

# **2005 Advanced Texas Administrative Law Seminar**

## **July 28-29, 2005 • Hyatt Regency Austin • Austin, TX**

### **Thursday Morning, July 28, 2005**

#### **Presiding Officer:**

**Robin A. Melvin**, Graves Dougherty Hearon & Moody - Austin, TX

9:15 am 1.00 hr	<p><b>The Constitutional Underpinnings of Administrative Law</b></p> <p>This session will discuss separation of powers and delegation plus a special discussion of the Constitutional underpinnings of due process standards for public participation in hearings and rulemaking.</p> <p>Ron Beal, Baylor Law School - Waco, TX</p>
10:15 am 1.00 hr	<p><b>Working with Texas Administrative Procedures Act ( APA )</b></p> <p>This session opens with an interview of Dudley McCalla, who played a key role in the development of the Administrative Procedures Act in Texas. The presentation will focus on the factors that led to the adoption of the original Texas APA 30 years ago, the changes to the APA since that time, and the application of the APA to rulemakings and contested cases today.</p> <p>Dudley D. McCalla, Heath Davis &amp; McCalla - Austin, TX Robin A. Melvin, Graves Dougherty Hearon &amp; Moody - Austin, TX</p>
11:30 am 0.75 hr	<p><b>Public Participation in Contested Cases in Texas—Permitting and Enforcement</b></p> <p>This article discusses the right of the public to participate in state penalty and enforcement contested case hearings, focusing on programs administered by the TCEQ.</p> <p>Jeffrey Civins, Haynes And Boone, LLP - Austin, TX</p>

### **Thursday Afternoon, July 28, 2005**

#### **Presiding Officer:**

**Janet I. Monteros**, Vista Health Plan, Inc - Austin, TX

1:30 pm 1.25 hrs	<p><b>Sovereign Immunity</b></p> <p>Discussion of the scope of protection afforded by sovereign immunity, how sovereign immunity can be waived and what claims can be maintained against governmental entities/officials without obtaining a waiver of immunity. The presentation will address recent developments in the area of immunity, particularly focusing on contract claims, claims for injunctive relief as well as tort claims.</p> <p>Michael A. Shaunessy, Shaunessy &amp; Burnett PC - Austin, TX</p>
2:45 pm 0.75 hr	<p><b>Delegations to SOAH—Hearings, Final Decisions and Overturning an ALJ Recommendation</b></p> <p>James H. Barkley, Baker Botts - Houston, TX</p>

3:45 pm 0.75 hr	<p><b>Judicial Deference to Administrative Action</b></p> <p>This presentation focuses on the parameters of Chevron deference including effect on delegated actions. In addition, doctrines of state deference are examined. The presentation concludes with an analysis concerning whether greater judicial oversight is warranted in light of Chevron’s broad parameters.</p> <p>Gerald J. Pels, Locke Liddell &amp; Sapp LLP - Houston, TX</p>
4:30 pm 0.50 hr	<p><b>How to Avoid the Tricks, Traps and Pitfalls of Obtaining Judicial Review</b></p> <p>An unwary litigant can easily succumb to various pitfalls in his or her efforts to obtain judicial review of contested administrative decisions. This presentation will show you how to avoid some of the most common and dangerous errors in your quest to obtain judicial review.</p> <p>Lino Mendiola III, Andrews &amp; Kurth LLP - Austin, TX</p>
5:00 pm 0.50 hr	<p><b>Rulemaking—How to Make and Challenge Rulemaking</b></p> <p>Rulemaking requirements and statutory effect of failure to follow rulemaking requirements.</p> <p>David C. Mattax, Office Of The Attorney General - Austin, TX</p>

## Friday Morning, July 29, 2005

### Presiding Officer:

**Celina Romero**, Clark Thomas & Winters - Austin, TX

9:00 am 1.00 hr	<p><b>Legislative Update Panel</b></p> <p>How did the 79th legislature affect the major areas of administrative practice? Several experienced practitioners will review the results.</p> <p>Roger B. Borgelt, Potts &amp; Reilly LLP - Austin, TX  Katherine K. Mudge, Covad Communications - Austin, TX  Celina Romero, Clark Thomas &amp; Winters - Austin, TX  Donald N. Walker, Attorney at Law - Austin, TX</p>
10:00 am 0.50 hr	<p><b>Uses and Abuses of Declaratory Judgments in Suits Involving the Judicial Review of Contested Cases</b></p> <p>Exploring the limits of declaratory judgment or a tool for judicial review of agency actions.</p> <p>Ray H. Langenberg, Scott, Douglass &amp; McConnico - Austin, TX</p>
10:45 am 0.50 hr	<p><b>Open Records—“Protecting Your (Third Party) Confidential Information”</b></p> <p>Best practices for submitting information to a governmental body and defending against its disclosure in response to a request under the Texas Public Information Act.</p> <p>Kimberly Frost, Vinson &amp; Elkins LLP - Austin, TX</p>

11:15 am  
0.50 hr

### **Parliamentary Based Legal Challenges to Administrative Statutes**

Knowing how the sausage was made is useful in determining legislative intent. Familiarity with rules governing the legislative process is necessary to unravel the mysteries of the record and to successfully challenge agency decisions. Related ethical and professional practice issues will also be covered.

Deborah Lynn Fulton, Texas Legislative Council - Austin, TX  
Anthony F. Haley, Haley Romero Winick & Kroll, Inc. - Austin, TX

## **Friday Afternoon, July 29, 2005**

### **Presiding Officer:**

**Celina Romero**, Clark Thomas & Winters - Austin, TX

1:00 pm  
1.25 hrs

### **Conflicts and Other Ethical Issues Faced by Administrative Lawyers**

A leading authority on professional practice and conflicts explores conflicts in the context of an administrative law practice.

Michael Sean Quinn, Quinn Hayes & Quinn - Austin, TX

2:15 pm  
1.00 hr

### **Judges Panel**

Trial court and appellate judges discuss the practical application of constitutional law principles to administrative law cases.

Margaret A. Cooper, Austin, TX  
David C. Duggins, Clark Thomas & Winter PC - Austin, TX  
Jan Patterson, 3rd Court Of Appeals - Austin, TX  
Hon. Bea Ann Smith, 3rd Court Of Appeals - Austin, TX