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*The Spreading Umbrella: Extending the APA's Adjudication Provisions to All Evidentiary Hearings Required by Statute*

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Abstract by Raymond R. Janairo

In the realm of administrative adjudication, practitioners and commentators often distinguish proceedings as either formal or informal adjudications. The APA's adjudication provisions govern formal adjudication (what the author refers to as Type A adjudication), conducted by administrative law judges (ALJs), and provide procedural protections to litigants. There are, however, a growing number of federal regulatory and beneficiary schemes, which call for evidentiary hearings outside of the APA that do not provide these procedural protections to litigants (the author refers to these types of cases as "Type B adjudication").

Although lumped into what administrative practice has called "informal adjudication," the author argues "[t]here is a large and important set of evidentiary hearings required by federal statutes that are just as 'formal' as adjudications conducted by ALJs." These Type B adjudications are different from informal adjudication. If Congress, due to agency lobbying, refuses to bring these Type B adjudications under the APA, the next best solution is to have Congress "impose procedural constraints on Type B hearings without converting them to Type A hearings," that is, having ALJs preside over them. The author's recommendations provide the following procedural protections: notice, a hearing that includes the ability to present evidence and confront opposing witnesses, an impartial decisionmaker, prohibition of outsider ex parte contacts, internal separation of functions, and a decision based on the record. The piece presents a draft statute that implements these recommendations. Finally, the author summarizes his solution by stating the purpose of the piece: to decouple the APA's provisions relating to ALJs from its provisions calling for fair hearings, decisions on the record, and impartial decisionmakers.