

Board Administration and Regulatory Coordination Unit

Division 3. Air Resources Board

Chapter 1. Air Resources Board

Subchapter 1.25. Administrative Procedures–Hearings

**Article 3. Administrative Hearing Procedures for
Petitions for Review of Complaints**

Subarticle 3. Ex Parte Communications

§ 60065.13. Prohibited Communications.

(a) Except as otherwise provided in this section, while the proceeding is pending, the hearing officer shall not participate in any communications with any party, representative of a party, or any person who has a direct or indirect interest in the outcome of the proceeding about the subject matter or merits of the case at issue, without notice and opportunity of all parties, to participate in communication except a party that has been determined to be in default pursuant to section 60065.38.

(b) No pleading, letter, document, or other writing shall be filed in a proceeding under these rules by a party unless service of a copy thereof together with any exhibit or attachment is made on all other parties to a proceeding. Service shall be in a manner as prescribed in section 60065.5.

(c) For the purpose of this section, a proceeding is pending from the time that the petition for review of an executive officer decision is filed.

(d) Communications prohibited under paragraph (a) do not include communications concerning matters of procedure or practice, including requests for continuances that are not in controversy. It also does not prohibit communications between a party and the hearing officer when the opposing party has had a default entered pursuant to section 60065.38.

(e) A communication between a hearing officer and an employee of the state board that would otherwise be prohibited by this section is permissible if:

(1) The employee is another hearing officer or other employee of the hearing office whose job duties include aiding the hearing officer in carrying out the hearing officer's adjudicative responsibilities. Upon request, the hearing office will provide a list of employees of the hearing office to the parties.

(2) The employee of the state board has not served as an investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage, or in any factually related proceedings, and the purpose of the communication is to assist and advise the hearing officer in determining whether a document is a confidential business record (i.e., trade secrets). In obtaining such assistance and advice, the hearing officer shall give notice to the parties of the person consulted and shall provide the parties with as detailed a summary as possible of the substance of the advice received, while protecting the confidentiality of the business records at issue, and a reasonable opportunity to respond.

(3) The prohibitions of paragraph (a) that apply to the hearing officer shall also apply to all employees covered by subparagraphs (1) and (2) above.

(4) Communications permitted under subparagraphs (1) and (2) above shall not furnish, augment, diminish, or modify the evidence in the record.

NOTE: Authority cited: Sections 39600, 39601, 43028 and 43031(a), Health and Safety Code. Reference: *Mathews v. Eldridge*, 424 U.S. 319 (1976); Sections 43028 and 43031(a), Health and Safety Code; and Sections 11430.70-11430.80, Government Code.

REFERENCE