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*Distinguishing Legislative Rules from Interpretative Rules*

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Abstract by Rosy Lor

This article discusses the difficulty courts have had in identifying and applying appropriate criteria to distinguish between legislative rules and interpretative rules issued by agencies. Although courts have applied a variety of inconsistent tests to distinguish between both types of rules, the author suggests that the D.C. Circuit provided an excellent set of guidelines for making that distinction in *American Mining Congress v. Mine Safety & Health Administration*, which six other circuits subsequently followed. However, the D.C. Circuit changed the criteria it adopted in 1993 in a subsequent opinion, *Paralyzed Veterans of America v. D.C. Arena*. Specifically in contrast to the 1993 opinion, the 1997 decision stated that prior agency interpretations of a legislative rule could only be modified by using the notice and comment procedure, which is not required for issuing interpretative rules. The author argues that the D.C. Circuit's 1997 opinion was a mistake and discusses the negative effects of courts' application of the decision. In conclusion, the author suggests that the D.C. Circuit and all other circuits return to the test provided by *American Mining Congress*.