

Comment from Senior Fellow Russell Wheeler on *Best Practices for Adjudication Not Involving an Evidentiary Hearing*

October 9, 2023

Line

- 24 Simpler to say “~~There is a~~No uniform set of procedures ~~that~~ applies . . .”
- 29-31 Does “often” in line 29 modify “not evidentiary hearings” in line 31? That is, does the sentence say that Type C adjudication does not “often” consist of evidentiary hearings, implying that sometimes they do, contrary to the report and the title of the recommendation? Perhaps line 31: “and inspection, ~~but~~. It does not, however, include evidentiary hearings.”
- 44 I think “At the same time” is distracting. Perhaps: “These procedural constraints, however, may be . . .”
- 50 “and try to ensure” or “and facilitate” (as in the next sentence).
- 67-68 Does this say the same thing with fewer words? “Agencies should ~~not restrict~~ allow participants . . . ~~from to being~~ represented by a lawyer . . .” Same in lines 70-71?
- 76 As written, “inquisitorial rather than adversarial . . .” is an essential clause, so the sentence says that the standards must be appropriately tailored only for those Type C systems “that are inquisitorial . . .”. Is that the intended meaning? If not, make it “adjudication systems, which ~~that~~ are . . .”
- 80 “Agencies ~~should adapt~~ regulations ~~that~~ should require . . .”
- 84 Same as above, and “whom ~~may be viewed by~~ stakeholders may view as ~~not impartial~~ . . .”
- 92-94 Perhaps simpler to revise as follows: “Agencies conducting Type C adjudications should provide oral . . . on which its decisions are based ~~that follow federal plain language guidelines~~, Such statements should follow federal plain language guidelines and explain . . .”
- 109 ““Agency ombuds programs should permit an ombuds, ~~if he or she~~ who believes that . . .” Same at line 115
- 138 “Agencies ~~should adopt~~ regulations ~~that~~ should specify . . .”
- 157 “Agencies with Type C adjudication systems ~~that do not~~ should have quality assurance systems—that is, practices . . . quality of decisions—~~should develop such systems in order~~ to promote . . .”