

18th Annual Conference on State and Federal Appeals

May 29-30, 2008 • Four Seasons Hotel • Austin, TX

Thursday Morning, May 29, 2008

Presiding Officer:

Pamela Stanton Baron, Attorney at Law - Austin, TX

8:00 am	Registration Opens Includes continental breakfast.
8:35 am	Welcoming Remarks
8:45 am 0.42 hr	Recent Developments in Arbitration A look at recent developments limiting attacks on arbitration awards with a focus on effective challenges that remain viable. <i>PLEASE NOTE: This session was previously scheduled for Thursday at 8:45 a.m.</i> Christopher D. Kratovil, K&L Gates LLP - Dallas, TX
9:10 am 0.50 hr	Procedure Update An update of case law affecting Texas civil procedure with an emphasis on decisions implicating appellate practice. Elaine A. Carlson, South Texas College of Law - Houston, TX
9:40 am 0.33 hr	Jury Charge Update Are recent significant jury charge decisions reconcilable? An examination of the case law with tips for navigating the charge when the law is not entirely clear. Daryl L. Moore, Attorney at Law - Houston, TX
10:00 am 0.50 hr	Findings of Fact and Conclusions of Law: An Exercise in Frustration Are findings and conclusions really all that helpful or do they just get in the way on appeal? A look at common problems and how to minimize their impact on your mental health and chances of success on appeal. David E. Keltner, Kelly Hart & Hallman LLP - Fort Worth, TX
10:30 am	Break
10:45 am 0.67 hr	Sovereign Immunity/Statutory Construction An unrestrained, no-holds-barred analysis of recent cases and trends involving governmental immunity and statutory construction and how they affect both sides of our appellate practice. Philip Durst, Deats, Durst, Owen & Levy, P.L.L.C. - Austin, TX

11:15 am 0.42 hr	<p>The Supremes and the Supremacy Clause: A New Heyday for Federal Preemption under the Roberts Court?</p> <p>A look at recent decisions from the U.S. Supreme Court and how they impact practice in the Texas courts.</p> <p>Co-Authors: Stephanie Coon, Baker Botts LLP - Houston, TX Co-Authors: Trisha English, Baker Botts - Houston, TX Thomas R. Phillips, Baker Botts L.L.P. - Austin, TX</p>
11:40 am 0.50 hr	<p>Has the Fat Lady Sung? Punitive Damages in an Age of Tort Reform</p> <p>An exploration of developments in the law of punitive damages in the wake of the U.S. Supreme Court's decision in Philip Morris v. Williams, from both the plaintiff and the defense perspectives.</p> <p>J. Brett Busby, Bracewell & Giuliani LLP - Houston, TX Brent M. Rosenthal, Baron & Budd P.C. - Dallas, TX</p>

Thursday Afternoon, May 29, 2008

Presiding Officer:

Jane M. N. Webre, Scott, Douglass & McConnico, L.L.P. - Austin, TX

12:10 pm	Lunch on your Own
1:55 pm 0.92 hr 0.50 hr ethics	<p>Ethical Pitfalls for the Appellate Lawyer</p> <p>Public and private reprimands, suspensions, disbarments, legal malpractice lawsuits, fee forfeiture proceedings, and damage to professional reputation. These are just seven out of the top ten reasons you shouldn't miss this timely review of cutting-edge ethical issues that are of particular interest to appellate attorneys.</p> <p>Scott Rothenberg, Law Offices of Scott Rothenberg - Houston, TX</p>
2:50 pm 0.67 hr	<p>Oral Argument: Anticipating and Handling the Tough Questions at the Supreme Court of Texas</p> <p>An examination of the types of questions frequently asked, the justices who ask them, and strategies for responses, as demonstrated by video clips from recent arguments before the court.</p> <p>Dana Livingston, Alexander Dubose & Townsend LLP - Austin, TX Amy Schumacher, The Supreme Court Of Texas - Austin, TX</p>
3:30 pm	Break
3:45 pm 0.50 hr	<p>Mandamus: Not a Four Letter Word</p> <p><i>AIU</i> and <i>Prudential</i> marked turning points in the way the Texas Supreme Court thinks about and applies mandamus as a procedural tool. But has the viewpoint filtered its way down to the courts of appeals, and how should practitioners adjust their approach accordingly?</p> <p>Kurt Kuhn, Brown McCarroll, L.L.P. - Austin, TX</p>

4:15 pm 0.33 hr	Effective Strategies for Representing Appellees Cross-points, cross-appeals, and other strategies for appellees to hold on to trial court victories in the court of appeals. Anne M. Johnson, Haynes and Boone, LLP - Dallas, TX
4:35 pm 0.75 hr 0.25 hr ethics	Practice Before the Courts of Appeals: Short Topics Three justices from three courts of appeals focus on aspects of practice before their courts. Challenging a civil contempt order: Hon. David Gaultney, Beaumont, TX Avoidable and unavoidable reversals: Hon. Jane Bland, Houston, TX Effective motions for rehearing: Hon. Jan P. Patterson, Austin, TX Hon. Jane Bland, 1st Court of Appeals - Houston, TX Hon. David B. Gaultney, 9th Court of Appeals - Beaumont, TX Hon. Jan P. Patterson, 3rd Court of Appeals - Austin, TX
5:20 pm	Adjourn

Friday Morning, May 30, 2008

Presiding Officer:

Hon. Diane M. Henson, 3rd Court of Appeals - Austin, TX

8:45 am 0.33 hr ethics	Lead Appellate Counsel Opportunities: The Pro Bono Pilot Projects The State Bar Appellate Section has initiated pilot programs in which the Supreme Court of Texas and the Third Court of Appeals can identify cases where pro bono assistance would be helpful to the court. Find out how you can volunteer, gain experience with the help of a mentor, meet certification requirements, and help others all at the same time. Marcy Hogan Greer, Fulbright & Jaworski L.L.P. - Austin, TX Jeffrey S. Levinger, Hankinson Levinger LLP - Dallas, TX
9:05 am 0.33 hr	Attorney's Fees Update Can you get them? Can you keep them? An examination of recent developments and ethical considerations affecting the recovery of attorney's fees in state court. Ronald C. Lewis, Marshall & Lewis, LLP - Houston, TX
9:25 am 0.42 hr ethics	When Advocacy Becomes Unethical In both the trial court and on appeal, an advocate can cross the line. A district judge with the power to sanction offers advice on how to locate the line and stay on the ethical side. <i>PLEASE NOTE: This session was previously scheduled for Friday at 9:20 a.m.</i> Hon. Sharon Sue McCally, 334th District Court, Harris County - Houston, TX

9:50 am 0.50 hr	<p>Petition Practice Before the Supreme Court of Texas: A Decade Under the New Rules</p> <p>Based on input from the justices and their staff, a look at developments in the petition process over the last 10 years, with a focus on the evolution of effective techniques for both petitioners and respondents.</p> <p>Douglas W. Alexander, Alexander Dubose & Townsend LLP - Austin, TX Lori Ploeger, Cooley Godward Kronish - Palo Alto, CA</p>
10:20 am	Break
10:35 am 0.50 hr	<p>Texas Supreme Court Statistics and Trends</p> <p>Two close watchers of the Texas Supreme Court analyze the state of the Court's docket and debate current trends.</p> <p>Pamela Stanton Baron, Attorney at Law - Austin, TX David M. Gunn, Beck Redden & Secrest, LLP - Houston, TX</p>
11:05 am 1.00 hr	<p>Practice Before the Supreme Court of Texas: Short Topics</p> <p>The justices examine four aspects of practice before the court and discuss the effect of pending rule changes.</p> <p>Effective motions for rehearing: Hon. Wallace B. Jefferson, Austin, TX Rules update: Hon. Nathan L. Hecht, Austin, TX Per curiam opinions: Hon. Scott Brister, Austin, TX Making the most of oral argument: Hon. Philip W. "Phil" Johnson, Austin, TX</p> <p>Moderator: Lisa Bowlin Hobbs, Vinson & Elkins - Austin, TX</p>

Friday Afternoon, May 30, 2008

Presiding Officer:

Samara Kline, Baker Botts L.L.P. - Dallas, TX

12:05 pm 1.00 hr	<p>Lunch with the Judiciary</p> <p>A unique opportunity to meet and discuss issues with members of the judiciary. Please select "Sponsored Lunch with the Judiciary" on the registration form if you plan to attend (additional fee).</p> <p>Special Thanks to Our Sponsors: Alexander Dubose Jones & Townsend LLP Baker Botts L.L.P. Brown McCarroll L.L.P. Haynes and Boone, LLP</p>
1:05 pm	Break

1:35 pm 0.42 hr 0.25 hr ethics	<p>Rehearing Procedures Before the Fifth Circuit</p> <p>A Fifth Circuit judge discusses ethical strategies that will improve your chances for success.</p> <p>Materials By: Beth Ellen Klusmann, U.S. Court of Appeals, Fifth Circuit - San Antonio, TX Hon. Edward C. Prado, U.S. Court of Appeals, Fifth Circuit - San Antonio, TX</p>
2:00 pm 0.42 hr	<p>Fifth Circuit Update</p> <p>A member of the federal appellate court provides an update on significant decisions of the Fifth Circuit from the past year.</p> <p>Materials By: Edward Cantu, U.S. Courts of Appeals, Fifth Circuit - Houston, TX Hon. Jennifer Walker Elrod, U.S. Court of Appeals, Fifth Circuit - Houston, TX</p>
2:25 pm 0.50 hr ethics	<p>Are There Ethics in Federal Court?</p> <p>Are they different than ethics in state court? A guide to good behavior in the federal courts.</p> <p>Thomas H. Watkins, Brown McCarroll, L.L.P. - Austin, TX</p>
2:55 pm	<p>Break</p>
3:10 pm 0.67 hr	<p>Effective Use of Appellate Counsel in Federal District Court</p> <p>Find out what's effective and what's not when appellate counsel venture into federal trial courts.</p> <p>Moderator: Hon. William J. Boyce, Fourteenth Court of Appeals - Houston, TX Hon. Xavier Rodriguez, United States District Court - San Antonio, TX Hon. T. John Ward, United States District Court - Marshall, TX Hon. Lee Yeakel, U.S. Dist. Court, Western District of TX - Austin, TX</p>
3:50 pm 0.33 hr	<p>Challenging Federal Appellate Jurisdiction</p> <p>Given the limited nature of federal appellate jurisdiction, the court may not have jurisdiction or may lose jurisdiction while the case is pending. An examination of jurisdictional impediments including mootness; standing; lack of a continuing case or controversy; finality; improvident grant of an interlocutory appeal; and settlement, arbitration, or other resolution of related matters.</p> <p>Meredith B. Parenti, Weil Gotshal Manges LLP - Austin, TX</p>
4:10 pm	<p>Adjourn</p>