

Comment from Senior Fellow Alan B. Morrison on *Precedential Decision Making in Agency Adjudication*
December 1, 2022

Comments on Precedential Decision Making Recommendation - most of them are non-substantive.

Line 6: delete the phrase "unless the precedent is distinguishable" - if it is distinguishable, it is, by definition, not precedential for the next case.

Lines 8-9: Delete "as well as allowing for policymaking and encouraging efficiency" -phrase seems to have nothing to do with the rest of the sentence.

Line 12: Add "agency" before "appellate" to make clear that court decisions are not included in this recommendation - i.e., this is not about non-acquiescence.

Line 23: Substitute "determine" for "consider" and add "may" before "tend".

Line 26: Delete "use or" - not needed when you include "consider using".

Line 27: Do you need the example "such as the solicitation etc" in the preamble?

Line 29: I suggest you insert "which" before "decisions" and add "to designate" after "decisions."

Line 37: Insert "their" before "appellate."

Line 39: I would substitute "decision" for "precedent."

Line 43: I think that the reference here is back to "decisions" in line 42, and so this line should say "lend them" instead of "lends itself."

Line 47: Replace "that" with "from which" and in the following line add "those" after "identify" and delete "decisions."

Line 81: Instead of "nominations" which usually refers to an individual, I would use "suggestions" or "recommendations".

Line 86: I would end the sentence after "interest" and begin the next with "That could be done".

Line 126: Instead of "consider" I would use "treat" or "use".

Line 140: I would add "in a particular case" at the end of the sentence.

Feel free to circulate and/or ask me about any. Hopefully, most of these can be resolved pre-plenary.

Alan