

4th Annual Advanced Texas Administrative Law Seminar
August 27-28, 2009 • Omni Austin Hotel at Southpark • Austin, TX

Thursday Morning, Aug. 27, 2009

Presiding Officer:

Kimberly A. Frost, Austin, TX

7:30 am	Registration Opens Includes continental breakfast.
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. Hon. J. Woodfin "Woodie" Jones, Third Court of Appeals - Austin, TX Linda Secord, Office of the Attorney General - Austin, TX
9:15 am 0.50 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 <i>Popp</i> case potentially impact agency decision making? Ed McCarthy, Jackson, Sjoberg, McCarthy, & Wilson, L.L.P. - Austin, TX
9:45 am 0.50 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 <i>Wilson</i> and <i>Lee</i> cases. Donald N. Walker, Attorney at Law - Austin, TX
10:15 am	Break
10:30 am 0.50 hr	Does the Federal Arbitration Act Preempt State Agency Exclusive Jurisdiction? Two cases decided by the U.S. Supreme Court, (<i>EEOC v. Waffle House</i> and <i>Preston v. Ferrer</i>) 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, Hays & Owens L.L.P. - Austin, TX

11:00 am 0.50 hr	<p>Continuing Developments in Rulemaking</p> <p>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 Section 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.</p> <p>Thursday's schedule has been modified from the printed brochure beginning with this session and through Adjourn.</p> <p>Ron Lynn Beal, Baylor Law School - Waco, TX</p>
	LUNCHEON PRESENTATION
11:30 am	<p>Pick up Box Lunch</p> <p>Included in conference registration fee.</p>
11:45 am 0.75 hr	<p>Discussion of the New SOAH Rules</p> <p>A discussion of rule changes in the State Office of Administrative Hearings.</p> <p>Hon. Paul D. Keeper, State Office of Administrative Hearings - Austin, TX Hon. Kerrie Jo Qualtrough, State Office of Administrative Hearings - Austin, TX</p>

Thursday Afternoon, Aug. 27, 2009

Presiding Officer:

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

12:30 pm 0.50 hr	<p>NextGen AdminLaw: Amending the APA and Other Practical Suggestions for Improving the Process</p> <p>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.</p> <p>Steven Baron, Consulting and Legal Services - Austin, TX</p>
1:00 pm 1.00 hr ethics	<p>Talking Out Loud: Ex Parte Communications and the Beleaguered Bureaucrat</p> <p>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?</p> <p>This session concludes with a town hall meeting format.</p> <p>Ron Lynn Beal, Baylor Law School - Waco, TX Lou Bright, Texas Alcoholic Beverage Commission - Austin, TX</p>
2:00 pm	Break

2:10 pm 0.50 hr	<p>Claim and Issue Preclusion in Administrative Proceedings</p> <p>The preclusive effect of findings and adjudications in administrative proceedings on subsequent judicial proceedings and vice-versa.</p> <p>Rance L. Craft, Office of the Attorney General - Austin, TX</p>
2:40 pm 0.50 hr	<p><i>Dubai, or not Dubai: That is the Question</i></p> <p>Must litigants comply with all statutory prerequisites to suit in order to confer jurisdiction upon the court? The Texas Supreme Court said "no" in <i>Dubai Petroleum</i>. The Third Court of Appeals, however, has suggested that the legislature effectively overruled that decision by amending Texas Government Code section 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 Tex. Gov't Code section 311.034 and recent cases applying it.</p> <p>Marnie Ann McCormick, Clark, Thomas & Winters - Austin, TX</p>
3:10 pm 0.50 hr	<p>When Do You Have the Right to a Contested Case — and Why?</p> <p>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 <i>Texas Department of Insurance v. State Farm Lloyds</i> insurance rate cases and other cases.</p> <p>Susan G. Conway, Graves, Dougherty, Hearon & Moody, P.C. - Austin, TX</p>
3:40 pm 0.50 hr	<p>Common Problems in Open Records and Open Meeting Litigation</p> <p>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?</p> <p>Co-Author: Jason Ray, Riggs, Aleshire & Ray, P.C. - Austin, TX Jennifer Scott Riggs, Riggs, Aleshire & Ray, P.C. - Austin, TX</p>
4:10 pm	<p>Break</p>
4:20 pm 0.50 hr	<p>Separation of Powers and the Nature of Remand</p> <p>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.</p> <p>Kristofer S. Monson, Office of the Attorney General - Austin, TX</p>
4:50 pm 0.33 hr ethics	<p>Pro Bono: Serving the Public During Times of Emergency</p> <p>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.</p> <p>Karin Crump, Lakeside Mediation Center - Austin, TX</p>

5:10 pm 0.50 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, of counsel to Gravelly & Pearson, L.L.P. - Austin, TX Bryan S. Spencer, Volunteer & Director Operation Enduring LAMP State Bar of Texas - Austin, TX
5:40 pm	Adjourn

Friday Morning, Aug. 28, 2009

Presiding Officer:

Mary A. Keeney, Austin, TX

7:30 am	Conference Room Opens Breakfast tacos and fruit included in conference registration fee.
7:45 am 0.50 hr	Legislative Update A summary of selected legislation from the 81 st Texas Legislature of interest to administrative law practitioners with a principal focus on bills impacting SOAH and the practice before SOAH. This session has moved to 1:45 p.m. on Friday. Hon. Howard S. Seitzman, State Office of Administrative Hearings - Austin, TX
8:15 am 0.50 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. Claude Robert Heath, Bickerstaff Heath Delgado Acosta LLP - Austin, TX
8:45 am 0.50 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, Potts & Reilly, L.L.P. - Austin, TX
9:15 am 0.50 hr	Advocacy An overview of advocacy in administrative law. Hon. John K. Dietz, 250th District Court - Austin, TX

9:45 am 0.50 hr ethics	<p>Conflicts, Contracts, and Costs: An Ethics Update</p> <p>An ethical update on critical law practice considerations.</p> <p>Claude E. Ducloux, Hill, Ducloux, Carnes & de la Garza - Austin, TX</p>
10:15 am	Break
10:30 am 0.50 hr	<p>Pleas to the Jurisdiction in Texas Administrative Law</p> <p>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. Matt Baumgartner is also a co-author to this session.</p> <p>Matthew Birk Baumgartner, Graves, Dougherty, Hearon & Moody, P.C. - Austin, TX Co-Author: Pete Schenkkan, Graves, Dougherty, Hearon & Moody, P.C. - Austin, TX</p>
11:00 am 0.50 hr ethics	<p>Recent Cases and Developments Regarding Attorneys' Fees</p> <p>This presentation explores ethical issues concerning attorneys' fees and especially the use of contingent fee agreements in such non-traditional areas as administrative law.</p> <p>Philip Durst, Deats, Durst, Owen & Levy, P.L.L.C. - Austin, TX</p>
11:30 am 0.50 hr	<p>What Every Lawyer Ought to Know About Employment Law</p> <p>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.</p> <p>Aaron Craig Carter, Davis & Davis - Austin, TX</p>

Friday Afternoon, Aug. 28, 2009

Presiding Officer:

Nichole Beth Bunker-Henderson, Austin, TX

	LUNCHEON PRESENTATION
12:00 pm	<p>Break for Hot Lunch Buffet</p> <p>Included in conference registration fee.</p>
12:15 pm 0.75 hr ethics	<p>Increasing Access to Justice in Texas</p> <p>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.</p> <p>Betty Balli Torres, Texas Access to Justice Foundation - Austin, TX Lisa Villarreal-Rios, Texas Access to Justice Commission - Austin, TX</p>
1:00 pm	Break

1:15 pm 0.50 hr	<p>Disaster Response and Recovery by State Agencies</p> <p>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.</p> <p>Materials By: Lanalta Ann Bright, Texas Parks And Wildlife Department - Austin, TX Jack Colley, Governor's Division of Emergency Management, Texas Department of Public Safety - Austin, TX</p>
1:45 pm 0.50 hr	<p>Resolving Conflicts Between Bankruptcy and Administrative Jurisdiction</p> <p>Bankruptcy and administrative law are two specialized areas of law. This presentation examines which rules apply when the two realms collide.</p> <p><i>This session has moved to 7:45 a.m. on Friday.</i></p> <p>Stephen W. Sather, Barron & Newburger, P.C. Barron, Newburger & Sinsley, PLLC - Austin, TX</p>
2:15 pm 0.75 hr	<p>Issues Regarding the Role of the District Court in APA Appeals</p> <p>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.</p> <p>Susan Henricks, Hull Henricks & MacRae LLP - Austin, TX John M. Hohengarten, Attorney General's Office - Austin, TX</p>
3:00 pm 0.75 hr	<p>Judicial Panel</p> <p>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.</p> <p>Moderator: Hon. Penny Wilkov, State Office of Administrative Hearings - Austin, TX Panelists: Hon. Suzanne Covington, 201st District Court - Austin, TX Panelists: Hon. Bob Pemberton, Third Court of Appeals - Austin, TX Panelists: Hon. Don R. Willett, Supreme Court of Texas - Austin, TX</p>
3:45 pm	<p>Adjourn</p>