

Michael Asimow

*Guidance Documents in the States: Toward a Safe Harbor*

54 Admin. Law Rev. 631 (2002)

Abstract by Dipal Shah

Professor Asimow, in his article, defines guidance documents as information produced by every administrative agency expressing a view about the meaning of language in statutes or regulations and defining how adjudicators should exercise their enforcement powers. Asimow argues that an agency should be allowed to adopt these guidance documents without a single pre-adoption procedure. Requiring an agency to supply Administrative Procedure Act (APA) pre-adoption procedures diminishes the number of guidance documents created, and leads to the circumvention of these constraints. Asimow maintains this is a negative result.

Asimow further contends that states are moving in the direction of conforming to federal law. Furthermore, his article suggests that states that have not eased their adoption of constraints on procedures involving guidance documents should do so. Asimow argues for a safe-harbor approach for all states, which could improve federal law as well if applied federally. The article defines the safe-harbor approach as a political compromise that both agencies and the private sector would accept.