

5th Annual Advanced Texas Administrative Law Seminar
September 2-3, 2010 • AT&T Conference Center • Austin, TX

Thursday Morning, Sep. 2, 2010

Presiding Officer:

Mary A. Keeney, Graves Dougherty Hearon & Moody - Austin, TX

8:00 am	Registration Opens Includes continental breakfast.
8:45 am	Welcoming Remarks
9:00 am 0.75 hr	Case Law Update A summary of key cases involving administrative law over the past year. Hon. J. Woodfin (Woodie) Jones, 3rd Court of Appeals - Austin, TX Linda B. Secord, Office of the Attorney General - Austin, TX
9:45 am 0.50 hr	Overview of the Sunset Process A discussion of the current Sunset review cycle including work on agencies ranging from PUC to Public Finance to the Forest Service. Also discussed, major components of Sunset evaluations, recent Sunset Commission decisions, and expectations for the upcoming legislative session. Joe Walraven, Sunset Advisory Commission - Austin, TX
10:15 am	Break
10:30 am 0.50 hr	New Criminal History Issues in Professional Licensing Amendments to Texas Occupations Code, Chapter 53 have affected the authority of certain agencies to deny applicants and discipline licensees. Susan Henricks, Hull Henricks LLP - Austin, TX
11:00 am 0.50 hr	Federal Preemption in Regulatory Litigation Overview of preemption analysis for state agencies subject to federal law addressing areas they regulate, with a focus on key U.S. and Texas Supreme Court decisions, as interpreted by the Austin Court of Appeals in reviewing key agency decisions that regulate environmental and other regimes. Helen Currie Foster, Graves, Dougherty, Hearon & Moody - Austin, TX

11:30 am
0.50 hr

Working with the Legislature: When Do You Cross the Line between Simply Providing Information and Lobbying?

Governmental bodies typically may not lobby, although they may provide information to the Legislature. This session focuses on what types of interaction with the Legislature are permissible. The speaker represented the Texas Association of Counties when its legislative activities were challenged in district court.

C. Robert Heath, Bickerstaff Heath Delgado Acosta LLP - Austin, TX

Thursday Afternoon, Sep. 2, 2010

Presiding Officer:

Hon. Howard S. Seitzman, State Office of Administrative Hearings - Austin, TX

12:00 pm

Luncheon Presentation

Pick up Box Lunch

Included in conference registration fee.

12:15 pm
0.50 hr

News from SOAH

An overview of SOAH's implementation of House Bill 2256 regarding mediations of out-of-network health benefit claims disputes and House Bill 3612 establishing a pilot project for appeals to SOAH of certain appraisal review board orders, along with what might be coming up in the next legislative session.

Hon. Cathleen Parsley, State Office of Administrative Hearings - Austin, TX

12:45 pm

Break

1:00 pm
0.50 hr ethics

Ethics Jeopardy

The game that tests your ethics.

Claude E. Ducloux, Hill, Ducloux, Carnes & de la Garza - Austin, TX

1:30 pm
0.50 hr ethics

Desktop Pro Bono Lawyering

This session concerns representation of persons appealing decisions denying applications for food stamps and temporary assistance to needy families.

Bruce P. Bower, Texas Legal Services Center - Austin, TX

2:00 pm
0.75 hr

Effective Advocacy in Your Administrative Appeal in both the District Court and Court of Appeals

Thoughts on how you can improve your effectiveness, both orally and in writing, in an appeal of an administrative proceeding. Subject matter includes comments on practice in both the district court and the court of appeals including their similarities and differences. Time is allotted for Q&A.

Hon. Scott H. Jenkins, 53rd District Court - Austin, TX

Hon. G. Alan Waldrop, Third Court of Appeals - Austin, TX

2:45 pm	Break
3:00 pm 0.75 hr	Giving Effective Legislative Testimony Learn the ins and outs of appearing before a legislative committee whether you are representing a client or appearing as a resource witness. Joseph Charles Gagen, Texas CASA - Austin, TX
3:45 pm 1.00 hr	Laying Down the Law: The Art and Science of Imposing Just Penalties Assessing sanctions is one of the most important functions of a regulatory agency. Who among the participants in the process should have the authority to decide what penalty to impose? More importantly, what are the elements and objectives of a reasonable, fair and effective penalty policy and how does actual practice among regulatory agencies compare to this standard? This town-hall-style discussion format addresses these and related questions. Be sure to bring your experiences and opinions to this interactive session. Ron Beal, Baylor Law School - Waco, TX Lou Bright, Attorney at Law - Austin, TX
4:45 pm	Adjourn

Friday Morning, Sep. 3, 2010

Presiding Officer:

Linda B. Secord, Office of the Attorney General - Austin, TX

8:00 am	Conference Room Opens Includes continental breakfast.
8:45 am 0.75 hr	Best Practices in Informal Settlement Conferences/Show Compliance Proceedings Practice tips and pointers for government and private sector attorneys. With agency cases often being resolved at the Informal Settlement Conference/Show Compliance (ISC) stage of administrative proceedings, the parties save money, time and resources while reducing the future need for high levels of stress tolerance for all involved. Making the most out of this opportunity is increasingly important for both government attorneys and defense counsel. The typical format and relative brevity of these proceedings require a focused and organized approach as well as an atmosphere of fairness and civility. Procedural and practical considerations frequently dictate just how beneficial the ISC will be. What works and doesn't work are lessons garnered from experience on both sides of the equation. Dewey E. Helmcamp III, Texas State Board of Veterinary Medical Examiners - Austin, TX Timothy E. Weitz, McDonald, Mackay & Weitz, LLP - Austin, TX
9:30 am 0.50 hr	<i>HCA Healthcare Corp. v. Texas Department of Insurance</i> A discussion of several topics illustrated in a single case, including the differences between facial and as-applied challenges to the constitutionality of a statute; whether informal service of agency decisions starts the clock running for appeal purposes; and whether a declaratory judgment can be a satisfactory substitute for an APA appeal. Thomas B. Hudson Jr., Graves Dougherty Hearon & Moody - Austin, TX

10:00 am	Break
10:15 am 0.75 hr	Rulemaking and Rule Challenges: Point-Counterpoint Ron Beal, Baylor Law School - Waco, TX Dudley D. McCalla, Jackson Walker L.L.P. - Austin, TX
11:00 am 0.75 hr	<i>Vista Community Medical Center v. Texas Mutual Insurance Co.</i> This dispute, while centering on construction and application of the "stop-loss exception" in the Workers Compensation Acute Care Inpatient Hospital Fee Guideline, raises questions of the effect of agency intent, the evolution of agency interpretation of its own rules, agency interpretation versus rule-making, validity of agency rules and <i>Boll Weevil</i> unconstitutional delegation—all in the context of a specific enabling statute. The strategies and arguments of the parties and the agency are discussed. David F. Bragg, Law Offices of David F. Bragg, P.C. - Austin, TX Steven M. Tipton, Flahive Ogden & Latson - Austin, TX

Friday Afternoon, Sep. 3, 2010

Presiding Officer:

J. Kay Trostle, Smith Trostle LLP - Austin, TX

11:45 am	Luncheon Presentation Break for Hot Lunch Buffet Included in conference registration fee.
12:00 pm 0.75 hr	Deal or No Deal: Leveraging Available Information to Overcome Psychological Barriers to Efficient and Ethical Deals Decision errors are expensive—especially in litigation. Drawing on law, economics and psychology, we explore ways to recognize and reduce such errors while improving communication. Animated outcome scenarios and decision trees focus parties on forward paths. That future focus helps crystallize decisions that may transform impasse to an efficient outcome. Donald R. Philbin Jr., Donald R. Philbin, Jr., P.C. - San Antonio, TX
12:45 pm	Break
1:00 pm 0.50 hr	Winning: Some Reflections and Empirical Observations about Challenging Agency Action It's easy enough to appeal administrative agency action. Just file an original petition that incorporates a laundry-list motion for rehearing. Or broadly request a declaratory judgment that an agency rule is invalid. The harder question is whether and when filing suit is likely to bring any concrete relief for the aggrieved party. This presentation takes a look at suits that have succeeded and those that have not, and suggests factors worth considering before deciding to challenge agency action. Steven Baron, Consulting and Legal Services - Austin, TX

1:30 pm 0.50 hr ethics	<p>Open Government Update</p> <p>Catch up on significant cases regarding the Texas Public Information Act and Open Meetings Act over the last year, including opinions addressing constitutional issues, attorney-client privilege and the proper timing of requests for rulings. Also, get up to speed on Open Records Decisions by the Attorney General, and look ahead to the next legislative session.</p> <p>Susan D. Banowsky, Vinson & Elkins L.L.P - Austin, TX</p>
2:00 pm 0.50 hr	<p>The Scope and Boundaries of Sovereign Immunity after <i>El Paso v. Heinrich</i></p> <p>This session addresses the effect that the <i>Heinrich</i> decision has on the scope of protection offered by sovereign immunity, specifically when a Plaintiff can avoid sovereign immunity by bringing ultra vires claims against government officials in their official capacity, as well as how the relief sought by a Plaintiff (monetary versus equitable relief, and prospective versus retrospective) may/will determine whether a suit is barred by immunity.</p> <p>Michael A. Shaunessy, Sedgwick, Detert, Moran & Arnold LLP - Austin, TX</p>
2:30 pm 1.00 hr	<p>Judges Panel</p> <p>Panelists engage in a round-robin discussion and take questions from the audience.</p> <p>Moderator: Hon. Suzanne Marshall, State Office of Administrative Hearings - Austin, TX</p> <p>Panelists: Hon. John K. Dietz, 250th District Court - Austin, TX</p> <p>Panelists: Hon. Robert Pemberton, 3rd Court of Appeals - Austin, TX</p> <p>Panelists: Hon. Stephen Yelenosky, 345th Judicial Civil District Court - Austin, TX</p>
3:30 pm	<p>Adjourn</p>