Overview of Administrative Law

Administrative Law: The Basics

Administrative law is all the rules created by administrative agencies and government departments. Administrative law is so ubiquitous and widespread that even clients with traditional civil law cases frequently face related administrative actions. In addition, the number of professions subject to administrative licensure is rapidly expanding. As a result, well-rounded counsel can serve new and existing clients well by understanding the reach of the administrative state and mastering administrative law and practice.

State legislatures and Congress pass laws; agencies implement these laws as part of administrative law. Administrative law governs the creation and operation of the government’s administrative agencies. Most regulations, and the decisions

1. The body of administrative law in the United States can be, and sometimes is, affected by civil law appeals of administrative law–centered matters. Fairly recent examples of this are Lippman v. City of Oakland, ___ Cal. 5th ___ (2018) (appeal of an administrative law code enforcement decision by the City of Oakland); and Rasooly v. City of Oakley (2018) ___ Cal. App. 5th ___ (A152709; in the Court of Appeal of the State of California, 1st Appellate District) (Contra Costa County Super. Ct. No. N16-1492) (filed Oct. 25, 2018; publication ordered Nov. 21, 2018). The municipal code ordinance’s plain language requires that notice of code violation be served by personal service, certified mail, or by affixing a copy to the structure. This establishes a hierarchy of acceptable means of providing notice. Any one of these means is “service.” As a result, the ordinance’s “nail & mail” procedures are not constitutionally deficient (even absent efforts at personal service).

2. For example, litigation over real property–related issues can trigger a visit from the local municipal code enforcement officer, possibly resulting in an administrative agency citation being issued. Once the client decides to fight the action and fees demanded in the citation, counsel will need to advise and guide the client through the administrative law and litigation process. A similar analysis results when a licensed professional (such as a public school teacher or a registered nurse) is cited for driving under the influence; the state likely will initiate a negative action on the client’s professional license. Counsel who understand the expansion of the administrative state as it branches off the client’s existing legal conflict are ahead of the curve in excellent client service and law firm business development. This volume provides a structure against which counsel can build an administrative case for clients facing administrative actions, either in tandem with an existing legal matter or completely independent of any other legal representation.
that result from their application and enforcement, flow from state, territory, and federal administrative agencies. This is the confluence of civil enforcement activity and administrative law practice.

**Administrative Agencies**

Administrative agencies support orderly government. When legislatures pass laws on complicated issues, they need help figuring out the granular aspects of implementation and enforcement of these laws. This triggers administrative agencies (and similar government departments) to develop all the particulars for implementation and enforcement of these new laws. To do this, agencies write and enact rules and regulations. Uncertainty sometimes arises regarding the powers granted to administrative agencies, the substantive rules these agencies make, and the legal relationships among agencies, government bodies, and the public. All of these are areas for counsel to argue when representing clients on the receiving end of administrative enforcement actions.

Federal administrative agencies are generally created by Congress and the president; they have the power to create agencies and delegate defined powers. The president creates “executive” agencies; Congress creates “independent” agencies.

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<thead>
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<th><strong>Examples of Administrative Agencies</strong></th>
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<td><strong>Federal Administrative Agencies</strong></td>
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<td>Well-known federal administrative agencies include the following:</td>
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<td>• Food and Drug Administration</td>
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<td>• Department of Justice</td>
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<td>• Internal Revenue Service</td>
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<td>• Securities and Exchange Commission</td>
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<td><strong>State Administrative Agencies</strong></td>
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<td>Some interesting state administrative agencies follow:</td>
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3. Agencies can also be called boards, departments, divisions, commissions, or similar titles.
4. For example, in a unanimous decision regarding the powers of the Federal Trade Commission, the Supreme Court held, to the extent that the agency exercises any executive function, it does so in the discharge and effectuation of its quasi-legislative or quasi-judicial powers or as an agency of the legislative or judicial departments of the government (*Humphrey’s Executor v. United States*, 295 U.S. 602 (1935)). Without this recognition, the existence of administrative agencies would be unconstitutional, because agencies exercise several types of powers, including law-making and sanction-leveling.
5. The major difference between executive agencies and independent agencies is that the president may not remove the head of an independent agency without “just cause.” Heads of executive agencies serve at the will of the president; they can be removed at any time.
State governments encompass administrative agencies that implement, execute, and enforce laws passed by state legislatures. State agencies are generally created in the same manner as federal agencies and frequently mimic major federal agencies (for example, California and Federal Department of Justice, California and Federal Department of the Treasury, Texas and Federal Department of Agriculture).

State residents often deal with administrative agencies and administrative law when they seek benefits in a state. Administrative law broadly protects public interests, not private rights, and agencies must act within constitutional parameters (always!).

7. For example, California has CalFresh, formerly Food Stamps; CalWORKs (a welfare program that gives cash aid and services); Head Start (implementing the Federal Head Start program); Low Income Home Energy Assistance Program (LIHEAP) Block Grant, funded by the Federal Department of Health and Human Services; Medicaid/Medi-Cal, California’s Medicaid health care program; California National School Breakfast and Lunch Program (the U.S. Department of Agriculture funds school meal and milk programs); Special Milk Program, a federally funded program helping schools provide milk to children; Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), which provides supplemental foods and nutrition education.
California’s Division of Occupational Safety and Health, known as Cal/OSHA, protects workers’ health and safety, as well as passengers riding elevators, amusement rides, and tramways. Cal/OSHA’s administrative activities include the following:

- Setting standards and enforcing them
- Providing outreach and education
- Issuing permits, licenses, certifications, registrations, and approvals

### U.S. Federal Administrative Law

Limits and directives on actions by federal agencies are based in the federal Administrative Procedure Act (the FAPA). The FAPA governs internal procedures of federal administrative agencies, including how they interact with the public. The FAPA prohibits improper agency behavior. In addition to addressing agency rule making, adjudication, and licensure, the FAPA contemplates an elastic definition of “agency.” The FAPA includes both the Freedom of Information Act (FOIA) and the Privacy Act.

Turning to state Administrative Procedure acts generally, three populous states illustrate how several Administrative Procedures Acts, enacted by different states, function: California, Texas, and Florida, as follows:

- California agencies are included in both the California Administrative Procedure Act (Cal.-APA) and the California Office of Administrative Law (OAL) Regulations. Cal.-APA establishes rulemaking procedures and standards for California’s state agencies. California regulations must also be adopted in compliance with standards adopted by the OAL.

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9. Licensure is defined as: “The granting of licenses, especially to practice a profession; the granting of permission, generally by a government agency, allowing an organization or individual to engage in a practice or activity, which, without the license, would be illegal.” For more information, visit https://www.merriam-webster.com/dictionary/licensure.
10. “agency” means each authority of the government of the United States, whether or not it is within or subject to review by another agency (it does not include the U.S. Congress, U.S. courts, the governments of U.S. territories or possessions, the government of the District of Columbia; or, except as to the requirements of section 552 of this title. . . . 5 U.S.C. § 552, FAPA § 3).
• The Texas Government Code, Administrative Procedure and Practice, covers state administrative law and practice in the Lone Star state.¹⁵
• The Florida Administrative Procedure Act is found in Title 10, Part X, Chapter 120 of the Florida Statutes.¹⁶

All U.S. states and territories have enacted or adopted APAs, many of which generally track the FAPA.¹⁷ The FAPA procedures give the public an opportunity to participate in the adoption of federal regulations. It ensures that regulations are clear, necessary, and legally sound.