



Shane A. Pennington

partner

Shane is a partner in the Litigation Department where he counsels clients on federal regulatory issues involving a number of industries, including energy, pharmaceuticals, controlled substances, aviation and agriculture. A former law clerk to federal judges on the D.C. Circuit, the Fifth Circuit and the D.C. District Court, Shane brings unique insight and strategic thinking to assist clients facing complex regulatory issues.

Rated “One to Watch” and a “Rising Star” in appellate law by The Best Lawyers in America and Super Lawyers, respectively, Shane has argued cases in the U.S. Courts of Appeals for the First, Ninth and D.C. Circuits, securing landmark results for clients. In a series of cases on behalf of veterans and scientists, for example, Shane raised a novel claim under the Freedom of Information Act to uncover a secret 2018 Opinion of the Office of Legal Counsel that revealed the unlawfulness of a longstanding agency policy that had obstructed cannabis research for over half a century. Shane regularly litigates cases concerning federal and state agencies that involve the Administrative Procedure Act, the Controlled Substances Act, and Federal Food, Drug and Cosmetic Act.

Clients turn to Shane to advance their strategic goals within existing regulatory and legal frameworks, but also to develop creative strategies to reimagine those frameworks amidst rapidly changing industries. To that end, Shane often advocates for clients at the administrative level, working with state and federal regulators to devise novel solutions to seemingly intractable problems. He has represented companies, scientists and industry coalitions before the Drug Enforcement Administration, the Department of Health and Human Services, the Food and Drug Administration, the Department of Justice, and the Securities and Exchange Commission.

Shane has completed clerkships with three federal judges, including the Honorable Royce C. Lamberth, then-Chief Judge of the United States District Court for the District of Columbia, the Honorable Jennifer Walker Elrod of the United States Court of Appeals for the Fifth Circuit, and the Honorable David B. Sentelle, then-Chief Judge of the United States Court of Appeals for the District of Columbia. While in law school, he served as both the Articles Editor for the Texas Law Review and as Managing Editor with Texas Review of Law and Politics.

CONTACT

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EDUCATION

The University of Texas School of Law, J.D., 2010

University of Houston, B.A., 2006

SERVICES

Government & Regulatory Affairs

- Legislative advocacy
- Regulatory advocacy
- Administrative advocacy

Cannabis

Shane has published extensively on topics related to administrative law and drug policy, including the private nondelegation doctrine, the Single Convention on Narcotic Drugs of 1961, judicial deference to administrative agencies, and bureaucratic management and the limits of presidential power. Shane often provides commentary on administrative law issues to the *Yale Journal on Regulation Notice & Comment* blog and is a regular contributor to the “News From the Circuits” column published in the American Bar Association’s *Administrative and Regulatory Law News*.

STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.REPRESENTATIVE MATTERS

- *Scottsdale Research Institute v. DEA* (D. Ariz.). Co-lead counsel in FOIA suit to force release of a secret 2018 opinion of DOJ’s Office of Legal Counsel, “Licensing Marijuana Cultivation in Compliance with the Single Convention on Narcotic Drugs.” Within weeks of filing a complaint—and without filing a FOIA request—secured settlement requiring DOJ to disclose OLC opinion barring DEA from processing medical research applications under the Controlled Substances Act until DEA brought its regulations in line with federal law and United States treaty obligations.
- *In re Scottsdale Research Institute* (D.C. Cir.). Co-lead counsel in mandamus action seeking order requiring DEA to process clinical research applications after years of delay. In response to order from D.C. Circuit calling for its response to the petition for writ of mandamus, DEA capitulated, processed 33 overdue applications, and announced at long last its intent to move forward with a comprehensive program. In May 2021, DEA announced that it had preliminarily approved Scottsdale Research Institute’s application to grow marijuana for research purposes. DEA and Scottsdale Research Institute have since negotiated a Memorandum of Agreement to govern Scottsdale Research Institute’s federal grow license going forward.
- *Sierra Frac Sand, L.L.C. v. CDE Global Limited* (5th Cir.). Defended appeal of district court order dismissing claims against Northern Irish company on forum non conveniens grounds. Fifth Circuit canceled oral argument and issued its published opinion affirming ruling in client’s favor.
- *California State Lands Commission v. Plains Pipeline LP* (Cal. App.). Briefing and oral argument on behalf of party appearing as amicus curiae; in opinion favorable to client, state appellate court expressly rejected federal appellate court’s ruling in client’s case presenting the same important and novel issue of California law.
- *Sabre Travel International, Ltd. v. Deutsche Lufthansa AG* (Tex.). Successfully represented airline before Texas Supreme Court; secured ruling that federal Airline Deregulation Act did not preempt airline’s state-law claims against third-party vendor.
- *Halliburton Co. v. Erica P. John Fund, Inc.* (U.S.). Merits briefing on behalf of petitioner resulting in a unanimous Supreme Court opinion in client’s favor holding that securities-fraud defendants must be afforded an opportunity to rebut the presumption of reliance before class certification with evidence of a lack of price impact.
- *Baker Botts LLP v. ASARCO, LLC* (U.S.). Certiorari- and merits-stage briefing in case questioning whether Bankruptcy Code permits bankruptcy courts to award attorney fees to counsel or other professionals employed by the bankruptcy estate for work in defense of fee application in court.

BAR ADMISSIONS

- Admitted only in Texas and directly supervised by Donald Barnes, a member of the District of Columbia Bar
- U.S. Court of Appeals for the District of Columbia Circuit
- U.S. Court of Appeals for the Fifth Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. District Court for the District of Columbia
- U.S. District Court for the Southern District of Texas
- U.S. District Court for the Eastern District of Wisconsin
- Supreme Court of the United States

PRESENTATIONS

- “Changes in Federal Approaches to Cannabis: Process and Impact,” Drug Enforcement and Policy Center at The Ohio State University Moritz College of Law, June 22, 2023
- “Impact Litigation and the Changing Terrain,” International Cannabis Bar Association’s Litigation, ADR, Disputes Symposium, March 20, 2023
- “Cannabis Seeds are Federally Legal: What Now?,” Cannabis Business Times Webinar, Feb. 1, 2023
- “Medical Marijuana and Hemp Law Symposium,” Pennsylvania Bar Institute Webinar, Sept. 24, 2022
- “Moot Court: Sisley v. U.S. Drug Enforcement Administration,” International Cannabis Bar Association, June 10, 2022
- “Sue 'n the DEA: Breaking the 50-year NIDA Monopoly,” SXSW 2022, March 15, 2022
- “Federal Agencies 101 - Cannabis: Federal Regulation Basics,” International Cannabis Bar Association Webinar, Aug. 15, 2021
- “Appellate Law 101,” International Cannabis Bar Association Webinar, July 14, 2021
- “Hemp Industry Litigation in Response to DEA Overreach,” Hemp Industries Association, May 15, 2021
- “Key Issues Impacting Cannabis Litigation,” International Cannabis Bar Association Webinar, March 11, 2021
- “Cannabis Lawsuits: Federal and State Challenges to Current Law,” Texas Marijuana Policy Conference, Nov. 21, 2020
- “Disputes and Litigation with the Regulators,” International Cannabis Bar Association, Oct. 13, 2020
- “Policy Council Conversations: Just Say No - Keep the DEA out of Cannabis Research,” NCIA Webinar, June 3, 2020
- “Ask the Doctors featuring Dr. Ethan Russo and Dr. Sue Sisley,” Informed Texas, May 12, 2020
- “Federal Law & Policy Update,” Business Issues in Cannabis & Industrial Hemp Conference, Feb. 27, 2020
- “In Legal Limbo: Federal Cannabis Laws at the Crossroads,” ABA Tort Trial and Insurance Practice Section Cannabis Law Conference, Sept. 19, 2019
- “Legal and Scientific Issues in Increasing Medical Cannabis Research,” Texas Marijuana Policy Conference, Aug. 30, 2019

PUBLICATIONS

- “Moving marijuana to Schedule III would aid access to legal care,” Bloomberg Law, co-author, Oct. 25, 2023
- “Coalition for Cannabis Scheduling Reform White Paper,” Green Market Report, co-author, June 2023
- “The Controlled Substances Act: An international private delegation that goes too far,” 100 Wash. U.L. Rev. 29, co-author, 2023
- “McGirt v. Oklahoma’s potentially sweeping regulatory implications for the oil & gas industry,” *The Texas Lawbook*, July 20, 2020
- “Fifth Circuit Review – Reviewed: Judge Smith listens to strict scrutiny,” *Yale Journal on Regulation Notice & Comment*, March 12, 2020

- “Some thoughts on how *Kisor* and *Chevron* differ,” *Yale Journal on Regulation Notice & Comment*, Nov. 16, 2019
- “Fifth Circuit Review – Reviewed: Article III cowboy hat tips and D.C. Circuit exceptionalism,” *Yale Journal on Regulation Notice & Comment*, Nov. 13, 2019
- “Fifth Circuit Review – Reviewed: Circuit-Split edition,” *Yale Journal on Regulation Notice & Comment*, July 12, 2019
- “Fifth Circuit Review – Reviewed: Inaugural edition,” *Yale Journal on Regulation Notice & Comment*, May 7, 2019
- “Questions raised by laws that use copyrighted standards,” *Law360*, Aug. 2, 2018

PROFESSIONAL ASSOCIATIONS

- American Bar Association, Cannabis Law and Policy General Committee, Vice-chair; Tort Trial & Insurance Practice Section
- International Cannabis Bar Association, Amicus Committee, Co-chair

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