

**Agenda for Meeting of the Opinion Standards Committee
of the Business Law Section of the Florida Bar
Wednesday, June 22, 2022
3:00 p.m. to 3:55 p.m.
In Person and Zoom
Hilton Orlando Bonnet Creek
Palm Beach Room
(Zoom Attendance Requires Registration to Secure Meeting ID and Passcode)**

- I. Welcome** Robert W. Barron, Co-Chair
 Gary Teblum, Co-Chair

- II. Pro Bono Reminder**

- III. Business Law Section Update & Welcome from Section Chair**

- IV. Heartfelt Thank You to Robert Barron for his Many Years of Service to the Committee**

- V. Welcome to David Peterson as new Co-Chair beginning June 23, 2022**

- VI. First Supplement to December 3, 2011 Third Party Legal Opinion Customary Practice in Florida Report.**
 - Still working on creating a “composite” version of the Report that can be made available to Section members – status, need for assistance and timing

- VII. Topics for Further Supplements**
 - Opinions under the Investment Company Act of 1940
 - Kirkland & Ellis Use of Inquiry Memorandum to Client
 - Opinions dealing with federal reserve board margin regulations

- VIII. Update Regarding Working Group on Legal Opinions Foundation**

- IX. Update Regarding TriBar Projects**

- X. Miscellaneous Opinion Issues for Discussion**
 - A. Propriety of Including a “Practical Realization” Type Override in the Equity and Bankruptcy exceptions with respect to the Ability to Collect on a Guaranty

 - B. Opinions on Security Interests in Digital Assets under the UCC (Phil Schwartz)

 - C. Opinions on Delaware business entities given by non-Delaware lawyers – *Bandera Master Fund LP v. Boardwalk Pipeline Partners, LP* 2021 WL 5267734 (Nov. 12, 2021)

D. Consideration of eliminating enforceability opinions in loan transactions with sophisticated lenders' counsel

E. Follow on Opinions

- Kinds of deals
- Types of amendments
- Assumptions needed?
 - Original documents were enforceable before amendment
 - No defaults
 - Consideration for amendment
 - All conditions to effectiveness are satisfied or waived
 - All actions have been taken
- Scope of remedy opinion
 - Amendment only
 - Original agreement and amendment
- Perfection opinion
 - No new collateral versus added collateral
 - No adverse effect/no impairment?
 - Should a new UCC-1 be filed or UCC-3?
 - Continue to be perfected
- No violation/breach opinions – appropriate?
 - Organization Documents
 - Applicable Laws
- Novation issue – check for no novation provision
- Should we/can we develop and publish a standard template for such a follow on opinion?

F. “not aware” vs “to our knowledge”

G. No violation/breach opinion

- How can this opinion be given if governing law is not the law of state of opinion giver?
- Violation/breach of material agreements – where material agreements are governed by law other than law of state of opinion giver

H. VC/PE Opinion Letters

- When are opinions appropriate or customary?
- VC vs. PE
- Model NVCA Legal Opinion
- Alternative entity opinions
- When to bring in Delaware counsel to give building blocks

XI. Good and Welfare