

# Adjudication Under the APA

Administrative Law

Penn State Dickinson Law

March 3, 2026



# The APA's procedural categories

	<b>formal</b>	<b>informal</b>
<b>adjudication</b>	formal adjudication	informal adjudication
<b>rulemaking</b>	formal rulemaking	informal rulemaking



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- Roughly 1350 Administrative Law Judges (ALJs) work for federal agencies.
- By comparison, there are fewer than 900 authorized federal judgeships.



# Hiring processes in agencies

Schedule E guidance  
Schedule F rule  
EO 13843  
on civil service hiring



# APA: provisions relating to adjudication

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- **5 U.S.C. § 556:** Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision



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- **5 U.S.C. § 556:** Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision
- **5 U.S.C. § 557:** Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record



# The APA's procedural categories, and which provisions apply

	<b>informal</b>	<b>formal</b>
<b>rulemaking</b>	§553	§§553, 556, 557
<b>adjudication</b>	§555	§§554, 556, 557



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- 4 cross-examination rights are limited: §556(d).
- 5 documents may substitute for oral testimony: §556(d).
- 6 the agency decision is “institutional”: product of a bureaucracy, rather than a single judge or panel: §557(c).



## Admissibility of evidence in adjudications: 5 U.S.C. §556(d)

Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. . . .

## Cross-examination in adjudications: 5 U.S.C. §556(d)

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# Substitution of written evidence for testimony

5 U.S.C. § 556(d):

. . . .

In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.





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  - ▶ An initial decision becomes the agency’s decision unless reviewed by an appeals board or the agency.
  - ▶ A recommended decision does not take effect unless acted on by the agency.
  - ▶ In reviewing the ALJ’s decision, the agency “has all the powers which it would have in making the initial decision . . . .” §557(b).



# Impartiality in on-the-record proceedings

5 U.S.C. § 556(b)(3):

. . . The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.



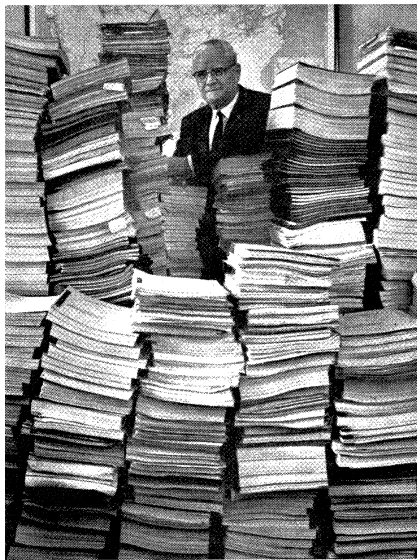
## Restriction on ex parte contacts; separation of functions (see also §557)

5 U.S.C. § 554(d): The employee who presides at the reception of evidence . . . may not - (1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or (2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency. An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings.

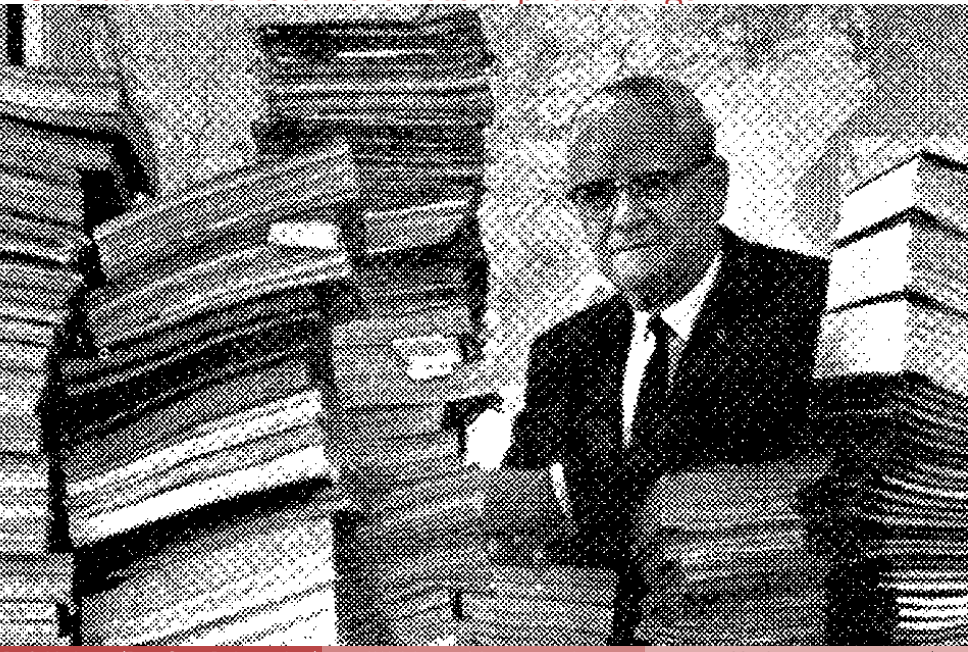




## One downside to on-the-record proceedings

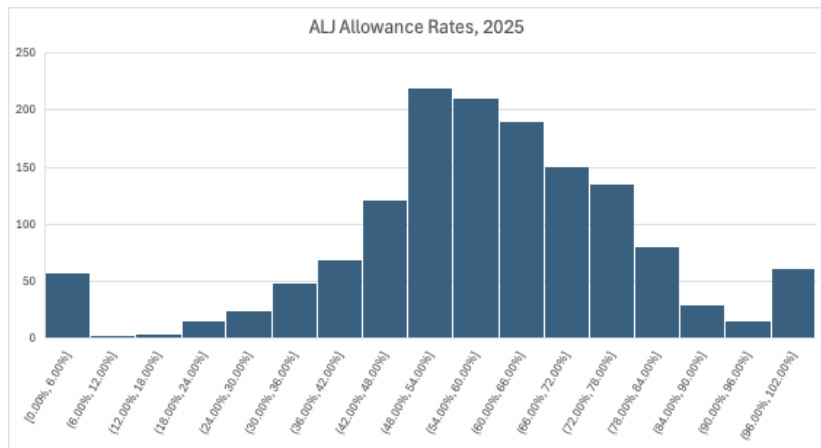


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# Backdrop to Ass'n Admin. Law Judges v. Heckler

this again



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## Procedural requirements for informal adjudications

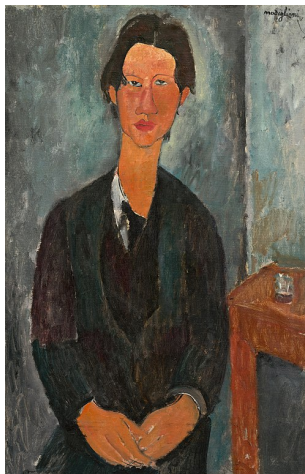
(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. **So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function.** With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. . . .

(e) **Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding.** Except in affirming a prior denial or when the denial is self-explanatory, **the notice shall be accompanied by a brief statement of the grounds for denial. (§555)**



## Cinderella Career and Finishing Schools: ???

“[W]e are charged with the responsibility of making certain that the image of the administrative process is not transformed from a Rubens to a Modigliani.”



PennState

# Sierra Club v. Costle: A scrubber



nState