



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Updates in Federal Agency Adjudication

December 2021

ACUS is an independent federal agency within the executive branch that develops recommendations to improve administrative processes, including adjudication, and arranges for the interchange of information to carry out its mission. The ACUS Office of the Chairman issues monthly *Updates* to share adjudication-related developments with agencies, Congress, and the public. For additional resources, visit www.acus.gov/adjudication.

This resource is for informational purposes only. Except as noted, these updates do not represent the position of ACUS or the federal government. New developments, feedback, and corrections are welcome at info@acus.gov.

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ADJUDICATORS

[Cochran v. SEC \(5th Cir., Dec. 13\)](#). The full Fifth Circuit held that federal district courts have jurisdiction to hear collateral attacks challenging the constitutionality of Securities and Exchange Commission adjudication. At issue is the constitutionality of multiple layers of for-cause removal protections for SEC administrative law judges.

ADMINISTRATIVE REVIEW

[Quality Assurance Systems in Agency Adjudication \(ACUS, Dec. 16\)](#). The ACUS Assembly adopted a recommendation identifying best practices for promoting fairness, accuracy, timeliness, and consistency in agency adjudications through the



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use of quality assurance systems. It provides guidance to agencies on the selection, role, and institutional placement of quality-assurance personnel. It also identifies specific considerations for the timing of and process for quality-assurance review; outlines different methodologies for identifying and correcting quality issues; and addresses how agencies might use electronic case management, data analytics, and artificial intelligence for quality-assurance purposes.

ALTERNATIVE DISPUTE RESOLUTION

[ADR in Agency Adjudication](#) (ACUS). This new report by Kristen Blankley, Kathleen Claussen, and Judith Starr provides an overview of the use of alternative dispute resolution in agency administrative programs. It addresses topics including selection and implementation of different ADR techniques, qualifications and selection of ADR personnel, training, ethics and confidentiality, case management, and interagency mechanisms to facilitate and support ADR.

COVID-19

[COVID-19 Symptoms Screener for In-Person Hearings](#) (SSA, Dec. 3). The Social Security Administration requested Office of Management and Budget approval and invited public comment on a new questionnaire. SSA plans to use the questionnaire upon resumption of in-person hearings to determine whether hearing participants are “cleared” or “not cleared” to enter hearing offices.

[Resumption of In-Person Hearings](#) (FMSHRC, Dec. 9). The Federal Mine Safety and Health Review Commission resumed authorization to schedule in-person hearings on January 3. According to an order from the Chief Administrative Law Judge, ALJs may, at their sole discretion and consistent with certain parameters, hold remote hearings and require procedures to provide for safety. The agency also released an updated [Workplace Safety Plan](#) on January 3 that addresses, among other things, hearings and oral arguments.

CUSTOMER EXPERIENCE

[Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government](#) (Dec. 13). President Biden issued a new executive order which directs agencies to take steps to improve customer experience—that is, “the public’s perceptions of and overall satisfaction with interactions with an agency, product, or service”—by “systematically identifying and resolving the root causes of customer experience challenges.” The



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executive order addresses, among other things, digitizing and streamlining forms and application processes, expanding online submission of evidence and other documentation, and accelerating the use of electronic signatures.

PROCEDURAL RULES

[Copyright Claims Board Procedural Rules \(CCB, Dec. 8\)](#). The U.S. Copyright Office proposed procedural rules for proceedings before the new Copyright Claims Board. The proposed rules address, among other topics, scheduling, conferences, discovery, written testimony, hearings, settlement, records, and conduct of parties.

PUBLIC ACCESS

[Public Access to Agency Adjudicative Proceedings \(ACUS, Dec. 16\)](#). The ACUS Assembly adopted a recommendation identifying best practices regarding when and how federal agencies provide public access to adjudicative proceedings. Within the legal framework established by federal law, it identifies factors agencies should consider when determining whether to open or close particular proceedings. It also offers best practices to promote public access to proceedings that agencies open to the public and recommends that agencies make the policies governing public access readily available.

[Public Availability of Settlement Agreements in Agency Enforcement Proceedings \(ACUS\)](#). ACUS recently launched a new project addressing the public availability of settlement agreements reached during administrative enforcement proceedings. It seeks to identify best practices for providing public access to such agreements without disclosing legally protected materials, consistent with the transparency objectives and privacy considerations of the Freedom of Information Act, Privacy Act, and other relevant laws and directives.

REPRESENTATION

[Regulation of Representatives in Agency Proceedings \(ACUS, Dec. 16\)](#). The ACUS Assembly adopted a recommendation that agencies consider adopting rules governing attorney and non-attorney representatives in order to promote accessibility, fairness, integrity, and efficiency in agency adjudicative proceedings. It provides guidance on the topics that rules might cover and recommends that agencies consider whether greater harmonization of different bodies of rules is desirable and ensure that their rules are readily accessible on their websites.



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Representation by Law Students and of Business Entities (CCB, Dec. 30).

The U.S. Copyright Office proposed establishing procedures governing the appearance of law student representatives and employees of business entities in proceedings before the new Copyright Claims Board.

TECHNOLOGY

Electronic Case Access and Filing (EOIR, Dec. 13). The Executive Office for Immigration Review published a final rule implementing electronic filing and records applications for all cases before the immigration courts and Board of Immigration Appeals.