

Comment from Senior Fellow Russell Wheeler on *Best Practices for Adjudication not Involving an Evidentiary Hearing*
October 24, 2023

Line

- 26 Agree with Ronald Levin’s suggestion. Deleting “There is no” requires it.
- 50 The reference for “This decision” is not clear (at least to me). Is it line 48’s “front-line decision” or the decision anticipated from line 50’s “neutral decisionmaker”? Instead of “This decision, perhaps “The _____ decision might be called”
- 75 “agency-adopted rules and policies offer agencies the best mechanisms ~~for agencies to~~ for establishing procedural”
- 93 Agree with Jeff Lubbers’s revision
- 100 On its face, this item says notices should not be in English. Perhaps, “provided in several languages other than English and be”
And does this language recommendation as to “notices” apply as well to item 8 (“FAQs” etc.) and item 16’s guidance documents?
- 109 Are items 6 (lawyers or laypersons) and 7 (friends, family members) either/or? If not, should they be combined?
- 122 Are items 10 and 11 on disqualification specific to Type C adjudications, or should they be prefaced with something like “As in Type A and B adjudications”?
Although the terms are regularly used interchangeably, I’ve always understood “disqualify” to mean a separate actor removes the decisionmaker, and recusal to mean self-removal. If so, “regulations should require the recusal of” or “agencies should disqualify.”
- 155 Isn’t “do not have” implied? And isn’t item 9 applicable here? Perhaps “Agencies that ~~do not have an ombuds program and do not~~ choose not to establish or share an ombuds program should provide less”