

ADMINISTRATIVE AND PUBLIC LAW SECTION OF THE STATE BAR OF TEXAS  
AUSTIN BAR ASSOCIATION ADMINISTRATIVE LAW SECTION  
THE UNIVERSITY OF TEXAS SCHOOL OF LAW

4<sup>TH</sup> ANNUAL  
ADVANCED TEXAS  
ADMINISTRATIVE LAW SEMINAR



August 27–28, 2009  
Omni Austin Hotel at Southpark ▪ Austin, Texas

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**THURSDAY MORNING, AUGUST 27, 2009**

**Presiding Officer:**  
Kimberly A. Frost, Austin, TX

**7:30 a.m. Registration Opens**  
Includes continental breakfast.

**8:15 a.m. Welcoming Remarks**

**8:30 a.m. .75 hr**

**Case Law Update**

A summary of key cases involving administrative law over the past year.

Hon. J. Woodfin Jones, Austin, TX  
Linda Secord, Austin, TX

**9:15 a.m. .50 hr**

**What Constitutes "Public Interest" in Administrative Proceedings?**

What is "the public interest"? What is its role in administrative proceedings, and how does the Third Court's decision in the *Popp* case potentially impact agency decision-making?

Ed McCarthy, Austin, TX

**9:45 a.m. .50 hr**

**Property Interest and Due Process in Administrative Licensing Actions**

State agency regulation of occupations is probably taken for granted most of the time. This topic addresses how property interests and other constitutional principles can affect the agency's power to regulate occupations and licenses in light of the recent *Wilson* and *Lee* cases.

Donald N. Walker, Austin, TX

**10:15 a.m. Break**

**10:30 a.m. .50 hr**

**Does the Federal Arbitration Act Preempt State Agency Exclusive Jurisdiction?**

Two cases decided by the U.S. Supreme Court, (*EEOC v. Waffle House* and *Preston v. Ferrer*) raise the question of when the Federal Arbitration Act may preempt a state agency's exclusive jurisdiction. Using these two cases as a point of beginning, this topic addresses the intersection of arbitration law with state administrative law, including past and current uses of arbitration in Texas administrative law.

John Charles Fleming, Austin, TX

**11:00 a.m. .50 hr**

**NextGen AdminLaw: Amending the APA and Other Practical Suggestions for Improving the Process**

Looking for the latest developments in primary jurisdiction, sovereign immunity, ex parte communications, open meetings, separation-of-powers, and exhaustion-of-administrative-remedies? Look elsewhere. Here are some practical suggestions for improving and smoothing the practice of administrative law.

Steven Baron, Austin, TX

**LUNCHEON PRESENTATION**

**11:30 a.m. Pick up Box Lunch**

Included in conference registration fee.

**11:45 a.m. .75 hr**

**Discussion of the New SOAH Rules**

A discussion of rule changes in the State Office of Administrative Hearings.

Hon. Paul D. Keeper, Austin, TX  
Kerrie Jo Qualtrough, Austin, TX

**12:30 p.m. Break**

**THURSDAY AFTERNOON**

**Presiding Officer:**  
Jason Ray, Austin, TX

**12:45 p.m. .50 hr**

**Continuing Developments in Rulemaking**

New issues in notice and comment rulemaking including (1) what is the legal consequence of when an agency wholly fails to follow APA procedures, (2) what is a voidable rule and the process of remanding it to the agency, (3) can a party challenge the failure of an agency to adopt a rule, and (4) may a person challenge the validity of a rule by a \$2001.038 declaratory judgment action when such person is not bound by the rule? Includes discussion of whether it is constitutional for an agency to adopt a rule that is the basis for a criminal prosecution.

Ron Beal, Waco, TX

**1:15 p.m. .50 hr**

**Claim and Issue Preclusion in Administrative Proceedings**

The preclusive effect of findings and adjudications in administrative proceedings on subsequent judicial proceedings and vice-versa.

Rance L. Craft, Austin, TX

**1:45 p.m. .50 hr**

**Dubai, or not Dubai? That is the Question**

Must litigants comply with all statutory prerequisites to suit in order to confer jurisdiction upon the court? The Texas Supreme Court said "no" in *Dubai Petroleum*. The Third Court of Appeals, however, has suggested that the legislature effectively overruled that decision by amending Texas Government Code §311.034 in 2005. This session discusses whether and the extent to which statutory prerequisites to suits for judicial review are jurisdictional or something less in light of §311.034 and recent cases applying it.

Marnie Ann McCormick, Austin, TX

**2:15 p.m. .50 hr**

**When Do You Have the Right to a Contested Case—and Why?**

Texas courts often have held that there is no right to an evidentiary hearing on an agency determination affecting a party's rights or privileges unless a statute expressly gives such a right or due process requires it, but there are cases finding a right to an APA-contested case by implication, custom, or agency action. This presentation discusses the right to a contested case and the standard for judicial review of agency decisions, in light of recent appeals court opinions in the *Texas Department of Insurance v. State Farm Lloyds* insurance rate cases and other cases.

Susan G. Conway, Austin, TX

**2:45 p.m. .50 hr**

**Common Problems in Open Records and Open Meeting Litigation**

Who do you sue? Do third parties have standing to appeal PIA decisions? Is discovery allowed in a PIA or OMA lawsuit? If so, what? Is a PIA trial limited to "the records"? Can the OMA be used as a vehicle to depose decision-makers?

Jennifer Scott Riggs, Austin, TX  
Co-Author: Jason Ray, Austin, TX

**3:15 p.m. Break**

3:30 p.m. .50 hr

### Separation-of-Powers and the Nature of Remand

This talk discusses the scope of remand in substantial evidence review cases and the separation-of-powers implications raised by the pending litigation in the three related cases currently before the Texas Supreme Court involving the Motor Vehicle Board.

Kristofer S. Monson, Austin, TX

4:00 p.m. .50 hr ethics

### Talking Out Loud: Ex Parte Communications and the Beleaguered Bureaucrat

How do (or should) the notions of transparency and publicity embedded in the ex parte rules apply to communications among and between agencies, industries and the public that take place outside the contested case process? And how might the application of ex parte considerations to those types of communications change our expectations and evaluations of deliberation and decision-making within governmental agencies?

Lou Bright, Austin, TX

4:30 p.m. .33 hr ethics

### Pro Bono: Serving the Public During Times of Emergency

The role the legal community plays during catastrophic events: Learn basic information about the FEMA process to coordinate with state and local bars, emergency legal staffing and phone lines, and emergency legal service funding.

Karin Crump, Austin, TX

4:50 p.m. .50 hr ethics

### Administrative Law - Professional Ethics, SCRA and LAMP

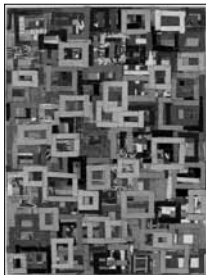
Professional ethics, the Servicemembers Civil Relief Act (SCRA) and Pro Bono for Military Personnel in the Practice of Administrative Law.

William J. Chriss, Austin, TX

Bryan S. Spencer, Austin, TX

5:20 p.m. Adjourn

## ABOUT THE COVER



*"Go Figure," collage on board 32"x 24" is by Lance Letscher. For more information, visit [www.dbermangallery.com](http://www.dbermangallery.com).*

## FRIDAY MORNING, AUGUST 28, 2009

**Presiding Officer:**  
Mary A. Keeney, Austin, TX

7:30 a.m. **Conference Room Opens**

Breakfast tacos and fruit included in conference registration fee.

7:45 a.m. .50 hr

### Legislative Update

A summary of selected legislation from the 81st Texas Legislature of interest to administrative law practitioners with a principal focus on bills impacting SOAH and the practice before SOAH.

Hon. Howard S. Seitzman, Austin, TX

8:15 a.m. .50 hr

### When Elections Are Too Close to Call

In an era when election law litigation over the result of elections is becoming increasingly common, the presentation explores the law of recounts, contests, and similar ways of challenging and defending the results of elections.

C. Robert Heath, Austin, TX

8:45 a.m. .50 hr

### The Overlap of Corporate and Administrative Issues

Discussion of consequences, liabilities, and issues pertaining to business entities subject to administrative enforcement matters. Topics include the corporate veil, potential officer and director liability, and consequences to the business entity.

Frank Michael Reilly, Austin, TX

9:15 a.m. .50 hr

### Advocacy

An overview of advocacy in administrative law.

Hon. John K. Dietz, Austin, TX

9:45 a.m. .50 hr ethics

### Conflicts, Contracts, and Costs: An Ethics Update

An ethical update on critical law practice considerations.

Claude E. Ducloux, Austin, TX

10:15 a.m. Break

10:30 a.m. .50 hr

### Pleas to the Jurisdiction in Texas Administrative Law

This session covers jurisdiction in administrative appeals, rule and UDJA declaratory judgment actions, as well as issues of enforcement of agency jurisdiction by mandamus. Pleas to the jurisdiction procedure and the implications of the reconveyance opinions also discussed.

Presenter and Co-Author:

Matthew Birk Baumgartner, Austin, TX

Co-Author: Pete Schenckan, Austin, TX

11:00 a.m. .50 hr ethics

### Recent Cases and Developments Regarding Attorneys' Fees

This presentation explores ethical issues concerning attorneys' fees and especially the use of contingent fee agreements in such non-traditional areas as administrative law.

Philip Durst, Austin, TX

11:30 a.m. .50 hr

### What Every Lawyer Ought to Know About Employment Law

Tips on taking personnel actions (or: "How to fire an employee and feel good about it"). What you don't know about employment law that can hurt you.

A. Craig Carter, Austin, TX

## FRIDAY AFTERNOON

**Presiding Officer:**  
Nichole Beth Bunker-Henderson, Austin, TX

### LUNCHEON PRESENTATION

12:00 p.m. **Break for Hot Lunch Buffet**

Included in conference registration fee.

12:15 p.m. .75 hr ethics

### Increasing Access to Justice in Texas

Representatives of the Texas Access to Justice Commission and the Texas Access to Justice Foundation explain how administrative law attorneys can help increase access to justice for poor and low-income Texans.

Betty Balli Torres, Austin, TX

Lisa Villarreal-Rios, Austin, TX

1:00 p.m. Break

1:15 p.m. .50 hr

### Disaster Response and Recovery by State Agencies

Emergency management and response can impact administrative lawyers' practice in a number of ways. This topic looks at emergency management in Texas, including the role of the Governor's Division of Emergency Management in carrying out a comprehensive all-hazard emergency management program for the State and assisting cities, counties, and state agencies in planning and implementing their emergency management programs.

Jack Colley, Austin, TX

Author: Ann Bright, Austin, TX

1:45 p.m. .50 hr

### Resolving Conflicts between Bankruptcy and Administrative Jurisdiction

Bankruptcy and administrative law are two specialized areas of law. This presentation examines which rules apply when the two realms collide.

Stephen W. Sather, Austin, TX

2:15 p.m. .75 hr

### Issues Regarding the Role of the District Court in APA Appeals

A presentation addressing substantive, procedural and tactical issues that may arise in an APA appeal to the district court. Includes perspectives from both sides of the docket: private attorneys who represent parties challenging final agency orders and government attorneys defending those orders.

Susan Henricks, Austin, TX

John M. Hohengarten, Austin, TX

3:00 p.m. .75 hr

### Judicial Panel

A justice from the Supreme Court of Texas, a justice from the Third Court of Appeals and a Travis County District Court judge, moderated by an administrative law judge from the State Office of Administrative Hearings, engage in a round-robin discussion and take questions from the audience.

#### Moderator:

Hon. Penny Wilkov, Austin, TX

#### Panelists:

Hon. Don R. Willett, Austin, TX

Hon. Bob Pemberton, Austin, TX

Hon. Suzanne Covington, Austin, TX

3:45 p.m. Adjourn

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#### Standard Registration

- ☐ Early Registration Fee due by August 19, 2009 ..... \$250.00  
☐ Registration Fee after August 19, 2009 ..... \$300.00

#### Government Lawyer

- ☐ Early Registration Fee due by August 19, 2009 ..... \$225.00  
☐ Registration Fee after August 19, 2009 ..... \$275.00

#### Judge

**Please list title and court/agency (required)** \_\_\_\_\_

- ☐ Registration—complimentary ..... no charge

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*Allow 2–4 weeks from the conference date for delivery.*

- ☐ Course Binder Without Conference Registration ..... \$250.00  
Note: Conference registration includes Course Binder.  
☐ Audio CD Set ..... \$175.00  
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(\$250 purchased alone, \$50 with registration or purchase of Course Binder or Audio CD Set)

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4<sup>TH</sup> ANNUAL

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Sponsored by the Administrative and Public Law Section of the State Bar of Texas, Austin Bar Association Administrative Law Section, and The University of Texas School of Law, the Advanced Texas Administrative Law Seminar brings together practitioners and members of the judiciary, regulatory, and academic communities. Come hear relevant presentations and meet with experienced practitioners and judges while earning up to 15 MCLE credit hours and 3 hours of ethics, all at a great low price!

#### Administrative and Public Law Section of the State Bar of Texas

The Administrative and Public Law Section of the State Bar consists of more than 1,000 licensed attorneys throughout Texas who represent clients before, or are employed by, a variety of state and federal agencies, boards and commissions. The Section's members also represent clients in state and federal judicial proceedings in which agency decisions or actions are litigated. The Section sponsors the Mack Kidd Administrative Law Moot Court Competition and also supports the Texas Tech Administrative Law Journal, included in Section membership.

**[www.adminlaw.org](http://www.adminlaw.org)**

#### Austin Bar Association Administrative Law Section

Everyone knows that Austin is the administrative law "capital" of Texas. The 450 members of the Austin Bar Association Administrative Law Section are dedicated to serving administrative lawyers in the central Texas area by organizing CLE opportunities, attending social functions, volunteering legal services, and raising thousands of dollars in donations for local charities all year long. Thanks to UTCLE and the State Bar Section for helping us serve our members through this CLE event!

**[www.austinbar.org/sectionadmin.shtml](http://www.austinbar.org/sectionadmin.shtml)**

### AUSTIN

August 27–28, 2009

#### CONFERENCE LOCATION



#### Omni Austin Hotel at Southpark

4140 Governor's Row  
Austin, TX 78744  
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**Free Parking**

#### KEY DATES

**August 19, 2009, 5:00 p.m.**

*last day for early registration*  
add \$50 for registrations  
received after this time

**August 21, 2009, 5:00 p.m.**

*last day for full refund*

**August 24, 2009, 5:00 p.m.**

*last day for partial refunds*  
\$50 processing fee applied

**August 27, 2009, 8:30 a.m.**

*conference begins*

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