

OVERVIEW OF THE ENFORCEMENT PROCESS



AGENDA

- Background on Adjudicative Proceedings
- CPPA Administrative Enforcement Process
- Ex Parte Communications
- Bias and Prejudice
- An Impermissible Interest in the Proceeding

BACKGROUND ON ADJUDICATIVE PROCEEDINGS

An “adjudicative proceeding” means an evidentiary hearing for determination of facts pursuant to which an agency formulates and issues a decision. Gov’t Code § 11405.20.

Example: An evidentiary hearing to determine facts about whether a business has violated the California Consumer Privacy Act (CCPA).

Adjudicative proceedings are subject to various legal requirements, including constitutional due process and the Administrative Adjudication Bill of Rights.

CPPA ADMINISTRATIVE ENFORCEMENT PROCESS

1. Enforcement Division commences an investigation
2. Enforcement Division files a Notice of Probable Cause Proceeding
3. Legal Division conducts a Probable Cause Hearing and makes its finding
4. Enforcement Division files an Accusation under with the Office of Administrative Hearings (OAH), in compliance with the Administrative Procedures Act
5. An Administrative Law Judge at OAH hears the matter renders a proposed decision
6. CPPA Board meets in closed session to consider the proposed decision and vote whether to adopt, amend, or reject it

EX PARTE COMMUNICATIONS

An “ex parte communication” generally refers to a direct or indirect communication to a board member from a party or interested person about a pending adjudicative proceeding that occurs without notice and the opportunity for all parties to participate in the communication. See Gov’t Code § 11430.10.

Board members are prohibited from ex parte communications during pending adjudicatory proceedings.

BIAS AND PREJUDICE

Bias generally refers to a lack of impartiality towards a party. Relatedly, prejudice generally refers to when an adjudicator has prejudged facts at issue in an adjudicative proceeding.

Board members are prohibited from bias and prejudice in adjudicative proceedings.

AN IMPERMISSIBLE INTEREST IN THE PROCEEDING

An impermissible interest in the proceeding generally refers to an advantage or disadvantage to the adjudicator that may arise out of the proceeding, such as a financial advantage.

Board members are prohibited from having an impermissible interest in adjudicative proceedings.