

13TH ANNUAL
**ADVANCED TEXAS
ADMINISTRATIVE LAW SEMINAR**



August 16–17, 2018
AT&T Conference Center ■ Austin, Texas

 **Live Webcast August 16–17**

Earn up to 13.75 Hours of Credit Including 1.50 Hours of Ethics Credit
Approved in TX, CA, and OK
TX Legal Specialization Credit Approved for Administrative Law
Earn up to 16.50 Hours of TX Accounting CPE Credit

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THURSDAY MORNING, AUG. 16, 2018

Presiding Officer:

**April G. Griffin, Texas Higher Education
Coordinating Board, Austin, TX**

7:30 a.m. Registration Opens

Includes continental breakfast.

8:20 a.m. Welcoming Remarks

8:30 a.m. .50 hr

Case Law Update – Part I

Examine significant administrative law cases issued during the last year.

Jennifer L. Hoggood, Office of the Attorney General,
Austin, TX

9:00 a.m. .50 hr

Open Government Update and Practice Tips

Review recent judicial decisions related to the Texas Public Information Act and the Texas Open Meetings Act and open government practice tips.

Kimberly L. Fuchs, Office of the Attorney General,
Austin, TX
Lori Fixley Winland, Ogletree Deakins,
Oklahoma, OK

9:30 a.m. .50 hr

**The Attorney General Opinion Process &
Recent Opinions**

Examine the procedures for asking for an Attorney General Opinion and providing input on a pending opinion request. Also survey recent Attorney General opinions relevant to state agencies.

Jennie Hoelscher, Office of the Attorney General,
Austin, TX

10:00 a.m. Break

10:15 a.m. .50 hr

**News from the Front: Restructuring,
Sunsetting, and More**

Discuss the new authority that some agencies were granted during the last legislative session, as well as shifts (and potential shifts) of programs from one agency to another. Identify agencies currently engaged in the Sunset process, while highlighting possible changes, and hear interesting news items from yet other agencies.

Kellie E. Billings-Ray, Office of the Attorney General,
Austin, TX
Karen L. Watkins, Office of the Attorney General,
Austin, TX

10:45 a.m. .50 hr

Rulemaking Update

Hear updates from the legislature and the courts on the interesting issues concerning proposed rules and rule validity.

Dudley D. McCalla, Jackson Walker LLP, Austin, TX

11:15 a.m. .50 hr

Exclusive/Primary Jurisdiction

The contours of an administrative agency's authority on subjects over which it has exclusive or primary jurisdiction have significant legal and practical impacts. Examine these impacts and what they mean for your practice.

Andres S. Medrano, Foley Gardere, Foley &
Lardner LLP, Austin, TX

11:45 a.m. .50 hr

Pleas to the Jurisdiction

Explore the procedure and standards for determining pleas to the jurisdiction, along with related procedural issues.

Amanda Cochran-McCall, Office of the Attorney
General, Austin, TX
Hon. Jeffrey L. Rose, Third Court of Appeals,
Austin, TX

12:15 p.m. Pick Up Lunch

Included in registration.

THURSDAY AFTERNOON

Presiding Officer:

**James W. Checkley Jr., Cross Texas
Transmission, LLC, West Lake Hills, TX**

**Lifetime Achievement Award
Presentation to
Former Chief Justice Bob Shannon**

Presented by Dudley McCalla on behalf of the
Administrative and Public Law Section
of the State Bar of Texas.

LUNCHEON PRESENTATION

12:35 p.m. .50 hr

Judicial Philosophy and Experience

Hear from the latest addition to the Court about his path to the bench and his philosophy about what his position there means.

Hon. James "Jimmy" Blacklock, The Supreme Court
of Texas, Austin, TX

1:05 p.m. Break

1:20 p.m. .75 hr

**Perspectives on Title IX: Responding to
Complaints of Sexual Harassment**

Lessons from an emerging area of law, discussed between an attorney for plaintiffs and an attorney for state University defendants.

Chad Wilson Dunn, Brazil & Dunn, Houston, TX
Carl Myers, Office of the Attorney General,
Austin, TX

2:05 p.m. .50 hr ethics

**Regulatory and Ethical Considerations for
Handling Sensitive Electronic Information**

Explore the regulatory framework when handling sensitive electronic information. Also, understand the ethical considerations when handling the information and if a breach occurs.

Adrian Senyszyn, Brin & Brin P.C., San Antonio, TX
Shawn E. Tuma, Scheef & Stone, L.L.P., Frisco, TX

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**M
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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 13.75 hours, of which 1.50 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 (#179).

2:35 p.m. .50 hr

Hear Me Now or Hear Me Later: A Review of Standing Before the Agency and Courts

What is the current state of the law regarding the rights of interested persons to participate in a contested administrative case and related judicial proceedings? What are the consequences of opposing such participation?

Steve Kosub, San Antonio Water System, San Antonio, TX

3:05 p.m. Break

3:15 p.m. .50 hr

Regulating Through Guidance

Discussion of ways that agencies act informally, such as with guidance, advisories, interpretations, etc., with analysis of the legal status of such action and suggestions of how to use it or fight it.

Donald N. Walker, Stone Loughlin & Swanson, LLP, Austin, TX

3:45 p.m. .75 hr

Evidentiary Issues at Contested Proceedings

Examine evidentiary issues that can arise in contested case proceedings before SOAH.

Hon. Elizabeth Drews, State Office of Administrative Hearings, Austin, TX

4:30 p.m. .75 hr

SOAH Update

Hear a discussion of recent developments at the State Office of Administrative Hearings.

Hon. Gary Elkins, State Office of Administrative Hearings, Austin, TX
Hon. Lesli Ginn, State Office of Administrative Hearings, Austin, TX

5:15 p.m. Adjourn to Reception

NETWORKING RECEPTION

5:15 p.m. to 6:15 p.m.

Join us for drinks and hors d'oeuvres with program faculty and attendees.

FRIDAY MORNING, AUG. 17, 2018

Presiding Officer:

Kimberly A. Frost, Martin Frost & Hill, Austin, TX

7:30 a.m. Conference Room Opens

Includes continental breakfast.

8:30 a.m. .50 hr

Case Law Update – Part II

Examine significant administrative law cases issued during the last year.

Jennifer L. Hopgood, Office of the Attorney General, Austin, TX

9:00 a.m. .50 hr

Judicial Deference to Agency Interpretation of Statutes In Texas

Discuss in what circumstances and to what extent Texas courts defer to state agency interpretations of ambiguous statutes. Contrast and compare Texas deference to that given by federal courts to federal agency interpretations.

Hon. Thomas R. Phillips, Baker Botts L.L.P., Austin, TX

9:30 a.m. .75 hr

Agency Spotlight: Texas Alcoholic Beverage Commission

The TABC faces significant challenges regulating a rapidly growing 21st century industry using a 20th century legal code. How can the Sunset Commission review process maximize the agency's ability to regulate and partner with industry?

Mary A. Keeney, Graves, Dougherty, Hearon & Moody, Austin, TX
Clark E. Smith, Texas Alcoholic Beverage Commission, Austin, TX
C. Andrew Weber, Kelly Hart & Hallman LLP, Austin, TX

10:15 a.m. Break

10:30 a.m. .75 hr

Disentangling the Standards of Review

The APA authorizes judicial review of contested-case decisions under the "substantial evidence rule," but the various standards of review (de novo, substantial evidence, arbitrary and capricious, and abuse of discretion) are frequently confused and conflated. Learn to disentangle those standards with a framework for identifying, defining, and effectively applying the correct standard to uphold or challenge agency decisions.

Susan A. Kidwell, Locke Lord LLP, Austin, TX

11:15 a.m. .50 hr

Ultra Vires Update

Review recent decisions addressing ultra vires claims, including ministerial versus discretionary acts, action beyond the scope of authority, retrospective versus prospective relief, and statutory construction.

Mark L. Walters, Jackson Walker LLP, Austin, TX

11:45 a.m. .50 hr

Administrative Law Judge Hiring and Constitutional Challenges

The constitutionality of the Securities and Exchange Commission's use of administrative law judges is being challenged in the federal courts. Examine the challenges, which could affect certain other federal regulatory agencies, and might even have possible implications for Texas regulatory agencies.

Thomas K. Anson, Clark Hill Strasburger, Austin, TX

12:15 p.m. Pick Up Lunch

Included in registration.

FRIDAY AFTERNOON

Presiding Officer:

Hon. Lesli Ginn, State Office of Administrative Hearings, Austin, TX

LUNCHEON PRESENTATION

12:35 p.m. .50 hr ethics

Ethical Implications When Representing Impaired Professionals

The representation of licensed professionals impaired by a substance abuse disorder and/or mental illness presents unique challenges and regulatory pitfalls for the unwary. Explore the attorney's ethical obligation when representing impaired clients, and how you can benefit your client to restore and improve their social and occupational functioning.

Louis D. Leichter, Leichter Law Firm PC, Austin, TX
Dan Lype, Leichter Law Firm PC, Austin, TX

1:05 p.m. Break

1:20 p.m. .50 hr

Data: Liability or Asset?

Explore the opportunities and challenges of managing data in Texas, and review recent developments regarding data sharing, open data, and data security and privacy.

Martin H. Zelinsky, Texas Department of Information Resources, Austin, TX

1:50 p.m. .50 hr ethics

2018 Amendments to the Texas Disciplinary Rules

In order to comply with new legislative requirements, the Supreme Court of Texas amended certain disciplinary rules. What changes have been implemented and how will they affect State Bar of Texas disciplinary matters?

Rita Alister, State Bar of Texas, Austin, TX

2:20 p.m. 1.00 hr

Judicial Panel

Engage in an unscripted round-robin discussion, with time for questions from the audience. Discussion will include thoughts on how technology can improve the process for both the parties and the bench.

Please submit your questions in advance to ConferenceQA@utcle.org or on-site at the registration desk to ensure a lively discussion.

Moderator:

Hon. Wendy K. L. Harvel, State Office of Administrative Hearings, Austin, TX

Panelists:

Hon. Debra Lehrmann, Supreme Court of Texas, Austin, TX

Hon. Amy Clark-Meachum, 201st Judicial District Civil Court, Austin, TX

Hon. Bob Pemberton, Third Court of Appeals, Austin, TX

3:20 p.m. Adjourn

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www.utcle.org/conferences/AL18

Mail:

The University of Texas
School of Law
Attn. CLE
PO Box 7759
Austin, TX 78713-7759

Fax:

512.475.6876

Questions? 512.475.6700

If you have dietary requirements or would like to request accommodations under the ADA, please contact Customer Service at 512.475.6700 or service@utcle.org at least 10 business days prior to the seminar.

REGISTRATION BENEFITS

Before the Seminar: Access course materials—downloadable PDFs of papers and slides—and speaker and attendee roster in "Your Briefcase" 48 hours before the seminar.

After the Seminar: Unlimited access to final, complete course materials—downloadable PDFs of papers and slides—in "Your Briefcase."

eConference: Complimentary access to the eConference—with papers, slides, and video—for CLE credit (TX and CA) you may have missed at the live conference. Available in "Your Briefcase" 6–8 weeks after the seminar.

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eConference

The online eConference includes papers, slides, and video—and CLE credit (TX and CA)—from this year's live seminar. Available in "Your Briefcase" through the user's account at www.utcle.org 6-8 weeks after the seminar.

Comprehensive Course Binders

Containing papers and slides from the live seminar, eBinders are available for download and printed binders can be ordered for delivery 4–6 weeks after the seminar date. Shipping included.

REGISTRATION FORM

PLEASE PRINT CLEARLY

AL18

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Registrant's Email (required) _____

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Invoices, confirmations, and receipts are emailed to these addresses.

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Special group registration rates available. Call 512.475.6700.

Select Registration Type

Individual

- Registration by August 8 \$495
 Registration after August 8 \$545

Government Attorney

- Registration by August 8 \$275
 Registration after August 8 \$325

Administrative Public Law Section Member – Individual

- Registration by August 8 \$470
 Registration after August 8 \$520

Administrative Public Law Section Member – Government Attorney

- Registration by August 8 \$250
 Registration after August 8 \$300

Printed course binder available for an additional fee through August 8

Seminar registration includes Electronic Course Binder Download (PDF) in "Your Briefcase" at www.utcle.org.

- Printed Course Binder \$37.99
Price includes 8.25% Sales Tax
 Printed Course Binder for tax exempt registrants \$35
(e.g., government employees and nonprofits)

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 Printed Binder \$275

[†]Texas customers—add 8.25% sales tax or include an Exemption Certificate \$ _____
Sales tax will be invoiced separately on taxable orders for which payment does not include tax.

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METHOD OF PAYMENT

- Check (make check payable to The University of Texas at Austin)
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AUSTIN

August 16–17, 2018

SEMINAR LOCATION



AT&T Conference Center

The University of Texas at Austin
 1900 University Avenue
 Austin, TX

Parking:

Extremely limited self-parking is available for free at the AT&T Conference Center Garage. Additional free parking is available at surrounding UT Garages. Note parking cannot be validated for the Dobie Garage. Separate fees apply for valet and overnight parking.

KEY DATES

August 8, 2018

Last day for early registration
 add \$50 for registrations
 received after this time

August 10, 2018

Last day for full refund cancellation

August 13, 2018

Last day for partial refund cancellation
 \$50 processing fee applied

August 16, 2018, 8:20 a.m.

Seminar begins

REASONS TO ATTEND

The **Advanced Texas Administrative Law Seminar** brings together members of the judiciary and regulatory and academic communities to engage with practitioners about the latest legislative and case law updates, rule changes, and other timely topics.

2018 highlights include:

- Updates on significant administrative law cases issued during the last year, Open Government decisions, ultra vires, and developments at SOAH.
- Discussion of the 2018 Amendments to the Texas Disciplinary Rules, including what changes are being implemented and how they affect State Bar disciplinary matters.
- An exploration of hot topics, including *Government Accountability, Administrative Law Judge Hiring and Constitutional Challenges, and Regulation Through Guidance*.
- *Disentangling the Standards of Review* with a framework for identifying, defining, and effectively applying the correct standard to uphold or challenge agency decisions.
- Insight into the *Regulatory and Ethical Considerations for Handling Sensitive Electronic Information*.
- A review of the procedures for seeking an Attorney General opinion and for providing input on a pending opinion request.
- Multiple opportunities to network and connect, including a **Happy Hour** on Thursday evening!

At the conclusion of the seminar, attendees will receive a bonus eCourse containing an additional hour of ethics to ensure attendees can earn their required 15.0/3.0 MCLE hours for the year.