



Section of Administrative Law & Regulatory Practice



Administrative Law Conference

October 25-26, 2012

Capital Hilton | Washington, DC

CLE: 12 Hours Professional Practice, 1.5 Ethics

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Neil Eisner, Richard Murphy, Carol Ann Siciliano

Section Chair James W. Conrad, Jr.

Schedule at a Glance

THURSDAY, OCTOBER 25

Time	Session	Room
8:00am—9:00am	Registration	Capital Terrace
9:00am—10:30am	NFIB v. Sebelius: Looking Forward, Who Won?	Presidential
9:00am—10:30am	Cost-Benefit Analysis: Knowing Quality When You See It	Congressional
9:00am—10:30am	Understanding Prosecutorial Discretion in Immigration Law	Statler AB
9:00am—10:30am	Recess Appointments: Legal Challenges to President Obama's Appointments to the CFPB and the NLRB	Senate
9:00am—10:30am	The Future of Chinese Administrative Law	Pan American AB
10:30am—10:45am	Break	Capital Terrace
10:45am—12:15pm	Privacy, Politics, and The People in Administrative Law	Presidential
10:45am—12:15pm	White House Review of Rulemaking: Strengthen, Mend, About Right or Abolish?	Congressional
10:45am—12:15pm	Agency as Network Operator: The Administrative Law Implications of the FirstNet Wireless Network	Statler AB
10:45am—12:15pm	The JOBS Act: The Real Impact on Financings and SEC Rulemaking, and the SEC Itself	Senate
10:45am—12:15pm	International Regulatory Cooperation and its New Executive Order	Pan American
12:30pm—1:45pm	Can We Reform Out of Our Dysfunction? Ideas to Improve America's Political Process, Luncheon with Norman J. Ornstein (NON-CLE)	Congressional/ Senate
1:45pm—3:15pm	Insider Trading on Government Information: Issues in Enforcement and Interpretation of the STOCK Act of 2012	Presidential
1:45pm—3:15pm	Cost-Benefit Analysis: How It Could Be Better	Congressional
1:45pm—3:15pm	The Law of Counterterrorism	Statler AB
1:45pm—3:15pm	Banking on B Corps	Senate
1:45pm—3:15pm	Administrative Law Case Processing in Electronic Age: From Filing to Hearing	Pan American AB
3:15pm—3:30pm	Break	Capital Terrace
3:30pm—5:00pm	Discussion on the Regulatory Policy of the Two Major Political Parties (NON-CLE)	Presidential
3:30pm—5:00pm	Building Successful SBREFA Panels	Congressional
3:30pm—5:00pm	So there is a 6" Remote Controlled Helicopter with a Camera Outside your Bedroom Window...	Statler AB
3:30pm—5:00pm	Sequestration and the Fiscal Cliff	Senate
3:30pm—5:00pm	Administrative Law Judges and Judicial Ethics	Pan American AB
6:10 pm— 9:30 pm	Section Dinner Cruise on the National Elite private yacht	6th & Water SW

FRIDAY, OCTOBER 26

Time	Session	Room
8:00am—9:00am	Registration	Capital Terrace
9:00am—10:30am	Developments in Administrative Law, Part I	Presidential
10:30am—10:45am	Break	Capital Terrace
10:45am—12:15pm	Developments in Administrative Law, Part II	Presidential
12:30pm—1:45pm	Awards Luncheon (NON-CLE)	Congressional/ Senate
1:45pm—3:15pm	Ethical 'Red Flags' for Public Lawyers: Responsibilities, Conflicts and More (ETHICS CLE)	Presidential
1:45pm—3:15pm	Rulemaking 101	Congressional
1:45pm—3:15pm	21st Century Administrative Law Research Tools	South American AB
1:45pm—3:15pm	Role of Administrative Agencies in the Political Process; A Preview of Potential Election Day Issues	Senate
3:15pm—3:30pm	Networking Break	Capital Terrace
3:30pm—5:00pm	Insights into CFPB Supervision, Enforcement, and Advocacy	Presidential
3:30pm—5:00pm	Negotiated Rulemaking	Congressional
3:30pm—5:00pm	DC Circuit Judges Panel (NON-CLE)	South American AB

Message from the Chair



As chair of the Administrative Law and Regulatory Practice Section, I am delighted to welcome you to the Section's 2012 Fall Conference.

We have increased the number of programs over prior years and hope your biggest problem will be choosing among the many excellent sessions. The drawback of being Chair is that I need to try and sample as many as I can; the benefit is that I get to sample as many as I can! Our programs address many hot topics such as sequestration, the law of counterterrorism, and a comparison of the regulatory policies of the two major presidential candidates. We also have many panels on basic ad law topics such as cost-benefit analyses, the newest web 2.0 research tools, and Rulemaking 101.

And it would not be a Fall Conference without our regular, very popular, and definitive Annual Review of Major Developments in Administrative Law and the George Washington Law Review's Annual Scholars' Review of Administrative Law. We're pleased to have a special luncheon program with noted political scientist Norman Ornstein talking about ways to improve our political process and a dinner cruise on the Potomac River.

To top it all off, you not only get valuable programs, you get to meet up with other administrative lawyers. Other lawyers like you, the power behind the throne. Remember, "Administrative Law Rules."

We are proud of the tremendously diverse group of lawyers from government, private practice, and the academy that make up our Section. We enjoy the job we do wrestling with important questions, sharing information and insight, and spending time with the many friends we have made in the process. It makes membership in the Section quite rewarding. If you are not already a member, we hope, after participating in the Fall Conference, you will join us.

I want to thank our meeting co-chairs, Carol Ann Siciliano, Neil Eisner, and Richard Murphy, three of the most charming, funny, humble, brilliant lawyers in the Section (this is saying a lot given our membership), for all of their work in putting this fabulous program together and for writing this message for me (unrequested!). The indispensable Anne Kiefer, Section Director, ably assisted by Toni Martinez and Alisha Dixon, makes the whole thing go, handling the thousands of day-to-day details. And we are most grateful for the crucial financial support provided by our generous sponsors – as of this writing, American University Washington College of Law, George Washington University Law School, Benjamin N. Cardozo School of Law, Greenberg Traurig LLP, Kirkland and Ellis LLP, LexisNexis, and Proskauer Rose LLP.

You've come to the right place! Welcome, and enjoy the program!

Thank you once again.

A handwritten signature in blue ink, which appears to read "J. Conrad, Jr.". The signature is fluid and cursive.

James W. Conrad, Jr.
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Program Agenda

Thursday • October 25, 2012

8:00 am – 9:00 am Registration *Capital Terrace*

9:00 am – 10:30 am **NFIB v. Sebelius: Looking Forward, Who Won?** *Presidential*

Timothy Aspinwall [Moderator]
James Blumstein, Gregory Katsas, Christopher Wright



The Supreme Court's decision regarding the Affordable Care Act leaves open big questions regarding the permissible reach of federal government in health care and other sectors. Does the Court's approval of the individual mandate suggest an expansion of Congressional power and agency regulatory authority? Alternatively, do the Court's holdings that the individual mandate is not a valid exercise of the Commerce Clause, and that the Medicaid expansion exceeds congressional power under the Spending Clause suggest a more limited role for the federal government? In the long run, who won? A panel of experts directly involved in the Supreme Court litigation will discuss these and other questions.

9:00 am – 10:30 am **Cost-Benefit Analysis: Knowing Quality When You See It** *Congressional*

David Rostker [Moderator]
Reeve Bull, Robert Burt, Amanda Lee (invited), Al McGartland



With President Obama's affirmation of the regulatory principles of Executive Order 12866, the debate over the use of cost-benefit analysis in regulatory policy has to a great extent been overtaken by a debate over the scope and quality of regulatory analysis. A presentation of the costs and benefit of rulemakings, even if not a formal cost-benefit analysis, is now common for high-impact rulemakings. But the preparation of a high quality cost-benefit analysis is not the task for regulatory counsel. This panel will provide an overview of the range of economic analyses prepared in support of regulatory policy development, OMB's guidance in their preparation, and an agency's preparation and use of these analyses in practice. Economists with practical experience in regulatory analysis will discuss the hallmarks of quality analysis and potential pitfalls.

9:00 am – 10:30 am **Understanding Prosecutorial Discretion in Immigration Law** *Statler AB*

Shoba Wadhia [Moderator]
Lenni Benson, Juan Osuna



This panel will focus on the following goals: understand the history and evolution of prosecutorial discretion in immigration law; understand the importance of the wise use of discretion in immigration laws and the humanitarian and economic reasons for why this discretion is essential to the agency to actually carry out its functions; and imagine the worst-case scenario: how should a government attorney respond when despite the most careful assessment, an individual who was given prosecutorial discretion commits a serious offense or in some way embarrasses the agency?

9:00 am – 10:30 am **Recess Appointments: Legal Challenges to President Obama's appointments to the Consumer Financial Protection Bureau and the National Labor Relations Board** *Senate*

Michael Stern [Moderator]
Hon. C. Boyden Gray, Deepak Gupta



On January 4, 2012, President Obama recess appointed Richard Cordray as the first director of the Consumer Financial Protection Bureau and, at the same time, made recess appointments to fill three vacancies on the National Labor Relations Board. These appointments immediately raised controversy as critics charged that the Senate was not in recess at the time the appointments were made. Legal challenges to these appointments and to the authority of these agencies to act without validly appointed officers are currently pending in the D.C. Circuit, the Seventh Circuit and the U.S. District Court for the District of Columbia. Panelists will discuss the legal issues raised by these cases and the potential implications for the CFPB, NLRB and the numerous businesses and organizations that they regulate.

Thursday • October 25, 2012

9:00 am – 10:30 am

The Future of Chinese Administrative Law

Pan American AB

Neysun Mahboubi [Moderator]

Xixin Wang, Hanhua Zhou, Haibo He, Hualin Song, Chunyan Zheng



This is a particularly dynamic moment for Chinese administrative law. The long-term reformist effort to secure passage of a comprehensive administrative procedure law – a law, roughly akin to the U.S. Administrative Procedure Act, that would provide baseline standards for all types of Chinese agency action – appears to be gaining new traction as a growing number of sub-national localities adopt regulations modeled upon the proposed national legislation. The scheduled upcoming revision of the two basic laws that define procedures for citizens to appeal unlawful government action has generated a vibrant scholarly discourse, and may lead to strengthening of these formal legal processes against some enduring challenges. Substantive regulatory dilemmas – some familiar in countries like the United States, and others more specific to China – have provoked a deepening sense of crisis that creates distinct openings for innovations in regulation. Featuring presentations by Chinese administrative law professors who have been specially invited to visit the United States by the Section of Administrative Law & Regulatory Practice, this panel will take stock of the development of Chinese administrative law over the past thirty years, and explore possibilities for reform today. Topics to be addressed include agency decision-making procedures, approaches to regulation, and external oversight in Chinese administrative law and practice. A central theme for discussion will be the degree to which traditional U.S. administrative law values such as transparency, public participation, and judicial review, and newer regulatory approaches such as cost-benefit and risk-based analysis, have informed Chinese administrative law thus far and might help shape its future.

10:30 am – 10:45 am

Break

10:45 am – 12:15 pm

Privacy, Politics, and The People in Administrative Law

Presidential

Francesca Bignami [Moderator], Kathleen Stoughton [Program Organizer]

David Arkush, Kenneth A. Bamberger, Mark Seidenfeld



The learning objectives of the panel are twofold. First, the panelists' presentations will offer audience members the opportunity to learn perspectives from leading scholars on the significance issues of the development of privacy law in the United States and the effects of politics and decision making bodies in administrative law. Second, audience members will learn about the overall impact of the democratic process on administrative law when the moderator initiates a discussion between all of the panelists to unite the areas of their research.

10:45 am – 12:15 pm

White House Review of Rulemaking: Strengthen, Mend, About Right or Abolish? *Congressional*

Jennifer A. Smith [Moderator], Sid Shapiro [Program Organizer]

Rena Steinzor, Louis Virelli III



In light of a forthcoming article by Professor Rena Steinzor, which recommends that centralized review of proposed regulations by OIRA should be abolished, the program will ask whether centralized review should be strengthened, mended, abolished or is now about right. Speakers will consider the constitutional, policy and political implications of the four possibilities as a means of discussing the pros and cons of retaining the existing approach, adjusting it, or even ending it. A focus will be centralized review in the Obama Administration.

10:45 am – 12:15 pm

Agency as Network Operator: The Administrative Law Implications of the FirstNet Wireless Network *Statler AB*

Scott Delacourt [Moderator], Donna Gregg [Program Organizer]

Jeffrey Cohen, Uzoma Onyeije, David Turetsky



The Middle Class Tax Relief and Job Creation Act of 2012 created FirstNet – the First Responder Network Authority – an independent agency within NTIA licensed to operate and tasked with deploying a nationwide wireless broadband network to serve public safety. This panel will explore the administrative law issues raised by a quasi-governmental entity building and running a wireless network. NTIA and the FCC, along with others, have a role. Panelists will explore “who is on first” and the administrative law implications.

10:45 am – 12:15 pm The JOBS Act: The Real Impact on Financings and SEC Rulemaking, and the SEC Itself
Senate

**Frank Zarb [Moderator] James Gerkis [Program Organizer]
Tom Kim, Harvey Pitt, Thomas Quaadman**



Following the adoption of the JOBS Act, there has been wide speculation about what the impact will be on private and public financing transactions. For example, there is a logical argument that a perverse impact of the Act will be to decrease the number of IPOs since it provides more flexibility for companies to remain private for longer periods of time. Another question is whether the ability to engage in general solicitation will actually change the nature and scope of traditional private financing transactions. In evaluating these issues, it is impossible to avoid questions about the role of the SEC in reacting to the new legislation, which changes well-settled areas of the law, and in carrying out its mandate to write new rules to implement its provisions in light of its longstanding policies, as well as new legal developments that impose new administrative hurdles, such as pressure to perform rigorous cost-benefit analyses.

Leveraging proposed rules and guidance from the SEC, as well as the actual experience of practitioners, this panel will focus on (1) the likely impact on capital raising by companies, and (2) rulemaking issues faced by a governmental agency in light of clear legislative action changing a well-settled area of the law. Practitioners and regulators alike will draw lessons from this program in advising clients and in implementing new rules, respectively.

10:45 am – 12:15 pm International Regulatory Cooperation and its New Executive Order *Pan American AB*

**Robert Ahdieh [Moderator], David Zaring [Program Organizer]
Michael Fitzpatrick, Alex Hunt**



International regulatory cooperation is hypertrophying, and has had deep effects on American approaches to financial regulation, consumer safety and pursuing level playing fields in trade cases. The President's new executive order promoting international regulatory cooperation broadly endorses the phenomenon, and encourages agencies to collaborate with their foreign counterparts. This panel is designed to reflect on how international regulatory cooperation is going, what the future implications of the new executive order are, and how agency officials and lawyers should respond to the new executive branch initiative.

12:15 pm – 1:45 pm Luncheon: Can We Reform Out of Our Dysfunction? Ideas to Improve America's Political Process
Congressional/Senate

Norman J. Ornstein [Keynote Speaker]

1:45 pm – 3:15 pm Insider Trading on Government Information: Issues in Enforcement and Interpretation of the STOCK Act of 2012
Presidential

**Robert L. Walker [Moderator]
Joseph Brenner, Don W. Fox, Donna Nagy, John Sassaman**



This panel will be of interest to all federal government personnel, and all private sector personnel, whose responsibilities involve them in the communication or receipt of potentially "market-moving" government information. The passage of the Stop Trading on Congressional Knowledge ("STOCK") Act of 2012 "affirmed" that the insider trading prohibitions arising under the federal securities laws apply to all government officials. But what day-to-day consequences does the STOCK Act create for the uses -- and for the users -- of government information? This panel will explore such current issues of enforcement and interpretation arising from passage of the STOCK Act as: "What is 'material, non-public information' in the government arena?"; "To what extent may private sector recipients of government information -- 'tippees' -- have derivative insider trading liability?"; "Could the STOCK Act's insider trading provisions chill necessary and beneficial exchanges of government information?" The distinguished panelists will bring a wide range of experience and perspectives to these important, still evolving issues.

1:45 pm – 3:15 pm

Cost-Benefit Analysis: How It Could Be Better

Congressional

David Rostker [Moderator]

Art Fraas, Heidi King, Bruce Kraus, Randy Lutter



Economics is not an exact science. Regulatory analysis, in which an agency presumes to predict the future, is even less exact. By necessity, the analysis will reflect the professional judgments of the staff and, likely, the policy judgments of the agency leadership. So it is unsurprising that the same level of scrutiny brought to bear on agency decision making is brought to bear on the supporting analyses. Or, sometimes, the lack of supporting analysis. Congress is a major player, both in its concern over specific rules and in efforts to further integrate regulatory analysis into decision making. And thanks to *Business Roundtable v SEC*, 647 F.3d 1144 (D.C. Cir. 2011), we now know that the courts are also paying attention. In some cases, flaws in supporting analysis will jeopardize the entire rulemaking.

This panel will discuss some current issues in cost-benefit analysis, including the court's holding in *Business Roundtable* and possible responses. The panel will also provide a summary of efforts in Congress to legislate better analysis.

1:45 pm – 3:15 pm

The Law of Counterterrorism

Statler AB

Lynne Zusman [Moderator]

John Altenburg, Jr., Michael J. Davidson, Dick Jackson, Jamil Jaffer, W. George Jameson



Counterterrorism has been defined as "offensive measures taken to prevent, deter, pre-empt, and respond to terrorism." Counterterrorism Law encompasses the legal parameters of this critical government activity. All three branches of the U.S. Government play important roles. This panel, composed of several contributing authors to the ABA Adlaw publication, *The Law of Counterterrorism*, will explore and discuss counterterrorism law developments regarding the law of war, military responsibilities, intelligence requirements, and surveillance actions as examples of the current USG counterterrorism framework to address the rapidly evolving situation.

1:45 pm – 3:15 pm

Banking on B Corps

Senate

Christine C. Franklin [Moderator]

Andrew Kassoy, Teri Lovelace, Other panelists TBA



Lawyers who advise or regulate businesses will be interested to learn of this new form of corporate entity. The program will provide a basic understanding of the benefit corporation, or "B corp", movement. Currently, 10 of the 50 States have statutes authorizing benefit corporations, and a nonprofit known as "B Lab" has certified more than 500 "Certified B Corporations" as meeting rigorous independent social and environmental standards. Attendees will learn about B corps generally: the economic rationale; the basic legal structure; the state-by-state effort to enact statutes authorizing B corps; the Certified B Corporation process; and the GIIRS rating system for impact investing. They also will learn about three Certified B Corporations which are banking institutions, each with its own characteristics. Attendees will learn how and why to form B corps, as well as practices of these responsible corporations which may be adaptable to traditional organizations. B corps role in the nation's recovery after the financial crisis also will be explored.

1:45 pm – 3:15 pm

Administrative Law Case Processing in Electronic Age:
From Filing to Hearing *Pan American AB*

Hon. James Gilbert [Moderator], Hon. Nancy Griswold [Program Organizer]
Bruce Goldin, Martin Gruen, Hon. Kathleen Scully-Hayes, Hon. Erin Wirth



Both Administrative Law Judges and litigants continue to be challenged as agencies look to technological solutions to keep pace with increasing workloads. This panel will discuss both the efficiencies gained and challenges faced when an agency begins processing workloads in an electronic environment. Technological questions such as determining a suitable platform for electronic processing must be resolved and legal concerns such as due process must be addressed when moving to an electronic environment. There are also questions which cross the boundaries between technical and legal expertise, such as the identification and protection of Personally Identifiable Information. Our experts will also discuss issues which must be considered in planning for the electronic courtroom of the future, such as line of sight, lighting for VTC and other digital hearing formats, accessibility of exhibits during hearings and ease of use. We will also discuss issues such as appropriate use of VTC and due process concerns to be considered when adopting electronic environments for case processing.

3:15 pm – 3:30 pm

Break

3:30 pm – 5:00 pm

Discussion on the Regulatory Policy of the Two Major Political Parties

Presidential

James L. Gattuso, other speakers and description TBA. Please note this is a non-CLE panel.

3:30 pm – 5:00 pm

Building Successful SBREFA Panels

Congressional

Bruce Lundegren [Moderator], Kevin Bromberg [Program Organizer]
Robert Burt, Jeffrey Longsworth, Lanelle Wiggins



This panel will explore the Small Business Advocacy Review (SBAR) panel process required by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), as practiced by EPA and OSHA. SBREFA requires EPA and OSHA (and now the new Consumer Financial Protection Bureau (CFPB) created by the Dodd-Frank law) to convene SBAR (or SBREFA) panels for each of their proposed rules that, if promulgated, will have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small non-profit organizations and small governmental jurisdictions. The SBAR panel consists of the covered agency (i.e., EPA, OSHA, or CFPB), the SBA Office of Advocacy, and the Office of Information and Regulatory Affairs (OIRA) within OMB. The SBAR panel is assisted in its review of the draft rule and background materials by small entity representatives (SERs) from the affected industries who review the materials and provide advice and recommendations to the panel. The panel then provides a report of its findings to the head of the covered agency. Issues to be explored include the nature and depth of materials provided to the SERs and procedures for ensuring an effective dialogue between the SERs and the Panel members. A successful panel would allow a well-selected group of SERs to provide informed and effective advice to the panel, allowing the Panel to reach consensus recommendations on how to achieve the statutory objectives in a manner that minimizes the impact on small entities. The panel includes four federal panel members with significant experience on multiple EPA or OSHA panels, and one private attorney. Attorneys who will be involved in SBREFA panel processes at EPA, OSHA, and CFPB will learn how to make more effective use of these proceedings.

3:30 pm – 5:00 pm

So there is a 6” Remote Controlled Helicopter with a Camera Outside your Bedroom Window...
Statler AB

Anne Bechdolt [Moderator]
Christopher Calabrese, Mark Eichorn, Claire McKenna, Alan Raul



In February 2012, Congress tasked the U.S. Department of Transportation and Federal Aviation Administration with integrating unmanned aircraft into the National Airspace System. This panel will explore the government’s responsibilities with regard to addressing privacy issues that result from regulating these types of emerging technologies under the traditional framework of the Privacy Act of 1974; the FTC’s responsibilities in protecting consumer privacy, and the roles of the judiciary and legislative branch in protecting privacy as technologies advance.

3:30 pm – 5:00 pm

Sequestration and the Fiscal Cliff *Senate*

Susan Irving [Moderator]
John Bowman, John F. Cooney



This panel will discuss the debt ceiling and other fiscal issues, such as tax policy, that are going to be before Congress in the lame duck session after the election. This panel will also discuss what is currently happening in regard to sequestration, what its impact could be, who has what role in the process, and how contractors should act. The discussion would be most helpful to those working on fiscal issues in government agencies and those outside agencies would be affected as lawyers advising clients who would be impacted.

3:30 pm – 5:00 pm

Administrative Law Judges and Judicial Ethics *Pan American AB*

Hon. Nancy Griswold [Moderator]
John Condray, Hon. Robert Lesnick, Alan Sibarium



The question of which ethical standards apply to Administrative Law Judges remains an issue of interest to both ALJs and those who practice before them. As Executive Branch employees, Administrative Law Judges are unquestionably bound by the Standards of Ethical Conduct for Employees of the Executive Branch which applies to all government employees. Recently, several agencies have followed the guidance of the American Bar Association in applying the additional standards of the Code of Judicial Conduct to their Administrative Law Judges. The growth in the use of Social Media has given rise to a new area of ethics discussion as Judges attempt to negotiate their way through this new means of social interaction while still maintaining ethical boundaries.

This panel will feature presentations from the Office of Government Ethics, Administrative Law Judges and legal scholars, who will discuss the applicability of the Code of Judicial Ethics in the Administrative Arena. Issues such as bias, use of social media by ALJs, use of the internet as an investigatory tool will be discussed.

6:10 pm – 9:30 pm

Section Dinner Cruise

Board the National Elite Yacht at 6th & Water Street SW at 6:00 pm. The Ship sails promptly at 6:10 pm. Cocktails and hors d’oeuvres from 6:15—7:30, Dinner from 7:30—8:30.



Friday • October 26, 2012

8:00 am – 9:00 am Registration *Capital Terrace*

9:00 am – 10:30 am Developments in Administrative Law, Part I *Presidential*



Jeffrey S. Lubbers [Moderator]
Michael Asimow, William Funk, William S. Jordan III, Richard Murphy, Jackie Solivan, Kathryn A. Watts

In this signature event of the Administrative Law Section's Fall Conference, scholars will present a comprehensive overview of the most important administrative law developments in the last twelve months. It's all the administrative law news that's fit for discussion and it comes packaged in one fast-paced program that has become a must-attend event for anyone practicing federal administrative law or involved with regulation in Washington.

10:30 am – 10:45 am Break

10:45 am – 12:15 pm Developments in Administrative Law, Part II *Presidential*



Jeffrey S. Lubbers [Moderator]
Michael Asimow, William Funk, William S. Jordan III, Richard Murphy, Jackie Solivan, Kathryn A. Watts

12:15 pm – 1:45 pm Awards Luncheon *Congressional/Senate*

Senior Fellow Award
Presented to Cass Sunstein

Mary C. Lawton Award for Outstanding Government Service
Presented to Mary Beth Richards

Annual Award for Scholarship in Administrative Law
Presented to John Manning, *Separation of Powers as Ordinary Interpretation*

Gellhorn-Sargentich Law Student Essay Award
Presented to Daniel Kazhdan, *Wyeth and PLIVA: The Law of Inadequate Drug Labeling*

1:45 pm – 3:15 pm Ethical 'Red Flags' for Public Lawyers: Responsibilities, Conflicts and More *Presidential*



Sharon Pandak [Moderator]
Carlos Acosta, Joseph N. Bowman, Judy Kaleta, Cynthia Rapp

The ABA's Government and Public Sector Lawyers Division's Ethical 'Red Flags' for Public Lawyers: Responsibilities, Conflicts and More examines the unique ethical issues confronted by public sector lawyers using an entertaining, interactive format. Panelists dramatize short, illustrative scenarios with a discussion period following each hypothetical. A variety of ethics topics will be covered – all from the point of view of the government lawyer.

1:45 pm – 3:15 pm Rulemaking 101 *Congressional*



Daniel Cohen [Moderator]
H. Thomas Byron III, Andrew Emery, Jane Luxton, Carol Ann Siciliano

This program will provide an introductory/refresher course on the procedural steps, legal requirements, and practical constraints applicable to issuing rules and challenging (or defending) them in court, suitable for lawyers and non-lawyer clients and managers. The course will be co-taught by a team of government and private practitioners, each bringing out considerations most relevant from their particular perspectives.

Friday • October 26, 2012

1:45 pm – 3:15 pm 21st Century Administrative Law Research Tools *South American AB*



Cynthia R. Farina [Moderator]
Robert Sukol, John Wagner, Michael White

This panel will discuss new methods of research that are easier and more effective for administrative law and regulation. Research tools used by the Federal Register and U.S. House of Representatives will be covered.

1:45 pm – 3:15 pm Role of Administrative Agencies in the Political Process; A Preview of Potential Election Day Issues *Senate*



John H. Young [Moderator], Elizabeth Howard [Program Organizer]
Stephen Cobb, Rebecca Green, Myron McClees, Hans A. von Spakovsky

This panel will focus on the current controversy over voter ID laws and how they are playing out nationally. Virginia, Wisconsin, Florida, and Pennsylvania are among the states that will be studied. This issue is extremely current and controversial and will raise a host of post-election issues (e.g., provisional ballots).

3:15 pm – 3:30 pm Break

3:30 pm – 5:00 pm Insights into CFPB Supervision, Enforcement, and Advocacy *Presidential*



Christine C. Franklin [Moderator]
April Breslaw, Michael W. Briggs, John Coleman, To-Quyen Truong

The Consumer Financial Protection Bureau is pressing forward in its second to fulfill its legislative mandate in the wake of the financial crisis and will be discussing several of its initiatives. Attendees will gain insights into the CFPB's supervision framework for both banks and non-banks offering consumer financial products and services, including its methodologies to safeguard the confidentiality of information provided by participants. Inter-agency coordination will be discussed. Practitioners will learn about the CFPB's program of submitting amicus briefs in federal appellate cases involving interpretations of consumer protection law. The amicus brief programs of the ABA and the Section also will be discussed.

3:30 pm – 5:00 pm Negotiated Rulemaking *Congressional*



Daniel Cohen [Moderator]
Daniel Alpert, John F. Caskey, Elizabeth A. McFadden, Richard Parker

In 1990, Congress endorsed the use by agencies of an alternative procedure known as "negotiated rulemaking." This procedure, sometimes called "regulatory negotiation," or "neg-reg," has been used by a fair number of agencies to bring interested parties into the rule-drafting process. This panel will discuss how successful negotiated rulemaking can lead to better, more acceptable rules, based on a clearer understanding of the corners of all affected interests.

3:30 pm – 5:00 pm DC Circuit Judges Panel *Senate*

Hon. Brett Kavanaugh and Hon. Stephen Williams. This is a NON-CLE panel.

5:00 pm - 7:00 pm Reception for the Chinese Administrative Law Scholars in the North Gate Grill, Hotel Lobby

Saturday • October 27, 2012

8:00 am – 5:00 pm Section Council Meeting *Capital Hilton - Senate Room*

All section members are welcome to attend. Breakfast and lunch will be provided. Please RSVP to Anne Kiefer. See informational for directions to the Capital Hilton.

Administrative Law Fall Conference • Important Information

Section Dinner Cruise Thursday, October 25, 6:10 pm – 9:30 pm

Join the Section of Administrative Law and Regulatory Practice and your colleagues for a dinner cruise on the National Elite private yacht along the Potomac River. Enjoy hors d'oeuvres and cocktails with never ending views of Washington, DC on the outdoor deck over a dinner buffet. We will also honor William S. Morrow, Jr., recipient of the 2012 Chair's Award for Outstanding Volunteer Service.

Meet at 6th and Water Street SW where we will board the National Elite Yacht promptly at 6:10 pm and return to the same location at 9:30 pm. All three levels of the yacht will be reserved for this event. All section members and guests are welcome!

Parking is provided by Colonial Parking, located across the street from the pier (Cars \$13 weekdays/\$16 weekends) and also along the street parking meters. Visit www.spiritofwashington.com for more information regarding the yacht. Register [online](#) or complete the registration form.

Section Council Meeting Saturday, October 27, 8:00 am – 5:00 pm Capital Hilton - Senate Room

All section members are welcome to attend. Breakfast and lunch will be provided. Materials will be available for download prior to the meeting. Please RSVP and direct questions to Anne Kiefer at anne.kiefer@americanbar.org.

Capital Hilton Directions and Hotel Block

1001 16th Street NW, Washington, DC 20036 T: 202-393-1000; F: 202-639-5784

Walking directions to Capital Hilton from

Farragut North Metro Station (Red Line): Exit the station and go east two blocks on K Street to 16th Street. Capital Hilton will be on the northeast corner of 16th and K Streets.

Farragut West Metro Station (Orange & Blue Lines): Exit the station and go east two blocks on I Street to 16th Street. Go north one block on 16th Street. Capital Hilton will be on the northeast corner of 16th and K Streets.

McPherson Square Metro Station (Orange & Blue Lines): Take the White House exit and go two blocks east on I Street to 16th. Go north one block on 16th Street. Capital Hilton will be on the northeast corner of 16th and K Streets.

The Capital Hilton has reserved a small block of rooms for the nights of Thursday October 25 and Friday October 26 at a rate of \$209 per night plus taxes (DC is currently 14.5%). This is the revised rate as of September 4. Contact the hotel directly at 202-393-1000 or 1-800-445-8667 and request a room under the "ABA Section of Administrative Law and Regulatory Practice 2012 Administrative Law Conference" to obtain the group rate no later than Thursday, October 5 at 5:00 pm (EST). A credit card guarantee is required and one night's deposit will be charged to guarantee the room. Check in time is 3:00 p.m. with a check-out time of 12:00 noon. Contact the hotel directly for reservation related questions. Parking is valet only and \$42 per day. We apologize but we cannot validate parking.

Registration

Register for the conference and section dinner [online](#) or complete the registration form. On-site registration is permitted however prices are subject to increase. Contact Toni Martinez at 202-662-1582 for registration questions. Scholarship opportunities for registration fees are available and handled on a case-by-case basis. Contact Anne Kiefer for more information on scholarships at 202-662-1690.

Continuing Legal Education (CLE) Credit

ABA programs ordinarily receive CLE credit in AK, AL, AR, AZ, CA, CO, DE, FL, GA, GU, HI, IA, ID, IL, IN, KS, KY, LA, ME, MN, MS, MO, MT, NH, NM, NV, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, VI, WA, WI, WV, and WY. These states sometimes do not approve a program for credit before the program occurs. This course is expected to qualify for 12 CLE credit hours (including 1.5 ethics hours) in 60-minute-hour states, and 14.4 credit hours (including 1.8 ethics hours) in 50-minute-hour states. This transitional program is approved for both newly admitted and experienced attorneys in NY. For more information about CLE accreditation in your state, visit the [ABA MCLE website](#). All CLE materials will be distributed on a USB memory key at registration. Contact antonia.martinez@americanbar.org no later than October 5 if your state requires a hard copy of these materials or for questions.

Administrative Law Conference and *Section Dinner* Registration Form
ABA Section of Administrative Law & Regulatory Practice
October 25-26, 2012 | Capital Hilton | Washington, DC

Registration: Use this form to register. Deadline for advanced registration is October 15. Depending on the number of advanced registrations, on-site registration may be available. Credit cards or checks are required at the time of registration (training vouchers, SF-182, or EFT CANNOT be accepted). Wire Transfers and ACH payments will also be accepted for advanced registration only. Receipt copies are emailed to the registrant when the registration is processed.

Conference Location: Capital Hilton, 1001 16th Street NW, Washington, DC, 20036, (202) 393-1000. The hotel is located within blocks of 3 Metro Stations: Farragut North Metro Station (Red Line), Farragut West Metro Station (Blue & Orange Lines), and McPherson Square Metro Station (Blue & Orange Lines). Parking: Valet parking is available at the Capital Hilton at a rate of \$42.00 per day. Sorry we cannot validate parking.

Dinner Cruise Location: Section Dinner Cruise will be held on Thursday, October 25. We will meet promptly at 6:10 pm at 6th and Water Street, SW, Washington, DC and return at 9:30 pm. Street parking is available and private parking is \$13 for the day.

Scholarships: Contact Anne Kiefer anne.kiefer@americanbar.org or 202.662.1690 to request a registration Scholarship. Decisions are based upon individual circumstances.

CLE: 12 hours of Professional Practice Credit and 1.5 hours of Ethics Credit have been requested, but cannot be guaranteed. Contact your state or local MCLE board to verify requirements.

Cancellation & Special Needs: Cancellations accepted without charge until October 5, 2012. No refunds are possible after that date substitutions only. Email cancellations and any special needs to Antonia.martinez@americanbar.org or Fax to 202-662-1529.

Name: _____

ABA Member I.D. _____ Administrative Law Section Member? Yes__ No__

Email: _____ Phone: _____

Organization: _____

Address: _____

City, State, Zip: _____

QTY.	CONFERENCE PROGRAM RATES	Rates
	Admin Law Section Member: Program Passport (All CLE Sessions)	\$275
	Government Attorney: Program Passport (All CLE Sessions) or Special Speaker Rate	\$240
	Non-Member: Program Passport (All CLE Sessions)	\$355
Oct 25	Single Day Passport (All CLE Sessions for 1 day only)	\$185
Oct 26	Please check appropriate day	
	Individual Program: ANNUAL REVIEW OF MAJOR DEVELOPMENTS IN ADMINISTRATIVE LAW	\$185
	Individual Programs – All Other Sessions, Members or Non-Members Notify antonia.martinez@americanbar.org of which program	\$90
	Law Student: No Charge for any CLE Sessions	No Charge
QTY.	DINNER EVENT RATES	TOTAL PROGRAM FEES \$
	Admin Law Section Member: Dinner Cruise	\$110
	Non-Section Member: Dinner Cruise	\$125
		TOTAL EVENT FEES \$
		GRAND TOTAL \$

Payment by check or credit card is required at time of registration. Make checks payable to the American Bar Association. Return this form by EMAIL: antonia.martinez@americanbar.org OR FAX: 2026621529 OR MAIL: Toni Martinez, ABA Section of Administrative Law, 740 15th Street NW, Washington, DC 20005. Wire Transfers and ACH payments will also be accepted for advanced registration only. Training vouchers, SF-182, or EFT CANNOT be accepted.

METHOD OF PAYMENT

Check (payable to "American Bar Association") VISA MasterCard AMEX

Card Number: _____ Exp. Date: _____

Signature: _____ Name on card: _____



Would you like to be a Member of the Section of Administrative Law & Regulatory Practice?
 Check here ___ to have the \$60 Annual Dues added to this invoice (must already be an ABA member).