

Comment from Senior Fellow Russell R. Wheeler on *Precedential Decision Making in Agency Adjudication*
November 3, 2022

- Title Query whether the title of the recommendation adequately describes it. “Precedential Decision Making in Agency Adjudication” seems to describe how agencies should make precedential decisions. The recommendation covers that, but it covers much more—how to identify and summarize them, where to post them, etc. Perhaps: “Precedential Decisions in Agency Adjudication: Policies and Procedures”?
- Line 12 Should “precedential decision” be “precedential decisions” or “decision making”? And “advances” probably should be “advances”.
- 13 The antecedent of “it” may not be clear. It may be worth repeating, i.e., “Additionally, effective use of precedential decisions can help”
- 35ff I was confused by the reference to FOIA “requirement”. Does the sentence summarize one or two requirements? If the latter, consider revising as follows: “. . . requirements. One requirement is that agencies postcases. The other is that agencies generally”
- 45 Would the active voice be clearer, i.e., “whether adjudicators should treat all, some, or no appellate decisions ~~should be treated~~ as precedential”?
- 52 It’s not clear to me what section c says. It could be read to say that agencies can realistically have no precedential decisions because they’re like needles in a haystack. One might ask whether agencies that issue a large volume of decisions are especially in need of methods to identify the few that are precedential.
- 66 For consistency, should it be “federal court”, consistent with line 115?
- 70 I found section 3 confusing. Consider inserting “other” before “purposes” in line 71.