# Administrative Law - Richards

# Study Guide - Chapter 3

# Learning Objectives

## Learn how adjudications different from Article III trials

## Learn how ALJs different from Article III judges

## Learn how the role of expertise shapes adjudication procedure.

## Learn the basic procedural requirements for an adjudication.

## Learn the historical limitations of the APA in providing guidance for modern adjudications.

## Learn how the requirement for a formal adjudication is triggered.

## Learn why the courts are reticent to order formal adjudications.

## Learn that there is no bright line between the process afforded and the complexity in formal and informal adjudications.

## Learn why the rules on ex parte communications are different for adjudications than for Article III trials.

## Learn when agency decisionmakers are allowed to consult with other persons in the agency.

## Learn how separation of functions helps reduce bias in agency proceedings.

# Evaluation Questions

## What is an adjudication?

### What is the definition of an adjudication?

#### What would you look to decide is something is an adjudication?

### Explain how inspections are a form of adjudication using a restaurant inspection as an example.

### How are federal student loan applications an adjudication?

## Making policy through adjudications

### How does an agency make policy through adjudications?

### Why would an agency want to do this, as opposed to making a rule?

### Why is it easier to assure consistent agency policy through rulemaking than through adjudications?

## ALJs and AJs

### How does an inquisitorial process (agency adjudication) differ from an adversarial (court) trial?

### What are Article III judges, how are they selected, disciplined, and removed?

#### How do these factors change for an Article V Louisiana judge?

### How can an Article III judge enforce a judgment?

#### Can an ALJ enforce a judgment?

### How does the section and supervision of an ALJ differ from an Article III judge?

#### Can ALJ’s be fired?

#### Can they be required to meet performance standards for their work?

### How is an ALJ's decision in the federal system different from an Article III judge's decision?

#### Is an ALJ decision final (when issued)under the APA?

##### Can the agency treat the decision as final?

##### Why did EPA do this for some decisions?

#### If the agency does not treat the decision as final, what does the agency do with it?

#### Do ALJs bind the agency in the federal system?

## Admission of Evidence

### What is the purpose of the rules of evidence in Article III trials?

### How does the policy for admitting evidence differ between an Article III jury trial and an ALJ hearing?

#### How is this changed when it is an Article III non-jury trial?

### Does the APA establish the rules for admitting evidence into administrative proceedings?

### Do all agencies use the same standards for evidence?

### What was the Residuum Rule?

#### How does the "substantial evidence" standard change the Residuum Rule?

## Notice

### What is required for Sec. 554(b) notice?

### What can complicate notice?

#### What about in immigration cases?

#### Welfare benefits cases?

## Burden of Proof

### What is the standard of proof required in an agency proceeding, unless otherwise specified in the law?

### Who has the burden of proof in an administrative proceeding?

### How do you determine who is the movant?

#### Why does it matter for burden of proof?

#### Why does this mean that it is harder for you to lose a law license than to be denied one in the first place?

## How has the nature of adjudications changed since the passing of the APA?

## Why are courts reticent to order formal adjudications?

## What is the language from Sec. 554 that triggers a formal adjudication?

## Assume that the statute enabling the adjudication in question is ambiguous on the language triggering 554.

### What do you need to argue on behalf of a regulated party who wants a formal adjudication?

### What do you argue on the behalf of the agency that is opposing the litigation requesting a formal adjudication?

### (These answer will be better informed after later discussions of rulemaking and due process.)

## Why is the problem of ex parte contacts different for ALJs and Article III judges?

## Discuss ex parte contacts in adjudications, including contact between agency staff, decision makers, parties, and interested persons.

### What is the solution to curing ex parte contacts?

## What is separation of functions in administrative hearings and how does this improve the fairness of hearings?

### How does the Louisiana DAL arise from separation of function concerns?

## Must all agencies separate their functions into investigation, prosecution, and decisionmaking?

### What must an agency like a state board of medical examiners do to limit bias if it does not have separation of functions?

### Why is separation of functions difficult for small agencies?

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