

30TH ANNUAL CONSTRUCTION LAW CONFERENCE



MARCH 2 & 3, 2017
THE LA CANTERA RESORT & SPA
SAN ANTONIO, TEXAS

Earn up to 13.75 Hours MCLE Credit, including 3.50 Hours Ethics!

Applicable toward MCLE, the College of the State Bar of Texas and the Texas Board of Legal Specialization in the fields of Construction Law, Real Estate Law, Personal Injury Trial Law, Civil Appellate Law and Civil Trial Law. Eligible for Texas Department of Insurance credit and MCE credit through the Texas Real Estate Commission.

Sponsored by:

**The Construction Law Foundation of Texas
&**

The Construction Law Section of the State Bar of Texas

in cooperation with

The Texas Institute of Continuing Legal Education

30TH ANNUAL CONSTRUCTION LAW CONFERENCE

March 2 & 3, 2017 ♦ The La Cantera Resort & Spa ♦ 16641 La Cantera Parkway ♦ San Antonio, Texas 78256

WEDNESDAY, MARCH 1, 2017

- 12:30 **GOLF TOURNAMENT** – *Shot Gun Start*
The Palmer Course at The La Cantera Resort
- 3:30 **TEXAS WOMEN'S CONSTRUCTION LAW GROUP MEETING** – The TWCLG will host a panel discussion on tips and strategies for marketing your practice followed by a cocktail reception networking event. – Sponsored by Robson Forensic
- 6:15 **RECEPTION** – In cooperation with the Young Lawyers Council of the Construction Law Section – Sponsored by McCullough & Associates

THURSDAY, MARCH 2, 2017

PRESIDING OFFICER: Thomas R. Barber, Houston

- 8:00 **LATE REGISTRATION** – Ballroom Foyer, The La Cantera Resort, 16641 La Cantera Pkwy., San Antonio, TX 78256, (210) 558-6500
- 8:00 **CONTINENTAL BREAKFAST** – Sponsored by Nelson Forensics, LLC
- 8:50 **WELCOME ON BEHALF OF THE CONSTRUCTION LAW SECTION**
George E. Bowles, Dallas
- 9:00 **CASE LAW UPDATE** – Recent case law and other developments impacting the construction industry.
Gregory M. Cokinos, Houston
- 9:45 **SO YOU THINK YOU HAVE A MEDIATED SETTLEMENT** – A discussion of the enforceability of mediated settlement agreements. Will a Memorandum of Understanding or Rule 11 agreement work, or do you need a formal and comprehensive agreement to bind the parties? Topics include avoiding problems created by buyer's remorse, confidentiality issues involved in enforcing a mediated settlement agreement, and practical tips to making the settlement stick.
Steve Nelson, Plano

- 10:15 **BREAK** – Sponsored by The VERTEX Companies, Inc.

- 10:45 **ADVOCATE OR NEUTRAL** – When do arbitrators cross the line in their management, questioning and conduct of the arbitral proceeding such that they are no longer neutral? How do arbitrators balance their obligation to the parties and the process to ensure they have the evidence and information required to render an informed award consistent with their obligation to be fair and neutral – and not unwittingly become advocates? What duty, if any, does an arbitrator have to address an obvious deficiency in a party's case? And, what can advocates do should they confront an arbitrator they believe has crossed the line and become an advocate for the other side?
L. Tyrone Holt, Denver, CO

- 11:30 **INSURANCE UPDATE** – An update for construction lawyers on the most recent insurance cases that impact construction defect litigation.
Lee H. Shidlofsky, Austin

- 12:00 **LUNCHEON** – *Discounted tickets available for \$16 each.* Sponsored by Interface Consulting International, Inc.
Topic: PRESIDENTS AND LAWYERS: THE TIES THAT BIND – An analysis of why those traits most important to great presidential leadership apply to what make lawyers consummate professionals.
Talmage Boston, Dallas

PRESIDING OFFICER: Denis G. Ducran, Houston

- 1:30 **CARVED OUT OF THE HERD: THE OTHERS SETTLED... SHOULD YOU HAVE?** – An assessment of the application of the One Satisfaction Rule, settlement credits, and allocating within settlement agreements to maximize separate recovery; A discussion of how to submit a case to the jury or factfinder when one defendant has settled, to maximize or minimize

the claimant's potential recovery; A discussion on the effect of offset or total judgment on application of "prevailing party" law in Texas, for purposes of calculating recovery of attorneys' fees and costs.
Ben Wheatley, Austin

- 2:15 **UNWITTING WAIVER OF ATTORNEY/CLIENT PRIVILEGE** – A guide to the attorney-client privilege in construction matters: what is it, how does it work, and why does it matter?
Lawrence T. Bowman, Dallas

- 3:00 **BREAK** – Sponsored by The Rhodes Group

- 3:30 **NO BOND? NO PROBLEM! ALTERNATIVES TO SECURING CONTRACTOR PERFORMANCE** – When a contractor cannot obtain a bond, the owner still has options to secure the performance. This presentation will discuss various alternatives to bonding and useful strategies for evaluating associated risks.
Cara D. Kennemer, Fort Worth

- 4:00 **SHOW ME THE MONEY!! PLEASE??** – A discussion of whether the various parties in a construction project can make sure money exists during the project and if a counter-party defaults, and practice pointers for drafting (and litigating) to get to that money.
Sara Abbott McEown, Houston

- 4:30 **RESIDENTIAL CONSTRUCTION UPDATE** – It's a Trap! Tips for navigating and negotiating modern residential construction contracts, clauses to look out for and suggestions for addressing controversial risk shifting provisions.
Nathan Van Graham, Houston

- 5:15 **RECEPTION** – Sponsored by Rimkus Consulting Group, Inc.

FRIDAY, MARCH 3, 2017

- 7:00 **CONTINENTAL BREAKFAST**

- 7:15 **BREAKFAST BREAKOUTS** – *Choose one of five sessions. Open to all registrants on a first-come, first-served basis until all seats are full.*

- Breakout #1** **DIFFERING SITE CONDITIONS: WHAT DIFFERENCE DO THEY MAKE?** – An exploration of the law in Texas, federal, and sister states regarding differing site conditions, including issues from the perspective of owners, contractors, subcontractors, and design professionals, and key considerations for litigation and transaction attorneys representing these parties.
Mason P. Hester, Houston

- Breakout #2** **MORE INSIGHTS FROM IN-HOUSE** – Back by popular demand, a follow-up discussion with another panel of seasoned in-house attorneys working for companies in the construction industry. Learn more about the challenges involved in these relationships, tips on meeting expectations and avoiding problems, cautionary tales and other lessons learned, and best practices for maintaining a good and productive working relationship.
Moderator: Denis G. Ducran, Houston
Panelists: Kelly W. Carr, Carrollton
Tonya Powers Johanness, Dallas
R. Craig Williams, Dallas

- Breakout #3** **NAVIGATING THE BANKRUPTCY MINEFIELD – PRACTICAL TIPS FOR CONSTRUCTION PRACTITIONERS** – A bankruptcy filed by a contractor, subcontractor, or owner can create significant complexities in connection with ongoing projects. When confronted with such a bankruptcy, many construction practitioners without experience in bankruptcy matters may be less than comfortable navigating the complexities that can arise, or even filing a basic proof of claim. Practical tips for construction practitioners confronted with the seemingly conflicting goals and principles that may arise when practical construction issues and construction law collide with the Bankruptcy Code.

Christopher Richard Ward, Frisco

- Breakout #4** **ARBITRATION VACATUR** – Navigating the Post-Award landscape amid the latest seismic shifts.
Lionel Mark Schooler, Houston

- Breakout #5** **MECHANICS LIENS AND MINERAL LIENS – INTERPLAYS AND TRAPS FOR THE UNWARY** – A discussion about the distinction between M&M liens and Mineral liens under the Texas Property Code, and issues related to utilizing the different statutory schemes to claim a lien on property when the work supporting the claim is on mineral producing property and/or equipment but not necessarily in furtherance of production of minerals and when labor and/or materials are provided for a project that includes both mineral property and traditional construction.
Jon Paul Hoelscher, Houston

PRESIDING OFFICER: Marty Crandall Coleman, Dallas

- 8:15 **LEGISLATIVE UPDATE** – A review of the 85th Legislative Session, focusing on the bills that affect the construction industry and how they may affect your practice and your clients' business.
William "Ben" Westcott, Houston

- 8:45 **ARBITRATION: WHAT WORKS AND WHAT DOESN'T WORK** – The panel will discuss effective techniques for the presentation of claims and damages, the use of protocols to monitor project site visits, and methods to streamline arbitration and improve efficiency.
Moderator: Allison J. Snyder, Houston
Panelists: Stanley W. Curry, Jr., San Antonio
Gary W. Javore, San Antonio

- 9:30 **WHEN THE KING DOES WRONG: THE AVAILABILITY AND LIMITS OF CONSTRUCTION-RELATED SUITS AGAINST THE GOVERNMENT** – Sovereign immunity is the ultimate King's X—except when it isn't. This topic will assess immunity's substantive and procedural protections, and explore the various legislative waivers and common-law exceptions that may open the door to claims against the government for legal and/or equitable relief. Issues will include contractual considerations, permissible suits and causes of action, limits on recoverable damages, potential counterclaims, and *ultra vires* actions.
Amy M. Emerson, Austin

- 10:00 **BREAK** – Sponsored by FTI Consulting, Inc.

- 10:30 **CROWD CONTROL** – Strategies in use of RTP designations – trying the empty chairs for RTPs and settling defendants. The limits of application of the proportionate responsibility statute in construction contracts subject to the ELR.
Annalyn G. Smith, San Antonio

- 11:15 **A QUESTION OF CONSEQUENCE** – Texas law has been less than crystal clear on the definition of consequential versus direct damages. Learn more about the historical treatment of these legal terms of art, their effect on outcomes in lawsuits and arbitrations, and how to draft contracts to precisely define and allocate the risks associated with consequential damages.
Will W. Allensworth, Austin

- 11:45 **CONTRACTUAL LIMITATIONS OF LIABILITY: ENFORCEMENT AND PRACTICAL TIPS** – Contractual limitations of liability, which are more common between certain project participants than others, can take many forms, from the types of limits to the breadth of the provisions. Enforcement of these provisions will be addressed, as will drafting tips and traps to avoid.
R. Carson Fisk, Austin

- 12:15 **LUNCHEON** – *Tickets available for \$26 each.*
Topic: PRESIDENT'S UPDATE – The mission of the State Bar of Texas is to support the administration of the legal system, assure all citizens equal access to justice, foster high standards of ethical conduct for lawyers, enable its members to better serve their clients and the public, educate the public

HOTEL INFORMATION

30th ANNUAL CONSTRUCTION LAW CONFERENCE ♦ March 2 & 3, 2017

The La Cantera Resort & Spa • 16641 La Cantera Parkway • San Antonio, TX 78256

A special block of rooms has been reserved at The La Cantera Resort & Spa at the special rate of \$205 for single/double. The hotel will release all unused rooms on the CUTOFF DATE of FEBRUARY 3, 2017. When contacting the hotel you must identify yourself as a participant with the "30th Annual Construction Law Conference" (Group Code: TIB2817A) in order to obtain the special rate in our room block. **Please call the hotel reservation line at (855) 499-2960 to make your reservation.** A deposit equal to your first night's room and tax will be required. We recommend that you make your reservations immediately if you plan to attend this course. Once the room block is exhausted rooms will only be provided on a space and rate-available basis.

REGISTRATION FORM

Mail to: Texas Institute of Continuing Legal Education
30th Annual Construction Law Conference
P.O. Box 4646
Austin, Texas 78765-4646

Online at: www.clesolutions.com

Fax Form to: 512/451-2911 (must be accompanied by American Express, Visa or Mastercard Information)
or Phone: 512/451-6960

Please register me for the conference as follows:

- Regular Pre-Registration Fee (due by 5 p.m. February 10).....\$500.00
- Pre-Registration for Construction Law Section Members.....\$450.00
(due by 5 p.m. February 10)
- Registration *after 5 p.m. February 10 & before 5 p.m. February 24*.....\$+50.00
- Registration *after 5 p.m. February 24* and at the door.....\$+100.00
- Construction Law Section Dues (eligible for the member registration fee)..... \$ 30.00

___ Thursday Luncheon Ticket *Discounted* at \$16 each..... \$ _____
 ___ Friday Luncheon Ticket at \$26 each..... \$ _____
 ___ # of "Folds of Honor" Raffle Tickets* (*\$10 each or 3 for \$25*)..... \$ _____

- I will play in the Golf Tournament on Wednesday, March 1, 2017
Green Fee (includes range balls and shared cart).....\$155.00
My handicap is _____. *Required*

Conference Materials: Choose ONE

Registrants have the option of choosing between electronic or printed versions of the conference materials. Please choose one option below. If you would like to receive both the USB and printed materials, an additional \$54.13 must be included with your registration.

- USB Version (includes hard copies of PowerPoint presentations for note-taking)
- Printed Version (3-Ring Binder)
- Both USB & Printed Version at \$50 + .0825 tax.....\$54.13

I cannot attend the conference. Please forward the following:

- Audio CDs & course materials (USB *or* Printed) at \$450 + .0825 tax.....\$487.13
- Course materials only (USB *or* Printed) at \$180 + .0825 tax.....\$194.85

TOTAL ENCLOSED.....\$ _____

No refunds after 5:00 p.m. Friday, February 24, 2017. Cancellation policy on back cover. (Call for Government and Student Discount Information)

Name _____

Firm _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Fax _____

Bar Card # _____ E-mail _____

Make Check Payable to: Texas Institute of Continuing Legal Education

Please Charge: AMERICAN EXPRESS VISA MASTERCARD

Card No. _____ Exp. Date _____

Name on Card (Please Print) _____

Security Code: (3 digit code on MC/Visa, 4 digit code on AmEx): _____

Billing Address (including zip): _____

Authorized Signature _____

SEND THIS FORM TO TEXAS INSTITUTE OF C.I.E.

about the rule of law, and promote diversity in the administration of justice and the practice of law. As part of its mission, the State Bar offers a variety of programs, services, and other benefits for the public as well as Texas attorneys, which are detailed in this presentation.

Frank Earl Stevenson II, Dallas

PRESIDING OFFICER: Richard E. Schellhammer, Fort Worth

1:45 **I CONTRACTED TO BUILD A HOUSE, DO I REALLY HAVE TO BUILD AN APARTMENT COMPLEX?** – In a world where forced work clauses are common, how far can someone go in requiring changed work? At what point is a scope of work an entirely different project? And most importantly, when am I off the hook for performance?

Thomas J. Walthall, Jr., San Antonio

2:15 **THE GOLDEN RULE: THEY WHO HAVE THE GOLD MAKE THE RULES** – Construction lending and what construction lawyers need to know; Tri-party subordination agreements; Construction loan documents may trump the construction contract; What do lenders care about in an A201.

David D. Peden, Jr., Houston

3:00 **BREAK**

3:15 **COVERAGE FOR CONSTRUCTION DEFECTS UNDER CIPs – WHAT DO YOU DO?** – A nuts and bolts guide to the pursuit of construction defect claims under CIPs versus traditional insurance programs, including scope of coverage, joint defense issues, effect on a participant's corporate insurance program and OCIP versus CCIP considerations.

Rodney L. Moss, Dallas

3:45 **ADJOURN**

PRESIDENT, THE CONSTRUCTION LAW FOUNDATION OF TEXAS

George E. Bowles, Locke Lord LLP, Dallas

PRESIDING OFFICERS

Thomas R. Barber, Munsch, Hardt, Kopf & Harr, PC, Houston

Marty Crandall Coleman, Fisher Broyles LLP, Dallas

Denis G. Ducran, Satterfield & Pontikes Construction, Inc., Houston

Richard E. Schellhammer, Underwood Law Firm, P.C., Fort Worth

CONFERENCE FACULTY

William W. Allensworth
Allensworth & Porter,
LLP, Austin

Mason P. Hester
Coats | Rose, Houston

Lionel Mark Schooler
Jackson Walker L.L.P.,
Houston

Talmage Boston
Winstead PC, Dallas

Jon Paul Hoelscher
Bradley Arant Boulton
Cummings LLP,
Houston

Lee H. Shidlofsky
Shidlofsky Law Firm
PLLC, Austin

Lawrence T. Bowman
Kane Russell Coleman
& Logan PC, Dallas

L. Tyrone Holt
The Holt Group LLC,
Denver

Annalyn G. Smith
Schmoyer Reinhard
LLP, San Antonio

Kelly W. Carr
The Brandt Companies,
LLC, Carrollton

Gary W. Javore
Johnson, Christopher,
Javore & Cochran, Inc.,
San Antonio

Allison J. Snyder
Porter Hedges LLP,
Houston

Gregory M. Cokinos
Cokinos, Bosien &
Young, P.C., Houston

Tonya Powers
Johannsen
The Beck Group,
Dallas

Frank Earl Stevenson II
Locke Lord LLP, Dallas

Stanley W. Curry, Jr.
Cokinos, Bosien &
Young, P.C., San
Antonio

Cara D. Kennemer
Underwood Law Firm,
P.C., Fort Worth

Thomas J. Walthall, Jr.
The Gardner Law
Firm, P.C., San
Antonio

Denis G. Ducran
Satterfield & Pontikes
Construction, Inc.,
Houston

Sara Abbott McEown
Jackson Walker L.L.P.,
Houston

Christopher R. Ward
Strasburger & Price,
LLP, Frisco

Amy M. Emerson
Allensworth & Porter,
LLP, Austin

Rodney L. Moss
Aon Risk Solutions,
Dallas

William B. Westcott
Andrews Myers, P.C.,
Houston

R. Carson Fisk
Andrews Myers, P.C.,
Austin

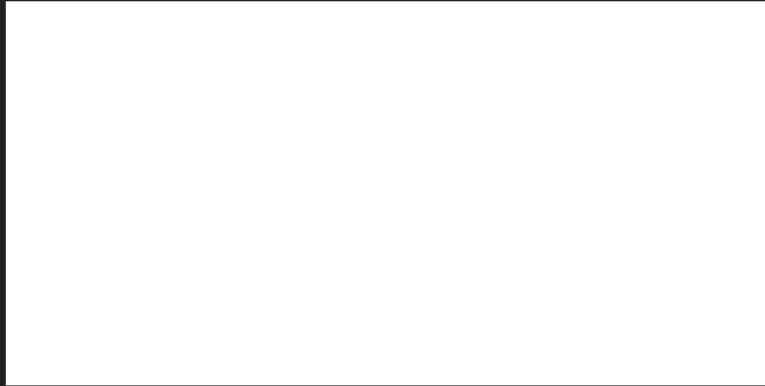
Steve Nelson
SureTec Insurance
Company, Plano

Ben Wheatley
Munsch Hardt Kopf &
Harr, P.C., Austin

Nathan Van Graham
Bradley Arant Boulton
Cummings LLP,
Houston

David D. Peden, Jr.
Porter Hedges LLP,
Houston

R. Craig Williams
HKS, Inc., Dallas



**30th Annual
Construction Law Conference**
March 2 & 3, 2017
**The La Cantera Resort & Spa
San Antonio, Texas**

Cover Art – “Julene’s Garden” is an original by Julene Franki, former Director, TexasBarCLE and Executive Director, ALI-ABA. Julene has graciously donated an art piece for the Folds of Honor raffle. You can find more of her work at www.julene.io.

***Folds of Honor** — We are proud to once again partner with *The Folds of Honor Foundation* to offer raffle tickets for your chance to win great prizes during the conference. All raffle proceeds benefit The Folds of Honor Foundation and their mission to provide scholarship assistance to the spouses and children of soldiers killed or wounded in service to our country.

Special Accommodations — If special arrangements are required for a person with a disability to attend this program, please contact us at 512/451-6960.

Visit Our Website — Visit the Construction Law Section's website at www.constructionlawsection.org for information on how to join the Section and access past conference papers.

Pre-Registration — To ensure sufficient materials are available for all attendees, pre-registration is strongly encouraged. Late registration is subject to additional fees.

Online Registration — Visit www.clesolutions.com to register online using a Visa, MasterCard or American Express.

Registration by Telephone — You may register by telephone by calling 512/451-6960 or by fax 512/451-2911. Faxed and phone-in registrations require a Visa, MasterCard or American Express number, expiration date, security code and billing address.

Cancellations and Refunds — Refunds, less a \$50.00 processing fee, will be given to registrants who cancel by 5:00 p.m. on the Friday preceding the conference. No refunds will be granted thereafter. Course materials and audio CDs will automatically be mailed to prepaid registrants who did not receive a refund and were not able to attend.

2017 PLANNING COMMITTEE
The Construction Law Foundation of Texas Board

George E. Bowles, Dallas
President

Richard P. Flake, Houston
Vice-President

Thomas R. Barber, Houston
Immediate Past President

David P. Boyce, Austin
Gregory M. Cokinos, Houston
Marty Crandall Coleman, Dallas
Denis G. Ducran, Houston
Ian P. Faria, Houston
Andrea A. Hight, Dallas

John Alex Huddleston, San Antonio
Timothy C. Ross, Houston
Richard E. Schellhammer, Fort Worth

Matthew J. Sullivan, Austin
Treasurer

Fred D. Wilshusen, Dallas
Secretary

Donna J. Passons, Austin
Executive Director

Allison J. Snyder, Houston
Bethany F. Thompson, San Antonio
William B. Westcott, Houston
G. Stewart Whitehead, Austin
Patrick J. Wielinski, Irving

Past Section Chairs:
Matthew C. Ryan, Austin
William W. Sommers, San Antonio

This course has been approved for 13.75 hours credit (including 3.50 hours ethics) which will apply toward MCLE, the College of the State Bar of Texas and the Texas Board of Legal Specialization in the fields of Construction Law, Real Estate Law, Personal Injury Trial Law, Civil Appellate Law and Civil Trial Law. You must attend all sessions to receive full credit. MCLE credit is available in other states. Please let us know your needs when you register.

CPAs may obtain approximately 16.50 hours of CPE credit toward licensing with the Texas State Board of Public Accountancy. Sponsor No. 6867.

The Texas Institute of CLE is an accredited sponsor with the Texas Department of Insurance. An application has been submitted for 13.75 hours of General credit (all license types) and 3.50 hours ethics. This course is eligible for MCE credit through the Texas Real Estate Commission.

Annual Conference Sponsors also include:

- * **Flash Drives** – Sponsored by Spire Consulting Group, LP
- * **Internet** – Sponsored by Exponent
- * **Name Badge Lanyards** – Sponsored by HSSK
- * **Notepads** – Sponsored by Bert L. Howe & Associates, Inc.
- * **Tote Bags** – Sponsored by Synergen Consulting
- * **Videotaping** – Sponsored by U.S. Legal Support