

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

THE STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

FILED

2016 OCT 26 A 8:05

In the Matter of  
Michael R. Marinelli  
And  
Insurance Appraisal Services,  
Respondents,

ORDER NO. 16-0155

**Motion To Disqualify Insurance  
Enforcement Specialist From  
Representing Insurance  
Commissioner**

HEARINGS UNIT  
OFFICE OF  
INSURANCE COMMISSIONER

**RELIEF REQUESTED**

Michael R. Marinelli ("Marinelli") and Insurance Appraisal Services ("IAS"),  
by and through their undersigned counsel ("Respondents"), hereby move this tribunal  
for an Order to Disqualify Insurance Enforcement Specialist from Representing the  
Insurance Commissioner in the above-captioned matter.

Specifically, Respondents seek an Order disqualifying:

- (1) Insurance Enforcement Specialist Drew Stillman; and,
- (2) any other Insurance Enforcement Specialist employed by the Office  
of the Insurance Commissioner (OIC"); and,
- (3) any deputy insurance commissioner or any other employee of the  
OIC,

from acting in any capacity as an attorney for or providing legal representation to the  
Insurance Commissioner or the OIC in this matter and from engaging in any activity  
that is tantamount to or is readily identifiable as the practice of law, as described in and  
regulated under applicable Supreme Court rules governing the practice of law in the

Motion to Disqualify Insurance  
Enforcement Specialist - 1

— KREGER BEEGHLY, PLLC —  
999 Third Ave, Suite 3000  
Seattle, WA 98104-4088  
(206)829-2708

1 State of Washington, with respect to any proceeding or action in or related to this  
2 matter.

3  
4 **STATEMENT OF THE ISSUE**

5 The issues presented for resolution by this tribunal are as follows:

6 1. Whether the current Insurance Enforcement Specialist, any other Insurance  
7 Enforcement Specialist, or any other employee of the Office of the Insurance  
8 Commissioner is prohibited from providing legal representation to or on behalf of the  
9 Insurance Commissioner or is prohibited from engaging in the practice of law by  
10 representing or the Insurance Commissioner with respect to any and all legal and quasi-  
11 legal proceedings in this matter; and

12 2. Whether any person other than statutory counsel assigned by the Office of  
13 the Attorney General is authorized to provide legal representation to the Insurance  
14 Commissioner or to engage in the practice of law by representing the Insurance  
15 Commissioner with respect to any and all legal and quasi-legal proceedings in this  
16 matter.

17  
18 **STATEMENT OF FACTS AND EVIDENCE RELIED UPON**

19 This matter was initiated by the Insurance Commissioner when he issued his  
20 Order to Cease and Desist against the Respondents. The Order to Cease and Desist was  
21 executed by Drew Stillman, as "designee" of the Insurance Commissioner acting on  
22 behalf of the Insurance Commissioner. Mr. Stillman is an attorney employed by the  
23 Office of the Insurance Commissioner as an Insurance Enforcement Specialist.  
24

1 This Motion is based on the facts set forth in this motion and in the pleadings in  
2 this matter, declarations of the Insurance Commissioner, the Declaration of Brian  
3 Kreger, with Exhibits, submitted with this Motion, official documents of the Office of  
4 the Insurance Commissioner, applicable Supreme Court Rules, and applicable laws and  
5 appellate court decisions.  
6

## 7 LEGAL AUTHORITY AND DISCUSSION

### 8 The Practice of Law

9 The Washington Supreme Court has inherent power under the Washington  
10 State Constitution to regulate the practice of law. (See, *State v. Gresham*, 173 Wn.2d  
11 405, 269 P.3d 207 (2012). In numerous decisions, the Supreme Court has made it clear  
12 that “the practice of law is within the sole province of the judiciary.” *Cultum v.*  
13 *Heritage House Realtors*, 103 Wn2d 623, 627, 694 P.2d 630 (1985). “This court has  
14 repeatedly emphasized that this power to regulate the practice of law is within the sole  
15 discretion of the courts.” *Cultum, supra*, at 630 (citations omitted).  
16

17 In the exercise of its power to regulate the practice of law, the Supreme Court  
18 has adopted General Rule 24, defining the practice of law:

19 (a) General Definition: The practice of law is the  
20 application of legal principles and judgment with regard  
21 to the circumstances or objectives of another entity or  
22 person(s) which require the knowledge and skill of a  
23 person trained in the law. This includes but is not  
24 limited to:

(1) Giving advice or counsel to others as to their  
legal rights or the legal rights or responsibilities of  
others for fees or other consideration.

(2) Selection, drafting, or completion of legal

1 documents or agreements which affect the legal rights of  
2 an entity or person(s).

3 (3) Representation of another entity or person(s) in a  
4 court, or in a formal administrative adjudicative  
5 proceeding or other formal dispute resolution process or  
6 in an administrative adjudicative proceeding in which  
7 legal pleadings are filed or a record is established as  
8 the basis for judicial review.

9 (4) Negotiation of legal rights or responsibilities on  
10 behalf of another entity or person(s).

11 (GR 24(a); emphasis added).

### 12 **The Legality of Appearance and Representation**

13 The official records of adjudicative administrative proceedings before this  
14 tribunal indicate that Insurance Commissioner Mike Kreidler has appeared *pro se* in  
15 those proceedings, although it is noted that such *pro se* appearance has been through  
16 other employees of the OIC. (See, Exhibits A-1 to A-3 to Declaration of Brian  
17 Kreger). Based on Court rule and appellate decisions, the propriety of this alleged *pro*  
18 *se* appearance is outside the legal parameters Washington Courts have established,  
19 explicitly, that an individual's right to appear *pro se* cannot be transferred to another  
20 person.

21 In *State v. Hunt*, the Court approved a jury instruction stating that the right of a  
22 person to appear and represent himself in legal proceedings cannot be transferred to  
23 another. "Instruction 15 explains that a person may practice law on his own behalf but  
24 "cannot transfer his 'pro se' right to practice law to any other person." As we earlier  
explained, this is also an accurate statement of Washington law." (*State v. Hunt, supra*,  
at 807; internal quotes in original.) This "accurate statement of Washington law" was

Motion to Disqualify Insurance  
Enforcement Specialist - 4

— KREGER BEEGHLY, PLLC —  
999 Third Ave, Suite 3000  
Seattle, WA 98104-4088  
(206)829-2708

1 re-affirmed by the Court in *In Re Marriage of Herridge*, 169, Wn. App. 290, 279 P.3d  
2 956 (2012), where the Court held: “Moreover, although a person may practice law on  
3 his own behalf, “ ‘he cannot transfer his pro se right to practice law to any other  
4 person’.” (*Hunt*, 75 Wn. App. At 807).” (*Id.* at 303; internal quotes in original.)

5 The Insurance Commissioner’s right to appear *pro se* in an administrative  
6 proceeding is not challenged. However, Commissioner Kreidler’s attempt to delegate  
7 or transfer his *pro se* appearance to other employees is contrary to established law in  
8 Washington.

9 The law on Washington establishes clearly that the Insurance Commissioner  
10 cannot legally transfer to any other person or employee of the OIC the Commissioner’s  
11 authority to appear personally as a *pro se* party in administrative proceedings. With  
12 that established, attention now is drawn to the scope of the Commissioner’s authority  
13 that may be delegated to other employees of the Office of the Insurance Commissioner.  
14

#### 15 **Limits on Delegation of Authority**

16 The records of other adjudicative administrative proceedings to have come  
17 before this tribunal include documents signed by Commissioner Mike Kreidler stating  
18 that he has delegated to other OIC employees his authority to appear and engage in  
19 certain acts, including acts taken in administrative proceedings. (See, Declaration of  
20 Mike Kreidler, Exhibit B to Declaration of Brian Kreger; and, Delegation of Authority,  
21 Exhibit D to Declaration of Brian Kreger, attached hereto).

22 In his Declaration (Exhibit B), Commissioner Kreidler stated under penalty of  
23 perjury that, “To the extent that I am or would be authorized to appear myself to  
24 present and conduct this matter, I have previously authorized . . . staff to do so in my

1 name pursuant to RCW 48.02.100.” However unlawful even that delegation itself may  
2 be, Commissioner Kreidler did make it abundantly clear that “the staff employed  
3 within their division have not and are not acting as my legal representative or legal  
4 counsel, or as my attorneys.” (Kreidler Declaration, Exhibit B, p.2; emphasis added).

5 In his Delegation of Authority (Exhibit D), Commissioner Kreidler said: “I do  
6 hereby delegate to AnnaLisa Gellermann, Deputy Insurance Commissioner for Legal  
7 Affairs, and her staff of Insurance Enforcement Specialists, the authority to issue  
8 enforcement orders, propose and enter into settlements related to enforcement matters,  
9 and present the agency position on enforcement matters and any other adjudicative  
10 administrative proceedings involving the Office of the Insurance Commissioner.”  
11 (Kreidler Delegation of Authority, Exhibit D). In this Delegation of Authority,  
12 Commissioner Kreidler recites virtually the identical language set forth in GR 24,  
13 above, describing the practice of law. Commissioner Kreidler seems to assume, and  
14 then attempts to delegate to others, his right to engage in certain acts that would  
15 constitute the practice of law. The very acts Commissioner Kreidler describes in his  
16 Delegation are not within the powers granted to the Insurance Commissioner under the  
17 Insurance Code. Consequently, the very act of delegating those legal and quasi-legal  
18 activities is also is well beyond the scope of any authority the Insurance Commissioner  
19 may have. He has no authority to do either.

20 It should be noted here that the Supreme Court has not only promulgated a rule  
21 defining the practice of law, but also has spoken on what the practice of law entails. In  
22 *Bar Ass'n v. Great Western Federal*, 91 Wn.2d 48, 586 P.2d 870 (1978), the Court  
23 asserted: “The “practice of law” does not lend itself to precise definition. However, it  
24 is generally acknowledged to include not only the doing or performing of services in

1 the courts of justice, throughout the various stages thereof, but in a larger sense  
2 includes legal advice and counsel and the preparation of legal instruments by which  
3 legal rights and obligations are established." (*Bar Ass'n, supra*, at 54; citations  
4 omitted; emphasis added; internal quotes in original).

5 While he may do these acts as a *pro se* party in a proceeding, there is nothing  
6 in any provision of the Insurance Code giving authority to the Insurance Commissioner  
7 to delegate any of these legal activities and services to employees of the Office of the  
8 Insurance Commissioner. Therefore, any attempt to delegate is outside the law  
9 established and affirmed by the Supreme Court.

10 However, even if the Commissioner did have the authority to delegate certain  
11 "practice of law" activities to others (such as, to the "staff of Insurance Enforcement  
12 Specialists") – and, to reiterate, the Insurance Code clearly does not grant such  
13 authority to the Insurance Commissioner – the Insurance Commissioner specifically  
14 has not authorized those individuals to act as his attorney or legal representative, or to  
15 appear on his behalf as such. In fact, Commissioner Kreidler specifically withholds  
16 from the staff of Insurance Enforcement Specialists the authority to engage in any  
17 attorney representation. The Commissioner declares: "Attorney representation of the  
18 Commissioner and the agency, as well as the creation of any related privilege, is  
19 reserved for statutory counsel assigned by the Office of the Attorney General."  
20 (Kreidler Delegation of Authority, Exhibit D; emphasis added).

21 Furthermore, other official records of the Office of Insurance Commissioner  
22 clearly establish that the OIC's Insurance Enforcement Specialists recognize that they  
23 do not have the authority to act as a legal representative or attorney for the Insurance  
24 Commissioner or the OIC. In his Declaration, Alan Singer (then an attorney employee

1 of the OIC) states: "The Commissioner has, pursuant to RCW 48.02.100, authorized  
2 some of his employees to exercise his powers and duties under the Insurance Code by  
3 acting in his name in this matter. None of the Commissioner's staff members have  
4 appeared or acted in this matter pursuant to any attorney-client relationship with the  
5 Commissioner; none exists, and none was requested or intended." (Singer Declaration,  
6 Exhibit C to Declaration of Brian Kreger at p.2 of 3; emphasis added).

7 And, in the matter in which Commissioner Kreidler submitted his Delegation of  
8 Authority, Insurance Enforcement Specialist Marcia Stickler states only that the  
9 "Insurance Commissioner has delegated his authority to present the agency position on  
10 enforcement matters at administrative hearings." (Stickler Declaration, Exhibit D to  
11 Declaration of Brian Kreger; emphasis added).

12 These declarations of OIC staff are consistent with Commissioner Kreidler's  
13 own admonition to his staff and, by extension, to this tribunal that "the [OIC] staff  
14 employed in their division have not and are not acting as my legal representatives or  
15 legal counsel, or as my attorneys."

16 Commissioner Kreidler has specifically not authorized his staff or any  
17 employee of the OIC to act in the capacity of legal representative or attorney for the  
18 Commissioner or the OIC. The Commissioner's staff recognize and accept that their  
19 authority is limited to "presenting the agency position" and to not engage in any  
20 activities that could be seen as being included in the general definition of the practice  
21 of law as set forth in GR 24. The Insurance Commissioner has made it clear that those  
22 activities of legal representation or acting as an attorney for the Commissioner or the  
23 OIC are "reserved for statutory counsel assigned by the Office of the Attorney  
24 General."

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

## Unauthorized Practice of Law

Notwithstanding the limited authority the Insurance Commissioner has delegated to his staff, which is, for the most part, restricted to only presenting the position of the OIC at a hearing of a matter before this tribunal, Mr. Stillman, one of Commissioner Kreidler's Insurance Enforcement Specialists, has, in fact, acted as the Insurance Commissioner's attorney in this matter. He has provided legal advice and counsel and has selected, drafted, and completed legal documents by which the legal rights and obligations of an entity (the OIC) and a person (the Respondents and the Insurance Commissioner) are affected. This, says the Supreme Court, constitutes the practice of law and this authority, says the Insurance Commissioner, has not been delegated to an Insurance Enforcement Specialist or to any other employee of the OIC.

One recent example of Mr. Stillman's acting as the Insurance Commissioner's attorney and engaging in the practice of law in this matter is his recent filing of the OIC's Motion to Dismiss. Those activities undertaken by Mr. Stillman match precisely the Court's observation that the practice of law includes performing services throughout the various stages of court (or tribunal) proceedings; and, these activities are outside the scope of Mr. Stillman's express and implied authority. And, since Mr. Stillman already has presented the OIC's position in this matter currently before this tribunal, he has exhausted the full range of his delegated authority.

Yet despite this, Mr. Stillman continues to represent the OIC and the Insurance Commissioner in this formal adjudicative administrative proceeding in which legal pleadings are filed and a record is established as the basis for judicial review. That representation and the associated activities constitute the practice of law, as defined in

1 GR 24, and are outside the scope of Mr. Stillman's limited authority restricted simply  
2 to presenting the OIC's position in this matter.

3 In other words, whenever Mr. Stillman drafts legal instruments, engages in  
4 discovery, examines witnesses, presents argument, participates in any other activity as  
5 the advocate for the Insurance Commissioner or the OIC throughout the various stages  
6 of proceedings in this matter, or engages in negotiations affecting the sights of others,  
7 he is engaging in the unauthorized practice of law. And, whenever Mr. Stillman  
8 provides legal advice and counsel to the Insurance Commissioner, or acts as attorney or  
9 legal representative for the Insurance Commissioner, or undertakes any other action or  
10 legal representation in this matter that falls within the Supreme Court's definition of the  
11 practice of law, he violates also the Insurance Commissioner's direct order that he is  
12 not to engage in those acts.

13 Furthermore, none of the exceptions or exclusions to the definition of the  
14 practice of law noted in GR 24 saves Mr. Stillman. All the permissible exceptions and  
15 exclusions to what would otherwise constitute the unauthorized practice of law have  
16 specific applicability to specific acts or circumstances, none of which applies to Mr.  
17 Stillman in his role as Insurance Enforcement Specialist for the OIC in this matter.  
18

19 **Attorney General Is Insurance Commissioner's Only Legal Counsel**

20 As Commissioner Kreidler admits and acknowledges, only statutory counsel  
21 assigned by the Office of the Attorney General are authorized, or can be authorized  
22 under the law, to represent the Insurance Commissioner and the OIC. This is an  
23 accurate statement of the law in Washington.  
24

1 By admitting and acknowledging that the Attorney General is to represent him  
2 and the Office of the Insurance Commissioner, the Insurance Commissioner conforms  
3 entirely to the Governor's directive to all executive agency heads prohibiting the  
4 employment of in-house attorneys for their respective agencies. (See, Memorandum of  
5 Nicholas Brown, General Counsel to the Governor, Exhibit E to Declaration of Brian  
6 Kreger). This directive from the Chief Executive Officer of the State of Washington  
7 makes it clear to all agency and department heads that "legal advice and legal  
8 representation generally provided to your agencies must come from the Attorney  
9 General's Office, rather than from in-house attorneys." (Memorandum, Exhibit E;  
10 emphasis added). The legal basis for this directive to state agency heads is based on  
11 several provisions of law, as noted in the Memorandum and addressed in more detail  
12 below.

13 Article III, Section 21 of the Washington State Constitution clearly and  
14 unambiguously establishes what the duty and role of the State's Attorney General shall  
15 be: "The attorney general shall be the legal adviser to the state officers, and shall  
16 perform such other duties as may be prescribed by law." (Const. Art. III, Sec. 21;  
17 emphasis added).

18 Those "other duties" of the Attorney General are found in several sections of  
19 the Revised Code of Washington, which pertain precisely to the issue presented in this  
20 motion.

21 RCW 43.10.030 General powers and duties, states, in pertinent part:

22 "The attorney general shall:

23 (1) Appear for and represent the state before the supreme court or the  
24 court of appeals in all cases in which the state is interested;

1 (2) Institute and prosecute all actions and proceedings for, or for the use  
2 of the state, which may be necessary in the execution of the duties of  
3 any state officer;

4 (3) Defend all actions and proceedings against any state officer or  
5 employee acting in his or her official capacity, in any of the courts of  
6 this state or the United States;" (Emphasis added.)  
7

8 RCW 43.10.040 Representation of boards, commissions and agencies.

9 "The attorney general shall also represent the state and all officials,  
10 departments, boards, commissions and agencies of the state in the courts, and  
11 before all administrative tribunals or bodies of any nature, in all legal or quasi  
12 legal matters, hearings, or proceedings, and advise all officials, departments,  
13 boards, commissions, or agencies of the state in all matters involving legal or  
14 quasi legal questions, except those declared by law to be the duty of the  
15 prosecuting attorney of any county." (Emphasis added.)  
16

17 RCW 43.10.067 Employment of attorneys by others restricted.

18 "No officer, director, administrative agency, board, or commission of  
19 the state, other than the attorney general, shall employ, appoint or retain in  
20 employment any attorney for any administrative body, department, commission,  
21 agency, or tribunal or any other person to act as attorney in any legal or quasi  
22 legal capacity in the exercise of any of the powers or performance of any of the  
23 duties specified by law to be performed by the attorney general, except where it  
24 is provided by law to be the duty of the judge of any court or the prosecuting

1 attorney of any county to employ or appoint such persons: PROVIDED, That  
2 RCW 43.10.040, and 43.10.065 through 43.10.080 shall not apply to the  
3 administration of the commission on judicial conduct, the state law library, the  
4 law school of the state university, the administration of the state bar act by the  
5 Washington State Bar Association, or the representation of an estate  
6 administered by the director of the department of revenue or the director's  
7 designee pursuant to chapter 11.28 RCW.” (Emphasis added.)  
8

9 The exact legal issue presented to this tribunal in this motion (namely, the  
10 recognition of the *only* attorney who is authorized to represent an agency head – in this  
11 matter, the Insurance Commissioner – and initiate and prosecute an adjudicative  
12 proceeding on his behalf), was presented to the Washington Supreme Court in  
13 *Goldmark v. McKenna*, 172 Wn. 2d 568, 259 P. 3d 1095 (2011). In that case, the  
14 Attorney General had refused to prosecute an appeal at the request of the commissioner  
15 of public lands. The commissioner sought a writ of mandamus to compel the Attorney  
16 General to represent that agency in pursuing an appeal of an adverse lower court  
17 decision. The Supreme Court relied on the very same provisions of Const. art. III, §  
18 21, RCW 43.10.040, and RCW 43.10.067 (and a statute similar to RCW 48.02.080)  
19 and held that the Attorney General’s duty to represent the agency is mandatory and that  
20 the Attorney General has no discretion to deny the commissioner legal representation.  
21

22 The Court noted, “The plain language of the statutes, however, leaves little to  
23 question” that “the attorney general has a statutory duty to represent the  
24 commissioner.” (*Goldmark* at 573; emphasis added). The Court continued,  
“Moreover, only the attorney general, or an SAAG [special assistant attorney general]

1 may represent the commissioner since RCW 43.10.067 prohibits the commissioner  
2 from hiring outside counsel.” (*Id.*, *emphasis added.*)

3       The Court further noted that, “. . . pursuant to RCW 43.10.067, the  
4 commissioner may not “employ, appoint, or retain . . . any attorney . . . to act in any  
5 legal or quasi legal capacity in the performance of any of the duties specified by law to  
6 be performed by the attorney general.” RCW 43.10.067. If the attorney general could  
7 refuse to represent the commissioner, then the commissioner could be left without any  
8 legal representation whatsoever.” \* \* \* “Instead, it appears the commissioner has the  
9 choice of one attorney to represent him, and that is the attorney general. The attorney  
10 general, however, has no choice but has a statutory duty to represent his client, the  
11 commissioner.” (*Goldmark* at 573-4; quotes in original; emphasis added.)

12       The Attorney General offered various arguments to the Court that the Office of  
13 the Attorney General has broad discretion in deciding which cases the office will  
14 undertake to represent on behalf of a particular state agency. The Supreme Court  
15 rejected all those arguments, stating: “No contrary legislative intent [to the above cited  
16 statutes] has been offered by the attorney general, so we conclude that the attorney  
17 general has a statutory duty to provide the commissioner with legal representation.”  
18 (*Id.* at 575.) In concluding that a writ of mandamus was appropriate, the Court  
19 concluded: “Given the mandatory language of the statute and the prohibition of hiring  
20 outside counsel, no discretion is involved, and representation is required.” (*Id.* at 582;  
21 emphasis added.)

22       In *Goldmark*, the Attorney General also challenged the Supreme Court to  
23 concede that its holding in *State v. Gattavara*, 182 Wash. 325, 47 P.2d 18 (1935)  
24 somehow supported the Attorney General’s view that he had discretionary ability

1 regarding whether he would or would not provide legal representation to the  
2 commissioner. The Court refuted this argument and explained that *Gattavara* was not  
3 concerned so much with the issue of the Attorney General representing the state  
4 agency, as it was with the question of who has the authority to initiate legal  
5 proceedings for the state agency.

6 The Court's holding in *Gattavara* is very instructive in the present matter  
7 before the OIC's Hearing Officer. That case was brought on a motion to quash the  
8 summons and dismiss the state's case against the appellants because the matter had not  
9 been brought by the attorney general or by anyone authorized by law to bring the action  
10 for the state. The Court recited the same provision of the Constitution as above, Article  
11 III, Section 21, and those sections of the law that are the precursors to RCW  
12 43.10.030(2) and RCW 43.10.040, set forth above. The pertinent section of earlier  
13 Washington code, Rem. Rev. Stat. § 112 (P.C. 6574-3), as set out in the Court's  
14 opinion, reads: "Sec. 3. The attorney general shall have the power and it shall be his  
15 duty: (2) To institute and prosecute all actions and proceedings for, or for the use of the  
16 state which may be necessary in the execution of the duties of any state officer."  
17 Referring to both the constitutional and statutory mandates, the Court held: "Although  
18 the constitutional provision above quoted is not self-executing, when the duties of the  
19 *Attorney General* are prescribed by statute and the statute has for its purpose the  
20 authorization of proper state officers to bring actions, that authority is exclusive."  
21 (*Gattavara, supra*, at 329; italics in original; emphasis added). The Court was adamant  
22 that the Attorney General's duty is not a mere technicality, and the consequences of a  
23 failure of that duty are severe.  
24

1 As further legal evidence that the Attorney General, and only the Attorney  
2 General may represent the Insurance Commissioner in this proceeding, one needs to  
3 look no farther than RCW 43.10.040, cited in full above: "The attorney general shall  
4 also represent the state and all officials, departments, boards, commissions and  
5 agencies of the state in the courts, and before all administrative tribunals or bodies of  
6 any nature, in all legal or quasi legal matters." (Emphasis added). This is a statutory  
7 mandate following the constitutional mandate establishing the office and the duties of  
8 the Attorney General. The statute could not be clearer and there is no room for varying  
9 interpretations of what that law directs the Attorney General to do.

10 *Sanders v. State*, 166 Wn.2d 164, 207 P.3d 1245 (2009), speaks directly to this  
11 point. *Sanders* involved a matter where the attorney general did not represent a state  
12 official in a legal action brought against the official because the official's acts  
13 complained of were unauthorized and unethical. In upholding the attorney general's  
14 refusal of legal representation under those circumstances, the Supreme Court took the  
15 opportunity to provide the Court's opinion on interpreting the intent of RCW  
16 43.10.040, as follows: "The court's primary duty in interpreting any statute is "to  
17 discern and implement the intent of the legislature." *State v. J.P.*, 149 Wn.2d 444, 450,  
18 69 P.3d 318 (2003). In this case, the statute under which Justice Sanders seeks his fees  
19 is RCW 43.10.040. As the Court of Appeals notes, RCW 43.10.040 was enacted in  
20 1941 "to end the proliferation of attorneys hired by various state agencies and place the  
21 authority for representation of state agencies in the Attorney General." *State v.*  
22 *Herrmann*, 89 Wn.2d 349, 354, 572 P.2d 713 (1977)." (*Sanders* at 171; quotes in  
23 original; emphasis added.)  
24

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

The Washington State Constitution directs that the Attorney General “shall be the legal adviser of the state officers, and shall perform such other duties as may be prescribed by law.” (Const. Art. III, Sec. 21). Those additional legal duties are statutorily prescribed in RCW 43.10.040, RCW 48.02.080, and RCW 43.10.067. The plain language of the Constitution and the laws leaves little to question regarding the Attorney General’s mandate to represent the Insurance Commissioner and the OIC, and to initiate and preform all legal and quasi legal services proceedings on behalf of the Insurance Commissioner and the OIC through the various stages of this matter before this tribunal. (See also, *Goldmark v. McKenna, supra*; *State v. Gattavara, supra*).

There is no other provision in either the Constitution or the Revised Code of Washington that in the least bit modifies the mandatory duties assigned to the Attorney General. Nor is there any legal authority for the Insurance Commissioner to authorize his Insurance Enforcement Specialists or any other employee of the OIC to act as legal representative or attorney for or on behalf of the Insurance Commissioner and the OIC, or to engage in any activities that constitute the practice of law, whether in this matter currently before this tribunal or in any administrative proceeding initiated by the Insurance Commissioner.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

## CONCLUSION

The Insurance Commissioner's Insurance Enforcement Specialist has undertaken and continues to undertake actions in this matter that fall squarely within the Supreme Court's definition of the practice of law. The Insurance Enforcement Specialist is not authorized to engage in these actions for a number of reasons, including the following: only duly qualified attorneys, or persons acting in the limited role as *pro se* counsel for themselves, are authorized under Court rule and the laws of the State of Washington to engage in activities that constitute the practice of law; the Insurance Commissioner has specifically instructed his staff, including the Insurance Enforcement Specialist involved in this matter, that they are not authorized to act as the Insurance Commissioner's legal representatives or legal counsel or as attorney in administrative proceedings; the Insurance Commissioner is not authorized to delegate or transfer his authority to personally appear and conduct this current adjudicative administrative proceeding; the Attorney General of the State of Washington, or statutory counsel assigned by the Attorney General, is the only attorney authorized under the laws of the State of Washington to represent the Insurance Commissioner in this current matter or in any administrative proceeding initiated by or for the Office of the Insurance Commissioner; and, the Insurance Enforcement Specialist in this matter lacks the legal authority to act as the attorney or legal representative for the Insurance Commissioner and the OIC in this matter.

For these reasons and based on all the evidence and law set forth above in this Motion, the Respondents respectfully request that the Hearing Officer of this tribunal issue and Order Disqualifying Insurance Enforcement Specialist Drew Stillman and all other Insurance Enforcement Specialist employees of the Office of the Insurance

1 Commissioner from further representation of the Insurance Commissioner and the OIC  
2 in this matter and directing that all such persons refrain from engaging in any activities  
3 that constitute the practice of law with respect to any of the various stages of this  
4 adjudicative administrative proceeding currently before this tribunal.  
5

6 DATED this 26<sup>th</sup> day of October, 2016  
7

8 KREGER BEEGHLY, PLLC  
9

10 

11 Brian F. Kreger,  
12 WSBA Number 10670

13 Attorney for Respondents  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

CERTIFICATE OF SERVICE

I, Brian F. Kreger, under penalty of perjury under the laws of the State of Washington do hereby declare and certify that I served and caused to be delivered by United States Postal Delivery and by Electronic Mail Delivery the foregoing **Motion To Disqualify Insurance Enforcement Specialist From Representing Insurance Commissioner and Declaration of Brian Kreger (with Exhibits)** on the following parties or persons at the last known addresses given below:

TO:  
Drew Stillman  
Insurance Enforcement Specialist  
Office of the Insurance Commissioner  
P.O. Box 40255  
Olympia, WA 98504-0255  
and to: DrewSt@OIC.WA.GOV

TO:  
Hearings Unit  
ATTN: Dorothy Seabourne-Taylor  
Office of the Insurance Commissioner  
P.O. Box 40255  
Olympia, WA 98504-0255  
DorothyS@oic.wa.gov

Executed on this 26<sup>th</sup> day of October, 2016 in Seattle, WA.

  
Brian F. Kreger