

ABSTRACT

Randolph J. May

Ruling Without Real Rules – Or How to Influence Private Conduct Without Really Binding

53 Admin. L. Rev. 1303 (2001)

Abstract by Michele Hinerman

Administrative agencies use of interpretive rules, opinion letters, enforcement manuals and other guidances, create practical and legal problems that have stirred considerable debate. While such guidances may prevent a private citizen from breaking the law, they may also be seen as a way for the government to influence the conduct of private citizens without following formal procedures for rulemaking. This article illustrates this dilemma by focusing on a case from the Court of Appeals for the D.C. Circuit, *CSC Credit Services v. Occupational Safety and Health Administration*.

In this case, CSC requested OSHA's policies regarding its' sales employees who worked from home. OSHA's response, which came two years later, suggested employers were responsible for employees' at-home work environments. Because of the political controversy stirred by the letter, OSHA withdrew the advice letter. OSHA argued the letter was specific to CSC and was not intended as an industry standard. The author argues the OSHA advisory letter should not be considered legally binding on private citizens and the courts should not have accorded the letter any deference. In addition, just because OSHA withdrew the letter, the confusion of agencies issuing nonlegislative rules is symptomatic of the ambiguity agency nonlegislative rules present to the public.