Comment from Public Member Russell Wheeler on Public Access to Agency Adjudicative Proceedings
October 19, 2021

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1 2 Insert “their” before “adjudicative—unless point is that each agency should identify generic objectives, applicable to all

8 Same point as above

10 Insert “the agency’s” before “adjudicative”

12 Re “any”: Can a regulation cover “any”—i.e., “any and all” circumstances? More general wording?

2 17 Instead of “Requirements” consider “Policies governing”. “Requirements” suggests no discretion.

21 “When” suggests days or hours. Perhaps “Which”? 

26 Are we concerned with “expectations” or “policies”? I.e., “We hope they won’t bring electronic devices” vs. “They may not bring devices”.

42 The list purports to be inclusive. Should there be a category recognizing special circumstances of individual agencies?

50 Suggest the active voice here, along the lines: “presumption that the agency will close hearings and proceedings while retaining the authority to open . . .

52 Is it other types of “adjudicative proceedings” or just “proceedings” (paper’s reference, e.g., to pretrial hearings).

58 To what does “that type” refer—one specific type or line 56’s “particular types”?

4 84 Subsection c seems to combine two separate functions: requesting and requesting. Consider two separate subsections: how to request closing or opening, and who responds. And does “respond” mean “answer” or “decide”?

5 105 Consider whether this section needs a “where feasible” qualifier, especially with regard to those with travel difficulties, etc

113 Consider striking “it would be beneficial”.

6 137 Consider whether including the participants/parties in the proceedings as a factor. Some might want to observe proceedings depending on who’s involved—note line 149’s reference to “significant public interest”

7 156 Consider including here something about providing recordings, etc., in timely manner A recording posted immediately after the hearing could dilute demand for real-time access. Something posted a week later would not.

170 Consider deleting “take steps to”.