

GEORGE MASON UNIVERSITY SCHOOL OF LAW
ADMINISTRATIVE LAW CLINIC
Law 364

Spring Semester 2023

Profs Harris, Weir & Bates

COURSE INFORMATION

- Class Meetings:** Class will be held on Mondays at 8:10 pm.
- Contact Info:** Professor Harris, jeff@consvoymccarthy.com
Professor Weir, bryan@consvoymccarthy.com
Professor Bates, tbates6@gmu.edu
- Prerequisite:** Administrative Law (Law 116)
- Course Book:** There is no assigned textbook. We will provide PDFs and case citations of the readings we assign.
- Grades/Attendance:** Student grades will be based primarily on student writing assignments completed on behalf of the clinic. In particular, 50 percent of a student's grade will be based on the student's work preparing and drafting legal documents filed on behalf of the clinic such as comments in agency rulemaking proceedings, legal briefs, and clinic white papers. The other 50 percent of student grades will be based on the student's oral and written updates regarding administrative agency activity and courts of appeal/legislative activity that the student has been assigned to monitor. In-class discussion and participation also are important. A student's overall grade based on their writing/monitoring assignments may be adjusted one step upward or downward (for example, from an A up to an A+ or down to an A-) based on the student's participation during in-class discussions. Class attendance is critical. In compliance with George Mason's attendance policy, students absent from 20 percent or more of classes may not receive credit for the course.
- Class Structure** We will assign readings that we expect you to discuss in class. Most of our readings will provide a practical look at how agencies operate on a day-to-day basis. You will learn the more theoretical aspects of administrative law in your Administrative Law coursework. Below is the tentative schedule of reading assignments, but additional assignments may be added throughout the semester to support student work on clinic projects.

Generally speaking, the first half of class will be devoted to discussing the assigned reading while the second half of class will be dedicated to discussing the clinic's ongoing projects and updates on agency activities. We also will have guest speakers who will lecture from time to time.

Requirements

Each student will be assigned an agency that he or she will monitor throughout the semester. This will include reviewing relevant sources to track the agency's activities, including the issuance of new rules, informal guidance, interpretations, and important adjudications. Students will update the class on these activities each time the class meets. Through this process, students are expected to identify agency proceedings in which the clinic potentially could participate or topics suitable for white papers that the clinic may publish on timely legal issues relevant to administrative agency operations.

Students will also be responsible for monitoring the Federal Register for new developments in agency activity. Students will be assigned on a rotating basis to provide an email with a class-wide update on important Federal Register notices. Each student should expect to be responsible to provide the daily Federal Register update on one out of every 10 business days.

Students also will be responsible for drafting documents that the clinic files with agencies. These filings may range from short letters to full comments in rulemaking proceedings. The clinic may also participate in court proceedings that challenge agency action by drafting and filing briefs on behalf of parties and *amici*.

Learning Outcomes

By the end of the course, students should have acquired:

- an understanding of how administrative law works in practice;
- an understanding of the nuts and bolts of agency practice; and
- the ability to research for and draft an effective agency comment.

SYLLABUS/CALENDAR OF EVENTS

| Date | Event (Topic) | Assignment |
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| <p style="text-align: center;">January 23</p> <p style="text-align: center;">Agency Summary Due</p> | <p style="text-align: center;">Comments Drafting Strategies</p> | <ul style="list-style-type: none"> • Jerry Ellig, <i>A Guide to Writing Public Interest Comments Using Economic Analysis</i>, Mercatus Center (2014), pp. 1-16, 25-35 • <i>Tips for Submitting Effective Comments: Government Primer</i> (PDF to be provided) • <i>Step-by-Step Tips for Writing Effective Public Comments</i>, http://eli-ocean.org/wp-content/blogs.dir/2/files/Written-Commenting.pdf |
| <p style="text-align: center;">January 30</p> | <p style="text-align: center;">Comments in Informal Rulemaking: Do They Make a Difference?</p> | <ul style="list-style-type: none"> • <i>Rulemaking Comments</i>, ACUS Recommendation 2011-2 (2011) • <i>Public Comments Make a Difference: Government Fact Sheet</i>, https://www.regulations.gov/docs/FactSheet_Public_Comments_Make_a_Difference.pdf <p style="text-align: center;">(Guest Speaker)</p> |
| <p style="text-align: center;">February 6</p> <p style="text-align: center;">Agency Summary Due</p> | <p style="text-align: center;">No Class</p> | <p style="text-align: center;">Circulate updates on agency activities to the class. Work on individual projects with professors.</p> |
| <p style="text-align: center;">February 13</p> | <p style="text-align: center;">OIRA Review of Agency Regulation</p> | <ul style="list-style-type: none"> • <i>Office of Information and Regulatory Affairs: Brief Description</i>, https://obamawhitehouse.archives.gov/omb/oir • Cass Sunstein, <i>The Office of Information and Regulatory Affairs: Myths and Realities</i>, 126 HARV. L. REV. 1838 (2013), https://harvardlawreview.org/wp-content/uploads/pdfs/vol126_sunstein.pdf • Executive Order 12866 |

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| February 20 Agency Summary Due | No Class | <ul style="list-style-type: none"> • Circulate updates on agency activities to the class. Work on individual projects with professors. |
| February 27 | Regulatory Budgets in Theory and Practice | <ul style="list-style-type: none"> • <i>Jeff Rosen, Putting Regulators on a Budget</i>, NAT'L AFFAIRS (2019), https://www.nationalaffairs.com/publications/detail/putting-regulators-on-a-budget • Executive Order 13771 • Connor Raso, <i>How has Trump's deregulatory order worked in practice?</i>, BROOKINGS INST. (Sept. 2018), https://www.brookings.edu/research/how-has-trumps-deregulatory-order-worked-in-practice/ |
| March 6 Agency Summary Due | Staffing the Civil Service | <ul style="list-style-type: none"> • <i>The Merit System Principles: Keys to Managing the Federal Workforce</i>, MSPB (Jan. 12, 2017), pp. 1-17 • <i>What is Due Process in Federal Civil Service Employment?</i>, MSPB (May 2015), pp. 1-31 |
| March 13 Spring Break | No Class | Circulate updates on agency activities to the class. Work on individual projects with professors. |
| March 20 Agency Summary Due | The Unique Status of Independent Agencies | <ul style="list-style-type: none"> • <i>Seila Law LLC v. CFPB</i>, 140 S.Ct. 2183 (2020) (majority & Thomas concurrence) |
| March 27 | The Current State of Separation of Powers and Structural Arguments in Agency Challenges | <ul style="list-style-type: none"> • <i>Gutierrez-Brizuela v. Lynch</i>, 834 F.3d 1142 (10th Cir. 2016) • Aditya Bamzai, <i>Delegation & Interpretive Discretion: Gundy, Kisor, & The Formation & Future of Administrative Law</i>, 133 HARV. L. REV. 164 (2019). |

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| <p>April 3</p> <p>Agency Summary Due</p> | <p>No Class</p> | <p>Circulate updates on agency activities to the class. Work on individual projects with professors.</p> |
| <p>April 10</p> | <p>Legislative Proposals for Reform (Regulatory Accountability Act, REINS Act, etc.)</p> | <ul style="list-style-type: none"> • Christopher J. Walker, <i>Modernizing the Administrative Procedure Act</i>, 69 ADMIN. L. REV. 629, 630-38, 648-70 (2017) |
| <p>April 17</p> | <p>No Class</p> | <ul style="list-style-type: none"> • Circulate updates on agency activities to the class. Work on individual projects with professors. |
| <p>April 24</p> | <p>Course Wrap-Up Debate & Discussion: Current System v. What Alternatives?</p> | <ul style="list-style-type: none"> • TBD |