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From: [REDACTED]

Sent: Thursday, September 18, 2014 5:23:03 PM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: RE: Ex Parte Question

You have asked whether Appeals must follow the *ex parte* communication rules when it is coordinating the settlement of an Appeals case with Area Counsel when there is a related case in Counsel jurisdiction pursuant to the provisions of IRM 8.4.1.17.1, *Settlement of Related Cases*. That subsection falls under the general heading of IRM 8.4, *Appeals Docketed Cases*, IRM 8.4.1, *Procedures for Processing and Settling Docketed Cases* and IRM 8.4.1.17, *Settlement of Docketed Cases*. IRM 8.4.1.17.1 generally provides that Appeals must coordinate with Counsel, and receive Counsel approval of settlement terms, when settling a case for which a related case is pending in Counsel jurisdiction. It does not make a distinction between Appeals non-docketed cases and Appeals docketed cases. As you know, IRM 8.4.1.17.1 does not appear to have been updated since the clarification of the *ex parte* communication rules in Revenue Procedure 2012-18.

It is our view that, if the substantive communication between Appeals and Counsel concerning the terms of the proposed Appeals settlement pertains to a docketed case in Appeals jurisdiction, then Rev. Proc. 2012-18 Sec. 2.06(2)(a) would apply as an exception to the *ex parte* rules. However, if the substantive communication pertains to a non-docketed open Appeals case, the *ex parte* rules must be observed in accordance with Rev. Proc. 2012-18 Sec. 2.03(13). The field attorney served as an advocate for the originating function in the related case, and the Counsel input (oral or written) on the Appeals settlement would have to be shared with the taxpayer or taxpayer's representative, with an opportunity for a response, as set forth in Rev. Proc. 2012-18. See *also*, CC Notice-2012-010, Update of Rules Governing *Ex Parte* Communications Between Chief Counsel Attorneys and Employees of Appeals.