

Timothy B. Strauch
c/o Office of Disciplinary Counsel
P.O. Box 1099
Helena, MT 59624-1099
Tel: 406.442.1648
Fax: 406.442.2685

Special Counsel for the Office of Disciplinary Counsel

**BEFORE THE COMMISSION ON PRACTICE OF THE
SUPREME COURT OF THE STATE OF MONTANA**

IN THE MATTER OF AUSTIN MILES)	Supreme Court Cause No. _____
)	
KNUDSEN,)	ODC File No. 21-094
)	
An Attorney at Law,)	COMPLAINT
)	
Respondent.)	[MRPC 3.4(c), 5.1(c), 8.2(a), 8.4(a), and
)	8.4(d)]

By leave of the Commission on Practice granted on August 31, 2023, the Office of Disciplinary Counsel for the State of Montana (ODC), hereby charges Respondent, Austin Miles Knudsen, with professional misconduct as follows:

GENERAL ALLEGATIONS

The following allegations are common to and incorporated in all Counts of this Complaint:

Nature of the Action

1. This is a disciplinary action brought pursuant to the Montana Rules of Professional Conduct (“MRPC” or the “Rules”), which govern all Montana lawyers. In accordance with those Rules, a lawyer “should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials.” MRPC, Preamble, ¶(6). Lawyers are officers of the court and, as such, must “conduct themselves

in a manner compatible with the role of courts in the administration of justice.” *In re Snyder*, 472 U.S. 634, 644-645 (1985). This complaint charges the Respondent, Austin Miles Knudsen (“Knudsen”), with violations of certain Rules intended to preserve public confidence in the fairness and impartiality of our system of justice in the State of Montana. “Obedience to ethical precepts may require abstention from what in other circumstances might be constitutionally protected speech.” *See, e.g., In re Sawyer*, 360 U.S. 622, 646-47 (1959) (Stewart, J., concurring). Contrary to these ethical precepts, Knudsen and lawyers under his supervision routinely and frequently undermined public confidence in the fairness and impartiality of our system of justice by attempting to evade the authority of the Montana Supreme Court and assaulting the integrity of the judiciary and the individual Justices who were duly elected by Montana citizens to make decisions. Because of this misconduct, the public may be led to question whether the judicial system itself is worthy of respect.

Jurisdiction

2. Knudsen was admitted to the practice of law in the State of Montana in 2008, at which time he took the oath required for admission, wherein, among other things, he swore to: support the Constitution of the United States and the Constitution of the State of Montana; maintain the respect due to the courts of justice and judicial officers; be candid, fair, and courteous before the court and with other attorneys; faithfully discharge the duties of an attorney and counselor at law with fidelity to the best of his knowledge and ability; and strive to uphold the honor and to maintain the dignity of the profession to improve not only the law but the administration of justice. Knudsen also swore to faithfully follow the Rules promulgated by the Montana Supreme Court, including the

Rules establishing the Court's regulatory authority over him as a Montana lawyer.

3. The Montana Supreme Court has exclusive jurisdiction over this matter pursuant to Mont. Const. Article VII, Section 2(3), MRPC 8.5(a), and Montana Rules for Lawyer Disciplinary Enforcement (MRLDE) Rule 7.

Attorney General Knudsen's Qualifications and Duties

4. Knudsen assumed office as the Montana Attorney General ("AG") on January 4, 2021, and continues to serve as AG through the filing of this Complaint.

5. Among other things, it is Knudsen's duty as AG to prosecute or defend all causes in the Montana Supreme Court in which the State or any officer of the State in the officer's official capacity is a party or in which the State has an interest. However, the basis of any agreement, appointment, communication, or understanding between the AG and the Legislature by which the AG undertook to represent the Legislature in connection with the specific matters alleged below has not been publicly disclosed.

Brown and McLaughlin Proceedings

6. On March 17, 2021, a Petition for Original Jurisdiction was filed in *Brown, et. al. v. Gianforte*, Montana Supreme Court Case No. OP 21-0125 ("*Brown*"), challenging the constitutionality of SB 140. The AG appeared as counsel of record in *Brown* on behalf of the Respondent, Governor Gianforte.

7. On April 1, 2021, the AG on behalf of Governor Gianforte, filed in *Brown* a motion to disqualify Judge Krueger, who was acting Chief Justice after Chief Justice McGrath recused himself and called in Judge Krueger. In a Declaration in support of the motion, Derek Oestreicher ("Oestreicher"), in his capacity as an attorney employed by the AG, attached copies of emails between Montana Supreme Court Administrator Beth

McLaughlin (“McLaughlin”) and the Supreme Court Justices and district court judges, purportedly “consistent with [his] ethical obligations” under MRPC 8.3 (informing the “appropriate disciplinary authority” of misconduct of another lawyer or judge.)

8. Contrary to Oestreicher’s assertion, if he or any other attorney with the AG believed there was an ethical obligation to report alleged misconduct by a judge, including one or more Justice of the Montana Supreme Court, MRPC 8.3 required the attorney to inform the Montana Judicial Standards Commission, which is the appropriate disciplinary authority over judicial misconduct, Jud. Stds. Comm. Rule 9, in accordance with the Rules of that Commission, not as the AG did.

9. On April 8, 2021, the Legislature issued a subpoena signed by Sen. Keith Regier, to Misty Giles, Director of Administration of the Department of Administration, demanding the production on April 9 of “[a]ll emails and attachments sent and received by Court Administrator Beth McLaughlin between January 4, 2021 and April 8, 2021 . . .” and “[a]ny and all recoverable deleted e-mails sent or received by Court Administrator Beth McLaughlin between January 4, 2021 and April 8, 2021 . . . (emphasis added).”

10. Upon information and belief, in response to the April 8 subpoena, sometime after receiving the subpoena on April 8 and by April 9, Giles produced to a person or persons on behalf of the Legislature over 5,000 responsive emails in electronic format on two USB drives.

11. On April 11, 2021, the Supreme Court issued a Temporary Order in *Brown* quashing the Legislature’s April 8 subpoena until a hearing could be held to consider the merits and parameters of the Legislature’s subpoena powers and pending further order of the Court.

12. On or about April 12, 2021, a person or persons on behalf of the Legislature provided the AG with two USB drives containing over 5,000 emails produced by Giles. The AG processed, copied, and reviewed the files contained on the two USB drives and thereafter retained custody, possession, and control over both the two USB drives and the files processed and copied from those drives. The reasons why the Legislature provided the emails to the AG's office or why or on whose behalf the AG's office accepted, processed, copied, reviewed, or maintained custody, possession, and control over the files are unclear and not confirmed in any writing (at least any writing that has been shared with the ODC).

13. On April 12, 2021, DOJ "Lieutenant General" Kristin Hansen ("Hansen") (now deceased), wrote a letter on the AG's letterhead to Supreme Court Acting Chief Justice Jim Rice stating, among other things, the following:

The Legislature does not recognize this Court's [April 11] Order as binding and will not abide it. The Legislature will not entertain the Court's interference in the Legislature's investigation of the serious and troubling conduct of members of the Judiciary. The subpoena is valid and will be enforced.

A copy of that letter is filed in the Court's docket in *Brown*.

14. Also on April 12, 2021, McLaughlin filed a Petition for Original Jurisdiction and Emergency Request to Quash/Enjoin Enforcement of Legislative Subpoena in *McLaughlin v. the Montana State Legislature and the Montana Department of Administration*, Montana Supreme Court Case No. OP 21-0173 ("*McLaughlin*"). The AG entered an appearance on behalf of the Legislature in *McLaughlin*.

15. On April 14, 2021, the AG, on behalf of the Legislature, filed in *McLaughlin* a Motion to Dismiss McLaughlin's Petition, stating, among other things, the following:

A. "Original jurisdiction here, if accepted, creates a conflict of interest for the Court

in that the Court's employee, though attempting to skirt this fact by styling the suit solely in her personal capacity, is acting in her representative capacity for the Court, and is the Plaintiff. This inherent bias requires recusal of, at minimum, the entire panel of Justices.

- B. The April 11 Order "will not bind the Legislature and will not be followed."
- C. "McLaughlin's current Petition seeks yet another Court order which will not bind the Legislature and will not be followed."

16. On April 16, 2021, the Supreme Court issued an order in *Brown* and *McLaughlin* staying enforcement of various Legislative subpoenas.

17. On April 18, 2021, Hansen wrote a letter on the AG's letterhead to all the Montana Supreme Court Justices regarding their obligations to appear and testify in response to the subpoenas issued to them. Regarding the Court's April 16 Order, the letter states the following:

The Court here lays claim to sole authority over provision of due process for all branches of government, which is ludicrous. The statement implies that the Legislature is not capable of providing a forum in which due process may be had by subjects of Legislative inquiry. This statement is wholly outside the bounds of rational thought, given that all branches and levels of government are bound to provide due process to citizens in every action taken, and which the Executive and Legislative branches do every day.

A copy of that letter is filed in the Court's dockets in *Brown* and *McLaughlin*.

18. On April 30, 2021, the AG, on behalf of the Legislature, filed in *McLaughlin* a Motion to Disqualify all Justices, alleging the Justices had a clear conflict of interest in hearing a case involving the Court's Administrator and staff. Among other things, it includes the following statements:

- A. "A quick recitation of the facts demonstrates the bewilderingly obvious conflict of interest this Court faces with the parties and subject matter at issue here. This conflict justifies and requires summary disqualification of each member of this Court."
- B. "That weekend transaction, which necessarily included ex parte communications

that have neither been acknowledged nor disavowed, resulted in the Court stifling the production of its own public records held by McLaughlin.”

- C. “Members of this Court have an obligation to promote confidence in the independence, integrity, or impartiality of the judiciary, see MCJC 1.2, but these actions do precisely the opposite.”
- D. “This matter has arisen because evidence of judicial misconduct has come to public light.”
- E. “The self-interest is so apparent, any attempt by this Court to decide the question runs afoul of state law and the MCJC.”
- F. “We are well beyond the point where the Court’s impartiality and independence ‘might reasonably be questioned.’ This is not merely the appearance of impropriety. This is actual impropriety.”

19. Also on April 30, 2021, the AG, on behalf of the Legislature, filed in *McLaughlin* a Response to the Petition, challenging the Supreme Montana Court’s jurisdiction. Among other things, it stated McLaughlin “prefer[ed] instead the sanctuary of her bosses’ conflict of interest.”

20. On May 12, 2021, the Supreme Court issued an Opinion and Order in *McLaughlin* denying the Legislature’s Motion to Recuse Justices, *McLaughlin v. Legislature*, 2021 MT 120, 404 Mont. 166, 489 P.3d 482.

21. On May 19, 2021, Knudsen wrote a letter on AG letterhead to the Supreme Court in response to its May 12, 2021, Order, “to object to some of the Court’s statements, which appear to me nothing more than thinly veiled threats and attacks on the professional integrity of attorneys in my office.” A copy of that letter is filed in the Court’s docket in *Mclaughlin*.

22. In his May 19, 2021, letter to the Justices, Knudsen acknowledged that “attorneys in his office ‘delivered strong statements from the Legislature regarding the Court’s lack of jurisdiction, the invalidity of resultant orders, and the impropriety of this

Court presuming to ‘settle’ its dispute with a coordinate branch of government.”

23. In his May 19, 2021, letter to the Justices, Knudsen also acknowledged that lawyers have “affirmative obligations” “to always pursue the truth, *see* [MRPC] Preamble § 1, and to safeguard ‘the integrity of the of the [legal] system and those who operate it as a basic necessity of the rule of law.’ [MRPC] Preamble § 14.” As a lawyer, Knudsen has and had, during the period alleged in this Complaint, those same obligations.

24. Knudsen’s May 19, 2021, letter to the Justices contains the following statements, among others:

- A. “Much can be said about the impropriety of the Court, the State’s highest disciplinary authority, bandying such warnings under circumstances like this.”
- B. [Quoting Page 10 of the May 12, 2021, Order]: “That statement is inaccurate almost to a word. It assumes facts and ascribes malintent so brazenly, it betrays a self-admission that the Court’s posture in this matter is adversarial—not adjudicatory. But for purposes of this letter, to the extent you are again attributing allegedly unethical behavior to my attorneys, that is incorrect and inappropriate.”
- C. “There is also some irony in accusing these fine attorneys of disrupting the administration of justice when their client’s argument is that it is constitutionally, legally, and ethically improper for this Court to attempt to administer justice in this matter.”
- D. “All this to say, while this dispute is extraordinary and troubling, please refrain from threatening or maligning the integrity of my attorneys who are assiduously living up to their ethical obligations under unusual circumstances. If you wish to vent any further frustrations about the conduct of attorneys in my office, I invite you to contact me directly.”

25. On May 26, 2021, the AG, on behalf of the Legislature, filed in *McLaughlin* a Petition for Rehearing of the Court’s May 12 Order. Among other things, it contains the following statements:

- A. “The Court Overlooked and Misstated Material Facts.”
- B. “And if those [emails] are anything like some of the other intemperate emails

already publicly available, the Court and its members have an obvious interest in providing a specific answer to that dusty old legal question about the scope of legislative subpoena power.”

- C. “The Legislature has repeatedly stated that the Court’s failure to disclose and produce ex parte communications between the justices and the Court Administrator demonstrates actual bias.”
- D. “And the Chief Justice’s emails betray a disdain for the Legislature that amounts to actual bias.”
- E. “...the Court’s multiple procedural irregularities (granting unnoticed weekend relief to nonparties for nonparties, refusing to disclose ex parte communications, etc.)”
- F. “Here, the Justices are institutionally and personally interested in the outcome, so their ability to be impartial is justifiably suspect.”
- G. “Specifically, the Court asserts that no Justice ‘participate[d]’ in the polls conducted by the MJA. Respectfully, public records tell a different tale.”
- H. “[I]t is perverse to suggest that this Court will determine whether its own polling practices are misconduct.”
- I. “It’s not all that surprising, but the Court appears to suffer from the bias of Maslow’s Hammer. See Abraham Maslow, *THE PSYCHOLOGY OF SCIENCE* 15 (1966) (‘if all you have is a hammer, everything looks like a nail’).”
- J. “Here, however, the disqualifying interest is not hypothetical. It is evident in the petitioning party (the Court’s Administrator), her objectives (to prevent disclosure of more embarrassing and ethically dubious judicial emails; to use judicial power to curtail legislative power in a dispute between the judiciary and the Legislature), and the Court’s multiple procedural irregularities (granting unnoticed weekend relief to nonparties for nonparties, refusing to disclose ex parte communications, etc.) that disqualifying interests are clear and present.”
- K. “Which begs the question: who will judge the judges? According to this Court—the judges. The judges will judge the judges. That of course defies common and constitutional sense.”

26. On June 10, 2021, the Court issued its Opinion and Order in *Brown, Brown v. Gianforte*, 2021 MT 149, 404 Mont. 269, 488 P.3d 548.

27. On June 22, 2021, the Legislature withdrew its subpoenas to McLaughlin and

the Justices.

28. On July 14, 2021, the Supreme Court issued its Opinion and Order in *McLaughlin, McLaughlin v. Mont. State Legislature*, 2021 MT 178, 405 Mont. 1, 493 P.3d 980.

29. Among other things, the Supreme Court ordered the following:

c. The Montana Legislature and its counsel are permanently ENJOINED from disseminating, publishing, re-producing, or disclosing in any manner, internally or otherwise, any documents produced pursuant to the subject subpoenas; and

d. The Montana Legislature is ORDERED to *immediately* return any materials produced pursuant to the subject subpoenas, or any copies or reproductions thereof, to Court Administrator Beth McLaughlin (emphasis added).

McLaughlin v. Mont. State Legislature, 2021 MT 178, ¶ 57.

30. As of the date of the Supreme Court's July 14 Order, the AG, purportedly in his representative capacity on behalf of the Legislature, still had custody, possession, and control over both the two USB drives produced by Giles and the files processed and copied from those drives. However, the AG did not immediately return to McLaughlin those materials as ordered. The AG did not return any files to McLaughlin until at least March 22, 2022, followed by additional materials on April 15, 2022.

31. On August 11, 2021, the AG, on behalf of the Legislature, filed in *McLaughlin* a Petition for Rehearing of the Court's July 14 Opinion and Order. Among other things, it contains the following statements:

- A. "Mazars can't support the circumstances here, where the Montana Supreme Court is hearing a case in which it is an interested party...."
- B. "Simply ignoring why we're here doesn't change why we're here—questionable judicial conduct."
- C. "The Court lacks prudential standing, violates due process, and worsens an already disqualifying conflict of interest."

- D. “The Opinion, on the other hand, is an unwarranted confiscatory decree.”
- E. “The Court’s dismissive treatment of the Legislature’s investigation into the records-retention practices of judicial officers blinks reality.”
- F. [Referencing *McLaughlin*, ¶ 45] “That is a stunning, counterfactual denial.”
- G. “The Court’s newfound power furthers the mistaken notion that the judiciary is immune to independent inquiry. These advisory statements must be withdrawn.”
- H. “This controversy began with an unnoticed weekend order in a case the present defendant was not party to, facilitated by ex parte communications.”
- I. “The Legislature therefore incorporates its prior arguments and encourages the Court to take this last chance to defuse the constitutional tinder box it has kindled.”
- J. “Apart from that, the Opinion contains numerous misstatements, ...”

32. On September 7, 2021, the Court denied the Legislature’s Petition for Rehearing in *McLaughlin*.

33. On December 6, 2021, the AG, on behalf of the Legislature, filed a Petition for Writ of Certiorari of *McLaughlin* (2021 MT 178), in the U.S. Supreme Court, and placed on the docket December 9, 2021, as No. 21-859. Among other things, the Petition contains the following statements:

- A. “Judicial self-dealing on this scale might be unprecedented in the Nation’s history.”
- B. “It [the Montana Supreme Court] reached out to facilitate a case brought by its appointee to conceal its misbehavior.”
- C. “Manifold conflicts arose at every step of litigation, and the court ignored them all.”
- D. [Referencing *McLaughlin*, 2021 MT 178, ¶¶ 9 and 11], “In addition to being untrue, these statements—a panegyric to insincerity—came after the nonparty Justices stayed their own subpoenas.”
- E. “Look how the *McLaughlin* case started—with an unnoticed, weekend motion

and court order, facilitated by still undisclosed *ex parte* communications, in a case to which neither McLaughlin nor the Legislature were parties.”

- F. “From the first, the six *McLaughlin* Justices determined to pilot this dispute to their desired outcome.”
- G. “The Chief Justice’s communications showed that the fix was in.”
- H. “The Justices below harbored direct interests in the outcome of *McLaughlin*.”
- I. “They [the six *McLaughlin* Justices] charged ahead, ensuring a result that bailed themselves out of an investigation prompted by their own inappropriate behavior.”
- J. “It permitted them [the Montana Supreme Court] to resolve the legal question of legislative subpoena power, and by emasculating that power, to conceal judicial branch misbehavior from the light of day.”
- K. “It bears repeating: the Montana Supreme Court’s own actions—not the Legislature’s—created and deepened the Justices’ disqualifying interests.”

34. The U.S. Supreme Court denied the Petition for Writ of Certiorari on March 21, 2022.

COUNTS

April 12, 2021, Letter

Count 1 (MRPC 5.1(c) and 3.4(c)): Knudsen violated MRPC 5.1(c) and 3.4(c) as a consequence of the April 12, 2021, letter being sent to Supreme Court Acting Chief Justice Jim Rice. Sending the Court, a letter to reargue an issue, resist the ruling, or insult the judge constitutes a knowing disobedience of an obligation under the rules of a tribunal. Knudsen either ordered the letter to be sent or, with knowledge of it, ratified or ignored it. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for sending the letter and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 2 (MRPC 5.1(c) and 8.4(d)): Knudsen violated MRPC 5.1(c) and 8.4(d) as a consequence of the April 12, 2021, letter being sent to Supreme Court Acting Chief Justice Jim Rice. All AG lawyers are officers of the Court and obligated to uphold the dignity of the Court, which, at a minimum, required them to refrain from sending a letter to the Court in criticism of its Order. This conduct was prejudicial to the administration of justice. Knudsen either ordered the letter to be sent or, with knowledge of it, ratified or ignored it. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for sending the letter and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 3 (MRPC 5.1(c) and 3.4(c)): Knudsen violated MRPC 5.1(c) and 3.4(c) as a consequence of one or more of the following statements contained in the April 12, 2021, letter to Supreme Court Acting Chief Justice Jim Rice:

- a) *“The Legislature does not recognize this Court’s [April 11] Order as binding and will not abide it.”*
- b) *“The Legislature will not entertain the Court’s interference in the Legislature’s investigation of the serious and troubling conduct of members of the Judiciary.”*
- c) *“The subpoena is valid and will be enforced.”*

Such statements are contemptuous, undignified, discourteous, and/or disrespectful and constitute a knowing disobedience of an obligation under the rules of a tribunal. Knudsen either ordered the statements to be made or, with knowledge of them, ratified or ignored them. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable

remedial action.

Count 4 (MRPC 5.1(c) and 8.2(a)): Knudsen violated MRPC 5.1(c) and 8.2(a) as a consequence of the following statement contained in the April 12, 2021, letter to Supreme Court Acting Chief Justice Jim Rice:

“The Legislature will not entertain the Court’s interference in the Legislature’s investigation of the serious and troubling conduct of members of the Judiciary.”

Either the lawyer(s) responsible for making the statement knew the statement concerning the qualifications or integrity of the Court was false or made it with reckless disregard as to its truth or falsity. Knudsen either ordered the statement to be made or, with knowledge of it, ratified or ignored it. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statement and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 5 (MRPC 5.1(c) and 8.4(d)): Knudsen violated MRPC 5.1(c) and 8.4(d) as a consequence of one or more of the following statements contained in the April 12, 2021, letter to Supreme Court Acting Chief Justice Jim Rice:

- a) *“The Legislature does not recognize this Court’s [April 11] Order as binding and will not abide it.”*
- b) *“The Legislature will not entertain the Court’s interference in the Legislature’s investigation of the serious and troubling conduct of members of the Judiciary.”*
- c) *“The subpoena is valid and will be enforced.”*

All AG lawyers are officers of the Court and obligated to uphold the dignity of the Court, which, at a minimum, required them to refrain from making such statements. This conduct was prejudicial to the administration of justice. Knudsen either ordered the statements to be made or, with knowledge of them, ratified or ignored them.

Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 6 (MRPC 8.4(a)): A finding that Knudsen violated any MRPC in connection with the April 12, 2021, letter as alleged in Counts 1 through 5 above constitutes a violation of MRPC 8.4(a).

April 14, 2021, Motion to Dismiss

Count 7 (MRPC 5.1(c) and 3.4(c)): Knudsen violated MRPC 5.1(c) and 3.4(c) as a consequence of one or more of the following statements contained in the Motion to Dismiss filed in *McLaughlin* on April 14, 2021:

- a) *“[The April 11 Order] will not bind the Legislature and will not be followed.”*
- b) *“McLaughlin’s current Petition seeks yet another Court order which will not bind the Legislature and will not be followed.”*

Such statements are contemptuous, undignified, discourteous, and/or disrespectful and constitute a knowing disobedience of an obligation under the rules of a tribunal. Knudsen either ordered the statements to be made or, with knowledge of them, ratified or ignored them. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 8 (MRPC 5.1(c) and 8.4(d)): Knudsen violated MRPC 5.1(c) and 8.4(d) as a consequence of one or more of the following statements contained in the Motion to Dismiss filed in *McLaughlin* on April 14, 2021:

- a) *“[The April 11 Order] will not bind the Legislature and will not be followed.”*
- b) *“McLaughlin’s current Petition seeks yet another Court order which will not bind the Legislature and will not be followed.”*

All AG lawyers are officers of the Court and obligated to uphold the dignity of the Court, which, at a minimum, required them to refrain from making such statements. This conduct was prejudicial to the administration of justice. Knudsen either ordered the statements to be made or, with knowledge of them, ratified or ignored them. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 9 (MRPC 8.4(a)): A finding that Knudsen violated any MRPC in connection with the Motion to Dismiss filed in *McLaughlin* on April 14, 2021, as alleged in Counts 7 and 8 above constitutes a violation of MRPC 8.4(a).

April 18, 2021, Letter

Count 10 (MRPC 5.1(c) and 3.4(c)): Knudsen violated MRPC 5.1(c) and MRPC 3.4(c) as a consequence of the April 18, 2021, letter being sent to all the Montana Supreme Court Justices. Sending the Court a letter to reargue an issue, resist the ruling, or insult the judge constitutes a knowing disobedience of an obligation under the rules of a tribunal. Knudsen either ordered the letter to be sent or, with knowledge of it, ratified or ignored it. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for sending the letter and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 11 (MRPC 5.1(c) and 8.4(d)): Knudsen violated MRPC 5.1(c) and 8.4(d) as a consequence of the April 18, 2021, letter being sent to all the Montana Supreme Court Justices. All AG lawyers are officers of the Court and obligated to uphold the dignity of the Court, which, at a minimum, required them to refrain from sending a letter to the Court in criticism of its Order. This conduct was prejudicial to the administration of justice. Knudsen either ordered the letter to be sent or, with knowledge of it, ratified or ignored it. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for sending the letter and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 12 (MRPC 5.1(c) and 3.4(c)): Knudsen violated MRPC 5.1(c) and 3.4(c) as a consequence of one or more of the following statements contained in the April 18, 2021, letter to all the Montana Supreme Court Justices:

- a) “[t]he Court here lays claim to sole authority over provision of due process for all branches of government, *which is ludicrous...*”
- b) the Court’s “*statement is wholly outside the bounds of rational thought, ...*”

Such statements are contemptuous, undignified, discourteous, and/or disrespectful and constitute a knowing disobedience of an obligation under the rules of a tribunal. Knudsen either ordered the statements to be made or, with knowledge of them, ratified or ignored them. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 13 (MRPC 5.1(c) and 8.4(d)): Knudsen violated MRPC 5.1(c) and 8.4(d) as a consequence of one or more of the following statements contained in the April 18, 2021, letter to all the Montana Supreme Court Justices:

- a) “[t]he Court here lays claim to sole authority over provision of due process for all branches of government, *which is ludicrous...*”
- b) the Court’s “*statement is wholly outside the bounds of rational thought, ...*”

All AG lawyers are officers of the Court and obligated to uphold the dignity of the Court, which, at a minimum, required them to refrain from making such statements. This conduct was prejudicial to the administration of justice. Knudsen either ordered the statements to be made or, with knowledge of them, ratified or ignored them. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 14 (MRPC 8.4(a)): A finding that Knudsen violated any MRPC in connection with the April 18, 2021, letter as alleged in Counts 10 through 13 above constitutes a violation of MRPC 8.4(a).

April 30, 2021, Motion to Disqualify

Count 15 (MRPC 5.1(c) and 3.4(c)): Knudsen violated MRPC 5.1(c) and 3.4(c) as a consequence of one or more of the following statements contained in the Motion to Disqualify All Judges filed in *McLaughlin* on April 30, 2021:

- a) “That weekend transaction, *which necessarily included ex parte communications that have neither been acknowledged nor disavowed*, resulted in the Court stifling the production of its own public records held by *McLaughlin*.”

- b) “Members of this Court have an obligation to promote confidence in the independence, integrity, or impartiality of the judiciary, see MCJC 1.2, *but these actions do precisely the opposite.*”
- c) “*This matter has arisen because evidence of judicial misconduct has come to public light.*”
- d) “*The self-interest is so apparent, any attempt by this Court to decide the question runs afoul of state law and the MCJC.*”
- e) “*We are well beyond the point where the Court’s impartiality and independence ‘might reasonably be questioned.’ This is not merely the appearance of impropriety. This is actual impropriety.*”

Such statements are contemptuous, undignified, discourteous, and/or disrespectful and constitute a knowing disobedience of an obligation under the rules of a tribunal. Knudsen either ordered the statements to be made or, with knowledge of them, ratified or ignored them. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 16 (MRPC 5.1(c) and 8.2(a)): Knudsen violated MRPC 5.1(c) and 8.2(a) as a consequence of one or more of the following statements contained in the Motion to Disqualify All Judges filed in *McLaughlin* on April 30, 2021:

- a) “Members of this Court have an obligation to promote confidence in the independence, integrity, or impartiality of the judiciary, see MCJC 1.2, *but these actions do precisely the opposite.*”
- b) “*This matter has arisen because evidence of judicial misconduct has come to public light.*”
- c) “*The self-interest is so apparent, any attempt by this Court to decide the question runs afoul of state law and the MCJC.*”

- d) *“We are well beyond the point where the Court’s impartiality and independence ‘might reasonably be questioned.’ This is not merely the appearance of impropriety. This is actual impropriety.”*

Either the lawyer(s) responsible for making the statements concerning the qualifications or integrity of the Court knew the statements were false or made them with reckless disregard as to their truth or falsity. Knudsen either ordered the statements to be made or, with knowledge of them, ratified or ignored them. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 17 (MRPC 5.1(c) and 8.4(d)): Knudsen violated MRPC 5.1(c) and 8.4(d) as a consequence of one or more of the following statements contained in the Motion to Disqualify All Judges filed in *McLaughlin* on April 30, 2021:

- a) *“That weekend transaction, which necessarily included ex parte communications that have neither been acknowledged nor disavowed, resulted in the Court stifling the production of its own public records held by McLaughlin.”*
- b) *“Members of this Court have an obligation to promote confidence in the independence, integrity, or impartiality of the judiciary, see MCJC 1.2, but these actions do precisely the opposite.”*
- c) *“This matter has arisen because evidence of judicial misconduct has come to public light.”*
- d) *“The self-interest is so apparent, any attempt by this Court to decide the question runs afoul of state law and the MCJC.”*
- e) *“We are well beyond the point where the Court’s impartiality and independence ‘might reasonably be questioned.’ This is not merely the appearance of impropriety. This is actual impropriety.”*

All AG lawyers are officers of the Court and obligated to uphold the dignity of the Court, which, at a minimum, required them to refrain from making such statements. This

conduct was prejudicial to the administration of justice. Knudsen either ordered the statements to be made or, with knowledge of them, ratified or ignored them. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 18 (MRPC 8.4(a)): A finding that Knudsen violated any MRPC in connection with the Motion to Disqualify All Judges filed in *McLaughlin* on April 30, 2021, as alleged in Counts 15 through 17 above constitutes a violation of MRPC 8.4(a).

May 19, 2021, Letter

Count 19 (MRPC 3.4(c)): Knudsen violated MRPC 3.4(c) by sending the May 19, 2021, letter to all the Montana Supreme Court Justices. Sending the Court a letter to reargue an issue, resist the ruling, or insult the judge constitutes a knowing disobedience of an obligation under the rules of a tribunal.

Count 20 (MRPC 8.4(d)): Knudsen violated MRPC 8.4(d) by sending the May 19, 2021, letter to all the Montana Supreme Court Justices. Knudsen is an officer of the Court and obligated to uphold the dignity of the Court, which, at a minimum, required him to refrain from sending a letter to the Court in criticism of its Order. This conduct was prejudicial to the administration of justice.

Count 21 (MRPC 3.4(c)): Knudsen violated MRPC 3.4(c) in connection with the May 19, 2021, letter to all the Montana Supreme Court Justices, by stating:

- a) “[m]uch can be said about *the impropriety of the Court*, the State’s highest disciplinary authority, bandying such warnings under circumstances like this.”
- b) “*That statement is inaccurate almost to a word.*”

- c) *“It assumes facts and ascribes malintent so brazenly, it betrays a self-admission that the Court’s posture in this matter is adversarial—not adjudicatory.”*
- d) *“But for purposes of this letter, to the extent you are again attributing allegedly unethical behavior to my attorneys, that is incorrect and inappropriate.”*
- e) *“There is also some irony in accusing these fine attorneys of disrupting the administration of justice when their client’s argument is that it is constitutionally, legally, and ethically improper for this Court to attempt to administer justice in this matter.”*
- f) *“All this to say, while this dispute is extraordinary and troubling, please refrain from threatening or maligning the integrity of my attorneys who are assiduously living up to their ethical obligations under unusual circumstances.”*
- g) *“If you wish to vent any further frustrations about the conduct of attorneys in my office, I invite you to contact me directly.”*

Such statements are contemptuous, undignified, discourteous, and/or disrespectful and constitute a knowing disobedience of an obligation under the rules of a tribunal.

Count 22 (MRPC 8.2(a)): Knudsen violated MRPC 8.2(a) as a consequence of one or more of the following statements contained in the May 19, 2021, letter to all the Montana Supreme Court Justices:

- a) *“[m]uch can be said about the impropriety of the Court, the State’s highest disciplinary authority, bandying such warnings under circumstances like this.”*
- b) *“That statement is inaccurate almost to a word.”*
- c) *“It assumes facts and ascribes malintent so brazenly, it betrays a self-admission that the Court’s posture in this matter is adversarial—not adjudicatory.”*

Either the AG knew the statements concerning the qualifications or integrity of the Court were false or made them with reckless disregard as to their truth or falsity.

Count 23 (MRPC 8.4(d)): Knudsen violated MRPC 8.4(d) as a consequence of one or more of the following statements contained in the May 19, 2021, letter to all the Montana Supreme Court Justices:

- a) “[m]uch can be said about *the impropriety of the Court*, the State’s highest disciplinary authority, bandying such warnings under circumstances like this.”
- b) “*That statement is inaccurate almost to a word.*”
- c) “*It assumes facts and ascribes malintent so brazenly, it betrays a self-admission that the Court’s posture in this matter is adversarial—not adjudicatory.*”
- d) “*But for purposes of this letter, to the extent you are again attributing allegedly unethical behavior to my attorneys, that is incorrect and inappropriate.*”
- e) “*There is also some irony in accusing these fine attorneys of disrupting the administration of justice when their client’s argument is that it is constitutionally, legally, and ethically improper for this Court to attempt to administer justice in this matter.*”
- f) “*All this to say, while this dispute is extraordinary and troubling, please refrain from threatening or maligning the integrity of my attorneys who are assiduously living up to their ethical obligations under unusual circumstances.*”
- g) “*If you wish to vent any further frustrations about the conduct of attorneys in my office, I invite you to contact me directly.*”

Knudsen is an officer of the Court and obligated to uphold the dignity of the Court, which, at a minimum, required him to refrain from making such statements. This conduct was prejudicial to the administration of justice.

Count 24 (MRPC 8.4(a)): A finding that Knudsen violated any MRPC in connection with the May 19, 2021, letter as alleged in Counts 19 through 23 above constitutes a violation of MRPC 8.4(a).

May 26, 2021, Petition for Rehearing

Count 25 (MRPC 5.1(c) and 3.4(c)): Knudsen violated MRPC 5.1(c) and 3.4(c) as a consequence of one or more of the following statements contained in the Petition for Rehearing filed in *McLaughlin* on May 26, 2021:

- a) *“The Court ... Misstated Material Facts.”*
- b) *“And if those [emails] are anything like some of the other intemperate emails already publicly available, the Court and its members have an obvious interest in providing a specific answer to that dusty old legal question about the scope of legislative subpoena power.”*
- c) *“...the Court’s multiple procedural irregularities (granting unnoticed weekend relief to nonparties for nonparties, refusing to disclose ex parte communications, etc.)”*
- d) *“Here, the Justices are institutionally and personally interested in the outcome, so their ability to be impartial is justifiably suspect.”*
- e) *“Specifically, the Court asserts that no Justice ‘participate[d]’ in the polls conducted by the MJA. Respectfully, public records tell a different tale.”*
- f) *“[I]t is perverse to suggest that this Court will determine whether its own polling practices are misconduct.”*
- g) *“It’s not all that surprising, but the Court appears to suffer from the bias of Maslow’s Hammer. See Abraham Maslow, THE PSYCHOLOGY OF SCIENCE 15 (1966) (“if all you have is a hammer, everything looks like a nail”).”*
- h) *“Here, however, the disqualifying interest is not hypothetical. It is evident in the petitioning party (the Court’s Administrator), her objectives (to prevent disclosure of more embarrassing and ethically dubious judicial emails; to use judicial power to curtail legislative power in a dispute between the judiciary and the Legislature), and the Court’s multiple procedural irregularities (granting unnoticed weekend relief to nonparties for nonparties, refusing to disclose ex parte communications, etc.) that disqualifying interests are clear and present.”*
- i) *“Which begs the question: who will judge the judges? According to this Court—the judges. The judges will judge the judges. That of course defies common and constitutional sense.”*

Such statements are contemptuous, undignified, discourteous, and/or disrespectful and constitute a knowing disobedience of an obligation under the rules of a tribunal. Knudsen either ordered the statements to be made or, with knowledge of them, ratified or ignored them. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 26 (MRPC 5.1(c) and 8.2(a)): Knudsen violated MRPC 5.1(c) and 8.2(a) as a consequence of one or more of the following statements contained in the Petition for Rehearing filed in *McLaughlin* on May 26, 2021:

- a) *“The Court ... Misstated Material Facts.”*
- b) *“And if those [emails] are anything like some of the other intemperate emails already publicly available, the Court and its members have an obvious interest in providing a specific answer to that dusty old legal question about the scope of legislative subpoena power.”*
- c) *“Here, the Justices are institutionally and personally interested in the outcome, so their ability to be impartial is justifiably suspect.”*
- d) *“It’s not all that surprising, but the Court appears to suffer from the bias of Maslow’s Hammer. See Abraham Maslow, THE PSYCHOLOGY OF SCIENCE 15 (1966) (“if all you have is a hammer, everything looks like a nail”).”*
- e) *“Here, however, the disqualifying interest is not hypothetical. It is evident in the petitioning party (the Court’s Administrator), her objectives (to prevent disclosure of more embarrassing and ethically dubious judicial emails; to use judicial power to curtail legislative power in a dispute between the judiciary and the Legislature), and the Court’s multiple procedural irregularities (granting unnoticed weekend relief to nonparties for nonparties, refusing to disclose ex parte communications, etc.) that disqualifying interests are clear and present.”*

Either the lawyer(s) responsible for making the statements concerning the qualifications or integrity of the Court knew the statements were false or made them with

reckless disregard as to their truth or falsity. Knudsen either ordered the statements to be made or, with knowledge of them, ratified or ignored them. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 27 (MRPC 5.1(c) and 8.4(d)): Knudsen violated MRPC 5.1(c) and 8.4(d) as a consequence of one or more of the following statements contained in the Petition for Rehearing filed in *McLaughlin* on May 26, 2021:

- a) *“The Court ... Misstated Material Facts.”*
- b) *“And if those [emails] are anything like some of the other intemperate emails already publicly available, the Court and its members have an obvious interest in providing a specific answer to that dusty old legal question about the scope of legislative subpoena power.”*
- c) *“...the Court’s multiple procedural irregularities (granting unnoticed weekend relief to nonparties for nonparties, refusing to disclose ex parte communications, etc.)”*
- d) *“Here, the Justices are institutionally and personally interested in the outcome, so their ability to be impartial is justifiably suspect.”*
- e) *“Specifically, the Court asserts that no Justice ‘participate[d]’ in the polls conducted by the MJA. Respectfully, public records tell a different tale.”*
- f) *“[I]t is perverse to suggest that this Court will determine whether its own polling practices are misconduct.”*
- g) *“It’s not all that surprising, but the Court appears to suffer from the bias of Maslow’s Hammer. See Abraham Maslow, THE PSYCHOLOGY OF SCIENCE 15 (1966) (“if all you have is a hammer, everything looks like a nail”).”*
- h) *“Here, however, the disqualifying interest is not hypothetical. It is evident in the petitioning party (the Court’s Administrator), her objectives (to prevent disclosure of more embarrassing and ethically dubious judicial emails; to use judicial power to curtail legislative power in a dispute between the judiciary and the Legislature), and the Court’s multiple procedural irregularities (granting unnoticed weekend relief to nonparties for nonparties, refusing to*

disclose ex parte communications, etc.) that disqualifying interests are clear and present.”

- i) “Which begs the question: who will judge the judges? According to this Court—the judges. The judges will judge the judges. *That of course defies common and constitutional sense.*”

All AG lawyers are officers of the Court and obligated to uphold the dignity of the Court, which, at a minimum, required them to refrain from making such statements. This conduct was prejudicial to the administration of justice. Knudsen either ordered the statements to be made or, with knowledge of them, ratified or ignored them. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 28 (MRPC 8.4(a)): A finding that Knudsen violated any MRPC in connection with the Petition for Rehearing filed in *McLaughlin* on May 26, 2021, as alleged in Counts 25 through 27 above constitutes a violation of MRPC 8.4(a).

August 11, 2021 Petition for Rehearing

Count 29 (MRPC 5.1(c) and 3.4(c)): Knudsen violated MRPC 5.1(c) and 3.4(c) as a consequence of one or more of the following statements contained in the Petition for Rehearing filed in *McLaughlin* on August 11, 2021:

- a) *where the Montana Supreme Court is hearing a case in which it is an interested party....”*
- b) *“Simply ignoring why we’re here doesn’t change why we’re here—questionable judicial conduct.”*
- c) *The Opinion, on the other hand, is an unwarranted confiscatory decree.*
- d) *“That is a stunning, counterfactual denial.”*

- e) *“The Court’s newfound power furthers the mistaken notion that the judiciary is immune to independent inquiry.”*
- f) *“This controversy began with an unnoticed weekend order in a case the present defendant was not party to, facilitated by ex parte communications.”*
- g) *“The Legislature therefore incorporates its prior arguments and encourages the Court to take this last chance to defuse the constitutional tinder box it has kindled.”*
- h) *“the Opinion contains numerous misstatements, ...”*

Such statements are contemptuous, undignified, discourteous, and/or disrespectful and constitute a knowing disobedience of an obligation under the rules of a tribunal. Knudsen either ordered the statements to be made or, with knowledge of them, ratified or ignored them. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 30 (MRPC 5.1(c) and 8.2(a)): Knudsen violated MRPC 5.1(c) and 8.2(a) as a consequence of one or more of the following statements contained in the Petition for Rehearing filed in *McLaughlin* on August 11, 2021:

- a) *“Simply ignoring why we’re here doesn’t change why we’re here—questionable judicial conduct.”*
- b) *“That is a stunning, counterfactual denial.”*
- c) *“the Opinion contains numerous misstatements, ...”*

Either the lawyer(s) responsible for making the statements concerning the qualifications or integrity of the Court knew the statements were false or made them with reckless disregard as to their truth or falsity. Knudsen either ordered the statements to

be made or, with knowledge of them, ratified or ignored them. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 31 (MRPC 5.1(c) and 8.4(d)): Knudsen violated MRPC 5.1(c) and 8.4(d) as a consequence of one or more of the following statements contained in the Petition for Rehearing filed in *McLaughlin* on August 11, 2021:

- a) *where the Montana Supreme Court is hearing a case in which it is an interested party....”*
- b) *“Simply ignoring why we’re here doesn’t change why we’re here—questionable judicial conduct.”*
- c) *The Opinion, on the other hand, is an unwarranted confiscatory decree.*
- d) *“That is a stunning, counterfactual denial.”*
- e) *“The Court’s newfound power furthers the mistaken notion that the judiciary is immune to independent inquiry.”*
- f) *“This controversy began with an unnoticed weekend order in a case the present defendant was not party to, facilitated by ex parte communications.”*
- g) *“The Legislature therefore incorporates its prior arguments and encourages the Court to take this last chance to defuse the constitutional tinder box it has kindled.”*
- h) *“the Opinion contains numerous misstatements, ...”*

All AG lawyers are officers of the Court and obligated to uphold the dignity of the Court, which, at a minimum, required them to refrain from making such statements. This conduct was prejudicial to the administration of justice. Knudsen either ordered the statements to be made or, with knowledge of them, ratified or ignored them. Alternatively, Knudsen had managerial authority or direct supervisory authority over the

lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 32 (MRPC 8.4(a)): A finding that Knudsen violated any MRPC in connection with the Petition for Rehearing filed in *McLaughlin* on May 26, 2021, as alleged in Counts 29 through 31 above constitutes a violation of MRPC 8.4(a).

December 6, 2021, Petition for Writ of Certiorari

Count 33 (MRPC 5.1(c) and 3.4(c)): Knudsen violated MRPC 5.1(c) and 3.4(c) as a consequence of one or more of the following statements contained in the Petition for Writ of Certiorari filed in the United States Supreme Court on December 6, 2021:

- a) “*Judicial self-dealing on this scale might be unprecedented in the Nation’s history.*”
- b) “It [the Montana Supreme Court] reached out to facilitate a case brought by its appointee *to conceal its misbehavior.*”
- c) [Referencing *McLaughlin*, ¶¶ 9 and 11], “In addition *to being untrue*, these statements—a panegyric to insincerity—came after the nonparty Justices stayed their own subpoenas.”
- d) “Look how the *McLaughlin* case started—with an unnoticed, weekend motion and court order, facilitated by still *undisclosed ex parte communications*, in a case to which neither *McLaughlin* nor the Legislature were parties.”
- e) “From the first, the six *McLaughlin* Justices determined to pilot this dispute to their desired outcome.”
- f) “The Chief Justice’s communications showed that *the fix was in.*”
- g) “They [the six *McLaughlin* Justices] charged ahead, ensuring a result that bailed themselves out of an investigation prompted by *their own inappropriate behavior.*”
- h) “It permitted them [the Montana Supreme Court] to resolve the legal question of legislative subpoena power, and by emasculating that power, *to conceal judicial branch misbehavior* from the light of day.”

Such statements are contemptuous, undignified, discourteous, and/or disrespectful and constitute a knowing disobedience of an obligation under the rules of a tribunal. Knudsen either ordered the statements to be made or, with knowledge of them, ratified or ignored them. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 34 (MRPC 5.1(c) and 8.2(a)): Knudsen violated MRPC 5.1(c) and 8.2(a) as a consequence of one or more of the following statements contained in the Petition for Writ of Certiorari filed in the United States Supreme Court on December 6, 2021:

- a) “*Judicial self-dealing on this scale might be unprecedented in the Nation’s history.*”
- b) “It [the Montana Supreme Court] reached out to facilitate a case brought by its appointee *to conceal its misbehavior.*”
- c) [Referencing *McLaughlin*, ¶¶ 9 and 11], “In addition *to being untrue*, these statements—a panegyric to insincerity—came after the nonparty Justices stayed their own subpoenas.”
- d) “From the first, the six *McLaughlin Justices determined to pilot this dispute to their desired outcome.*”
- e) “They [the six *McLaughlin Justices*] charged ahead, ensuring a result that bailed themselves out of an investigation prompted by *their own inappropriate behavior.*”
- f) “It permitted them [the Montana Supreme Court] to resolve the legal question of legislative subpoena power, and by emasculating that power, *to conceal judicial branch misbehavior* from the light of day.”

Either the lawyer(s) responsible for making the statements concerning the qualifications or integrity of the Court knew the statements were false or made them with reckless disregard as to their truth or falsity. Knudsen either ordered the statements to

be made or, with knowledge of them, ratified or ignored them. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 35 (MRPC 5.1(c) and 8.4(d)): Knudsen violated MRPC 5.1(c) and 8.4(d) as a consequence of one or more of the following statements contained in the Petition for Writ of Certiorari filed in the United States Supreme Court on December 6, 2021:

- a) “*Judicial self-dealing on this scale might be unprecedented in the Nation’s history.*”
- b) “It [the Montana Supreme Court] reached out to facilitate a case brought by its appointee *to conceal its misbehavior.*”
- c) [Referencing *McLaughlin*, ¶¶ 9 and 11], “In addition *to being untrue*, these statements—a panegyric to insincerity—came after the nonparty Justices stayed their own subpoenas.”
- d) “Look how the *McLaughlin* case started—with an unnoticed, weekend motion and court order, facilitated by still *undisclosed ex parte communications*, in a case to which neither *McLaughlin* nor the Legislature were parties.”
- e) “From the first, the six *McLaughlin Justices* determined to *pilot this dispute to their desired outcome.*”
- f) “The Chief Justice’s communications showed that *the fix was in.*”
- g) “They [the six *McLaughlin Justices*] charged ahead, ensuring a result that bailed themselves out of an investigation prompted by *their own inappropriate behavior.*”
- h) “It permitted them [the Montana Supreme Court] to resolve the legal question of legislative subpoena power, and by emasculating that power, *to conceal judicial branch misbehavior* from the light of day.”

All AG lawyers are officers of the Court and obligated to uphold the dignity of the Court, which, at a minimum, required them to refrain from making such statements. This conduct was prejudicial to the administration of justice. Knudsen either ordered the

statements to be made or, with knowledge of them, ratified or ignored them. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for making the statements and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 36 (MRPC 8.4(a)): A finding that Knudsen violated any MRPC in connection with the Petition for Writ of Certiorari filed in the United States Supreme Court on December 6, 2021, as alleged in Counts 33 through 35 above constitutes a violation of MRPC 8.4(a).

AG's Failure to Return Materials as Ordered

Count 37 (MRPC 3.4(c)): Knudsen did not immediately return to Court Administrator Beth McLaughlin all the materials within his possession, custody, or control that were produced pursuant to the subpoenas at issue in *McLaughlin*, or all the copies or reproductions thereof. Such conduct constitutes a knowing disobedience of an obligation under the rules of a tribunal in violation of MRPC 3.4(c).

Count 38 (MRPC 5.1(c) and 3.4(c)): Knudsen violated MRPC 5.1(c) and 3.4(c) because lawyers in the office of the AG did not immediately return to Court Administrator Beth McLaughlin all the materials within their possession, custody, or control that were produced pursuant to the subpoenas at issue in *McLaughlin*, or all the copies or reproductions thereof. Such conduct constitutes a knowing disobedience of an obligation under the rules of a tribunal. Knudsen either ordered this conduct or, with knowledge of it, ratified or ignored it. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for the failure to return materials

and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 39 (MRPC 8.4(d)): Knudsen did not immediately return to Court Administrator Beth McLaughlin all the materials within his possession, custody, or control that were produced pursuant to the subpoenas at issue in *McLaughlin*, or all the copies or reproductions thereof. Such conduct is prejudicial to the administration of justice in violation of MRPC 8.4(d).

Count 40 (MRPC 5.1(c) and 8.4(d)): Knudsen violated MRPC 5.1(c) and 8.4(d) because other lawyers in the office of the AG did not immediately return to Court Administrator Beth McLaughlin all the materials within their possession, custody, or control that were produced pursuant to the subpoenas at issue in *McLaughlin*, or all the copies or reproductions thereof. Such conduct is prejudicial to the administration of justice. Knudsen either ordered this conduct or, with knowledge of it, ratified or ignored it. Alternatively, Knudsen had managerial authority or direct supervisory authority over the lawyer(s) responsible for the failure to return materials and knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action.

Count 41 (MRPC 8.4(a)): A finding that Knudsen violated any MRPC in connection with the failure to return materials as alleged in Counts 37 through 40 above constitutes a violation of MRPC 8.4(a).

WHEREFORE Special Disciplinary Counsel prays as follows:

1. That a Citation be issued to the Respondent, to which shall be attached a copy of this Complaint, requiring Respondent, within twenty-one (21) days after service

thereof, to file a written answer to the Complaint;

2. That a formal hearing be had on the allegations of this Complaint before an Adjudicatory Panel of the Commission on Practice;

3. That the Adjudicatory Panel of the Commission on Practice make a report to the Montana Supreme Court of its findings and recommendations after a formal hearing, and, in the event the Adjudicatory Panel finds the facts warrant disciplinary action and recommends discipline, that the Commission also recommend the nature and extent of appropriate disciplinary action, including an award of costs and expenses incurred in investigating and prosecuting this matter, and;

4. For such other and further relief is deemed necessary and proper.

DATED this 5th day of September 2023.

/s/ Timothy B. Strauch
Timothy B. Strauch

*Special Counsel for the Office of
Disciplinary Counsel*