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SECOND EDITION

Linda D. Jellum

ELLISON CAPERS PALMER SR. PROFESSOR OF LAW
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*For Lee, Chris, and Kaylee:
I hope you someday understand why I work so hard*

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We hope that you will enjoy studying with, and learning from, the Mastering Series.

Russell L. Weaver
Professor of Law & Distinguished University Scholar
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Foreword

Administrative law is something exotic in the law school curriculum. That is, the subject is unknown to most students. And the field is full of alphabet-soup acronyms and insider jargon. Moreover, most students have had little direct experience with regulatory bodies. All of this can make the subject seem daunting.

But wait! There are two things you need to think about before you become daunted. First, the field is increasingly a vital subject for all lawyers. You can't really function in today's legal world without some introduction to administrative law, so the time you invest learning the subject will not be wasted. And it is an exciting place for a lawyer to be. Administrative law professionals, whether inside or outside government, tend to work at the cutting edge of law. Administering the same policies doesn't usually require lawyers. But when the agency or the client wants to try something new, something different, something innovative, that's when your phone rings.

Answering that phone will introduce you to the variety of roles lawyers play in this field. To agency executives and regulated clients, lawyers are crucial interpreters of the law, specialists on procedural requirements, drafters, critical arbiters of policy analysis, and, of course, advocates in the courtroom and other places. With this skill set, these professionals are usually at the center of the action, including the meetings that really count. For an elaboration of these professional roles inside government, see Thomas O. McGarrity. *The Role of Government Attorneys in Regulatory Agency Rulemaking*, 61 LAW & CONTEMP. PROBS. 19 (1998).

Second, you should know that administrative law is ultimately a practical subject. When one is dealing with really important matters (think of banking regulation, civil rights, labor/management issues, workplace safety, environmental protection, monetary policy, health care, etc.) there is simply too much at stake to allow endless research or infinite doctrinal refinement. Yes, good regulatory policy must rest on solid research and intelligent principles, but the government must also be kept open. Like the experienced administrative lawyer, you should not be paralyzed by doctrinal complexity.

Understand it. But don't let it trap you in a box you can't get out of if more practical resolutions emerge from your thinking. Answers that work are always necessary and usually sufficient.

Finding answers that work may require consideration of multiple perspectives. Effective and workable administrative law doctrines must be consistent with legislative wishes, efficient in the day-to-day work of the executive branch and the independent agencies, sensitive to the attitudes and culture of regulated parties, and ultimately administrable by the courts. These institutions may have different needs and different resources—and finding doctrine that works tolerably well for most of them at a given time is one of the real challenges of the field. It is a challenge worthy of the best minds.

So welcome to the field of administrative law. It is sometimes intellectually difficult but always professionally rewarding. It will, without doubt, be a growth experience for you.

Preface to the Second Edition

This work is intended for the student or the foreign lawyer in need of a short introduction to the U.S. system of administrative law. Rather than being a contribution to the larger theoretical literature, it attempts to identify central principles in an understandable form and to organize them so that their essential functions are clear. The discussion is accompanied by a number of graphics that should help you visualize important doctrinal relationships.

Three important acknowledgements: I must first thank the author of the first edition, Professor William Andersen who, on retirement, invited me to take on the task of keeping the book current, as to both any new developments I thought relevant and any substantive changes I thought necessary. I appreciate the trust this implied and the freedom that resulted.

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