



Kelly P. Dunbar

PARTNER

WASHINGTON DC
+ 1 202 663 6262
[KELLY.DUNBAR@WILMERHALE.COM](mailto:kelly.dunbar@wilmerhale.com)

Kelly Dunbar is a leader of the firm's Administrative Law Group and focuses his practice on government and regulatory litigation, administrative rulemakings, general constitutional and civil litigation, and appellate matters. Mr. Dunbar regularly counsels clients regarding regulatory strategy and litigation, represents them before administrative agencies, and litigates Administrative Procedure Act (APA), constitutional, and other matters in federal district and appellate courts across the country in cases involving state or federal agencies or regulatory regimes. Mr. Dunbar was recognized in 2019 by *The National Law Journal* as a "Litigation Trailblazer."

Mr. Dunbar's administrative law practice spans agencies across the federal government, including the Securities and Exchange Commission, the Federal Communications Commission, the Department of Transportation, the Department of Labor, the Department of the Interior, the Department of Health and Human Services, the Federal Aviation Administration, the Financial Stability Oversight Council, the Federal Housing Administration, the Food and Drug Administration, the Department of Treasury, the Federal Energy Regulatory Commission, the Small Business Administration, the Surface Transportation Board, the Consumer Financial Protection Bureau, and the Department of Agriculture. These matters involve complex statutes and regulations governing a wide range of clients, including telecommunications companies, cable operators, airlines, insurance companies, health care providers, Indian tribes, and railroads. These matters regularly involve direct engagement with federal agencies, as well as litigation under the APA. Mr. Dunbar also frequently counsels clients regarding FOIA matters, including potential litigation and reverse-FOIA claims.

Beyond administrative law, Mr. Dunbar has significant experience in constitutional and general civil litigation matters. Mr. Dunbar has represented clients in federal and state court in a range of high-stakes challenges, often against state attorneys generals or other state entities, in cases involving the First Amendment, federal Indian law, voting rights, health care regulation, federal preemption, and worker classification questions, among others. Mr. Dunbar's civil litigation experience spans the lifecycle of litigation matters—including pre-suit investigation

and preparation, preliminary injunction proceedings, motions to dismiss, discovery, summary judgment, and trial.

Mr. Dunbar also has an active appellate practice. He has represented clients in matters before the United States Supreme Court, multiple federal courts of appeals, and state high courts. These appellate matters have involved a wide range of civil and criminal subject matters, including federal preemption, the Freedom of Information Act, the Indian Gaming Regulatory Act, Sarbanes Oxley, bankruptcy, insurance class actions, federal communications law, the Voting Rights Act, and the First Amendment. Mr. Dunbar has presented oral arguments on behalf of clients in multiple federal courts (appellate and district), including before the Eighth Circuit, the Ninth Circuit, and the DC Circuit.

Mr. Dunbar joined the firm after serving as an attorney-adviser in the Office of Legal Counsel at the Department of Justice. During his time at the Department, Mr. Dunbar assisted in drafting opinions resolving legal disputes between and among executive branch agencies and in providing advice on a range of APA, constitutional, executive privilege, and statutory issues to the Office of the Attorney General, the White House, and other executive branch agencies.

Professional Activities

Mr. Dunbar is admitted to practice before the US Supreme Court, the US Courts of Appeals for the First, Fourth, Fifth, Eighth, Ninth, Tenth, and District of Columbia Circuits, and the US District Courts for the District of Columbia, the Northern District of Florida, the Western District of Michigan, and the District of Maryland.

Mr. Dunbar is a fellow of the American Bar Foundation and a member of the Working Group on Compiling Administrative Records of the Administrative Conference of the United States.

Solutions

Administrative Law

Energy, Environment and
Natural Resources
Litigation

Appellate and Supreme Court
Litigation

Environmental Litigation and
Enforcement Defense
Native American Law

Cybersecurity and Privacy

Government and Regulatory
Litigation
Trials

Experience

Mr. Dunbar has represented numerous individual, corporate, and associational clients in administrative, civil, and criminal matters, including:

- obtaining a preliminary injunction on behalf of a leading medical provider against California legislation in a constitutional challenge to the state statute;
- representing multiple trade associations as amici curiae in defense of the Securities and Exchange Commission's Regulation BI in the court of appeals;
- representing petitioners in an APA challenge in the DC Circuit to orders of the Securities and Exchanges Commission under the Exchange Act;
- representing cryptocurrency stakeholders in administrative rulemakings before the Department of Treasury;
- representing an Indian tribe in an APA challenge to an order of the Department of the Interior denying trust status for tribal lands, resulting in vacatur of the order by a federal court;
- representing a financial service provider in an APA challenge to a regulation promulgated by the Consumer Financial Protection Bureau, resulting in vacatur of key parts of the regulation by a federal court;
- representing trade associations in successful APA litigation challenging the Fiduciary Rule promulgated by the Department of Labor to regulate the life insurance and financial services industries, resulting in vacatur of the Rule;
- representing a leading global security company in an APA whistleblower appeal under the Sarbanes Oxley Act, resulting in appellate vacatur of the administrative decision below;
- obtaining a preliminary injunction and temporary restraining order on behalf of a leading medical provider in an APA challenge to an emergency rule promulgated by the Department of Health and Human Services;
- representing a trade association as an amicus curiae in cost-of-insurance litigation in federal district court, appellate courts, and the US Supreme Court;
- representing a communications client in an enforcement proceeding by the Federal Communications Commission under the Open Internet rules;
- representing DC public charter schools before the DC Circuit in a constitutional challenge to District of Columbia school funding practices;
- representing a major passenger railroad company as intervenor in an APA action in defense of a rule promulgated by the Surface Transportation Board;
- securing multiple trial and appellate court victories in high-profile litigation challenging a state voter photo ID law;
- representing domestic citrus growers in an APA challenge to the Department of Agriculture's decision to permit the importation of foreign citrus products into the United States;
- advising a major insurance company with respect to Dodd-Frank issues involving the Financial Stability Oversight Council;
- advising technology companies with respect to obligations under the Stored Communications Act;
- submitting an amicus brief on behalf of a trade association in an APA challenge to the Financial Stability Oversight Council's designation of a non-bank financial institution as a systemically important financial institution;
- counseling a national air carrier with respect to federal regulations and orders

pertaining to international aviation issues;

- counseling a government contractor with respect to small business regulations involving the US Small Business Administration;
- representing a major financial institution in class-action litigation involving alleged violations of state law property inspection fees;
- securing an appellate victory for an Indian tribe with respect to trust acquisition of land for purposes of casino gaming;
- securing a US Supreme Court victory for a bankruptcy trustee in case involving the interpretation of the Bankruptcy Code;
- securing a US Supreme Court victory for a state defending its legislative reapportionment plan from constitutional challenge; and
- securing a victory in the New York Court of Appeals for a major university in a challenge to its expansion plan.

Recognition



Litigation Trailblazer

The National Law Journal

2019



Telecoms and Broadcast: Regulatory

The Legal 500 United States

2017



Judicial Advocacy Initiative Award

*American Cancer Society Cancer Action
Network*

- *The National Law Journal* 2019 Litigation Trailblazer
- Recommended in the 2017 edition of *The Legal 500 United States* in the area of telecoms and broadcast: regulatory
- Recipient of the American Cancer Society Cancer Action Network Judicial Advocacy Initiative Award for APA litigation

Credentials

EDUCATION

JD, Yale Law School, 2004

*Articles Editor, Yale Law
Journal, Editor, Yale Journal on
Regulation, Potter Stewart Prize*

MA, Communication Studies,
Baylor University, 1999

BA, History, Baylor University,
1997

magna cum laude

*Phi Beta Kappa, Glenn R. Capp
Debate Forum*

GOVERNMENT EXPERIENCE

Department of Justice

Office of Legal Counsel

Attorney Advisor

ADMISSIONS

District of Columbia

New York

CLERKSHIPS

The Hon. Douglas H.
Ginsburg, US Court of
Appeals for the District of
Columbia Circuit, 2004 - 2005