

## Comments from Andrew Vollmer, Public Member

These comments relate to the version of “Agency Litigation Webpages” distributed on August 13, 2020.

1. Lines 3, 27, and 60: I do not recall why the term “consent decree” was inserted for “settlement.” “Settlement” is the better word to use. Some agencies such as DoJ and the SEC settle cases using agreements or administrative orders instead of judicial consent decrees. All those forms are settlements. The preamble and the recommendation should refer to settlements alone or to both settlements and consent decrees.

2. The preamble, recommendation, or both should encourage agencies to post selected filings from private parties. The reason is that many agency litigation documents would be difficult to understand without having the associated private filing. An agency opposition to a cert petition, motion to dismiss, or brief as appellee in a court of appeals would fall short of meeting the objectives of the recommendation if the agency did not also post the private party’s cert petition, complaint, or brief as appellant. Several of us at the first meeting thought that an agency should be urged but not required to post material or significant filings from private parties.

Something could be added as a new paragraph 4 at line 85: Agencies should consider posting filings from private parties litigating with the agency when those filings concern a material or significant matter in the litigation, are associated with an agency filing that is being posted, and contribute in a meaningful way to an understanding of the litigation or the agency’s position.

3. Several of us on the first call thought the preamble or recommendation should say something about agencies with a large volume of federal district court litigation. DoJ and the SSA are examples. Perhaps a new paragraph 3 in the recommendation at line 78 could say: Agencies with a large volume of litigation in federal district court could decide not to post documents from every case. They could post examples of filings from routine litigation and all or a major portion of the filings from cases raising important or unusual questions.

4. The preamble should mention “Adjudication Materials on Agency Websites,” Recommendation 2017-1. It is related to this recommendation and would be useful for readers of this recommendation to know about.