

**7<sup>th</sup> Annual Advanced Texas Administrative Law Seminar**  
**August 30-31, 2012 • Sheraton Austin Hotel at the Capitol • Austin, TX**

**Thursday Morning, Aug. 30, 2012**

**Presiding Officer:**

**James W. Checkley Jr.**, Cross Texas Transmission, LLC - Austin, TX

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| 8:00 am             | <b>Registration Opens</b><br><br>Includes continental breakfast.  |
| 8:50 am             | <b>Welcoming Remarks</b>  |
|                     | <b>RECENT CASE DEVELOPMENTS</b>   |
| 9:00 am<br>0.50 hr  | <b>Open Government</b><br><br>An examination of recent developments in the Open Meetings Act and Public Information Act and their impact on practitioners and governmental agencies.<br><br>G. Alan Waldrop, Locke Lord LLP - Austin, TX<br>Lori Anne Fixley Winland, Locke Lord LLP - Austin, TX   |
| 9:30 am<br>0.75 hr  | <b>Motions for Rehearing</b><br><br>An examination of recent decisions concerning motions for rehearing of final agency orders and the need, if any, for amendments to the provisions of the Texas APA that govern the filing and disposition of such motions.<br><br>J. Bruce Bennett, Cardwell, Hart & Bennett, L.L.P. - Austin, TX<br>Dudley D. McCalla, Of Counsel, Jackson Walker L.L.P. - Austin, TX  |
| 10:15 am<br>0.50 hr | <b>Judicial Deference to an Agency's Statutory Interpretation</b><br><br>When reviewing agency decisions, Texas courts often state that the agency's statutory interpretation is entitled to "serious consideration." What exactly does that mean? How much deference is given to the agency? What factors bear on the degree of deference? When is deference not given? This presentation examines last year's opinion by the Texas Supreme Court in <i>Railroad Commission v. Texas Citizens for a Safe Future and Clean Water</i> and how post-Texas Citizens cases have dealt with the issue.<br><br>Steven Baron, Consulting and Legal Services - Austin, TX |
| 10:45 am            | <b>Break</b>  |
| 11:00 am<br>0.50 hr | <b>The Right to a Contested Case</b><br><br>A discussion of developments in the law on the right to obtain a contested case hearing, including standing as an affected person.<br><br>Susan G. Conway, Graves Dougherty Hearon & Moody - Austin, TX   |

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| 11:30 am<br>0.50 hr | <p><b>Sovereign Immunity, Takings, Claims and Ultra Vires Doctrine</b></p> <p>An examination of recent Supreme Court decisions on sovereign immunity and the viability of takings claims and the ultra vires doctrine to overcome governmental immunity from suit.</p> <p>Mary A. Keeney, Graves Dougherty Hearon &amp; Moody - Austin, TX</p> |
| 12:00 pm<br>0.50 hr | <p><b>Evidentiary Mistakes to Avoid</b></p> <p>A discussion of common mistakes made by attorneys in administrative hearings.</p> <p>Hon. Craig R. Bennett, State Office of Administrative Hearings - Austin, TX</p>  |

## Thursday Afternoon, Aug. 30, 2012

### Presiding Officer:

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

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| 12:30 pm                             | <b>Pick up Box Lunch</b>   |
|                                      | <b>LUNCHEON PRESENTATION</b>   |
| 12:45 pm<br>0.75 hr                  | <p><b>SOAH Update</b></p> <p>Hon. Cathleen Parsley, State Office of Administrative Hearings - Austin, TX</p>   |
| 1:30 pm                              | <b>Break</b>   |
| 1:45 pm<br>0.75 hr                   | <p><b>Government Pre-Suit Investigative Powers</b></p> <p>Legal and practical issues in responding to Attorney General investigative demands and state agency investigatory requests for information are covered.</p> <p>James Edward Davis, Locke Lord LLP - Austin, TX<br/>Jon Lelton Gillum, Locke Lord LLP - Austin, TX</p>  |
| 2:30 pm<br>1.00 hr<br>0.50 hr ethics | <p><b>General Counsel Roundtable</b></p> <p>This panel discussion focuses on issues beyond the APA, such as transparency, appropriations and legislative issues, including a discussion of ethical issues such as identifying the client and balancing the roles of advocate and advisor.</p> <p>Moderator:<br/>Ann Bright, Texas Parks and Wildlife Department - Austin, TX<br/>Panelists:<br/>Steve Aragon III, Texas Health and Human Services Commission - Austin, TX<br/>Panelists:<br/>Kimberly L. Kiplin, Austin, TX<br/>Panelists:<br/>Leslie Brad Trobman, Texas Commission on Environmental Quality - Austin, TX<br/>Panelists:<br/>William F. Warnick, Texas General Land Office - Austin, TX</p> |
| 3:30 pm                              | <b>Break</b>   |

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| 3:45 pm<br>0.50 hr        | <p><b>The Yeses, Nos and Who Knows to a Protest Proceeding Involving a Permit or License from TABC</b></p> <p>Fundamentals regarding a protest to the application or renewal of a license before a county judge or a permit before the State Office of Administrative Hearings (SOAH).</p> <p>Emily E. Helm, Texas Alcoholic Beverage Commission - Austin, TX<br/>John William Sedberry, Texas Alcoholic Beverage Commission - Austin, TX<br/>Panelist:<br/>Judith L. Kennison, Texas Alcoholic Beverage Comm - Austin, TX</p> |
| 4:15 pm<br>1.00 hr ethics | <p><b>What Judges Think of Litigation Ethics: A Survey of State and Federal Opinions</b></p> <p>What judges think of lawyer conduct.</p> <p>Claude E. Ducloux, Hill, Ducloux, Carnes &amp; de la Garza - Austin, TX</p>  |
| 5:15 pm                   | <b>Adjourn</b>   |

## Friday Morning, Aug. 31, 2012

### Presiding Officer:

**J. Kay Trostle**, Smith Trostle & Huerta LLP - Austin, TX

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| 8:30 am                   | <p><b>Conference Room Opens</b></p> <p>Includes continental breakfast.</p>  |
| 9:00 am<br>0.50 hr        | <p><b>Electronic Confidentiality Issues in the Practice of Law</b></p> <p>Coverage of the ABA Commission on Ethics 20/20 work papers on technology and confidentiality, including a practitioner's duty to prevent inadvertent and unauthorized disclosures and unauthorized access to information relating to representation of client, in light of Texas Disciplinary Rules of Professional Conduct Rule 1.05.</p> <p>Janet I. Monteros, El Paso County Attorney's Office - El Paso, TX</p> |
| 9:30 am<br>0.75 hr ethics | <p><b>Pro Bono Opportunities in Administrative Law</b></p> <p>This session explores the variety of administrative law related pro bono opportunities available for attorneys including an attorney's ethical obligation to provide pro bono services.</p> <p>Steven P. Elliot, Volunteer Legal Services of Central Texas - Austin, TX<br/>Susan Henricks, Hull Henricks LLP - Austin, TX<br/>Paul D. Trahan, Fulbright &amp; Jaworski, L.L.P. - Austin, TX</p>                                |
| 10:15 am                  | <b>Break</b>  |

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| 10:30 am<br>1.00 hr ethics | <p><b>The Texas Attorney Discipline Process</b></p> <p>An overview of the Texas attorney discipline process, current issues and resources available to assist attorneys in their practice.</p> <p>Linda A. Acevedo, State Bar of Texas - Austin, TX<br/>Laura Kathryn Bayouth Popps, State Bar of Texas - Austin, TX</p> |
| 11:30 am<br>0.50 hr        | <p><b>E-Discovery: Issues and Practical Management Strategies</b></p> <p>This presentation identifies developing issues in E-Discovery and presents some practical management strategies to address those issues.</p> <p>Matthew C. Henry, Vinson &amp; Elkins LLP - Dallas, TX</p>                                      |

## Friday Afternoon, Aug. 31, 2012

**Presiding Officer:**  
**Kimberly L. Kiplin**, Austin, TX

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| 12:00 pm            | <b>Pick up Lunch Buffet</b>  |
|                     | <b>LUNCHEON PRESENTATION</b>   |
| 12:15 pm<br>0.50 hr | <p><b>Hot Topics Facing the 83rd Legislature</b></p> <p>Compelling government regulation and operations issues face the 83rd Legislature. Budget, public education, higher education, juvenile justice reform will be front and center. Other lesser-known issues are lining up for attention through interim committee work including state agency procurement and more.</p> <p>Sherri R. Greenberg, The University of Texas at Austin - Austin, TX</p>   |
| 12:45 pm            | <b>Break</b>   |
| 1:00 pm<br>1.00 hr  | <p><b>Should SOAH Make Final Decisions?</b></p> <p>Legislation has been proposed in the last three sessions of the Texas Legislature that would give SOAH authority to issue final orders in certain contested cases. The presenters provide historical context of the development of decision making authority in Texas administrative law jurisprudence, and discuss the pros and cons of assigning final decision making authority to SOAH. Time is available for your questions at the end of the presentation.</p> <p>Panelists:<br/>John M. Hohengarten, Office of the Attorney General - Austin, TX<br/>Panelists:<br/>Dudley D. McCalla, Of Counsel, Jackson Walker L.L.P. - Austin, TX<br/>Panelists:<br/>Jon Eugene Porter Jr., McDonald Mackay &amp; Weitz LLP - Austin, TX</p> |

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| 2:00 pm<br>0.75 hr | <p><b>Who's the Prevailing Party?</b></p> <p>The 82nd Legislature amended Labor Code §413.0312, relating to review of medical fee disputes, to require the State Office of Administrative Hearings (SOAH) to identify the "non-prevailing" party, from whom the Texas Department of Insurance - Division of Workers' Compensation will collect the costs of services provided to SOAH. The term "non-prevailing party" is not defined in the Texas Labor Code or the Texas Administrative Code. This topic explores the concept of prevailing parties under this statute and others providing for fee shifting in administrative law proceedings, along with some practical aspects of this recent development.</p> <p>Thomas B. Hudson Jr., Graves Dougherty Hearon &amp; Moody - Austin, TX</p> |
| 2:45 pm<br>1.00 hr | <p><b>Judicial Panel</b></p> <p>Panelists engage in a round-robin discussion and respond to participants in a short, structured Q&amp;A.</p> <p>Moderator:<br/>Hon. Hunter W. Burkhalter, State Office of Administrative Hearings - Austin, TX</p> <p>Panelists:<br/>Hon. Debra Lehrmann, Supreme Court of Texas - Austin, TX</p> <p>Panelists:<br/>Hon. Bob Pemberton, Third Court of Appeals - Austin, TX</p> <p>Panelists:<br/>Hon. Timothy M. Sulak, 353rd Judicial District Civil Court - Austin, TX</p>   |
| 3:45 pm            | <p><b>Adjourn</b></p>   |