

Comment from Special Counsel Jeffrey S. Lubbers on *Public Access to Agency Adjudicative Proceedings*
November 11, 2021

By line number:

Lines 4-5 I would reorder this list to make it more chronological, such as "investigatory hearings, prehearing and scheduling conferences, settlement conferences, evidentiary hearings, and appellate arguments" [On this note I wonder if investigatory hearings are ever open.]

Line 15--add "aspects of" before adjudicative proceedings" [It may not be the full proceeding that has to be open or closed, but an aspect of it.]

Line 18--The mention of the FOIA here seems a little questionable since it is a disclosure statute and doesn't necessarily "require" non-release of documents.

Line 61 I would substitute "hearing room" for "office"

Line 69: Add "upcoming" before "open" [This conforms with paragraph 10.]

Line 86--"argument" should be plural

Line 94--This might be worth discussing or adding a modifier--all participants have privacy interests, but only some should trigger closing a hearing.

Line 104--In the parenthesis, I would say "such as investigatory hearings or prehearing conferences")

Lines 125-127--It seems to me that subparagraphs (d) and (e) overlap and could be combined.

Lines 128-29--which way does subparagraph cut? If the public can easily obtain this stuff, does that mean that the proceedings should be opened or does that make more reasonable to close them?

Line 152--Need to capitalize "agencies"

Line 200: I think we should discuss and maybe add something more about registration. I can see the need for online participants to register in advance, but do we think that people who attend in person should invariably need to pre-register? (Of course they would need to show ID, etc., to enter a federal building.)

One last topic that is not addressed in the recommendation is the need for appropriate security.

Jeff