

2021 ADMINISTRATIVE LAW CONFERENCE

NOVEMBER 18-19, 2021 | VIRTUAL LIVE CLE CONFERENCE



PROGRAM CO-CHAIRS

LINDA JELLUM

SUSAN PROSNITZ

CHRISTOPHER J. WALKER

SECTION CHAIR

ANDREW EMERY

12.5 HOURS OF GENERAL CLE
INCLUDING 1.5 HOURS OF ETHICS CREDIT

REQUESTED



Thursday November 18, 2021

8:45 am – 10:15 am ET

- Researching and Interpreting the Administrative Procedure Act
- Understanding Immigration Law Challenges
- The Paperwork Reduction Act: Practice, Policy and Predictions

10:45 am – 12:15 pm ET

- OIRA in the Biden Administration: A Conversation with Former OIRA Administrators
- Pursuing Innovation in Administrative Enforcement
- Making FOIA Work

1:30 pm – 3:00 pm ET

- Administrative Law at the Intersection of Legislative, Judicial and Executive Powers
- What Does *Arthrex* Mean for Administrative Adjudication?
- Nationwide Injunctions and Federal Rulemaking

3:30 pm – 5:00 pm ET

- *Ex Parte* Communications in Informal Rulemaking
- Litigating Administrative Law Cases in the Roberts Court: Insiders' Accounts
- What the heck is going on with the Independent Agencies? A Discussion of recent controversies confronting the FTC and other independent agencies.

Friday November 19, 2021

8:45 am – 10:30 am

- Developments in Administrative Law Part 1

10:45 am – 12:30 pm ET

- Developments in Administrative Law Part 2

1:00 pm – 2:30 pm ET

- Artificial Intelligence in Agency Rulemaking
- Troubling Issues Raised by the Supreme Court's Shadow Docket
- Executive Orders In Theory and Practice

3:00 pm – 4:30 pm ET

- Regulatory Policymaking in the Biden Administration
- The Shifting Sands of Standing Doctrine
- Keeping the Appearance of Propriety: Ethical Challenges in Regulatory Lawyering

Virtual Live Administrative Law Conference Agenda

As of 9/22/21

Thursday November 18, 2021

8:45 am – 10:15 am ET

CLE Session 1

Researching and Interpreting the Administrative Procedure Act

In recent years, courts have shown more interest in interpreting the APA consistently with its text and history. Agency personnel and practitioners must respond with well-researched interpretations of this all-important statute. But the APA's history is as complex as its text is short. This panel will introduce a new resource coming to Hein Online in Fall 2021--The Bremer-Kovacs Collection: Historic Documents Related to the Administrative Procedure Act of 1946. The panel will explore the ~17 year history that lead to the APA's adoption, the documents that shed light on the statute's meaning, and the special challenges of integrating legislative history and judicial precedent into a persuasive and sound interpretation. It will also introduce some tools available with the Collection to make researching the APA more efficient and accurate. The ABA AdLaw Section's special role in the statute's enactment will be a point of focus. Panelists will also discuss particular interpretative issues that arise in adjudication, rulemaking, and judicial review and explore how the APA's history can yield greater fidelity to its text and purposes.

Speakers

- Emily Bremer, Associate Professor of Law, Notre Dame Law School, Notre Dame, IN
- Kathryn Kovacs, Professor of the Law, Rutgers Law School, Newark, NJ
- Charlotte Schneider, Head of Public Services, Rutgers Law School, Newark, NJ

Thursday November 18, 2021

8:45 am – 10:15 am ET

CLE Session 2

Understanding Immigration Law Challenges

The panelists will discuss real world dilemmas in the world of immigration law, including viewpoints from academia, the private sector and the government. An introduction to the basic principles of immigration law will allow for a discussion of President Biden's immigration policies.

Speakers

- Amy Fallon, Partner, Fragomen, New York, NY
- Jill Family, Commonwealth Professor of Law and Government, Widener University Commonwealth Law School, Harrisburg, PA
- A. Ashley Tabaddor, Chief Counsel, U.S. Citizenship and Immigration Services, Washington, DC

Moderator

- Jill Family, Commonwealth Professor of Law and Government, Widener University Commonwealth Law School, Harrisburg, PA

Thursday November 18, 2021

8:45 am – 10:15 am ET

CLE Session 3

The Paperwork Reduction Act: Practice, Policy and Predictions

The Paperwork Reduction Act (PRA) turned 40 years old in December of 2020. This bipartisan legislation addressed both the burdens and the utility of paperwork or information collections of the government, centralized statistical policy coordination, and created the Office of Information and Regulatory Affairs inside the Office of Management and Budget to manage its processes. Significant amendments were made in 1995 that situated agency reviews within the operations of Chief Information Officers (CIOs). And in 2001, Congress added additional responsibilities for the quality of information disseminated from federal agencies. Recently the Foundations for Evidence-Based Policymaking Act of 2018 further reinforced the critical role of government information collection and analysis to support government and private sector uses of data.

Technological change and the rising use of social media and new forms of information collection by government agencies started new conversation on the PRA's applicability and uses answered first in 2010. Efforts continue to modernize government uses of data and methods of collection alongside the processes of the PRA.

This panel will provide an overview of the PRA, its application for agency regulatory practice, and discussions of its future application to changing methods of information collection and dissemination. Recent litigation over the use of a "stay" and review of a collection at the Equal Employment Opportunity Commission in 2017 as well as the status of certain independent regulatory agencies and commissions in light of *Seila Law* will also be discussed.

Speakers

- Amit Narang, Regulatory Policy Analyst, Public Citizen, Washington, DC
- Rosario Palmieri, Group Vice President, The Kellen Company, former Associate Administrator, U.S. Office of Information and Regulatory Affairs, and former House Committee on Oversight staff, Washington, DC
- Stephanie Tatham, Senior Analyst and Counsel, U.S. Office of Information and Regulatory Affairs, Washington, DC

Moderator

- Amy Wildermuth, Dean, School of Law, University of Pittsburgh, Pittsburgh, PA

Thursday November 18, 2021

10:45 am – 12:15 pm ET

CLE Session 4

OIRA in the Biden Administration: A Conversation with Former OIRA Administrators

One year into the Biden Administration there is an abundance of regulatory activity, but no nominated OIRA Administrator. The panel will discuss the current state of OIRA regulatory review, Biden regulatory initiatives, and the opportunities and challenges for OIRA.

Speakers

- Sally Katzen, Professor of Practice and Distinguished Scholar in Residence, New York University Law School, New York, NY
- Howard Shelanski, Professor of Law, Georgetown Law, and Partner, Davis Polk; former OIRA Administrator Obama Administration, Washington, DC
- Susan E. Dudley, Director, GW Regulatory Studies Center, and former OIRA Administrator in the George W. Bush Administration, Washington, DC

Moderator

- Michael Fitzpatrick, Director Strategy & Innovation, Google Global Affairs, former OIRA Administrator Obama Administration, Washington, DC

Thursday November 18, 2021

10:45 am – 12:15 pm ET

CLE Session 5

Pursuing Innovation in Administrative Enforcement

Administrative enforcement has become an increasingly important option for regulators, though critics have worried that it lacks procedural safeguards. This panel will evaluate the balance between discretion and process in financial regulation, corporate compliance, and healthcare regulation.

Speakers

- Randal K. Quarles, Vice Chair for Supervision, Board of Governors of The Federal Reserve System, Washington, DC
- Kate Judge, Harvey J. Goldschmid Professor of Law, Columbia Law School, New York, NY
- Daniel R. Walfish, Walfish & Fissell LLP, New York, NY
- Geeyoung Min, Assistant Professor of Law, Michigan State University, East Lansing, MI
- Joel McElvain, Partner, King & Spaulding, Washington, DC

Moderator

- David Zaring, Elizabeth F. Putzel Professor, Professor of Legal Studies & Business Ethics, Wharton University of Pennsylvania, Philadelphia, PA

Thursday November 18, 2021

10:45 am – 12:15 pm ET

CLE Session 6

Making FOIA Work

Since its enactment in 1966, the Freedom of Information Act (FOIA) has been celebrated as a pathbreaking open government measure. But disputes about responding to FOIA requests increasingly sap agency, court and requestor resources; contribute to a culture of adversarialism; and frustrate FOIA's transparency goals. The status quo – where fully responding to requests can involve years of back and forth – is widely regarded as unsatisfactory. This panel will explore different approaches for addressing the glut of FOIA disputes currently facing agencies and the public. Some of those approaches – such as alternative conflict management systems and technological solutions – fit within the existing system for resolving FOIA disputes, while others – such as alternative disclosure systems and affirmative disclosure requirements – would be outside the existing system.

Speakers

- Margaret Kwoka, Professor, Moritz College of Law, Ohio State University, Columbus, OH
- Bobak Talebian, Director, Office of Information Policy, U.S. Department of Justice & Co-Chair, Chief FOIA Officers Council, Washington, DC
- Mia Woodard, Legislative Affairs and Policy Counsel, Citizens for Responsibility and Ethics in Washington, Washington, DC
- Danielle Schulkin, Attorney Advisor, Administrative Conference of the United States, Washington, DC

Moderator

- Mark Thomson, Deputy Research Director, Administrative Conference of the United States, Washington, DC

Thursday November 18, 2021

1:30 pm – 3:00 pm ET

CLE Session 7

Administrative Law at the Intersection of Legislative, Judicial, and Executive Powers

This panel—comprised of scholars whose works have been accepted for publication in *The George Washington Law Review's* Vol. 90 *Annual Review of Administrative Law*—explores separation of powers and the administrative state. Professor Tara Grove will explore recent scholarly efforts to test what “ordinary people” view as the meaning of federal statutes in recent Supreme Court cases. Professor Robert Glicksman and Professor Richard Levy will delve into the contours of the new separation of powers formalism and consider its implications for adjudication by administrative agencies. Professor Bijal Shah will examine how presidents impact agency efforts to execute the law and argue for presidential administration that focuses on statutory values and purpose above presidents' own policy goals. Administrative law scholars, practitioners, and students will gain guidance and perspective on these pressing administrative law issues that they can utilize in their practice and studies.

Speakers

- Tara Leigh Grove, Charles E. Tweedy, Jr., Endowed Chairholder of Law, University of Alabama School of Law, Tuscaloosa, AL
- Robert L. Glicksman, J.B. and Maurice C. Shapiro Professor of Environmental Law, The George Washington University Law School, Washington, DC
- Richard E. Levy, J.B. Smith Distinguished Professor of Constitutional Law, The University of Kansas School of Law, Lawrence, KS
- Bijal Shah, Associate Professor of Law, Arizona State University Sandra Day O'Connor College of Law, Phoenix, AZ

Moderator

- The Honorable Neomi Rao, U.S. Court of Appeals for the D.C. Circuit, Washington, DC

Thursday November 18, 2021

1:30 pm – 3:00 pm ET

CLE Session 8

What Does *Arthrex* Mean for Administrative Adjudication?

This past term the U.S. Supreme Court decided *United States v. Arthrex*, a case involving application of the Appointments Clause to judges of the Patent Trial and Appeals Board (PTAB), a tribunal established by Congress in 2012 within the U.S. Patent and Trademark Office (USPTO). In the *Arthrex* decision, the Court held that the administrative patent judges of the PTAB, who are appointed by the Commerce Secretary, were principal officers who had to be appointed by the President and confirmed by the Senate. The Court determined that it could remedy the Appointments Clause defect by holding unenforceable the patent statute provision that disallowed unilateral review of administrative patent judge decisions by the USPTO Director. With unilateral review by the Director (a Presidentially appointed and Senate confirmed (PAS) official) in place, the PTAB was constitutional. Going forward, the *Arthrex* decision has obvious implications for other agency adjudication schemes that do not provide for unilateral review by PAS officials. More broadly, it raises questions about how to structure PAS review and impacts on adjudicatory decision making that may result from PAS review. This panel will address those questions.

Speakers

- Chief Judge Scott Boalick, Patent Trial and Appeal Board, Washington, DC
- Jeremy S. Graboyes, Principal Deputy Research Director, Staff, Administrative Conference of the United States, Washington, DC
- Christopher J. Walker, John W. Bricker Professor of Law, Director Moritz Washington DC Summer Program, Michael E. Moritz College of Law, Columbus, OH

Moderator

- Arti Rai, Elvin R. Latty Professor of Law, Duke University Law School, Durham, NC

Thursday November 18, 2021

1:30 pm – 3:00 pm ET

CLE Session 9

Nationwide Injunctions and Federal Rulemaking

The debate over nationwide injunctions, begun several years ago, only continues to intensify. Although the debate has illuminated important doctrinal questions of constitutional and remedies law, it has given little, if any, attention, to the actual effects of nationwide injunctions and similar equitable relief on the actual regulatory activities of federal agencies. This panel will address that important subject for the benefit of agency officials, practitioners, academics, and other attendees.

The panel will ask, among other questions, how frequently courts issue nationwide injunctions (especially preliminary injunctions) involving agency rules; whether agencies understand judgments “vacating” and “setting aside” rules under the Administrative Procedure Act to provide for what the Department of Justice calls “universal vacatur” or instead vacatur/setaside for the benefit only of the actual parties challenging a rule; and how agency officials do and should respond to nationwide injunctions/universal vacatur of rules, especially when faced with duplicative suits in multiple courts and conflicting judgments. In addressing these and other questions, the panelists will draw heavily on their ongoing empirical study as consultants for the Administrative Conference of the United States. Their presentations, discussion, and responses to audience questions will help equip agency officials to administer federal programs most efficiently and conduct their rulemaking activities with an eye toward emerging developments in judicial doctrines.

Speakers

- Zachary D. Clopton, Professor of Law, Northwestern Pritzker School of Law, Chicago, IL
- Carol Ann Siciliano, former Associate General Counsel, U.S. Environmental Protection Agency, and Senior Fellow, Administrative Conference of the United States, Washington, DC
- Jed Stiglitz, Professor of Law, Cornell Law School, Ithaca, NY
- Mila Sohoni, Associate Dean of Faculty and Professor of Law, University of San Diego School of Law, San Diego, CA

Moderator

- Matthew Lee Wiener, Acting Chairman, Vice Chairman, and Executive Director, Administrative Conference of the United States, Washington, DC

Thursday November 18, 2021

3:30 pm – 5:00 pm ET

CLE Session 10

Ex Parte Communications in Informal Rulemaking

The APA does not contain any explicit restrictions on ex parte communications in informal rulemaking, but that doesn’t mean that anything goes. Join seasoned attorneys from both inside and outside government as they discuss similarities and differences in agency practices on this issue, the key concerns at stake, and potential best practices.

Speakers

- Edmund C. Baird, Associate Solicitor for Occupational Safety and Health, U.S. Department of Labor, Washington, DC
- Megan L. Brown, Partner, Wiley, Washington, DC
- Sabrina Jawed, Senior Attorney, Federal Aviation Administration, Washington, DC
- Amit Narang, Regulatory Policy Advocate, Public Citizen, Washington, DC
- Esa Sferra-Bonistalli, Attorney, Office of the General Counsel, Department of Homeland Security; former Team Leader and Senior Attorney, Office of the Judge Advocate General, U.S. Coast Guard, Washington, DC *appearing in personal capacity*

Moderator

- Eloise Pasachoff, Professor of Law, Georgetown University Law Center, Washington DC

November 18, 2021

3:30 pm – 5:00 pm ET

CLE Session 11

Litigating Administrative Law Cases in the Roberts Court: Insiders' Accounts

This panel addresses recent developments in the U.S. Supreme Court regarding administrative law and should be of interest to anyone who practices in the field of regulation. The panelists have all recently argued administrative law cases in the Supreme Court and will share their perspectives on the Supreme Court's current approach to issues such as agency adjudication, structural constitutionalism, and arbitrary-and-capricious review. The panel will focus on how to best frame arguments, identify potential targets of litigation, and think strategically when defending or challenging agency action.

Speakers

- Sarah Harris, Partner, Williams & Connolly LLP, Washington, DC
- Douglas Letter, General Counsel U.S. House of Representatives, Washington, DC
- Aaron Nielson, Professor, Brigham Young University Law School, Provo, UT
- Helgi Walker, Partner, Gibson Dunn & Crutcher LLP, Washington, DC

Moderator

- Judge Thomas Griffith, Special Counsel, Hunton Andrews Kurth LLP and former Judge, U.S. Court of Appeals for the District of Columbia Circuit, Washington, DC

Thursday November 18, 2021

3:30 pm – 5:00 pm ET

CLE Session 12

What the heck is going on with the Independent Agencies? A discussion of recent controversies confronting the FTC and other Independent Agencies

This panel will examine recent changes in independent agencies' decision-making through the lens of one such agency: the Federal Trade Commission. The panelists will review the dramatic recent changes at the FTC and discuss the implications thereof, including the selection and powers of the agency head, well-publicized recusal issues, Congress's reactions to all the changes (how much difference does it make?), and the benefits of competition rulemaking versus adjudication and the continued viability of *National Petroleum Refiners*. Audience members will leave the panel with a better understanding of the functioning of independent agencies including issues related to appointment, recusal, rulemaking, adjudication, and Congressional relations.

Speakers

- Stephen Calkins, Professor of Law, Wayne State University Law School, Detroit, MI
- Louis J. Virelli III, Professor of Law, Stetson University Law School, Gulfport, FL
- Howard Shelanski, Professor of Law, Georgetown University Law School, Washington, DC
- Todd Phillips, Director of Financial Regulation, Center for American Progress, Washington, DC

Moderator

- Linda D. Jellum, Visiting Professor of Law, University of Mississippi School of Law, Ellison Capers Palmer Sr. Endowed Chair in Tax Law, Mercer University School of Law, Macon, GA

Friday November 19, 2021

8:45 am – 10:30 am ET

CLE Session 13

Developments in Administrative Law Part 1

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. Administrative law moves fast, and the past year has seen many changes in the areas of government information and privacy, rulemaking, and adjudication, specifically. In this panel—the first of two separate Developments panels—our speakers take up these topics and provide essential information about the past year's biggest changes. Keeping track of everything that happens in administrative agencies, in the courts, in Congress, and in the White House across all substantive fields can be next to impossible, especially in a presidential transition year, but you'll have a leg up when you attend this survey panel. Each of the panelists will not only cover the year's key developments but will also emphasize broader themes and trends that can only be seen by looking at developments together. The panelists' prepared remarks will be followed by a short question and answer session.

Speakers

- Bernard Bell, Professor of Law and Herbert Hanocho Scholar, Rutgers Law School, Newark, NJ (**Government Information & Right to Privacy**)
- Bridget C.E. Dooling, Research Professor, George Washington University Regulatory Studies Center, Washington, DC; and Bethany Davis Noll, Executive Director of the State Energy & Environmental Impact Center and Adjunct Professor of Law, New York University School of Law, New York, NY (**Rulemaking**)
- Christopher J. Walker, John W. Bricker Professor of Law, Director Moritz Washington DC Summer Program, Michael E. Moritz College of Law, Columbus, OH; and Matthew Lee Wiener, Acting Chairman, Vice Chairman & Executive Director, The Administrative Conference of the United States, Washington, DC (**Adjudication**)

Moderator

- Daniel Walters, Assistant Professor of Law, Penn State Law, University Park, PA

Friday November 19, 2021

10:45 am – 12:30 pm ET

CLE Session 14

Developments in Administrative Law Part 2

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. Administrative law moves fast, and the past year has seen many changes in the areas of constitutional law, the scope of judicial review, and access to the courts. In this panel—the second of two separate Developments panels—our speakers take up these topics and provide essential information about the past year's biggest changes. Keeping track of everything that happens in administrative agencies, in the courts, in Congress, and in the White House across all substantive fields can be next to impossible, especially in a presidential transition year, but you'll have a leg up when you attend this survey panel. Each of the panelists will not only cover the year's key developments but will also emphasize broader themes and trends that can only be seen by looking at developments together. The panelists' prepared remarks will be followed by a short question and answer session.

Speakers

- William Funk, Lewis & Clark Distinguished Professor of Law Emeritus, Lewis and Clark Law School, Portland, OR (**Constitutional Law**)
- Linda D. Jellum, Ellison Capers Palmer Sr. Endowed Chair in Tax Law, Mercer University School of Law, Macon, GA (**Judicial Review: Scope of Review**)
- Richard W. Murphy, AT&T Professor of Law, Texas Tech University School of Law, Lubbock, TX (**Judicial Review: Access to the Courts**)

Moderator

- Daniel Walters, Assistant Professor of Law, Penn State Law, University Park, PA

Friday November 19, 2021

1:00 pm – 2:30 pm ET

CLE Session 15

Artificial Intelligence in Agency Rulemaking

Technology has created new challenges and opportunities in the area of agency rulemaking. On the one hand, AI has now evolved to the point that parties could flood agencies with millions of unique, credible comments that would require enormous resources to process. On the other hand, natural language processing tools can allow agencies to much more efficiently process both computer-generated and human-generated comments. And AI and other technological tools can help agencies open up new avenues of public participation (including those targeting traditionally underrepresented groups) and more efficiently conduct retrospective review of existing regulations. This panel will explore how agencies can best navigate the challenges and exploit the opportunities. It will draw upon several recent recommendations and statements of the Administrative Conference of the United States, including those relating to AI, mass comments, and retrospective review.

Speakers

- Virginia A. Huth, Deputy Associate Administrator, Office of Regulation Management, General Services Administration, Washington, DC
- Michael A. Livermore, Edward F. Howrey, Professor of Law, University of Virginia School of Law, Charlottesville, VA
- Catherine M. Sharkey, Segal Family Professor of Regulatory Law and Policy, New York University School of Law, New York, NY

Moderator

- Reeve T. Bull, Research Director, Administrative Conference of the United States, Washington, DC

Friday November 19, 2021

1:00 pm – 2:30 pm ET

CLE Session 16

Troubling Issues Raised by the Supreme Courts' Shadow Docket

As described in the attached essay, the Supreme Court has taken 45 major actions over the past five years without providing any reasons for the actions. The members of this panel believe that the Court's unprecedented practice of making major decisions without any accompanying opinion is lawless and must stop. The panel members will describe the Court's new practice and explain why they believe that it is unacceptable.

Speakers

- Stephen Vladeck, Charles Alan Wright Chair in Federal Courts, University of Texas School of Law, Austin, TX
- Mila Sohoni, Associate Dean of Faculty and Professor of Law, University of San Diego School of Law, San Diego, CA
- Richard Pierce, Lyle T. Alverson Professor of Law, George Washington University School of Law, Washington, DC
- Adam White, Co-Executive Director, C. Boyden Gray Center for the Study of the Administrative State, former Associate Administrator, Office of Information and Regulatory Affairs, Washington, DC

Moderator

- Mark Thomson, Deputy Research Director, Administrative Conference of the United States, Washington, DC

Friday November 19, 2021

1:00 pm – 2:30 pm ET

CLE Session 17

Executive Orders in Theory and Practice

Presidents value executive orders because they allow for unilateral action, but they have their limits. This panel will consider the practical and legal limits of executive orders in the modern administrative state. Topics will include the role of executive orders in presidential policymaking, how the bureaucracy shapes draft executive orders, how that internal development process changed in the Trump and Biden administrations, and what can be learned from recent litigation involving executive orders.

Speakers

- Aram Gavoort, Professorial Lecturer in Law, George Washington University Law School, Washington, DC
- Andrew Rudalevige, Thomas Brackett Reed Professor of Government & Chair, Department of Government and Legal Studies, Bowdoin College, Brunswick, ME
- Allison Zieve, General Counsel and Director of Litigation Group, Public Citizen, Washington, DC

Moderator

- Bridget C.E. Dooling, Research Professor, George Washington University Regulatory Studies Center, Washington, DC

Friday November 19, 2021

3:00 pm – 4:30 pm ET

CLE Session 18

Regulatory Policymaking in the Biden Administration

Motivated in part by Congress's failure to legislate, presidents in recent years have turned ever more to administrative law and the regulatory process to make major policy. And they have experimented with different modes of regulatory action beyond notice-and-comment rulemaking. These include agency adjudication, interim final rulemaking, subregulatory guidance, and executive orders and other presidential directives.

Immigration is one area where we have seen much experimentation. The Obama Administration's DACA and DAPA immigration policies come immediately to mind. So does the Trump Administration's attempted rescission of DACA, among other regulatory or executive branch actions such as the travel ban, regulation of "sanctuary" cities, and major adjudicative and rulemaking policy changes to asylum and related relief. Notably, the Biden Administration has signaled a return to notice-and-comment rulemaking as the main regulatory mode for major immigration policymaking.

Every administration announces some signature regulatory policy initiatives, and the Biden Administration is no different, having commissioned OMB to make recommendations on a range of regulatory topics, including how to take the distributional effects of regulation into account and the role of OIRA in promoting regulatory initiatives. This panel will explore the debate over the proper regulatory processes for promulgating major policy and current developments in regulatory policymaking in the Biden Administration. It will also explore how courts and Congress may respond to these developments.

Speakers

- Jamie Conrad, Principal, Conrad Law & Policy Counsel, Washington, DC
- Katie Keith, Associate Research Professor, Center on Health Insurance Reforms, Georgetown University, Washington, DC
- Maureen Ohlhausen, Partner, Baker Botts; former FTC Commissioner, Washington, DC
- Shoba Sivaprasad Wadhia, Associate Dean for Diversity, Equity, and Inclusion, Samuel Weiss Faculty Scholar; and Clinical Professor of Law, Penn State Law, University Park, PA

Moderator

- Christopher Walker, John W. Bricker Professor of Law, The Ohio State University, Columbus, OH

Friday November 19, 2021

3:00 pm – 4:30 pm ET

CLE Session 19

The Shifting Sands of Standing Doctrine

The Supreme Court's last few terms have included several decisions with interesting and potentially significant statements about standing doctrine. With Justices Gorsuch, Kavanaugh, and Barrett replacing Justices Scalia, Kennedy, and Ginsburg, respectively, are we seeing the beginnings of a generational shift in how the Supreme Court approaches standing questions? Our panelists will identify and discuss potential trends in the Supreme Court's standing jurisprudence.

Speakers

- Jonathan H. Adler, Johan Verheij Memorial Professor of Law and Director, Coleman P. Burke Center for Environmental Law, Case Western Reserve University School of Law, Cleveland, OH
- Seth Davis, Professor of Law, University of California Berkeley School of Law, Berkeley, CA
- Erin E. Murphy, Partner, Kirkland & Ellis, Washington, DC
- Richard J. Pierce, Jr., Lyle T. Alverson Professor of Law, George Washington University Law School, Washington, DC

Moderator

- Kristin E. Hickman, McKnight Presidential Professor in Law, University of Minnesota Law School, Minneapolis, MN

Friday November 19, 2021

3:00 pm – 4:30 pm ET

ETHICS CLE Session 20

Keeping the Appearance of Propriety: Ethical Challenges in Regulatory Lawyering

This panel brings together experts who will identify and offer solutions to complex conflicts-of-interest issues encountered by lawyers who practice regulatory and administrative law. Conflicts of interest arise in many contexts for the regulatory lawyer. Sometimes those issues are the result of personal actions or financial holdings; but other times, they are the result of various other individuals meddling in regulatory decision-making—meddling that can be politically or financially motivated.

Conflicts of interest should be a serious concern to lawyers in this practice area because violations live in a very dangerous neighborhood where criminal penalties reside. It is, therefore, of paramount importance for regulatory lawyers in the private and public sectors to learn how to identify and avoid running afoul of the law in this area.

This panel will provide legal and practical guidance on a number of topics: recusal from particular matters (including matters that may arise at specific stages of a large program or when specific parties are introduced), post-employment restrictions (e.g., former agency employees practicing before their former agencies), financial relationships with regulated entities, gifts that present the appearance of a conflict, etc. Finally, the panel will discuss how the pandemic/remote-work environment may have further complicated the ethics landscape for the regulatory lawyer.

Speakers

- Richard Briffault, Joseph P. Chamberlain Professor of Legislation, Columbia Law School, New York, NY
- Hon. Michael Oths, Magistrate Judge, Ada County, ID
- James J. Sandman, Distinguished Lecturer & Senior Consultant to the Future of the Profession Initiative, University of Pennsylvania Carey Law School, Philadelphia, PA

Moderator

- Shawne C. McGibbon, General Counsel, Administrative Conference of the United States, Washington, DC

REGISTRATION FORM
ABA Section of Administrative Law & Regulatory Practice
2021 Administrative Law Conference | Virtual Live CLE Program | November 18-19, 2021
Meeting Code is AL21111

WELCOME to our **SECOND VIRTUAL LIVE** Administrative Law Conference on the Convene Virtual Platform! Earn up to 12.5 Hours of **ONLINE LIVE CLE CREDIT** for 8 panels over 2 days. Then Access Online Video Recordings of all 8 panels for 30 days after the conference (CLE credit is **NOT AVAILABLE** for Video recordings – CLE Credit is Only available for participation in the full panels live on November 18-19, 2021). Attendees must remain logged in for the duration of each panel in order to earn CLE credit – no partial CLE credit is available for panels (you must watch all 90 minutes).

GROUPS MAY REGISTER BY COMPLETING ONE FORM FOR EACH PERSON AND EMAILING THESE TO JENETTE CROMWELL, ABA ASSOCIATE DATA ADMINISTRATOR, JENETTE.CROMWELL@AMERICANBAR.ORG 312-988-5554. She will register the group and will contact the group's organizer to arrange for payment of the group invoice. **THE GROUP DISCOUNT CODE IS ALFALL2021G AND IT GIVES A \$20 PER PERSON DISCOUNT FOR EACH MEMBER OF THE GROUP. GROUPS MAY REGISTER WITH THIS FORM ONLY BEGINNING AUGUST 18, 2021. THE GROUP DISCOUNT CODE IS VALID THROUGH SEPTEMBER 30, 2021.**

ONLINE REGISTRATION WILL OPEN BY AUGUST 10, 2021 – CHECK WWW.AMERICANBAR.ORG/ADMINLAW FOR THE REGISTRATION LINK ON AUGUST 10. After AUGUST 10, Individuals may also contact the ABA Service Center at 800-285-2221, 312-988-5000, Monday-Friday 9:00 AM - 6:00 PM ET. A member of the Service Center team will register the attendee, process payment via invoice or credit card and will email a receipt to the attendee. Attendees will also receive an email confirming their registration when the registration is processed. Payment is necessary when the order is processed – VISA, American Express, Master Card or Discover are accepted.

Cancellations: Cancellations accepted with cancellation fee (\$25—\$50 depending on rate). Substitutions are accepted without fee. Contact Anne.Kiefer@americanbar.org or 202-662-1690.

Conference Participation Details: Once the conference is finalized, each registered attendee will receive an email with complete instructions for participation in this online event. Computer access will be necessary as CLE validations occur throughout each panel.

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CLE: The ABA will seek 12.5 hours of CLE credit in 60-minute states, and 15 hours of CLE credit for this program in 50-minute states**. Including 1.5 hours of CLE specialty ethics credit in 60-minute states, 1.8 hours of CLE specialty ethics credit in 50-minute states. Credit hours are estimated and are subject to each state's approval and credit rounding rules. Please visit the program website Opening August 10, 2021 for program CLE details or visit www.americanbar.org/mcle for general information on CLE at the ABA. For more information about CLE accreditation in your state, visit <https://www.americanbar.org/events-cle/mcle/>, or contact Anne Kiefer at Anne.Kiefer@americanbar.org. **** Florida bar regulators have stated that attorneys will not receive Florida credit for this ABA program, even if they self-apply.** All CLE materials will be posted online and a link to the materials will be emailed to attendees. Please contact Anne.Kiefer@americanbar.org by October 1, 2021 if your local MCLE board/state requires a hard copy of materials.

Scholarships: A limited number of scholarships to partially defray tuition expenses are available for this program. To request a scholarship, send an e-mail to Anne.Kiefer@americanbar.org explaining the reason for your scholarship request and provide your **ABA Membership ID number**. Scholarship requests must be received by the ABA **no later than October 1, 2021**. You will be notified of your scholarship status by November 3, 2021.

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Please contact Anne Kiefer anne.kiefer@americanbar.org or 202-662-1690 with registration questions.
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