

**COMMUNICATION WITH DECISIONMAKERS
IN PENDING
QUASI-ADJUDICATORY PROCEEDINGS**

Section 1: Purpose

To memorialize the long-standing existing administrative practice of the California Insurance Commissioner and the California Department of Insurance (“Department”) to ensure transparency in connection with Quasi-Adjudicatory Proceedings pending before the Insurance Commissioner and other Department Decisionmakers.

Section 2: Definitions

- (a) “Communication” means any transmission of information from a person or entity to another person or entity whether written or oral, formal or informal, at any time or place, and under any circumstances whereby information in any manner is transmitted or transferred with respect to a pending Quasi-Adjudicatory Proceeding.
- (b) “Decisionmaker” means the California Insurance Commissioner (“Commissioner”), Special Counsel to the Commissioner, including the legal staff assigned to the pending Quasi-Adjudicatory Proceeding in the office of the Special Counsel, and the presiding Administrative Law Judge or hearing officer in any pending Quasi-Adjudicatory Proceeding.
- (c) “Interested Person” means any of the following:
 - (1) any Party to a pending Quasi-Adjudicatory Proceeding before a Decisionmaker and the agents or employees of any Party, including attorneys or other persons representing any of them;
 - (2) any person with a financial interest in the pending Quasi-Adjudicatory Proceeding, or such person’s agents or employees, including attorneys or other persons representing such a person; or
 - (3) a representative acting formally or informally on behalf of any officially organized civic, environmental, neighborhood, business, labor, trade, or similar organization who intends to influence the decision of a Decisionmaker in a pending Quasi-Adjudicatory Proceeding, even if that organization is not a Party to the proceeding.
- (d) “Party” or “Parties” means the Department, the person to which the Department’s pending Quasi-Adjudicatory Proceeding is directed or that is the subject of a pending Quasi-Adjudicatory Proceeding, and any other person named as a Party or allowed to appear or intervene in the pending Quasi-Adjudicatory Proceeding.
- (e) “Procedural Matter” means:

- (1) an inquiry solely regarding the schedule of a proceeding, location or format of a hearing or other event in the proceeding, provided that the subject of the inquiry is not in controversy;
 - (2) a discussion of issues related solely to submission, filing or service of a document, provided those issues are not in controversy;
 - (3) a request for a specific procedural action, provided that the subject of the request is not in controversy; or
 - (4) an inquiry pertaining to the forms and requirements for filing an intervenor compensation notice or request for compensation.
- (f) “Quasi-Adjudicatory Proceeding” means: (i) an administrative proceeding of the Department to determine the rights or duties of a person under existing laws, regulations, or policies; (ii) a proceeding involving the issuance, amendment, or revocation of a permit or license by the Department; or (iii) a proceeding by the Department to enforce compliance with existing law or to impose sanctions for violations of existing law.

Section 3: Permissible Communications in Pending Proceedings

- (a) Except as permitted in this Section 3, no Decisionmaker may Communicate or attempt to Communicate, directly or indirectly, with any Interested Person, or with the presiding Administrative Law Judge regarding the merits of any issue in any pending Quasi-Adjudicatory Proceeding.
- (b) When circumstances require it, a Communication between a Decisionmaker and an Interested Person regarding Procedural Matters in a pending Quasi-Adjudicatory Proceeding is permitted.
- (c) In any pending Quasi-Adjudicatory Proceeding, a Decisionmaker may engage in Communications with an Interested Person, provided that the Decisionmaker (i) invites all Parties to attend the meeting or arranges a conference call or an electronic meeting in which all Parties may participate, and (ii) provides notice of the meeting or call as soon as possible.
- (d) Written Communications between an Interested Person and a Decisionmaker are permitted at any time, provided that the person making the written Communication provides copies of the written Communication to all Parties on the same day the written Communication is provided to the Interested Person or a Decisionmaker.
- (e) A Decisionmaker may, with the consent of all the Parties, confer separately with individual Parties, their representatives and other Interested Persons in an effort to settle Quasi-Adjudicatory Proceedings pending before the Decisionmaker.

(f) A Decisionmaker may initiate, permit, or consider any Communication when expressly authorized by law to do so.

(g) Except for Communications to and from an Administrative Law Judge, the limitations on Communications contained in this Section 3 do not extend to general background discussions about the insurance industry that do not relate directly to a specific pending Quasi-Adjudicatory Proceeding, or to formal rulemaking or quasi-legislative proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Department investigates rates or practices for the insurance industry or class of entities within the insurance industry.

Section 4: Reporting Unauthorized Communications

(a) If a Decisionmaker makes or receives an unauthorized Communication concerning a pending Quasi-Adjudicatory Proceeding, the Decisionmaker must notify each Party to the proceeding. The notice shall include the following information:

- (1) The date, time, and location of the Communication, and whether it was oral, written, or a combination of both, and the Communication medium used;
- (2) The identities of each Decisionmaker involved, the person initiating the Communication, and any persons that received such Communication;
- (3) The substance of the Communication, together with any request, recommendation, or advice provided to the Decisionmaker.

(b) If an Administrative Law Judge makes or receives an unauthorized Communication concerning a pending Quasi-Adjudicatory Proceeding, the Administrative Law Judge must make all of the following a part of the record in such pending Quasi-Adjudicatory Proceeding:

- (1) If the Communication is written, the writing and any written response of the Administrative Law Judge to the Communication.
- (2) If the Communication is oral, a memorandum stating the substance of the Communication, any response made by the Administrative Law Judge, and the identity of each person from whom the Administrative Law Judge received the Communication.
- (3) The Administrative Law Judge shall notify all Parties that a Communication in violation of Section 3 has been made a part of the record.

(c) If a Party to the Quasi-Adjudicatory Proceeding requests an opportunity to address the Communication that was made in violation of Section 3 within 10 days after receipt of notice of the Communication:

- (1) The Party shall be allowed to comment on the Communication.

(2) The Party may present evidence concerning the subject of the Communication if

(d) The requirements of this Section 4 apply from the issuance of the Department's pleading, or as of the effective date of the decision in the relevant Quasi-Adjudicatory Proceeding or as set forth in California Government Code section 11519 as applicable.

Section 5: Meeting Requests

Except as permitted by Section 3, no Interested Person may arrange any meeting regarding any Quasi-Adjudicatory Proceeding pending before the Department with either the Commissioner or the Office of the Special Counsel to the Commissioner, including the legal staff in the Special Counsel's office assigned to any such pending Quasi-Adjudicatory Proceeding. Any Interested Person who wishes to meet with the Commissioner relating to a matter unrelated to a pending Quasi-Adjudicatory Proceeding must complete and submit the then current Meeting Request Form and provide all the information required by such form.

Section 6: Compliance

Decisionmakers shall use their reasonable efforts, including providing appropriate supervision, to ensure that these provisions are not violated by persons subject to such Decisionmaker's direction and control. If any of these provisions are inconsistent with the requirements of California Government Code with respect to permissible communications, the requirements of the Government Code shall prevail.