



Section of Administrative Law & Regulatory Practice

8th Annual

ADMINISTRATIVE LAW AND REGULATORY PRACTICE INSTITUTE

MAY 9 - 10, 2012 • CAPITAL HILTON • WASHINGTON, DC

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**The Center for the
Study of Rulemaking
American University**



**Program Chair: Joe D. Whitley
Section Chair: Michael Herz**

10.75 Hours of Professional Practice CLE Credit Requested

Welcome Message from Joe D. Whitley



As Vice-Chair of the American Bar Association's Administrative Law and Regulatory Practice Section, I would like to invite you to the *8th Annual Administrative Law Institute*. Our program will be held on *May 9 & 10, 2012* at the Capital Hilton in Washington, D.C. If you, or someone you know, wants a better appreciation of the change that is occurring in the world of administrative law, I encourage you to attend and/or share information about this outstanding and informative program with them.

MAY 9 - RULEMAKING 101

The Institute will begin with an informative "RULEMAKING 101" class on the afternoon of MAY 9. This introductory/refresher course will provide 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 lawyers and a team of private practitioners, each bringing out considerations most relevant from their particular perspectives. Those attending will receive *A Guide to Federal Agency Rulemaking* by Jeffrey S. Lubbers, and *Document Drafting Handbook Annotated*, by The Regulatory Group Inc.

MAY 10 - CRITICAL ISSUES ON RULEMAKING

On MAY 10, the Institute will focus on the following substantive issues and topics:

- *OIRA – Running with the Rules – A Look at Rulemaking Policy and Future Plans*
- *Recent Developments in Rulemaking Law and Practice*

This panel of experts will address recent judicial and administrative developments concerning rule-making. Topics will include the operation of regulatory review under E.O. 12,866, activities (and lack thereof) under the Congressional Review Act, rulemaking burdens imposed by the new health care legislation, important recent cases on the rulemaking process, and the ongoing struggles, among agencies and courts, over distinguishing legislative rules, subject to notice and comment, from interpretive rules, guidance documents and the like.

- *Current Proposal and Regulatory Reform*

AdLaw Section Chair Michael Herz leads this expert panel discussion which will review proposals for regulatory reform, including discussion of cost/benefit analysis, other changes to the rulemaking process, and opportunities to revise or expedite permitting, contained in pending legislation and in recent reports from the Business Roundtable and the President's Council on Jobs and Competitiveness.

• *Inside State Rulemaking, Lessons from External and Internal Prospective - by Governor John Engler*

U.S.-based corporations often protest the costs and economic uncertainty imposed by federal regulation – not just from individual rules that affect a particular industry, but also from the cumulative effects of regulations issued by multiple agencies. Honorable John Engler is the former governor of Michigan and president of Business Roundtable, an association of CEOs of leading U.S. corporations, details business’ objections and offers a solution to regulatory excess– “smarter regulation,” a transparent process that involves affected parties earlier in the process. The Obama Administration has indicated its support for many of the regulatory principles.

• *Arguing and Deciding Administrative Law Cases in the D.C. Circuit*

D.C. Circuit Judge Brett Kavanaugh and two expert practitioners, Michael Raab and Catherine Stetson, review administrative law cases, procedures and outcomes, giving perspectives from both sides of the bench.

• *How to Interact Effectively with OIRA and Regulatory Agencies*

This panel, moderated by AdLaw Section's Chair-Elect Jamie Conrad, will discuss the respective roles of agencies and OIRA under Executive Orders 12866/13563, the Paperwork Reduction Act, and OMB's Peer Review Bulletin and Information Quality Act Guidelines. Panelists will review when and how to involve other components of the Executive Office of the President and other agencies. Finally, the panel will discuss interactions between OIRA, agencies and SBA's Office of Advocacy under the Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act.

I would like to thank our program Planning Committee Members Michael Herz, Jamie Conrad, Jonathan Rusch, Jeffrey Rosen and Paul Noe for helping to select our topics and speakers for this year’s Institute.

A special thanks goes to Anne Kiefer, Section Director and Toni Martinez, Program Associate of the Section, who make this program work year after year.

For more information and to register online, please visit the [ABA's website](#).

We look forward to seeing you on May 9th and 10th.

Best regards,



Joe D. Whitley
Section Vice-Chair & Program Chair
Former and First General Counsel, DHS
Former Appointed U.S. Attorney in the Middle and Northern Districts of Georgia

PROGRAM FACULTY

Joe D. Whitley, Program Chair

Vice Chair, ABA Section of Administrative Law and Regulatory Practice, Shareholder, Greenberg Traurig LLP, Atlanta, GA and Washington, DC

Robert P. Charrow

Shareholder, Greenberg, Traurig, LLP, Washington, DC

James W. Conrad, Jr.

Principal, Conrad Law & Policy Counsel, Washington, DC

Joan Dailey

Senior Attorney, Office of the General Counsel, U.S. Department of Health and Human Services, Washington, DC

E. Donald Elliot

Yale School of Law, New Haven, CT, *Former U.S. Environmental Protection Agency (EPA) General Counsel*

Andrew Emery

Principal, The Regulatory Group Inc., Arlington, VA

The Honorable John Engler

President, Business Roundtable in Washington, DC and *former Governor of Michigan*

Michael A. Fitzpatrick

Senior Manager and Senior Counsel, Government and Regulatory Affairs, General Electric, Washington, DC

Michael E. Herz

Arthur Kaplan Professor of Law and Co-Director of the Floersheimer Center for Constitutional Democracy, Benjamin N. Cardozo School of Law, Yeshiva University, New York, NY, and Chair of the ABA Section of Administrative Law and Regulatory Practice

David R. Hill

Partner, Sidley Austin, Washington, DC

William S. Jordan III

Associate Dean and C. Blake McDowell, Jr. Professor, The University of Akron School of Law, Akron, OH

The Honorable Brett M. Kavanaugh

Judge, U.S. Court of Appeals for the District of Columbia Circuit, Washington, DC

Alisa Klein

Appeals Counsel, Appellate Staff, Civil Division, U.S. Department of Justice

Ronald M. Levin

William R. Orthwein Distinguished Professor of Law, Washington University School of Law, St. Louis, MO

Jeffrey S. Lubbers

Professor, American University Washington College of Law, Washington, DC

Shawne C. McGibbon

General Counsel, Administrative Conference of the United States (ACUS), Washington, DC

Nina A. Mendelson

Professor, University of Michigan School of Law, Ann Arbor, MI

Paul Noe

Vice President for Public Policy, American Forest & Paper Association, Washington, DC

Michael S. Raab

Assistant Director, U.S. Department of Justice, Civil Division, Washington, DC

Jeffrey A. Rosen

Partner, Kirkland & Ellis, Washington, DC

Catherine E. Stetson

Partner, Hogan Lovells, Washington, DC

Richard G. Stoll

Partner, Foley & Lardner LLP, Washington, DC

Cass Sunstein

Administrator, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC and Professor, Harvard Law School (on leave)

PROGRAM AGENDA

Wednesday • May 9, 2012

Rulemaking 101, South American Room

1:00 p.m. – 1:30 p.m. Registration

1:30 p.m. – 3:00 p.m. The Rulemaking Process

“Inside Government” Team:

Joan Dailey, Andrew Emery, Alisa Klein

“Outside Government” Team:

Robert P. Charrow, James W. Conrad, Jr., Richard G. Stoll

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 lawyers and a team of private practitioners, each bringing out considerations most relevant from their particular perspectives. Those attending will receive *A Guide to Federal Agency Rulemaking* by Jeffrey S. Lubbers.

3:00 p.m. – 3:30 p.m. Break

3:30 p.m. – 5:00 p.m. Judicial Review of Rules

“Inside Government” Team:

Joan Dailey, Andrew Emery, Alisa Klein

“Outside Government” Team:

Robert P. Charrow, James W. Conrad, Jr., Richard G. Stoll

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Thursday • May 10, 2012

The Institute, Presidential Ballroom

7:30 a.m. – 8:00 a.m. Registration

8:15 a.m. – 8:30 a.m. Welcoming Remarks

Michael E. Herz, Joe D. Whitley

8:30 a.m. – 9:30 a.m. Recent Developments in Rulemaking Law and Practice, Part 1

Jeffrey S. Lubbers (Moderator)

David R. Hill, William S. Jordan III, Nina A. Mendelson,

This panel of experts will address recent judicial and administrative developments concerning rulemaking. Topics will include the operation of regulatory review under E.O. 12,866, activities (and lack thereof) under the Congressional Review Act, rulemaking burdens imposed by the new health care legislation, important recent cases on the rulemaking process, and the ongoing struggles, among agencies and courts, over distinguishing legislative rules, subject to notice and comment, from interpretive rules, guidance documents and the like.

9:30 a.m. – 10:30 a.m. OIRA—Following the Rules—A Look at Rulemaking Policy and Future Plans

Cass Sunstein

Administrator Sunstein will provide an inside look at the rulemaking policies of the Obama Administration and future plans.

10:30 a.m. – 11:00 a.m. Recent Developments in Rulemaking Law and Practice, Part 2

Jeffrey S. Lubbers (Moderator)

David R. Hill, William S. Jordan III, Nina A. Mendelson

11:00 a.m. – 11:15 a.m. Break

11:15 a.m. – 12:30 p.m. Current Proposals for Regulatory Reform

Michael E. Herz (Moderator)

Michael A. Fitzpatrick, Ronald M. Levin, Jeffrey A. Rosen

The panel will review proposals for regulatory reform, including discussion of cost/benefit analysis, other changes to the rulemaking process, and opportunities to revise or expedite permitting, contained in pending legislation and in recent reports from the Business Roundtable and the President's Council on Jobs and Competitiveness.

12:30 p.m. – 1:00 p.m. Lunch, Presidential Ballroom

1:00 p.m. – 2:00 p.m. Inside State Rulemaking – Lessons from External and Internal Perspectives

The Honorable John Engler

U.S.-based corporations often protest the costs and economic uncertainty imposed by federal regulation – not just from individual rules that affect a particular industry, but also from the cumulative effects of regulations issued by multiple agencies. John Engler, former governor of Michigan and president of Business Roundtable, an association of CEOs of leading U.S. corporations, details business' objections and offers a solution to regulatory excess– “smarter regulation,” a transparent process that involves affected parties earlier in the process. The Obama Administration has indicated its support for many of the regulatory principles.

2:00 p.m. – 3:45 p.m. Arguing and Deciding Administrative Law Cases in the D. C. Circuit

**The Honorable Brett M. Kavanaugh (Moderator)
Michael S. Raab, Catherine E. Stetson**

A D.C. Circuit Judge and two expert practitioners review administrative law cases, procedures and outcomes, giving perspectives from both sides of the bench.

3:45 p.m. – 4:00 p.m. Break

4:00 p.m. – 5:15 p.m. How to Interact Effectively with OIRA and Regulatory Agencies

**James W. Conrad, Jr. (Moderator)
E. Donald Elliot, Shawne C. McGibbon, Paul Noe**

The panel will discuss the respective roles of agencies and OIRA under Executive Orders 12866/13563, the Paperwork Reduction Act, and OMB's Peer Review Bulletin and Information Quality Act Guidelines. Panelists will review when and how to involve other components of the Executive Office of the President and other agencies. Finally, the panel will discuss interactions between OIRA, agencies and SBA's Office of Advocacy under the Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act.

5:15 p.m. Concluding Remarks



8th Annual Administrative Law Institute—Critical Issues in Rulemaking

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1:30 p.m. – 3:00 p.m.	The Rulemaking Process
3:00 p.m. – 3:30 p.m.	Break
3:30 p.m. – 5:00 p.m.	Judicial Review of Rules

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2:00 p.m. – 3:45 p.m.	Arguing and Deciding Administrative Law Cases in the D. C. Circuit
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5:15 p.m.	Concluding Remarks