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**Spring Meeting and Program**

We will meet briefly on Friday, April 7 from 10 to 10:30 am at the Wyndham Harbour in the Joseph B. Lancaster Room at street level. Following our meeting, we will present a program from 10:30 am to 12:30 pm in the same room. The program is titled Law Office Opinion Practices -- Policy and Process. We will cover the Law Office Opinion Practices Report which was published in 2004, but has never been the subject of a program by our committee, having been over shadowed by the *Dean Foods* decision. We will cover the report briefly and then our panel, comprised of Arthur Field, Tim Hoxie from Heller Ehrman, Amy Williams from Hunton & Williams, Larry Safran from Latham & Watkins, Trey Baldy from Holland & Knight, and me, as moderator, will discuss the questions and responses contained in the Report as well as the following questions:

- The report focuses on policies and practices surrounding the giving of third party legal opinions. Do you have policies covering review of opinions when you represent the opinion recipient?

- To the extent your firm requires second partner or opinion committee review, do the reviewing partners also review the underlying transactions documents and due diligence materials?

- How do you keep opinion reviewers informed? Has this changed with the increase in use of law firm intranets?

- How do you integrate lateral hires into your opinion process?

- If you have offices outside the United States, how does that impact your firm’s opinion practice?

- Do you have any different policies or practices addressing giving opinions for new clients as opposed to established clients?

- Do you audit opinions that have been delivered by the firm after the fact? In other words, what is your firm doing to monitor the opinions it is giving and compliance with firm policies?

- Do you maintain an accessible file of opinions received by clients of the firm from other law firms?

- Do you have procedures in place to address concerns raised by the cases such as confirming compliance with firm policies, insuring correctness of legal opinions from a legal standpoint and supporting factual confirmations? Have those policies changed in response to the recent cases?

- Do you include any statement in your legal opinions regarding their interpretation consistently with customary practice as included in legal opinion reports or specifically by reference to the ABA Legal Opinions Committee Principles?
• Are there issues that the Legal Opinions Committee should address and if so, what are they?

Bring your own questions and be prepared to join in what we hope will be a lively discussion. If you cannot attend, and have an issue that you would like us to discuss, please email me by noon on Wednesday, April 5th. Our June newsletter will include a report on the meeting and program.

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**Annual Meeting**

We are co-sponsoring a program to be held at the Annual Meeting in Hawaii with the Partnerships and Unincorporated Business Organizations and Small Business Committees on “Practice and Perils of Opinions on Alternative Entities.” We will cover legal opinions for limited liability companies and limited partnerships focusing on the soon to be published TriBar Opinion Committee report on "Third-Party Closing Opinions: Limited Liability Companies"; customary practice regarding due diligence; assumptions, qualifications, limitations or exclusions; consideration of fiduciary duty; and rendering opinions on Delaware entities by non-Delaware lawyers. The TriBar report is at the publisher and should be available sometime this Spring.

In preparing for the program, we circulated a questionnaire to the members of the three sponsoring committees. I am pleased to report that we had 250 responses. Unfortunately, a multiple choice questionnaire leads to some unsatisfactory responses. I will not quit my day job to become a professional pollster. That being said, a few of you sent me questions and comments on the side. If you responded to the questionnaire and would like to expound on some topic, feel free to email me directly, berkley@ballardspahr.com. I will keep your identity confidential unless you provide otherwise. I will have no way of knowing whether you responded to the questionnaire or how you responded as the data we have, and are in the process of analyzing for the program, are not attributable to any respondent. If you did not respond to the questionnaire, you can email me for a word copy.
**Subcommittee on Securities Law Opinions**

The Securities Law Opinions subcommittee of the Federal Regulation Of Securities Committee will meet on Friday, April 7 at the Tampa Marriott, Salon D, Level 2.

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**Committee on Audit Responses**

The Audit Response Committee will meet Thursday, April 6 from 1:00 to 2:00 p.m. at the Tampa Marriott, Meeting Room 5, Level 2. On the agenda is a discussion of recent developments, including the current state of engagement letters, non-conforming requests and any issues arising from Interpretation 47 of FAS 143 regarding Conditional Asset Retirement Obligations (essentially environmental contingencies). The current efforts of the ABA Task Force on Attorney-Client Privilege as it relates to audit matters may also be discussed.

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**Opinion Risk Management Seminar-Fall 2006, New York City**

The Section of Business Law, this Committee, the Business Law Sections of the Texas and California Bar and TriBar, among others, are planning a one-day seminar on Opinion Risk Management for the fall. The Seminar will be limited to lawyers with substantial experience in the area. Space will be limited. If you have a special interest, let me know. We will keep you informed as decisions on Seminar arrangements are made.

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**Other Opinion News**

The TriBar LLC report: Third-Party Closing Opinions: Limited Liability Companies is finished and will be published in the February 2006 *The Business Lawyer*. We should expect to see it hit our desks this spring. Also, the Boston Bar Streamlined Opinion with an introduction by Stanley Keller and Donald Glazer will be published in the November 2005 *The Business Lawyer*.

TriBar is considering a new report on the meaning of an opinion that preferred stock has been duly authorized and is validly issued.
Steve Weise and I will speak at the 2006 Business Bar Leaders Conference in Chicago on May 10, 2006 on “Toward a National Opinion Practice.” Our emphasis will be on how state and local bar associations can effectively contribute to the ongoing national dialog about opinion practice.

Membership

If you know someone who would like to join the Committee and receive our Newsletter, please direct them to the ABA Business Law Section website: http://www.abanet.org/buslaw/home.html, click “Committees” and the Legal Opinions Committee. If you haven’t visited the website lately, I recommend you do so. Our mission statement and prior newsletters are posted there.

Next Newsletter

The next newsletter will be circulated sometime in June. Please forward cases, news and items of interest to berkley@ballardspahr.com.