

# 20<sup>th</sup> Annual Conference on State and Federal Appeals

## June 3-4, 2010 • Four Seasons Hotel • Austin, TX

### Thursday Morning, June 3, 2010

**Presiding Officer:**

**Pamela Stanton Baron**, Attorney at Law - Austin, TX

8:00 am	<b>Registration Opens</b>  Includes continental breakfast.
8:30 am	<b>Welcoming Remarks</b>
8:45 am 0.42 hr	<b>How Does Chapter 33 Work?</b>  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 am 0.42 hr	<b>Gross Negligence and Punitive Damages: Recent Developments and Potential Strategies</b>  The Texas Supreme Court recently further developed its jurisprudence on gross negligence at the same time the U.S. Supreme 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 am 0.67 hr	<b>Texas Procedure Update: An Analysis of Recent Cases—Identifying Traps and Trends</b>  An update of case law affecting Texas civil procedure with an emphasis on decisions implicating appellate practice.  Elaine Grafton Carlson, South Texas College of Law - Houston, TX
10:15 am	<b>Break</b>
10:30 am 0.33 hr	<b>Successes and Failures in the Appellate Communication Process</b>  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 am 0.67 hr	<p><b>Thinking out Loud: Why We Orally Argue Appellate Cases and How Best to Prepare for the Joust</b></p> <p>A discussion on why oral argument is still important and how to give it the detailed preparation that it deserves.</p> <p>Kendall M. Gray, Andrews Kurth LLP - Houston, TX  Panelists:  Hon. William J. Boyce, 14th Court of Appeals - Houston, TX  Panelists:  Jennifer Bruch Hogan, Hogan &amp; Hogan, L.L.P. - Houston, TX  Panelists:  Daryl L. Moore, Attorney at Law - Houston, TX</p>
11:30 am 0.50 hr ethics	<p><b>Disciplinary Rules Changes</b></p> <p>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.</p> <p>Kennon Peterson, Supreme Court of Texas - Austin, TX  Thomas H. Watkins, Brown McCarroll, L.L.P. - Austin, TX</p>

## Thursday Afternoon, June 3, 2010

### Presiding Officer:

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

12:00 pm	<p><b>Pick up Box Lunch</b></p> <p>Included in conference registration fee.</p>
12:15 pm 0.50 hr ethics	<p><b>Lunch Presentation, Part I: Ethics Issues for the Appellate Bar (including Issues Arising under the New Disciplinary Rules)</b></p> <p>Fire down below! A look at the proposed new rules and trial counsel's ethical problems as they affect appellate counsel.</p> <p>Kennon Peterson, Supreme Court of Texas - Austin, TX  Thomas H. Watkins, Brown McCarroll, L.L.P. - Austin, TX</p>
12:45 pm 0.50 hr ethics	<p><b>Lunch Presentation, Part II: Ethics, the Psyche and Adversity: Good Lawyering in Bad Times</b></p> <p>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.</p> <p>William J. Chriss, Law Office of William J. Chriss, P.C. - Austin, TX</p>
1:15 pm	<p><b>Break</b></p>

1:30 pm 0.33 hr	<p><b>Summary Judgment Proof: Form vs. Substance</b></p> <p>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.</p> <p>Timothy Patton, Attorney at Law - San Antonio, TX</p>
1:50 pm 0.42 hr	<p><b>Google, Facebook and Twitter: Judicial Ethics Meets the Internet</b></p> <p>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.</p> <p>Beth Thornburg, Southern Methodist University Dedman School of Law - Dallas, TX</p>
2:15 pm 0.33 hr	<p><b>Restructuring of the Texas Courts of Appeals</b></p> <p>Are fourteen separate courts of appeals too many? Would consolidation into five super-regional courts streamline operations and reduce the conflict resolution burden?</p> <p>David J. Schenck, Jones Day - Dallas, TX</p>
2:35 pm 0.50 hr	<p><b>Appellate Briefs of the Future</b></p> <p>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.</p> <p>Don Cruse, Law Office of Don Cruse - Austin, TX Blake A. Hawthorne, Supreme Court of Texas - Austin, TX</p>
3:05 pm	<p><b>Break</b></p>
3:20 pm 0.33 hr	<p><b>There's an (Interlocutory) App for That!</b></p> <p>A look at the expanded availability, use and abuse of interlocutory appeals, as well as recent decisions addressing recurring issues.</p> <p>Pamela Stanton Baron, Attorney at Law - Austin, TX</p>
3:40 pm 0.50 hr	<p><b>Effective Use of Post-Submission Briefs</b></p> <p>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.</p> <p>Hon. William J. Boyce, 14th Court of Appeals - Houston, TX</p>

4:10 pm 0.67 hr	<p><b>Court of Appeals Panel</b></p> <p>A candid commentary on the day's state court topics affecting practice before the courts of appeals.</p> <p>Moderator: Daryl L. Moore, Attorney at Law - Houston, TX</p> <p>Panelists: Hon. Jane Bland, 1st Court of Appeals - Houston, TX</p> <p>Panelists: Hon. J. Woodfin (Woodie) Jones, 3rd Court of Appeals - Austin, TX</p> <p>Panelists: Hon. Catherine M. Stone, 4th Court of Appeals - San Antonio, TX</p>
4:50 pm	<b>Adjourn</b>

## Friday Morning, June 4, 2010

### Presiding Officer:

**Wade Caven Crosnoe**, Thompson Coe Cousins & Irons LLP - Austin, TX

7:45 am	<p><b>Conference Room Opens</b></p> <p>Includes continental breakfast.</p>
8:30 am 0.33 hr	<p><b>State and Federal Declaratory Judgments</b></p> <p>An examination of state and federal declaratory judgment procedures, with an emphasis on issues that may arise on appeal, such as jurisdictional challenges.</p> <p>Kristofer S. Monson, Office of the Attorney General - Austin, TX</p>
8:50 am 0.42 hr	<p><b>Juror Communications</b></p> <p>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.</p> <p>Hon. Tracy Christopher, Fourteenth Court of Appeals - Houston, TX</p>
9:15 am 0.50 hr ethics	<p><b>Recusal and Disqualification of Judges</b></p> <p>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.</p> <p>Hon. David Peebles, Fourth Administrative Judicial Region - San Antonio, TX</p>
9:45 am 0.50 hr ethics	<p><b>Recent Cases and Trends on the Issue of Attorney's Fees on Appeal</b></p> <p>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).</p> <p>Philip Durst, Deats, Durst, Owen &amp; Levy, P.L.L.C. - Austin, TX</p>

10:15 am	<b>Break</b>
10:30 am 0.42 hr	<p><b>Legal Writing: Topics and Transitions, Not Dates and Doctors</b></p> <p>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.</p> <p>Wayne Schiess, The University of Texas School of Law - Austin, TX</p>
10:55 am 0.50 hr	<p><b>Texas Supreme Court Update</b></p> <p>Changes on the court: Does it make a difference? A look at recent big cases and trends.</p> <p>Kurt Kuhn, Brown McCarroll, L.L.P. - Austin, TX</p>
11:25 am	<p><b>Presentation of the Chief Jack Pope Professionalism Award</b></p> <p>The award is given by the Texas Center for Legal Ethics and honors one of the Center's three founders, former Texas Supreme Court Chief Justice Jack Pope, who was the recipient of the inaugural Award in 2009. It is presented to a Texas appellate lawyer or a Texas appellate judge who epitomizes the highest level of professionalism and integrity.</p>
11:30 am 0.67 hr	<p><b>Texas Supreme Court Panel</b></p> <p>Justices from the state's highest court answer questions from a former Justice and the audience regarding the Court's procedures and administrative activities.</p> <p>Moderator: Scott A. Brister, Andrews Kurth LLP - Austin, TX</p> <p>Panelists: Hon. Eva Guzman, Supreme Court of Texas - Austin, TX</p> <p>Panelists: Hon. Nathan L. Hecht, Supreme Court of Texas - Austin, TX</p> <p>Panelists: Hon. Wallace B. Jefferson, Supreme Court of Texas - Austin, TX</p>

## Friday Afternoon, June 4, 2010

### Presiding Officer:

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

12:10 pm	<b>Break</b>
12:20 pm 1.00 hr	<p><b>Sponsored Lunch with the Judiciary</b></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 (there is an additional fee of \$7).</p> <p>Special Thanks to Our Sponsors:</p>
1:20 pm	<b>Break</b>

1:30 pm 0.50 hr	<p><b>Fifth Circuit Update</b></p> <p>The Chief Judge of the Fifth Circuit reviews recent decisions from the court.</p> <p>Hon. Patrick E. Higginbotham, U.S. Court of Appeals, Fifth Circuit - Austin, TX</p>
2:00 pm 0.50 hr	<p><b>Amendments to Both the Federal Rules of Civil Procedure (FRCP) and Federal Rules of Evidence (FRE)</b></p> <p>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.</p> <p>David J. Beck, Beck Redden &amp; Secrest, LLP - Houston, TX</p>
2:30 pm 0.58 hr	<p><b><i>Iqbal</i>: The Death of Notice Pleading in Federal Court?</b></p> <p>The Supreme Court's opinion in <i>Ashcroft v. Iqbal</i> 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-<i>Iqbal</i>, the effect on judicial decision-making, legislative responses to <i>Iqbal</i>, and best practices for plaintiffs and defendants.</p> <p>Moderator: Anne M. Johnson, Haynes and Boone, LLP - Dallas, TX Panelists: Lisa R. Eskow, Weil, Gotshal &amp; Manges LLP - Houston, TX Panelists: Hon. W. Royal Furgeson Jr., U.S. District Court, Northern District of Texas - Dallas, TX Panelists: Hon. Patrick E. Higginbotham, U.S. Court of Appeals, Fifth Circuit - Austin, TX</p>
3:05 pm 0.50 hr	<p><b>What Really Goes on in the U.S. Supreme Court?</b></p> <p>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 will 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.</p> <p>Aaron Michael Streett, Baker Botts L.L.P. - Houston, TX Evan Young, Baker Botts L.L.P. - Austin, TX</p>
3:35 pm	<p><b>Adjourn</b></p>