

American Bar Association
Section of Administrative Law and Regulatory Practice



**Agency Guidance under
Amended Executive Order 12866 and
the “Good Guidance Practices”
Bulletin: Issues of Law, Administrative
Practice, and Judicial Review**

Fourth Annual Administrative and Regulatory Law Institute

May 1, 2008

The Sphinx Club

1315 K Street, NW, Washington, DC

Special Thanks to our Sponsor

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

This program is brought to you by the ABA Section
of Administrative Law and Regulatory Practice
and co-sponsored by the
D.C. Bar Administrative Law and Agency
Practice Section

About the Institute

In 2007, the framework for development, review, and issuance of guidance documents—a repository of agency policy crucial to both agency decision-makers and members of the public—was significantly changed with amendments to Executive Order 12866 and the issuance by the Office of Management and Budget of a Bulletin on Good Guidance Practices . After offering an overview of the rulemaking process and the role of guidance in the administration of agency programs, this Institute will present various panels and speakers examining in detail these important developments, including OMB's interpretation and application of the revised Executive Order and Bulletin; the impacts on agency practices in drafting and issuing guidance; the challenges presented to the private bar in representing clients who may be affected by guidance; and the interaction of judicial review and agency guidance.

Program Agenda

- 8:00am Registration
- 8:25am Welcome Remarks
- 8:30am ***Opening Keynote Address***
Cornelius M. Kerwin, President, American University, and Founder, Center for the Study of Rulemaking at American University, Washington, DC
- 9:00 am ***The Role of Guidance in Administrative Law***
Richard J. Pierce, Jr. Professor of Law, George Washington University Law School, Washington, DC
- 10:00 am Presentation to **Robert A. Anthony**, Professor Emeritus, George Mason University Law School, Arlington, VA
- 10:15 am ***OMB Review of Guidance***
Panelists:
John G. Knepper, Deputy General Counsel, Office of Management and Budget, Washington, DC
Paul Noe, Vice President of Regulatory Affairs, The Grocery Manufacturers Association, Washington, DC
Sidney A. Shapiro, Professor, Wake Forest University School of Law, Winston-Salem, NC
- 11:45am ***The Private Sector Perspective: Use and Abuse of Guidance***
Panelists:
Richard G. Stoll, Partner, Foley & Lardner LLP, Washington, DC
Daniel E. Troy, Partner, Sidley Austin LLP, Washington, DC
Lauren A. Freeman, Partner, Hunton & Williams LLP, Washington, DC
William A. Sarraille, Partner, Sidley Austin LLP, Washington, DC
- 1:00pm ***Luncheon***

- 2:00pm ***Keynote Address***
The Honorable Susan E. Dudley
Administrator, Office of Information and Regulatory Affairs,
White House Office of Management and Budget, Washington, DC
- 2:30pm ***Agency Practices in Developing/Drafting Guidance and Complying with the Executive Order and Bulletin***
Panelists:
Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Washington, DC
Dr. Nicole Owens, Director, Regulatory Management Division, U.S. Environmental Protection Agency, Washington, DC
Betsy Kohl, Office of the General Counsel, U.S. Department of Commerce, Washington, DC
Demetrious L. Kouzoukas, Office of the General Counsel, U.S. Department of Health and Human Services, Washington, DC

Moderator:
Fred Emery, Principal, The Regulatory Group, Rosslyn, VA
- 4:00pm ***Judicial Review of Guidance***
Panelists:
The Honorable Stephen F. Williams, U.S. Court of Appeals for the District of Columbia Circuit, Washington, DC
The Honorable Brett M. Kavanaugh, U.S. Court of Appeals for the District of Columbia Circuit, Washington, DC

Moderator:
Peter Strauss, Professor of Law, Columbia University School of Law, New York, NY
- 5:00pm ADJOURN

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