

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

11TH ANNUAL
**ADVANCED TEXAS
ADMINISTRATIVE LAW SEMINAR**



September 1–2, 2016
AT&T Conference Center ■ Austin, Texas

\$220 Government Attorney Early Registration Rate

Earn up to 14.50 Hours of Credit Including 2.50 Hours of Ethics Credit
TX Legal Specialization Credit Approved for Administrative Law

www.utcle.org ■ 512.475.6700

11TH ANNUAL
ADVANCED TEXAS ADMINISTRATIVE LAW SEMINAR

September 1–2, 2016 ■ AT&T Conference Center ■ Austin, Texas

Earn up to 14.50 Hours of Credit Including 2.50 Hours of Ethics Credit
TX Legal Specialization Credit Approved for Administrative Law

THURSDAY MORNING, SEP. 1, 2016

Presiding Officer:

Hon. Lesli Ginn, State Office of
Administrative Hearings, Austin, TX

7:30 a.m. Registration Opens

Includes continental breakfast.

8:20 a.m. Welcoming Remarks

8:30 a.m. .50 hr

Case Law Update: Part I

Discuss significant administrative law cases issued during the last year.

Andres S. Medrano, Gardere Wynne Sewell LLP,
Austin, TX
Laurie Ratliff, Ikard Golden Jones P.C., Austin, TX

9:00 a.m. .50 hr

Open Government Update

Review recent legislation and judicial decisions concerning the Texas Public Information Act and the Texas Open Meetings Act.

Kimberly L. Fuchs, Office of the Attorney General,
Austin, TX
Lori Anne Fixley Winland, Locke Lord LLP, Austin, TX

9:30 a.m. .50 hr

Motion for Rehearing Update

An examination of the intent and key provisions of Senate Bill 1267, which recently amended the notice and rehearing provisions of the Texas Administrative Procedure Act.

John H. H. Bennett, Walker Keeling LLP, Victoria, TX

10:00 a.m. .50 hr

Contracting after the 2015 Legislative Session: New Reporting and Oversight Requirements

A discussion of the significant legislation relating to contracting with governmental bodies enacted by the 84th Texas Legislature, including new requirements for monitoring and disclosures.

Ann Bright, Texas Parks and Wildlife Department,
Austin, TX
Sydney W. Falk Jr., Bickerstaff Heath Delgado Acosta
LLP, Austin, TX

10:30 a.m. Break

10:45 a.m. .50 hr

Chapter 55 Implementation: Veterans and Licensing

A brief history and discussion of implementing legislation designed to bridge the gap for veterans reentering the workforce, with practice tips for expediting veteran licensure.

Moderator:

Douglas A. Jennings, Texas Department of Licensing and Regulation, Austin, TX

Panelists:

Virginia S. Fields, Texas Department of Licensing and Regulation, Austin, TX
Randy Nesbitt, Texas Department of Licensing and Regulation, Austin, TX

11:15 a.m. .75 hr | .25 hr ethics

Licensing: Temporary Suspensions and Convictions

Explore the current landscape of temporary suspensions and criminal dispositions. Learn what the government has to prove in these proceedings, develop effective rebuttal strategies, and understand the difference between deferred adjudication and deferred prosecution.

Franklin Hopkins, Germer Gertz Beaman & Brown
PLLC, Austin, TX
Joseph T. Marcee, Law Office of Joseph T. Marcee,
Georgetown, TX

12:00 p.m. .50 hr

Top Ten Tips for Drafting Legislation

In anticipation of the upcoming legislative session, get the expert's advice on some best practices for preparing and analyzing bills and amendments.

Erin Smith, Texas Legislative Council, Austin, TX

12:30 p.m. Pick Up Lunch

Included in registration.

THURSDAY AFTERNOON

Presiding Officer:

Janet I. Monteros, Texas Health and
Human Services Commission, El Paso, TX

LUNCHEON PRESENTATION

12:50 p.m. .50 hr | .25 hr ethics

The Civility Oath

Recent changes to the Texas Lawyer's Oath put the state's citizens firmly behind the idea that Texas lawyers and judges should conduct themselves with the highest standards of civility and professionalism. Hear one legislator's take on the new oath and on the current state of the practice.

Kirk Watson, Texas State Senate, District 14, Austin, TX

1:20 p.m. Break

1:35 p.m. .50 hr

Challenges to Agency Rules

The Legislature creates agencies and grants them rulemaking authority. Statutes also provide an opportunity to comment on proposed rules, to require agencies to justify their rules, and to challenge rules believed to impair rights or privileges of affected entities. Hear a review of the authority granted to agencies and examine the rulemaking challenges in the current landscape.

Dudley D. McCalla, Of Counsel, Jackson Walker LLP,
Austin, TX

2:05 p.m. .50 hr

What is a "Rule"? Navigating a Notoriously Muddled Corner(stone) of Texas Administrative Law

When must a Texas administrative agency use the APA's notice-and-comment rulemaking procedures? When is a statement by an agency or an agency official considered to be a rule that can be challenged in an APA declaratory judgment action? A review of the case law sheds some light on these mysteries.

Steven Baron, Baron Consulting and Legal Services,
Austin, TX

2:35 p.m. 1.00 hr

Rules and Rulemaking: The Need and Prospects for Clarification of Procedural Requirements and the Opportunities for Substantive Challenges

Is Texas law on rules and rulemaking procedures as muddled as some say? What are the prospects for clarification by the Texas Supreme Court? When can a rule be challenged on substantive due course of law grounds under the Court's decision in *Patel v. Texas Department of Licensing and Regulation*? A panel of experienced administrative law practitioners discusses these issues.

Moderator:

Steven Baron, Baron Consulting and Legal Services, Austin, TX

Panelists:

Dudley D. McCalla, Of Counsel, Jackson Walker LLP, Austin, TX
Kristofer S. Monson, Office of the Attorney General, Austin, TX
Donald N. Walker, Stone Loughlin & Swanson, LLP, Austin, TX

3:35 p.m. Break

3:45 p.m. .50 hr

Texas v. United States: Procedural Lessons Learned

Explore the important procedural differences between state and federal administrative law practice.

Linda B. Secord, Office of the Attorney General, Austin, TX
Mark L. Walters, Jackson Walker LLP, Austin, TX

4:15 p.m. .50 hr

State Office of Administrative Hearings Update

Hear an update on developments at SOAH, including implementation of Sunset recommendations, rule amendments, plans for an electronic case management system, and other items of interest.

Hon. Lesli Ginn, State Office of Administrative Hearings, Austin, TX
Hon. Tom Walston, State Office of Administrative Hearings, Austin, TX

M
C
L
E

This course has been approved for Minimum Continuing Legal Education credit by the State Bar of Texas Committee on MCLE in the amount of 14.50 hours, of which 2.50 credit hours will apply to legal ethics/professional responsibility credit. The University of Texas School of Law is a State Bar of California approved MCLE provider (#1944), and an Oklahoma Bar Association MCLE presumptively-approved provider (#169).

4:45 p.m. .75 hr

State Office of Administrative Hearings Judicial Panel

A discussion of recent developments at SOAH, including the use of mass dockets, new procedural rules, access for self-represented litigants, and other procedural matters.

Hon. Hunter Burkhalter, State Office of Administrative Hearings, Austin, TX
Hon. Roy Scudday, State Office of Administrative Hearings, Austin, TX
Hon. Rebecca Smith, State Office of Administrative Hearings, Austin, TX
Hon. Holly Vandrovec, State Office of Administrative Hearings, Austin, TX

5:30 p.m. Adjourn to Reception

**NETWORKING RECEPTION
5:30 P.M. TO 6:30 P.M.**

Join us for drinks and hors d'oeuvres with program faculty and attendees.

**THANK YOU TO OUR
RECEPTION SPONSOR**

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

FRIDAY MORNING, SEP. 2, 2016

Presiding Officer:

Susan Henricks, Texas Board of Law Examiners, Austin, TX

7:30 a.m. Conference Room Opens

Includes continental breakfast.

8:30 a.m. .50 hr

Case Law Update: Part II

A continuation of the discussion of significant administrative law cases issued during the last year.

Andres S. Medrano, Gardere Wynne Sewell LLP, Austin, TX
Laurie Ratliff, Ikard Golden Jones P.C., Austin, TX

9:00 a.m. .50 hr ethics

Who is Your Client?

A discussion of the role of the Attorney General in the attorney-client relationship.

James E. Davis, Office of the Attorney General, Austin, TX

9:30 a.m. .50 hr

Governmental Immunity Review

A review of recent Supreme Court of Texas decisions on governmental immunity, with a focus on the Court's application of the governmental-proprietary dichotomy in the context of contract claims.

Emily R. Jolly, Enoch Keever PLLC, Austin, TX

10:00 a.m. .50 hr

Use or Abuse of Social Media by Texas Administrative Agencies

On December 14, 2015, the U.S. General Accounting Office issued Ruling B-326944 regarding application of federal publicity or propaganda and anti-lobbying provisions to certain social media activities of the Environmental Protection Agency. Is this a uniquely federal issue, or a new concern for agency counsel in Texas? What law or policies restrict use of social media by Texas agencies?

Steve Kosub, San Antonio Water System, San Antonio, TX

10:30 a.m. Break

10:45 a.m. .50 hr ethics

Data Breaches

Best practices for avoiding breaches and addressing them when they occur.

Claudia V. Escobar, Texas Department of Information Resources, Austin, TX
April G. Griffin, Office of the Attorney General, Austin, TX

11:15 a.m. .50 hr ethics

Impaired Attorneys and the Texas Lawyers' Assistance Program

Learn about the lifesaving services of the Texas Lawyers Assistance Program, and the Sheeran Crowley Memorial Trust, which assist lawyers, judges and law students who are dealing with substance abuse and/or mental health disorders. These disorders can impact a law practice—hear about services available to restore the lawyer's life and practice to one of the highest ethical standards.

Allan K. DuBois, Immediate Past President, State Bar of Texas, Austin, TX

11:45 a.m. .50 hr

Agency Spotlight: Employees Retirement System of Texas (ERS)

Hear an overview of current activity at ERS, whose mission is to provide competitive benefits in support of the State of Texas workforce. The ever-changing benefits and budget landscape offers continual challenges in meeting this mission, with real impacts to employees and their families.

Porter Wilson, Executive Director, Employees Retirement System of Texas, Austin, TX

12:15 p.m. Pick Up Lunch

Included in registration.

Presiding Officer:

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

LUNCHEON PRESENTATION

12:35 p.m. .50 hr ethics

Pro Bono Opportunities

Learn about the advocacy and volunteer opportunities at Disability Rights Texas (DRTx), the federally-designated protection and advocacy organization for the State of Texas. Hear about the services available to Texans living with disabilities and the pro bono volunteer lawyer opportunities to work on DRTx cases.

Cicely C. Reid, Disability Rights Texas, Houston, TX

1:05 p.m. Break

1:20 p.m. .50 hr

The Meaning of Inaction

Explore the concept of legislative acquiescence in Texas law.

Hon. Lesli Ginn, State Office of Administrative Hearings, Austin, TX

1:50 p.m. .50 hr

Agency Deference at the Texas Supreme Court

An overview of the Court's view of agency deference and the interplay between statutory construction and agency deference.

James E. Davis, Office of the Attorney General, Austin, TX
 Brantley D. Starr, Office of the Attorney General, Austin, TX

2:20 p.m. .50 hr

Forcing the Agency's Hand: Right to Final Agency Action and Judicial Review of Temporary Suspension Orders post-Wiseman

Analyze issues related to temporary agency action, including the application of the exhaustion of administrative remedies doctrine, other practical effects, and appeal rights after the *Wiseman* decision.

Rodrigo Montes, Montes Law Practice, Austin, TX

2:50 p.m. 1.00 hr

Judicial Panel

An unscripted round-robin discussion.

Moderator:

Hon. Suzanne Formby Marshall, State Office of Administrative Hearings, Austin, TX

Panelists:

Hon. Jeffrey S. Boyd, The Supreme Court of Texas, Austin, TX
 Hon. Jeffrey L. Rose, Third Court of Appeals, Austin, TX
 Hon. Amy Clark-Meachum, 201st Judicial District Civil Court, Austin, TX

3:50 p.m. Adjourn

HON. LESLI GINN*—CHAIR
 State Office of Administrative Hearings
 Austin, TX

STEVEN BARON*
 Baron Consulting and Legal Services
 Austin, TX

J. BRUCE BENNETT*
 Cardwell, Hart & Bennett, L.L.P.
 Austin, TX

JOHN H. H. BENNETT
 Office of Senator Craig Estes
 Austin, TX

HON. JEFFREY S. BOYD
 The Supreme Court of Texas
 Austin, TX

ANN BRIGHT*
 Texas Parks and Wildlife Department
 Austin, TX

LOU BRIGHT*
 Martin Frost & Hill
 Austin, TX

HON. HUNTER BURKHALTER
 State Office of Administrative Hearings
 Austin, TX

JAMES W. CHECKLEY JR.*
 Cross Texas Transmission, LLC
 Austin, TX

HON. AMY CLARK-MEACHUM
 201st Judicial District Civil Court
 Austin, TX

JAMES E. DAVIS
 Office of the Attorney General
 Austin, TX

ALLAN K. DUBOIS
 Immediate Past President State Bar
 of Texas
 Austin, TX

WILLIAM D. DUGAT III*
 Bickerstaff Heath Delgado Acosta LLP
 Austin, TX

CLAUDIA V. ESCOBAR
 Texas Department of
 Information Resources
 Austin, TX

SYDNEY W. FALK JR.
 Bickerstaff Heath Delgado Acosta LLP
 Austin, TX

VIRGINIA S. FIELDS
 Texas Department of Licensing and
 Regulation
 Austin, TX

HON. SUZANNE FORMBY MARSHALL
 State Office of Administrative Hearings
 Austin, TX

KIMBERLY A. FROST*
 Martin Frost & Hill
 Austin, TX

KIMBERLY L. FUCHS
 Office of the Attorney General
 Austin, TX

JON L. GILLUM*
 Locke Lord LLP
 Austin, TX

APRIL G. GRIFFIN*
 Office of the Attorney General
 Austin, TX

SUSAN HENRICKS*
 Texas Board of Law Examiners
 Austin, TX

FRANKLIN HOPKINS*
 Germer Gertz Beaman & Brown PLLC
 Austin, TX

DOUGLAS A. JENNINGS
 Texas Department of Licensing and
 Regulation
 Austin, TX

EMILY R. JOLLY
 Enoch Keever PLLC
 Austin, TX

HON. J. WOODFIN "WOODIE"
 JONES*
 Alexander Dubose Jefferson &
 Townsend LLP
 Austin, TX

KIMBERLY L. KIPLIN*
 Law Office of Kimberly L. Kiplin
 Austin, TX

STEVE KOSUB*
 San Antonio Water System
 San Antonio, TX

JOSEPH T. MARCEE
 Law Office of Joseph T. Marcee
 Georgetown, TX

DUDLEY D. MCCALLA*
 Of Counsel Jackson Walker LLP
 Austin, TX

ANDRES S. MEDRANO*
 Gardere Wynne Sewell LLP
 Austin, TX

LEILA MELHEM*
 Winstead PC
 Austin, TX

KRISTOFER S. MONSON
 Office of the Attorney General
 Austin, TX

JANET I. MONTEROS*
 Texas Health and Human Services
 Commission
 El Paso, TX

RODRIGO MONTES
 Montes Law Practice
 Austin, TX

RANDY NESBITT
 Texas Department of Licensing and
 Regulation
 Austin, TX

THOMAS M. POLLAN*
 Bickerstaff Heath Delgado Acosta LLP
 Austin, TX

LAURIE RATLIFF
 Ikard Golden Jones P.C.
 Austin, TX

CICELY C. REID
 Disability Rights Texas
 Houston, TX

HON. JEFFREY L. ROSE
 Third Court of Appeals
 Austin, TX

TED A. ROSS*
 Office of the Attorney General
 Austin, TX

HON. ROY SCUDDAY
 State Office of Administrative Hearings
 Austin, TX

LINDA B. SECORD*
 Office of the Attorney General
 Austin, TX

HON. HOWARD S. SEITZMAN*
 State Office of Administrative Hearings
 Austin, TX

ERIN SMITH
 Texas Legislative Council
 Austin, TX

HON. REBECCA SMITH
 State Office of Administrative Hearings
 Austin, TX

HON. SARAH E. STARNES*
 State Office of Administrative Hearings
 Austin, TX

BRANTLEY D. STARR
 Office of the Attorney General
 Austin, TX

J. KAY TROSTLE*
 Smith Trostle & Huerta LLP
 Austin, TX

HON. HOLLY VANDROVEC
 State Office of Administrative Hearings
 Austin, TX

DONALD N. WALKER*
 Stone Loughlin & Swanson, LLP
 Austin, TX

HON. TOM WALSTON
 State Office of Administrative Hearings
 Austin, TX

MARK L. WALTERS
 Jackson Walker LLP
 Austin, TX

KIRK WATSON
 Texas State Senate, District 14
 Austin, TX

PORTER WILSON
 Employees Retirement System
 of Texas
 Austin, TX

LORI ANNE FIXLEY WINLAND
 Locke Lord LLP
 Austin, TX

*Planning Committee member

HOW TO REGISTER

Online:
www.utcle.org/conferences/AL16

Mail:
The University of Texas
School of Law
Attn. CLE
PO Box 7759
Austin, TX 78713-7759

Fax:
512.475.6876

Questions? 512.475.6700

*Dietary requirements or Accessibility needs?
Call 512.475.6700 or email service@utcle.org*

REGISTRATION BENEFITS

Before the Conference: Access course materials—downloadable PDFs of papers and slides—and speaker and attendee roster in *Your Briefcase* 48 hours before the conference.

After the Conference: Unlimited access to final, complete course materials—downloadable PDFs of papers and slides—in *Your Briefcase*.

eConference: Complimentary 180-day access to the eConference—with papers, slides, and audio—for CLE credit (TX and CA) you may have missed at the live conference. Available in *Your Briefcase* 6–8 weeks after the conference.

TX MCLE Credit Reporting: UT Law CLE can report credit on your behalf directly to the State Bar of Texas. Track your Texas MCLE credit claimed and reported through UT Law CLE in *Your Account*.

Your Account: Activate *Your Account* online at www.utcle.org. Your UT Law CLE Account is created for you as a first-time conference registrant (mail and fax registrations) with the email address you provide.

IN-HOUSE AND CONFERENCECOMPLETE MATERIALS

In-House

Bring the conference in-house. Audio presentations and written materials for learning with your colleagues—for Texas MCLE credit. We manage the accreditation process from approval to reporting. Custom packages available.

ConferenceComplete Materials

Comprehensive Binder and Audio products from the live conference—for research and self-study. Available for download and shipping.

REGISTRATION FORM

PLEASE PRINT CLEARLY

AL16

Bar Card# _____ TX Other State: _____ N/A

Name [Mr. / Ms.] _____

Firm _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Fax _____

Registrant's Email (required) _____

Assistant's Email (optional) _____

Invoices, confirmations and receipts are emailed to these addresses.

REGISTRATION—Includes Course Materials, Thursday and Friday Luncheon Presentations and Thursday Evening Networking Reception

Special group registration rates available. Call 512.475.6700.

1. Select Registration Type

Individual

- Registration by Wednesday, August 24 \$450
 Registration after Wednesday, August 24 \$500

Government Attorney

- Registration by Wednesday, August 24 \$220
 Registration after Wednesday, August 24 \$270

Administrative and Public Law Section Member

Member

- Registration by Wednesday, August 24 \$425
 Registration after Wednesday, August 24 \$475

Member–Government Attorney

- Registration by Wednesday, August 24 \$195
 Registration after Wednesday, August 24 \$245

Judge

- Please list Title and Court/Agency _____
 Registration—complimentary no charge

2. Select Course Materials Format

- Electronic Course Binder PDF Download Only (included with registration)
 PURCHASE: Printed Course Binder (available through August 24) \$27.06
Price of binder includes 8.25% sales tax.

IN-HOUSE—For Texas MCLE Credit

ConferenceComplete package includes Audio CD Set plus a Printed Binder and MCLE Reporting Form for each participant. Available for delivery 3–5 weeks after conference date. Shipping included.

- In-House for 2 \$850
 _____ Additional participant(s) for \$275 each \$ _____

CONFERENCECOMPLETE[†] MATERIALS—For Research and Self-Study

Comprehensive Binder and Audio products from the live conference. Available for delivery 3–5 weeks after conference date. Shipping included.

- eBinder Download (PDF) \$225
 Printed Binder \$275
 Audio Download (MP3) \$175
 Audio CD Set \$225

[†]Texas customers—add 8.25% sales tax or include an Exemption Certificate \$ _____
Sales tax will be invoiced separately on taxable orders for which payment does not include tax.

TOTAL \$ _____

METHOD OF PAYMENT

- Check (make check payable to The University of Texas at Austin)
 VISA MasterCard American Express P.O.

Card /P.O. # _____ Exp. Date _____ / _____
 (mm/yy)

Authorized Signature _____

Visit

www.utcle.org

Email

service@utcle.org

Call

512.475.6700

Follow

@UTLawCLE

Tweet

#UTLawAdminLaw

AUSTIN

September 1–2, 2016

CONFERENCE LOCATION



AT&T Conference Center

1900 University Avenue
Austin, Texas
512.404.3600

Parking:

Free daily self-parking at UT garages. Separate fees apply for valet and overnight parking.

KEY DATES

August 24, 2016

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

August 26, 2016

last day for cancellation (full refund)

August 29, 2016

last day for cancellation (partial refund)
\$50 processing fee applied

September 1, 2016, 8:20 a.m.

Conference begins

REASONS TO ATTEND

The Advanced Texas Administrative Law Seminar brings together members of the judiciary, as well as regulatory and academic communities, to engage with practitioners to discuss the latest legislative and case law updates, rule changes and other timely topics.

2016 program highlights include:

- Discussion of significant administrative law cases issued during the last year, plus updates on open government legislation, motions for rehearing, governmental immunity, and developments at the State Office of Administrative Hearings
- Exploration of hot topics, including the *Use or Abuse of Social Media by Texas Administrative Agencies*, *Data Breaches*, and *Contracting After the 2015 Legislative Session*
- *Agency Spotlight: Employees Retirement System of Texas* with **Porter Wilson**, Executive Director
- *Top Ten Tips for Drafting Legislation* with **Erin Smith** of the Texas Legislative Counsel
- A deep dive into the rules and rulemaking, including a panel discussion on *Rules and Rulemaking: The Need and Prospects for Clarification of Procedural Requirements and the Opportunities for Substantive Challenges*
- **Hon. Suzanne Formby Marshall** moderates the annual unscripted round-robin discussion among members of the judiciary, featuring **Hon. Jeffrey S. Boyd**, **Hon. Jeffrey L. Rose** and **Hon. Amy Clark-Meachum**
- Multiple opportunities to network and connect, including a Thursday Evening Networking Reception!

ADMINISTRATIVE AND PUBLIC LAW SECTION OF THE STATE BAR OF TEXAS

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