



Section of Administrative Law & Regulatory Practice

Administrative Law Conference

November 17-18, 2011

Georgetown University Hotel and Conference Center
Washington, DC

CLE: 12 Hours Professional Practice, 1.5 Ethics

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**Program Chairs
Neil Eisner and Richard Murphy**

**Section Chair
Michael Herz**



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Message From Michael Herz

As chair of the Administrative Law and Regulatory Practice Section, I am delighted to invite you to our Fall Conference on November 17-18, 2011, at the Georgetown University Hotel and Conference Center in Washington, D.C.

Take a quick glance at our list of programs, and you'll see why, if your practice has anything to do with government agencies, you need to be at the Fall Conference. Highlights include:

- Programs on foundational topics that cut across administrative practice — including panels on paperwork reduction, inspectors general, incorporation by reference, and retrospective reviews of rules.
- Programs on “hot topics” from across the substantive spectrum — including panels on health care reform, immigration, election law, and consumer finance protection.
- A dynamic presentation of “ethics in action” vignettes — an engaging and thought-provoking way to earn some of those always-helpful ethics credits.
- Controversies galore! A panel of leading practitioner and scholars will discuss the practical and ethical quandaries that arise when one of your clients disapproves of another client and wants you to cut off representation. Another distinguished, and decidedly non-unanimous, panel will assess the various ambitious regulatory reform measures now pending in Congress. A third panel, including two federal judges, will tackle “administrative law goes to war.”
- The always popular and definitive Annual Review of Major Developments in Administrative Law and the *George Washington Law Review's* Annual Scholars' Review of Administrative Law.

Of course, best of all, while attending these valuable programs, you will be hobnobbing with your fellow administrative lawyers, who are, as all must admit, excellent people. (And for hobnobbing of the first order, don't forget to sign up for the Section dinner Thursday evening, which will honor the chairs of the Administrative Conference of the United States, a distinguished group indeed.)

I am sure that the conference will be characterized by much of what gives the Section its special flavor and makes membership so rewarding – a diverse group of administrative lawyers from government, private practice, and the academy, wrestling with important questions, sharing information and insight, and enjoying each other's company mightily in the process.

I want to thank our meeting co-chairs, Neil Eisner and Richard Murphy, two of the most well-liked, good-looking, 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. The indispensable Anne Kiefer, Section Director, 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: Washington College of Law at American University, George Washington University Law School, Greenberg Traurig LLP, WilmerHale, The Dow Chemical Company and Lexis/Nexis

The Fall Conference is the place to be on November 17th and 18th! See you there!

Best wishes,

Michael Herz
Section Chair

Schedule at a Glance

Thursday, November 17, 2011		
Time	Session	Room
8:00am—9:00am	Registration	South Gallery
9:00am—10:30am	Debt Ceiling Default CLE PANEL	Salon AGH
9:00am—10:30am	Regulatory Review of Independent Agencies, Including Presidential/OMB Review and UMRA CLE PANEL	Salon EF
9:00am—10:30am	Solving the Immigration Removal Adjudication Crisis CLE PANEL	Salon D
9:00am—10:30am	Congressional Ethics: Rules, Process, and Enforcement CLE PANEL	Salon BC
10:30am—10:45am	Networking Break	South Gallery
10:45am—12:15pm	The George Washington Law Review's Annual Scholars' Review of Administrative Law CLE PANEL	Salon AGH
10:45am—12:15pm	The Government in the Sunshine Act: A Current Assessment CLE PANEL	Salon EF
10:45am—12:15pm	Recent Developments in Employment Based Immigration Adjudication CLE PANEL	Salon D
10:45am—12:15pm	Administrative Law Issues in the Patient Protection and Affordable Care Act: Prospects for Facilitating Genuine Health Reform CLE PANEL	Salon BC
12:30pm—1:45pm	Luncheon with Wm. T. (Bill) Robinson III, President of the American Bar Association and Elizabeth Dickinson, FDA Acting Chief Counsel THIS IS NOT A CLE PANEL	Salon AGH
1:45pm—3:15pm	Administrative Law: Time to REIN It In, CURB It, or Reform It? CLE PANEL	Salon AGH
1:45pm—3:15pm	Retrospective Reviews of Regulations under Sect. 610 of the Regulatory Flexibility Act and Various Presidential Orders CLE PANEL	Salon EF
1:45pm—3:15pm	Interstate Fracking Regulation CLE PANEL	Salon D
1:45pm—3:15pm	The Impact of New Federal State & Local Pay-to-Play Regulations on Your Clients CLE PANEL	Salon BC
3:15pm—3:30pm	Networking Break	South Gallery
3:30pm—5:00pm	So Someone Objects to Your New Client THIS IS NOT A CLE PANEL	Salon D
3:30pm—5:00pm	Paperwork Reduction Act: A Primer CLE PANEL	Salon EF
3:30pm—5:00pm	Information as a Regulatory Tool CLE PANEL	Salon AGH
3:30pm—5:00pm	The Consumer Financial Protection Bureau CLE PANEL	Salon BC
Friday, November 18, 2011		
Time	Session	Room
8:00am—9:00am	Registration	South Gallery
9:00am—10:30am	Developments in Administrative Law, Part I CLE PANEL	Salon AGH
10:30am—10:45am	Networking Break	South Gallery
10:45am—12:15pm	Developments in Administrative Law, Part II CLE PANEL	Salon AGH
12:30pm—1:45pm	Luncheon with Linda Klein, Chair, ABA House of Delegates and Awards Presentation THIS IS NOT A CLE PANEL	Salon AGH
1:45pm—3:15pm	Judicial Review in the Roberts Era CLE PANEL	Salon EF
1:45pm—3:15pm	Incorporation by Reference CLE PANEL	Salon AGH
1:45pm—3:15pm	Should Congress Expand the Jurisdiction of the Court of Appeals for Veterans Claims and the Court of Appeals for the Federal Circuit CLE PANEL	Salon D
1:45pm—3:15pm	Ethical Considerations in Public Sector Law ETHICS CLE PANEL	Salon BC
3:15pm—3:30pm	Networking Break	South Gallery
3:30pm—5:00pm	Administrative Law Goes to War THIS IS NOT A CLE PANEL	Salon AGH
3:30pm—5:00pm	OIG 101: Over Thirty Years of Increasing Oversight Authority CLE PANEL	Salon EF

Thursday, November 17, 2011

8:00am—9:00am

Registration *South Gallery*

9:00am—10:30am

CLE PANEL

Debt Ceiling Default *Salon AGH*

- **Charlotte M. Bahin**, Washington, DC [Moderator]
- **John F. Cooney**, Partner, Venable LLP, Washington, DC
- **John E. Bowman**, Former Acting Director of the Office of Thrift Supervision and Former Assistant General Counsel, US Department of the Treasury, Washington, DC
- **Neil H. Buchanan**, Professor, George Washington University Law School, Washington, DC
- **Chris Krueger**, Senior Vice President, Washington Research Group, Washington, DC

During the summer of 2011, Congress and the Administration reached a compromise that required Congressional action to reduce the deficit and to pass an appropriations bill to fund federal agencies. A Select Joint Committee has been established to negotiate bills. The debate, compromise, and negotiation raise a number of logistical, legal, and practical issues. This panel of experts will address the valid administrative law and tax implications as well as the political dynamic and logistical consequences of the actions leading up to ultimate compromise.

9:00am—10:30am

CLE PANEL

Regulatory Review of Independent Agencies, Including Presidential/OMB Review and UMRA *Salon EF*

- **Alan Raul**, Partner, Sidley Austin LLP, Washington, DC [Moderator]
- **C. Boyden Gray**, former Counsel to the President, Adjunct Professor, New York University School of Law, NY, NY
- **Boris Bershteyn**, General Counsel, Office of Management and Budget, Washington, DC
- **Brian Callanan**, Office of Senator Rob Portman, Washington, DC
- **Robert Percival**, Robert F. Stanton Professor of Law and Director of Environmental Law Program, University of Maryland School of Law, Baltimore, MD

Analyze the legal and policy rationales for subjecting or exempting independent agencies from regulatory review under Executive Orders and the Unfunded Mandates Reform Act, and the obligations to apply cost-benefit analysis and choose least burdensome regulatory alternative.



9:00am—10:30am

CLE PANEL

Solving the Immigration Removal Adjudication Crisis *Salon D*

- **Jill E. Family**, Associate Professor, Widener University School of Law, Harrisburg, PA [Moderator]
- **Lenni B. Benson**, Professor, New York Law School, New York, NY
- **Juan P. Osuna**, Director, Executive Office for Immigration Review, US Department of Justice, Washington, DC
- **Peter S. Vincent**, Principal Legal Advisor, Immigration and Customs Enforcement, US Department of Homeland Security, Washington, DC
- **Russell Wheeler**, Visiting Fellow, Brookings Institution, Washington, DC

This panel will discuss the challenges facing adjudication of removal (deportation) cases and potential reforms. While there is widespread consensus that the system needs reform, the nature of the reform is still being studied and debated. This panel will bring audience members up to date on the major challenges facing a system charged with determining whether an individual may be deported from the United States. The panel also will discuss proposed reforms, including an ongoing study of the system being conducted by the Administrative Conference of the United States and a study completed by the American Bar Association.

9:00am—10:30am

CLE PANEL

Congressional Ethics: Rules, Process, and Enforcement *Salon BC*

- **Robert L. Walker**, Of Counsel, Wiley Rein LLP, Washington, DC [Moderator]
- **Omar Ashmawy**, Staff Director and Chief Counsel, Office of Congressional Ethics, US House of Representatives, Washington, DC
- **John C. Sassaman, Jr.**, Chief Counsel and Staff Director, Select Committee on Ethics, US Senate, Washington, DC
- **Daniel A. Schwager**, Staff Director and Chief Counsel, Committee on Ethics, US House of Representatives, Washington, DC

An understanding of congressional ethics rules and process is essential for: Members and staff of Congress; corporations and trade associations; government affairs and campaign professionals; and counsel for any of these individuals or groups. This panel -- comprising the current chief counsels of all three congressional ethics offices and moderated by a former chief counsel of both the House and Senate ethics committees -- will provide a comprehensive overview of: U.S. congressional ethics rules, with a focus on the gift rules; the advisory and enforcement processes followed by the House Ethics Committee and by the Senate Ethics Committee; and the jurisdiction and role of the new Office of Congressional Ethics in the House ethics enforcement framework.

10:30am—10:45am
Networking Break

10:45am—12:15pm **CLE PANEL**
The George Washington Law Review's Annual
Scholars' Review of Administrative Law *Salon AGH*

- **Robert Glicksman**, Professor, George Washington University Law School, Washington, DC [Moderator]
- **Richard J. Pierce**, Professor, George Washington University Law School, Washington, DC
- **Gillian Metzger**, Professor and Vice Dean, Columbia Law School, New York, NY
- **Jason Yackee**, Assistant Professor, University of Wisconsin Law School, Madison, WI

The learning objectives of the panel will thus be two-fold. First, the panelists' presentations will offer audience members the opportunity to learn perspectives from leading scholars on the significant issues of rulemaking ossification and the common law character of administrative law. Second, audience members will learn about the overall impact of judicial decision-making on administrative law when Professor Glicksman initiates a discussion between all of the panelists to unite the areas of their research. This discussion will explore the role of the courts in the development of administrative law and whether courts are playing a salutary role or having unintended effects on administrative law. This program was organized by Stephanie Trifone, Senior Project Editor of The George Washington Law Review.

10:45am—12:15pm **CLE PANEL**
The Government in the Sunshine Act: A Current
Assessment *Salon EF*

- **James T. O'Reilly**, Professor, University of Cincinnati Law School, Cincinnati, OH [Moderator]
- **Bernard W. Bell**, Professor, Rutgers Law School, Newark, NJ [Program Organizer]
- **Randolph J. May**, President, Free State Foundation, Rockville, MD

Stephen H. Klitzman, Deputy Chief, Consumer and Governmental Affairs Bureau, Office of Intergovernmental Affairs, Federal Communications Commission, Washington, DC



The Government in the Sunshine Act, enacted in 1976, requires that the multi-member bodies that head government agencies hold their meetings in public. Many have suggested that the Sunshine Act decreases collegiality at such multi-member agencies and encourages the use of techniques to avoid meaningful discussions at meetings. This program will discuss various assessments of the Act's impact on multi-member agencies.

10:45am—12:15pm **CLE PANEL**
Recent Developments in Employment Based
Immigration Adjudication *Salon D*

- **Geoffrey Forney**, Trial Attorney, United States Department of Justice, Washington, DC [Moderator]
- **Harry Sheinfeld**, Attorney, Solicitor of Labor's Office, US Department of Labor, Washington, DC
- **Thomas Ragland**, Partner, Duane Morris LLP, Washington, DC
- **Jennifer A. Hermansky**, Associate Attorney, Klasko, Rulon, Stock & Seltzer, LLP, Philadelphia, PA
- **Kate Kalmykov**, Of Counsel, Greenberg Traurig, LLP, New York, NY



This panel will focus on recent developments in employment-based immigration benefits programs, including the Department of Homeland Security's (DHS's) administration of the controversial foreign investor program, and the Department of Labor's (DOL's) new prevailing wage regulations governing the employment of temporary and permanent foreign national workers. In exploring these topics, participants will learn about the cross section of immigration and administrative law. The panel will also cover DOL's recent legislative rulemaking activities. In addition, the panel will examine strategies for challenging employment-based immigration decisions in federal court, and some common defenses raised by the Government.

10:45am—12:15pm **CLE PANEL**
Administrative Law Issues in the Patient Protection and
Affordable Care Act: Prospects for Facilitating
Genuine Health Reform *Salon BC*

- **Eleanor D. Kinney**, Hall Render Professor of Law Emeritus, Indiana University School of Law, Indianapolis, IN [Moderator]
- **Timothy Jost**, Robert L. Willett Family Professor, Washington and Lee School of Law, Harrisonburg, VA
- **Lawrence O. Gostin**, Linda D. and Timothy J. O'Neill Professor of Global Health Law, Faculty Director, Center for Law and the Public's Health, Georgetown University Law Center, Washington, DC
- **David Orentlicher**, Samuel R. Rosen Professor of Law, Co-Director, Hall Center for Law and Health, Indiana University School Of Law, Indianapolis, IN

This program is intended to educate on the major administrative law issues in the Patient Protection and Affordable Care Act (PPACA). This statute, enacted in March 2010, requires an aggressive agenda of regulatory implementation which will affect all aspects of the US health care sector. This program will seek to: explain the basic provisions of PPACA and associated administrative law issues; debate the constitutionality of PPACA and the litigation on this issue now before the federal courts; explain how the public health initiatives are incorporated into PPACA; debate the challenges associated with the implementation of Health Insurance Exchanges; and describe the role of comparative effectiveness research in health reform.

12:30pm—1:45pm

Luncheon *Salon AGH*

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Address from **Wm. T. (Bill) Robinson III**, President of the American Bar Association

Address from **Elizabeth H. Dickinson**, Acting Chief Counsel, Food and Drug Administration, Washington, DC



1:45pm—3:15pm

CLE PANEL

Administrative Law: Time to REIN It In, CURB It, or Reform It? *Salon AGH*

- **Jennifer Smith**, Co-Chair, Regulatory Policy Committee, ABA Section of Administrative Law and Regulatory Practice, Washington, DC [Moderator]
- **Curtis Copeland**, Former Specialist in American Government, Congressional Research Service, Washington, DC
- **Susan Dudley**, Professor and Director, Regulatory Studies Center, George Washington University, Washington, DC
- **Sidney Shapiro**, Associate Dean, Wake Forest University School of Law, Winston Salem, NC
- **Robert Weissman**, President, Public Citizen, Washington, DC
- **Jeffrey A. Rosen**, Partner, Kirkland & Ellis LLP, Washington, DC

In June, the Administrative Procedure Act (APA) turned 65 years old. Even though there have been significant changes in the organization and scope of government agencies over the years, the APA has remained largely unchanged. Currently, there are several bills that are

pending in Congress that may impact the administrative law landscape. The program will feature a panel of experts from different sides of the issue. The panel will discuss the bill on APA, the Clearing Unnecessary Regulatory Burdens Act or the CURB Act, and the Regulations from the Executive in Need of Scrutiny Act of 2011 or REINS Act. The audience will learn about this important pending legislation and the potential impact that the bills could have on the regulatory community.

1:45pm—3:15pm

CLE PANEL

Retrospective Reviews of Regulations under Sect. 610 of the Regulatory Flexibility Act and Various Presidential Orders *Salon EF*

- **Charles Gordon**, Former Senior Regulatory Attorney for Occupational Safety and Health Administration, Department of Labor, Professor, Lewis and Clark, Gaithersburg, MD [Program Organizer]
- **Marc Fleischaker**, Chairman Emeritus, ArentFox LLP, Washington, DC [Moderator]
- **Marc Freedman**, Executive Director, Labor Law Policy, US Chamber of Commerce, Washington, DC
- **Lanelle Wiggins**, Regulatory Flexibility Act Team Leader, US Environmental Protection Agency, Washington, DC
- **Thomas M. Sullivan**, Of Counsel, Nelson, Mullens, Riley & Scarborough LLP, Former Counsel for Advocacy, Small Business Administration, Washington, DC
- **Nicholas Ashford**, Professor and Director of Technology and Policy, Massachusetts Institute of Technology, Cambridge, MA

The requirements of Sect 610 of the Regulatory Flexibility Act and various Presidential Executive Orders will be presented and their conclusions discussed on the effectiveness of the regulations, their costs and their impacts on small businesses. The agencies conclusions and their responses to the findings will be debated. Methods of preparing such reports and effective ways for the public (both industry and public interest/labor groups) to respond to retrospective reviews will be presented. Finally have the regulations worked?

1:45pm—3:15pm

CLE PANEL

Interstate Fracking Regulation *Salon D*

- **William S. Morrow III**, Chair, Intergovernmental Relations Committee, ABA Section of Administrative Law and Regulatory Practice, Washington, DC [Moderator]
- **Kenneth J. Warren**, Delaware River Basin Commission General Counsel, Hangle, Aronchick Segal & Pudlin, Philadelphia, PA
- **Kenneth T. Kristl**, Associate Professor, Widener Environmental & Natural Resources Law Clinic, Widener Law School, Wilmington, DE
- **Richard Lewis**, Member, Steptoe & Johnson, Charleston, WV

Rising energy prices and the pressure to develop affordable domestic fuel supplies has resulted in natural gas and oil companies using hydraulic fracturing technology to extract natural gas and oil from shale substrate in various locations throughout the United States. This “new” water injection process has raised concerns from environmentalists and state regulators. The panel will discuss new “fracking” regulations promulgated under an interstate compact by the Delaware River Basin Commission (DRBC). Attendees will learn about the fracking process, how the States regulate that process, and how fracking regulation is affected by the Delaware River Basin Compact and NEPA.

1:45pm—3:15pm **CLE PANEL**

The Impact of New Federal State and Local Pay-to-Play Regulations on Your Clients *Salon BC*

- **Liz Howard**, Sandler Reiff Young & Lamb, PC, Washington, DC [Moderator]
- **Brandi Zehr**, Wiley Rein LLP, Washington, DC
- **D. Mark Renaud**, Partner, Wiley Rein LLP, Washington, DC
- **Joseph Sandler**, Partner, Sandler Reiff Young & Lamb, PC, Washington, DC
- **Ki Hong**, Partner, Skadden Arps Slate Meagher & Flom, Washington, DC

The new SEC pay to play rule has implications not just in the field of election law, but also for any field that deals with the financial services industries. In addition, the state and local pay-to-play rules that apply may impact a variety of individuals which are associated in various ways with businesses that have or would like to have contracts with state or local governments. These pay to play rules are the result of an electorate demanding more transparency in the area of political contributions and government contracts. Due to the newness of the SEC rule and patchwork application of state and local pay-to-play regulations, there seems to be widespread uncertainty and at times misinformation about the rules. These rules are already impacting the candidates in the 2012 election and potential donors. This panel will enable attendees to provide information to their clients about the potential implications of political contributions to presidential candidates or city council candidates. This panel will also provide insights to current federal, state and local attorneys concerning the impact of such regulations, what policies have and have not worked and the regulatory trends in this area.

3:15pm—3:30pm
Networking Break



3:30pm—5:00pm **THIS IS NOT A CLE PANEL**

So Someone Objects To Your New Client... *Salon D*

- **John Hardin Young**, Partner, Sandler, Reiff, Young & Lamb, Washington, DC [Moderator]
- **Lawrence J. Fox**, Visiting Lecturer in Law, Yale University School of Law and Partner, Drinker Biddle, Philadelphia, PA
- **Thomas D. Morgan**, Professor, George Washington University Law School

What should we, as lawyers, do when asked to represent a client or a position that is very unpopular with other clients our firm represents? Do we have an absolute responsibility to represent an unpopular client? Does it matter whether others dislike the client? How do the responsibilities of being a lawyer vary depending on whether the representation is in civil or criminal matters? What if representation will result in our losing other, angry clients or future business opportunities? At a time when many are concerned about partisan behavior and the inability to reach compromises on important matters, these issue take on increasing importance. Two of the preeminent experts on the subject will explore the ethical and practical aspects of lawyer representation.

3:30pm—5:00pm **CLE PANEL**

Paperwork Reduction Act: A Primer *Salon EF*

- **David Rostker**, Assistant Chief Counsel, Small Business Administration Office of Advocacy, Washington, DC [Moderator]
- **Brian Harris-Kojetin**, Statistician, Office of Information and Regulatory Affairs, US Office of Management and Budget, Washington, DC
- **Joseph Bartels**, Attorney, Office of the Assistant General Counsel for Legislation and Regulation, US Department of Commerce, Washington, DC

The PRA is one of the broadest reaching checks on agency authority, but it is generally not well understood and rarely used to its full potential. This session will provide a primer on the information collection provisions of the Act. It will cover the policy and procedures of the Act, an introduction to OMB's guidance on surveys and how OMB reviews surveys and other statistical information collections, and the perspective of agency staff on regulatory development and the PRA.

3:30pm—5:00pm **CLE PANEL**

Information as a Regulatory Tool *Salon AGH*

- **Steve Wood**, Office of Chief Counsel, National Highway Traffic Safety Administration, Department of Transportation, Washington, DC [Moderator]
- **Jennifer Nou**, Special Assistant and Policy Analyst, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC

- **Kristin Davis**, Senior Regulatory Counsel, Office of Regulations, Center for Tobacco Products, Food and Drug Administration, Washington, DC



- **Karl Simon**, Director, Transportation and Climate Division, Office of Transportation and Air Quality, Environmental Protection Agency, Washington, DC

- **Dr. Robert C. Post**, Deputy Director, Center for Nutrition Policy and Promotion, Department of Agriculture, Washington, DC

This panel will focus on legal and policy issues related to agency use of regulation by disclosure, one of the approaches that regulatory agencies can use to achieve program goals in ways that reduce burdens and maintain flexibility and freedom of choice. Issues to be addressed include: when should disclosure be used as a substitute for command-and-control regulation and when as a supplement, what types of disclosure information, statements and graphics are most effective, are there limits to the types of disclosures that can or should be required, in what ways has research involving focus groups and surveys been designed and used to develop more effective disclosures, and how can the benefits of new disclosure requirements be estimated.

3:30pm—5:00pm **CLE PANEL**

**The Consumer Financial Protection Bureau
Salon BC**

- **Christine C. Franklin**, Principal/Attorney, Franklin Advocacy, P.C., Chicago, IL [Moderator]
- **Kelly Cochran**, Deputy Assistant Director for Regulations, Consumer Financial Protection Bureau, Washington, DC
- **Michael Calhoun**, President, Center for Responsible Lending, Washington, DC
- **Ruth R. Amberg**, Senior Counsel, Consumer Compliance Section, Corporate, Consumer, Insurance and Legislation Branch Legal Division, Federal Deposit Insurance Corporation, Washington, DC

This panel will discuss the developing regulatory approach of the Consumer Financial Protection Bureau as it moves forward to implement its mandate under the Consumer Financial Protection Act of 2010 in general and with respect to specific markets such as mortgage, credit card, college loan, checking and payday lending. Parallel efforts by other governmental agencies and consumer advocacy groups to deal with the aftermath of the financial crisis also will be explored.

Section Dinner - Cosmos Club

*Section Reception and Dinner
Thursday, November 17, 2011
6:30 pm—9:30 pm
Cosmos Club, Washington, DC*

This year's dinner will honor the present and former Chairs of the Administrative Conference of the United States.
Please join us!

REGISTER

Download a fillable Registration Form and send to Toni Martinez via:

Email: antonia.martinez@americanbar.org
Mail: 740 15th St. NW Washington, DC 20005
Fax: 202-662-1529

Thursday Panels and Events Conclude

Friday, November 18, 2011

8:00am—9:00am

Registration South Gallery

9:00am—10:30am

CLE PANEL

Developments in Administrative Law, Part I Salon AGH

- **Jeffrey S. Lubbers**, Professor, American University Washington College of Law, Washington, DC [Moderator]
- **Michael Asimow**, Professor, Stanford Law School, Stanford, CA
- **William Funk**, Professor, Lewis and Clark Law School, Portland, OR
- **William S. Jordan III**, Associate Dean and Professor, University of Akron School of Law, Akron, OH
- **Richard Murphy**, Professor, Texas Tech School of Law, Lubbock, TX
- **Kathryn Watts**, Associate Dean for Research and Faculty, University of Washington School of Law, Seattle, WA

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.

10:45am—12:15pm **CLE PANEL**

Developments in Administrative Law, Part II Salon AGH

12:30pm—1:45pm *Salon AGH*

Luncheon featuring **Linda Klein**, Chair, House of Delegates, American Bar Association and Managing Shareholder, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC **THIS IS NOT A CLE PANEL**

Awards Presentation:

- Gellhorn Sargentich Law Student Essay Award: **Aaron M. Moore**, 3L, American University Washington College of Law, Washington, DC. Presented by John Hardin Young
- Mary C. Lawton Award for Outstanding Government Service: **Gabriel Taussig**, Chief of the Administrative Law Division, New York City Law Department, New York, NY. Presented by Elaine Reiss
- Annual Award for Scholarship in Administrative Law: **Nina Mendelson**, Professor, University of Michigan Law School, Ann Arbor, MI. Presented by Ronald Krotoszynski



Linda Klein



Gabriel Taussig



Nina Mendelson



Aaron Moore

1:45pm—3:15pm **CLE PANEL**

Judicial Review in the Roberts Era Salon EF

- **Kathryn Watts**, Associate Dean for Research and Faculty, University of Washington School of Law, Seattle, WA [Moderator]
- **Kristin Hickman**, Professor, University of Minnesota Law School, Minneapolis, MN
- **Ronald Levin**, William R. Orthwein Distinguished Professor, Washington University School of Law, St. Louis, MO
- **Richard J. Pierce**, Professor, George Washington University Law School, Washington, DC
- **Matthew Stephenson**, Professor, Harvard Law School, Cambridge, MA

As Justices Kagan and Sotomayor settle into their seats on the bench and the Roberts Court enters its seventh Term, now seems an appropriate time to step back and think about how the Roberts Court has handled various doctrines relating to judicial review of federal agency action, including Chevron, Skidmore and Auer deference as well as arbitrary and capricious review. This panel will identify and discuss some of the Roberts Court's most significant decisions involving scope of review doctrines and access to courts issues, such as the Court's recent opinions in *Talk America*, *Mayo Foundation*, *FCC v. Fox and Massachusetts v. EPA*, to determine whether any consistent themes or patterns can be discerned. The panel will also assess whether any predictions for the fate of judicial review of federal agency action during the Roberts era can be made.

1:45pm—3:15pm **CLE PANEL**

Incorporation by Reference Salon AGH

- **Daniel Cohen**, Assistant General Counsel for Legislation, Regulation and Energy Efficiency, Department of Energy, Washington, DC [Moderator]
- **Amy Bunk**, Director of Legal Affairs and Policy, Office of the Federal Register, Washington, DC
- **Clark Silcox**, General Counsel, National Electrical Manufacturers Association, Washington, DC
- **Emily Bremer**, Staff Counsel, Administrative Conference of the United States, Washington, DC

This panel will explore legal and policy issues related to agency use of incorporation by reference. Issues addressed will include: access by the public to documents they often need to purchase in order to determine applicable regulations; ambiguities that can arise as agencies interpret and apply incorporated material they did not produce; updating regulations that incorporate industry consensus standards when those standards are updated; copyright issues that may arise when an agency makes available documents produced by a third party, and finding ways to improve procedures for approving and managing regulations that incorporate other materials by reference.

1:45pm—3:15pm **CLE PANEL**

Should Congress Expand the Jurisdiction of the Court of Appeals for Veterans Claims and the Court of Appeals for the Federal Circuit? Salon D

- **John Hardin Young**, Partner, Sandler, Reiff, Young & Lamb, Washington, DC [Moderator]
- **Louis George**, Co-Chair, Veterans Affairs Committee, ABA Section of Administrative Law and Regulatory Practice, Washington, DC [Organizer]
- **Ronald L. Smith**, Counsel, Veterans Pro Bono Program, Finnegan, Henderson, Farabow, Garrett & Dunner, Washington, DC
- **Paul R. Michel**, Chief Judge (retired), US Court of Appeals for the Federal Circuit, Washington, DC
- **R. Randall Campbell**, Assistant General Counsel, Department of Veterans Affairs, Washington, DC

- **Barton F. Stichman**, Joint Executive Director, National Veterans Legal Services Program, Washington, DC
- **James T. O'Reilly**, Professor, University of Cincinnati College of Law, Cincinnati, OH

The issue to be discussed at the program is whether the jurisdiction of the Court of Appeals for Veterans Claims (CAVC) and the Court of Appeals for the Federal Circuit (CAFC) should be expanded. In particular, the program will address whether Congress should grant the CAVC de novo jurisdiction to review all aspects of a decision by the Board of Veterans' Appeals and also grant the CAFC jurisdiction to review factual determinations for "clear error." The panelists will address the pros and cons of the approach, including issues that should be addressed by Congress (in particular, a concern that the Court should not re-visit favorable factual determinations made by the Board). It is hoped that the program will serve as the spring-board for a resolution by the ABA House of Delegates, recommending that Congress create legislation.

1:45pm—3:15pm **ETHICS CLE PANEL**

Ethical Considerations in Public Sector Law Salon BC
Co-Sponsored by the ABA Government and Public Sector Lawyers Division

- **Honorable R. Bryan McDaniel**, Administrative Judge, Department of the Interior, Interior Board of Land Appeals, Arlington, VA [Moderator]
- **Sharon Pandak**, Greehan, Taves, Pandak and Stoner PLLC, Woodbridge, VA
- **Judith S. Kaleta**, Assistant General Counsel, Office of the General Counsel, the Alternate Agency Ethics Official, and the Dispute Resolution Specialist for the U.S. Department of Transportation, Washington, DC
- **Cynthia Rapp**, Deputy Clerk, United States Supreme Court, Washington, DC
- **Richard Litsey**, Counsel and Senior Advisor for Indian Affairs for the United States Senate, Committee on Finance, Washington, DC

Ethical Considerations in Public Sector Law focuses on the unique ethical issues confronted by public lawyers using an entertaining, interactive format. Panelists dramatize short, illustrative hypothetical scenarios with a discussion period following each skit. Topics include: scope of representation, duties to former clients, responsibilities of supervisory lawyers, special conflicts of interest for government employees, reporting professional misconduct and more. Presented many times across the country, this program has been universally well-received by government lawyers eager for ethics programming designed specifically for them.

3:15pm—3:30pm
Networking Break

3:30pm—5:00pm **THIS IS NOT A CLE PANEL**
Administrative Law Goes to War Salon AGH

- **The Honorable Brett Kavanaugh**, United States Court of Appeals Judge, DC Circuit, Washington, DC
- **The Honorable John D. Bates**, United States District Court Judge, US District Court for the District of Columbia, Washington, DC
- **Benjamin Wittes**, Senior Fellow, Governance Studies, Brookings Institute, Washington, DC

The panel will discuss the role of the district court and appellate court in reviewing decisions of the Executive Branch and the military in the ongoing war against al Qaeda. In so doing, the panel will discuss how traditional administrative law principles relating to deference, statutory interpretation, and standards of review apply in this context. The court will also consider issues such as standing and political question in war powers cases.

3:30pm—5:00pm **CLE PANEL**
OIG 101: Over Thirty Years of Increasing Oversight Authority Salon EF

- **Nancy Eyl**, Assistant Counsel to the Inspector General, Department of Homeland Security, Washington, DC [Moderator]
- **Maryann Grodin**, Counsel to the Inspector General, Nuclear Regulatory Commission, Washington, DC
- **Elizabeth Dean**, Counsel to the Inspector General, Farm Credit Administration, Washington, DC
- **Kathy A. Buller**, Inspector General, US Peace Corps, Washington, DC
- **Henry Shelley**, Counsel to the Inspector General, US Department of Defense, Arlington, VA

The Inspector General Act dates from 1978, a year of "good government" with the concurrent creation of the Office of Special Counsel and the Merit Systems Protection Board. Since then, not only has the number and type of federal inspectors general (IGs) increased, but also the authorities and independence of federal IGs have grown. Among other authorities, federal IGs now have full statutory law enforcement power, independent counsel, enhanced subpoena authority, and greater protection from arbitrary removal. On this panel, eminent members of the IG community will discuss these issues and more, including such issues as investigations and audits; review of proposed policy, legislation and regulations; the IG statutory budget process; reporting requirements; and the Council of the Inspectors General on Integrity and Efficiency (CIGIE), the "watchdog of the watchdogs." The discussion will be followed by a Q&A.

Conference Concludes

Saturday, November 19, 2011

8:00am– 5:00pm

Section Council Meeting & Publications Committee Meeting

ABA Headquarters,
Washington, DC



All Section members are welcome to attend. Breakfast and Lunch will be provided. Please RSVP to Anne Kiefer

Council Meeting - ABA Headquarters

The Council Meeting will be held at the ABA Headquarters which is located at 740 15th St NW Washington, DC 20005 on the 9th Floor in the John Marshall Room. The ABA is located at the corner of H and 15th Street, a block away from McPherson Square Metro Station (Blue-Orange line) or four blocks away from Metro Center Station (Red line). Buses 32, 36, 37 and 39 all stop outside the ABA building.

Section Dinner - Cosmos Club

The Section Dinner and Reception will be held at the Cosmos Club which is located at 2121 Massachusetts Ave, NW in downtown Washington, DC. The nearest metro station is Dupont Circle (Red line, .7 miles away). Parking will be available in the Rear Valet and West Gordon lot for \$12. For more information on directions, parking or the Cosmos Club, visit the [web-site](#) or call the club directly at 202-387-7783. Complete [registration form](#) to register.

Georgetown Hotel and Conference Center

The Georgetown University Hotel and Conference Center is located at 3800 Reservoir Rd NW Washington, DC 20007. You will see a hospital on your right side, and a sign that reads, "Georgetown University Hotel & Conference Center." Walk/drive straight until you see the Leavey Center Parking Garage. The entrance to the hotel and conference center is to the right of the Parking Garage, look for the green awning that reads, "Conference Center." Once you enter the hotel, walk straight to the end of the hallway and turn left at the South Gallery to enter the conference center. The conference center is on the floor directly above the garage. Download a [map of the main campus](#) and visit the [Travel Information](#) section of the [meeting website](#) for driving directions and parking information.

Public Transportation

Nearest Metro Station: Foggy Bottom (Blue Orange Line, 1.5 miles from campus)

GUTS Bus: Complimentary, departs from and to Georgetown every 15 minutes. Stops include: Wisconsin Ave, Dupont Circle Metro (Red line), Arlington Loop, Rosslyn Metro (Blue/Orange line).

[GUTS Bus schedule and maps](#)

DC Circulator: Both blue and orange line of the DC circulator stop at Georgetown University, main campus. Blue line circulator has several stops between Roslyn-Georgetown-Dupont Circle. Orange line has several stops between Georgetown-Union Station.

[DC Circulator schedule and maps](#)

Hotel Block

Georgetown University Hotel and Conference Center
Address: 3800 Reservoir Rd NW Washington, DC 20007. Phone: 202-687-3200. Website: <http://www.accguhotelandconferencecenter.com/>

The Georgetown University Hotel and Conference Center has reserved a very small block of rooms for the nights of Wednesday November 16 and Thursday November 17 at a rate of \$189 per night plus taxes (DC is currently 14.5%). Reservations must be made no later than Friday October 21, 2011 as the room block will be released on October 22. Contact the hotel directly and request a room under the "American Bar Association, Administrative Law Conference" to obtain the group rate. A credit card guarantee is required and one night's deposit will be charged to guarantee the room. Check in time is 4:00 pm and check-out time is 11:00 am. Contact the hotel directly for information regarding cancellation of an individual room reservation. Visit the [Travel Information](#) section of the [meeting website](#) for other hotels near Georgetown.

Registration Information

Use fillable registration form attached to brochure or [register online](#) for the conference. On-site registration is permitted however prices are subject to increase. Contact [Toni Martinez](#) at 202-662-1582 with 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.

CLE Information

Requested CLE Credit: 12 CLE credit hours and 1.5 Ethics credit hours for a 60-minute state; 14.4 CLE credit hours and 1.8 Ethics credit hours for a 50-minute state. All CLE materials will be on a USB memory key and distributed at registration.

[Download a printable PDF of IMPORTANT & NECESSARY Travel Information for the Conference and Conference Events](#)