

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0029

In the Matter of:

**INTEGRITY ADVANCE, LLC and
JAMES R. CARNES,**

Respondents.

**ENFORCEMENT
COUNSEL'S NOTICE OF EX
PARTE COMMUNICATION**

ENFORCEMENT COUNSEL'S NOTICE OF EX PARTE COMMUNICATION

Enforcement Counsel hereby provides notice that on February 26, 2018, Respondents' counsel in the above-captioned matter sent a prohibited ex parte letter to Acting Director Mulvaney. *See* 12 C.F.R. § 1081.110(b)(1). Pursuant to the Rules of Practice for Adjudication Proceedings (Rules), a prohibited ex parte communication "*shall* . . . be placed on the record of the proceeding and served on all parties[, and a]ll other parties to the proceeding *shall* have an opportunity, within ten days of receipt of service of the ex parte communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section . . ." 12 C.F.R. § 1081.110(c) (emphasis added). Therefore, Enforcement Counsel respectfully requests that the letter, attached as Exhibit A, be entered into the record, and requests an opportunity to substantively respond to the letter within 10 days of its filing on the docket. *See id.*

The February 26 letter is a prohibited ex parte communication because it is (1) a material written communication relevant to the merits (2) that was not made on the record or with reasonable prior notice (3) between an interested person not employed by the Bureau and the hearing officer, Director, or a decisional employee (4) that was made during the pendency of the proceeding. 12 C.F.R. § 1081.110(a)(1), (a)(3), (b).

Section 1081.110(a)(1) defines an ex parte communication as “any material oral or written communication relevant to the merits of an adjudication proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between: (i) [a]n interested person not employed by the Bureau (including such person’s counsel); and (ii) [t]he hearing officer handling the proceeding, the Director, or a decisional employee.” The February 26 letter undoubtedly meets this definition. It is clearly material and relevant to the merits as it raises numerous legal and factual arguments related to the proceeding and ultimately asks the Acting Director to dismiss the proceeding. Ex. A. In addition, it is not on the record because Respondents’ counsel sent the communication directly to the Acting Director via Federal Express rather than filing the communication with the Office of Administrative Adjudication, and the communication has not been published on the docket as required. *See* 12 C.F.R. §§ 1081.111, 112. Also, Respondents’ counsel did not provide Enforcement Counsel with any prior notice, let alone reasonable prior notice¹. *See id.* § 1081.110(a)(1). Finally, Respondents and Respondents’ counsel are interested persons not employed by the Bureau, *see id.*

¹ Enforcement Counsel did not receive contemporaneous notice of the communication from Respondents’ counsel. Respondents’ counsel sent the original letter to Acting Director Mulvaney on February 26 via Federal Express overnight delivery, but sent Enforcement Counsel a copy of the letter, via US Mail, which was received on March 6, 2018.

§ 1081.110(a)(1)(i), and the Acting Director is one of the persons identified in section 1081.110(a)(1)(ii).

The Rules prohibit ex parte communications during the pendency of a proceeding – “the time from when the Bureau issues a notice of charges … until the time the Director enters his or her final decision and order in the proceeding and the time permitted to seek reconsideration of that decision and order has elapsed.” 12 C.F.R § 1081.110(a)(3) (defining pendency), (b) (prohibiting ex parte communications). There is no question that this matter is still pending given that a final decision has not issued. Therefore, pursuant to the Rules, Enforcement Counsel requests that the Office of Administrative Adjudication enter the February 26 letter into the formal record for this matter, serve the letter on all parties, and provide all other parties with the opportunity to respond within 10 days of “receipt of service” (as computed pursuant to 12 C.F.R. § 1081.114), as required by 12 C.F.R. §1081.110(c).

Respectfully submitted,

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Enforcement Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of March 2018, I caused a copy of the foregoing Enforcement Counsel's Notice of Ex Parte Communication to be filed by electronic transmission (e-mail) with the Office of Administrative Adjudication (CFPB_electronic_filings@cfpb.gov), and served by email on Respondents' counsel at the following addresses:

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/s/ Alusheyi J. Wheeler
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