

**GEORGE MASON UNIVERSITY SCHOOL OF LAW**  
**ADMINISTRATIVE LAW CLINIC**  
**Law 364**

Fall Semester 2021

Profs Harris, Weir, & Bates

**COURSE INFORMATION**

**Class Meetings:** Class will be held on Mondays at 8:10pm. The first class is on Monday, August 23.

**Contact Info:** Professor Harris, [jeff@consvoymccarthy.com](mailto:jeff@consvoymccarthy.com)  
Professor Weir, [bryan@consvoymccarthy.com](mailto:bryan@consvoymccarthy.com)  
Professor Bates, [tbates6@gmu.edu](mailto:tbates6@gmu.edu)

**Course Book:** There is no assigned textbook. We will provide case and article 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% 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 and legal briefs. The other 50% 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% 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 clinic's ongoing projects and updates on agency activities, while the second half of class will be dedicated to discussing the assigned readings. 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.

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
Aug. 23 8:10 pm	<p>Introduction to Course Procedures, Protocols, and Expectations</p> <p>Agency and Federal Register Signup</p> <p>Introduction to Agencies' Impact</p>	<p>Richard B. Stewart, <i>Administrative Law in the Twenty-First Century</i>, 78 N.Y.U. L. Rev. 437, 437-60 (2003).</p> <p>Ralph F. Fuchs, <i>Review of "The Administrative Process," by James Landis</i>, 24 Wash. U. L. Q. 300, 300-02 (1939).</p> <p><i>City of Arlington v. FCC</i>, 133 S. Ct. 1863, 1877-80 (2013) (Roberts, C.J., dissenting) (Section I).</p> <p>Skim the U.S. Constitution (arts. I- VII).</p>
Aug. 30 8:10 pm	Primer on the APA	<p>Martin Shapiro, <i>Golden Anniversary: The Administrative Procedure Act of 1946</i>, 19 Regulation 40 (1996).</p> <p>Steven P. Croley, <i>The Administrative Procedure Act and Regulatory Reform: A Reconciliation</i>, 10 Admin. L.J. Am. U. 35, 37-43 (1996) (Sect. I only).</p>
Sept. 6	No Class (Labor Day)	

<p>Sept. 13 8:10 pm</p> <p><b>Agency Summaries Due</b></p>	<p>Brief Presentations on Assigned Agencies</p> <p>Primer on Rulemaking, Legislative v. Nonlegislative Rules</p>	<p>Each student will draft a handout outlining the subject matter of his or her assigned agency.</p> <p>APA, 5 U.S.C. §§ 553, 556-557.</p> <p>Richard J. Pierce, Jr., <i>Distinguishing Legislative Rules from Interpretative Rules</i>, 52 Admin. L. Rev. 547, 547-53 (2000).</p> <p>John F. Manning, <i>Nonlegislative Rules</i>, 72 Geo. Wash. L. Rev. 893, 893-94, 914-27 (2004).</p>
<p>Sept. 20</p>	<p>No Class</p>	<p>Circulate updates on agency activities to the class. Work on individual projects with professors.</p>
<p>Sept. 27</p> <p><b>Agency Updates Due</b></p>	<p>No Class</p>	<p>Circulate updates on agency activities to the class. Work on individual projects with professors.</p>

<p>Oct. 4 8:10 pm</p>	<p>Legislative v. Interpretive Rules in Practice</p>	<p>Gillian E. Metzger &amp; Kevin M. Stack, <i>Internal Administrative Law Before and After the APA</i>, Administrative Law from the Inside Out, edited by Nicholas R. Parrillo (2017) (180-183) (The reading assignment starts with the paragraph on p. 180 that begins, “Judicial doctrine . . .”).</p> <p><i>Perez v. Mortgage Bankers Ass’n</i>, 135 S. Ct. 1199, 1203-13 (2015) (Read the majority and Justices Alito’s and Scalia’s concurring opinions. Justice Thomas’s concurring opinion is optional.)</p> <p>Wayne Crews, <i>A Preliminary Inventory of “Regulatory Dark Matter</i>, Competitive Enterprise Institute 3-31 (Dec. 2015).</p>
<p>Oct. 11/12</p>	<p>No Class (Fall Break)</p>	<p>Circulate updates on agency activities to the class. Work on individual projects with professors.</p>
<p>Oct. 18 8:10pm</p> <p><b>Agency Updates Due</b></p>	<p>Guest Speaker: The Inside of an Agency (Rulemaking)</p>	<p>TBD</p>
<p>Oct. 25</p>	<p>No Class</p>	<p>Circulate updates on agency activities to the class. Work on individual projects with professors.</p>
<p>Nov. 1 8:10pm</p> <p><b>Agency Updates Due</b></p>	<p>Agency Adjudications</p>	<p>APA, 5 U.S.C. §§ 554-557</p> <p>Michael Asimow, <i>A Guide to Federal Agency Adjudication</i> 145-60 (2003) (Chapter 9 on Informal Adjudication) (PDF to be provided).</p> <p>Michael Asimow, <i>Adjudication Outside the Administrative Procedure Act</i> (Sept. 16, 2016) (draft report for ACUS). (Please skim pp. 1-32.)</p>

Nov. 8 8:10 pm	No Class	Circulate updates on agency activities to the class. Work on individual projects with professors.
Nov. 15 8:10pm  <b>Agency Updates Due</b>	Challenging and Defending Agency Actions	TBD
Nov. 22 8:10 pm	Guest Speaker: The Inside of an Agency (Adjudication)	TBD