

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

## June 14-15, 2018 • AT&T Conference Center • Austin, TX

### Thursday Morning, June 14, 2018

**Presiding Officer:**

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

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| 7:30 am                              | <b>Registration Opens</b><br><br>Includes continental breakfast.   |
| 8:20 am                              | <b>Welcoming Remarks</b>   |
| 8:30 am<br>0.75 hr                   | <b>Supreme Court of Texas Update</b><br><br>Explore recent opinions issued by the Court in the current term.<br><br>Hon. Jeffrey S. Boyd, The Supreme Court of Texas - Austin, TX<br>Kurt Kuhn, Kuhn Hobbs PLLC - Austin, TX   |
| 9:15 am<br>0.50 hr<br>0.25 hr ethics | <b>Genuine Issues on Summary Judgments</b><br><br>Discuss trends in summary judgment practice with an emphasis on the challenges during appellate review. Analyze pleadings, scope of review, summary judgment evidence, conclusory or defective evidence, and harmless error.<br><br>Sharon McCally, McCally Law, P.C. - Houston, TX  |
| 9:45 am<br>0.50 hr                   | <b><i>Casteel</i>: To Infinity and Beyond</b><br><br>Charge practice started down a new road almost two decades ago in <i>Crown Life Ins. v. Casteel</i> (Tex. 2000). Take a close look at the post- <i>Casteel</i> developments.<br><br>David M. Gunn, Beck Redden LLP - Houston, TX  |
| 10:15 am                             | <b>Break</b>   |
| 10:30 am<br>0.50 hr                  | <b>Help! A Default Judgment!</b><br><br>Explore what to look for and learn what to do when your client asks you to overturn a default judgment.<br><br>Alex Wilson Albright, Alexander Dubose Jefferson & Townsend LLP - Austin, TX  |
| 11:00 am<br>0.50 hr                  | <b>Form Contracts That Don't Mean What They Say</b><br><br>In an age when plain-text interpretation dominates cases of contract construction, it is surprising how many contracts do not mean what they plainly say—especially in certain widely used form contracts. When is a nonstandard meaning of a standard contract term an exception to “plain meaning?”<br><br>Hon. Scott A. Brister, Hunton Andrews Kurth LLP - Austin, TX |

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| 11:30 am<br>0.50 hr | <p><b>Surprise SLAPP: Applications and Consequences of the TCPA</b></p> <p>Hear an analysis of interesting, unexpected, and perhaps unintended ways in which the TCPA has been used by litigants and interpreted by Texas courts in the last five years. Discuss the consequences this has had on parties, counsel, and the courts.</p> <p>Amanda G. Taylor, Beck Redden LLP - Austin, TX</p> |
| 12:00 pm<br>0.50 hr | <p><b>Rule 91(a) Dismissals and Appeals</b></p> <p>Survey the precedent and get tips for trial-court and appellate practice.</p> <p>Anne M. Johnson, Haynes and Boone, LLP - Dallas, TX<br/>Kennon L. Wooten, Scott Douglass &amp; McConnico LLP - Austin, TX</p>   |
| 12:30 pm            | <p><b>Pick Up Lunch</b></p> <p>Included in registration.</p>  |

## Thursday Afternoon, June 14, 2018

### Presiding Officer:

**Constance H. Pfeiffer**, Beck Redden LLP - Houston, TX

### LUNCHEON PRESENTATION

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| 12:50 pm<br>0.75 hr<br>0.25 hr ethics | <p><b>First Judges in Texas</b></p> <p>From real estate scams and stolen Supreme Court records to the battle of San Jacinto, the first judges of Texas were interesting people. Learn about two of them in this presentation from the host of the Texas history podcast, "Wise About Texas."</p> <p>Hon. Ken Wise, Fourteenth Court of Appeals - Houston, TX</p>  |
| 1:35 pm                               | <p><b>Break</b></p>   |
| 1:50 pm<br>0.75 hr                    | <p><b>Supreme Court of Texas Panel</b></p> <p>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.</p> <p>Moderator:<br/>Jane M. N. Webre, Scott Douglass &amp; McConnico LLP - Austin, TX<br/>Panelists:<br/>Hon. Paul W. Green, The Supreme Court of Texas - Austin, TX<br/>Hon. Eva M. Guzman, The Supreme Court of Texas - Austin, TX<br/>Hon. James "Jimmy" Blacklock, The Supreme Court of Texas - Austin, TX</p> |
| 2:35 pm<br>0.50 hr                    | <p><b>Harmless Error</b></p> <p>Review recent developments affecting whether your error is deemed judgment-critical or swept "under the rug."</p> <p>Philip Durst, Deats, Durst &amp; Owen, P.L.L.C. - Austin, TX</p>   |

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| 3:05 pm<br>0.50 hr ethics | <p><b>Ethical Implications of Sua Sponte Waivers Findings</b></p> <p>Appellate courts sometimes make findings of trial court preservation waiver and appellate court briefing waiver in the absence of any assertion of waiver by either party. Explore the ethical implications of sua sponte waiver findings for appellate courts and appellate practitioners.</p> <p>Scott Rothenberg, Law Offices of Scott Rothenberg - Houston, TX</p>   |
| 3:35 pm                   | <b>Break</b>  |
| 3:45 pm<br>0.50 hr        | <p><b>Equitable Relief at Trial and on Appeal</b></p> <p>Equitable relief can be a powerful and dangerous remedy. Understanding when it is available and what is required to procure it will aid lawyers in trying to protect it or defeat it on appeal.</p> <p>Lara H. Hollingsworth, Rusty Hardin &amp; Associates LLP - Houston, TX<br/>Jeffrey S. Levinger, Levinger PC - Dallas, TX</p>  |
| 4:15 pm<br>0.75 hr ethics | <p><b>"To Tell the Truth"</b></p> <p>A panel of "experts" provide real and fake answers to ethics questions, while the audience tries to guess who's telling the truth. #FakeEthicsNews</p> <p>Moderator:<br/>Raffi O. Melkonian, Wright Close &amp; Barger, LLP - Houston, TX</p> <p>Panelists:<br/>Hon. Tracy Christopher, Fourteenth Court of Appeals - Houston, TX<br/>David Keltner, Kelly Hart &amp; Hallman LLP - Fort Worth, TX<br/>Hon. Daryl L. Moore, 333rd District Court - Houston, TX</p> |
| 5:00 pm                   | <b>Adjourn</b>  |
|                           | <p><b>Networking Reception (5:00 p.m. to 6:00 p.m.)</b></p> <p>Join us for drinks and hors d'oeuvres with program faculty and attendees.</p>  |

## Friday Morning, June 15, 2018

### Presiding Officer:

**Hon. Daryl L. Moore**, 333rd District Court - Houston, TX

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| 7:30 am                   | <p><b>Conference Room Opens</b></p> <p>Includes continental breakfast.</p>   |
| 8:30 am<br>0.50 hr ethics | <p><b>Deep Ethics: How I Learned to Stop Worrying and Love the Internet</b></p> <p>The work tools in the modern law office now consist of a networked ecosystem of distractions, and our default method of use may be harmful to us and degrade the value we can bring to clients. Change the way you use these tools to preserve wellness and protect your ability to engage in deep, linear, creative thinking.</p> <p>Kendall M. Gray, Hunton Andrews Kurth LLP - Houston, TX</p> |

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| 9:00 am<br>0.50 hr                    | <p><b>How the Supreme Court of Texas Operates Today</b></p> <p>Explore what practitioners and their clients should know about how the Court's internal procedures have been changing, and how they haven't.</p> <p>Don Cruse, Law Office of Don Cruse - Austin, TX<br/>Blake A. Hawthorne, The Supreme Court of Texas - Austin, TX</p>   |
| 9:30 am<br>0.50 hr                    | <p><b>Interview with Judge Don R. Willett</b></p> <p>A new appointee to the United States Court of Appeals for the Fifth Circuit discusses his experience so far, and reflects on the differences between state and federal appellate practice.</p> <p>Dana Livingston, Alexander Dubose Jefferson &amp; Townsend LLP - Austin, TX<br/>Hon. Don R. Willett, U.S. Court of Appeals, Fifth Circuit - New Orleans, LA</p> |
| 10:00 am<br>0.50 hr                   | <p><b>Update on the Supreme Court of the United States</b></p> <p>Review of the 2017 term and a look ahead to the 2018 term commencing in October.</p> <p>Jeremy C. Marwell, Vinson &amp; Elkins LLP - Washington, DC</p>  |
| 10:30 am                              | <b>Break</b>   |
| 10:45 am<br>0.50 hr<br>0.25 hr ethics | <p><b>Appellate Road Warrior</b></p> <p>Technology has enabled our practices to become more mobile than ever before. Learn about hardware, software, and best practices that will allow you to work safely, securely, and efficiently from wherever you are.</p> <p>D. Todd Smith, Smith Haley Nobles - Austin, TX</p>   |
| 11:15 am<br>0.75 hr<br>0.25 hr ethics | <p><b>Oral Argument from Both Sides</b></p> <p>"Yes, we're talking, but you're not hearing me." Sound familiar? Examine how to get more out of oral argument from the perspectives of the lawyer and the court.</p> <p>Hon. William J. Boyce, Fourteenth Court of Appeals - Houston, TX<br/>Robert M. (Randy) Roach Jr., Roach &amp; Newton, L.L.P. - Houston, TX</p>  |
| 12:00 pm                              | <b>Break</b>   |

## Friday Afternoon, June 15, 2018

### Presiding Officer:

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

### OPTIONAL LUNCHEON WITH THE JUDICIARY

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| 12:20 pm | <p><b>Optional Luncheon with the Judiciary</b></p> <p>Take advantage of this unique opportunity to meet and discuss issues with members of the judiciary. Please select "Luncheon with the Judiciary" on the registration form to attend (\$35 additional charge).</p> |
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| 1:10 pm            | <b>Return to General Session</b>   |
| 1:25 pm<br>0.50 hr | <b>Emergency Relief in the Fifth Circuit</b><br><br>Sometimes you need the Fifth Circuit to act fast. Learn about obtaining stays and other emergency relief from federal appellate courts.<br><br>Leslie Sara Hyman, Pulman, Cappuccio, Pullen & Benson LLP - San Antonio, TX<br>Kevin S. Ranlett, Mayer Brown LLP - Houston, TX  |
| 1:55 pm<br>0.75 hr | <b>U.S. Fifth Circuit Update</b><br><br>Review recent opinions and trends from the U.S. Fifth Circuit Court of Appeals.<br><br>David S. Coale, Lynn Pinker Cox & Hurst, LLP - Dallas, TX   |
| 2:40 pm<br>0.50 hr | <b>Clearing the Hurdles</b><br><br>Don't let your case be decided on a procedural ground when it doesn't need to be! Hear an update on recent cases addressing the most important procedural bars in Fifth Circuit appeals, including qualified immunity, subject matter jurisdiction, appellate jurisdiction, ripeness, and mootness.<br><br>Raffi O. Melkonian, Wright Close & Barger, LLP - Houston, TX |
| 3:10 pm<br>0.50 hr | <b>Fifth Circuit Statistics</b><br><br>Based on cases argued before the Fifth Circuit over a one-year period, examine statistics such as voting patterns, reversal rates, and timing of decisions.<br><br>William Peterson, Morgan, Lewis & Bockius LLP - Houston, TX  |
| 3:40 pm            | <b>Adjourn</b>   |