

PRACTITIONERS' GUIDE TO: *Ex Parte Communications*

Ex parte communications are governed by Article 8 of the Commission's Rules of Practice & Procedure, as mandated by Public Utilities Code §1701.1 et seq.

It is the responsibility of every person who transacts business with the Commission to abide by these rules. Violations of these rules are subject to sanctions, including fines and other penalties.

This practitioners' guide is a general summary of the key aspects of the rules. To the extent that there is any inconsistency between this guide and Rules of Practice and Procedure, the Rules of Practice and Procedure govern.

What is an ex parte communication?

An ex parte communication is a communication between a decisionmaker and an interested person concerning a substantive issue in a formal proceeding before the Commission that does not occur in a public forum established in the proceeding or on the record of the proceeding.

Who is a decisionmaker?

Decisionmakers include the Commissioners, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, any Administrative Law Judge assigned to the proceeding, and any designated Law and Motion Administrative Law Judge. Although the Commissioners' personal advisors are not defined as "decisionmakers," communications with them are governed by most of the same rules as apply to decisionmakers.

Who is an interested person?

Interested persons subject to this rule include any party to the proceeding, any person with a financial interest in the proceeding (as defined in Gov. Code § 87100), any formally organized association who intends to influence a decisionmaker; and any representative of such persons.

What is a substantive issue?

Generally, a substantive issue is a factual, legal or policy issue that will be resolved by the Commission decision on the matter. Generally, communications regarding procedural issues, such as schedule, location, and format and dates for filings and submissions, are not substantive issues. However, some procedural issues may have substantive implications, particularly if they are contested. If you are uncertain whether an issue is substantive for purposes of the ex parte rules, contact the assigned Administrative Law Judge for guidance.

What is a formal proceeding?

A formal proceeding is a proceeding initiated by application, complaint, order instituting investigation, or order instituting rulemaking. Advice letters, draft

resolutions and informal complaints to the Commission's Consumer Affairs Branch are not formal proceedings for purposes of the ex parte rules.

What is the formal record of a proceeding, and what is a public forum?

The formal record of the proceeding generally consists of filed pleadings and the transcribed record of hearings set by order of the Commission or by ruling of a decisionmaker. A public forum established in the proceeding is generally a hearing or workshop that is set or authorized by ruling of a decisionmaker, although it might not be transcribed. If you are uncertain whether a forum is within the formal record of a proceeding for purposes of the ex parte rules, contact the assigned Administrative Law Judge for guidance.

What are the rules governing ex parte communications?

The rules governing ex parte communication generally depend on the category of the proceeding (as determined pursuant to Rules 7.1 et seq. and posted on the proceeding's docket card, which is maintained on the Commission's website):

- *Ex parte communications are prohibited in **adjudicatory** proceedings.*
- *Ex parte communications are permitted in **ratesetting** proceedings, subject to restrictions and reporting requirements.*
- *Ex parte communications are permitted in **quasi-legislative** proceedings without restrictions or reporting requirements.*

Regardless of the category of the proceeding,

- *Communications regarding categorization are permitted without restriction, but must be reported.*
- *Communications regarding particular ALJ assignments are prohibited, and the prohibition extends to communications between the ALJ and other decisionmakers regarding reassignment.*

What rules apply before the category of the proceeding has been determined?

Until the category of the proceeding has been determined, the applicable rules depend on the proceeding type:

- ***Complaints and investigations** are treated as **adjudicatory** proceedings, and ex parte communications are prohibited.*
- ***Applications** are treated as **ratesetting** proceedings, and ex parte communications are permitted subject to restrictions and reporting requirements, until the Commission issues the preliminary determination of category in Resolution ALJ-176. Then, that preliminary categorization applies until the assigned Commissioner issues the final determination of category in the scoping memo.*
- ***Rulemakings** are treated as **quasi-legislative** proceedings, and ex parte communications are permitted without restrictions or reporting requirements.*

What restrictions apply to ex parte communications in ratesetting proceedings?

Ex parte communications are permitted in ratesetting proceedings as follows:

- *All-party meetings with Commissioners are permitted with 3 days' advance notice to parties.*
- *Individual oral communications with a decisionmaker are permitted provided that 3 days' advance notice of the communication has been provided to the parties and all other parties are afforded an opportunity to individually meet with the decisionmaker for a substantially equal period of time. (This restriction does not apply to communications with Commissioners' personal advisors.)*
- *Written communications must be concurrently served on all parties.*
- *Ex parte communications are generally banned from the date of a Ratesetting Deliberative Meeting, if any, through the date of the decision on the matter. Ratesetting Deliberative Meetings are noticed in the Daily Calendar.*

What reporting requirements apply to ex parte communications in ratesetting proceedings?

Notice of ex parte communications must be filed within 3 days of the communication, and must contain the information set forth in Rule 8.2.

- *This reporting requirement does not eliminate the requirement that written ex parte communications be concurrently served on all parties. However, same-day filing and service of the notice of the written ex parte communication will satisfy the separate same-day service requirement.*
- *NOTE: The Commission is considering modifying this rule to shorten the time for filing notices of ex parte communications to within 1 day of the communication. See draft Resolution ALJ-260, currently open for comment.*

When do the ex parte communication restrictions and reporting requirements end?

The ex parte communication restrictions and reporting requirement apply until the Commission resolves any application for rehearing on the decision closing the proceeding or until the time to apply for rehearing has expired and no application for rehearing has been filed.