Comment from Consultant Michael Asimow on *Best Practices for Adjudication Not Involving an Evidentiary Hearing*
October 5, 2023

I made some changes. I do not think we should overproceduralize by turning Type C into Type B except in narrow situations involving personal culpability and credibility issues. Thus we should not recommend disqualifying adjudicators for prejudgment when so often the investigators and adjudicators are the same person or on the same team. That would radically change Type C adjudication. Nor should we recommend separation of functions or ex parte limitations just because sanctions are serious. There are also some mixups in where specific recommendations are classified.

Footnote 1
Edit: Parenthetical revised to read "defining 'adjudication' more broadly to include licensing and other agency action that is not a rule."

Line 11
Edit: Inserted "constitutional provision," before "statute."

Line 32
Edit: Made "inspection" plural.

Line 41
Edit: Added a second "§" and then "and 558" after "555."

Opportunity to Submit Evidence and Argument
Comment: I think these should be demarcated somehow. This could be Recommendation A, covering paragraphs 1 and 2.

Lines 87-89
Edit: Removed "or indication of prejudgment of facts at issue," with related change of comma after "decision" to "and."
Comment: I don't think prejudgment should be disqualifying in type C investigation given that investigators and adjudicators are often the same person.

Recommendation 9, Lines 90-92
Comment: I think this is overbroad. It would change a lot of Type C functions like land use, bank regulation, or new drug regulation. Perhaps it should be limited to cases involving personal culpability and credibility issues.

Line 94
Edit: Change "its" to "their."

Administrative Review
Comment: This is a recommendation concerning Notice, not administrative review.

Procedural Regulations
Comment: Para 18 concerns notice, not procedural regulations.

Recommendation 19
Comment: This is where procedural regulations starts.