

**13<sup>th</sup> Annual Advanced Texas Administrative Law Seminar**  
**August 16-17, 2018 • AT&T Conference Center • Austin, TX**  
**August 16-17, 2018 • Live Webcast**

**Thursday Morning, Aug. 16, 2018**

**Presiding Officer:**

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

7:30 am In Austin Only	<b>Registration Opens</b>  Includes continental breakfast.
8:20 am	<b>Welcoming Remarks</b>
8:30 am 0.50 hr	<b>Case Law Update - Part I</b>  Examine significant administrative law cases issued during the last year.  Jennifer L. Hopgood, Office of the Attorney General - Austin, TX
9:00 am 0.50 hr	<b>Open Government Update and Practice Tips</b>  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 am 0.50 hr	<b>The Attorney General Opinion Process &amp; Recent Opinions</b>  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 am	<b>Break</b>
10:15 am 0.50 hr	<b>News from the Front: Restructuring, Sunset, and More</b>  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.  Priscilla M. Hubenak, Office of the Attorney General - Austin, TX Karen L. Watkins, Office of the Attorney General - Austin, TX

10:45 am 0.50 hr	<b>Rulemaking Update</b>  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 am 0.50 hr	<b>Ultra Vires Update</b>  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.  <i>This session was originally scheduled on Friday, August 17 at 11:15 a.m.</i>  Mark L. Walters, Jackson Walker LLP - Austin, TX
11:45 am 0.50 hr	<b>Pleas to the Jurisdiction</b>  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 pm In Austin Only	<b>Pick Up Lunch</b>  Included in registration.

## Thursday Afternoon, Aug. 16, 2018

### Presiding Officer:

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

### LUNCHEON PRESENTATION

	<b>Lifetime Achievement Award Presentation to Former Chief Justice Bob Shannon</b>  Presented by the Administrative and Public Law Section of the State Bar of Texas.  Dudley D. McCalla, Jackson Walker LLP - Austin, TX
12:35 pm 0.50 hr	<b>Judicial Philosophy and Experience</b>  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 pm	<b>Break</b>

1:20 pm 0.75 hr	<p><b>Perspectives on Title IX: Responding to Complaints of Sexual Harassment</b></p> <p>Lessons from an emerging area of law, discussed between an attorney for plaintiffs and an attorney for state University defendants.</p> <p>Chad Wilson Dunn, Brazil &amp; Dunn - Houston, TX Carl Myers, Office of the Attorney General - Austin, TX</p>
2:05 pm 0.50 hr ethics	<p><b>Regulatory and Ethical Considerations for Handling Sensitive Electronic Information</b></p> <p>Explore the regulatory framework when handling sensitive electronic information. Also, understand the ethical considerations when handling the information and if a breach occurs.</p> <p>Adrian Senyszyn, Brin &amp; Brin P.C. - San Antonio, TX Shawn E. Tuma, Spencer Fane, LLP - Plano, TX</p>
2:35 pm 0.50 hr	<p><b>Hear Me Now or Hear Me Later: A Review of Standing Before the Agency and Courts</b></p> <p>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?</p> <p>Steve Kosub, San Antonio Water System - San Antonio, TX</p>
3:05 pm	<p><b>Break</b></p>
3:15 pm 0.50 hr	<p><b>Regulating Through Guidance</b></p> <p>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.</p> <p>Donald N. Walker, Stone Loughlin &amp; Swanson, LLP - Austin, TX</p>
3:45 pm 0.75 hr	<p><b>Evidentiary Issues at Contested Proceedings</b></p> <p>Examine evidentiary issues that can arise in contested case proceedings before SOAH.</p> <p>Hon. Elizabeth Drews, State Office of Administrative Hearings - Austin, TX</p>
4:30 pm 0.75 hr	<p><b>SOAH Update</b></p> <p>Hear a discussion of recent developments at the State Office of Administrative Hearings.</p> <p>Hon. Gary Elkins, State Office of Administrative Hearings - Austin, TX Hon. Lesli Ginn, State Office of Administrative Hearings - Austin, TX</p>
5:15 pm In Austin Only	<p><b>Adjourn to Reception</b></p> <p>Join us for drinks and hors d'oeuvres with program faculty and attendees.</p>

## Friday Morning, Aug. 17, 2018

### Presiding Officer:

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

7:30 am In Austin Only	<b>Conference Room Opens</b>  Includes continental breakfast.
8:30 am 0.50 hr	<b>Case Law Update - Part II</b>  Examine significant administrative law cases issued during the last year.  Jennifer L. Hopgood, Office of the Attorney General - Austin, TX
9:00 am 0.50 hr	<b>Judicial Deference to Agency Interpretation of Statutes In Texas</b>  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 am 0.75 hr	<b>Agency Spotlight: Texas Alcoholic Beverage Commission</b>  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 am	<b>Break</b>
10:30 am 0.75 hr	<b>Disentangling the Standards of Review</b>  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 am 0.50 hr	<b>Exclusive/Primary Jurisdiction</b>  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.  <i>This session was originally scheduled on Thursday, August 16 at 11:15 a.m.</i>  Andres S. Medrano, Foley Gardere, Foley & Lardner LLP - Austin, TX
11:45 am 0.50 hr	<b>Administrative Law Judge Hiring and Constitutional Challenges</b>  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 pm  
In Austin Only

### **Pick Up Lunch**

Included in registration.

## **Friday Afternoon, Aug. 17, 2018**

### **Presiding Officer:**

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

### **LUNCHEON PRESENTATION**

12:35 pm  
0.50 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 pm

#### **Break**

1:20 pm  
0.50 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 pm  
0.50 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 pm  
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](mailto: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 pm

#### **Adjourn**