

**THE FLORIDA BAR BUSINESS LAW SECTION
EXECUTIVE COUNCIL MEETING AGENDA**

Thursday, June 22, 2017
3:30 p.m. – 6:30 p.m.

Boca Resort and Club, Boca Raton, Florida

- I. Call to Order, and Introductions by Council Members – Jon Polenberg, Chair**
- II. Approval of Minutes of the January 26, 2017 Midyear Meeting (EXHIBIT “A”)**
Michael Chesal, Secretary-Treasurer
- III. Treasurer’s Report – Michael Chesal, Secretary-Treasurer (EXHIBIT “B”)**
- IV. Reports of Special Committees and Task Forces**
 - A. Bylaws Task Force – Phil Schwartz, Chair
 - B. Chapter 607 Sub-Committee – Phil Schwartz and Gary Teblum, Co-Chairs
 - C. Rule 4-4.2 Task Force – Manny Farach, Chair
 - D. UCRERA Task Force – Amanda Fernandez and Ken Murena, Co-Chairs
 - E. Bitcoin Task Force – Woody Pollack, Chair
- V. Standing Committee Reports**
 - A. Bankruptcy/UCC – Jodi Cooke, Chair; Hon. Cathy McEwen, Judicial Chair
 - B. Bankruptcy/Judicial Liaison – Lynn Sherman, Chair; Hon. Paul Hyman, Judicial Chair
 - C. Business Litigation – Irwin Gilbert, Chair; Hon. Ed LaRose, Judicial Chair
 - D. Communications – Paige Greenlee, Chair
 - E. Computer & Technology Law – Keith Kanouse, Chair
 - F. Continuing Legal Education – Stephanie Lieb, Chair
 - G. Corporations, Securities & Financial Services – Robert Barron, Chair
 - H. eDiscovery Committee – Christian Dodd, Chair
 - I. Inclusion/Mentoring/Fellowships – James Moon, Chair
Hon. John Olson Judicial Chair
 - J. Intellectual Property – Kimra Major-Morris, Chair
 - K. Legislation – Jay Brown, Chair
Aimee Diaz Lyon & Greg Black, Legislative Consultants
 - L. Long Range Planning – Greg Yadley, Chair; Hon. Michael G. Williamson, Judicial Chair
 - M. Membership & Law School Relations – Amir Isaiah and Zach Hyman, Co-Chairs
 - N. Pro Bono – John MacDonald, Chair; Hon. Laurel Isicoff, Judicial Chair
 - O. Labor Day Weekend Retreat – Mark Nichols, Chair
 - P. Sponsorship Committee – Doug Bates and Jason Burnett, Co-Chairs
 - Q. State/Federal Courts Liaison – Detra Shaw Wilder, Chair; Hon. Gill Freeman, Judicial Chair
 - R. Third Party Opinion Standards Committee – Robert Barron, Chair **(EXHIBIT C)**
- VI. Other Reports:**
 - A. Historian/Parliamentarian Report – Phil Schwartz
 - B. Council of Sections Report – Jon Polenberg
 - C. Board of Governors – Leslie Lott
 - D. RPPTL Liaison Report – Jamie Marx/Marsha Rydberg
 - E. Tax Liaison Report –

- F. Liaison to FICPA Report – Donald Workman
- G. Liaison to Out-of-State Practitioners Report – Donald Workman
- H. Chair’s Report – Jon Polenberg
- I. Chair-Elect’s Report – Melanie Damian

VII. Future Meeting Dates

- A. Labor Day Retreat – Eau, Palm Beach, Florida September 1-4, 2017
- B. Mid-year Meeting – TBD January 2018

VIII. Motion to Adjourn

EXHIBIT A

**MINUTES OF THE 2016-17 MID-YEAR MEETING
OF THE FLORIDA BAR BUSINESS LAW SECTION
EXECUTIVE COUNCIL**

Thursday, January 26, 2017
Gaylord Palms, Orlando Florida

I. Call to Order and Introductions – Jon Polenberg, Chair

Jon Polenberg, Chair of the Section, duly called the meeting to order at approximately 9:00 AM.

As the first order of business, Mr. Polenberg confirmed the Section’s commitment to Pro Bono activities.

Mr. Polenberg then requested that every member present please sign the “Attendance List” to confirm that a quorum was present for the transaction of business. (A copy of the Attendance Sheet is attached hereto.)

II. Approval of Minutes - Michael Chesal, Secretary-Treasurer

Michael Chesal, Secretary-Treasurer, presented the Minutes of the September 5, 2016 Labor Day Weekend Retreat meeting (a copy of which were attached to the Agenda as Exhibit A) for approval. Upon motion duly made and seconded, the Minutes were approved (subject to a notation that although not reflected on the attendance sheet, Manuel Farach and Judge Ed LaRose as well as the Chair, Vice-Chair and Secretary-Treasurer of the Section were also in attendance).

III. Matters Requiring Executive Council Vote or Consideration

Chairman Polenberg then took the following items out of order (originally under item IV of the agenda).

A. Access to Civil Justice Commission – Council of Business Partners

Chairman Polenberg recognized Greg Coleman, who advised the members of the BLS Executive Council that the Council of Business Partners was actively recruiting members of the general business community to serve on the Council of Business Partners Access to Justice Initiative. He requested that members of the BLS Executive Council forward him the names of any qualified candidates so that they could be given due consideration.

B. Triple Motions

Chairman Polenberg then advised the Council that the Business Litigation Committee and Bankruptcy/UCC Committees had approved legislative positions in their respective committees that they wished to present to the Executive Council for consideration and approval. Chairman Polenberg then recognized Jacob “Jay” Brown, Chair of the Legislation Committee, to present the motions.

Mr. Brown duly presented the first triple motion, moving to have the Section support, by triple motion, opposition to any proposed amendments to the Florida Constitution that would restrict or overturn the courts' authority to review the constitutional validity of legislation. Jude Cooper seconded the motion. After brief discussion the question was called and the triple motion passed unanimously.

Mr. Brown then presented a second triple motion, moving to have the Section support opposition to any proposed amendments to the United States Constitution that would restrict or overturn the courts' authority to review the constitutional validity of legislation. Merrick "Rick" Gross seconded the motion. After brief discussion the question was called and the triple motion passed unanimously.

Mr. Brown then presented a third triple motion, moving to have the Section support, by triple motion, opposition to any proposed legislation that would violate a legislator's oath of office to not violate the Constitution of Florida or the Constitution of the United States or that threatens the separation of powers therein. Mark Stein seconded the motion. The floor was opened for discussion, whereupon Irwin Gilbert, Chair of the Business Litigation Committee, expressed concern that by passing the motion and adopting this position, it might be offensive to legislators. Rick Gross expressed a similar concern, particularly because of the upcoming Constitution Revision Commission. After some further discussion Mr. Gilbert then moved to table the motion. Jodi Cooke, Chair of the Bankruptcy/UCC Committee seconded the motion to table. The question was called and the motion to table passed unanimously. The motion was thus duly tabled.

Mr. Brown then presented a fourth and final triple motion, moving to have the Section support, by triple motion, opposition to term limits for judges as well as minimum age requirements at any level of Florida's state court system. Maxine Long seconded the motion. After brief discussion, the question was called and the triple motion passed, with one abstention.

IV. Treasurer's Report – Michael Chesal, Secretary-Treasurer

Returning to Item III of the Agenda, Chairman Polenbergh then invited Michael Chesal, Secretary-Treasurer, to present the Section's 2017-18 Proposed Budget for approval.

Mr. Chesal noted that a copy of the Proposed Budget was attached to the Agenda as Exhibit B and moved for its approval and adoption. Jay Brown seconded the motion. After answering a few questions, the question was then called and the motion passed unanimously and the 2017-2018 budget was duly adopted.

V. Reports of Special Committees and Task Forces

A. Bylaws Task Force – Phil Schwartz, Chair

The Chair then asked for a report from the Bylaws Task Force. Phil Schwartz, Chair of the Task Force, proceeded to thank all those who had participated in

rewriting the Section's Bylaws and indicated that with the adoption of the new Bylaws, the work of the Task Force was now completed.

Chairman Polenberg noted (with hint of frustration) that it took roughly ten months for The Florida Bar to approve the Section's proposed Bylaws amendments.

Mr. Schwartz indicated that with the adoption of the new Bylaws, the next task for the Section was to work on their implementation.

Mr. Schwartz then returned to Chairman Polenberg's comment and proceeded to question why the process had to be so cumbersome and why the Bar finds it necessary to take a proprietary interest in the detailed workings of the various Sections of the Bar. Mr. Schwartz indicated that he plans to raise this issue with the Council of Sections.

Mr. Chesal requested that before dissolving the Task Force that Mr. Schwartz prepare an implementation memorandum highlighting the steps to be taken to implement the new Bylaws. Mr. Schwartz graciously agreed.

B. Chapter 607 Sub-Committee – Phil Schwartz and Gary Teblum, Co-Chairs

The Chair then requested a report from the Chapter 607 Sub-Committee. Gary Teblum, Co-Chair, reported that the Subcommittee had a productive three-hour meeting the prior day. He also indicated that the subcommittee did not expect to have a draft bill completed for the 2018 legislative session, but that it would be realistic to have a proposal ready for the 2019 legislative session.

Mr. Teblum also indicated that the Subcommittee had received good input from the Florida Department of State, which has provided strong support for the efforts of the Subcommittee.

Finally, Mr. Teblum thanked all those who have participated in the Subcommittee's regular telephonic conferences.

C. Rule 4-4.2 Task Force – Manny Farach, Chair

The Chair then asked for a report from the Rule 4.4.2 Task Force. Manny Farach, Chair, indicated that there had been no developments since the last report.

D. UCRERA Task Force – Amanda Fernandez and Ken Murena, Co-Chairs

The Chair then asked for a report from the UCRERA Task Force. Amanda Fernandez, Co-Chair, reported that the Task Force did not formally meet during the mid-year meeting, but that a majority of members of the Task Force felt that the proposed Act (the Uniform Commercial Real Estate Receivership Act) is still worth pursuing. Ms. Fernandez indicated that the Task Force is planning a telephonic meeting in two weeks and that they hoped to have a proposal for the 2018 Legislative Session.

E. Bitcoin Task Force – Woody Pollack, Chair

The Chair then asked for a report from the Bitcoin Task Force. Woodrow “Woody” Pollock, Chair, reported that the Task Force had successfully researched and provided advice to Senator Hukill on proposed Bitcoin legislation. Mr. Pollock also indicated that a banking regulation expert was also providing assistance on this issue.

VI. Standing Committee Reports

The Chair then requested reports from each of the Section’s standing committees:

A. Bankruptcy/UCC – Jodi Cooke, Chair; Hon. Cathy McEwen, Judicial Chair

Jodi Cooke, Chair, reported on behalf of the Bankruptcy/UCC Committee. Ms. Cooke advised that the Committee had a well-attended meeting, which focused largely on legislative issues, especially the Uniform Voidable Transfers Act. Ms. Cooke indicated that the Committee was working diligently to try and resolve differences that the Section has with positions being taken by the Real Property, Probate & Trust Law (“RPPTL”) Section of the Bar. Ms. Cooke also indicated that the Committee discussed proposed foreclosure amendments, a bill proposed by the International Law Section and issues relating to Sections 121 and 125 of the Bankruptcy Code.

Ms. Cooke also reported that the Committee was working on continuing legal education, including a planned May 19th boot camp on depositions to be presented in Orlando and a general bankruptcy CLE to be presented in cooperation with the Young Lawyers Division.

Corali “Cori” Lopez-Castro then discussed creation of a database of prospective receivers, which was requested by and would be a resource for judges in Florida’s 11th Judicial Circuit. (A copy of the proposal is attached hereto.)

Michael Chesal requested that Ms. Lopez-Castro provide the Section with feedback concerning the effectiveness and usefulness of the database once it was implemented.

This concluded the report of the Bankruptcy/UCC committee.

(Before proceeding, Chairman Polenberg recognized Lanse Scriven, candidate for President-Elect of The Florida Bar, who briefly addressed the Council about the upcoming election and his qualifications.)

B. Bankruptcy/Judicial Liaison – Lynn Sherman, Chair; Hon. Paul Hyman, Judicial Chair

Judge Paul Hyman, Judicial Chair, reported on behalf of the Bankruptcy Judicial Liaison Committee. He informed that Council that the Committee had a well-attended meeting, with reports from various clerks, judges and bar associations representing each district. The Committee then retired to what was described as a “great” dinner.

C. Business Litigation – Irwin Gilbert, Chair; Hon. Ed LaRose, Judicial Chair

Irwin Gilbert, Chair, reported that the Business Litigation Committee also had a well-attended meeting. Mr. Gilbert indicated that the Committee discussed legislation, but they did not discuss Antitrust Certification. The committee hopes to take up the issue of Antitrust Certification at its next meeting. Mr. Gilbert also indicated that the Committee is working on a project with Paige Greenlee to see if they can provide profiles of members on the Section's website. The Committee also discussed the Section's submission of an *amicus curiae* brief in *Ober v. Town of Lauderdale-By-The-Sea*. Mr. Gilbert noted that the Fourth District Court of Appeal withdrew its earlier opinion and then not only adopted the position taken by the Section, but referred to the Section's brief in the Opinion.

D. Communications – Paige Greenlee, Chair

Paige Greenlee reported for the Communications Committee. Ms. Greenlee began with a brief discussion of Lexology, an email collaboration of scholarly legal articles, sent to Council members as a member benefit. Ms. Greenlee then requested the submission of articles from members of the Section for inclusion in the Section blog. Lastly, she asked that Council members please let the Committee know about any events that should be publicized.

E. Computer & Technology Law – Keith Kanouse, Chair

The Computer & Technology Law Committee did not have a report.

F. Continuing Legal Education – Stephanie Lieb, Chair

Jennifer Morando reported for the Continuing Legal Education Committee. Ms. Morando indicated that the Committee had focused on ways to promote awareness of the Section in the legal community at large, informing the Council of the various programs being offered throughout the State by the Section and its members.

G. Corporations, Securities & Financial Services – Robert Barron, Chair

Andrew Schwartz, Vice-Chair, reported for the Corporations, Securities & Financial Services Committee. Mr. Schwartz indicated that the Committee's meeting was unfortunately not as well attended as last year's mid-year meeting. He is hopeful that attendance will increase in the future. The main focus of discussion at the Committee's meeting was the Fictitious Name legislation, would was moving forward in the 2017 legislative session as planned.

H. eDiscovery Committee – Christian Dodd, Chair

Christian Dodd reported for the eDiscovery Committee. Mr. Dodd indicated that the Committee's meeting was well-attended. The Committee has worked on three main projects: (1) As part of the Committee's judicial outreach efforts, the Committee organized a CJE presentation for judges in Broward County and is planning to offer similar presentation to the judiciary in Tampa and Orlando; (2) The Committee is once again planning a 4 hour CLE to be presented at the annual

meeting of The Florida Bar in conjunction with Computer & Technology Law Committee, focusing on cyber security issues; (3) The Committee has also formed task force to study the impact of the 2015 amendments to Federal Rules of Civil Procedure and to consider whether any similar changes should be proposed to the Florida Rule of Civil Procedure.

I. Inclusion/Mentoring/Fellowships – James Moon, Chair
Hon. John Olson and Hon. Gill Freeman, Co-Judicial Chairs

James Moon, Chair, reported for the Inclusion/Mentoring/Fellowships Committee. Mr. Moon thanked all those in attendance who had attended the Section's luncheon. He reported that the Committee's meeting was well attended and included a lively discussion about what the Committee's focus should be. Mr. Moon expressed his belief that CLE would seem to be the best vehicle for accomplishing the Committee's outreach goals. He also discussed organizing a Diversity Workshop to be held in conjunction with the Section's Labor Day Weekend Retreat. He informed the Council about the upcoming Diversity Picnics being organized in Miami and Orlando. He also noted that Florida Coastal University and the Jacksonville Bar Association were in the planning stages for another event focused on promoting diversity.

Mr. Moon then noted that the Section's Fellows seemed to be having some difficulty getting projects from mentors. He suggested that having them write articles for the Section would be a worthwhile project if other projects weren't readily available.

Lastly, he noted that the Committee approved funding from their budget for the roll-out of Receivership Project that Cori Lopez-Castro had discussed earlier in the meeting, which was estimated to be \$1500.00.

J. Intellectual Property – Kimra Major-Morris, Chair

Kimra Major-Morris reported for the Intellectual Property Law Committee. Ms. Major-Morris noted that the Committee had a well-attended meeting, with at least three new faces, including law students. During the meeting, there was a CLE presentation on school apparel trademarks. The Committee also discussed proposed amendments to Florida Trademark Act. The Committee was also gearing up for its upcoming 8th Annual IP Law Symposium, scheduled for March 30-31, 2017, which would include a panel discussion on preparing for the IP Board Certification exam.

K. Legislation – Jay Brown, Chair
Aimee Diaz Lyon & Greg Black, Legislative Consultants

Jay Brown reported for the Legislation Committee. Mr. Brown indicated that the Committee meeting was well-attended. Mr. Brown noted that one of the Committee's challenges this year was dealing with the large turnover of legislators in the House and Senate. He discussed some ways to help with the transition. Mr. Brown then noted that next year's session will begin in January, which means that there will be less time to prepare any proposed bills. Mr. Brown asked that Committees let him know by the upcoming Annual Meeting if

there would be any legislative proposals. He then thanked the various committee vice-chairs for reviewing filed bills.

Mr. Brown noted that the key legislation this year has included the Fictitious Names bill (which he expects will move smoothly), the UVTA, which Senator Simmons has agreed to sponsor but which still needs a house sponsor; a Financial Literacy bill, which was filed by Senator Huckill, and digital (or virtual) currency legislation.

Lastly, Mr. Brown expressed his belief that judicial term limits would be bad for Florida and accordingly encouraged Council members to write to their legislators about this concern.

L. Long Range Planning – Greg Yadley, Chair; Hon. Michael G. Williamson, Judicial Chair

The Long Range Planning Committee did not have a report.

M. Membership & Law School Relations – Amir Isaiah and Zach Hyman, Co-Chairs

Amanda Fernandez reported for the Membership & Law School Relations Committee. Ms. Fernandez discussed the scholars program and the importance of taking steps to ensure that the scholars remain active in the Section. Ms. Fernandez also noted that the Section assisted with an upcoming program to be presented at Nova Southeastern University Law School, at which Michael Chesal would be a featured presenter.

This concluded the report of the Membership & Law School Relations Committee.

(Before proceeding further, Chairman Polenberg recognized Michelle Suskauer, candidate for President-Elect of The Florida Bar, who addressed the Council about the upcoming election.)

N. Pro Bono – John Macdonald, Chair; Hon. Laurel Isicoff, Judicial Chair

John Macdonald reported for the Pro Bono Committee. Mr. Macdonald noted that the Section had previously authorized a \$10,000 contribution to the Florida Bar Foundation to support a new position in South Florida, Pro-bono coordinator. Mr. Macdonald also reported on a Florida Bar Foundation project called Florida Pro Bono Matters, a database of pro bono service providers in Miami-Dade County. Mr. Macdonald indicated that if the project is successful it is expected to be launched statewide. Mr. Macdonald also noted that other states have expressed an interest in adopting similar programs. Mr. Macdonald then noted that one of the challenges facing the project (and the Section's participation) is with publicizing the platform and encouraging lawyers to take on cases.

Mr. Macdonald then briefly discussed a second project called Everyone Counts which will take place on March 20, 2017, and which will assess on a one-day

snapshot basis the scope of pro se cases, and thus the need for potential pro bono assistance, in each of the 134 courtrooms in Miami-Dade County. The project needs volunteer lawyers to cover each of the courtrooms.

Lastly, Mr. Macdonald referred back to the September Minutes of the Council, noting that a \$1000 contribution entitles donors to a lifetime fellowship status in the Florida Bar Foundation. The contributions are payable in two installments for certain lawyers who qualify and over ten years for younger lawyers. Mr. Macdonald asked for 100 percent participation from members of the Council for this program.

O. Labor Day Weekend Retreat – Mark Nichols, Chair

Adina Pollan, Vice-Chair, reported for the Labor Day Weekend Retreat Committee. This year's Retreat will take place at the Eau Palm Beach Resort in Manalapan. It's the 30th Anniversary of the Retreat and the theme is "Pearls of Wisdom." The Committee would like to pay homage to the work of Section over the past 30 years and to the Section's long-time sponsors.

P. Sponsorship Committee – Doug Bates and Jason Burnett, Co-Chairs

Doug Bates reported for the Sponsorship Committee. Mr. Bates indicated that the Committee was working closely with the Retreat Committee and assuming responsibility for securing this year's sponsorships. Mr. Bates recognized Mark Stein for being instrumental in putting together marketing materials. Mr. Bates also noted that the Committee is working on some non-traditional/non-law related sponsors. Jason Burnett then piped in, urging council members to all be sponsors (or ensure that their firms are sponsors).

Q. State/Federal Courts Liaison – Detra Shaw Wilder, Chair; Hon. Gill Freeman, Judicial Chair

Detra Shaw Wilder reported for the State/Federal Courts Liaison Committee. Ms. Shaw Wilder noted that the Committee met jointly with the Business Litigation Committee. She also noted the widespread changeover with business judges throughout the state. The Committee once again plans to organize a roundtable discussion with business court judges at the Retreat and asked that Council members who have a relationship with a business court judge encourage them to participate and get involved with the Section.

R. Third Party Opinion Standards Committee – Robert Barron, Chair

Phil Schwartz reported for the Third Party Opinion Standards Committee. Mr. Schwartz indicated that the Committee is working on an update to the 2011 report on third party opinion standards. Mr. Schwartz briefly discussed issues being addressed at the national level on third party opinions. A number of state and local bars have written on this subject, all with slightly different nuances. At some point in this process, the Council will be asked to approve the update.

VII. Other Reports:

A. Historian/Parliamentarian Report – Phil Schwartz

No report.

B. Council of Sections Report – Jon Polenberg

No report.

C. Board of Governors – Leslie Lott

No report.

D. RPPTL Liaison Report – Jamie Marx/Marsha Rydberg

No report.

E. Tax Liaison Report –

No Report.

F. Liaison to FICPA Report – Donald Workman

Donald Workman reported success with the FICPA Bar project. The FICPA State and Legislative Policies Committee has approved an FICPA Committee Liaison and has appointed 8-10 people to its committee. Mr. Workman indicated that the Section would coordinate with the FICPA on legislation where feasible.

G. Liaison to Out-of-State Practitioners Report – Donald Workman

In his capacity as Liaison to Out-of-State Practitioners, Mr. Workman requested that Council members consider submitted articles for publication in the newsletter of Out-of-State Practitioners.

H. Chair's Report – Jon Polenberg

For his report, Chairman Polenberg announced that the annual meeting of the Section would take place in Boca Raton in conjunction with the Annual Meeting of The Florida Bar. He also noted that the Section would meet next in Lisbon, Portugal.

I. Chair-Elect's Report – Melanie Damian

No Report.

VIII. Motion to Adjourn

The Chair entertained a motion to adjourn, which was duly made, seconded and passed at approximately 10:45 AM.

/s/ Michael B. Chesal¹
Michael B. Chesal
Secretary/Treasurer

¹ Special thanks to Gary Teblum for his proofreading prowess.

2017 BLS MIDYEAR SECTION MEETING ATTENDANCE SIGN-IN

Meeting/Chair: Executive Council
 Date/Time: 1/26/17
 Location:

Please include the names of all attendees. If additional space is needed, please use the back of page.

	Name	Email Address	Bar Number
1	Jude Cooper	jcooper@pdenbergcooper.com	366100
2	JIM MURPHY	jbmurphyjr@gmail.com	287598
3	Jay Brown	jacob.brown@afterman.com	170038
4	Christie Dodd	cdodd@hickeysmith.com	93404
5	BART VALDES	bvaldes@dsklawgroup.com	323380
6	Irwin Gilbert	igilbert@kklaw.com	099473
7	Edward LaRuse	laruse@flcourts.org	372528
8	Detra Shaw-Wilde	dps@kttlaw.com	037184
9	LAWEL M. ISICOFF	lawel_m_isicoff@flsb.uscourts.gov	
10	Roberta Colton	Roberta.Colton@flnb.uscourts.gov	
11	Paul Hyman	paul-hyman@flsb.uscourts.gov	218198
12	Doreen Wasyluk	doreen@ip-appeals.com	0191620
13	Woody Pullack	wpullack@gray-robinson.com	26802
14	Michelle Suarez	MichelleSuarezEsq@gmail.com	104826
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20	John Olson	johm-k-olson@flsb.uscourts.gov	201634
21	ALAN HOWARD	AHOWARD@miamihoward.com	629091

	Name	Email Address	Bar Number
22	Don Workman	dworkman@bakerlaw.com	933392
23	Mariane Dorris	mdorris@lseblaw.com	173665
24	Jason Burnett	Jason.Burnette@gray-robinson.com	822663
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26	Manuel Farach	mfarach@mcglinchey.com	612130
27	Kacy Donlon	kdonlon@wiandlaw.com	0066941
28	Paige Greenlee	paige@greenleelawtampa.com	0635928
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30	MARK STEW	MARK@MARKSTEWLAW.COM	818666
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38	Jodi Cooke	jcooke@srbp.com	52651
39	JCORI Lopez-Estro	clc@KITTLAW.COM	803830
40	Stefan Rubin	scrubin@shutts.com	257280
41	Andrew Schwartz	andrew.schwartz@akerman.com	13956
42	GARY TEBLUM	gteblum@trenam.com	283037
43	Philip Schwartz	philip.schwartz@akerman.com	280372
44	Mindy Mora	mmora@bilzin.com	678910
45	JEROME HIRSCH	HIRSCHJ@GILAW.COM	199850
46	Melanie Damigan	mclamigan@dvllp.com	0099392
47	Jon Rolsby		
48	Michael Chesel		
49			

REGISTRATION OF RECEIVERSHIP APPLICATION FOR THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY

PURPOSE OF THE PROGRAM

A committee of attorneys representing the voluntary bar associations of Miami-Dade County was convened by the Chief Judge of the 11th Judicial Circuit to promote a transparent application process that would encourage the appointment of diverse professionals (lawyers, accountants and real estate professionals) to act as receivers. In order to facilitate a more open and inclusive appointment process, the committee developed an application which became available to interested parties who wished to be considered for receivership appointments. The applications submitted thus far are currently kept in a binder in the office of the administrative judge for review by judges considering candidates for receivership appointment.

ACCESSIBILITY OF APPLICATION

While some receivership candidates did submit the applications via hard copy, it became evident that the binder was not easily accessible to judges considering receivership appointments for various reasons. Moreover, the applications could be more accessible to potential applicants interested in registering if an online portal existed for taking the applications and updating the information thereon as necessary. Thus, the committee concluded that to achieve its goal, it would be most effective to set up an online portal easily accessible to the judges of the 11th Judicial Circuit where they could access the pool of applications online, easily perform a search of the applications and their contents and that it would also make the applications more accessible for applicants wishing to be considered for judicial appointments.

REQUEST FOR FUNDING AN ONLINE PORTAL FOR JUDGES TO VIEW APPLICATIONS BY THE 11TH JUDICIAL CIRCUIT

Due to the limitations in both funding and the very outdated computer system in place at the 11th Judicial Circuit, the judges requested the assistance of the BLS in providing access to and funding for the database to host the applications which could be made accessible to the judges online. After discussions at the Bankruptcy/UCC Committee level and at the Executive Council, it was concluded that the creation of a database accessible via a link on the BLS website would facilitate accessibility by both judges and applicants and also provide a location where the database could be accessed. BLS would not be endorsing any applicant and such disclaimer would be prominently displayed. It was discussed that this would be a pilot program that would be evaluated based upon usage of the site by both judges and applicants and potentially become a program that could be implemented for use by judges and applicants in other judicial circuits throughout the state. In order to evaluate whether the database has been used as intended, its use by judges would be monitored (i.e., how many times judges signed on to the portal would be recorded). Members of the committee have attended meetings with the judges of 11th Judicial Circuit and they have expressed both a desire for a database to enhance and diversify the appointment process and their intention to avail themselves of the database.

Attached are the finalized form for the Application for Consideration for Receivership in both hard copy and draft web form reflecting the fields and type of information that can be provided in the application and which can be searched in the database. The judiciary will be able to view the applications and

search among them according to area of expertise as well as demographic information and specific search terms. The profiles would be renewed annually by the professional or else automatically deleted.

Among other biographical data, information such as the type of receivership and industry will be available to provide additional detail to viewers as to an applicant more specific experience and/or qualifications.

Based upon the quotes received for the creation of the database and its anticipated costs for functionality and maintenance, it was estimated that the database can be created and maintained for a cost of approximately \$1,500.00.

Business Web Address: _____

Type of Receivership:

Subspecialty:

- | | |
|-----------------------------------------|-------------------------------------------|
| <input type="checkbox"/> Fraud | <input type="checkbox"/> Trusts & Estates |
| <input type="checkbox"/> Reorganization | <input type="checkbox"/> Family Law |
| <input type="checkbox"/> Liquidation | <input type="checkbox"/> Insurance |

Hourly rate(s): _____

Attach Resume or CV, and Brochure, if applicable.

Not Including your own, Names of Accounting Firms with which you have Worked in Previous Receiverships. If None, Leave Blank.

Not Including your own, Names of Law Firms with which you have Worked in Previous Receiverships.

Demographic Information:

Optional

Sex:

- | | |
|---------------------------------|-------------------------------|
| <input type="checkbox"/> Female | <input type="checkbox"/> Male |
|---------------------------------|-------------------------------|

Race/ Ethnicity:

- | | |
|-----------------------------------------------------------|----------------------------------------------------------|
| <input type="checkbox"/> American Indian/ Native American | <input type="checkbox"/> White/ Caucasian (Non-Hispanic) |
| <input type="checkbox"/> African American/ Black | <input type="checkbox"/> Disabled |
| <input type="checkbox"/> Asian | <input type="checkbox"/> LGBT |
| <input type="checkbox"/> Hispanic/ Latino | <input type="checkbox"/> Other _____ |

References:

Case Numbers and Presiding Judges for Last Five Receivership Appointments:

For Receivers with fewer than Five Prior Appointments, Names of Professionals who have Agreed to Mentor:

Other Experience Relevant to Receiverships:

Certifications:

Please initial beside each certification in the space provided.

I Hereby State Under Penalty of Perjury that:

- I have filed Income Tax Returns for the three preceding tax years.
- I owe no delinquent taxes to any taxing authority.
- I have never been convicted of a felony.
- I am not addicted to any drug, narcotic or alcohol.
- There are no outstanding money judgments against me.
- I am not individually named in any pending lawsuit.
- I will promptly alert the Eleventh Judicial Circuit of any circumstances that cause any of these certifications to change.
- I have not been disciplined by the Florida Bar or any Licensing or Regulatory Authority.
- If you did not Certify any of the Above, Please Explain:

If necessary, attach additional pages for explanation.

Signature: _____ Date: _____

Receivership Application - Draft Web Form

To visit Live Test Page, see <http://form.jotform.us/form/40286617338156>

Application for Consideration for Receivership

Full Name *
First Name Middle Name Last Name

Business Name *

Profession *

- Accountant
- Attorney
- Property Manager
- Other

State of Licensure

Attorney Bar Number
If Applicable

Year of Admission

Address *

Street Address

Street Address Line 2

City State / Province

Postal / Zip Code Country

E-mail * ex: myname@example.com

Telephone * -
Area Code Phone Number

Mobile * -
Area Code Phone Number

Facsimile -
Area Code Phone Number

Type of Receivership *

Subspecialty

Hourly rate

Not Including your own, Names of Accounting Firms with which you have Worked in Previous Receiverships

Agriculture
 Mining
 Utilities
 Construction
 Manufacturing
 Wholesale Trade
 Retail Trade
 Transportation
 Warehousing
 Information
 Insurance
 Finance
 Real Estate Rental and Leasing
 Professional Services
 Scientific Services
 Technical Services
 Management of Companies and Enterprises
 Waste Management
 Education

If None, Leave Blank

Subspecialty

Hourly rate

Not Including your own, Names of Accounting Firms with which you have Worked in Previous Receiverships

Not Including your own, Names of Law Firms with which you have Worked in Previous Receiverships

Upload Resume or CV

Upload Brochure

URL:

Fraud
 Reorganization
 Liquidation
 Trusts & Estates
 Family Law
 Insurance

No file selected.

No file selected.

http://www.
Business Web Address

Not Including your own, Names of Law Firms with which you have Worked in Previous Receiverships

Upload Resume or CV

No file selected.

Upload Brochure

No file selected.

URL:

Business Web Address

Demographic Information (Optional)

Sex

- Female
- Male

Race/ Ethnicity

- American Indian/ Native American
- African American/ Black
- Asian
- Hispanic/ Latino
- White/ Caucasian (Non-Hispanic)
- Disabled
- LGBT
- Other

References

Case Numbers and Presiding Judges for Last Five Receivership Appointments

For Receivers with fewer than Five Prior Appointments, Names of Professionals who have Agreed to Mentor

Other Experience Relevant to Receiverships

Certifications

I Hereby State Under Penalty
of Perjury that:

- I have filed Income Tax Returns for the three preceding tax years.
- I owe no delinquent taxes to any taxing authority.
- I have never been convicted of a felony.
- I am not addicted to any drug, narcotic or alcohol.
- There are no outstanding money judgments against me.
- I am not individually named in any pending lawsuit.
- I will promptly alert the Eleventh Judicial Circuit of any circumstances that cause any of these certifications to change.
- I have not been disciplined by the Florida Bar or any Licensing or Regulatory Authority.

If you did not Certify any of the
Above, Please Explain:

Enter the message as it's
shown *

~~shame~~



Submit

EXHIBIT B

	<u>Budget</u>	<u>Variance</u>	<u>Actual</u>	<u>Variance</u>	<u>Prior Year</u>
3001-Annual Fees	285,000	(10,860)	274,140	20,353	253,788
3002-Affiliate Fees	2,590	(500)	2,090	(660)	2,750
Total Fee Revenue	287,590	11,360	276,230	(19,693)	256,538
3301-Registration-Live	115,000	(9,386)	105,614	(11,647)	117,261
3331-Registration-Ticket	35,500	(16,133)	19,367	(47,258)	66,625
Total Registration Revenue	150,500	25,519	124,981	58,905	183,886
3351-Sponsorships	115,000	(1,800)	113,200	(30,300)	143,500
3391 Section Profit Split	115,000	(31,243)	83,757	(32,255)	116,012
3392-Section Differential	22,000	(9,585)	12,415	2,075	10,340
Other Event Revenue	252,000	42,628	209,372	60,480	269,852
3699-Other Operating Revenue		0		(2,853)	2,853
Other Revenue Sources	0	0	0	2,853	2,853
3899-Investment Allocation	10,928	32,810	43,738	60,091	(16,353)
Non-Operating Income	10,928	(32,810)	43,738	(60,091)	(16,353)
Total Revenue	701,018	46,697	654,321	42,454	696,776
4111-Rent Equipment	20,000	481	19,519	(1,813)	17,706
4131-Telephone Expense	750	306	444	120	565
4133-Internet Service	150	150		0	
4134-Web Services	20,000	(476)	20,476	(3,190)	17,286
4135-Social Media	7,500	3,500	4,000	0	4,000
4301-Photocopying	200	197	3	28	31
4311-Office Supplies	600	499	101	374	475
Total Staff & Office Expense	49,200	4,657	44,543	(4,480)	40,063
5051-Credit Card Fees	2,900	330	2,570	492	3,062
5101-Consultants	80,000	20,000	60,000	110	60,110
Total Contract Services	82,900	20,330	62,570	602	63,172
5501-Employee Travel	7,621	5,346	2,275	851	3,127
5561-Judges Travel	46,000	27,003	18,997	(731)	18,266
5599-Other Travel	8,000	4,572	3,428	(2,751)	676
Total Travel	61,621	36,921	24,700	(2,631)	22,069
6001-Post 1st Class/Bulk	575	542	33	487	520
6301-Mtgs TFB Annual Meeting	14,000	13,905	95	(95)	
6311-Mtgs General Meeting	50,000	(6,551)	56,551	31,394	87,945
6319-Mtgs Other Functions	30,000	30,486	(486)	15,529	15,043
6321-Mtgs Meals	150,000	(34,439)	184,439	34	184,473
6325-Mtgs Hospitality	58,000	(3,654)	61,654	(4,857)	56,797
6361-Mtgs Entertainment	10,000	(8,910)	18,910	(2,773)	16,137
6401-Speaker Expense	2,500	2,140	360	552	912
6451-Committee Expense	8,000	7,533	467	2,273	2,740
6531-Brd/Off Special Project	1,500	1,500		5,000	5,000
7001-Grant/Award/Donation	14,000	4,000	10,000	40,000	50,000
7011-Scholarship/Fellowship	50,000	23,185	26,815	(10,561)	16,253
7999-Other Operating Exp	51,257	47,142	4,115	(79)	4,036
Total Other Expense	439,832	76,879	362,953	76,903	439,857

	<u>Budget</u>	<u>Variance</u>	<u>Actual</u>	<u>Variance</u>	<u>Prior Year</u>
8021-Section Admin Fee	91,675	3,417	88,258	1,425	89,683
8101-Printing In-House	<u>1,850</u>	<u>1,152</u>	<u>698</u>	<u>(281)</u>	<u>417</u>
Total Admin & Internal Expense	93,525	4,569	88,956	1,144	90,100
9692-Transfer Out-Council of Sections	<u>300</u>	<u>0</u>	<u>300</u>	<u>0</u>	<u>300</u>
Total InterFund Transfers Out	300	0	300	0	300
Total Expense	<u>727,378</u>	<u>143,357</u>	<u>584,021</u>	<u>71,539</u>	<u>655,560</u>
Net Income	<u>(26,360)</u>	<u>(96,660)</u>	<u>70,300</u>	<u>(29,084)</u>	<u>41,216</u>
2001-Fund Balance, Beginning	<u>373,038</u>	<u>0</u>	<u>373,038</u>	<u>(115,517)</u>	<u>488,554</u>
Fund Balance, Ending	<u>346,678</u>	<u>(96,660)</u>	<u>443,338</u>	<u>86,432</u>	<u>529,770</u>

EXHIBIT C

[As approved by the Joint Committee on Statement of Opinion Practices on March 28, 2017, subject to approval by the Legal Opinions Committee of the American Bar Association's Business Law Section and the Board of Directors of the Working Group on Legal Opinions Foundation]

STATEMENT OF OPINION PRACTICES¹

1 INTRODUCTION

Third-party legal opinion letters (“closing opinions”)² are delivered at the closing of a business transaction by counsel for one party (the “opinion giver”) to another party (the “opinion recipient”) to satisfy a condition to the ~~other party~~ opinion recipient’s obligation to close. A closing opinion includes opinions on specific legal matters (“opinions”) and, in so doing, serves as a part of the diligence of the opinion recipient.³

This Statement of Opinion Practices (this “*Statement*”)⁴ describes selected aspects of customary practice and other practices generally followed throughout the United States in the giving and receiving of closing opinions.

2 CUSTOMARY PRACTICE

Closing opinions are prepared and understood in accordance with the customary practice of lawyers who regularly give them and lawyers who regularly review them for opinion recipients. The phrase “customary practice” refers principally to the work lawyers are expected to perform to give opinions (customary diligence) and the way certain words and phrases

¹ This *Statement* has been published in *The Business Lawyer* [cite]. At the time of its publication, this *Statement* was approved by the bar associations and other lawyer groups identified in **Schedule I** (the “Schedule of Approving Organizations”). A current Schedule of Approving Organizations can be found at [URL]. Approval by a bar association or other lawyer group does not necessarily mean approval by individual members of that association or group.

² The terms “opinion letters” and “closing opinions” are commonly used to refer to third-party legal opinion letters, defined in this *Statement* as “closing opinions.”

³ References in this *Statement* to an opinion recipient ~~means~~ mean the addressee of a closing opinion and ~~when appropriate in the context, any~~ other ~~persons~~ person expressly authorized to rely on the closing opinion.

⁴ This *Statement* is drawn principally from: Comm. on Legal Op. of the Section of Bus. Law of the Am. Bar Ass’n, *Legal Opinions Principles*, 53 BUS. LAW. 831 (May 1998), and Comm. on Legal Op., *Guidelines for the Preparation of Closing Opinions*, 57 BUS. LAW. 875 (Feb. 2002). It updates the *Principles* in its entirety and selected provisions of the *Guidelines*. The other provisions of the *Guidelines* are unaffected, and no inference should be drawn from their omission from this *Statement*. Each of the provisions of this *Statement* should be read and understood together with the other provisions of this *Statement*.

commonly used in closing opinions are understood (customary usage).⁵ Customary practice applies to a closing opinion whether or not the closing opinion refers to it; ~~accordingly, those aspects of customary practice that are described in this Statement apply to a closing opinion whether or not this Statement is referred to, incorporated by reference in, or attached to a closing opinion or to this Statement.~~⁶

3 LEGAL OBLIGATIONS AND RULES OF PROFESSIONAL CONDUCT

When they give closing opinions, lawyers are subject to generally applicable legal obligations and to the rules governing the professional conduct of lawyers.⁷

4 GENERAL

4.1 Expression of Professional Judgment

An opinion expresses the professional judgment of the opinion giver regarding the legal issues the opinion addresses. It is not a guarantee that a court will reach any particular result.

4.2 Bankruptcy Exception and Equitable Principles Limitation

The bankruptcy exception and equitable principles limitation apply to opinions even if they are not expressly stated.

4.3 Cost and Benefit

The benefit to the recipient of a closing opinion and of any particular opinion should warrant the time and expense required to give them.

4.4 Golden Rule

Opinion givers and counsel for opinion recipients should be guided by a sense of professionalism and not treat closing opinions as if they were part of a business negotiation. An opinion giver should not be expected to give an opinion that counsel for the opinion recipient would not give in similar circumstances if that counsel were the opinion giver and had the requisite competence to give the opinion. Correspondingly, before declining to give an opinion it is competent to give, an opinion giver should consider whether a lawyer in similar circumstances would ordinarily give the opinion.

⁵ See *Statement on the Role of Customary Practice in the Preparation and Understanding of Third-Party Legal Opinions*, 63 BUS. LAW. 1277 (Aug. 2008) attached as **Appendix A**, which has been approved by the bar associations and other lawyer groups listed at the end of that Statement.

⁶ See *infra* Section 10 (*Varying Customary Practice*).

⁷ These include rules relating to the duties of an opinion giver to its own client. Counsel for an opinion recipient also has duties to its client, including duties relating to a closing opinion.

4.5 Reliance by Recipients

In accepting a closing opinion, an opinion recipient ordinarily need not take any action to verify the opinions it contains. However, an opinion recipient is not entitled to rely on an opinion if it knows⁸ the opinion to be incorrect or if its reliance on the opinion is otherwise unreasonable under the circumstances.

4.6 Good Faith

An opinion giver and an opinion recipient and its counsel are each entitled to expect that the other is acting in good faith with respect to a closing opinion.

5 FACTS AND ASSUMPTIONS

5.1 Reliance on Factual Information and Use of Assumptions

Because the lawyers preparing a closing opinion (the “opinion preparers”) typically will not have personal knowledge of all of the facts they need to support the opinions ~~they are giving~~being given, they ordinarily are ~~permitted~~entitled to base ~~their~~those opinions on factual information provided by others, including ~~the~~their client, and on factual assumptions.

5.2 Reliance on Facts Provided by Third Parties

Opinion ~~preparers~~givers are entitled to rely on factual information provided by others unless ~~they~~the opinion preparers know that information to be false or unreliable. Information may be unreliable, for example, if it is irregular on its face or has been provided by an inappropriate source.

5.3 Scope of Inquiry

Opinion preparers are not expected to conduct a factual inquiry of the other lawyers in their law firm or a review of the firm’s records, except to the extent ~~the opinion preparers~~they recognize⁹ that a particular lawyer is reasonably likely to have or a particular record is reasonably likely to contain information not otherwise known to ~~the opinion preparers~~them that they need to give an opinion.⁹¹⁰

⁸ ~~The term “knows” is understood to refer to a person’s~~ “Knows” refers to “actual knowledge (see, e.g., Model Rules of Professional Conduct, §1.0(f)).”

⁹ “Recognize” refers to perceiving the relevance of information actually known.

⁹¹⁰ References in this Statement to a law firm also include, ~~when appropriate in the context,~~ a law department of an organization.

5.4 Opinions Should Not Be Based on Representations of Law

An opinion should not be based on a representation that is tantamount to the legal conclusions it expresses. An opinion may, however, be based on legal conclusions in a certificate of an appropriate government official.

5.5 Factual Assumptions

Some factual assumptions on which opinions are based need to be stated expressly; others do not. Examples of factual assumptions that ordinarily do not need to be stated expressly are assumptions of general application that apply regardless of the type of transaction or the nature of the parties. These include, for example, assumptions that copies of documents are identical to the originals, signatures are genuine, the parties to the transaction other than the opinion giver's client¹¹ have the power and have taken the necessary action to enter into the transaction, and the agreements those parties have entered into with the opinion giver's client are enforceable against them. ~~Opinion preparers~~ An opinion should not ~~rely~~ be based on an unstated assumption ~~they~~ the opinion preparers know to be incorrect or otherwise unreliable.¹⁰¹²

5.6 Presumption of Regularity

~~Opinion givers~~ Opinions may ~~rely~~ be based on a presumption of regularity for matters relating to the client (for example, actions taken at meetings during the period covered by a missing minute book) that are not verifiable from the client's records, if that presumption is not inconsistent with those records and ~~their~~ reliance on it is not otherwise inappropriate under the circumstances. Opinion givers may rely on the presumption without stating ~~their~~ that reliance in the closing opinion unless the opinion preparers consider a reference to the presumption to be necessary because of the significance of the matters being presumed.

5.7 Limited Factual Confirmations and Negative Assurance

An opinion giver ordinarily should not be asked to confirm factual matters, even if the confirmation is limited to the knowledge of the opinion preparers. A confirmation of factual matters, for example, the accuracy of the representations and warranties in an agreement or the information in a

¹¹ This unstated assumption also may not be relied on for a non-client whose obligations are covered by the opinion.

¹⁰¹² This is in contrast to a stated assumption, which may be relied on ~~so long as~~ in giving an opinion even if incorrect or unreliable unless the opinion preparers ~~do not~~ recognize that ~~their~~ reliance on that assumption will mislead the opinion recipient with regard to a matter the opinion addresses. See *infra* Section 12 (*No Opinion That Will Mislead Recipient*).

disclosure document (except as indicated below), does not involve the exercise of professional judgment by lawyers and therefore is not ~~the~~ proper subject for an opinion even when limited by a broadly-worded disclaimer. An exception is the confirmation sometimes requested regarding particular legal proceedings to which the client is a party.¹¹¹³ Negative assurance regarding the adequacy of disclosures in a prospectus or other disclosure documents may be provided in limited circumstances in connection with a sale of securities to assist the opinion recipient to establish a due diligence or similar defense.

6 LAW

6.1 Covered ~~Jurisdiction~~ Law

When a closing opinion states that ~~it~~an opinion covers the law of a specific jurisdiction or particular laws ~~of a jurisdiction, it does not cover any, the~~ opinion covers no other law or laws.

6.2 Applicable Law

An opinion on the law of a jurisdiction covers only the law of ~~the~~that jurisdiction ~~whose law is covered~~ that lawyers practicing in ~~that~~the jurisdiction, exercising customary professional diligence in similar circumstances, would reasonably recognize as being applicable to the client or ~~the~~ transaction that is the subject of the opinion. A closing opinion does not cover some laws (for example, securities, tax and insolvency laws) that are otherwise applicable to the matters it addresses, ~~unless it does so expressly~~. A closing opinion also does not cover municipal and other local law, ~~unless it~~. An opinion may, however, cover law that would not otherwise be covered if the closing opinion so states or the opinion does so expressly.¹⁴

7 SCOPE

7.1 Matters Addressed

The opinions included in a closing opinion should be limited to reasonably specific and determinable matters of law that involve the exercise of professional judgment ~~by the opinion giver~~. A closing opinion covers only those matters it specifically addresses.

¹¹¹³ This Statement also applies, when appropriate in the context, to confirmations.

¹⁴ See *infra* Section 10 (*Varying Customary Practice*).

7.2 Matters Beyond the Expertise of Lawyers

Opinion givers should not be expected to give opinions on matters that are not within the expertise of lawyers (for example, financial statement analysis, economic forecasting and valuation). When an opinion depends on a matter ~~requiring that other~~ not within the expertise of lawyers, an opinion giver ~~may~~ is entitled to rely on a certificate from an appropriate source or an express assumption with regard to the matter.

7.3 Relevance

Opinion requests should be limited to matters that are reasonably related to the opinion giver's client and the transaction that is the subject of the closing opinion. Depending on the circumstances, limiting assumptions, exceptions and qualifications to those reasonably related to the client, the transaction and the opinions given can facilitate the opinion process by making the closing opinion more informative.

8 PROCESS

8.1 Opinion Recipient and Customary Practice

An opinion giver is entitled to presume that the opinion recipient is familiar with, or has obtained advice about, customary practice ~~concerning as it~~ applies to the opinions it is receiving from the opinion giver.

8.2 Other Counsel's Opinion

An opinion giver should not be expected to express its concurrence in the substance of an opinion of other counsel.

8.3 Financial Interest in or Other Relationship with Client

Opinion preparers ordinarily do not attempt to determine whether others in their law firm have a financial interest in, or other relationship with, the client. Nor do they ordinarily disclose any such financial interest or other relationship that they or others in their firm have. If the opinion preparers recognize that such a financial interest or relationship exists, they should consider whether, even if disclosed, it will compromise their professional judgment with respect to the opinions ~~they are giving~~ being given.

8.4 Client Consent and Disclosure of Information

When the client's consent to the delivery of a closing opinion is required by the rules of professional conduct, that consent can be inferred from the circumstances of the transaction and ordinarily is inferred from a provision in the agreement making the delivery of a closing opinion a condition to

closing. If an opinion would require disclosure of information that the opinion preparers recognize the client would wish to keep confidential, ~~they~~the opinion should not be given unless, after discussion with the client, ~~not give the opinion unless~~ the client consents.

9 DATE

A closing opinion speaks as of its date. An opinion giver has no obligation to update a closing opinion for subsequent events or legal developments.

10 VARYING CUSTOMARY PRACTICE

~~Customary~~The application of customary practice, including those aspects of customary practice described in this *Statement*, to a closing opinion or a particular opinion may be varied by a statement in ~~a~~the closing opinion or opinion or by an understanding with the opinion recipient or ~~other person~~entitled to rely on the opinion or the recipient's or other person's counsel.

11 RELIANCE

A closing opinion may be relied on only by its addressee and any other person expressly authorized to rely.¹²¹⁵

12 NO OPINIONS THAT WILL MISLEAD RECIPIENT

An opinion giver should not give an opinion that the opinion preparers recognize will mislead the opinion recipient with regard to the matters ~~addressed by that opinion.~~¹³it addresses.¹⁶

¹²¹⁵ This section does not address the circumstances in which reliance by others may be permitted as a matter of law. *See also supra* note 3.

¹³¹⁶ For a general discussion of this subject, including the role of disclosure, *see* TriBar Op. Comm., *Third-Party "Closing" Opinions*, 53 BUS. LAW. 591, 602-03 (§1.4(d)) (Feb. 1998) (noting that in determining whether an opinion will mislead the opinion recipient ~~"..."~~ "[t]he question the opinion preparers must consider is whether under the circumstances the opinion will cause the opinion recipient to miscalculate the specific opinion given.") An opinion giver is not precluded from limiting the matters addressed by an opinion through the use of specific language (including a specific assumption, exception or qualification) so long as the opinion preparers do not recognize that the limitation itself will mislead the recipient. *See supra* Section 10 (*Varying Opinion Practices*).

Document comparison by Workshare Compare on Friday, March 31, 2017
9:24:04 AM

Input:	
Document 1 ID	file://D:\#57372742v21_America_ - Statement on Customary Opinion Practices.DOCX
Description	#57372742v21_America_ - Statement on Customary Opinion Practices
Document 2 ID	file://D:\65864849_12-Statement on Customary Opinion Practices.docx
Description	65864849_12-Statement on Customary Opinion Practices
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	69
Deletions	61
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	130

[As approved by the Joint Committee on Statement of Opinion Practices on March 28, 2017, subject to approval by the Legal Opinions Committee of the American Bar Association's Business Law Section and the Board of Directors of the Working Group on Legal Opinions Foundation]

CORE OPINION PRINCIPLES

The following *Core Opinion Principles* are drawn from the *Statement of Opinion Practices*, ___ BUS. LAW. ___ () (the "*Statement*"), and are intended to have the same meaning as the provisions of the *Statement* from which they are drawn. The *Statement*, which has been approved by the bar associations and other lawyer groups identified in Schedule I to the *Statement*, describes selected aspects of customary practice and other practices followed throughout the United States in the giving and receiving of closing opinions. In doing so, it amplifies the *Statement on the Role of Customary Practice in the Preparation and Understanding of Third-Party Legal Opinions*, 63 BUS. LAW. 1277 (Aug. 2008). The *Core Opinion Principles* are designed for use by opinion givers (both law firms and law departments of organizations) who wish to incorporate or attach to their opinion letters a more concise statement of some of the opinion principles included in the *Statement*.

CORE OPINION PRINCIPLES

1. General

1.1 *Customary Practice.* Third-party legal opinion letters given at the closing of a business transaction (“closing opinions”) by counsel for one party (the “opinion giver”) to another party (the “opinion recipient,” which term includes any other person expressly authorized to rely on the closing opinion) are prepared and understood in accordance with the customary practice of lawyers who regularly give them and lawyers who regularly review them for opinion recipients. The phrase “customary practice” refers principally to the work lawyers are expected to perform to give the opinions included in a closing opinion and the way certain words and phrases commonly used in closing opinions are understood.

1.2 *Varying Customary Practice.* The application of customary practice to a closing opinion or a particular opinion may be varied by a statement in the closing opinion or the opinion or by an understanding with the opinion recipient or its counsel.

1.3 *Expression of Professional Judgment.* An opinion expresses the professional judgment of the opinion giver regarding the legal issues the opinion addresses. It is not a guarantee that a court will reach any particular result.

1.4 *Reliance by Recipients.* In accepting a closing opinion, an opinion recipient ordinarily need not take any action to verify the opinions it contains. However, an opinion recipient is not entitled to rely on an opinion if it knows the opinion to be incorrect or if its reliance on the opinion is otherwise unreasonable under the circumstances.

1.5 *Good Faith.* An opinion giver and an opinion recipient and its counsel are each entitled to expect that the other is acting in good faith with respect to a closing opinion.

1.6 *Opinion Recipient and Customary Practice.* An opinion giver is entitled to presume that the opinion recipient is familiar with, or has obtained advice about, customary practice as it applies to the opinions it is receiving from the opinion giver.

1.7 *Only Matters Specifically Addressed.* A closing opinion covers only those matters it specifically addresses.

1.8 *Matters Beyond the Expertise of Lawyers.* Opinion givers should not be expected to give opinions on matters that are not within the expertise of lawyers (for example, financial statement analysis, economic forecasting and valuation). When an opinion depends on a matter not within the expertise of lawyers, an opinion giver is entitled to rely on a certificate from an appropriate source or an express assumption with regard to the matter.

2. Facts and Assumptions

2.1 *Reliance on Factual Information and Use of Assumptions.* Because the lawyers preparing a closing opinion (the “opinion preparers”) typically will not have personal knowledge of all of the facts they need to support the opinions being given, they ordinarily are entitled to base those opinions on factual information provided by others, including their client, and on factual assumptions.

2.2 *Reliance on Facts Provided by Third Parties.* Opinion givers are entitled to rely on factual information provided by others unless the opinion preparers know that information to be false or unreliable. Information may be unreliable, for example, if it is irregular on its face or has been provided by an inappropriate source.

2.3 *Scope of Inquiry.* Opinion preparers are not expected to conduct a factual inquiry of the other lawyers in their law firm or a review of the firm’s records, except to the extent they recognize that a particular lawyer is reasonably likely to have or a particular record is reasonably likely to contain information not otherwise known to them that they need to give an opinion.

2.4 *Opinions Should Not Be Based on Representations of Law.* An opinion should not be based on a representation that is tantamount to the legal conclusions it expresses. An opinion may, however, be based on legal conclusions in a certificate of an appropriate government official.

2.5 *Factual Assumptions.* Some factual assumptions on which opinions are based need to be stated expressly; others do not. Examples of factual assumptions that ordinarily do not need to be stated expressly are assumptions of general application that apply regardless of the type of transaction or the nature of the parties. These include, for example, assumptions that copies of documents are identical to the originals, signatures are genuine, and the parties other than the opinion giver’s client have the power and have taken the necessary action to enter into the transaction, and the agreements those parties have entered into with the opinion giver’s client are enforceable against them.

3. Law

3.1 *Covered Law.* When a closing opinion states that an opinion covers the law of a specific jurisdiction or particular laws, the opinion covers no other law or laws.

3.2 *Applicable Law.* An opinion on the law of a jurisdiction covers only the law of that jurisdiction that lawyers practicing in the jurisdiction, exercising customary professional diligence in similar circumstances, would reasonably recognize as being applicable to the client or transaction that is the subject of the opinion. A closing opinion does not cover some laws (for example, securities, tax and insolvency laws) that are otherwise applicable to the matters it addresses. A closing opinion also does not cover municipal and other local law. An opinion may, however, cover law that would not otherwise be covered if the closing opinion so states or the opinion does so expressly.

4. Miscellaneous

4.1 *Date.* A closing opinion speaks as of its date. An opinion giver has no obligation to update a closing opinion for subsequent events or legal developments.

4.2 *Reliance.* A closing opinion may be relied on only by its addressee and any other person expressly authorized to rely.

[As approved by the Joint Committee on Statement of Opinion Practices on March 28, 2017, subject to approval by the Legal Opinions Committee of the American Bar Association's Business Law Section and the Board of Directors of the Working Group on Legal Opinions Foundation]

STATEMENT OF OPINION PRACTICES¹

1 INTRODUCTION

Third-party legal opinion letters (“closing opinions”)² are delivered at the closing of a business transaction by counsel for one party (the “opinion giver”) to another party (the “opinion recipient”) to satisfy a condition to the opinion recipient’s obligation to close. A closing opinion includes opinions on specific legal matters (“opinions”) and, in so doing, serves as a part of the diligence of the opinion recipient.³

This Statement of Opinion Practices (this “*Statement*”)⁴ describes selected aspects of customary practice and other practices generally followed throughout the United States in the giving and receiving of closing opinions.

2 CUSTOMARY PRACTICE

Closing opinions are prepared and understood in accordance with the customary practice of lawyers who regularly give them and lawyers who regu-

¹ This *Statement* has been published in *The Business Lawyer* [cite]. At the time of its publication, this *Statement* was approved by the bar associations and other lawyer groups identified in **Schedule I** (the “Schedule of Approving Organizations”). A current Schedule of Approving Organizations can be found at [URL]. Approval by a bar association or other lawyer group does not necessarily mean approval by individual members of that association or group.

² The terms “opinion letters” and “closing opinions” are commonly used to refer to third-party legal opinion letters, defined in this *Statement* as “closing opinions.”

³ References in this *Statement* to an opinion recipient mean the addressee of a closing opinion and any other person expressly authorized to rely on the closing opinion.

⁴ This *Statement* is drawn principally from: Comm. on Legal Op. of the Section of Bus. Law of the Am. Bar Ass’n, *Legal Opinions Principles*, 53 BUS. LAW. 831 (May 1998), and Comm. on Legal Op., *Guidelines for the Preparation of Closing Opinions*, 57 BUS. LAW. 875 (Feb. 2002). It updates the *Principles* in its entirety and selected provisions of the *Guidelines*. The other provisions of the *Guidelines* are unaffected, and no inference should be drawn from their omission from this *Statement*. Each of the provisions of this *Statement* should be read and understood together with the other provisions of this *Statement*.

larly review them for opinion recipients. The phrase “customary practice” refers principally to the work lawyers are expected to perform to give opinions (customary diligence) and the way certain words and phrases commonly used in closing opinions are understood (customary usage).⁵ Customary practice applies to a closing opinion whether or not the closing opinion refers to it or to this *Statement*.⁶

3 LEGAL OBLIGATIONS AND RULES OF PROFESSIONAL CONDUCT

When they give closing opinions, lawyers are subject to generally applicable legal obligations and to the rules governing the professional conduct of lawyers.⁷

4 GENERAL

4.1 Expression of Professional Judgment

An opinion expresses the professional judgment of the opinion giver regarding the legal issues the opinion addresses. It is not a guarantee that a court will reach any particular result.

4.2 Bankruptcy Exception and Equitable Principles Limitation

The bankruptcy exception and equitable principles limitation apply to opinions even if they are not expressly stated.

4.3 Cost and Benefit

The benefit to the recipient of a closing opinion and of any particular opinion should warrant the time and expense required to give them.

4.4 Golden Rule

Opinion givers and counsel for opinion recipients should be guided by a sense of professionalism and not treat closing opinions as if they were part of a business negotiation. An opinion giver should not be expected to give an opinion that counsel for the opinion recipient would not give in similar circumstances if that counsel were the opinion giver and had the requisite competence to give the opinion. Correspondingly, before declining to give

⁵ See *Statement on the Role of Customary Practice in the Preparation and Understanding of Third-Party Legal Opinions*, 63 BUS. LAW. 1277 (Aug. 2008) attached as **Appendix A**, which has been approved by the bar associations and other lawyer groups listed at the end of that Statement.

⁶ See *infra* Section 10 (*Varying Customary Practice*).

⁷ These include rules relating to the duties of an opinion giver to its own client. Counsel for an opinion recipient also has duties to its client, including duties relating to a closing opinion.

an opinion it is competent to give, an opinion giver should consider whether a lawyer in similar circumstances would ordinarily give the opinion.

4.5 Reliance by Recipients

In accepting a closing opinion, an opinion recipient ordinarily need not take any action to verify the opinions it contains. However, an opinion recipient is not entitled to rely on an opinion if it knows⁸ the opinion to be incorrect or if its reliance on the opinion is otherwise unreasonable under the circumstances.

4.6 Good Faith

An opinion giver and an opinion recipient and its counsel are each entitled to expect that the other is acting in good faith with respect to a closing opinion.

5 FACTS AND ASSUMPTIONS

5.1 Reliance on Factual Information and Use of Assumptions

Because the lawyers preparing a closing opinion (the “opinion preparers”) typically will not have personal knowledge of all of the facts they need to support the opinions being given, they ordinarily are entitled to base those opinions on factual information provided by others, including their client, and on factual assumptions.

5.2 Reliance on Facts Provided by Third Parties

Opinion givers are entitled to rely on factual information provided by others unless the opinion preparers know that information to be false or unreliable. Information may be unreliable, for example, if it is irregular on its face or has been provided by an inappropriate source.

5.3 Scope of Inquiry

Opinion preparers are not expected to conduct a factual inquiry of the other lawyers in their law firm or a review of the firm’s records, except to the extent they recognize⁹ that a particular lawyer is reasonably likely to have or a particular record is reasonably likely to contain information not otherwise known to them that they need to give an opinion.¹⁰

⁸ “Knows” refers to “actual knowledge.”

⁹ “Recognize” refers to perceiving the relevance of information actually known.

¹⁰ References in this *Statement* to a law firm also include a law department of an organization.

5.4 Opinions Should Not Be Based on Representations of Law

An opinion should not be based on a representation that is tantamount to the legal conclusions it expresses. An opinion may, however, be based on legal conclusions in a certificate of an appropriate government official.

5.5 Factual Assumptions

Some factual assumptions on which opinions are based need to be stated expressly; others do not. Examples of factual assumptions that ordinarily do not need to be stated expressly are assumptions of general application that apply regardless of the type of transaction or the nature of the parties. These include, for example, assumptions that copies of documents are identical to the originals, signatures are genuine, the parties to the transaction other than the opinion giver's client¹¹ have the power and have taken the necessary action to enter into the transaction, and the agreements those parties have entered into with the opinion giver's client are enforceable against them. An opinion should not be based on an unstated assumption the opinion preparers know to be incorrect or otherwise unreliable.¹²

5.6 Presumption of Regularity

Opinions may be based on a presumption of regularity for matters relating to the client (for example, actions taken at meetings during the period covered by a missing minute book) that are not verifiable from the client's records, if that presumption is not inconsistent with those records and reliance on it is not otherwise inappropriate under the circumstances. Opinion givers may rely on the presumption without stating that reliance in the closing opinion unless the opinion preparers consider a reference to the presumption to be necessary because of the significance of the matters being presumed.

5.7 Limited Factual Confirmations and Negative Assurance

An opinion giver ordinarily should not be asked to confirm factual matters, even if the confirmation is limited to the knowledge of the opinion preparers. A confirmation of factual matters, for example, the accuracy of the rep-

¹¹ This unstated assumption also may not be relied on for a non-client whose obligations are covered by the opinion.

¹² This is in contrast to a stated assumption, which may be relied on in giving an opinion even if incorrect or unreliable unless the opinion preparers recognize that their reliance on that assumption will mislead the opinion recipient with regard to a matter the opinion addresses. *See infra* Section 12 (*No Opinion That Will Mislead Recipient*).

representations and warranties in an agreement or the information in a disclosure document (except as indicated below), does not involve the exercise of professional judgment by lawyers and therefore is not a proper subject for an opinion even when limited by a broadly-worded disclaimer. An exception is the confirmation sometimes requested regarding particular legal proceedings to which the client is a party.¹³ Negative assurance regarding the adequacy of disclosures in a prospectus or other disclosure documents may be provided in limited circumstances in connection with a sale of securities to assist the opinion recipient to establish a due diligence or similar defense.

6 LAW

6.1 Covered Law

When a closing opinion states that an opinion covers the law of a specific jurisdiction or particular laws, the opinion covers no other law or laws.

6.2 Applicable Law

An opinion on the law of a jurisdiction covers only the law of that jurisdiction that lawyers practicing in the jurisdiction, exercising customary professional diligence in similar circumstances, would reasonably recognize as being applicable to the client or transaction that is the subject of the opinion. A closing opinion does not cover some laws (for example, securities, tax and insolvency laws) that are otherwise applicable to the matters it addresses. A closing opinion also does not cover municipal and other local law. An opinion may, however, cover law that would not otherwise be covered if the closing opinion so states or the opinion does so expressly.¹⁴

7 SCOPE

7.1 Matters Addressed

The opinions included in a closing opinion should be limited to reasonably specific and determinable matters of law that involve the exercise of professional judgment. A closing opinion covers only those matters it specifically addresses.

7.2 Matters Beyond the Expertise of Lawyers

Opinion givers should not be expected to give opinions on matters that are not within the expertise of lawyers (for example, financial statement analy-

¹³ This *Statement* also applies, when appropriate in the context, to confirmations.

¹⁴ See *infra* Section 10 (*Varying Customary Practice*).

sis, economic forecasting and valuation). When an opinion depends on a matter not within the expertise of lawyers, an opinion giver is entitled to rely on a certificate from an appropriate source or an express assumption with regard to the matter.

7.3 Relevance

Opinion requests should be limited to matters that are reasonably related to the opinion giver's client and the transaction that is the subject of the closing opinion. Depending on the circumstances, limiting assumptions, exceptions and qualifications to those reasonably related to the client, the transaction and the opinions given can facilitate the opinion process by making the closing opinion more informative.

8 PROCESS

8.1 Opinion Recipient and Customary Practice

An opinion giver is entitled to presume that the opinion recipient is familiar with, or has obtained advice about, customary practice as it applies to the opinions it is receiving from the opinion giver.

8.2 Other Counsel's Opinion

An opinion giver should not be expected to express its concurrence in the substance of an opinion of other counsel.

8.3 Financial Interest in or Other Relationship with Client

Opinion preparers ordinarily do not attempt to determine whether others in their law firm have a financial interest in, or other relationship with, the client. Nor do they ordinarily disclose any such financial interest or other relationship that they or others in their firm have. If the opinion preparers recognize that such a financial interest or relationship exists, they should consider whether, even if disclosed, it will compromise their professional judgment with respect to the opinions being given.

8.4 Client Consent and Disclosure of Information

When the client's consent to the delivery of a closing opinion is required by the rules of professional conduct, that consent can be inferred from the circumstances of the transaction and ordinarily is inferred from a provision in the agreement making the delivery of a closing opinion a condition to closing. If an opinion would require disclosure of information that the opinion preparers recognize the client would wish to keep confidential, the opinion

should not be given unless, after discussion with the client, the client consents.

9 DATE

A closing opinion speaks as of its date. An opinion giver has no obligation to update a closing opinion for subsequent events or legal developments.

10 VARYING CUSTOMARY PRACTICE

The application of customary practice, including those aspects of customary practice described in this *Statement*, to a closing opinion or a particular opinion may be varied by a statement in the closing opinion or opinion or by an understanding with the opinion recipient or its counsel.

11 RELIANCE

A closing opinion may be relied on only by its addressee and any other person expressly authorized to rely.¹⁵

12 NO OPINIONS THAT WILL MISLEAD RECIPIENT

An opinion giver should not give an opinion that the opinion preparers recognize will mislead the opinion recipient with regard to the matters it addresses.¹⁶

¹⁵ This section does not address the circumstances in which reliance by others may be permitted as a matter of law. *See also supra* note 3.

¹⁶ For a general discussion of this subject, including the role of disclosure, *see* TriBar Op. Comm., *Third-Party "Closing" Opinions*, 53 BUS. LAW. 591, 602-03 (§1.4(d)) (Feb. 1998) (noting that, in determining whether an opinion will mislead the opinion recipient, "[t]he question the opinion preparers must consider is whether under the circumstances the opinion will cause the opinion recipient to miscalculate the specific opinion given.") An opinion giver is not precluded from limiting the matters addressed by an opinion through the use of specific language (including a specific assumption, exception or qualification) so long as the opinion preparers do not recognize that the limitation itself will mislead the recipient. *See supra* Section 10 (*Varying Opinion Practices*).