

Preside or Lead?

The Attributes and Actions of Effective Regulators

11. Commissions Are Not Courts; Regulators Are Not Judges

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Newcomers to regulation are not newcomers to government. They understand “executive branch,” “legislative branch,” “judicial branch.” But they are unsure about commissions, asking, “What exactly are we?” Some find comfort in the familiar: Judges sit on benches, await the parties’ disputes, use adversarial procedures, find facts, then apply law to those facts. “That seems straightforward,” they say; “regulators are like judges.”

To view the commission as a court—to “preside” rather than lead—undermines effectiveness. Here’s why.

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