

Comment from Public Member Russell Wheeler on *Public Access to Agency Adjudicative Proceedings*
November 22, 2021

Pg Line

- 2 25 delete “a careful balance of” with “balancing”
- 32 Consider prefacing the sentence with “As with any legal proceeding, however, there can, however, be drawbacks”.
- As written, sentence could be read to suggest that these problems are unique to adjudicative proceedings.
- 3 47 To avoid having ACUS appear to tell agencies to obey the law, consider using the formulation in line 53, i.e., “encourages agencies to develop policies that, in addition to complying with all . . .”
- 4 64 Consider adding “, open or closed” after proceedings.
- 5 92 Does the parenthetical mean that appellate judges’ conferences in non-argued cases could be open to the public? Compare to line 109 (“appellate proceedings that are typically closed”).
- 95ff “a compelling interest” (and “or” in 100) may suggest that no case can present more than one of these interests. Could it read “compelling interests”? and “and” at line 100?
- 115 Would it help to add “in agency decision making”. Otherwise, given “public access” in line 113, readers may see “public participation” as tautological.
- 6 137 I think it would help to give an example of the “individuals”—is it parties only, or replace “individuals” with “parties or non-parties”?
- 7 149 Should the recommendation include an admonition (or reminder) not to frustrate public access by scheduling hearings in the smallest space available?
- 154 Consider adding, in the interests of full disclosure if nothing else, after “online”:
“Agencies should understand that members of the public, including the press, may record and disseminate audio or video transmissions in whole or in part.”
- 160 How can agencies enforce this presumptive ban on sharing visual content?
- 163 Is it implied in Para. 10 that agencies who “consider” these factors should take action if the “consideration” warrants it—or should that be explicit?
- 8 174 Consider whether to explain why agencies might “consider whether to provide” notice of closed proceedings—I presume, to allow challenges.
- 193 Replace “or” with “and” unless the recommendation is to use no more than one of these fora.
- 10 231 Consider inserting as a final standalone sentence for this paragraph. “Agencies should consider that broadcasting proceedings in real time may reduce requests for transcripts and recordings of such proceedings.”