

Comment from Special Counsel Jeffrey S. Lubbers on *Precedential Decision Making in Agency Adjudication*
November 3, 2022

Location	Comment
Lines 2-3, “as addressed in previous recommendations of the Administrative Conference”	I dont think this is necessary, since the footnote makes it clear enough.
Lines 4-5, “and legislative and nonlegislative rules”	I would move "legislative and non-legislative rules" after "appellate review"
Line 7, “incidental to appellate review”	I would substitute "in the course of appellate review by the agency head or delegated adjudicator"
Line 8, “adjudicator”	I would add after "adjudicator" "(below the agency-head level)"
Line 12, “decision advances”	decisions advances
Line 13, “policymaking,”	delete comma?
Line 20, “or a”	(in some cases a... (delete "or")--my reason is that multi-member commissions and boards are also "agency heads"
Lines 39-40, “and procedures for”	maybe set off this phrase with commas
Line 44, “adjudicator must”	below the agency head level
Line 48, “precedent;”	This is just a suggestion but how about just using an (a) and (b). After (a), you could insert "or conversely" and then combine (b) and (c). My reason is that (a) is positive to the idea and (b) & (c) are negative
Line 49, “largely”	mainly?
Lines 62-63, “or by harmonizing or integrating disparate”	maybe set of this phrase with commas
Line 70, “not prohibit”	add "generally"
Line 85, “existing”	Paragraphs 5 and 7 seem to overlap. Is the difference that 7 deals with decisions that are already on the books?
Line 98, “overruling the decision.”	doing so.
Line 128, “informal”	informative
Line 132, “(f)”	(f) seems very closely related to (d)
Line 137, “(h)”	I don't think (h) is necessary or that agencies will say anything useful about this.

