

20TH ANNUAL
CONFERENCE ON
STATE AND FEDERAL APPEALS



June 3–4, 2010
Four Seasons Hotel ▪ Austin, Texas

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THURSDAY MORNING, JUNE 3, 2010

Presiding Officer:

Pamela Stanton Baron, Attorney at Law,
Austin, TX

8:00 a.m. Registration Opens

Includes continental breakfast.

8:30 a.m. Welcoming Remarks

8:45 a.m. .42 hr

How Does Chapter 33 Work?

What an appellate lawyer needs to know about proportionate responsibility, responsible third parties, and unanswered questions regarding jury submissions.

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

9:10 a.m. .42 hr

Gross Negligence and Punitive Damages: Recent Developments and Potential Strategies

The Texas Supreme Court recently further developed its jurisprudence on gross negligence at the same time the U.S. Supreme Court has been developing its jurisprudence concerning punitive damages. Individually and taken together, their developing jurisprudences point toward new strategies for both sides of the docket.

Robert M. (Randy) Roach, Jr., Roach & Newton LLP,
Houston, TX

9:35 a.m. .67 hr

Texas Procedure Update: An Analysis of Recent Cases—Identifying Traps and Trends

An update of case law affecting Texas civil procedure with an emphasis on decisions implicating appellate practice.

Professor Elaine Grafton Carlson, South Texas
College of Law, Houston, TX

10:15 a.m. Break

10:30 a.m. .33 hr

Successes and Failures in the Appellate Communication Process

The appellate process differs radically from the trial process in the way that it allows communication between counsel and the courts. How are we doing? How can we improve?

David M. Gunn, Beck Redden & Secrest, LLP,
Houston, TX

10:50 a.m. .67 hr

Thinking out Loud: Why We Orally Argue Appellate Cases and How Best to Prepare for the Joust

A discussion on why oral argument is still important and how to give it the detailed preparation that it deserves.

Kendall M. Gray, Andrews Kurth LLP, Houston, TX

11:30 a.m. .50 hr ethics

Disciplinary Rules Changes

A look at the substance and potential impact of the most significant recent changes to the disciplinary rules, together with an overview of the process for amending the rules.

Kennon Peterson, Supreme Court of Texas,
Austin, TX

THURSDAY AFTERNOON

Presiding Officer:

Elizabeth G. (Heidi) Bloch, Brown
McCarroll L.L.P., Austin, TX

12:00 p.m. Pick up Box Lunch

Included in conference registration fee.

LUNCHEON PRESENTATION

12:15 p.m. .50 hr ethics

Luncheon Presentation, Part I: Ethics Issues for the Appellate Bar (including Issues Arising under the New Disciplinary Rules)

Fire down below! A look at the proposed new rules and trial counsel's ethical problems as they affect appellate counsel.

Thomas H. Watkins, Brown McCarroll, L.L.P.,
Austin, TX

12:45 p.m. .50 hr ethics

Luncheon Presentation, Part II: Ethics, the Psyche and Adversity: Good Lawyering in Bad Times

Depression and other psychic maladies continue to afflict lawyers, especially during tough economic times. Learn the facts, the warning signs, and how to help yourself and your colleagues thrive in the face of adversity.

William J. Chriss, Of Counsel to Gravely &
Pearson, L.L.P., Austin, TX

1:15 p.m. Break

1:30 p.m. .33 hr

Summary Judgment Proof: Form vs. Substance

An analysis of the continuing uncertainty over defects in the substance of summary judgment proof, which may be challenged for the first time on appeal, as opposed to defects in form, which may be raised on appeal only if first raised in, and ruled on, by the trial court.

Timothy Patton, Attorney at Law, San Antonio, TX

1:50 p.m. .42 hr

Google, Facebook and Twitter: Judicial Ethics Meets the Internet

Judicial ethics rules have long prohibited ex parte communications. But these rules are now being applied to Internet fact research, and to judges' use of social networking media, in ways people may not anticipate. This session surveys the issues in the context of appellate practice.

Professor Beth Thornburg, Southern Methodist
University, Dedman School of Law, Dallas, TX

2:15 p.m. .33 hr

Restructuring of the Texas Courts of Appeals

Are fourteen separate courts of appeals too many? Would consolidation into five super-regional courts streamline operations and reduce the conflict resolution burden?

David J. Schenck, Jones Day, Dallas, TX

2:35 p.m. .50 hr

Appellate Briefs of the Future

Technology is rapidly changing the way attorneys communicate with courts. This session examines what the future holds for appellate briefs and explains how you can incorporate tomorrow's trends into today's briefs.

Don Cruse, Law Office of Don Cruse, Austin, TX
Blake A. Hawthorne, Supreme Court of Texas,
Austin, TX

3:05 p.m. Break

3:20 p.m. .33 hr

There's an (Interlocutory) App for That!

A look at the expanded availability, use and abuse of interlocutory appeals, as well as recent decisions addressing recurring issues.

Pamela Stanton Baron, Attorney at Law, Austin, TX

3:40 p.m. .50 hr

Effective Use of Post-Submission Briefs

Handled properly, a post-submission brief can address questions that were crystallized at oral argument and drive your main points home. Handled improperly, it can be a waste of time and paper. This presentation discusses the techniques and tactics that distinguish effective post-submission briefs from ineffective ones.

Hon. William J. Boyce, Fourteenth Court of Appeals, Houston, TX

4:10 p.m. .67 hr

Court of Appeals Panel

A candid commentary on the day's state court topics affecting practice before the courts of appeals.

Moderator:

Daryl L. Moore, Attorney at Law, Houston, TX

Panelists:

Hon. Jane Bland, First Court of Appeals, Houston, TX

Hon. J. Woodfin "Woodie" Jones, Third Court of Appeals, Austin, TX

Hon. Catherine M. Stone, Fourth Court of Appeals, San Antonio, TX

4:50 p.m. Adjourn

FRIDAY MORNING, JUNE 4, 2010

Presiding Officer:

Wade Crosnoe, Thompson Coe Cousins & Irons LLP, Austin, TX

7:45 a.m. Conference Room Opens

Includes continental breakfast.

8:30 a.m. .33 hr

State and Federal Declaratory Judgments

An examination of state and federal declaratory judgment procedures, with an emphasis on issues that may arise on appeal, such as jurisdictional challenges.

Kristofer S. Monson, Office of the Attorney General, Austin, TX

8:50 a.m. .42 hr

Juror Communications

The trend is toward allowing jurors to be more active in the trial process. This presentation examines juror notes during trial and deliberations and juror questions during the trial, as well as how to handle juror use of social media and the Internet.

Hon. Tracy Christopher, Fourteenth Court of Appeals, Houston, TX

9:15 a.m. .50 hr ethics

Recusal and Disqualification of Judges

A presiding administrative judge discusses the most common issues in judicial recusal and explains the Supreme Court Advisory Committee's recent proposal to revise Rule 18a.

Hon. David Peeples, Fourth Administrative Judicial Region, San Antonio, TX

9:45 a.m. .50 hr ethics

Recent Cases and Trends on the Issue of Attorney's Fees on Appeal

Whether you are seeking to maximize, minimize or eliminate fee recovery, this session looks at recent cases and the trends used by appellate courts to handle the issues and questions of attorney fee recovery (and expenses).

Philip Durst, Deats, Durst, Owen & Levy, P.L.L.C., Austin, TX

10:15 a.m. Break

10:30 a.m. .42 hr

Legal Writing: Topics and Transitions, Not Dates and Doctors

Why do so many legal writers use dates, case names and witness names in their topic and transition sentences? Because it's easy. This presentation recommends a different approach that is harder for the writer but easier for the reader—real topic sentences and real transitions.

Wayne Schiess, The University of Texas School of Law, Austin, TX

10:55 a.m. .50 hr

Texas Supreme Court Update

Changes on the court: Does it make a difference? A look at recent big cases and trends.

Kurt Kuhn, Brown McCarroll, L.L.P., Austin, TX

11:25 a.m. .67 hr

Texas Supreme Court Panel

Justices from the state's highest court answer questions from a former Justice and the audience regarding the Court's procedures and administrative activities.

Moderator:

Scott A. Brister, Andrews Kurth LLP, Austin, TX

Panelists:

Hon. Wallace B. Jefferson, Supreme Court of Texas, Austin, TX

Hon. Nathan L. Hecht, Supreme Court of Texas, Austin, TX

Hon. Eva Guzman, Supreme Court of Texas, Austin, TX

12:05 p.m. Break

FRIDAY AFTERNOON

Presiding Officer:

Dana Livingston, Alexander Dubose & Townsend LLP, Austin, TX

SPONSORED LUNCH WITH THE JUDICIARY

12:20 p.m. Lunch with the Judiciary

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 (there is an additional fee of \$7).

Special Thanks to Our Sponsors:

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1:20 p.m. Break

1:30 p.m. .50 hr

Fifth Circuit Update

The Chief Judge of the Fifth Circuit reviews recent decisions from the court.

Hon. Edith H. Jones, U.S. Court of Appeals, Fifth Circuit, Houston, TX

2:00 p.m. .50 hr

Amendments to Both the Federal Rules of Civil Procedure (FRCP) and Federal Rules of Evidence (FRE)

There are a number of proposed rule changes and contemplated areas of revision to the Federal Rules of Civil Procedure and Federal Rules of Evidence. In addition, potentially far-reaching changes addressing the high cost of civil litigation, particularly discovery, are being discussed by various groups to promote rule changes. The speaker comments on these important subjects.

David J. Beck, Beck Redden & Secrest, LLP, Houston, TX

The program content, topics, formats, and speakers were exceptional. Nice mix.

Great program, really well done.

I liked the diversity of the topics and the interaction with the judiciary.

2:30 p.m.

.58 hr

***Iqbal*: The Death of Notice Pleading in Federal Court?**

The Supreme Court's opinion in *Ashcroft v. Iqbal* has been called "the most significant Supreme Court decision in a decade for day-to-day litigation in federal courts." One year later, has this prediction turned out to be true? The panel discusses case law trends post-*Iqbal*, the effect on judicial decision making, legislative responses to *Iqbal*, and best practices for plaintiffs and defendants.

Moderator:

Anne M. Johnson, Haynes and Boone, LLP, Dallas, TX

Panelists:

Lisa R. Eskow, Weil, Gotshal & Manges LLP, Austin and Houston, TX

Hon. W. Royal Furgeson Jr., U.S. District Court for the Western and Northern Districts of Texas, Dallas, TX

Hon. Patrick E. Higginbotham, U.S. Court of Appeals, Fifth Circuit, Austin, TX

3:05 p.m.

.50 hr

What Really Goes on in the U.S. Supreme Court?

If a client (or a client's opponent) wants to seek relief at the U.S. Supreme Court or file an amicus brief about a particularly important case, advocates should know who the audience for a "cert petition" or amicus brief is, how that audience will react, what matters to it and will catch its eye, and what efforts might have no value at all. This presentation by two former Supreme Court clerks does not disclose anything "secret," but addresses what actually happens at the Court, by answering questions like these: What role do law clerks play? How much time can they, or the Justices, invest in any given petition? What do they look for in a cert petition or amicus brief? Should you file a brief in opposition to a cert petition without it being requested by the Court? The presentation also includes an update on a few key pending or recently-decided cases.

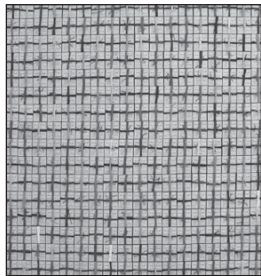
Aaron Michael Streett, Baker Botts L.L.P., Houston, TX

Evan Young, Baker Botts L.L.P., Austin, TX

3:35 p.m.

Adjourn

ABOUT THE COVER



What Killed My Parents (detail), 30" x 38", mixed media collage of cigarette coupons, paper, and embroidery thread, is by Philip Durst. For more information, visit www.philipdurst.com or call 512-474-6200.

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Or fax to:
512-475-6876

Or register online:
www.utcle.org

Questions? Call us at 512-475-6700

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Austin, Texas
at the AT&T Conference Center

Insurance Law

October 14-15, 2010
Austin, Texas
at the InterContinental
Stephen F. Austin Hotel

Page Keeton Civil Litigation

October 28-29, 2010
Austin, Texas
at the Four Seasons Hotel

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Mail this registration form to:

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Includes Course Binder and Thursday Luncheon Presentation

- ☐ Early Registration Fee due by Wednesday, May 26, 2010\$565
☐ Registration Fee after Wednesday, May 26, 2010.....\$615
☐ Friday Sponsored Lunch with the Judiciary\$7

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Registration must be accompanied by a letter from a sponsoring judge.

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Allow 3–5 weeks from the conference date for delivery.

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Note: Conference registration includes Course Binder.
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AUSTIN

June 3–4, 2010

CONFERENCE LOCATION



Four Seasons Hotel
98 San Jacinto Blvd.
Austin, TX 78701
512-685-8100

Special Room Rate: \$230
good through May 12, 2010
(subject to availability)

Valet Parking:
\$16 per day; \$28.50 overnight
(subject to change)

KEY DATES

May 26, 2010, 5 p.m.
last day for early registration
add \$50 for registrations
received after this time

May 28, 2010, 5 p.m.
last day for full refund

June 1, 2010, 5 p.m.
last day for partial refunds
(\$50 processing fee applied)

June 3, 2010, 8:45 a.m.
Conference begins

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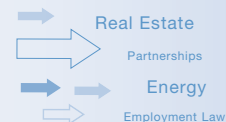


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E**

This course has been approved for Minimum Continuing Legal Education credit by the State Bar of Texas Committee on MCLE in the amount of 12.50 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).



Questions? Contact us at service@utcle.org or (512) 475-6700.