

**Agenda for Meeting of the Opinion Standards Committee
of the Business Law Section of the Florida Bar**

Wednesday, January 16, 2023

12:00 p.m. to 1:30 p.m.

By Zoom

(Zoom Attendance Requires Registration to Secure Meeting ID and Passcode)

- I. **Welcome** Gary Teblum, Co-Chair
David Peterson, Co-Chair
- II. **Pro Bono Reminder**
- III. **Business Law Section Update & Welcome from Section Chair**
- IV. **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
- V. **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
- VI. **Update Regarding Working Group on Legal Opinions Foundation**
- VII. **Update Regarding TriBar Projects**
 - A. UCC Digital Assets Opinions
 - B. Other
- VIII. **Miscellaneous Opinion Issues for Discussion**
 - A. Need to go “up the chain” to give an authority opinion for an LLC – Florida Bar Report vs. TriBar- Discussion of Exposure Draft (additional copy attached)
 - B. Opinions on Delaware business entities given by non-Delaware lawyers update to address appellate decision – *Boardwalk Pipeline Partners LP v. Bandera Master Fund LP*, 2022 WL 17750348 (Dec. 19, 2021)
 - C. Consideration of eliminating enforceability opinions in loan transactions with sophisticated lenders’ counsel
 - D. 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?

E. “not aware” vs “to our knowledge”

F. 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

G. 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

IX. Good and Welfare