



**Federal Bar
Association**

An Inaugural Event

PASSENGER RAIL SEMINAR

November 15, 2019

FHI360 Conference Center • Washington, D.C.

www.fedbar.org/rail19

Presented by the Transportation and Transportation Security Law Section

The Transportation and Transportation Security Law Section will host its inaugural Passenger Rail Seminar on November 15 in Washington, D.C. This full-day seminar is designed for both new and experienced attorneys to better understand the essential legal policies and principles for the passenger rail industry. The seminar will be presented in plain English and is not limited to lawyers. We welcome participants involved in administration, operations, planning, finance, property, environmental management, or security for passenger rail or transit services. Panelists from both private and public sectors will facilitate an interactive program for attendees to further their professional accreditation and network with industry peers.

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8:00 – 8:30 AM • Registration and Breakfast

8:25 – 8:30 AM • Welcome Remarks

8:30 – 9:30 AM • Panel 1: Rail Law 101—Overview

We will introduce attendees to the passenger rail transportation landscape, including a brief history, the various modes used in the United States, and the legal frameworks that govern them. The railroad industry is the oldest regulated industry in the United States. Vestiges of this long history remain in the legal framework applicable to intercity and commuter passenger transportation, and are coupled with current regulation and practice to address the industry's constantly changing market dynamics and technology. In the context of urban fixed guideway systems, operations that had traditionally been locally regulated have only recently become subject to a nationwide federal safety regulatory program. This session will provide attendees with an understanding of the legal framework governing U.S. passenger rail transportation and the regulatory distinctions that apply to different modes.

Moderator: Charles A. Spitulnik, Partner, Kaplan Kirsch & Rockwell LLP

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

Suzanne L. Silverman, Partner, Kaplan Kirsch & Rockwell LLP

T. Byron Smith, Partner, Kaplan Kirsch & Rockwell LLP

9:40 – 10:40 AM

Panel 2: Meet Your Regulators

We introduce you to the chief counsels and senior attorneys for the Surface Transportation Board (STB), Federal Railroad Administration (FRA), and Federal Transit Administration (FTA), and the regulatory territory each agency covers. The STB is responsible for licensing and regulation of the economic aspects of the rail industry, and its governing statutes broadly (but not entirely) preempt state law. The FRA regulates the safety of rail operations and is responsible for funding and financing programs directed at developing and maintaining rail infrastructure. The FTA has jurisdiction over a broad array of funding mechanisms applicable to all forms of passenger rail transportation and governs safety for fixed guideway systems other than those regulated by FRA; under current law, continued federal funding is dependent on maintaining safe operations. Our panelists will provide you with an understanding of how each agency fulfills its regulatory mandate and what legal factors are essential for parties interacting with or seeking regulatory relief from each.

Moderator: Charles A. Spitulnik, Partner, Kaplan Kirsch & Rockwell LLP

Craig Keats, General Counsel, Surface Transportation Board

Federal Railroad Administration Representative

Federal Transit Administration Representative

10:50 – 11:50 AM

Panel 3: Regulatory and Safety

This panel will introduce attendees to the regulatory safety regimes that govern passenger rail operations: FRA's oversight of safety on intercity and commuter rail systems, including the ongoing implementation of positive train control systems to automatically control certain train movements; FTA's regulation of safety on trolleys, streetcars, light rail, and heavy rail rapid transit lines; and the limited but important areas of overlap between the two. Because safety is at the core of successful passenger transportation, knowledge of the applicable rules and procedures will allow passenger rail providers to build safety into their operating culture and interact effectively with regulators in the event of violations or incidents. We will address important emerging issues; the statutory framework for transit system safety under the FTA's jurisdiction was introduced in 2012 and is moving into full implementation over the next year, and on the general national rail network, all intercity passenger operations and commuter services must install positive train control systems by the end of 2020. The procurement, licensing, and environmental review issues that passenger railroads have faced as they answer this mandate have been complex and provide lessons for industry practitioners. Participants will learn which regulatory regimes govern which kinds of operations as well as what legal elements apply in today's operating environments.

Moderator: Allison I. Fultz, Partner, Kaplan Kirsch & Rockwell LLP

Stephanie Anderson, Attorney-Adviser, Office of Chief Counsel, Safety Law Division, Federal Railroad Administration

Candace Key, Director, Office of Transit Safety and Oversight, Federal Transit Administration

Federal Railroad Administration Representative

Noon – 1:30 PM

Luncheon

1:30 – 2:30 PM

Panel 4: Rail Transaction Basics—Negotiations With the Class I's and Amtrak

This discussion will guide attendees through the unique transactional and regulatory angles that apply to transactions involving rail property. Our speakers will provide perspectives from the points of view of a public agency, a Class I railroad, and Amtrak. Unique legal issues include a federal statutory framework that bars the application of most forms of state or local regulation of matters affecting real property used in rail transportation, such as eminent domain and zoning approval, and the requirement to seek federal authorization for the acquisition or disposition of

rail property. Rail transactions also present unique issues concerning environmental due diligence, utilities, risk allocation, the potential for joint capital projects, and the use of shared corridors by both passenger and freight operators. Attendees will understand the impact of the rail industry's unique statutory requirements on transactions involving rail property, along with the prominent issues that are likely to arise.

Moderator: Suzanne L. Silverman, Partner, Kaplan Kirsch & Rockwell LLP

Sean Craig, Assistant General Counsel, CSX Transportation

Dan Dwyer, Special Counsel, Commerce & Regulatory Compliance, Southeastern Pennsylvania Transportation Authority

Amtrak Representative

2:40–3:40 p.m.

Panel 5: Funding and Financing

We will discuss a wide range of strategies (e.g., federal grant and loan programs, local tax strategies, public-private partnerships) for securing the money needed for rail development projects. Federal funding requires familiarity with federally imposed conditions on grants and loans as well as rigorous adherence to agency requirements. Local tax initiatives linked to the development of public transportation provide a greater degree of local control and can provide dedicated revenue streams for the maintenance and operation of passenger rail services, but they require careful planning and the clear articulation of policy goals to the public. Public-private partnerships can effectively deploy private sector funding and expertise, can accelerate certain elements of project planning and execution, and require careful structuring to ensure that the public sees the maximum benefit from this innovative approach to project development. Attendees will gain an understanding of the legal issues, negotiation tactics, and unique compliance elements relating to each funding strategy.

Moderator: T. Byron Smith, Partner, Kaplan Kirsch & Rockwell LLP

Adam M. Giuliano, Partner, Kaplan Kirsch & Rockwell LLP

Sasha Page, Senior Vice President, IMG Rebel

3:50–4:50 p.m.

Panel 6: Railbanking

Preserving rail corridors that are threatened with abandonment can be a highly effective tool for acquiring right-of-way for future passenger rail projects. This panel will introduce attendees to the law governing interim trail use (i.e., railbanking); a nationwide view of rails-to-trails projects; and practice pointers for successful railbanking. Railbanking occurs in a very specific regulatory context, and while the process is reasonably straightforward, railbanking sponsors must be prepared to fulfill several statutory obligations. Issues of indemnification, the scope of real property interests in a given corridor, and liability are all central to successful railbanking. Although federal law does not require the development of public recreational trails on railbanked corridors, and such corridors may be put to a variety of uses (including public transportation), railbanking sponsors bear the responsibility to preserve rail corridors in a manner that would allow freight rail service to potentially return in the future. Through our discussion, you will understand the statutory and regulatory context for railbanking and learn about legal strategies for a successful railbanking project.

Moderator: Christian L. Alexander, Associate, Kaplan Kirsch & Rockwell LLP

Daniel Elliott, Partner, Conner & Winters, LLC, Former Chairman, Surface Transportation Board

Andrea Ferster, General Counsel, Rails to Trails Conservancy

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

4:50–5:00 p.m.

Closing Remarks

PLANNING COMMITTEE

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REGISTRATION FORM

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1. Online at www.fedbar.org/rail19
2. Mail to Federal Bar Association, Attn. 2019 Passenger Rail Seminar, PO Box 79395, Baltimore, MD 21279-0395
3. Fax to (571) 481-9090

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- \$320 Nonmember
- \$90 Government
- \$85 Student

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