

29TH ANNUAL CONSTRUCTION LAW CONFERENCE



MARCH 3 & 4, 2016
THE LA CANTERA HILL COUNTRY RESORT
SAN ANTONIO, TEXAS

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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

29TH ANNUAL CONSTRUCTION LAW CONFERENCE

March 3 & 4, 2016 ♦ The La Cantera Hill Country Resort ♦ 16641 La Cantera Parkway ♦ San Antonio, Texas 78256

WEDNESDAY, MARCH 2, 2016

- 12:30 **GOLF TOURNAMENT** – *Shot Gun Start*
The Palmer Course on the grounds of The La Cantera Hill Country Resort
- 6:15 **RECEPTION** – In cooperation with the Young Lawyers Council of the Construction Law Section – Sponsored by McCullough & Associates

THURSDAY, MARCH 3, 2016

PRESIDING OFFICER: Mason P. Hester, 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**
Thomas R. Barber, Houston
- 9:00 **CASE LAW UPDATE** – Recent case law and other developments impacting the construction industry.
Gregory M. Cokinos, Houston
- 9:45 **ARBITRATION RULES UPDATE** – The AAA has promulgated rules that may have flown under the radar. Fixed time/cost rules for arbitration, and appellate rules, offer clients valuable options.
Robert J. Shapiro, Dallas

- 10:15 **BREAK** – Sponsored by Exponent

- 10:45 **ETHICS OF THE TRI-PARTITE RELATIONSHIP – THE RIGHT OF CONTRACTORS TO SELECT DEFENSE COUNSEL OVER INSURANCE** – Contrasting views from contractor's counsel, insurance defense counsel, and coverage counsel in a construction defect case. What are the roles, and limits, for each lawyer? What are the mistakes that are made again and again? What is the current state of the law for independent counsel?
David P. Boyce, Austin
David Scott Lynch, Houston
David D. Peden, Jr., Houston

- 11:30 **TO BID OR NOT TO BID, THAT IS THE QUESTION** – An update of Texas public procurement statutes and survey of problems and pitfalls for the construction practitioner.
Timothy D. Matheny, Dallas

- 12:15 **LUNCHEON** – *Discounted tickets available for \$16 each.* Sponsored in part by Interface Consulting International, Inc.
Topic: CUTTING EDGE TECHNOLOGY FOR CONSTRUCTION LAWYERS – What's out there, what's effective, and how can it help you effectively manage your practice?
Matthew J. DeVries, Nashville

PRESIDING OFFICER: Misti L. Beanland, Dallas

- 1:45 **NON-COMPETE AGREEMENTS IN CONSTRUCTION** – With the construction labor market getting tighter and tighter, many key employees are changing employers. Here we explore the impact of employee non-compete agreements on the original employer, the departed employee, and the new employer.
J. Paulo Flores, Dallas

- 2:15 **DEFLATEGATE AND SELECTED ISSUES IN ARBITRATION** – That a football was inflated to less than 1.5psi of the NFL standard could become a national cause celebre says a lot about American culture. How the issue was resolved says a lot about arbitration in professional sports. Additionally, we will focus on new techniques of evidence presentation: "hot tubbing" as well as the status of the law on compelling non-signatories to arbitration, an issue frequently arising in construction disputes.
John K. Boyce, III, San Antonio

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

- 3:30 **DRAFTING AND NEGOTIATION OF DESIGN PROFESSIONAL SERVICES CONTRACTS** – *"If you have total freedom, then you are in trouble. It's much better when you have some obligation, some discipline, some rules. When you have no rules, then you start to build your own rules."* – Renzo Piano" Join Capshaw and Rieger as they explore the nuances of design professional contracts and attempt to strike a balance between artistic expression and "the rules."
Richard A. Capshaw, Dallas
Michelle I. Rieger, Dallas

- 4:15 **THE BORDER PATROL** – What limits do "unauthorized practice of law" statutes impose on construction lawyers? This session examines our professional obligations when litigating, arbitrating, or negotiating contracts outside of Texas.
John W. Slates, Dallas

- 4:45 **HOW DO WE GET THIS FINISHED?** – Following a contractor default, the performance bond surety is expected to... do something. This presentation provides an overview of the options available to the surety, the owner and the contractor as the parties work together to get the project completed.
Marty Crandall Coleman, Dallas

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

FRIDAY, MARCH 4, 2016

- 7:00 **CONTINENTAL BREAKFAST**

- 7:30 **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** **INSURANCE FOR DUMMIES** – A basic overview of insurance coverage issues that often arise in construction defect cases, including the types of insurance involved, exclusions that may apply, policy conditions, and the scope of the duty to defend.
Rebecca S.C. DiMasi, Austin

- Breakout #2** **IN-HOUSE PERSPECTIVES: WHAT KEEPS US AWAKE AT NIGHT... AND TIPS FOR BETTER SLEEP** – This panel discussion among senior managing counsel from several major companies in the construction industry will explore various challenges in-house lawyers face along with tips for overcoming them. Presented by in-house lawyers for in-house lawyers, topics will include selection and management of outside counsel, choosing between arbitration and litigation, document retention, ESI discovery, contract management, compliance challenges, data security and more.
Moderator: Denis G. Ducran, Houston
Panelists: Vijay A. D'Cruz, Houston
Tonya Powers Johannsen, Dallas
Mark E. Lowes, Houston

- Breakout #3** **PUBLIC SCHOOL TRAPS** – There are a number of laws unique to public school construction in Texas. As always, those unfamiliar can be caught in some traps as a result, in transactions and litigation. The session will focus on the applicable statutes, the practical effects of the laws and when the construction practitioner is likely to encounter situations where these "special" rules will apply, as well as potential means and methods for dealing with the associated impacts.
Richard E. Schellhammer, Fort Worth

- Breakout #4** **CONSTRUCTION MEETS TEXAS LAW – STATUTORY OVERRIDES** – A discussion of Texas statutory provisions that prevail over common construction contract terms and their associated impact on the resolution of construction claims.
Sean M. McChristian, Houston

- Breakout #5** **MWBE/DBE** – This presentation will provide a summary of the requirements to become a MWBE/DBE and tips and traps for handling MWBE/DBE issues on a construction project.
Andrea Alford Hight, Dallas

PRESIDING OFFICER: J. Paulo Flores, Dallas

- 8:15 **LEGISLATIVE UPDATE** – A review of the construction related bills passed the 84th Regular Legislative Session, as well as a discussion of their impact on the practice of construction law.
William B. Westcott, Houston

- 8:45 **ANATOMY OF A CONSTRUCTION INSURANCE COVERAGE DISPUTE** – A hypothetical construction defect dispute will touch on a myriad of coverage issues and strategies, including coverage analysis, notice and tender of the claim, additional insured and interaction with indemnity, reservation of rights, declinations of coverage and the means to resolve them, whether through declaratory judgment actions, or mediation of the underlying and/or coverage cases.
Moderator: Lee H. Shidlofsky, Austin
Panelists: Patrick J. Wielinski, Irving
Leonard W. Woods, Jr., Austin

- 9:30 **DESIGN-BUILD CONTRACTS: "THE FORCE AWAKENS"** – An examination of why design build agreements have become so popular, whether you need the "The Force" to manage the risk, and discuss situations in which a "Jedi mind trick" might come in handy.
Eric M. Cohen, Houston

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

- 10:30 **ACCIDENT INVESTIGATION AND RESPONSE: PRACTICAL TIPS** – From drafting contractual provisions that allocate risk, the implementation of emergency action plans that assist in the aftermath of a worksite accident, to what to do when OSHA shows up at your worksite including guiding clients to respond appropriately, as well as the legal responses and process to a citation, and the ethical dilemmas that arise for the attorney and client.
Ian P. Faria, Houston

- 11:15 **THIRD PARTY PRACTICE IN MULTI-PARTY DISPUTES: "What We've Got Here, is Failure to Communicate"** – Ever feel like everyone at the mediation is talking about a completely different project, or stubbornly ignoring obvious risks? Practical ways to maximize the mediation process, and maybe even resolve the case, a panel discussion.
Defense: John E. Pipkin, Houston
Plaintiff: Marc E. Gravelly, San Antonio
Mediator: William K. Andrews, Houston

- 12:05 **LUNCHEON** – *Tickets available for \$26 each.*
Topic: ALTERNATIVE FEE ARRANGEMENTS: THEY'RE NOT ALTERNATIVE ANYMORE – Let's stop talking about all the reason to avoid alternative fee arrangements and start using them! A former Fortune 500 GC that only worked with firms on an AFA basis will lead you through the what why and how to start thinking about a non-billable hour world that's better for you and for your customers.
Jeffrey Carr, The Woodlands

PRESIDING OFFICER: William B. Sommers, San Antonio

- 1:30 **INSURANCE UPDATE** – This presentation will dazzle you with an amazing array of new insurance coverage cases and provide you with an in-depth analysis of how each one personally impacts your practice, your life, social media, and the election of the next president.
Lee H. Shidlofsky, Austin

- 2:00 **LAWYERS AS TARGETS** – When clients are unhappy, they often look to blame their lawyers. This presentation explains how and why lawyers

HOTEL INFORMATION

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The La Cantera Hill Country Resort • 16641 La Cantera Parkway • San Antonio, TX 78256

A special block of rooms has been reserved at The La Cantera Hill Country Resort at the special rate of \$194 for single/double. The hotel will release all unused rooms on the **CUTOFF DATE of FEBRUARY 5, 2016**. When contacting the hotel you must identify yourself as a participant with the "29th Annual Construction Law Conference" in order to obtain the special rate in our room block. **Please call the hotel reservation line at (210) 558-6500 to make your reservation.** 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
29th 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 12).....\$500.00
- Pre-Registration for Construction Law Section Members.....\$450.00
(due by 5 p.m. February 12)
- Registration *after 5 p.m. February 12 & before 5 p.m. February 26*.....\$+50.00
- Registration *after 5 p.m. February 26* 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 2, 2016**
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 26, 2016. Cancellation policy on back cover. (Call for Government and Student Discount Information)

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Firm _____

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Authorized Signature _____

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may be subjected to malpractice suits and disciplinary proceedings. It also explains the reasons why lawyers are at greater risk today than in the past for their actions, and what lawyers can do to foster a fuller understanding of professionalism among themselves.

Michael S. Ariens, San Antonio

2:45 **BREAK** – Sponsored by VERTEX Companies, Inc.

3:00 **THE GRINCH THAT STOLE COVERAGE** – Learn how to protect your clients against the epidemic of insurance endorsements being used that eviscerate coverage. Affected are smaller GCs and subcontractors of any tier.

Charles E. Comiskey, Houston

3:35 **PORT O JOHNS AND PIPELINES: QUIRKS AND CURVEBALLS IN LIEN PRACTICE** – Advanced and emerging issues in mineral liens, mechanics' liens, and Chapter 2253 bond claims.

Bethany F. Thompson, San Antonio

4:05 **KEY CLAUSES IN DESIGN AND CONSTRUCTION CONTRACTS FOR CONDOMINIUM PROJECTS** – Typical clauses in design and construction contracts may not provide the protections sought when drafting for a condominium project. We will discuss suggested revisions, the importance of harmonizing the design and construction contracts with the condominium declarations, and the new protections in the Uniform Condominium Act.

Joe R. Basham, Austin

4:35 **ADJOURN**

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& Price, LLP, Dallas

Timothy D. Matheny
Ford Nassen &
Baldwin, P.C., Dallas

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Duggins Wren Mann
& Romero, LLP, Austin

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Enterprise Products
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Sean M. McChristian
Porter Hedges LLP,
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San Antonio, Texas

Cover Art – A Tribute to Byron Fullerton — "Bluebonnet Hillside" is an original by Byron Fullerton from Austin, Texas. Byron passed in 2011 and we proudly honor his memory and talent by featuring this special piece for the 29th Annual brochure.

***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 and security code.

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.

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This course has been approved for 14.75 hours credit (including 3.75 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 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 17.70 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 11.00 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
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