

Comment from Special Counsel Jeffrey Lubbers on *Best Practices for Adjudication not Involving an Evidentiary Hearing*
October 24, 2023

I agree with the changes proposed by Ron Levin and Matt Wiener.

Lines 36-37—change to “such as cases involving inspections or sanctions,”

Lines 45-46—I stumble over “Types A and B”—I would either delete the “s” or spell out as Type A and Type B.”

Line 52—I also have a problem with “reconsideration,” and would change to “review” or “administrative review” as used in recommendation #14.

Line 54—rather than “Typically” I would say “Often”. On this line maybe “reconsideration” is OK if it is simply another staff member.

Lines 55-56—this last sentence seems like a note to self. Rather than “must be reflected...” how about “are reflected in this recommendation.”?

Line 66—rights of representation are in section 555—so you may not need to mention it here—although I would specify what in 555 and 558 are relevant earlier in the sentence.

Line 92—the lead-in sentence should be “When applicable, this notice should provide parties with information as to:” And then change (iv) to say “How to access materials in the agency’s file that might be needed for presenting their arguments.”

Line 100—#3 should begin: “When applicable and feasible, such notice should be provided...”

In recommendations 10 and 11, I prefer recusal to disqualification.

Recommendation 13, line 133—how about “factual” instead of “facts”?

Jeff Lubbers