

AGENDA



Administrative Law Annual Forum

November 15, 2019

Tennessee Bar Center - Nashville, Tennessee

Program Producer: Christy Allen, General Counsel, Office of General Counsel

Total Credits: 2 General 1 Dual

This three-hour program will include one ethics hour and two hours devoted to developments in the practice area and the law.

8 - 9 a.m.	A blue square icon with a white circle containing a fork and a knife.	Registration & Breakfast
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9 - 10 a.m.

Agency Deference: Guidelines for Judicial and Administrative Deference to an Administrative Agency's Interpretation of its Statutes and Rules

*Proceedings before administrative agencies often involve an agency's interpretation of a statute within their jurisdiction or a rule promulgated by the agency. When that interpretation is challenged, a court or administrative judge will decide what weight to give to the agency's interpretation. Recently in *Kisor v. Wilkie*, the U.S. Supreme Court significantly restricted the doctrine of Auer deference. 139 S. Ct. 2400 (2019). Under Auer deference, courts defer to an administrative agency's interpretation of its own regulation when that regulation is ambiguous, and the agency's interpretation is reasonable. The split decision in *Kisor* leaves the doctrine intact but establishes a number of limitations to its application. In federal parlance the so-called Chevron deference two-step process concerning an Agency's statute is highly litigated. The courts of Tennessee have also weighed in on the limits of agency deference. This segment will examine the agency deference doctrine, discuss when deference can be given and what sort of agency is entitled to deference if it applies.*

Travis Brandon, Belmont University College of Law

Mary Ellen Knack, Attorney General's Office

Moderator: Bill Penny, Burr & Forman LLP

10 - 11 a.m.

When is Policy the Rule?

For years, Tennessee administrative agencies have been making policy across state government. New legislation from the General Assembly, however, aims to force policymakers into the byzantine, and more publicly scrutinized, world of rulemaking under the Uniform Administrative Procedures Act. What implications does this have for state officials and private parties regulated by state agencies?

Tom Lee, Frost Brown Todd LLC

11 - 11:15 a.m.



Break

11:15 a.m. - 12:15 p.m.

Ex parte Communications in Agency Proceedings and Ethics Update from the Board of Professional Responsibility

DUAL

Discussion of the attorneys' obligations who are assigned to Boards with regard to questions such as: What is an ex parte communication that is prohibited in advising agency Boards? What can attorneys who make probable cause presentations to boards tell the board? Can the Board's attorney recommend specific discipline or is she/he limited to a recommendation that disciplinary action would be warranted? The presentation will also include an Ethics Update from the Board of Professional Responsibility.

Laura Chastain, Ethics Counsel, Board of Professional Responsibility of the Supreme Court of Tennessee