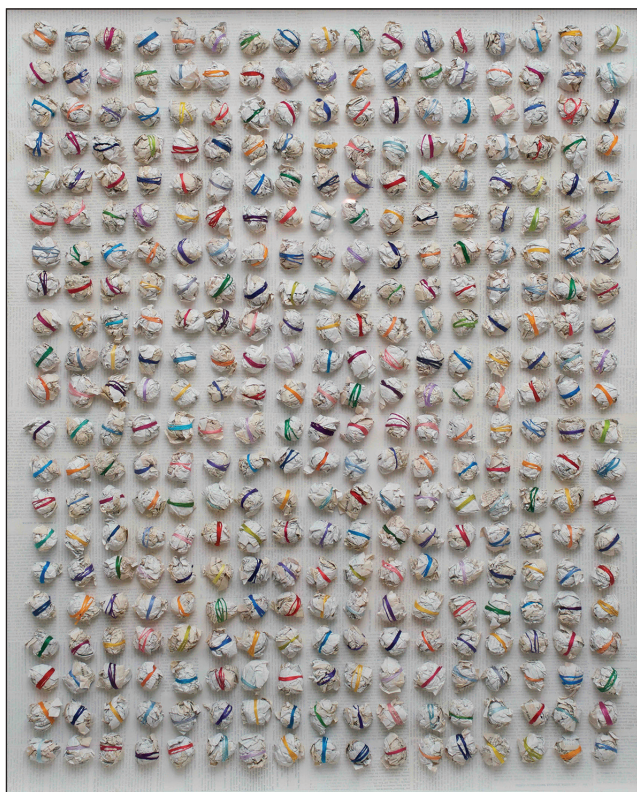


30<sup>TH</sup> ANNUAL CONFERENCE ON  
**STATE AND FEDERAL APPEALS**



June 4–5, 2020

 Live Webcast

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# 30<sup>TH</sup> ANNUAL CONFERENCE ON STATE AND FEDERAL APPEALS

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## THURSDAY MORNING, JUNE 4, 2020

### Presiding Officer:

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

### 8:20 a.m. Welcoming Remarks

8:30 a.m. .50 hr

### What Are the Odds

Two jurimetricians provide answers to common questions clients ask about their chances in the Texas Supreme Court.

Pamela Stanton Baron, Attorney at Law, Austin, TX  
Don Cruse, Law Office of Don Cruse, Austin, TX

9:05 a.m. .75 hr

### Conference Retrospective: 30 Years Later

Two members of the first class of board-certified civil appellate lawyers discuss how the ensuing 30 years have directly and subtly impacted the appellate process—particularly the “Four Pillars of Appellate Review”: preservation, the standard of review, harmful/less error, and stare decisis.

Michael A. Hatchell, Haynes and Boone, LLP,  
Austin, TX  
David Keltner, Kelly Hart & Hallman LLP,  
Fort Worth, TX

9:55 a.m. .50 hr

### Beyond Breach: Recent Developments in Contract Issues

Recent decisions from the Texas Supreme Court concerning contract enforcement adhere to the principle that contract rights in Texas are held sacred and shall be enforced. From contract formation to fraudulent inducement claims, application of that principle is shifting contract-based analysis away from the jury and onto the bench.

Kendyl T. Hanks, Greenberg Traurig, LLP, Austin, TX  
Co-Author  
Nicole Córdoba, Greenberg Traurig, LLP, Austin, TX

10:30 a.m. .75 hr

### Texas Supreme Court Update

Explore recent opinions issued by the Court in the current term.

Hon. Jeff Boyd, The Supreme Court of Texas,  
Austin, TX  
Kurt Kuhn, Kuhn Hobbs PLLC, Austin, TX

11:20 a.m. .50 hr

### Briefing Beyond the Words

A discussion on how to use visuals to enhance your written advocacy and transform your briefs.

Mark Trachtenberg, Haynes and Boone, LLP,  
Houston, TX

11:55 a.m. .50 hr

### Preparing for and Delivering an Effective Appellate Argument

The key to effective appellate argument is preparation, gain insight into the strategic and practical steps to take in the weeks before rising to speak at the podium—and what to do when you get there.

Michael Dreeben, O'Melveny & Myers LLP,  
Washington DC

12:25 p.m. Break for Lunch

Presentation resumes at 12:50 p.m.

## THURSDAY AFTERNOON

### Presiding Officer:

Thomas S. Leatherbury, Vinson &  
Elkins LLP, Dallas, TX

## LUNCHEON PRESENTATION

12:50 p.m. .75 hr ethics

### Standards for Appellate Conduct

In 1995, Skip Watson and Kevin Dubose led an effort to draft the Standards for Appellate Conduct. 24 years later, they reflect on the effect the Standards have had on the appellate practice and culture in Texas, and what can be done to revitalize the Standards for today's appellate bar.

Kevin Dubose, Alexander Dubose & Jefferson LLP,  
Houston, TX  
Charles R. Watson Jr., Greenberg Traurig, LLP, Austin, TX

1:40 p.m. .50 hr

### The Art of the Reply

The reply brief can be a repetitive, tedious exercise that fails to truly engage on the tough issues. Learn how to make your replies helpful and effective.

Hon. Gina M. Benavides, Thirteenth Court Of  
Appeals, Edinburg, TX  
Meredith B. Parenti, Parenti Law PLLC, Houston, TX  
Hon. Gisela D. Triana, Third Court of Appeals,  
Austin, TX

2:15 p.m. .50 hr

### Working with In-House Counsel: Tips and Traps

Two veteran in-house counsel provide insights and suggestions.

Nina Cortell, Haynes and Boone, LLP, Dallas, TX  
Lisa L. Havens, Baylor Scott & White Health,  
Temple, TX  
Tonja De Sloover, Energy Transfer LP, Houston, TX

2:50 p.m. .50 hr

### Attorney's Fees Update

Examine recent case law governing how to prove up attorney's fees at trial and keep them on appeal.

Shelby L. O'Brien, Enoch Keever PLLC, Austin, TX

3:25 p.m. .50 hr ethics

### Texas Courts Respond to COVID-19

A discussion of challenges facing the Texas courts during a pandemic and the steps taken to resolve those challenges, both in the trial and appellate courts.

#### Moderator:

Blake A. Hawthorne, The Supreme Court of Texas,  
Austin, TX

#### Panelists:

Hon. Emily Miskel, 470<sup>th</sup> District Court, Collin County,  
McKinney, TX  
David Slayton, Office of Court Administration,  
Austin, TX

4:00 p.m. .50 hr

### U.S. Supreme Court Update

An overview of major decisions and trends from the Supreme Court's 2019-2020 term.

Jeremy C. Marwell, Vinson & Elkins LLP,  
Washington, DC

4:35 p.m. .75 hr ethics

### Ethics Game Show

Watch ambitious appellate practitioners compete against one another, as they try to answer ethics questions that savvy practitioners ought to know. #WhatWouldPhilSay

Hon. Daryl L. Moore, 333<sup>rd</sup> District Court,  
Houston, TX

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

5:20 p.m. Adjourn

## FRIDAY MORNING, JUNE 5, 2020

### Presiding Officer:

Melissa Lorber, Enoch Keever PLLC,  
Austin, TX

8:30 a.m. .50 hr | .25 hr ethics

### The Right to Retain Silence? The Enforceability of "Catch and Kill" NDAs

The role of nondisclosure agreements in sexual harassment settlement agreements and in "catch and kill" agreements—an agreement whereby a media outlet buys the exclusive right to a story, usually involving allegations of misconduct against a prominent figure, and then "kills" the story for the benefit of the individual—has gained widespread media attention following the #MeToo movement, the 2016 presidential election, and Ronan Farrow's 2019 investigation into Harvey Weinstein. The use of NDAs to keep information from public view regarding possible sexual misconduct or sexual crimes raises numerous complex and controversial legal and ethical questions. A focus on the enforceability of such NDAs under Texas law, including the factors courts would examine in deciding whether such contractual provisions violate public policy.

Karima Maloney, Smyser Kaplan & Veselka, L.L.P.,  
Houston, TX  
Samantha J. Jarvis, Smyser Kaplan & Veselka, L.L.P.,  
Houston, TX

9:05 a.m. .75 hr | .25 hr ethics

### 2020 Texas Appellate Judicial Survey

The first step in tailoring your clients' oral and written presentations to the preferences and dislikes of appellate justices is learning what they are. The 2020 Texas Appellate Judicial Survey is a valuable tool to achieve that important objective.

Scott Rothenberg, Law Offices of Scott Rothenberg,  
Bellaire, TX  
Kent Rutter, Haynes and Boone, LLP, Houston, TX  
Jo Ann Storey, Jo Ann Storey, P.C., Houston, TX

M  
C  
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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 13.00 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).

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9:55 a.m. .50 hr

### What is Persuasive Authority and When Does it Stop Being Persuasive?

What authority do courts find to be "persuasive" even when it's not binding? And, what happens when the Legislature steps in with statutory directions about authorities courts can reply upon?

William J. Boyce, Alexander Dubose & Jefferson LLP,  
Houston, TX  
Robert B. Dubose, Alexander Dubose & Jefferson  
LLP, Houston, TX

10:30 a.m. .50 hr

### Settlement Credits

How to calculate settlement credits, their effect on prejudgment interest, burden placement in determining the amount to be credited, and recent constitutional challenges.

Jacqueline M. Stroh, The Law Office Of Jacqueline  
M. Stroh, P.C., San Antonio, TX

11:05 a.m. .75 hr

### Texas Supreme Court Panel

Hear a candid conversation among the Justices about what is new at the Court, the state of the docket, and ways practitioners can improve their chances of obtaining favorable relief for their clients.

**Moderator:**  
David M. Gunn, Beck Redden LLP, Houston, TX

**Panelists:**  
Hon. Nathan L. Hecht, The Supreme Court of Texas,  
Austin, TX  
Hon. J. Brett Busby, The Supreme Court of Texas,  
Austin, TX  
Hon. Jane N. Bland, The Supreme Court of Texas,  
Austin, TX

11:50 a.m. Break for Lunch

Presentation resumes at 12:15 p.m.

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## FRIDAY AFTERNOON

### Presiding Officer:

Laurie Ratliff, Laurie Ratliff LLC,  
Austin, TX

12:15 p.m. .50 hr

### Why I Lost

Lessons learned from advocacy, case selection, error preservation, and adverse authority.

Sean M. Reagan, Leyh Payne & Mallia PLLC,  
Houston, TX

12:50 p.m. .50 hr

### Unsettled Questions on Advanced Personal Jurisdiction

The United States Supreme Court issued six personal jurisdiction opinions from 2011 to 2017. What are the open issues after *Daimler*, *Nicastro*, and *Bristol Myers*?

Alex Wilson Albright, Alexander Dubose & Jefferson  
LLP, Austin, TX

1:25 p.m. .50 hr

### Fifth Circuit Update

A close look at the most interesting and important cases from the United States Court of Appeals for the Fifth Circuit in the past year.

Raffi Melkonian, Wright Close & Barger, LLP,  
Houston, TX

2:00 p.m. .50 hr

### FRAP Traps

A quick word to the wary about some procedural traps to watch out for.

Jason P. Steed, Kilpatrick Townsend & Stockton LLP,  
Dallas, TX

2:35 p.m. .50 hr

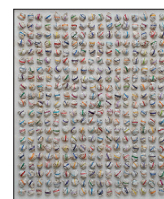
### Certification by the Circuits

Has the Fifth Circuit shown a renewed interest in considering certifying state-law questions to the Texas Supreme Court? What can other circuits' approaches teach us about when certification may be appropriate?

Dana Livingston, Cokinon | Young, Austin, TX

3:05 p.m. Adjourn

### ABOUT THE COVER



"Ghosts of Departed Quantities" by Philip Durst  
[www.davisgalleryaustin.com/artist/philip-durst](http://www.davisgalleryaustin.com/artist/philip-durst)

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June 4–5, 2020

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*Webcast begins*

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1956–2019

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Phil's career spanned more than 30 years and for at least half of those years, he was a planning committee member of and speaker at this conference. As a talented artist, his newest designs and projects frequently accompanied him at planning

meetings and in ballroom foyers. A wayward pair of scissors even had to be returned to him once.

Phil was truly an exemplary man who loved helping people, his contributions of his time, his expertise, and especially his humor, are numerous and invaluable. Phil will be remembered for a very long time to come.



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