

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

## June 4-5, 2020 • Live Webcast

**Thursday Morning, Jun. 4, 2020**

**Presiding Officer:**

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

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|---------------------|---|
| 8:20 am             | <p><b>Welcoming Remarks</b></p>   |
| 8:30 am<br>0.50 hr  | <p><b>What Are the Odds</b></p> <p>Two jurismetricians provide answers to common questions clients ask about their chances in the Texas Supreme Court.</p> <p>Pamela Stanton Baron, Attorney at Law - Austin, TX<br/>Don Cruse, Law Office of Don Cruse - Austin, TX</p>  |
| 9:00 am             | <p><b>5-Minute Break</b></p>  |
| 9:05 am<br>0.75 hr  | <p><b>Conference Retrospective: 30 Years Later</b></p> <p>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.</p> <p>Michael A. Hatchell, Haynes and Boone, LLP - Austin, TX<br/>David Keltner, Kelly Hart &amp; Hallman LLP - Fort Worth, TX</p>   |
| 9:50 am             | <p><b>5-Minute Break</b></p>  |
| 9:55 am<br>0.50 hr  | <p><b>Beyond Breach: Recent Developments in Contract Issues</b></p> <p>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.</p> <p>Kendyl T. Hanks, Greenberg Traurig, LLP - Austin, TX<br/>Nicole Córdoba, Greenberg Traurig, LLP - Austin, TX</p> |
| 10:25 am            | <p><b>5-Minute Break</b></p>  |
| 10:30 am<br>0.75 hr | <p><b>Texas Supreme Court Update</b></p> <p>Explore recent opinions issued by the Court in the current term.</p> <p>Hon. Jeff Boyd, The Supreme Court of Texas - Austin, TX<br/>Kurt Kuhn, Kuhn Hobbs PLLC - Austin, TX</p>   |
| 11:15 am            | <p><b>5-Minute Break</b></p>  |

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| 11:20 am<br>0.50 hr | <p><b>Briefing Beyond the Words</b></p> <p>A discussion on how to use visuals to enhance your written advocacy and transform your briefs.</p> <p>Mark Trachtenberg, Haynes and Boone, LLP - Houston, TX</p>  |
| 11:50 am            | <p><b>5-Minute Break</b></p>   |
| 11:55 am<br>0.50 hr | <p><b>Preparing for and Delivering an Effective Appellate Argument</b></p> <p>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.</p> <p>Michael Dreeben, O’Melveny &amp; Myers LLP - Washington DC</p> |
| 12:25 pm            | <p><b>Break for Lunch—Presentation Resumes at 12:50 p.m.</b></p>   |

## Thursday Afternoon, Jun. 4, 2020

### Presiding Officer:

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

### LUNCHEON PRESENTATION

|                            |   |
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| 12:50 pm<br>0.75 hr ethics | <p><b>Standards for Appellate Conduct</b></p> <p>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.</p> <p>Kevin Dubose, Alexander Dubose &amp; Jefferson LLP - Houston, TX<br/>Charles (Skip) Watson, Greenberg Traurig, LLP - Austin, TX</p> |
| 1:35 pm                    | <p><b>5-Minute Break</b></p>  |
| 1:40 pm<br>0.50 hr         | <p><b>The Art of the Reply</b></p> <p>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.</p> <p>Hon. Gina M. Benavides, Thirteenth Court Of Appeals - Edinburg, TX<br/>Meredith B. Parenti, Parenti Law PLLC - Houston, TX<br/>Hon. Gisela D. Triana, Third Court of Appeals - Austin, TX</p>  |
| 2:10 pm                    | <p><b>5-Minute Break</b></p>  |

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| 2:15 pm<br>0.50 hr        | <p><b>Working with In-House Counsel: Tips and Traps</b></p> <p>Two veteran in-house counsel provide insights and suggestions.</p> <p>Nina Cortell, Haynes and Boone, LLP - Dallas, TX<br/> Lisa L. Havens, Baylor Scott &amp; White Health - Temple, TX<br/> Tonja De Sloover, Energy Transfer LP - Houston, TX</p>   |
| 2:45 pm                   | <p><b>5-Minute Break</b></p>  |
| 2:50 pm<br>0.50 hr        | <p><b>Attorney's Fees Update</b></p> <p>Examine recent case law governing how to prove up attorney's fees at trial and keep them on appeal.</p> <p>Shelby L. O'Brien, Enoch Keever PLLC - Austin, TX</p>  |
| 3:20 pm                   | <p><b>5-Minute Break</b></p>  |
| 3:25 pm<br>0.50 hr ethics | <p><b>Texas Courts Respond to COVID-19</b></p> <p>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.</p> <p>Moderator:<br/> Blake A. Hawthorne, The Supreme Court of Texas - Austin, TX<br/> Panelists:<br/> Hon. Emily Miskel, 470th District Court, Collin County - McKinney, TX<br/> David Slayton, Office of Court Administration - Austin, TX</p> |
| 3:55 pm                   | <p><b>5-Minute Break</b></p>  |
| 4:00 pm<br>0.50 hr        | <p><b>U.S. Supreme Court Update</b></p> <p>An overview of major decisions and trends from the Supreme Court's 2019-2020 term.</p> <p>Jeremy C. Marwell, Vinson &amp; Elkins LLP - Washington, DC</p>  |
| 4:30 pm                   | <p><b>5-Minute Break</b></p>  |
| 4:35 pm<br>0.75 hr ethics | <p><b>Ethics Game Show</b></p> <p>Watch ambitious appellate practitioners compete against one another, as they try to answer ethics questions that savvy practitioners ought to know. #WhatWouldPhilSay</p> <p>Hon. Daryl L. Moore, 333rd District Court - Houston, TX<br/> Jane M. N. Webre, Scott Douglass &amp; McConnico LLP - Austin, TX</p>   |
| 5:20 pm                   | <p><b>Adjourn</b></p>   |

## Friday Morning, Jun. 5, 2020

**Presiding Officer:**

**Melissa Lorber**, Enoch Keever PLLC - Austin, TX

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| 8:30 am<br>0.50 hr<br>0.25 hr ethics | <p><b>The Right to Retain Silence? The Enforceability of NDAs After #MeToo</b></p> <p>The role of nondisclosure agreements in settling sexual misconduct claims has gained widespread media attention following the #MeToo and Time’s Up movements, the 2016 presidential election, the criminal trials of Harvey Weinstein and Bill Cosby, and the ouster of prominent figures such as Bill O’Reilly and Matt Lauer. The use of NDAs—typically used to protect trade secrets and other business confidential data—to shield claims of sexual misconduct from public scrutiny has raised complex legal, ethical, and moral questions, and has stirred a debate over whether courts should enforce these agreements. 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.</p> <p>Karima Maloney, Smyser Kaplan &amp; Veselka, L.L.P. - Houston, TX<br/>       Samantha J. Jarvis, Smyser Kaplan &amp; Veselka, L.L.P. - Houston, TX</p> |
| 9:00 am                              | <p><b>5-Minute Break</b></p>  |
| 9:05 am<br>0.75 hr<br>0.25 hr ethics | <p><b>2020 Texas Appellate Judicial Survey</b></p> <p>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.</p> <p>Scott Rothenberg, Law Offices of Scott Rothenberg - Bellaire, TX<br/>       Kent Rutter, Haynes and Boone, LLP - Houston, TX<br/>       Jo Ann Storey, Jo Ann Storey, P.C. - Houston, TX</p>  |
| 9:50 am                              | <p><b>5-Minute Break</b></p>  |
| 9:55 am<br>0.50 hr                   | <p><b>What is Persuasive Authority and When Does it Stop Being Persuasive?</b></p> <p>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 the courts can reply upon?</p> <p>William J. Boyce, Alexander Dubose &amp; Jefferson LLP - Houston, TX<br/>       Robert B. Dubose, Alexander Dubose &amp; Jefferson LLP - Houston, TX</p>   |
| 10:25 am                             | <p><b>5-Minute Break</b></p>  |
| 10:30 am<br>0.50 hr                  | <p><b>Settlement Credits</b></p> <p>How to calculate settlement credits, their effect on prejudgment interest, burden placement in determining the amount to be credited, and recent constitutional challenges.</p> <p>Jacqueline M. Stroh, The Law Office Of Jacqueline M. Stroh, P.C. - San Antonio, TX</p>   |
| 11:00 am                             | <p><b>5-Minute Break</b></p>  |

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| <p>11:05 am<br/>0.75 hr</p> | <p><b>Texas Supreme Court 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/>David M. Gunn, Beck Redden LLP - Houston, TX</p> <p>Panelists:<br/>Hon. Nathan L. Hecht, The Supreme Court of Texas - Austin, TX<br/>Hon. J. Brett Busby, The Supreme Court of Texas - Austin, TX<br/>Hon. Jane N. Bland, The Supreme Court of Texas - Austin, TX</p> |
| <p>11:50 am</p>             | <p><b>Break for Lunch—Presentation Resumes at 12:15 p.m.</b></p>  |

## Friday Afternoon, Jun. 5, 2020

### Presiding Officer:

**Laurie Ratliff**, Laurie Ratliff LLC - Austin, TX

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| <p>12:15 pm<br/>0.50 hr</p> | <p><b>Why I Lost</b></p> <p>Lessons learned from advocacy, case selection, error preservation, and adverse authority.</p> <p>Sean M. Reagan, Leyh Payne &amp; Mallia PLLC - Houston, TX</p>  |
| <p>12:45 pm</p>             | <p><b>5-Minute Break</b></p>   |
| <p>12:50 pm<br/>0.50 hr</p> | <p><b>Unsettled Questions on Advanced Personal Jurisdiction</b></p> <p>The United States Supreme Court issued six personal jurisdiction opinions from 2011 to 2017. What are the open issues after <i>Daimler</i>, <i>Nicastro</i>, and <i>Bristol-Myers</i>?</p> <p>Alex Wilson Albright, Alexander Dubose &amp; Jefferson LLP - Austin, TX</p> |
| <p>1:20 pm</p>              | <p><b>5-Minute Break</b></p>   |
| <p>1:25 pm<br/>0.50 hr</p>  | <p><b>Fifth Circuit Update</b></p> <p>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.</p> <p>Raffi Melkonian, Wright Close &amp; Barger, LLP - Houston, TX</p>  |
| <p>1:55 pm</p>              | <p><b>5-Minute Break</b></p>   |
| <p>2:00 pm<br/>0.50 hr</p>  | <p><b>Appellate Judge's View of Employment Law Cases</b></p> <p>A mid-level update of employment law opinions from our intermediate courts of appeal.</p> <p><i>This pre-recorded presentation has been added to the agenda due to the cancelation of "FRAP Traps."</i></p> <p>Hon. Amanda L. Reichel, Fifth Court of Appeals - Dallas, TX</p>   |

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| 2:30 pm            | <b>5-Minute Break</b>   |
| 2:35 pm<br>0.50 hr | <b>Certification by the Circuits</b><br><br>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?<br><br>Dana Livingston, Cokinos   Young - Austin, TX |
| 3:05 pm            | <b>Adjourn</b>  |