



Preliminary Program

# 58<sup>th</sup> Annual Workshop on Transportation Law

*Sunday, July 21 - Wednesday, July 24, 2019*

*The Westin Cleveland Downtown*

*Cleveland, Ohio*

**ORGANIZED BY**

Technical Activities Division  
Transportation Research Board

**SPONSORED BY**

Legal Resources Group



# 58<sup>TH</sup> ANNUAL WORKSHOP ON TRANSPORTATION LAW

*Legal Resources Group Chair, Fred Wagner*  
*Committee on Transportation Law, Chair, Marcelle Jones*  
*Committee on Transit & Intermodal Transportation Law, Chair, Robin M. Reitzes*  
*Committee on Contract Law, Chair, Nancy Smith*  
*Committee on Emerging Technology Law, Chair, Ellen Partridge*  
*Committee on Environmental Issues in Transportation Law, Chair, Jomar Maldonado*  
*Committee on Eminent Domain & Land Use, Chair, William E. James*  
*Committee on Tort Liability & Risk Management, Chair, Jeanne E. Scherer*

## **Transportation Research Board Staff**

Ann Brach, Director, Technical Activities  
Robert J. Shea, Senior Program Officer and Counsel for Legal Research Projects  
Joanice L. Johnson, Associate Program Officer  
Megan Kaufmann, Senior Conference Manager

***The workshop has in the past been approved for continuing legal education (CLE) credits in states requiring such credits. Rules vary from state to state. Inquiries about such matters should be made to Joanice (Jo) Johnson at 202-334-2287 or by email [jojohnson@nas.edu](mailto:jojohnson@nas.edu).***

The registration fee covers all sessions of the workshop program and materials distributed at or following the workshop, plus the Sunday evening reception (July 21), Monday through Wednesday continental breakfasts, and morning and afternoon coffee breaks.

The **Transportation Research Board** is one of seven major programs of the National Academies of Sciences, Engineering, and Medicine. The mission of the Transportation Research Board is to increase the benefits that transportation contributes to society by providing leadership in transportation innovation and progress through research and information exchange, conducted within a setting that is objective, interdisciplinary, and multimodal. The Board's varied committees, task forces, and panels annually engage about 7,000 engineers, scientists, and other transportation researchers and practitioners from the public and private sectors and academia, all of whom contribute their expertise in the public interest. The program is supported by state transportation departments, federal agencies including the component administrations of the U.S. Department of Transportation, and other organizations and individuals interested in the development of transportation.

[www.TRB.org](http://www.TRB.org)

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## TENTATIVE AGENDA AT A GLANCE

### 58<sup>TH</sup> ANNUAL WORKSHOP ON TRANSPORTATION LAW

<b>Sunday, July 21, 2019</b>	
3:30 p.m. – 6:00 p.m.	<b>Registration</b>
6:30 p.m. – 8:00 p.m.	<b>Welcome Reception</b>
<b>Monday, July 22, 2019</b>	
7:30 a.m. – 5:00 p.m.	<b>Registration</b>
7:30 a.m. – 8:00 a.m.	<b>Continental Breakfast</b>
8:00 a.m. – 8:30 a.m.	<b>Welcome</b>
8:30 a.m. – 10:00 a.m.	<b>Session 1: Legal Updates and Perspectives from USDOT Modal Senior Legal Representatives</b>
10:00 a.m. – 10:30 a.m.	<b>Break</b>
10:30 a.m. – Noon	<b>Session 2: Best Practices for Handling and Responding Before, During &amp; After a Cyberattack or Data Breach</b>
12:15 p.m. – 1:45 p.m.	<b>Committee Meetings</b>
2:00 p.m. – 3:30 p.m. Concurrent Sessions	<b>Session 3: Passing the Torch: The Role of the Project Proponent in the Environmental Review</b>
	<b>Session 4: Transit Law Update</b>
3:30 p.m. – 4:00 p.m.	<b>Break</b>
4:00 p.m. – 5:30 p.m. Concurrent Sessions	<b>Session 5: The Impact of a Changing Climate on Our Transportation Systems</b>
	<b>Session 6: Working on the Railroad: Condemnation and Regulation of Railroad Property</b>
<b>Tuesday, July 23, 2019</b>	
7:30 a.m. – 3:00 p.m.	<b>Registration</b>
7:30 a.m. – 8:00 a.m.	<b>Continental Breakfast</b>
7:30 a.m. – 8:00 a.m.	<b>Ethics Session: Crisis Management 101 for the Transportation Lawyer</b>
8:00 a.m. – 9:30 a.m. Concurrent Sessions	<b>Session 7: Regulating and Compensating for Billboards in a Digital World</b>
	<b>Session 8: Risky Business? Design Flexibility, Practical Design and Complete Streets: Best Practices for Balancing Transportation Design Needs and Reducing Tort Liability</b>

9:30 a.m. – 10:00 a.m.	<b>Break</b>
10:00 a.m. – 11:30 a.m. Concurrent Sessions	<b>Session 9: Risk Allocation - Mitigation</b>
	<b>Session 10: The Legal Realities of the New Mobility</b>
11:45 a.m. – 1:15 p.m.	<b>Committee Meetings</b>
1:30 p.m. – 3:00 p.m. Concurrent Sessions	<b>Session 11: Sexual Harassment Involving Transit Users and Agency Contractors</b>
	<b>Session 12: Right of Way Best Practices in Light of Recent Trends and Developments in Eminent Domain and Land Use Law</b>
3:00 p.m. – 3:30 p.m.	<b>Break</b>
3:30 p.m. -5:00 p.m. Concurrent Sessions	<b>Session 13: Aviation Innovation in Ohio</b>
	<b>Session 14: Janus and Public Sector Unions: Effect on Transit Agencies and Recent Activity</b>
<b>Wednesday, July 24, 2019</b>	
7:00 a.m. – 8:00 a.m.	<b>Continental Breakfast</b>
8:00 a.m.– 9:30 a.m. Concurrent Sessions	<b>Session 15: Contractor Suspension/Disbarment</b>
	<b>Session 16: Bridging Plans and Projects: How PEL Eliminates Duplication</b>
9:30 a.m. – 10:00 a.m.	<b>Break</b>
10:00 a.m. – 11:30 a.m.	<b>Ethics Session - Session 17: Past Present and Future of Legal Ethics</b>
11:30 a.m. – 12:00 p.m.	<b>Closing Remarks &amp; Adjournment</b>
12:00 p.m. – 2:30 p.m.	<b>Group Council Meeting (<i>Closed Meeting</i>)</b>

### ALL SPEAKERS ARE “INVITED”

#### Sunday, July 21

3:30 p.m. – 6:00 p.m.

##### REGISTRATION

6:30 p.m. – 8:00 p.m.

##### WELCOME RECEPTION

#### Monday, July 22

7:30 a.m. – 5:00 p.m.

##### REGISTRATION

7:30 a.m. – 8:00 a.m.

##### CONTINENTAL BREAKFAST

8:00 a.m. - 8:30 a.m.

##### WELCOME

Fred Wagner, Chair, Legal Resources Group

Robert J. Shea, Senior Program Officer and Counsel for Legal Research Projects, Technical Activities Division, Transportation Research Board

8:30 a.m. – 10:00 a.m.

##### SESSION 1: LEGAL UPDATES AND PERSPECTIVES FROM USDOT MODAL SENIOR LEGAL REPRESENTATIVES

Steven G. Bradbury, General Counsel, US Department of Transportation (USDOT)

Mark Lillie, Chief Counsel, Federal Highway Administration (FHWA)

John Brennan III, Chief Counsel, Federal Highway Administration (FTA)

Jonathan C. Morrison, Chief Counsel, National Highway Traffic Safety Administration (NHTSA)

Senior Legal Representatives from Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Railroad Administration (FRA) will brief attendees on current policy and program developments and initiatives of their respective administrations, as well as the United States Department of Transportation (USDOT). They will also offer insights on hot topics, important trends, and key developments impacting the current and future practice of transportation law professionals.

10:00 a.m. – 10:30 a.m.

**BREAK**

10:30 a.m. – Noon

**SESSION 2: BEST PRACTICES FOR HANDLING AND RESPONDING BEFORE, DURING & AFTER A CYBERATTACK OR DATA BREACH**

Bruce Smith, Apperson Crump PLC, *moderator*

*Sponsored by: Contract Law Committee (AL030), Emerging Technology Committee (AL040), and Transit & Intermodal Transportation Law Committee (AL020)*

This session features presenters from law enforcement and government agencies who are daily on the front line in defending against cyberattacks, investigating the cause and source of data breaches, and prosecuting persons and entities that perpetrate cyberattacks and data breaches. Government agencies at the federal, state and local level are daily subjected to cyberattacks motivated by a range of reasons ranging from desire for financial gain (including ransom and obtaining confidential information), cyber revenge, disruption of operations, interference with public services and terrorism. Law firms, as the Keepers of the Secrets, are also targets for hackers and cyber-attacks as holders of confidential and highly sensitive client information. This panel will examine the two primary types of threats: Internal Threats and External Threats

Before The Cyberattack or Data Breach: The panel will discuss how Internal Threats require the Agency/Law Firm to examine how it's vetting its people, including its third party contractors and IT professionals. The legal and ethical obligations of lawyers and law firms will be discussed, as will pointers on how to identify and address the wide and ever changing range of "Bad Guys" (External Threats).

During the Data Breach: The Agency's/Law Firm's response is a critical part of its Emergency Preparedness/Emergency Response protocol. The panel will discuss the obligations of the Agency/Law Firm to notify effected persons or potentially effected persons of the data breach and measures to assure their customers that personal and confidential information stored by or accessible to the Agency is secure.

After the Cyber-Attack or Data Breach: Some cyber-attacks which do not result in a data breach are sufficiently serious as to require actions and measures by the Agency/Law Firm such as procuring new or updated equipment or software, additional training, and updating the entity's Security/Cyber Security protocols. If customers' data has been compromised, corrective measures for the effected customers must be developed.

**Panel Discussion:**

David M. Martin, Federal Bureau of Investigation (FBI); Kyle N. Malo, Washington Metropolitan Area Transit Authority (WMATA); and Kelce S. Wilson

12:15 p.m. – 1:45 p.m.

**COMMITTEE MEETINGS (lunch provided)**

**Transportation Law (AL010)**

**Transit and Intermodal Transportation Law (AL020)**

**Environmental Issues in Transportation Law (AL050)**

2:00 p.m. – 3:30 p.m., Concurrent Sessions

**SESSION 3: PASSING THE TORCH: THE ROLE OF THE PROJECT PROPONENT IN THE ENVIRONMENTAL REVIEW**

Albert Ferlo, Perkins Coie, LLP, *moderator*

*Sponsored by: Environmental Issues in Transportation Law Committee (AL050)*

Since NEPA's early days, federal regulations and case law have recognized that project sponsors can participate in developing environmental review documents, while also limiting the roles that project sponsors can play. The constraints on project sponsors' roles are intended to avoid conflicts of interest and preserve the objectivity and integrity of the NEPA process. But with limited federal resources, an increased emphasis on risk-based oversight and management, and a push for more devolution of responsibilities, the lines of demarcation between federal and non-federal roles are being reconsidered. This panel will explore the current lines of responsibilities and opportunities for project sponsors to take on enhanced responsibilities for environmental document preparation. Panelists will address these issues from the perspectives of federal, state, and private-sector participants in the NEPA process.

**Panel Discussion**

Gary Kleist, Pennsylvania Department of Transportation (PennDOT); Christopher Van Nostrand, Federal Railroad Administration (FRA); Eric Beightel, WSP; and Richard Christopher, HDR Engineering

## **SESSION 4: TRANSIT LAWYER UPDATE**

Robin M. Reitzes, San Francisco City Attorney's Office, *moderator*

*Sponsored by: Transit and Intermodal Transportation Law Committee (AL020)*

### **Limited English Proficiency Session**

Collette Holt, Colette Holt & Associates

As the population of the US and the metropolitan areas serviced by transit systems grow more diverse, transit agencies are increasingly servicing riders who speak a number of languages and who may not be sufficiently proficient in English to navigate the systems. Ms. Holt will discuss issues such as how Title VI may guide LEP considerations for transit systems, as well as related issues such as political support for improving access for LEP riders, selecting which other languages should be considered, and the trends in addressing LEP concerns in the United States.

### **Rail Update**

Allison I. Fultz, Kaplan Kirsch & Rockwell

- i. Implementation of State Safety Oversight programs under 49 USC 5329 for passenger rail systems not regulated by FRA
- ii. Positive Train Control implementation – the race to the finish
- iii. Significant regulatory or project developments – i.e., Texas Central Railway private high-speed rail project, NYC Gateway

### **Evolving Issues under Buy America**

James P. LaRusch, Raul V. Bravo & Associates, Inc.

Accounting for new, expensive, and usually foreign technology has brought renewed emphasis into the always elusive definition of component and subcomponent “manufacturing.” What once was a simple list of vehicle components is now confused by manufacturing advances and the introduction of more complex systems. This session will address these and other issues from the ever-changing world of Buy America.

- i. Quick recitation of regulatory standards
- ii. Introduction of the concepts of sufficient manufacturing and end product/component/subcomponent determinations
- iii. Examples from other applications
- iv. Discussion of the FTA guidance on battery electric bus systems

3:30 p.m. – 4:00 p.m.

**BREAK**



4:00 p.m. – 5:30 p.m., Concurrent Sessions

### **SESSION 5: THE IMPACT OF A CHANGING CLIMATE ON OUR TRANSPORTATION SYSTEMS**

Jeanne Scherer, California Department of Transportation (CALTRANS), *moderator*

*Sponsored by: Tort Liability and Risk Management Committee (AL070) and Environmental Issues in Transportation Law (AL050)*

The Fourth National Assessment provides a dire warning of the societal and economic impacts of a changing climate on our transportation infrastructure increasing transportation challenges. Transportation is not just on the receiving end of climate change-related impacts but also a contributor to human influence over climate change. All phases of transportation infrastructure are affected or involved. This panel will discuss various issues on how our transportation infrastructure affects or is affected by climate change. Topics will include establishing emission standards that include GHG emissions (Corporate Average Fuel Efficiency standard update), the impact of recent disaster events on transportation facilities, resiliency considerations in project development and asset management planning, and anticipated litigation risks.

#### **Panel Discussion**

Akshai Sing, Sierra Club, Ohio Chapter; Lauren Machado, California Department of Transportation (CALTRANS); and Ellen Mecray, National Oceanic and Atmospheric Administration (NOAA)

### **SESSION 6: WORKING ON THE RAILROAD: CONDEMNATION AND REGULATION OF RAILROAD PROPERTY**

Christopher Kramer, Jennings, Strouss & Salmon, *moderator*

*Sponsored by: Eminent Domain and Land Use Committee (AL060)*

Failure to appreciate and address the special issues relating to federal preemption of the regulation of railroad properties can delay or even completely “derail” a project or regulation. Condemnation and regulation of railroad property is both complex and challenging in light of the regulatory scheme applicable to such properties. This session will discuss the ability of state and local authorities to condemn and regulate the use of property owned or used by railroads. The presentation will include discussions of federal preemption, the concept of what constitutes a “more necessary” public use, and court decisions relating to the condemnation, use or regulation of railroad property. Practitioners will learn to identify issues that need to be addressed when an agency’s project or proposed regulation impacts railroad property.

#### **Panel Discussion**

Darby Venza, Texas Department of Transportation (TxDOT); and Christopher Kramer, Jennings Strouss & Salmon

## Tuesday, July 23

7:30 a.m. – 3:00 p.m.

### REGISTRATION

7:30 a.m. – 8:00 a.m.

### CONTINENTAL BREAKFAST



7:30 a.m. – 8:00 a.m.

### **ETHICS SESSION: CRISIS MANAGEMENT 101 FOR THE TRANSPORTATION LAWYER**

Fred Wagner, Venable, LLP, *presenting*

*Sponsored by: Legal Resources Group (AL000)*

Maintaining Your Professional Ethics in the Midst of a Crisis: Your client finds itself in the midst of a media and political firestorm. Reporters are seeking comment; politicians are calling for resignations; and scandal could lead to potential liabilities. While everyone in and around the Agency seems to be losing their cool, you as their legal counsel must bring order to the situation—and under tight time constraints with ever evolving factual circumstances. As events unfold by the hour, you need to provide sound advice under pressure, but you also must never forget your ethical responsibilities. Important issues to be covered include managing client confidences, the possible need to disclose illegal activity, remembering who you represent (and don't represent), and the obligation to provide zealous representation. The presenters will examine and give examples of what the Rules Of Professional Conduct permit a lawyer to say to the ever present and demanding media. The Rules of Professional Conduct may not get your client out of hot water, but they will keep you out of it.

8:00 a.m. – 9:30 a.m., Concurrent Sessions

### **SESSION 7: REGULATING AND COMPENSATING FOR BILLBOARDS IN A DIGITAL WORLD**

Craig Gustafson, Minnesota Department of Transportation (MnDOT), *moderator*

*Sponsored by: Transportation Law Committee (AL010)*

Technology permeates all aspects of transportation and highway safety and operations including the regulation of billboards. This session will discuss safety, regulations and legal issues regarding the operations and placement of digital billboards along roadways. Panelist will also discuss recent legal challenges to digital billboards including the Scenic America, Inc. v. USDOT and Outdoor Advertising Association of America.

#### **Panel Discussion**

Kerry Yoakum, Outdoor Advertising Association of America (OAAA); Dawn Horan, Federal Highway Administration (FHWA); and Alan Weinstein, Cleveland State University

## **SESSION 8: RISKY BUSINESS? DESIGN FLEXIBILITY, PRACTICAL DESIGN AND COMPLETE STREETS: BEST PRACTICES FOR BALANCING TRANSPORTATION DESIGN NEEDS AND REDUCING TORT LIABILITY**

Monica Aleman Smoot, Texas Department of Transportation (TxDOT), *moderator*  
*Sponsored by: Tort Liability and Risk Management Committee (AL070)*

The 2018 AASHTO Policy on Geometric Design of Highways and Streets promotes continued efforts to embrace appropriate flexible and practical design concepts to encourage sustainable and cost effective road designs. The concept of Complete Streets encompasses many approaches to planning, designing, and operating roadways and rights of way with all users in mind to make the transportation network safer and more efficient. This panel discussion will address tort liability and risk management implications and best practices for agencies seeking to balance transportation design needs.

### **Panel Discussion**

Terri Parker, Missouri Department of Transportation (MoDOT); and Jeanne Scherer, California Department of Transportation (CALTRANS)

9:30 a.m. – 10:00 a.m.

### **BREAK**

10:00 a.m. – 11:30 a.m., Concurrent Sessions

## **SESSION 9: RISK ALLOCATION - MITIGATION**

Merry Mandus, State Road & Tollway Authority and Georgia Regional Transportation Authority, *moderator*

*Sponsored by: Contract Law Committee (AL030)*

Risk is an ever-present factor in projects of all sizes, affecting such vital issues as whether to undertake a project, how to allocate risk among contractual parties, how to price risks efficiently, and the administration of risk allocation during project delivery. Additionally, alternative delivery projects, such as design-build and P3, carry unique considerations for how risks are allocated and enforced. This panel will discuss the entire lifecycle of risk assessment and management for public works projects, starting with the identification and allocation of risks at a project's early stages, contractual considerations to embody the owner's desired risk sharing mechanisms, how a risk profile affects funding, price estimates, and contingencies, and finally, enforcement of risk sharing provisions. The panel will walk through the process of developing a risk matrix to identify risks unique to a project, how that risk profile factors into the project's delivery method, contract drafting considerations, and project administration.

### **Panel Discussion**

Kenneth Beehler, WSP; Evan Caplicki, Nossaman LLP; and Marie Breen, Massachusetts Department of Transportation (MassDOT)

## **SESSION 10: THE LEGAL REALITIES OF THE NEW MOBILITY**

Greg Rodriguez, Best Best & Krieger, *moderator*

*Sponsored by: Transit and Intermodal Transportation Law (AL020)*

As new innovations like rideshare, microtransit, dockless micromobility, and autonomous vehicles continue to be integrated into transportation systems across the country, we should keep in mind the foundations on which our public transportation system is based. This is especially important when federal funding is being used to support innovation-focused pilot projects. This session will start by discussing the important legal and regulatory issues that need to be considered when planning such projects, including interactions between planners and legal counsel to reduce untested risks and liabilities. The FTA will then provide information and guidance about how it is navigating new innovative projects that do not fit neatly into existing funding regulations. Finally, we will convene a forward-thinking panel to discuss the opportunities and challenges around the future of mobility.

### **Practical Applications of the New Mobility**

Susan Cleveland-Knowles, San Francisco City Attorney's Office

### **Federal Regulatory Efforts/Guidance**

Dana Nifosi, Federal Transit Administration

### **The Future of the New Mobility—Smart Transportation Planning, Safety and Demonstration Programs**

Rich Granger, DriveOhio; Grace Gallucci, Northeast Ohio Areawide Coordinating Agency (NOACA); and Jamie Cox, TransLoc

11:45 a.m. – 1:15 p.m.

### **COMMITTEE MEETINGS (lunch provided)**

**Contract Law Committee (AL030)**

**Emerging Technology Law (AL040)**

**Eminent Domain and Land Use (AL060)**

**Tort Liability and Risk Management (AL070)**

1:30 p.m. – 3:00 p.m., Concurrent Sessions

**SESSION 11: SEXUAL HARASSMENT INVOLVING TRANSIT USERS AND AGENCY CONTRACTORS**

Marcelle Jones, Stantec Consulting Services, Inc., *moderator*

*Sponsored by: Transportation Law Committee (AL010); and Transit and Intermodal Transportation Law (AL020)*

Sexual harassment means conduct so pervasive as to create an environment that a reasonable person would consider it intimidating, hostile, or abusive. This session will discuss the responsibility of the agency to address sexual harassment that occurs outside of the employee-employer relationship. Speakers will discuss (a) the obligations of public agencies when sexual harassment occurs on public transit (and how certain agencies are combatting it), and (b) sexual harassment between contractors/consultants and employees. They will explore issues related to jurisdiction, investigations, law enforcement and co-employment.

**Panel Discussion:** Merryl Mandus, State Road & Tollway Authority and Georgia Regional Transportation Authority; Samuel Wilson, Derek Smith Law Group; and Karen Seimetz, Chicago Transit Authority

**SESSION 12: RIGHT OF WAY BEST PRACTICES IN LIGHT OF RECENT TRENDS AND DEVELOPMENTS IN EMINENT DOMAIN AND LAND USE LAW**

Rita Looney, Arkansas Department of Transportation (ArDOT), *moderator*

*Sponsored by: Eminent Domain and Land Use Committee (AL060)*

Right of way is critical to nearly every major public project. This panel of legal experts will explore recent developments in eminent domain law, explain how these evolving rules can impact the timing and cost of right of way acquisition, and discuss best practices for keeping this changing legal landscape from derailing your project's schedule and budget.

**Panel Discussion:** Bernadette Duran-Brown, Nossaman LLP; William James, Tennessee Attorney General's Office and Laura R. Curry, Jennings, Strouss and Salmon

3:00 p.m. – 3:30 p.m.

**BREAK**

3:30 p.m. – 5:00 p.m., Concurrent Session

**SESSION 13: AVIATION INNOVATION IN OHIO**

Peter Voderberg, Office of Ohio Governor Mike DeWine, *moderator*

*Sponsored by: Emerging Technology Law (AL040)*

Ohio has always been at the forefront of aviation innovation. This session will highlight continuing technical developments and legal initiatives in the skies of the state. Panelists will introduce activities in the state related to aerial data collection, delivery, and passenger transport, and they will discuss the legal frameworks for and implications of these activities.

**Panel Discussion:** Arthur F. Huber II, U.S. Airforce Research Lab; Fred Judson, Ohio UAS Center; and Alice Cummings, SPGlobal, Inc.

**SESSION 14: JANUS AND PUBLIC SECTOR UNIONS: EFFECT ON TRANSIT AGENCIES AND RECENT ACTIVITY**

Katie Kraft, Washington Metropolitan Area Transit Authority (WMATA), *moderator*

*Sponsored by: Transit and Intermodal Transportation Law (AL020)*

In June 2018, the Supreme Court overturned 40 years of precedent when it decided *Janus v. American Federation of State, County, and Municipal Employees*, a landmark labor case concerning the power of public sector labor unions to collect fees from non-union members. The panelists will discuss the background of the *Janus* decision, how the decision has affected transit agencies, and what court activity has occurred in the wake of *Janus*.

**Panel Discussion:** Clifford Godiner, Thompson Coburn LLP, Vicki Nuetzel, Bay Area Rapid Transit (BART); and Sheryl King Benford, Greater Cleveland Regional Transit Authority

**Wednesday, July 24**

7:30 a.m. – 8:00 a.m.

**CONTINENTAL BREAKFAST**

8:00 a.m. – 9:30 a.m., Concurrent Sessions

**SESSION 15: CONTRACTOR SUSPENSION/DEBARMENT**

Lisa MacPhee, Federal Highway Administration (FHWA), *moderator*

*Sponsored by: Contract Law Committee (AL030)*

Suspension and Debarment, Trends and Perspectives from Government and Industry: Experts from government and industry will provide perspectives on present trends in federal suspension and debarment actions and how those trends inform the differing perspectives of the parties involved in those actions. Trends discussed will include overall government-wide actions for suspensions, debarments, and monitoring agreements. The panel will discuss successful resolution of suspension and debarment cases, and how government and industry can work together to improve contract compliance and performance on transportation contracts.

**Panel Discussion:** Duc Nguyen, Environmental Protection Agency (EPA); Rodney A. Grandon, Affiliated Monitors, Inc.; and Mike Wagner, Covington and Burling LLP

**SESSION 16: BRIDGING PLANS AND PROJECTS: HOW PEL ELIMINATES DUPLICATION**

Manisha Patel, WSP, *moderator*

*Sponsored by: Environmental Issues in Transportation Law (AL050)*

Relying on decisions made during the planning stage on subjects such as the purpose and need of a project or project alternatives can save time and costs during the project development stage. The Federal Highway Administration and the Federal Transit Administration have relied on existing authorities, known as Planning and Environmental Linkages (PEL), for this practice since the early 2000s. Other agencies have relied on concepts such as incorporation by reference and adoption authorized by NEPA regulations. Congress has also recognized the value of this practice by creating statutory authorities under MAP-21 and the FAST Act. Yet, the path to implementation of all of these authorities can be unclear for many specialists and attorneys. As a result, they are not widely used.

This panel will explore the various authorities for PEL, how they work, what is the state of practice in this area, and what might be in the future for this concept as the Administration implements its One Federal Decision policy.

**Panel Discussion:** Eric Beightel, WSP; David J. Miller, Nossaman LLP; and Carmelo Acevedo, Arizona Department of Transportation

9:30 a.m. – 10:00 a.m.

**BREAK**



10:00 a.m. – 11:30 a.m.

**ETHICS SESSION**

**SESSION 17: PAST, PRESENT, AND FUTURE OF LEGAL ETHICS**

*Sponsored by: Legal Resources Group (AL000)*

Nicolle M. Fleury, Federal Highway Administration (FHWA), and Edward V.A. Kussy, Nossaman LLP, moderators

*Sponsored by: Legal Resources Group (AL000)*

As technology has evolved over the past 100 years, so has the practice law. The ethical responsibilities of attorneys remain, notwithstanding technological advances. This session will examine the intersection of technology and ethics. Specifically, the panel will discuss the impact of technology on attorneys' professional responsibilities.

- a. Past – A brief retrospective review of the rules of ethics.
- b. Present – An interactive discussion with all attendees examining technology's impact on ethics by applying certain rules of professional responsibility to scenarios based on recent cases.
- c. Future – A discussion of how technological advances may shape future professional responsibilities.

**Panel Discussion**

Nicolle M. Fleury, Federal Highway Administration (FHWA); Lawrence (Lance) Hanf, Federal Highway Administration (FHWA); Edward V.A. Kussy, Nossaman LLP; and Adam Sleeter, Federal Highway Administration (FHWA)

11:30 a.m. – 12:00 p.m.

**CLOSING REMARKS & ADJOURNMENT**

12:00 p.m. – 2:30 p.m.

**GROUP COUNCIL MEETING (CLOSED MEETING)**







# Mark Your Calendar



## 2020 TRB Annual Meeting

The Transportation Research Board (TRB) 99th Annual Meeting will be held January 12–16, 2020, at the Walter E. Washington Convention Center, in Washington, D.C. The information-packed program is expected to attract more than 13,000 transportation professionals from around the world.

The meeting program will cover all transportation modes, with more than 5,000 presentations in nearly 800 sessions and workshops, addressing topics of interest to policy makers, administrators, practitioners, researchers, and representatives of government, industry, and academic institutions. A number of sessions and workshops will focus on the spotlight theme for the 2020 meeting: *A Century of Progress: Foundation for the Future*.

### TRB CALENDAR OF UPCOMING EVENTS

Visit the TRB Calendar website at <http://www.trb.org/Calendar/Calendar.aspx>  
(Conferences cosponsored by TRB are denoted with an asterisk.)

- TRB Traffic Signal Systems (AHB25) Midyear Meeting; August 6-8, 2019; Woods Hole, Massachusetts
- 6th International Conference on Women’s Issues in Transportation (WiT 2019); September 10-13, 2019; Irvine, California
- 12th TRB International Conference on Low-Volume Roads; September 15-18, 2019; Kalispell, Montana
- Conference on Performance and Data in Transportation Decision Making; September 15-18, 2019; Atlanta, Georgia
- 9th International Visualization in Transportation Symposium: Visualization in Action; November 5-6, 2019; Washington, DC
- Transportation Resilience 2019: 2nd International Conference on Transportation System Resilience to Natural Hazards and Extreme Weather; November 13-15, 2019; Washington, DC
- First International Conference on 3D Printing and Transportation; November 20-21, 2019; Washington, DC
- Conference on Health and Active Transportation; December 11-12, 2019; Washington, DC

Save the Date



# 59<sup>th</sup> Annual Workshop on Transportation Law

*Sunday, August 2 – Wednesday, August 5, 2020*  
*Capital Hilton*  
*Washington, DC*

For over 50 years, the Transportation Research Board's Legal Resources Group has conducted its Annual Transportation Law Workshops throughout the various cities in the United States. The Law Workshop:

- Provides updates by senior attorneys from the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the Federal Railroad Administration (FRA) and other leaders in the field on significant developments in transportation law, regulation and policy over the prior year;
- Presents in-depth sessions by leading subject matter practitioners on significant legal issues in transportation;
- Is a major source of continuing legal education (CLE) credits--nationally for transportation attorneys;
- Provides opportunities to meet Federal, state and local government transportation agency attorneys and private transportation practitioners from around the country;
- Increases the participant's professional competence;
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