

Comment from Senior Fellow Ronald Levin on *Best Practices for Adjudication not Involving an Evidentiary Hearing*
October 22, 2023

I have a few suggestions for the pending recommendation on “Best Practices for Adjudication Not Involving an Evidentiary Hearing.” Line references pertain to the October 11 redlined draft.

Line 23: Change “must” to “should.” ACUS can recommend best practices, but this balance is an aspiration, not obligatory.

Lines 25-26: Change “nor could there be” to “nor could one be devised.”

Lines 28-29: In view of Russell Wheeler’s query about whether “often” modifies “but not evidentiary hearings,” I would simply delete the latter phrase. That evidentiary hearings aren’t expected is obvious from the context.

Footnote 7: Mathews was a Type B case, or at least a case in which an evidentiary hearing could ultimately be required. Possible substitute language: “Mathews v. Eldridge, 424 U.S. 319 (1976); Brock v. Roadway Express, Inc., 481 U.S. 252, 262-63 (1987) (applying Mathews principles in a Type C context).”