

37TH ANNUAL CONSTRUCTION LAW CONFERENCE



**MARCH 7 & 8, 2024
THE LA CANTERA RESORT & SPA
SAN ANTONIO, TEXAS**

Earn up to 12.00 Hours MCLE Credit, including 3.00 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 MCE credit through the Texas Real Estate Commission. Texas Department of Insurance credit requested.

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

37TH ANNUAL CONSTRUCTION LAW CONFERENCE

March 7 & 8, 2024 ♦ The La Cantera Resort & Spa ♦ 16641 La Cantera Parkway ♦ San Antonio, Texas 78256

WEDNESDAY, MARCH 6, 2024

- 12:00 **GOLF TOURNAMENT** – *Shot Gun Start*
Only conference registrants, presenters and 2024 sponsor attendees are eligible to register.
The Resort Course at The La Cantera Resort
- 2:00 **PRE-REGISTRATION PICK-UP** – Attendees who pre-registered by February 28 may pick-up their badge and materials from 2:00-4:00pm.
- 4:30 **TEXAS WOMEN'S CONSTRUCTION LAW GROUP NETWORKING EVENT** – For registered conference attendees only. *Please indicate your RSVP to attend on the registration form.* – Sponsored by Socotec
- 6:15 **RECEPTION** – In cooperation with the Young Lawyer's Committee of the Construction Law Section – Sponsored by Rimkus

THURSDAY, MARCH 7, 2024

PRESIDING OFFICER: Gregory M. Cokinos, 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 Fiebig Architecture, PLLC
- 8:50 **WELCOME ON BEHALF OF THE CONSTRUCTION LAW FOUNDATION**
Thomas J. Walthall Jr., San Antonio
- 9:00 **CASE LAW UPDATE** – Recent case law and other developments affecting the construction industry.
William W. Allensworth, Austin
- 9:50 **SOMEONE FILED A MECHANIC'S LIEN – NOW WHAT DO I DO?** – Tips, traps, and ethical considerations when a lien is filed on your project. This session will address statutory requirements and practical tips for filing an indemnity bond and procedures for removing a lien, what constitutes a fraudulent lien and how to avoid filing one, and remedies if a fraudulent lien is filed on your project.
Misty Hubbard Gutierrez, Dallas
- 10:20 **PIONEER AWARD** – **Hollye C. Fisk**
The Pioneer Award is given by the Foundation as a recognition for lifetime achievement, a career of service, and extraordinary contribution to the practice of Construction Law. *Presented by Craig Williams, Chief Legal Officer at HKS, Dallas.*
- 10:30 **BREAK** – Sponsored by Secretariat
- 11:00 **MEDIATION DO'S AND DON'TS FOR MULTI-PARTY CONSTRUCTION DEFECT CASES** – Ways to maximize your chances of success in mediation, especially when insurance is involved. How to avoid common misconceptions and missteps that may lead to unsuccessful mediations.
Moderator: Lee H. Shidlofsky, Austin
Brian K. Carroll, Belton
Michael B. Gerstle, Dallas
Jennifer L. Kelley, Dallas
- 11:45 **LUNCHEON** – *Tickets available for \$25 each.*

.50 Ethics
RESILIENCY IN THE LEGAL PROFESSION: STRATEGIES TO BANISH ANXIETY AND BOOST POSITIVITY IN THE FACE OF ONGOING CHANGE IN THE WORKPLACE – Information about anxiety from a psychosocial perspective and an opportunity to assess your own level of anxiety will be addressed. Our speaker will share science-based, resilience-boosting strategies that promote one's ability to overcome anxiety and increase a sense of well-being and positivity.
Bree Buchanan, San Marcos

PRESIDING OFFICER: Erick L. Lucio, Brownsville

- 1:15 **CAUSES OF ACTION AND DAMAGES IN CONSTRUCTION LAW** – Causes of action and damages, including causes of action and claims by owners against GCs, as well as GCs against subcontractors, along with an analysis of the downflow of claims by GCs against subcontractors

and lower tier vendors and suppliers, indemnity concerns, anti-indemnity issues, additional insured, crossclaims, and responsible third parties.
Gregory M. Cokinos, Houston
Angela A. Connor, Houston
Mark A. Waite, Houston

- 2:00 **I HAVE A VERDICT – WHAT DO I DO?** – Turning the verdict into a judgment and election of remedies.
Jessica Z. Barger, Houston
- 3:00 **BREAK** – Sponsored by FTI Consulting, Inc.

CONCURRENT SESSIONS - Choose Sessions A or B

Sessions A - PRESIDING OFFICER: Cara D. Kennemer

- 3:15 **CAN YOU TAKE ME HIGHER – NEW TRENDS IN TRUNCATED ADR** – Moderated settlement conferences, summary jury trials, mock trials and arbitrations.
George E. Bowles, Dallas
Richard P. Flake, Friendswood
- 3:45 **EQUITABLE ADJUSTMENTS AND CLAIMS: TIPS, TRAPS, AND BEST PRACTICES** – The subjective concept of equity often plays a role in the resolution of construction disputes. Consideration of how equity applies—and who determines what is equitable—is best addressed at the contract drafting stage. This session will focus on equity as addressed in leading industry group forms, offering practitioners suggested approaches to revisions and will discuss the concept as it applies at the federal level, through the False Claims Act.
R. Carson Fisk, Austin
- 4:15 **MANY RIVERS TO CROSS – ENFORCING ARBITRATION AGREEMENTS AS WRITTEN** – Although the Texas Supreme Court long ago established legal theories under which non-signatories to arbitration agreements may be compelled to arbitration, until recently it did not address application of those legal theories in construction defect cases. Recently, the Supreme Court fleshed out the doctrine of direct-benefits estoppel and how it applies to non-signatory homeowners who sue residential builders for defects. The Court also clarified whether the trial court or the arbitrator decides issues of “arbitrability.” This session will summarize the Court's decisions and discuss practice tips for those seeking to enforce their arbitration agreements.
James W. Rudnicki, Austin
- 4:45 **THE RECONSTRUCTED RCLA** – For attorneys representing homeowners or homebuilders, knowledge of the RCLA—Chapter 27 of the Property Code—is crucial. The RCLA looms large in all aspects of a claim, from pre-suit obligations through recovery of damages. We will discuss recent amendments to the RCLA, including changes to deadlines, burdens of proof, liability limitations, and potentially recoverable damages.
Kimberly G. Altsuler, Houston

Sessions B - PRESIDING OFFICER: Erick L. Lucio

- 3:15 **HOW MANY CHANGES ARE TOO MANY CHANGES? A LOOK AT THE CARDINAL CHANGE AND CUMULATIVE IMPACT DOCTRINES** – This session will review federal and state case law on the doctrines of cardinal change and cumulative impact to examine whether a change order is still a prerequisite to a claimant obtaining relief or recovery against an owner.
Timothy D. Matheny, Dallas
- 3:45 **SIGN, SIGN, EVERYWHERE ASSIGNMENTS: WHAT YOU NEED TO KNOW ABOUT ASSIGNING CONSTRUCTION CONTRACTS AND CLAIMS** – Claims and contracts that can and cannot be assigned, traditional assignments, liquidating agreements and pass-through claims, and statutory schemes and equitable doctrines that affect assigning certain claims.
Karly A. Houchin, Austin

4:15 **NAVIGATING THE PROCUREMENT MAZE** – Those who are new to the public works world may get caught in a maze of unfamiliar statutes and regulations that can lead to missed opportunities and rejected bids. This session will provide an overview of federal and state public procurement rules and updates and offer practical advice to answer common client questions regarding procurement.
Jerry M. Negrete, Austin

4:45 **ROBOTS AND LASERS AND BIM - OH MY!** – 3D BIM models, drones, robots, laser scanning, virtual reality, wearable technology are some of the new technologies used on residential and commercial projects. Owners may receive a “digital twin” rather than as-builts. Project management software integrates, organizes, and analyzes data from numerous sources. This session will describe new technologies and how to request, gather, organize, and use the voluminous data created (as well as managing cybersecurity, confidentiality, and ethical issues) in non-technical, practical terms.
Leslie K. O'Neal, Miami

5:15 **ADJOURN TO RECEPTION** – Sponsored by Interface Consulting International, Inc. & Nelson Forensics, LLC

FRIDAY, MARCH 8, 2024

PRESIDING OFFICER: Cara D. Kennemer, Fort Worth

- 8:00 **CONTINENTAL BREAKFAST**
- 8:30 **LEGISLATIVE UPDATE** – Summary of outcome of the 88th Legislative Session and potential impacts on your practice.
Ian P. Faria, Houston
- 9:00 **LAWYERS BEHAVING BADLY** – Join Karen Delaney (solo; co-host of the *Lawyers Behaving Badly* podcast; professional mess enthusiast) and Karen Vladeck (Managing Director, Whistler Partners; recovering litigator; *Lawyers Behaving Badly* enthusiast) as they share outrageous but true tales of ethically indifferent lawyers.
Karen A. Delaney, Frisco
Karen S. Vladeck, Austin
- 10:00 **BREAK** – Sponsored by Bryant Consultants, Inc.
- 10:25 **MEAN TWEETS II: CONFERENCE EDITION**
Matthew C. Ryan, Austin
- 10:30 **INSURANCE LAW UPDATE** – Insurance in the world of construction: What's new and what's coming around the bend?
Douglas P. Skelley, Austin
- 11:00 **WON'T YOU BE MY EXPERT?** – This session examines several issues related to the use of experts in construction law including relevant case law and legal standards, the ability to designate a party as an expert, and effective avenues to strike an expert.
James S. Richards, Houston
- 11:30 **CONTRACTUAL INSURANCE REQUIREMENTS, POLICY FORMS AND ENDORSEMENTS** – A focus on nature of contractual liability insurance vs. required indemnification and vs. additional insured status, including procurement of proper insurance coverage.
Charles E. Comiskey, Houston
- 12:15 **LUNCHEON** – *Tickets available for \$26 each.*
.50 Ethics
THE CHANGING TIDE: LAW PRACTICE MANAGEMENT IN A POST-COVID WORLD – Remote depositions and court appearances necessary during the pandemic have continued and become more mainstream. Attorneys continue to work remotely, at least part of the time, and often such flexibility in work hours or location is necessary to maintain and attract new talent. This session will discuss the continuing challenges that attorneys face and some of the ethical issues that are raised.
Christine Reinhard, San Antonio

PRESIDING OFFICER: Jon Paul Hoelscher, Houston

- 1:45 BREAK - Sponsored by Bert L. Howe & Associates, Inc.
2:00 THE CONTRACTUAL RIGHT TO OFFSET MONEY OWED ON OTHER PROJECTS: I CAN DO THAT... RIGHT? - During the most recent Legislature, failed legislation tried to make it a Trust Fund Act and Prompt Pay Act violation where a prime contractor withholds payment to a subcontractor on Project B, due to a payment dispute/alleged default regarding that same subcontractor on Project A.
2:30 SURETY BONDS IN CONSTRUCTION - Types of bonds, common situations, contractual implications, and the usual players and their respective perspectives.
3:15 EQUIPMENT AND MATERIAL PROCUREMENT IN A POST-PANDEMIC ERA - Challenges abound when procuring equipment and materials.
3:45 ADJOURN

PRESIDENT, THE CONSTRUCTION LAW FOUNDATION OF TEXAS

Thomas J. Walthall, Jr., Sanderford & Carroll P.C., San Antonio

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- Gregory M. Cokinos, Cokinos | Young, Houston
Jon Paul Hoelscher, Bradley Arant Boult Cummings LLP, Houston
Cara D. Kennemer, Underwood Law Firm, P.C., Fort Worth
Erick L. Lucio, Hamilton & Lucio, P.C., Brownsville

CONFERENCE FACULTY

- William W. Allensworth, Allensworth Law, Austin
Kimberly G. Altsuler, Peckar & Abramson, P.C., Houston
Jessica Z. Barger, Wright Close & Barger, LLP, Houston
George E. Bowles, Bowles ADR, Dallas
Bree Buchanan, Krill Strategies, San Marcos
Brian Keith Carroll, Sanderford & Carroll P.C., Belton
Gregory M. Cokinos, Cokinos | Young, Houston
Charles E. Comiskey, RiskTech, Inc., Houston
Angela A. Connor, Peckar & Abramson, P.C., Houston
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Ian P. Faria, Bradley Arant Boult Cummings LLP, Houston
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Richard P. Flake, Flake ADR, Friendswood
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Misty H. Gutierrez, Thomas, Feldman & Wilshusen, L.L.P., Dallas
Mason P. Hester, Munsch Hardt Kopf & Harr, P.C., Houston
Karly A. Houchin, Allensworth Law, Austin
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Christine Reinhard, Schmoyer Reinhard LLP, San Antonio
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Seth A. Russell, Andrews Myers, P.C., Houston
Lee H. Shidlofsky, Shidlofsky Law Firm PLLC, Austin
Douglas P. Skelley, Shidlofsky Law Firm PLLC, Austin
Karen S. Vladdek, Whistler Partners, Austin
Mark A. Waite, DLA Piper LLP, Houston
Gregory M. Weinstein, Weinstein Radcliff Pipkin LLP, Dallas

HOTEL INFORMATION

37th ANNUAL CONSTRUCTION LAW CONFERENCE ♦ March 7 & 8, 2024
The La Cantera Resort & Spa • 16641 La Cantera Parkway • San Antonio, TX 78256

The La Cantera Resort & Spa is our host hotel for the conference. As of press time, the group room block was filled to capacity with early-bird registrants but the status changes daily and rooms will only be provided on a space and rate-available basis going forward. If you plan to attend, we encourage you to secure a reservation at a nearby venue as soon as possible.

REGISTRATION FORM

Mail to: The Construction Law Foundation of Texas
37th Annual Construction Law Conference
P.O. Box 4646
Austin, TX 78765-4646

Online at: www.constructionlawfoundation.org

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 16).....\$600.00
Pre-Registration Fee for Construction Law Section Members.....\$550.00
Registration after 5 p.m. February 16 & before 5 p.m. February 28...+\$250.00
Door Registration after 5 p.m. February 28 (Available Onsite Only).....+\$250.00
Construction Law Section Dues (eligible for the member registration fee).... \$ 30.00
Thursday Luncheon Ticket at \$25 each..... \$
Friday Luncheon Ticket at \$26 each..... \$
RSVP for Texas Women's CLG Networking Event on Wednesday, March 6, 2024
I will play in the Golf Tournament on Wednesday, March 6, 2024
Green Fee (includes range balls and shared cart).....\$155.00
My handicap is _____. Required

Conference Materials:

Registrants will automatically receive the electronic USB version of the conference materials. You may also pre-purchase the printed binder version for an additional fee.
Add Printed Version (3-Ring Binder) at \$50 + .0825 tax.....\$ 54.13

I cannot attend the conference. Please forward the following:

- Audio Files & Course Materials (On USB Only) at \$500 + .0825 tax.....\$541.25
Course Materials Only (On USB Only) at \$200 + .0825 tax.....\$216.50

TOTAL ENCLOSED.....\$

No refunds after 5:00 p.m. Friday, March 1, 2024. See cancellation policy on back cover. (Call for Government and Student Discount Information)

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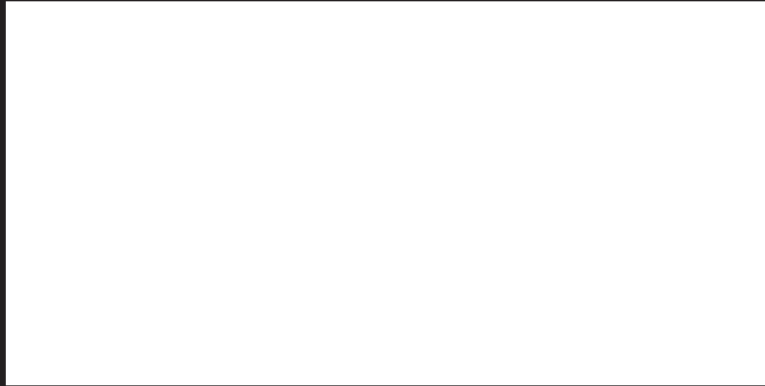
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March 7 & 8, 2024
**The La Cantera Resort & Spa
San Antonio, Texas**

Cover Art – “White Caps on Slab Road” is an original by Julene Franki, former Director, TexasBarCLE and Executive Director, ALI-ABA. You can find more of her work at www.julene.io.

***Tunnel to Towers Foundation (T2T.org)** — We are proud to partner with T2T to offer the opportunity for attendees to contribute during the conference. All donations will benefit T2T and their mission to help America’s heroes by providing mortgage-free homes to Gold Star and fallen first responder families and by building specially-adapted smart homes for catastrophically injured veterans and first responders.

Special Accommodations — If special arrangements are required for a person with a disability to attend this program, please contact us at 512.451.6960.

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

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

Online Registration — Visit www.constructionlawfoundation.org 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 full 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 files will automatically be mailed to prepaid registrants who did not receive a refund and were not able to attend.

2024 PLANNING COMMITTEE
The Construction Law Foundation of Texas Board

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Misty H. Gutierrez, Dallas	Kyle A. Zunker, San Antonio

This course has been approved for 12.00 hours credit (including 3.00 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 14.40 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 will be submitted for 12.00 hours of General credit (all license types) and 2.5 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, LLC
- * **Internet** – Sponsored by Ankura Consulting Group, LLC
- * **Name Badge Lanyards** – Sponsored by Weaver
- * **Notepads** – Sponsored by Thornton Tomasetti
- * **Power Strips** – Sponsored by Precision Scheduling Consultants, LLC
- * **Tote Bags** – Sponsored by Socotec
- * **Videotaping** – Sponsored by U.S. Legal Support

FOR MORE INFORMATION ABOUT THIS PROGRAM OR OTHER PROGRAMS OFFERED BY THE TEXAS INSTITUTE OF CLE, PLEASE VISIT WWW.CLESOLUTIONS.COM.