



**AMERICAN BAR ASSOCIATION
SECTION OF ADMINISTRATIVE LAW AND REGULATORY PRACTICE**

**2009 Midyear Meeting
February 12-13, 2009**

**Fairmont Copley Plaza
138 St. James Avenue
Boston, MA**



[Click here to register online!](#)

**Section Chair:
H. Russell Frisby**

**Meeting Chairs:
Renée Landers
Paul Afonso**

Schedule At-a-Glance

Thursday February 12, 2009
Suffolk University Law School
120 Tremont Street, Boston, MA

| | | |
|-------------------|---|-------------------|
| 3:00 pm – 4:00 pm | Registration | Room 285 |
| 4:00 pm – 5:30 pm | Managing the Bailout: Execution and Oversight of the Federal Response to the Financial Crisis <i>Sponsored by the Rappaport Center for Law and Public Service, Suffolk University Law School, and the ABA Section of Business Law</i> | Room 285 |
| 5:30 pm – 7:00 pm | Reception , <i>Sponsored by the Rappaport Center for Law and Public Service, Suffolk University Law School</i> | Faculty Boardroom |
| 7:00 pm | Prix-fixe Dinner in a local restaurant | TBD |

Friday February 13, 2009
Fairmont Copley Plaza Hotel
138 St. James Avenue, Boston

| | | |
|---------------------|---|---------------------------|
| 8:00 am – 9:00 am | Registration | State Suite B Lower Lobby |
| 9:00 am – 10:30 am | Recent Developments in Education Law | State Suite B Lower Lobby |
| 10:45 am – 12:15 pm | Recent Developments in Communications Law | State Suite B Lower Lobby |
| 10:45 am – 12:15 pm | Regional Greenhouse Gas Initiatives: Lasting Model or Historical Artifact? <i>Co-sponsored by the ABA Standing Committee on Environmental Law and the ABA Section of Environment, Energy and Resources</i> | State Suite A Lower Lobby |
| 12:30 pm – 1:45 pm | Luncheon featuring Alfred C. Aman, Jr., Dean of Suffolk University Law School | Venetian Room Main Lobby |
| 1:45 pm – 3:30 pm | Implementing Health Reform: The Massachusetts Example | State Suite A Lower Lobby |
| 3:30 pm – 5:00 pm | Family Medical Leave Act Update | CANCELLED |

**Thursday February 12, 2009
Suffolk University Law School
120 Tremont Street, Boston, MA**

Managing the Bailout: Execution and Oversight of the Federal Response to the Financial Crisis (CLE)
Room 285
4:00 pm – 5:30 pm

Sponsored by the Rappaport Center for Law and Public Service, Suffolk University Law School and the ABA Section of Business Law

This panel will examine the challenges of policy execution and oversight posed by Troubled Asset Relief Program approved by Congress in October 2008. The conditions under which TARP was implemented were daunting: a massive budget; short time frame, and high uncertainty about the character of the problem to be addressed. What were the major design and implementation challenges, and how well have they been addressed? Have oversight mechanisms established since October 2008 proved effective?

Panelists:

- **Professor Cornelius Hurley**, Director, Morin Center for Banking and Financial Law, Boston University School of Law
- **William F. Kroener III**, Counsel, Sullivan & Cromwell LLP; Co-Chair, ABA Task Force on Financial Markets Regulatory Reform
- **Thomas McCool**, Director, Applied Research and Methods, Government Accountability Office
- **Damon Silvers**, Associate General Counsel, AFL-CIO; Member, EESA Congressional Oversight Panel
- **Robert F. Hoyt**, General Counsel, Department of the Treasury, December 2006-January 2009

Moderator:

- **Alasdair Roberts**, Jerome L. Rappaport Professor of Law and Public Policy, Suffolk University Law School

Reception
Faculty Boardroom
5:30 pm – 7:00 pm

Sponsored by the Rappaport Center for Law and Public Service, Suffolk University Law School

Dinner
Location: TBD
7:00 pm

If you would like to attend this “dutch treat” dinner, please contact Katrina at parierak@staff.abanet.org

Friday February 13, 2009
Fairmont Copley Plaza Hotel
138 St. James Avenue, Boston

Recent Developments in Education Law
State Suite B, Lower Lobby Level
9:00am – 10:30am

The emerging area of professors suing students; schools giving student identifying information to music companies; parents right to "opt out" of curriculum they find offensive; student speech.

On this panel you will hear from Karen Orr, the attorney who obtained immunity for two Purdue University students when they were sued by their professor after they complained about him.

The panel will also discuss cases like the *Tenenbaum* and *Arista Records*. Presenters include Judie Tenenbaum, an attorney and the mother of Joel Tenenbaum, the B.U. graduate student who the Recording Industry of American (RIAA) is suing for file sharing music.

We also discuss parents' decision not to have their second grade and kindergarten age children read books about gay marriage and the right of the school to control its curriculum in the *Parker v. Hurley* case. Hear from attorneys like John J. Davis who represented the town and the school. Hear from attorneys representing the parents.

We will also discuss the emerging limitation on student speech.

Panelists:

- **John J. Davis**, Pierce, Davis & Perritano, Boston, MA
- **Robert Sinsheimer**, Denner Pellegrino, Boston, MA
- **Karen Orr**, Stuart and Branigin, LLP, Lafayette, IN
- **Judie Tenenbaum**, attorney, mother of Joel Tenenbaum
- **Caroline Newcombe**, Southwestern Law School, Los Angeles, CA (program organizer)

Moderator:

- **Victoria Dodd**, Suffolk University Law School, Boston, MA

Recent Developments in Communications Law
State Suite B, Lower Lobby Level
10:45am – 12:15pm

Fox v. FCC and fleeting expletives before the Supreme Court; Network Neutrality and claims that Comcast interfered with peer to peer applications. The FCC order involving Free Press and Comcast.

On November 4, 2008, the Supreme Court heard oral argument in *Fox v. FCC*. This is the famous Cher and Nicole Richie "fleeting expletives" case. According to one paper, this case could have "the most profound effect on federal regulation of broadcasting in 30 years." It also would be the first time the US Supreme Court has looked at indecency issues in 30 years. Hear from Maureen O'Connell, News Corporation. Hear from Matthew Berry, FCC. Hear from Seamus Duffy, Drinker Biddle & Realth LLP, who represents Comcast. Mr. Duffy will be discussing network management practices. Hear from Chris Riley, counsel for Free Press, who will be discussing the issue of alleged degrading of peer to peer applications.

Panelists:

- **Maureen O'Connell**, Esq., Senior Vice President, Regulatory and Government Affairs, News Corporation, Washington DC
- **Matthew Berry**, General Counsel, Federal Communications Commission (FCC), Washington, DC
- **Seamus Duffy**, Drinker Biddle & Realth LLP, Philadelphia, PA

- **Chris Riley**, Policy Counsel, Free Press, Washington, DC

Moderator:

- **Russell Frisby**, Fleischman & Harding, Washington, DC

Program Organizer:

- **Caroline Newcombe**, Southwestern Law School, Los Angeles, CA
-

Regional Greenhouse Gas Initiatives: Lasting Model or Historical Artifact?

State Suite A, Lower Lobby Level

10:45am – 12:15pm

Although the possibility is imminent in light of the change in administration, neither Congress nor the Environmental Protection Agency has enacted legislation or promulgated rules to regulate greenhouse gas emissions or institute a cap-and-trade program. During the last few years, in the absence of a federal regulatory scheme, groups of states have formulated regional greenhouse gas initiatives to establish regional cap-and-trade programs. Of these, the Regional Greenhouse Gas Initiative (“RGGI”), formulated by the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont, is the most advanced. Two other regional programs, the Midwestern Regional Greenhouse Gas Reduction Accord and the Western Climate Initiative, are on a slower track.

Formulated by states that did not want to sit idly on the sidelines as the federal government failed to take action, the regional initiatives came into being to fill the regulatory gap. Many commentators believe that these programs might be around for a long time, in light of the current economic situation and congressional reluctance to impose carbon dioxide emission surcharges on energy prices. Others demur. Whichever body of opinion turns out to be correct, questions abound as to whether the regional initiatives are effective mechanisms for greenhouse gas regulation, whether they will survive legal scrutiny, and whether they ultimately will be pre-empted by federal legislation or agency rules. The Panelists will address these issues from several different perspectives.

Co-sponsored by the ABA Standing Committee on Environmental Law and the ABA Section of Environment, Energy and Resources

Panelists:

- **William Funk**, a professor at the Lewis and Clark Law School who teaches environmental, administrative and constitutional law, will address RGGI from a constitutional perspective, with a focus on the compact clause and dormant commerce clause of the Constitution of the United States. Portland, OR
- **Professor Richard Pierce**, George Washington Law School, Washington, DC
- **Honorable Laurie Burt**, Commissioner, Massachusetts Department of Environmental Protection, Boston, MA
- **Paul Sotkiewicz**, Senior Economist, PJM Interconnection, LLC., Norristown, PA
- **Colin Owyang**, Senior Vice-President & U.S. General Counsel, National Grid

Moderator:

- **Ken Hurwitz**, Partner, Haynes Boone, LLP, Washington, D.C.
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Implementing Health Reform: The Massachusetts Example
State Suite A, Lower Lobby Level
1:45pm – 3:30pm

When Massachusetts enacted An Act Providing Access to Affordable, Quality, Accountable Health Care in April 2006, it undertook a comprehensive and visible effort to reform health insurance and health care practices. By requiring every Massachusetts resident to obtain health insurance coverage or its equivalent by July 1, 2007, Massachusetts hoped to eliminate lack of insurance as a cause of inadequate health care. The statute also established reporting and goal-setting mechanisms aimed at improving the quality of health care services, including reducing racial and ethnic disparities. A study conducted after the first year in which insurance was required for all who have access to affordable coverage, shows that uninsurance was reduced and access to care improved. As a result, the Massachusetts experience seems to many to offer a model to inform the efforts of other states and the nation in addressing access to, and the quality of, health care. This panel will explore the Massachusetts experience in implementing the universal coverage mandate and the areas in which the Massachusetts experience may or may not provide a useful model for the nation. Panelists will include representatives of the major agencies involved in the program and private business and insurance interests also affected by the statute.

Panelists:

- **Rosemarie Day**, Deputy Director, Commonwealth Health Insurance Connector Authority
- **Dolores Mitchell**, Executive Director, Massachusetts Group Insurance Commission
- **Joseph Nevins**, Law Department, Blue Cross/Blue Shield of Massachusetts
- **Donna McCormick**, Managing Attorney, Greater Boston Legal Services, Boston, MA

Moderator:

- **Renée M. Landers**, Professor, Suffolk University Law School, Boston, MA
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**American Bar Association
Section of Administrative Law and Regulatory Practice**

2009 Midyear Meeting
February 12-13, 2009
Fairmont Copley Plaza

Registration Information

Administrative Law Section CLE programs and social events described in this brochure are ticketed events to be purchased through the Section using the enclosed Section Meeting registration form or [online](#). Walk-in registrations are accepted on the day of the program.

Continuing Legal Education Credits

Accreditation will be requested for this program from every state with mandatory continuing legal education (MCLE) requirements for its lawyers. Please be aware that each state has its own rules and regulations, including its definition of "CLE". Check with your state agency for confirmation of this program's approval. Attorneys seeking to obtain MCLE credit in Pennsylvania are required to pay state accreditation fees directly to that state. Certificates of attendance will be available at the conclusion of the program. In order to receive CLE credit, all attorneys will be required to sign in on the sign in sheets and obtain a Uniform Certificate of Attendance. Registration fees must be paid in full before registrants can receive credit.

Refunds

Refunds requested on or before January 30, 2009 will be processed less a \$25 cancellation fee. No refunds will be issued after January 30, 2009. Substitutions will be accepted. Please notify us of any substitutions by emailing parierak@staff.abanet.org.

Hotel

If you wish to reserve a room in one of the ABA hotels it is necessary for you to also register with the ABA at this link <http://www.abanet.org/midyear/2009/>. There is no charge for this registration.

Location:

Events for Thursday, February 12th will take place at Suffolk University Law School, at 120 Tremont Street in Boston, with the exception of the Executive Committee Meeting, which will be held at Fairmont Copley Plaza. All events for Friday, February 13th will take place at Fairmont Copley Plaza at 138 St. James Avenue in Boston.

**American Bar Association
Section of Administrative Law and Regulatory Practice
2009 Midyear Meeting CLE Programs, February 12-13
Fairmont Copley Plaza, Boston, MA**

Name: _____

Organization: _____

Address: _____

City, State, Zip: _____

Email: _____ Phone: _____

Section of Administrative Law Membership \$60 (must already be an ABA member)

Please send me an ABA membership packet

Circle appropriate Fee

| ✓ | Program | Regular Rate | Young Lawyer | Law Student |
|--------------|---|--------------|--------------|-------------|
| | Managing the Bailout: Execution and Oversight of the Federal Response to the Financial Crisis (CLE) 02/12/09 4:00pm – 5:30pm Suffolk U. Law School | \$25 | \$15 | FREE |
| | Reception at Suffolk University Law School 02/12/09 5:30 pm – 7:00 pm | \$0 | \$0 | \$0 |
| | Recent Developments in Education Law (CLE) 02/13/09 9:00am – 10:30am State Suite B | \$25 | \$15 | FREE |
| | Recent Developments in Communications Law (CLE) 02/13/09 10:45am – 12:15pm State Suite B | \$25 | \$15 | FREE |
| | Regional Greenhouse Gas Initiatives: Lasting Model or Historical Artifact? (CLE) 02/13/09 10:45am – 12:15pm State Suite A | \$25 | \$15 | FREE |
| | Section Lunch - Friday 02/13/09 12:30 – 1:45, Fairmont Copley Plaza | \$65 | \$65 | \$65 |
| | Implementing Health Reform: The Massachusetts Example (CLE) 02/13/09 1:45pm – 3:30pm State Suite A | \$25 | \$15 | FREE |
| Total | | | | |

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METHOD OF PAYMENT (or [Click here to register Online](#))

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

Card Number: _____ Exp. Date: _____

Signature: _____ Name on card: _____

**ABA, Administrative Law Section, 740 15th Street, NW, Washington D.C. 20005
202-662-1582 Fax: 202-662-1529 E-mail: parierak@staff.abanet.org**

Program materials will not be printed. You can download them on our website at <http://new.abanet.org/calendar/administrative-law-section-mid-year-meeting-program/Pages/CLESessionMaterials.aspx>