

**49<sup>th</sup> Annual Ernest E. Smith Oil, Gas and Mineral Law Institute**  
**April 14, 2023 • Royal Sonesta Hotel Houston • Houston, TX**  
**April 14, 2023 • Live Webcast**

**Friday Morning, Apr. 14, 2023**

**Presiding Officer:**

**Donato David Ramos Jr.**, Law Offices of Donato D. Ramos P.L.L.C. - Laredo, TX

7:30 am In Houston Only	<b>Registration Opens</b>  Includes continental breakfast.
8:00 am	<b>Welcoming Remarks</b>
8:10 am 0.75 hr	<b>Case Law Update: Part One</b>  Review recent decisions dealing with oil and gas leases, royalties, mineral conveyances, joint operating agreements, state regulation, and related topics.  Owen L. Anderson, The University of Texas School of Law - Austin, TX
8:55 am 0.50 hr	<b>Revisiting “Waste”</b>  A review of statutes prohibiting the production of oil and gas in a manner that constitutes “waste.” This session will consider whether: (a) waste is absolutely prohibited, or whether Courts should holistically consider waste in conjunction with other factors; (b) common law and statutory remedies for waste; and (c) how to analyze waste in conjunction with competing uses of pore space, including carbon sequestration and wastewater disposal.  Michael K. Reer, Harris, Finley & Bogle, P.C. - Fort Worth, TX
9:25 am 0.75 hr	<b>Subsurface Property Issues</b>  Examine recent cases across the country concerning subsurface property rights and hear a high-level account of the state of subsurface property law. Cases to be covered will include <i>Myers-Woodward, LLC v. Underground Services Markham, LLC</i> (Tex. App. 2022) respacing the right to store oil in a salt cavern, <i>Northwest Landowners Association v. State of North Dakota</i> (N.D. 2022) holding that legislation limiting the rights of pore space owners to compensation for use of their pore space in oil and gas operations constituted a taking, and <i>Continental Resources v. Fisher</i> (D.N.D. 2021) involving claims for compensation for the use of pore space for saltwater disposal.  Joseph A. Schremmer, University of New Mexico School of Law - Albuquerque, NM
10:10 am	<b>15 Minute Break</b>

<p>10:25 am 0.75 hr</p>	<p><b>Texas Railroad Commission Update</b></p> <p>An update on current issues at the Texas Railroad Commission – from the perspectives of landowners and operators – focused on the latest developments with allocation wells and the Mineral Interest Pooling Act. Texas Operators are increasingly using allocation and production sharing agreement (“PSA”) wells for drilling horizontal laterals. But the Austin Court of Appeals, in <i>Opiela v. RRC</i>, has been asked to review the Commission’s methods for permitting allocation and PSA wells. What is at issue in that case, and what could the future hold for this type of development? Meanwhile, Texas is not known for strong forced pooling, but the Mineral Interest Pooling Act has seen a resurgence at the Railroad Commission. How is the MIPA being used in Texas today?</p> <p>Mark W. Hanna, Scott Douglass &amp; McConnico LLP - Austin, TX Ryan Lammert, Uhl, Fitzsimons, Burton, Wolff &amp; Rangel, PLLC - San Antonio, TX</p>
<p>11:10 am 0.50 hr</p>	<p><b><i>Devon v. Sheppard: Is Royalty Owed on Gross Proceeds or Gross Proceeds Plus?</i></b></p> <p>Hear the two approaches argued before the Texas Supreme Court.</p> <p>Charles (Skip) Watson, Greenberg Traurig, LLP - Austin, TX Jordan K. Mullins, McGinnis Lochridge - Austin, TX</p>
<p>11:40 am In Houston Only</p>	<p><b>Pick up Lunch</b></p> <p>Included in registration.</p>

## Friday Afternoon, Apr. 14, 2023

### Presiding Officer:

**Donato David Ramos Jr.**, Law Offices of Donato D. Ramos P.L.L.C. - Laredo, TX

### LUNCHEON PRESENTATION

	<p><b>Thank You to Our Luncheon Sponsor</b></p> <p><b>BakerHostetler</b></p>
<p>12:00 pm 1.00 hr ethics</p>	<p><b>Alternative Dispute Resolution in Energy Cases</b></p> <p>The presentation will address developing successful alternative dispute programs for energy cases, implementing those programs, and ethical issues related to arbitrator selection.</p> <p>David E. Harrell Jr., Locke Lord LLP - Houston, TX</p>
<p>1:00 pm</p>	<p><b>15 Minute Break</b></p>
<p>1:15 pm 0.50 hr</p>	<p><b>Case Law Update Part 2</b></p> <p>Review recent decisions dealing with oil and gas leases, royalties, mineral conveyances, joint operating agreements, state regulation, and related topics.</p> <p>Owen L. Anderson, The University of Texas School of Law - Austin, TX</p>

<p>1:45 pm 0.50 hr</p>	<p><b>Rules of Interpretation and Canons of Construction</b></p> <p>Discuss the differences between rules of interpretation and canons of construction, when and how courts apply each to construe unambiguous instruments, and recent case law providing additional guidance on the greatest possible estate rule.</p> <p>Lad Stricker, Sanders Bajwa LLP - Austin, TX</p>
<p>2:15 pm 0.50 hr</p>	<p><b>Takings of Oil and Gas Infrastructure: Highest and Best Use, Remainder Damages, Costs to Cure, and Related Issues</b></p> <p>With the large population growth in Texas and surge of infrastructure projects, we are seeing increased takings of oil and gas infrastructure by government entities. There are many valuation issues that must be considered when maximizing compensation.</p> <p>Justin A. Hodge, Marrs Ellis &amp; Hodge LLP - Houston, TX Joe Regan, Jackson Walker LLP - Fort Worth, TX</p>
<p>2:45 pm</p>	<p><b>10 Minute Break</b></p>
<p>2:55 pm 0.50 hr</p>	<p><b>“To Equity or Not? The Role of Equitable Defenses in Deed Construction Cases”</b></p> <p>This presentation will focus on the use of equitable defenses in deed construction cases (e.g., estoppel by deed, waiver, ratification, judicial estoppel, etc.), and further, the application of <i>Sun Oil</i> to those defense.</p> <p>Peter E. Hosey, Jackson Walker LLP - San Antonio, TX</p>
<p>3:25 pm 0.75 hr 0.25 hr ethics</p>	<p><b>The Consequences of Not Complying With Preferential Rights to Purchase, Consents to Assign or Other Restraints on Assignment</b></p> <p>Hear about enforceability issues for these common, but inconvenient (for buyers and sellers), restraints on the assignment of oil and gas interests. Evaluate the consequences of imperfect compliance or outright disregard by buyers and sellers, exercise attempts by preferential right holders, and the remedies for holders of these restraints, and defenses in play for sellers and buyers when a breach is asserted.</p> <p>Terry I. Cross, McClure &amp; Cross LLP - Dallas, TX</p>
<p>4:10 pm 0.50 hr</p>	<p><b>Holding onto Legacy Leasehold: Cessation of Production and Production in Paying Quantities Issues in the Permian</b></p> <p>Jacob M. Davidson, Davis Gerald &amp; Cremer - Midland, TX</p>
<p>4:40 pm 0.50 hr</p>	<p><b>Inherent Surface Conflicts Between Oil and Gas and Renewable Energy Operations/Development</b></p> <p>Austin W. Brister, McGinnis Lochridge - Houston, TX</p>
<p>5:10 pm</p>	<p><b>Adjourn</b></p>