

3rd Annual Advanced Texas Administrative Law Seminar
August 28-29, 2008 • Omni Austin Hotel at Southpark • Austin, TX

Thursday Morning, Aug. 28, 2008

Presiding Officer:

Jason Ray, Riggs, Aleshire & Ray, P.C. - Austin, TX

7:30 am	Registration Opens Continental breakfast included in conference registration.
8:15 am	Welcoming Remarks
8:30 am 0.75 hr	Case Law Update A summary of key cases involving administrative law over the past year. Alessandra Ziek Beavers, 3rd Court of Appeals - Austin, TX David D. Dubose, 3rd Court of Appeals - Austin, TX Ryan D. V. Greene, 3rd Court of Appeals - Austin, TX
9:15 am 0.50 hr	Third Party Issues Under the PIA: Protecting Trade Secrets & Competitive Information Discussion of PIA protections for third party information; protecting information upon submission to a government body; participating in requests for AG rulings and suing under the PIA to protect proprietary information. Susan Denmon Gusky, Vinson & Elkins L.L.P - Austin, TX
9:45 am 0.50 hr	Open Records: New Developments and Recurring Issues in Public Information Act Requests This session will discuss recent developments in open records laws and explain how governmental bodies can draft effective briefs to the Office of the Attorney General as required by section 552.301 of the Public Information Act. Amanda E. Crawford, Office of the Attorney General - Austin, TX
10:15 am	Break
10:30 am 0.75 hr	Official and Unofficial Attorney General Opinions, Letter Rulings, and Open Records Decisions A discussion of the various Attorney General rulings and opinions, the jurisprudential significance of each, who may request such rulings, and time frames for issuance. Jason Everett Boatright, Texas Attorney General - Austin, TX Claude Robert Heath, Bickerstaff Heath Delgado Acosta LLP - Austin, TX

11:15 am 0.75 hr	Civil Investigative Demands Civil Investigative Demands are an investigative and enforcement tool of the Office of the Attorney General. The session will cover: What are they? What does your client have to do if he is the subject of one? What are the potential consequences? What is negotiable? Roger B. Borgelt, Potts & Reilly LLP - Austin, TX C. Brad Schuelke, Office of The Attorney General - Austin, TX
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Thursday Afternoon, Aug. 28, 2008

Presiding Officer:

Kimberly A. Frost, Jack Martin & Associates - Austin, TX

	LUNCHEON PRESENTATION
12:00 pm	Pick up Box Lunch
12:30 pm 0.75 hr	Tax Proceedings at SOAH Hon. Peter Brooks, State Office of Administrative Hearings - Austin, TX
1:15 pm 0.75 hr	Informal Proceedings at State Agencies Michael C. Crowley, Office of the Attorney General - Austin, TX Amanda Jean Ellis, Office of the Attorney General - Austin, TX Moderator: Hon. Howard S. Seitzman, State Office of Administrative Hearings - Austin, TX
2:00 pm 0.50 hr	Primary and Exclusive Agency Jurisdiction: Impact on Court Litigation Primary or exclusive agency jurisdiction can prevent, delay, or determine the outcome of court litigation. This session will provide an overview of the applicable doctrines and their current impact in selected practice areas. Mary A. Keeney, Graves Dougherty Hearon & Moody PC - Austin, TX
2:30 pm 0.50 hr	Changing Findings of Fact and Conclusions of Law Legal restrictions on the ability of agencies to change an ALJ's findings of fact and conclusions of law Don E. Walden, Attorney at Law - Austin, TX
3:00 pm	Break
3:15 pm 0.50 hr	Advanced Discovery Issues How does the APA synch with the TRCP in administrative proceedings? How do you deal with matters such as issuance of subpoenas, non-party discovery, protective orders in contested cases, and cost recovery? Kathleen E. Magruder, Brown McCarroll - Houston, TX

3:45 pm 0.50 hr ethics	<p>The 'Rambo' Litigator in the Administrative Case</p> <p>The presentation will examine dealing with the 'Rambo' litigator in the administrative case process from the start of the case as an investigation, through the Informal Settlement Conference and to the contested case hearing at the State Office of Administrative Hearings. Emphasis will be on both legal remedies and personal approaches with reference to key ethical considerations.</p> <p>Dewey E. Helmcamp III, Texas State Board of Veterinary Medical Examiners - Austin, TX</p>
4:15 pm 0.50 hr ethics	<p>AYLA Presentation: How to Get Signed Up for Texas Lawyers Help</p> <p>The statewide web initiative consists of two websites: Texas Law Help and Texas Lawyers Help. They are designed to be comprehensive online resources for clients and advocates. Texas Lawyers Help was launched in 2005 as a resource for legal aid attorneys and attorneys interested in pro bono work. This session will focus on the resources available to attorneys via Texas Lawyers Help.</p> <p>L. Monique Gonzalez, Texas Legal Services Center - Austin, TX</p>
4:45 pm 0.50 hr ethics	<p>Public Sector Attorneys and Pro Bono Representation</p> <p>This presentation will address the current state of pro bono participation among government attorneys, the legal and practical limitations on their participation, and the opportunities that might improve the number of government attorneys providing pro bono representation.</p> <p>Joe H. Thrash, Office of the Attorney General - Austin, TX</p>
5:15 pm	<p>Adjourn to Reception honoring Shelia Bailey Taylor, the long-time Chief ALJ of SOAH, on her retirement.</p> <p>Remarks by Cathie Parsley, incoming Chief ALJ</p>

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Jason Ray, Riggs, Aleshire & Ray, P.C. - Austin, TX

7:30 am	<p>Conference Room Opens</p> <p>Breakfast tacos included in conference registration.</p>
8:00 am	<p>Welcoming Remarks</p>

8:15 am 0.75 hr ethics	<p>Ex Parte Communications: Is Vandygriff the Final Word?</p> <p>Overview and panel discussion of Ex Parte Communications in the administrative process.</p> <p>Moderator: Thomas M. Pollan, Bickerstaff Heath Delgado Acosta LLP - Austin, TX</p> <p>Panelists: Lou Bright, Texas Alcoholic Beverage Commission - Austin, TX</p> <p>Panelists: Hon. Howard S. Seitzman, State Office of Administrative Hearings - Austin, TX</p> <p>Panelists: Elizabeth R. Todd, Office of the Attorney General - Austin, TX</p> <p>Panelists: Gaines F. West II, West Webb Allbritton & Gentry P C - College Station, TX</p>
9:00 am 0.50 hr	<p>Intellectual Property Rights for Governmental Bodies: What You Need to Manage</p> <p>Governmental entities can create and own intellectual property. When grants are made or contracts administered, governmental entities may limit or condition the intellectual property rights of others. Similarly, as can anyone, governmental entities can infringe third-party intellectual property rights. Governmental entities need to be deliberate in acquiring and managing intellectual property, to be sure they own what they create or pay others to create. They also need to manage the workplace so as to minimize risks that they infringe the intellectual property of others. Infringement is rampant: The “Internet mentality”—that whatever can be found or transmitted on the Internet is free to everyone for any purpose—is pervasive, but it is not much of a defense to a charge of infringement. This paper will focus on copyright law, because it is especially likely to be important to governmental entities, although mention will be made of trademarks and patents, primarily to put copyrights in context.</p> <p>Sydney W. Falk Jr., Bickerstaff Heath Delgado Acosta LLP - Austin, TX</p>
9:30 am 0.50 hr	<p>The Impact of Criminal Convictions on Obtaining an Occupational License</p> <p>Texas Occupations Code, Chapter 53 addresses the effects of criminal convictions on certain occupational licenses. This presentation will discuss the discretionary authority given to state agencies when evaluating applicants’ and licensees’ past criminal convictions and the non-discretionary obligations imposed on state agencies for applicants and licensees who are in prison.</p> <p>Bradford Jay Bowman, Texas Department Of Licensing & Regulation - Austin, TX Wendy M. Pellow, Texas Department of Licensing and Regulation - Austin, TX</p>
10:00 am 0.50 hr	<p>What Every Administrative Lawyer Should Know About the Criminal Law</p> <p>This presentation will address the evolution of the "administrative crime" and the exercise of power by agencies in recent years to promulgate rules and regulations that define criminal conduct. The speaker will also review the various varieties of "administrative crimes" that exist under Texas law, along with the most common standards by which courts have found criminal liability to exist for violations of agency rules and regulations.</p> <p>Danny S. Ashby, Kirkpatrick & Lockhart Preston Gates Ellis LLP - Dallas, TX</p>
10:30 am	<p>Break</p>

10:45 am 0.50 hr	<p>Developments in the Law of Rulemaking</p> <p>The administrative lawyer who practices within a state agency will likely be called upon to assess whether a planned agency action complies with the rulemaking statutes in the Texas Government Code, especially chapter 2001. This presentation will focus on the required elements of rule proposal and adoption, and the new challenges to agencies posed by developments in the law such as HB 3430 (80th Leg.) and El Paso Hospital District.</p> <p>Robert D. Sweeney Jr., Texas Parks and Wildlife Department - Austin, TX</p>
11:15 am 0.75 hr	<p>Implied Powers of an Administrative Agency</p> <p>As a creation of the Legislature, an administrative agency can exercise only those powers conferred by statute. Some powers, though not expressly stated, are implied by the language of the statute. This presentation addresses factors that should be considered in distinguishing between an agency's exercise of implied powers and agency actions that fall outside the bounds of its authority.</p> <p>Steven Baron, Consulting and Legal Services - Austin, TX</p>

Friday Afternoon, Aug. 29, 2008

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Kimberly A. Frost, Jack Martin & Associates - Austin, TX

	LUNCHEON PRESENTATION
12:00 pm	<p>Break for Hot Lunch Buffet</p> <p>Included in conference registration fee.</p>
12:30 pm 0.75 hr	<p>Old Dogs/New Tricks: Mediating at SOAH</p> <p>Do you equate mediation with rolling over? Using video clips featuring some of your favorite SOAH ALJs, this session will help contested case litigators become fearless, effective participants in mediation.</p> <p>Hon. Suzanne Marshall, State Office of Administrative Hearings - Austin, TX Hon. Renee M. Rusch, State Office of Administrative Hearings - Austin, TX</p>
1:15 pm 0.50 hr	<p>Going Outside the Box? Recent Case Law Governing Non-APA Challenges to Agency Decisions</p> <p>Kristofer S. Monson, Office of the Attorney General - Austin, TX</p>
1:45 pm 0.42 hr	<p>50 Great Web Resources for Administrative Law Attorneys</p> <p>From city codes to federal regs to the best place to find the dirt on that expert witness, these are the web resources that administrative attorneys need to know.</p> <p>Jason Ray, Riggs, Aleshire & Ray, P.C. - Austin, TX</p>

2:10 pm 0.33 hr	<p>Observations from 16 Years of Service</p> <p>Judge Cooper, retiring from the bench on December 31, 2008, will reflect on her years of service as the judge of the 353rd District Court. Judge Cooper is the only Travis County district judge board-certified in the area of administrative law.</p> <p>Hon. Margaret A. Cooper, 353rd District Court - Austin, TX</p>
2:30 pm 0.75 hr	<p>Judicial Panel</p> <p>Q&A: Written questions for the panel may be submitted any time prior to lunch Friday.</p> <p>Hon. Nathan L. Hecht, Supreme Court Of Texas - Austin, TX Hon. Lora Jeanette Livingston, Travis County District Court - Austin, TX Hon. Bob Pemberton, 3rd Court of Appeals - Austin, TX Moderator: Thomas H. Walston, State Office of Administrative Hearings - Austin, TX</p>
3:15 pm	<p>Adjourn</p>