



AMERICAN PUBLIC TRANSPORTATION ASSOCIATION

2017 LEGAL AFFAIRS SEMINAR

February 26-28, 2017

Andaz Hotel
Savannah, GA

Welcome to the 2017 APTA Legal Affairs Seminar. Topics for this conference will highlight the most recent developments in Transit & Last Mile Partners; CEOs, Board Members and the General Counsel; NEPA and Capital Projects; Procurements; Grants Management and labor issues, as well as evolving legislative and regulatory initiatives that will impact transit lawyers. Continuing legal education credits will be available

As part of APTA's sustainability commitment, conference materials are posted and available to registered attendees approximately one week prior to the seminar and continuously available for reference or downloading thereafter at <http://www.apta.com/mc/legal/synopsis/Pages/default.aspx>. To view the conference materials during the conference, please be sure to download the 2017 Synopsis of the Law and either bring a laptop with the files to the conference or print the portions you wish to use in hard copy and bring those copies to the conference. The 2017 Synopsis of the Law will be made available upon request in CD or printed form at additional cost. Additionally, the conference materials will be available for downloading on-site throughout the conference.

APTA's Vision Statement

Be the leading force in advancing public transportation.

APTA's Mission Statement

To strengthen and improve public transportation, APTA serves and leads its diverse membership through advocacy, innovation, and information sharing.

APTA's Policy on Diversity

APTA recognizes the importance of diversity for conference topics and speakers and is committed to increasing the awareness of its membership on diversity issues. APTA welcomes ideas and suggestions on how to strengthen its efforts to meet these important diversity objectives.

We would like to thank our sponsors for their generous contributions to the 2017 Legal Affairs Seminar



2017 Legal Affairs Seminar Program-at-a-Glance

| Sunday, Feb. 26 | Monday, Feb. 27 | Tuesday, Feb. 28 |
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| <p>9 a.m. – 3 p.m. Registration</p> <p>10 – 10:30 a.m. Welcome & Seminar Overview</p> <p>10:30 – 11:15 a.m. Legislative Update</p> <p>11:15 – 11:30 a.m. Break / (Pick up Lunch)</p> <p>11:30 a.m. – 2:00 p.m. Lunch & Round-Table Discussion <i>(The round-table discussion is intended as a forum for transit agency attorneys and their outside counsel to exchange information in a non-attribution, confidential setting.)</i></p> <p>2 – 3:00 p.m. Legal Writing</p> <p>3 – 3:15 Break</p> <p>3:15 – 4:15 p.m. CEO's, Board Members and the General Counsel</p> <p>4:15 – 5:15 p.m. FTA Chief Counsel Session</p> <p>6 – 7 p.m. Opening Reception <i>Sponsored by Kaplan Kirsch & Rockwell</i></p> | <p>7:30 – 8:30 a.m. Breakfast <i>Sponsored by Manatt, Phelps & Phillips, LLP</i></p> <p>8:30 a.m. – 4 p.m. Registration</p> <p>8:30 – 10 a.m. FTA's New Approach to Safety: Applying the New Rules on Safety and Asset Management</p> <p>10 – 10:15 a.m. Break</p> <p>10:15 – 11:15 a.m. Environmental Litigation & Capital Projects</p> <p>11:15 – 11:30 a.m. Break / (Pick up Lunch)</p> <p>11:30 a.m. – 12:20 p.m. Working Lunch <i>Sponsored by Hanson Bridgett, LLP</i></p> <p>12:20 – 12:30 p.m. Break</p> <p>12:30 – 1:30 Hot Topics in Procurement</p> <p>1:30 – 2:30 p.m. Ethics & Professional Responsibility</p> <p>2:30 – 3:30 p.m. Rail: You know that curse about living in interesting times?</p> <p>3:30 – 3:45 p.m. Break <i>Sponsored by Venable, LLP</i></p> <p>3:45 – 4:45 p.m. Transportation Networking Companies and Public Transit – Resolving Legal Concerns to Foster Innovation</p> <p>6 – 8 p.m. Reception at Service Brewery <i>Sponsored by Thompson Coburn, LLP</i></p> | <p>7:30 – 8:15 a.m. Breakfast</p> <p>8 – 8:30 a.m. Legal Affairs Committee Meeting</p> <p>8:30 – 11 a.m. Registration</p> <p>8:30 – 10:30 a.m. TAM/SOGR and Grants/Management: FTA and Agency Perspectives -- and What Transit Attorneys Should Know</p> <p>10:30 – 10:45 a.m. Break</p> <p>10:45 a.m. – 11:45 a.m. Labor Panel</p> <p>11:45 a.m. Closing</p> <p><i>Additional Sponsorship provided by: Apperson Crump, PLC</i></p> |



General Information

Attire: Business Casual

As courtesy to other attendees, please MUTE your electronic devices during the sessions.

2017 Legal Affairs Seminar

Sunday, February 26

9 a.m. – 3 p.m.
Grand Parlor Foyer

Registration

10 – 10:30 a.m.
Grand Parlor

Welcome & Seminar Overview

Speaker:

Marla L. Lien Member, APTA Board of Directors; Chair, APTA Legal Affairs Committee; and Kaplan Kircsh & Rockwell, Denver, CO

Eddie W. DeLoach, Mayor, City of Savannah, Savannah, GA

10:30 – 11:15 a.m.
Grand Parlor

Legislative Update

A review of current and potential legislative activity affecting the public transportation industry. With a new president and the 115th Congress getting to work, 2017 promises to be an eventful year in Washington, and APTA will be advocating strongly for greater federal investment in our industry.

Speaker:

Mark Hybner, Sr. Legislative Representative, APTA, Washington, D.C.

11:15 – 11:30 a.m.
Grand Parlor Foyer

Break / (Pick up Lunch)

11:30 a.m. – 2 p.m.
Grand Parlor

Round-Table Discussion

This is an informal session for public transit agency attorneys to introduce themselves and share information and strategies for handling legal issues facing their agencies. Come with questions, ideas, and news about the legal challenges your agencies have asked you to solve.

(The round-table discussion is intended as a forum for transit agency attorneys and their outside counsel to exchange information in a non-attribution, confidential setting.)

Sunday, continued

2 – 3:00 p.m.
Grand Parlor

Legal Writing Workshop

We all must communicate effectively in order to help our clients. The quality of our writing matters regardless of whether we draft an email, a contract, or a complaint. Yet we lawyers are the only professional writers who do not benefit from professional editing as a matter of course. Becoming a better writer is a never-ending process and there is always room to improve. This interactive session will highlight how to avoid common writing pitfalls and will also provide tips to becoming better writers and editors.

Attention to this workshop is particularly important because prizes will be awarded for the accurate identification of the number of times the passive voice is used in this sentence.

Speaker:

Steven D. Miller, Partner, Hanson Bridgett LLP, San Francisco, CA

3 – 3:15 p.m.

Break

3:15 – 4:15 p.m.
Grand Parlor

CEOs, Board Members and the General Counsel

CEO's from three major transit agencies will speak about their view of the General Counsel's role, how the relationship between the Board, General Counsel and the CEO is structured, the General Counsel responsibility for ethics compliance, and their view of what makes a good General Counsel.

Moderator:

Marla L. Lien, Member, APTA Board of Directors; Chair, APTA Legal Affairs Committee; and Partner, Kaplan Kircsh & Rockwell, Denver, CO

Speakers:

Dorval Carter, Executive Committee Member, APTA, President Chicago Transit Authority, Chicago, IL

Nathaniel P. Ford Sr., Vice Chair, APTA, Chief Executive Officer, Jacksonville Transportation Authority, Jacksonville, FL

Larry Hoy, Chair, RTD Board of Directors, Denver, CO

Sunday, continued

4:15 – 5:15p.m.
Grand Parlor

A Conversation with the FTA Chief Counsel

FTA's Deputy Chief Counsel will provide a retrospective summary of significant FTA actions in 2016 and a preview of what's on the horizon in 2017.

Speaker:

Dana C. Nifosi, Deputy Chief Counsel,
Federal Transit Administration, Washington, D.C.

6 – 7 p.m.
Terrace

Opening Reception

Sponsored by:
Kaplan Kirsch & Rockwell



Monday, February 27

7:30 – 8:30 a.m.
Grand Parlor Foyer

Breakfast

Sponsored by:
Manatt, Phelps & Phillips, LLP

The logo for Manatt, Phelps & Phillips, LLP, featuring the word "manatt" in a lowercase, sans-serif font in white, set against a solid orange rectangular background.

8:30 a.m. – 4 p.m.
Grand Parlor Foyer

Registration

8:30 – 10 a.m.
Grand Parlor

FTA's New Approach to Safety: Applying the New Rules on Safety and Asset Management

This panel will explain the FTA's recently published rules on safety including agency safety plans and state safety oversight. The panel will discuss FTA's safety policy – Safety Management Systems (SMS) – as well as how agencies may implement SMS. The panel will explain the rules that outline FTA's procedures as well as the roles and responsibilities for transit agencies and state safety regulatory bodies. The panel will discuss the rules on asset management and how those rules might interact with a transit agency's safety program. The panel will focus on practical considerations, identifying key risk areas and best practices. As the expanse of safety investigations grows, the panel will offer advice on gathering and reporting data, and responding to requests pursuant to a safety investigation.

Moderator:

Jenifer Ross-Amato, Deputy General Counsel,
Regional Transportation District, Denver, CO

Speakers:

Candace Key, Attorney Advisor, Federal Transit Administration,
Washington, D.C.

James P. LaRusch, Corporate Counsel, Raul V. Bravo +
Associates, Inc., Reston, VA

Stephanie Stuart Bethune, Deputy City Attorney, City & County of
San Francisco, San Francisco, CA

Monday, continued

10 – 10:15 a.m.

Break

10:15 – 11:15 a.m.
Grand Parlor

Environmental Litigation & Capital Projects

How have plaintiffs been litigating transit capital projects? How could a transit project be delayed by impacts to small businesses, urban parks, historic resources, or endangered species? Join us for a lively dialogue with environmental litigators for 5 different transit projects. Panelists will share how their projects were defended. The panel will discuss lessons learned in how counsel can help their clients prepare environmental review documents. The panel will also provide a general introduction to 4(f) and 106 law. One of the private practitioners on the panel will conclude with his predictions on the new Administration's potential directions for NEPA environmental review in transportation projects.

Moderator:

Minming Wu Morri, Assistant Regional Counsel, Region IX, Federal Transit Administration, San Francisco, CA

Speakers:

Tiffany K. Wright, Managing Partner, Remy Moose Manley, LLP, Sacramento, CA

Fred Wagner, Partner, Venable, LLP, Washington, D.C.

Jay Fox, Regional Counsel, Region III, Federal Transit Administration, Philadelphia, PA

11:15 – 11:30 a.m.
Grand Parlor Foyer

Break / (Pick up Lunch)

11:30 a.m. – 12:20 p.m.
Grand Parlor

Working Lunch

Speaker:

Samuel S. Olens, Former State of Georgia Attorney General; President, Kennesaw State University, Kennesaw, GA

Sponsored by:
Hanson Bridgett, LLP



Monday, continued

12:30 – 1:30 p.m.
Grand Parlor

Hot Topics in Procurement

This panel will explore three key procurement issues:
(1) challenges of implementing Buy America requirements to the utility relocation scope of federally funded projects;
(2) dealing with constituents pressuring an agency to make “socially conscious” procurement decisions;
and (3) Federal Transit Administration updates.

Moderator:

Julie Sherman, Partner, Hanson Bridgett LLP, San Francisco, CA

Speakers:

Micah Miller, Regional Counsel, Federal Transit Administration, Region IV, Atlanta, GA

Bart Simmons, Senior Counsel, Utah Transit Authority, Salt Lake City, UT

Tim Spangler, Chief Counsel, Sacramento Regional Transit District, Sacramento, CA

1:30 – 2:30 p.m.
Grand Parlor

Ethics & Professional Responsibility

The stated policy intent to find innovative financial means to build and re-build infrastructure, along with huge funding demands growing out of the huge cost of attaining State of Good Repair and implementing DOT’s Safety Initiative, means that there will be heightened emphasis on innovative financing and Public Private Partnerships.

The FTA Master Agreement requires recipients of transit funds to establish and maintain written Standards of Conduct covering conflict of interest that apply to certain individuals who have a present or potential financial interest, or other significant interest, such as a present or potential employment interest in the selection, award or administration of a third party contract or subcontract.

Among other things, the Standards of Conduct must prohibit certain individuals from engaging in any activities, including selection, award, or administration of a third party contract in which the individual has a present or potential

Monday, continued

financial or other potential or other significant interest; and from accepting a gratuity, favor, or anything of monetary value from a present or potential Third Party Participant in the Recipient's underlying Project "unless the gift is unsolicited and has an insubstantial financial or nominal intrinsic value."

The potential for increased reliance on private financing and dealings with sophisticated private equity organizations will place an even greater emphasis on organizational conflicts of interest and gift policies as part of required Standards of Conduct. On top of that, these complex financial negotiations must be handled with great care, so as not to run afoul of another significant objective of an effective Ethics Code that there be no secret dealings.

This interactive ethics session will present actual scenarios encountered by transit agencies and their counsel.

Speakers:

Bruce M. Smith, Attorney at Law, Apperson Crump PLC, Memphis TN

Fred Wagner, Partner, Venable, LLP, Washington DC

2:30 – 3:30 p.m.
Grand Parlor

Rail: You know that curse about living in interesting times?

Safety. Reliability. Cost-effectiveness. These are all key concepts in the planning for any transit service, and the rail sector has faced a number of issues over the past year that brought increased focus on all three. For Amtrak and states that sponsor intercity so-called short distance intercity service, the Congressional mandate for improved reliability and for changes in the way states pay Amtrak for use of Amtrak's assets have led to litigation and unresolved disputes over how to manage these mandates. Ensuring on-time performance, and allocating costs and access to corridors in a rational manner are all components of these debates. On the safety front, the Federal Railroad Administration (FRA) has imposed new obligations on states for developing system safety plans that have led states, while supporting the emphasis on improved

Monday, continued

safety, to push back on the allocation of responsibility mandated by FRA because that allocation increases the cost of delivery of service but does not have a direct causal link to improving safety. These are indeed interesting times on the rail side of the passenger and transit industry.

Moderator:

Charles A. Spitulnik, Partner, Kaplan Kirsch & Rockwell LLP, Washington, DC

Speakers:

Scott Beaver, Assistant Attorney General, North Carolina Department of Justice, Raleigh, NC

Allison I. Fultz, Partner, Kaplan Kirsch & Rockwell LLP, Washington, DC

Kevin M. Sheys, Partner, Nossaman LLP, Washington, DC

Kevin P. Martin, Partner, Goodwin Procter LLP, Washington, D.C.

Teresa J. Moore, General Counsel, South Florida Regional Transportation Authority, Pompano Beach, FL

3:30 – 3:45 p.m.
Grand Parlor Foyer

Break

Sponsored by:
Venable, LLP



3:45 – 4:45 p.m.
Grand Parlor

Transportation Networking Companies and Public Transit – Resolving Legal Concerns to Foster Innovation

This session will be an interactive discussion of the opportunities and various legal concerns that arise when public transit agencies partner with transportation networking companies. We will take a look at the structure of transit agencies' recent dealings with TNCs and will evaluate the risks and unknowns associated with such partnerships. Topics to be discussed include: accessibility; liability and indemnification obligations; disclosure of information and management of public records; public safety; Title VI; procurement; and options and best practices for contracting.

Monday, continued

Moderator:

Dana Henderson, General Counsel, Pierce Transit, Lakewood, WA

Speaker:

Gregory Rodriguez, Of Counsel, Best Best & Kreiger, LLP
Washington, D.C.

6 – 8 p.m.

Reception at Service Brewing Co.

Sponsored by:
Thompson Coburn LLP



Tuesday, February 28

7:30 – 8:15 a.m.
Grand Parlor Foyer

Breakfast

8 – 8:30 a.m.
Grand Parlor

Legal Affairs Committee Meeting

Presiding Officer:

Marla L. Lien, Member, APTA Board of Directors; Chair, APTA Legal Affairs Committee; and Partner, Kaplan Kircsh & Rockwell, Denver, CO

8:30 – 11 a.m.
Grand Parlor Foyer

Registration

8:30 – 10:30 a.m.
Grand Parlor

TAM/SOGR and Grants/Management: FTA and Agency Perspectives -- and What Transit Attorneys Should Know

Recently, the FTA promulgated regulations to establish requirements for Transit Asset Management (TAM) 49 CFR Part 625), and issued a new Award Management (former Grants Management) Circular (5010.1E). This session features FTA attorneys and Agency representatives discussing these initiatives, how they are implementing them, and what attorneys (who may not often get involved in these issues) should know in order to assist their clients.

Demystifying the Super Circular

In late 2013, and effective for grantees on December 26, 2014, the Office of Management and Budget (OMB) streamlined the OMB Circulars on Administrative Requirements, Cost Principles, and Audit Requirements for all Federal awards into one set of rules, which has been dubbed the "Super Circular." What does this mean for transit agencies? What has changed? Where do I find these rules? The FTA will answer these questions and many more.

Moderator:

Robin M. Reitzes, Deputy City Attorney, City and County of San Francisco, San Francisco, CA

Tuesday, continued

Speakers:

Transit Asset Management/State of Good Repair

Candace Key, Attorney Advisor and Acting Director, Office of Safety, Federal Transit Administration, Washington, DC

David M. Springstead, Assistant General Manager of Capital Programs & Development, Metropolitan Atlanta Rapid Transit Authority, Atlanta, GA

Grants Management

Jennifer Riess, Attorney Advisor, Federal Transit Administration, Washington, DC

Joel Goldberg, Manager, Capital Procurement & Management, San Francisco Municipal Transportation Agency, San Francisco, CA

Super Circular:

Jennifer Riess, Attorney Advisor, Federal Transit Administration, Washington, DC

10:30 – 10:45 a.m.

Break

10:45 – 11:45 a.m.
Grand Parlor

Labor Panel

The labor panel will include an update on the 13(c) labor protection litigation related to California's pension reform legislation, discussion of an arbitration award on 13(c) and joint employer issues, and a presentation from the Amalgamated Transit Union on issues of interest.

Moderator:

Jane Sutter Starke, Partner, Thompson Coburn LLP, Washington, DC

Speakers:

Katie Kraft, Partner, Thompson Coburn LLP, Washington, DC

Keira McNett, Associate General Counsel, Amalgamated Transit Union, Silver Spring, MD

Tim Spangler, Chief Counsel, Sacramento Regional Transit District, Sacramento, CA

Tuesday, continued

11:45 a.m.
Grand Parlor

Closing

Speaker:

Marla L. Lien, Member, APTA Board of Directors; Chair,
APTA Legal Affairs Committee; and Partner,
Kaplan Kircsh & Rockwell, Denver, CO

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