



AMERICAN PUBLIC TRANSPORTATION ASSOCIATION

# 2012 LEGAL AFFAIRS SEMINAR

February 19 – 21

Tampa Marriott Waterside Hotel & Marina  
Tampa, FL

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Welcome to the 2012 APTA Legal Affairs Seminar. This professional development seminar will help you gain up-to-date information on legislative, regulatory litigation, and other legal issues affecting the transit industry.

Topics for this conference will highlight the most recent developments in civil rights, procurement, commuter rail, rail transit, and 13(c) labor protection, as well as quickly evolving legislative and regulatory initiatives that will impact transit lawyers.

*As part of APTA's sustainability commitment, conference materials will be 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 2012 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 2012 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 onsite 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.

# 2012 Legal Affairs Seminar Program-at-a-Glance

<b>Sunday Feb. 19</b>	<b>Monday Feb. 20</b>	<b>Tuesday Feb. 21</b>
9:30 a.m. – 3 p.m. Registration Florida Ballroom	7:30 – 8:30 a.m. Continental Breakfast Florida Ballroom	7:30 – 8:30 a.m. Breakfast Florida Ballroom
10 – 10:15 a.m. Welcome & Seminar Overview Florida Salon V-VI	8 a.m. – 4 p.m. Registration Florida Ballroom	8 – 8:30 a.m. Legal Affairs Committee Meeting Florida Salon V-VI
10:15 – 11:15 a.m. Legislative Update Florida Salon V	8:30 – 10:30 a.m. Fare Increases & Service Reductions Florida Salon V-VI	8:30 – 10 a.m. Registration Florida Ballroom
11:30 a.m. – 3 p.m. Lunch & Roundtable Discussion Florida Salon V	10:30 – 10:45 a.m. Break	8:30 – 10 a.m. Hot Topics Florida Salon V-VI
3 p.m. – 4:30 p.m. ADA Session Florida Salon V	10:45 – 11:45 a.m. Surviving FTA Reviews Florida Salon V-VI	10 – 10:15 a.m. Break
6 – 7:30 p.m. Opening Reception Patio & Riverwalk	12– 1:30 p.m. Working Lunch: The Role of Counsel for a Party to an NTSB Accident Investigation Florida Salon IV	10:15 – 11:15 a.m. Ethics in the Digital Age Florida Salon V-VI
	1:30 – 2:30 p.m. FTA Chief Counsel Session Florida Salon V-VI	
	2:30 – 3:30 p.m. Rail Session Florida Salon V-VI	
	3:30 – 3:45 p.m. Break	
	3:45 – 4:45 p.m. Real Estate Session Florida Salon V-VI	

## General Information

As courtesy to other attendees, please turn off cell phones and pagers during the sessions.

# 2012 Legal Affairs Seminar

**Sunday, February 19**

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9:30 a.m. – 3 p.m.  
Florida Ballroom

Registration

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10 – 10:15 a.m.  
Florida Salon V-VI

Welcome & Seminar Overview

**Speakers:**

**Mike Suarez**, city councilman, board member, Hillsborough Area Regional Transit Authority, Hillsborough County Metropolitan Planning Organization, and Tampa Historic Streetcar, Tampa, FL

**Charles A. Spitulnik**, chair, APTA Legal Affairs Committee, and partner, Kaplan, Kirsch & Rockwell, LLP, Washington, DC

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10:15 – 11:15 a.m.  
Florida Salon V

Legislative Update

This session will provide an up-to-the-minute review of the quickly evolving legislative situation involving proposals in both houses of Congress to reauthorize the transit program, including substantial funding and programmatic changes. Regardless of the direction Congress goes, these events will impact transit law practitioners, so join in this interactive presentation to be sure you are ready for all the changes.

**Speakers:**

**Bonnie Graves**, attorney-advisor, Regulations and Legislation Division of the Office of Chief Counsel, Federal Transit Administration, Washington, DC

**Robert Healy**, vice president-government affairs, APTA, Washington, DC

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## Sunday, continued

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11:30 a.m. – 3 p.m.  
Florida Salon V

### Lunch & Roundtable Discussion

This working lunch will provide an opportunity for public transportation agency practitioners to share information and strategies for dealing with the legal issues facing their agencies. It will include a presentation on patent infringement claims throughout the transit industry. Additionally, FTA's chief counsel will join the discussion to discuss the FTA role in dealing with collective issues.

**Speaker:**

**Charles A. Spitulnik**, chair, APTA Legal Affairs Committee and partner, Kaplan, Kirsch & Rockwell, LLP, Washington, DC

**Dorval R. Carter, Jr.**, chief counsel, Federal Transit Administration, Washington, DC

**Sponsored by:**  
**Kaplan Kirsch & Rockwell**



3 – 4:30 p.m.  
Florida Salon V

### ADA Session

Join us to discuss recent regulatory developments governing the implementation of the Americans with Disabilities Act in the transportation context. This session will address USDOT's final rule on level-entry boarding for passenger trains and platforms, revised weight limitation guidelines for wheelchairs, and legal issues relating to the use of service animals.

**Moderator:**

**Charles A. Spitulnik**, chair, APTA Legal Affairs Committee and partner, Kaplan, Kirsch & Rockwell, LLP, Washington, DC

**Speakers:**

**Anthony A. Anderson**, partner, Thompson Coburn LLP, Washington, DC

**Bonnie Graves**, attorney-advisor, Regulations and Legislation Division of the Office of Chief Counsel, Federal Transit Administration, Washington, DC

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

## Sunday, continued

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6 – 7:30 p.m.  
Patio & Riverwalk

Opening Reception

**Sponsored by:**  
**Thompson Coburn LLP**

**THOMPSON COBURN LLP**

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# Monday, February 20

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7:30 – 8:30 a.m.  
Florida Ballroom

Continental Breakfast

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8 a.m. – 4 p.m.  
Florida Ballroom

Registration

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8:30 – 10:30 a.m.  
Florida Salons V-VI

Fare Increases & Service Reductions

Transit agencies face difficult challenges in meeting public transportation needs in a time of increased passenger demand, limited or decreased financial resources, and evolving needs within the service area. Fare increases and service reductions are often a "hot button" issue for the community and the transit agency alike. FTA has proposed important new guidance as to Title VI and Environmental Justice and requires that an equity analysis be performed before service changes or fare increases. Limited English Proficiency (LEP) has become a critical component of an effective public outreach program. Transit agencies must revise their programs to accommodate the new and developing FTA requirements and guidance.

**Speakers:**

**Bonnie Graves**, attorney-advisor, Regulations and Legislation Division of the Office of Chief Counsel, Federal Transit Administration, Washington, DC

**Teresa J. Moore**, general counsel, South Florida Regional Transportation Authority, Pompano Beach, FL

**Bruce M. Smith**, attorney, Apperson Crump, Memphis, TN

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10:30 – 10:45 a.m.

Break

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## Monday, continued

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10:45 – 11:45 a.m.  
Florida Salon V-VI

### Surviving FTA Reviews

It used to be just the triennial and an occasional procurement review. Now FTA currently performs multiple reviews, including drug and alcohol, DBE, civil rights, and financial management reviews. Focusing on the triennial, the procurement review, and the financial management review, this panel will discuss tips for surviving such reviews, the problems that have been encountered with them, and the advantages to the transit agency from the reviews. This is intended to be an interactive panel, with significant participation from the conference attendees. The FTA will also be on the panel to give its perspective and answer questions.

**Speakers:**

**Edward J. Gill, Jr.**, partner, Thompson Coburn LLP,  
Washington, DC

**Robin Reitzes**, deputy city attorney, City Attorney's Office, San  
Francisco, CA

**Erica Matos**, regional counsel, Federal Transit Administration,  
Atlanta, GA

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## Monday, continued

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12 – 1:30 p.m.  
Florida Salon IV

### Working Lunch: The Role of Counsel for a Party to an NTSB Accident Investigation

The National Transportation Safety Board has jurisdiction over public transportation. Transit lawyers must understand the NTSB investigative process should our clients experience a major accident. Counsel, risk managers, safety personnel, employees assigned to represent the company in the NTSB investigation, and even public relations personnel need to know what to expect and will routinely turn to us to explain the rules. Gary Halbert served as the NTSB General Counsel for five years before joining Holland & Knight LLP in its D.C. office. He will address the most frequent questions transit lawyers are likely to face: How does the NTSB organize an investigation? What are some pitfalls for operators in the NTSB process? What can an agency say publicly, and when can the agency say it?

**Speaker:**

**Gary Halbert**, partner, Holland & Knight LLP, Washington, DC

**Sponsored by:**  
**Holland & Knight**

**Holland & Knight**

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1:30 – 2:30 p.m.  
Florida Salon V-VI

### View from the Federal Transit Administration

FTA's chief counsel will focus on the administration's legislative and regulatory priorities, including proposed regulatory changes to the New Starts, Title VI, and Environmental Justice programs.

**Speaker:**

**Dorval R. Carter, Jr.**, chief counsel, Federal Transit Administration, Washington, DC

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## Monday, continued

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2:30 – 3:30 p.m.  
Florida Salon V-VI

### Rail Session

Commuter railroads (and light rail systems that are “connected” to the general railroad system) face new challenges related to the implementation of the Railroad Safety Improvement Act of 2008 as well as the perennial challenge of dealing with freight railroads in shared use operating environments. Come to this panel and hear about some of the most daunting challenges in these areas.

**Moderator:**

**Kevin M. Sheys**, partner, Nossaman LLP, Washington, DC

**Speakers:**

*Implementation Challenges of the FRA’s Conductor Certification Rule*

**Peter W. Denton**, associate, Nossaman LLP, Washington, DC

*Light Rail or Commuter Rail: Common Issues and Solutions When Negotiating Shared Use Agreements*

**Suzanne L. Silverman**, senior director contracts and claims capital planning and programs, NJ TRANSIT, Newark, NJ

*Positive Train Control Update: Trials and Tribulations on the Track to 2015*

**Steven D. Miller**, senior counsel, Hanson Bridgett LLP, San Francisco, CA

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3:30 – 3:45 p.m.

### Break

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## Monday, continued

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3:45 – 4:45 p.m.  
Florida Salon V-VI

### Real Estate Session

Transit-oriented development, joint development, and public-private partnerships are more popular than ever but present huge challenges for attorneys seeking to comply with federal funding limitations; help their clients make the best possible use of real estate and other assets; and stay focused on obtaining a sound business deal for the public agency. This panel will help on all those points.

**Moderator:**

**Jeffrey Bandini**, partner, Parker Poe, Raleigh, NC

*Incidental Use and Transit-Oriented Developments (TOD)*

This presentation will focus on the circumstances under which FTA will permit the incidental use of transit equipment and property in the context of a transit-oriented development (TOD). We will review the general definition of an incidental use of an FTA-funded real property. We also will discuss the similarities and differences of the terms “joint development” and “transit-oriented development” in general and in relation to incidental use.

**Speaker:**

**Erica Matos**, regional counsel, Federal Transit Administration, Atlanta, GA

*Public Sector Experience with Public-Private Partnerships (PPPs) and TODs*

This presentation will provide the public perspective on issues raised in the Private Sector presentation and include tips and advice for internally managing and administering PPPs for public agencies. The presentation will include a discussion of lessons learned from actual PPPs involving TODs and advice for dealing with developers in TODs.

**Speaker:**

**DeWitt F. (“Mac”) McCarley**, associate, Parker Poe, Raleigh, NC

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## Monday, continued

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### Real Estate Session, continued

#### *Private Sector View of Public-Private Partnerships and TODs*

This presentation will consider public-private partnerships (PPPs) from the perspective of the private sector and will include a discussion of what constitutes a true PPP and why it is important in the relationship-building process between the public and private participants to establish clear responsibilities and realistic expectations of costs and benefits. The presentation also will touch on the importance of a public agency shedding the typical "vendor-client" perspective in dealing with an outside third party and embracing the role of a true "partner" in PPPs. Other issues to be addressed include conflicts of interest, tips for improving agency interactions, and communication strategies.

#### **Speaker:**

**James H. Richardson, III**, senior vice president, Forest City Real Estate Services, Tampa, FL

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# Tuesday, February 21

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7:30 – 8:30 a.m.  
Florida Ballroom

Breakfast

**Sponsored by:**  
**Hanson Bridgett**



8 – 8:30 a.m.  
Florida Salon V-VI

Legal Affairs Committee Meeting

**Presiding Officer:**

**Charles A. Spitulnik**, chair, APTA Legal Affairs Committee, partner,  
Kaplan, Kirsch & Rockwell, LLP, Washington, DC

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8:30 – 10 a.m.  
Florida Ballroom

Registration

## Tuesday, continued

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8:30 – 10 a.m.  
Florida Salon V-VI

### Hot Topics

Transit agencies are faced with a variety of legal challenges every day. Join the Hot Topics panel to address some of today's most critical issues confronting transit counsel, including the following subjects: Transgressions by transit passengers, ranging from panhandling to serious crimes such as aggravated assault with a deadly weapon; 13(c) matters, including what obligations apply in outsourcing, industry practices in procurements on labor issues, and basic 13(c) requirements; procurement of operations and maintenance (O&M) services, featuring an overview of the recent CalTrain O&M procurement that will focus on the unique history of the CalTrain passenger rail service, the solicitation process, the challenges faced along the way, and the creative approaches to dealing with such challenges; and privatization in Florida, including a discussion of the attempts to privatize government services from prisons to passenger rail in the state and possible ramifications for the transit industry. In this session, expert attorneys who regularly handle these areas for transit clients will discuss the controlling legal framework and offer practical advice based on experience.

**Moderator:**

**Ann-Therese Schmid**, partner, Holland & Knight, Washington, DC

*Disruptive Passengers*

What do you do when your frustrated transit client calls, asking you to legally solve their problem with a passenger who is behaving badly, or threatening or even attacking drivers or fellow passengers? Public transportation agencies deal more often than you may expect with transgressions ranging from panhandling to serious crimes such as aggravated assault with a deadly weapon. In this session, an attorney who regularly handles these calls for his transit client will briefly discuss the controlling legal framework, and offer practical advice based on experience.

**Speaker:**

**George M. Derryberry**, George M. Derryberry & Associates, Chattanooga, TN

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## Tuesday, continued

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### Hot Topics, continued

#### *13(c) Update/Outsourcing Issues*

13(c) matters, including what obligations apply in outsourcing, industry practices in procurements on labor issues, and basic 13(c) requirements.

**Speaker:**

**Jane Sutter Starke**, partner, Thompson Coburn LLP, Washington, DC

#### *Privatization in Florida - from Prisons to Passenger Rail - The Transfer of Responsibility for Traditional Public Services*

This session will feature an interactive discussion of the attempts to privatize government services in Florida and possible ramifications for the transit industry.

**Speaker:**

**Teresa J. Moore**, general counsel, South Florida Regional Transportation Authority, Pompano Beach, FL

#### *The CalTrain Experience*

This informative session will focus on the procurement of operations and maintenance (O&M) services, featuring an overview of the recent CalTrain O&M procurement that will focus on the unique history of the CalTrain passenger rail service, the solicitation process, the challenges faced along the way, and the creative approaches to dealing with such challenges.

**Speakers:**

Julie A. Sherman, associate, Hanson Bridgett, San Francisco, CA

Joan L. Cassman, partner, Hanson Bridgett, San Francisco, CA

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## Tuesday, continued

10 – 10:15 a.m.	Break
10:15 – 11:45 a.m. Florida Salon V-VI	<p data-bbox="646 394 1031 436"><b>Ethics in the Digital Age</b></p> <p data-bbox="646 485 1425 737">1. Competence – In today’s digital world it is necessary to have technological competence, especially in the area of e-discovery. Fairness to opposing counsel and party is considered as well as the dangers of incompetence for not complying with discovery, spoliation, and possible sanctions. Model Rules of Professional Conduct, Rule 1.1 and Rule 3.4 (a).</p> <p data-bbox="646 779 1446 957">2. Cooperation – Lawyers have a duty of zealous advocacy for their clients and a duty to cooperate with opposing counsel and to expedite litigation. The Sedona Principles and Co-opetition are considered. Model Rules of Professional Conduct, Rule 1.3, Rule 3.2, and Rule 3.4 (d).</p> <p data-bbox="646 999 1446 1178">3. Confidentiality – The duty of confidentiality of information includes the duty to competently protect the confidences and secrets of a client from disclosure, even inadvertent disclosure in the digital age. Rules of Professional Conduct, Rule 1.6 and Rule 1.1.</p> <p data-bbox="646 1220 1433 1472">4. Supervision – In this digital age, managing lawyers, indeed all lawyers, are challenged to ensure that the conduct of the lawyers and non-lawyers whom they supervise is compatible with the professional obligations of a lawyer under the Model Rules of Professional Conduct, especially as to competence and confidentiality. Model Rules of Professional Conduct, Rule 5.1, Rule 5.3, Rule 1.1, and Rule 1.6.</p> <p data-bbox="646 1514 1442 1598"><b>Speaker:</b> <b>Thomas N. Hyde</b>, principal, Law Office of Thomas Newcomb Hyde, Tampa, FL</p>

Thanks also to



for their monetary support of our program