this behavior but also undermined the integrity of the legal process, failing to uphold the standards required of all attorneys.

Finally, General Counsel Campbell's conduct in facilitating and failing to report the improper communication constitutes an attempt to influence a judicial officer by unlawful means. The Code of Judicial Ethics, Canon 1 mandates that a judge observe such standards that the integrity and independence of the judiciary are preserved. The communication directly attacks the ALJs judicial independence, which is indispensable to justice in this state. Similarly, Canon 3(B)(2) requires that a judge be faithful to the law regardless of partisan interests, public clamor, or fear of criticism. The communication orders the ALJs to be faithful to a political officer, and ignore statutory and case law to the contrary. By instructing the ALJs how to interpret the statute and regulations and threatening discipline for failure to do so, General Counsel Campbell violated Rule 8.4, subdivision (e).

I. December 9, 2024 Meeting

On December 9, 2024, at 12:30 p.m., General Counsel Campbell met with Special Counsel Wang, Chief Deputy Commissioner Martinez, and Deputy Commissioner Menchaca, via the Microsoft Teams meeting platform, to discuss the CALJ's refusal to rescind the Notice of Ex Parte Communication. Representatives from the consumer groups and insurance carriers were not in attendance.

Meeting with the Department's executive branch decision-makers, without the presence of all parties involved, constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter.[18] Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, General Counsel Campbell's participation in the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional,

[18] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at pp. 9-10. See also, Gov. Code, sec. 11430.70, subd. (a).

separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. The violation is particularly egregious given that, immediately following the meeting, Special Counsel Wang drafted an Order interfering with the due process rights of the other litigants. Such misconduct severely compromises the integrity of the proceedings and prejudices the remaining litigants. That the concealment and dishonestly was undertaken by the Department's chief counsel, who supervises other Department attorneys, makes the conduct even more shocking and more concerning.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly, the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

J. December 9, 2024, Email to Chief Judge

On December 9, 2024, at 1:54 p.m., Deputy Commissioner Menchaca sent an email to the CALJ instructing the judge to rescind the Notice of Ex Parte Communication. The email message, instructing the CALJ to violate the Government Code and the Code of Judicial Ethics, was also sent to Special Counsel Wang, General Counsel Campbell, Deputy General Counsel Hoesterey and Chief Deputy Commissioner Martinez. The email message was not served on the remaining litigants and at no time did General Counsel Campbell or any other attorney provide the remaining litigants with notice of the ex parte communication.

General Counsel Campbell had knowledge of the improper ex parte communication and took no remedial action to ensure Departmental compliance with the Government Code's strict prohibition against communicating with the presiding officer. Such conduct constitutes misconduct under the Government Code and violates Rules 3.5 and 8.4 of the Rules of Professional Conduct. In addition, General Counsel Campbell understood the communication from the Deputy Commissioner to be an instruction that the Chief Judge violate the Code of Judicial Ethics and the Government Code by denying the litigants their opportunity to be heard. Such conduct violates Insurance Code section 21.5 and serves as an attempt to improperly influence a judicial officer, in violation of Rule 8.4, subdivisions (e) and (f). That the General Counsel took no action to counsel the Department against future improper ex parte communication, and failed to provide notice to the remaining litigants severely compromises the integrity of the proceedings and harms the public's confidence in state regulatory agencies.

K. December 9, 2024, Order Withdrawing Ex Parte Notice

On December 9, 2024, the Insurance Commissioner issued an Order purporting to withdraw the Chief Judge's Notice of Ex Parte Communication. The Order, drafted by Special Counsel Wang, violates Rule 8.4, subdivisions (a), (d), (e) and (f). Through the act of another, Special Counsel Wang knowingly interfered with the administration of justice, attempted to deny litigants their statutory right to be heard under Government Code section 11430.50, and attempted to improperly influence a judicial officer into violating the Code of Judicial Ethics. Such conduct severely compromises the integrity of proceedings in front of the Department, and prejudiced the

litigants who wished to exercise their statutory rights. General Counsel Campbell knew of this action and took no remedial steps to prevent the statutory violations.

General Counsel Campbell's actions also violate Rule 4.1, subdivision (a), which prohibits making false statements of fact or law. In the December 9, 2024 Order, Special Counsel Wang falsely asserted the November 21 communication was procedural in nature, and therefore was not unlawful under the Government Code. This claim, however, contradicts Special Counsel Wang's December 6 communication and is grossly misrepresents the law regarding ex parte communications. First, Special Counsel Wang misrepresented the nature of the November 21 communication. The communication specifically ordered the ALJs to interpret the statute and regulations in accordance with the Commissioner's wishes. The Order withdrawing the ex parte notice overlooks this material fact and distorts the communication. Second, Government Code section 11430.80 expressly prohibits the agency head from communicating with the ALJs, as the presiding officer(s). No exception is made for procedural communications; a fact General Counsel Campbell was aware of. By failing to correct this critical point to the parties, General Counsel Campbell knowingly perpetuated a false statement, attempted to deny the litigants their due process rights, and further undermined the integrity of the process.

General Counsel Campbell's failure to report the professional misconduct committed by Special Counsel Wang in drafting the invalid and misleading order also constitutes a violation of Rule 8.3, subdivision (a), which mandates that lawyers report any conduct involving dishonesty or deceit to the State Bar or appropriate tribunal. General Counsel Campbell was fully aware that the order included false statements of law and denied the parties their due process right to be heard under Government Code section 11430.50. Despite this clear knowledge of intentional deceit and dishonesty, General Counsel Campbell took no action to fulfill her ethical duty to report this misconduct to the State Bar. By willfully neglecting her obligation to act, she not only condoned this behavior but also undermined the integrity of the legal process, failing to uphold the standards required of all attorneys.

L. December 11, 2024 12:00 p.m. Meeting

On December 11, 2024, at 12:00 p.m., General Counsel Campbell met with Special Counsel Wang, Deputy Commissioner Menchaca and Soller and Chief Deputy Commissioner Martinez, via the Microsoft Teams meeting platform, to discuss the scheduled ex parte hearing and potential disciplinary action for the ALJs for refusal to comply with the Commissioner's Order. This meeting did not include representatives from the consumer advocates or the insurance carriers; the other two parties to the proceeding.

Meeting with the Department's final decision-maker, without the presence of all parties involved, constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or

decision-making body overseeing the matter.[19] Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, General Counsel Campbell's participation in the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. The violation is particularly egregious given that at least one party expressed serious concern over the ex parte communications to the Chief Judge, further disadvantaging the other parties. Such misconduct severely compromises the integrity of the proceedings and prejudices the remaining litigants. That the concealment and dishonesty was undertaken by the Department's chief counsel, who supervises other Department attorneys, makes the conduct even more shocking and more concerning.

General Counsel Campbell's actions in discussing and threatening discipline also constitute a violation of Rule 8.4, subdivision (e), as General Counsel Campbell counseled the Department to attempt to improperly influence a judicial officer. Such conduct severely interferes with the rule of law and the administration of justice, and violates Insurance Code section 21.5, which expressly prohibits supervision of ALJs by the legal branch.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly, the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

M. December 11, 2024, 4:15 p.m. Meeting

On December 11, 2024 at 4:15 p.m., General Counsel Campbell met with Special Counsel Wang, Chief Deputy Commissioner Martinez and Deputy Commissioners Soller and Menchaca, via the Microsoft Teams meeting platform, to discuss the Second Notice of Ex Parte Communication. At no time were the remaining parties to the proceeding informed of this secret meeting, nor was subsequent notice disclosing the ex parte communications provided to the other litigant parties by General Counsel Campbell or other attorneys present during the meeting.

Meeting with the Department's final decision-maker, without the presence of all parties involved, constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer

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[19] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at pp. 9-10. See also, Gov. Code, sec. 11430.70, subd. (a).

from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter. Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, General Counsel Campbell's participation in the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. The violation is particularly egregious given that at least one party expressed serious concern over the ex parte communications to the Chief Judge, further disadvantaging the other parties. Such misconduct severely compromises the integrity of the proceedings and prejudices the remaining litigants. That the concealment and dishonestly was undertaken by a senior attorney, who supervises other Department attorneys, makes the conduct even more shocking and more concerning.

General Counsel Campbell's actions in discussing and threatening discipline also constitute a violation of Rule 8.4, subdivision (e), as General Counsel Campbell counseled the Department to attempt to improperly influence a judicial officer. Such conduct severely interferes with the rule of law and the administration of justice, and violates Insurance Code section 21.5, which expressly prohibits supervision of ALJs by the legal branch.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly, the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

N. December 13, 2024 Meeting

On December 13, 2024, General Counsel Campbell initiated a meeting with Special Counsel Wang, Attorney Jeresa Ewell, and Deputy Commissioner Menchaca, via the Microsoft Teams meeting platform, with a representative from the Department of Justice to discuss taking adverse action against the ALJs for their refusal to violate the Code of Judicial Ethics and Government Code provisions in the pending proceedings. This meeting did not include representatives from the consumer advocates or the insurance carriers; the other two parties to the proceeding.

Meeting with the Department's final decision-maker, without the presence of all parties involved, constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer

from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter. Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, General Counsel Campbell's participation in the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. The violation is particularly egregious given that at least one party expressed serious concern over the ex parte communications to the CALJ, further disadvantaging the other parties. Such misconduct severely compromises the integrity of the proceedings and prejudices the remaining litigants. That the concealment and dishonestly was undertaken by a senior attorney, who supervises other Department attorneys, makes the conduct even more shocking and more concerning.

General Counsel Campbell's actions in allowing and participating in a discussion on discipline of the ALJs also constitutes a violation of Rule 8.4, subdivision (e), as General Counsel Campbell counseled the Department to attempt to improperly influence a judicial officer by threat and coercion. Such conduct severely interferes with the rule of law and the administration of justice, and violates Insurance Code section 21.5, which expressly prohibits supervision of ALJs by the legal branch.

Again, it must be noted that to date, the remaining litigants are unaware that the Department's prosecutorial and executive branches met secretly to collude on proceeding results. Accordingly, the concealment and bad faith continue unabated, making disclosure and discipline necessary to protect the litigants and the public.

IV. Conclusion

In conclusion, the more than 50 alleged violations of the Rules of Professional Conduct outlined above represent a pattern of willful and continuous misconduct that has significantly interfered with the fair administration of justice. By colluding with the Department's executive branch and final decision-makers, General Counsel Campbell's actions not only undermine the integrity of the proceedings but also erode public trust in the legal system.

The persistent and unrelenting nature of these violations reflects a systemic failure within the Department to uphold its legal and ethical obligations. Despite repeated opportunities to address and correct these egregious actions, General Counsel Campbell participated and permitted them to proceed and thereafter continuously ignored or actively circumvented corrective measures,

allowing the misconduct to persist unabated. This ongoing pattern of disregard for accountability is further compounded by a covert and troubling collusion among Department officials, who have secretly coordinated to obstruct due process and deprive litigants of their fundamental rights. These coordinated efforts to deny justice and manipulate outcomes undermine the integrity of the entire legal process. It is clear that this behavior is not an isolated incident, but rather a pervasive issue that calls into question General Counsel Campbell's and the Department's commitment to the rule of law. To protect the public and preserve the credibility of our courts, immediate intervention is required to end this cycle of misconduct and ensure that such flagrant violations do not continue unchecked. Without such measures, the public's trust in the justice system will be irreparably damaged, and the very foundations of fairness and transparency will remain at risk.

Given the alarming pattern of misconduct already revealed, it is imperative that a thorough and comprehensive investigation be conducted to ensure there are no other violations lurking beneath the surface. The scope of these actions suggests the possibility of additional, yet undiscovered, transgressions that could further compromise the integrity of the legal process. The Department's repeated failure to respond to corrective measures and the ongoing covert collusion among its officials raise serious concerns that there may be more extensive wrongdoing hidden from scrutiny. To safeguard the public's trust and protect the fairness of the judicial system, a full investigation is necessary to uncover the complete extent of these violations and to ensure that no further misconduct has been or will be allowed to go unchecked. Without this deeper inquiry, the true scale of the corruption and abuse may remain obscured, continuing to undermine the rights of litigants and the credibility of the Department and the legal profession.

We, therefore, urge the State Bar to impose a level of discipline that is fully commensurate with the gravity of the violations uncovered. The extent of dishonesty and misconduct demonstrated by General Counsel Campbell and the Department's other attorneys—evident in their repeated, reckless disregard for ethical standards and due process—requires a response that sends a clear and unequivocal message. Such egregious behavior, so casually embraced and perpetuated within the Department, cannot be allowed to go unpunished. The public's trust in the legal system depends on a firm, consistent commitment to holding attorneys accountable for actions that undermine the integrity of the profession. The discipline imposed must reflect the serious harm caused by these actions and serve as a deterrent against future misconduct, ensuring that similar violations are not allowed to continue unchecked.

The State Bar of California

OFFICE OF CHIEF TRIAL COUNSEL

845 South Figueroa Street, Los Angeles, CA 90017

800-843-9053
Fax: 213-765-1168

DISCIPLINE REFERRAL FORM

To file a discipline referral, please fill out the online form to be used by a judicial officer or court staff when reporting attorney misconduct, or violations of any provision of the Rules of Professional Conduct, pursuant to Judicial Canon 3(D)(2); or when complying with mandatory court reporting requirements pursuant to Business and Professions Code sections 6086.7, 6086.8 subdivision (a), 6101 subdivision (c), and California Rules of Court, rules 10.609 and 10.1071. For questions call 800-843-9053.

Please send completed form to the State Bar of California - Intake Unit, at the above address or fax number.

The judicial officer named below will be identified as the complainant and will be regularly apprised of the complaint status and disposition.

1. Report Submitted by/on Behalf of:

Title: Hon.		
First Name: Kristin	Middle Name: L.	
Last Name: Rosi		
Address: [redacted]		
City: [redacted]	State: [redacted]	Zip Code: [redacted]
Email: [redacted]	Primary Phone: [redacted]	Other Phone:

If you prefer to communicate by email, please provide an email address.

Will there be a point of contact other than the person referenced above?

☐ Yes ☑ No

Point of Contact

Enter the name and contact information of the person to contact for further information.

Title:		
First Name:	Middle Name:	
Last Name:		
Address:		
City:	State:	Zip Code:
Email:	Primary Phone:	Other Phone:

2. Attorney's Information

CA Bar License #: 184269		
First Name: Nikki	Middle Name:	
Last Name: McKennedy		
Address: [redacted]		
City: [redacted]	State: [redacted]	Zip Code: [redacted]
Email: [redacted]	Work Phone:	Website:

To better achieve the State Bar's mission to protect the public, please answer the following questions:

Select whether this is a Reportable Action required under Business and Professions Code sections 6101, 6086.7, or 6086.8 or a Complaint of Other Professional Misconduct.

☐ Reportable Action ☑ Complaint

To your knowledge, is the attorney who is the subject of the referral represented by counsel?

☐ Yes ☑ No

Attorney's Counsel Information
If yes, enter attorney's counsel information

CA Bar License #:		
First Name:	Middle Name:	
Last Name:		
Address:		
City:	State:	Zip Code:
Email:	Work Phone:	Website:

Does this complaint involve allegations of theft?

☐ Yes ☑ No

Does this complaint involve allegations of attorney misconduct where a person 65 years of age or older is victimized?

☐ Yes ☑ No

Does this complaint involve allegations of attorney misconduct where a person who is incapacitated, infirm, disabled, incarcerated, an immigrant, or a minor was victimized?

☐ Yes ☑ No

Does this complaint involve allegations that the attorney has abandoned a client?

☐ Yes ☑ No

Reportable Actions

Please check the applicable boxes of the court decision or order containing the action being reported.

☐ A judgment against an attorney for fraud, misrepresentation, breach of fiduciary duty, or gross professional negligence. (Business and Professions Code, § 6086.8, subd. (a).)

☐ A final order of contempt against an attorney that may warrant discipline. (Business and Professions Code § 6086.7, subd. (a)(1).)

☐ The modification or reversal of a judgment based in whole or in part on attorney misconduct or incompetence. (Business and Professions Code, § 6086.7, subd. (a)(2).)

☐ The imposition of judicial sanctions, except for failure to make discovery or sanctions under $1,000. (Business and Professions Code, § 6086.7, subd. (a)(3).)

☐ The imposition of a civil penalty upon an attorney pursuant to section 8620 of the Family Code regarding adoption of children with Indian tribal affiliations. (Business and Professions Code, § 6086.7, subd. (a)(4).)

☐ The finding of bad faith by a prosecuting attorney in withholding exculpatory evidence. (Business and Professions Code, § 6086.7, subd. (a)(5).)

☐ The conviction of an attorney. (Business and Professions Code, § 6101, subd. (c).)

Other Professional Misconduct

Please describe the nature of the attorney's conduct which may warrant disciplinary action. In the Attachments section, attach copies of pertinent documents such as a court decision, the order that contains the action being reported, or document filed by the attorney that is the subject of the misconduct.

Signature: _____ Date: 2/2/2025

The following is based on personal knowledge and credible documentary evidence in the possession of judicial officers.

In accordance with the ethical obligations under the California Code of Judicial Ethics Canon 3(D)(2) and Rule 8.3 of the Rules of Professional Conduct, the following disciplinary referral is made to the California State Bar regarding California attorney Nikki McKennedy, State Bar No. 184269.

As outlined in detail below, the numerous allegations of misconduct are particularly egregious, pervasive, and have continued despite multiple attempts at corrective action. In addition, the conduct has caused significant harm to the administration of justice, eroded confidence in a state regulatory agency, violated the due process rights of litigants and implies the ability to improperly influence a state agency and judicial officers.

Attorney McKennedy serves as an Assistant Chief Counsel at the California Department of Insurance. In that role, McKennedy serves as the head of the Department's Rate Enforcement Bureau, a division of the Department's Legal branch, supervising attorneys and representing the Department in rate and request for compensation proceedings.

I. Relevant Organizational Background & Statutory Separation of Functions

The Department of Insurance is a party in each of the relevant proceedings discussed herein. The remaining parties are consumer advocates and insurance carriers.

The Department's Executive Branch consists of Insurance Commissioner Ricardo Lara, Chief Deputy Commissioner Michael Martinez, and the Office of the Special Counsel, managed by Special Counsel Lucy Wang.[1] The Commissioner has delegated review of administrative decisions to the Special Counsel.

The Department's Legal Branch serves as the Department's prosecutorial division, representing the Department in external litigation and internal proceedings. The Legal Branch litigates enforcement actions, reviews and analyzes insurance policies to determine whether they should be approved for sale to consumers, and analyzes and reviews rate filings to ensure they comply with the requirements of Proposition 103. As such, applicable law provides that it must maintain separation from the Department's Executive Branch and its Administrative Hearing Bureau.[2] The Legal branch is supervised by the Department's General Counsel Teresa Campbell, and attorneys are assigned to one of several insurance-specific divisions. At all times relevant herein, the Assistant Chief Counsel McKennedy served as the supervisor for the Rate Enforcement Bureau and represented the Department in the underlying proceedings discussed.

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[1] Pursuant to Canon 3(D)(2) and Rule 8.3, the judges previously filed disciplinary referrals with the State Bar of California regarding Special Counsel Lucy Wang and General Counsel Teresa Campbell, outlining numerous violations stemming from the same set of facts described herein. Attorney McKennedy's conduct is part of a larger systemic problem within the Department of Insurance.

[2] *Department of Alcohol Beverage Control v. Alcohol Beverage Control Appeal Board* (2006) 40 Cal.4th 1 (the Administrative Procedures Act strictly limits contacts between an agency's prosecutor and the officers the agency selects to preside over hearings and ultimately decide adjudicative matters). See also, Gov. Code, sec. 11430.10.

The Department's Administrative Hearing Bureau (AHB), codified by Insurance Code section 21.5, is effectively the special administrative court charged with the responsibility of neutral adjudication of certain Insurance Code and other disputes. Accordingly, it is statutorily walled off from the agency's other regulatory functions performed by the Legal and Executive branches.[3] Insulating AHB even more outright than the separation of functions expected by the Government Code and constitutional principles of due process, Insurance Code sections 7 and 21.5 prohibit the Commissioner, his deputies, and the Legal branch from any direct or indirect supervision of the Administrative Law Judges.[4] Administrative Law Judges are bound by both the Government Code's Administrative Procedures Act and the Code of Judicial Ethics to require compliance with these limitations.[5] Violation of either constitutes misconduct on the part of the ALJ, and may result in discipline.[6]

As in all California administrative agencies, the separation of functions is paramount. The separation of functions safeguards the fairness and impartiality of decision-making by preventing individuals involved in investigating or prosecuting cases from also participating in the adjudicative process, thus ensuring that the decision-maker remains objective and unbiased, ultimately protecting the rights of those affected by agency actions. It promotes public confidence in the justice system and ensures bias does not enter into final decision-making. This mandate is so crucial that the Government Code's Administrative Procedures Act sets forth clear guard rails meant to ensure a separation between decision makers and all other Departmental staff.[7]

In addition to the Administrative Procedures Act's provisions mandating the separation of functions within a state agency, the Supreme Court's holding in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board*, (2006) 40 Cal.4th 1, further instructs the Department on the compulsory separation between agency decision-makers and prosecutorial staff. Therein, the Supreme Court expressly states that "the APA sets out a clear rule: an agency prosecutor cannot secretly communicate with the agency decision maker or the decision maker's advisor about the substance of the case prior to issuance of a final decision."[8] Violations of these rules constitutes misconduct under multiple statutes, including the Rules of Professional Conduct, the Government Code and the Code of Judicial Ethics.

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[3] Gov. Code, sec. 11425.10, subd. (a)(4). ("(a) The governing procedure by which an agency conducts an adjudicative proceeding is subject to all of the following requirements: (4) The adjudicative function shall be separated from the investigative, prosecutorial, and advocacy functions within the agency as provided in Section 11425.30.")

[4] Ins. Code, sec. 21.5, subdivision (b) provides "An administrative law judge appointed by the commissioner pursuant to civil service rules shall be employed within the administrative law bureau and shall not be supervised directly by the commissioner or supervised directly or indirectly by an employee in the legal branch of the department.)

[5] Gov. Code, sec. 11475.20.

[6] Gov. Code, sec. 11475.50.

[7] Gov. Code, sec. 11430.10 et seq.

[8] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at p. 10. See also, *Morongo Band of Mission Indians v. State Water Res. Control Bd.*, (2009) 45 Cal.4th 731, 737 ("[P]rocedural fairness does not mandate the dissolution of unitary agencies, but it does require some internal separation between advocates and decision makers to preserve neutrality.")

II. Statement of Facts

In May 2024, the Department's Administrative Law Judges issued a briefing order in eight targeted separate Request for Compensation proceedings from among those RFCs then pending, in which there was an identified pattern of concern in the underlying rate approval history. The briefing order instructed all parties to address whether the Department of Insurance was processing and settling insurance rate increase applications in accordance with the Insurance Code and its applicable Regulations. All three parties to the proceedings, i.e. the Department of Insurance's legal branch, insurance carrier and consumer advocates filed briefs responding to the ALJs' Orders. Attorney McKennedy responded on behalf of the Department of Insurance.

On October 3, 2024, at 1:30 p.m., Attorney McKennedy met secretly with Department Special Counsel Lucy Wang, General Counsel Teresa Campbell and Chief Deputy Commissioner Michael Martinez, via the Microsoft Teams meeting platform, to discuss the impending administrative decisions in the above-mentioned proceedings. During this meeting, Attorney McKennedy and others in attendance circulated and edited a document intended to instruct the Administrative Law Judges on how to interpret the Insurance Code and its regulations. The issues discussed in this document were the exact legal issues then currently being litigated in front of the ALJs. Attorney McKennedy made numerous changes to the document and understood the document would be sent ex parte to the Chief Judge. McKennedy also requested that her name be removed from the list of attorneys copied on the communication. This meeting between the Department's prosecutors and members of the executive branch serving as final decision makers, did not include representatives from the consumer group or the insurance carriers, all of whom were parties to the respective case. Further, Attorney McKennedy did not subsequently disclose this private, ex parte meeting to the remaining litigants, nor did she insist on the statutory separation of functions between Department staff.

On October 18, 2024, the Chief Judge issued eight RFC decisions. Nearly identical in analysis, the Decisions find that the underlying rate proceedings had not concluded because of the Department's failure to follow the statutory and regulatory requirements regarding the review of insurance rate applications. Specifically, the Decisions note the Department refused to hold statutorily-mandated hearings, employed underground regulations in lieu of those provided for by law, and circumvented settlement transparency regulations by failing to present settlements to the ALJs for review and decision. The RFCs were granted, but relied upon alternate grounds other than that the rate proceedings were concluded properly.

Shortly after the issuance of these decisions, the Department's Legal and Executive branches began meeting secretly to discuss the Legal branch's intended request for reconsideration. Specifically, on November 4, 2024, at 2:30 p.m., Attorney McKennedy met secretly with Special Counsel Wang, General Counsel Campbell, Deputy General Counsel Heather Hoesterey and Chief Deputy Commissioner Michael Martinez, via the Microsoft Teams meeting platform, to address "the AHB Rulings." This meeting between the Department's legal team, once again a party to the underlying proceedings, and the Department's final decision-maker, did not include representatives from the consumer advocates or the insurance carriers; the other two parties to the proceeding. No subsequent notice disclosing the ex parte communication(s) was provided to

the other litigant parties and filed by any of the attorneys in attendance, despite the Department's failure to adhere to the statutory provisions regarding separation of functions.

Immediately after the November 4, 2024 meeting, Attorney McKennedy filed a Request for Reconsideration with Special Counsel Wang and the Insurance Commissioner. The Department's Legal branch also requested the Commissioner stay the RFC decisions pending resolution of the Request for Reconsideration. Attorney McKennedy cited to the formal administrative proceeding rules, specifically Government Code section 11521, in making this request.

On November 5, 2024, the consumer advocacy group filed a response objecting to the Department's Request for Reconsideration. In so objecting, the consumer advocates stated, "Ms. McKennedy' s request is unprecedented in the modern history of the California Department of Insurance. The Decisions are in effect and should not be disturbed. To do otherwise would undermine the integrity of the agency, the authority and independence of the administrative law judges, and the laws that you are required to uphold."

On November 14, 2024, at 2:00 p.m., Attorney McKennedy met privately with Commissioner Lara, General Counsel Campbell, Special Counsel Wang, and Chief Deputy Commissioner Martinez, via the Microsoft Teams meeting platform, to discuss the Legal branch's Request for Reconsideration and the "Delegation" document previously edited by Attorney McKennedy. As explained above, the document specially addresses the legal issues pending reconsideration by the Commissioner. This meeting between the Department's Legal branch, a party to the proceedings under review by the Commissioner, and the Commissioner and his legal team, did not include representatives from the consumer advocates or the insurance carriers, and therefore constituted an ex parte communication. No subsequent notice of this meeting has been provided to the other party litigants and of which no subsequent notice disclosing the ex parte communication was filed by Attorney McKennedy or any of the attorneys in attendance.

On November 15, 2024, one day after meeting privately with the Department's prosecutorial branch, Special Counsel Wang issued an "Order Granting Stay of Expiration of Power to Order Reconsideration of Decisions Awarding Compensation", as requested by the Department, and over the objection of at least one other party to the proceeding. Special Counsel Wang cited to Government Code section 11521 in issuing such an order.

On November 21, 2024, the Commissioner sent a letter to the Chief Administrative Law Judge (CALJ), with copies to the General Counsel Campbell, Special Counsel Wang, Deputy Commissioner Laurie Menchaca and Chief Deputy Commissioner Martinez. The letter, titled a "Delegation pursuant to civil service rules," informs the ALJs that they can only hear matters in accordance with the Commissioner's letter. Included among the "delegations," is an instruction to interpret the statues and regulations in accordance with the Commissioner's directions therein. This instruction is contrary to clear statutory and regulatory authority, as well as the ALJs legal analysis in the aforementioned decisions. The letter also included an instruction that the ALJs "get on board" with the Commissioner's plan and added a thinly veiled threat of discipline and removal. This letter is identical, in all relevant aspects, to the document drafted, circulated and edited by Special Counsel Wang, General Counsel Campbell and Attorney McKennedy.

Although this letter purports to apply to all pending proceedings, the letter was not served on the consumer advocates or the insurance carrier. Therefore, it constituted an impermissible ex parte communication, and further violated the statutory separation of functions outlined by the Government Code and the California Supreme Court.

On November 22, 2024, at 3:00 p.m., General Counsel Campbell, Chief Deputy Commissioner Martinez, Deputy Commissioner Menchaca and Deputy Commissioner Michael Soller again met secretly, via the Microsoft Teams meeting platform, to discuss "AHB Procedures." This meeting between the Department's Legal branch, a party to the proceedings under review by the Commissioner, and the Chief Deputy Commissioner, did not include representatives from the consumer advocates or the insurance carriers, although the Department's intent was to address the decisions issued by the CALJ. No subsequent notice of this meeting was provided to the other party litigants by the General Counsel Campbell or an attorneys present and no certificate of service evidencing notice disclosing the ex parte communication was filed by them.

On November 25, 2024, the Commissioner issued an Order Granting the Department's Request for Reconsideration. Therein, the Commissioner indicated he would issue new decisions "authorizing payments to Consumer Watchdog and striking out the portions of dicta which (1) contain improper advisory opinions regarding Proposition 103, (2) conflict with longstanding Department policies and procedures, and (3) contain erroneous legal interpretations." As counsel to the Commissioner, Special Counsel Wang drafted the Order Granting Reconsideration. The Order does not disclose the private meetings Special Counsel Wang had with General Counsel Campbell, Attorney McKennedy or other members of the Department's litigation team prior to granting the Order they requested, nor communicates in any way that the aforementioned procedural steps, taken with Attorney McKennedy's input, participation, and consent, had been orchestrated to facilitate a pre-determined outcome as agreed upon in the secret meetings.

On December 3, 2024, the ALJs issued Notice of Ex Parte Communications in all pending RFC matters, pursuant to Government Code section 11430.50, regarding the Commissioner's November 21, 2024, letter to the CALJ.[9] The Notice informed the parties of their statutory right to respond to the ex parte communication, and provided a hearing date should any party request an opportunity to publicly respond.

Shortly after receiving the Notice of Ex Parte Communication, at approximately 5:30 p.m. on December 3, 2024, Special Counsel Wang, General Counsel Campbell, Chief Deputy Commissioner Martinez and Deputy Commissioner Menchaca and Deputy Commissioner Michael Soller met, via the Microsoft Teams meeting platform, to discuss the Notice of Ex Parte Communication. These same parties met privately again, via the Microsoft Teams meeting platform, on December 5, 2024, at 9:25 a.m. and 12:30 p.m. to continue their private discussion on the pending proceedings. At no time were the remaining parties to the proceeding informed of

[9] Government Code section 11430.80, subdivision (a) provides "There shall be no communication, direct or indirect, while a proceeding is pending regarding the merits of any issue in the proceeding, between the presiding officer and the agency head or other person or body to which the power to hear or decide in the proceeding is delegated." At the time of the Notice of Ex Parte Communication, the ALJs had approximately 18 pending RFC proceedings on their dockets.

these secret meetings, nor was subsequent notice disclosing the ex parte communications provided to the other litigant parties by General Counsel Campbell or other attorneys present during the meeting. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the statutory separation of functions which ensure transparency and fairness in administrative proceedings.

On December 6, 2024, Chief Deputy Commissioner Martinez sent an email to the CALJ, with copies to the General Counsel Campbell, Special Counsel Wang, Deputy Commissioner Laurie Menchaca and Deputy General Counsel Heather Hoestery, regarding the Notice of Ex Parte Communication. The email, sent at 11:01 a.m., states that the pending RFC matters do not constitute "adjudicatory proceedings" and thus the Notice of Ex Parte Communication must be rescinded. This argument is in direct contradiction to Special Counsel Wang's Order Granting Reconsideration. The email further states "Based on the foregoing facts, I ask that you – in your role as Supervising Administrative Law Judge – issue subsequent Orders which (1) clarify there are no adjudicative proceedings pending before AHB, (2) inform parties there is no need to address the Delegation, nor present evidence, and (3) vacate the December 13, 2024 case calendar calls. Please issue these subsequent orders by the end of business today (Friday, December 6, 2024). If you have any questions, please do not hesitate to contact me by email or telephone." This communication was not served on the consumer advocates or the insurance carriers, all of whom were parties in the pending proceedings. Upon receiving this second ex parte communication, General Counsel Campbell took no action to prevent further violations of the Government Code, nor did she provide notice of the improper communication to the remaining litigants. The CALJ refused to take the ordered actions without comment. The staff ALJ concurred.

On December 6, 2024, Special Counsel Wang issued a revised decision in one of the RFC cases, and awarded compensation to Consumer Watchdog, in accordance with Attorney McKennedy's request. Special Counsel Wang's decision did not address the legal issues raised by the CALJ, nor did Special Counsel Wang's decision disclose the numerous secret meetings she held with the Department's litigation team and Attorney McKennedy; a party to the proceeding.

On December 9, 2024, at 1:54 p.m., Deputy Commissioner Menchaca sent an email to the CALJ instructing the judge to rescind the Notice of Ex Parte Communication. The email message, instructing the CALJ to violate the Government Code and the Code of Judicial Ethics, was also sent to Special Counsel Wang, General Counsel Campbell, Deputy General Counsel Hoesterey and Chief Deputy Commissioner Martinez. The email message was not served on the remaining litigants and at no time did General Counsel Campbell or any other attorney provide the remaining litigants with notice of the ex parte communication.

The CALJ did not respond to Deputy Commissioner Menchaca's communication. Shortly thereafter, the Commissioner issued an Order Withdrawing Notices of Ex Parte Communication and Vacating Hearing. The Commissioner's Order purported to withdraw notice of his own improper communication with the presiding judge, and to cancel the parties' right to a due process hearing. The Order, drafted by Special Counsel Wang, states the Commissioner's communication is not an ex parte communication because it pertains to procedural issues. The

Commissioner's Order contains both factual and legal misrepresentations, which Special Counsel Wang knew when she drafted the document. The Order also fails to include any disclosure of the secret meetings between General Counsel Campbell, the Department's legal team and its executive team leading up to the issuance of the Order.

On December 10, 2024, consumer advocates sent an email addressed to the CALJ indicating its intent to present an in-person response to the Commissioner's ex parte communication, as is permitted under in Government Code section 11430.50. This communication was served on all parties. Special Counsel Wang responded to the email addressed to the CALJ, indicating the hearing had been vacated.

On December 11, 2024, consumer advocates filed an Objection to the Commissioner's Order withdrawing the Notices of Ex Parte Communications with the CALJ. In response, the ALJs issued a Notice of Opportunity to Respond, providing all parties the occasion to address Consumer Watchdog's objections. No party offered any response to the ALJs' Notice.

On December 11, 2024, at 12:00 p.m., General Counsel Campbell, Special Counsel Wang, Deputy Commissioner Menchaca and Soller and Chief Deputy Commissioner Martinez met secretly, via the Microsoft Teams meeting platform, to discuss the scheduled ex parte hearing and potential disciplinary action for the ALJs for refusal to comply with the Commissioner's Order. At no time were the remaining parties to the proceeding informed of the private meeting, nor was subsequent notice disclosing the ex parte communication provided to the other litigant parties by General Counsel Campbell or other attorneys present during the meeting. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the statutory separation of functions which ensure transparency and fairness in administrative proceedings.

On December 11, 2024, the ALJs also issued a Second Notice of Ex Parte Communication, which attached Chief Deputy Commissioner Martinez's December 6, 2024 email. Immediately thereafter, at 4:15 p.m., General Counsel Campbell, Special Counsel Wang, Chief Deputy Commissioner Martinez and Deputy Commissioners Soller and Menchaca met privately, via the Microsoft Teams meeting platform, to discuss the Second Notice of Ex Parte Communication. At no time were the remaining parties to the proceeding informed of this secret meeting, nor was subsequent notice disclosing the ex parte communications provided to the other litigant parties by General Counsel Campbell or other attorneys present during the meeting. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the statutory separation of functions which ensure transparency and fairness in administrative proceedings.

On December 12, 2024, the ALJs issued rulings sustaining Consumer Watchdog's objections and confirming the December 13, 2024 calendar call.

Also on December 12, 2024, consumer advocates filed a written response to the December 3, 2024 Notice of Ex Parte Communication. Therein, the litigants argued the Commissioner's conduct violated Insurance Code section 21.5, as unlawful supervision of the ALJs, and Government Code provision 11430.80 regarding ex parte communications between an agency head and a presiding officer.

On December 13, 2024, the ALJs held a calendar call on all noticed RFC cases regarding the Commissioner's November 21, 2024 ex parte communication. Consumer advocates appeared at the hearing and provided comment supplementing their written filing regarding the impropriety of the Department's actions and the Commissioner's instructions. On that same date, at 2:00 p.m., General Counsel Campbell, Special Counsel Wang, Attorney Jeresa Ewell, and Deputy Commissioner Menchaca met privately, via the Microsoft Teams meeting platform, with a representative from the Department of Justice to discuss disciplining the ALJs for their refusal to violate the Code of Judicial Ethics and Government Code provisions, and removal of the proceedings from the neutral adjudicators. At no time were the remaining parties to the proceeding informed of this secret meeting, nor was subsequent notice disclosing the ex parte communication provided to the other litigant parties by General Counsel Campbell or other attorneys present during the meeting. This meeting between the Department's litigation team and the ultimate decision-maker also ignored the statutory separation of functions, which ensure transparency and fairness in administrative proceedings.

On December 13, 2024, in accordance with Regulations section 2656.1, consumer advocates filed a proposed stipulated settlement in a pending rate application proceeding, and requested the ALJ issue a proposed decision adopting the settlement.

On December 17, 2024, the Commissioner issued a letter to the CALJ purportedly removing all then pending RFCs from AHB. This letter was served on all parties. Although there is no statutory authority for the removal of these cases, the ALJs have not taken any action on those remaining cases. The letter conferring jurisdiction over the pending RFC cases to the Commissioner and his delegate, Special Counsel Wang, fails to inform the remaining litigants of the extensive ex parte communications that occurred between the Department's legal branch and the final decision-makers before the issuance of this letter.

On December 18, 2024, the CALJ issued a Notice of Proposed Settlement to all relevant parties. The Notice set a status conference and provided the parties with an opportunity to object to the proposed settlement in accordance with Regulations section 2656.1.

On December 19, 2024, consumer advocates filed a response to the Second Notice of Ex Parte Communication. The parties again argued the Chief Deputy Insurance Commissioner violated Insurance Code section 21.5, regarding supervision of ALJs, and Government Code section 11430.10 and 11430.80. The consumer advocates also noted Special Counsel Wang's role in drafting the second ex parte communication.

On December 23, 2024, Human Resource Director Jenny Ruth directly emailed the CALJ regarding the Notice of Proposed Settlement. Director Ruth advised that she was acting under the authority of the Commissioner and as the agent for Deputy Commissioner Menchaca. Director Ruth, a non-attorney, stated that the CALJ's Notice violated the Commissioner's November 21, 2024 "Delegation" order and instructed the CALJ to "cancel this status conference in writing and advise me that it was been cancelled by no later than 5PM today (12/23/2024)." The CALJ continued the status conference. This communication was not served on the parties to that proceeding.

On December 27, 2024, the CALJ issued a third Notice of Ex Parte Communication regarding Director Ruth's December 23, 2024 email message.

III. Alleged Ethical Violations

Based on the foregoing facts, and in accordance with Canon 3(D) and Rule 8.3, General Counsel Campbell's conduct violates Rules 1.2.1, 3.3, 3.5, 4.1, 8.3 and 8.4 of the Rules of Professional Conduct, as well as Business and Professions Code sections 6068, 6103 and 6106. The repeat nature of the violations, even after appropriate corrective action and instruction, and the collusion between the Department's prosecutorial and executive branches, sadly demonstrates purposeful intent to violate ethics rules and has caused significant damage to the administration of justice and the public's confidence in the legal system.

A. October 3, 2024 Meeting

On October 3, 2024, at 1:30 p.m., Attorney McKennedy met secretly with Special Counsel Wang, General Counsel Campbell, Chief Deputy Commissioner Michael Martinez, via the Microsoft Teams meeting platform, to discuss legal issues raised in the impending administrative decisions in the above-mentioned proceedings.

Meeting with the Department's executive branch final decision-makers without the presence of all parties involved constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter.[10] Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, Attorney McKennedy's participation in the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. That the concealment and dishonestly was undertaken by a senior attorney and bureau chief, who supervises other Department attorneys and represented the Department in the underlying proceedings, makes the conduct even more egregious and more concerning. Moreover, Attorney McKennedy's written request to have her name removed from the document infers awareness that her participation was

[10] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at pp. 9-10. See also, Gov. Code, sec. 11430.70, subd. (a).

improper. This deliberate attempt to erase any trace of her involvement in the unlawful meeting suggests an intent to deceive both the judges and the remaining litigants. Such actions not only demonstrate a calculated effort to mislead, but also constitute a knowing violation of the Rules of Professional Conduct, further underscoring her disregard for legal and ethical standards.

Attorney McKennedy's failure to report the professional misconduct committed by Special Counsel Wang, General Counsel Campbell and other attorneys present constitutes a direct violation of Rule 8.3, subdivision (a), which mandates that lawyers report any conduct involving dishonesty or deceit to the State Bar or appropriate tribunal. Attorney McKennedy was fully aware that the ex parte meeting was improperly initiated and conducted by Special Counsel Wang, and that it was deliberately concealed from the other litigants. Despite this clear knowledge of intentional deceit and dishonesty, Attorney McKennedy took no action to fulfill her ethical duty to report this misconduct to the State Bar. By willfully neglecting her obligation to act, she not only condoned this behavior but also undermined the integrity of the legal process, failing to uphold the standards required of all attorneys.

It is crucial to emphasize that, to this day, the remaining litigants are unaware that the Department's prosecutorial and executive branches secretly colluded to manipulate the outcome of these proceedings. This orchestration was designed to create the illusion of a fair process, one that seemingly upheld the separation of functions, but in reality, it was a deceptive façade. Such misconduct undermines the integrity of the process and perpetuates a pattern of concealment and bad faith that continues unchecked. Therefore, full disclosure and immediate disciplinary action are not just warranted—they are essential to safeguard the rights of the litigants and protect the public trust in the system.

B. November 4, 2024 Meeting

on November 4, 2024, at 2:30 p.m., Attorney McKennedy, General Counsel Campbell, Deputy General Counsel Heather Hoesterey and Chief Deputy Commissioner Michael Martinez conducted a private meeting, via the Microsoft Teams meeting platform, to address the legal findings in "the AHB Rulings."

Meeting with the Department's executive branch designees, without the presence of all parties involved, constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter[11] Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating

[11] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at pp. 9-10. See also, Gov. Code, sec. 11430.70, subd. (a).

and continuing collusion between the decision-maker and a litigant strike at the heart of the fair administration of justice and procedural due process.

In addition, Attorney McKennedy's participation in the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. These violations are particularly egregious given that, immediately following the meeting, Attorney McKennedy filed a Request for Reconsideration for Special Counsel Wang's review, further disadvantaging the other parties. Such misconduct severely compromises the integrity of the proceedings and prejudices the remaining litigants. That the concealment and dishonestly was undertaken by a senior attorney and bureau chief, who supervises other Department attorneys and represented the Department in the underlying proceedings, makes the conduct even more shocking and more concerning.

Attorney McKennedy's failure to report the professional misconduct committed by General Counsel Campbell and other attorneys present constitutes a direct violation of Rule 8.3, subdivision (a), which mandates that lawyers report any conduct involving dishonesty or deceit to the State Bar or appropriate tribunal. Attorney McKennedy was fully aware that the ex parte meeting was improperly initiated and conducted by General Counsel Campbell, and that it was deliberately concealed from the other litigants. Despite this clear knowledge of intentional deceit and dishonesty, Attorney McKennedy took no action to fulfill her ethical duty to report this misconduct to the State Bar. By willfully neglecting her obligation to act, she not only condoned this behavior but also undermined the integrity of the legal process, failing to uphold the standards required of all attorneys.

Again, it is crucial to emphasize that, to this day, the remaining litigants are unaware that the Department's prosecutorial and executive branches secretly colluded to manipulate the outcome of these proceedings. This orchestration was designed to create the illusion of a fair process, one that seemingly upheld the separation of functions, but in reality, it was a deceptive façade. Such misconduct undermines the integrity of the process and perpetuates a pattern of concealment and bad faith that continues unchecked. Therefore, full disclosure and immediate disciplinary action are not just warranted—they are essential to safeguard the rights of the litigants and protect the public trust in the system.

C. November 14, 2024 Meeting

On November 14, 2024, at 2:00 p.m., Commissioner Lara, Special Counsel Wang, General Counsel Campbell, Attorney McKennedy and Chief Deputy Commissioner Martinez met secretly, via the Microsoft Teams meeting platform, to discuss the Legal branch's Request for Reconsideration and the "Delegation" document previously drafted by Special Counsel Wang.

Meeting with the Department's final decision-maker and agency head, without the presence of all parties involved, constitutes a clear violation of Government Code section 11430.10, subdivision (a). This provision explicitly states that "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding

officer from an employee or representative of an agency that is a party... without notice and opportunity for all parties to participate in the communication." The same rules governing ex parte communications with the presiding officer extend to communications with any agency head or decision-making body overseeing the matter.[12] Such actions not only breach legal protocol, but they also undermine the Government Code's essential requirement for the separation of functions within an agency. Allowing such conduct erodes public trust in both the state's regulatory processes and the integrity of the legal profession at large. Upholding transparency, honesty and fairness is critical to maintaining confidence in our legal and administrative systems. Initiating and continuing collusion between the decision-maker and a litigant, strikes at the heart of the fair administration of justice and procedural due process.

In addition, Attorney McKennedy's participation in the ex parte communication and failure to provide subsequent notice of the ex parte meeting to the other litigants constitute additional, separate violations of Government Code section 11430.50. This conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. This is an especially egregious violation considering that the following day, Special Counsel Wang issued an Order Granting the Request for Reconsideration, as requested by Attorney McKennedy, and contested by at least on other party to the proceeding. This failure to abide by the statutory divisions within the Department constitutes misconduct and is highly prejudicial to the remaining parties in the proceeding. That the concealment and dishonestly was undertaken by a senior attorney and bureau chief, who supervises other Department attorneys and represented the Department in the underlying proceedings, makes the conduct even more shocking and more concerning.

Attorney McKennedy's failure to report the professional misconduct committed by Special Counsel Wang and other attorneys present constitutes a direct violation of Rule 8.3, subdivision (a), which mandates that lawyers report any conduct involving dishonesty or deceit to the State Bar or appropriate tribunal. Attorney McKennedy was fully aware that the ex parte meeting was improperly initiated and conducted by Special Counsel Wang, and that it was deliberately concealed from the other litigants. Despite this clear knowledge of intentional deceit and dishonesty, Attorney McKennedy took no action to fulfill her ethical duty to report this misconduct to the State Bar. By willfully neglecting her obligation to act, she not only condoned this behavior but also undermined the integrity of the legal process, failing to uphold the standards required of all attorneys.

Again, it is crucial to emphasize that, to this day, the remaining litigants are unaware that the Department's prosecutorial and executive branches secretly colluded to manipulate the outcome of these proceedings. This orchestration was designed to create the illusion of a fair process, one that seemingly upheld the separation of functions, but in reality, it was a deceptive façade. Such misconduct undermines the integrity of the process and perpetuates a pattern of concealment and bad faith that continues unchecked. Therefore, full disclosure and immediate disciplinary action

[12] *Dept. of Alcoholic Beverage Control*, 40 Cal.4th at pp. 9-10. See also, Gov. Code, sec. 11430.70, subd. (a).

are not just warranted—they are essential to safeguard the rights of the litigants and protect the public trust in the system.

D. November 21, 2024 Ex Parte Communication to Chief Judge

On November 21, 2024, Insurance Commissioner Lara sent an email message directly to the Chief Judge. Therein, the Commissioner suggested the judges needed to "get on board" with his regulatory plan, and further instructed the ALJs on how to rule on questions of law and fact pertaining to the Insurance Code and its applicable regulations. The email concluded with a thinly-veiled threat to the Chief Judge about elimination of the position. This letter is identical, in all relevant aspects, to the document drafted, circulated and edited by Special Counsel Wang, General Counsel Campbell and Attorney McKennedy.

Attorney McKennedy assisted in drafting the attachment and knew it would be sent to the Chief Judge privately, and without service on all parties in the underlying litigation. Attorney McKennedy knew this action violated Government Code section 11430.80, which prohibits any communication between the agency head and a presiding officer, yet took no action to prevent the communication or subsequently disclose the communication. Such conduct constitutes willful misconduct under the Government Code, as well as Rule 8.4 of the Rule of Professional Conduct, and is prejudicial to the fair administration of justice. It further constitutes an impermissible ex parte communication in violation of Rule 3.5, subdivision (b), which prohibits ex parte communications with judicial officers. The ex parte communication directly addresses the merits of a contested matter pending before the ALJs.

Attorney McKennedy's conduct in drafting and facilitating the ex parte communication, similarly violates Insurance Code section 21.5, which prohibits the Insurance Commissioner, his deputies and the Department's Legal branch, from directly or indirectly supervising the Administrative Law Judges. By issuing a document that instructs the ALJs to interpret the law in accordance with the Commissioner's wishes, Attorney McKennedy facilitated an improper supervisory directive to the ALJs, and engaged in conduct that is prejudicial to the administration of justice.

Additionally, Attorney McKennedy's actions appear to violate Rule 1.2.1, subdivision (a), as she counseled her client, namely the Department of Insurance, to engage in conduct she knew violated Government Code section 11430.80 and Insurance Code section 21.5. As a licensed attorney, Attorney McKennedy was well aware of the prohibition against ex parte communication, yet failed to counsel her client against such improper conduct nonetheless.

The communication similarly violates Rule 3.3, subdivision (a), as the letter includes knowingly false statements of fact and law that Attorney McKennedy failed to correct. Therein, the Commissioner indicates he may limit the ALJs legal interpretation and jurisdiction through fiat. The letter ignores, however, California Code of Regulation, title 10, section 2654.1, subdivision (a) which specifically grants the ALJs authority to rule on the validity of settlement agreements,

and California case law affirming.[13] By failing to disclose controlling legal authority, and by failing to correct knowingly false factual and legal statements, Attorney McKennedy intended to unlawfully secure judicial compliance and mislead the judicial officers into adjudicating proceedings in the Department's favor.[14]

Attorney McKennedy's failure to report the professional misconduct committed by Special Counsel Wang in drafting and directing the improper ex parte communication also constitutes a direct violation of Rule 8.3, subdivision (a), which mandates that lawyers report any conduct involving dishonesty or deceit to the State Bar or appropriate tribunal. Attorney McKennedy was fully aware that the ex parte communication violated Government Code section 11430.80 and Rule 3.5 of the Rules of Professional Conduct, and that it was deliberately concealed from the other litigants. Despite this clear knowledge of intentional deceit and dishonesty, Attorney McKennedy took no action to fulfill her ethical duty to report this misconduct to the State Bar. By willfully neglecting her obligation to act, she not only condoned this behavior but also undermined the integrity of the legal process, failing to uphold the standards required of all attorneys.

Finally, Attorney McKennedy's conduct is drafting the ex parte communication, and facilitating its improper communication constitutes an attempt to influence a judicial officer by unlawful means. The Code of Judicial Ethics, Canon 1 mandates that a judge observe such standards that the integrity and independence of the judiciary are preserved. The communication directly attacks the ALJs judicial independence, which is indispensable to justice in this state. Similarly, Canon 3(B)(2) requires that a judge be faithful to the law regardless of partisan interests, public clamor, or fear of criticism. The communication orders the ALJs to be faithful to a political officer, and ignore statutory and case law to the contrary. By instructing the ALJs how to interpret the statute and regulations and threatening discipline for failure to do so, Attorney McKennedy violated Rule 8.4, subdivision (e).

IV. Conclusion

In conclusion, the flagrant and numerous violations of the Rules of Professional Conduct outlined above represent a pattern of willful and continuous misconduct that has significantly interfered with the fair administration of justice. By colluding with the Department's executive branch and final decision-makers, Attorney McKennedy's actions not only undermine the integrity of the proceedings but also erode public trust in the legal system.

The persistent and unrelenting nature of these violations reflects a systemic failure within the Department to uphold its legal and ethical obligations.[15] Despite repeated efforts to address and correct these egregious actions, Attorney McKennedy has continuously ignored or actively circumvented corrective measures, allowing the misconduct to persist unabated. This ongoing

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[13] Cal. Code Regs., tit. 10, sec. 2654.1, subd (a) ("To the extent not otherwise specified by law or regulation, the administrative law judge shall: control the course of proceedings; grant or deny requests for continuances; . . . recommend to the Commissioner approval or disapproval of proposed stipulations and settlements".) See also, *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029.

[14] See, *Davis v. State Bar* (1983) 33 Cal.3d 231, 239-240.

[15] See also, Disciplinary Referrals of Special Counsel Lucy Wang and General Counsel Teresa Campbell.

pattern of disregard for accountability is further compounded by a covert and troubling collusion among Department officials, who have secretly coordinated to obstruct due process and deprive litigants of their fundamental rights. These coordinated efforts to deny justice and manipulate outcomes undermine the integrity of the entire legal process. It is clear that this behavior is not an isolated incident, but rather a pervasive issue that calls into question Attorney McKennedy's and the Department's commitment to the rule of law. To protect the public and preserve the credibility of our courts, immediate intervention is required to end this cycle of misconduct and ensure that such flagrant violations do not continue unchecked. Without such measures, the public's trust in the justice system will be irreparably damaged, and the very foundations of fairness and transparency will remain at risk.

Given the alarming pattern of misconduct already revealed, it is imperative that a thorough and comprehensive investigation be conducted to ensure there are no other violations lurking beneath the surface. The scope of these actions suggests the possibility of additional, yet undiscovered, transgressions that could further compromise the integrity of the legal process. The Department's repeated failure to respond to corrective measures and the ongoing covert collusion among its officials raise serious concerns that there may be more extensive wrongdoing hidden from scrutiny. To safeguard the public's trust and protect the fairness of the judicial system, a full investigation is necessary to uncover the complete extent of these violations and to ensure that no further misconduct has been allowed to go unchecked. Without this deeper inquiry, the true scale of the corruption and abuse may remain obscured, continuing to undermine the rights of litigants and the credibility of the Department and the legal profession.

We, therefore, urge the State Bar to impose a level of discipline that is fully commensurate with the gravity of the violations uncovered. The extent of dishonesty and misconduct demonstrated by Attorney McKennedy and the Department's other attorneys—evident in their repeated, reckless disregard for ethical standards and due process—requires a response that sends a clear and unequivocal message. Such egregious behavior, so casually embraced and perpetuated within the Department, cannot be allowed to go unpunished. The public's trust in the legal system depends on a firm, consistent commitment to holding attorneys accountable for actions that undermine the integrity of the profession. The discipline imposed must reflect the serious harm caused by these actions and serve as a deterrent against future misconduct, ensuring that similar violations are not allowed to continue unchecked.