LLCs, Partnerships and Unincorporated Entities Committee

2019 LLC Institute

November 7 – 8, 2019

Agenda
(as of 7/24/19)

(The ABA will seek 15.25 hours of CLE credit, including 1.5 hours of ethics credit, in 60-minute states and 18.3 hours of CLE credit, including 1.8 hours of ethics credit, in 50-minute states for this program. Credit hours are estimated and are subject to each state’s approval and credit rounding rules.)

Stetson Tampa Law Center
1700 N Tampa St.
Tampa, Florida

Wednesday, November 6, 2019

5:30 p.m. – 7:00 p.m. Welcome Reception

101 North Campus Street, Suite 4100, Tampa, Florida 33602

The Welcome Reception is made possible by the generous support of Holland & Knight, LLP

(Through the registration page, please indicate whether you will attend, number of guests, etc.)

Thursday, November 7, 2019

7:20 a.m. - 8:00 a.m. Breakfast (included in registration)
8:00 a.m. - 8:15 a.m. Welcome; Housekeeping
8:15 a.m. - 10:15 a.m. Program (2 hrs.) Case Law Update (Non-Delaware)

Prof. Elizabeth “Beth” Miller (Baylor Law School, Waco, Texas); Kelley Bender (Chapman & Cutler, Chicago, Illinois); Sean Ducharme (Hunton Andrews Kurth LLP, Richmond, Virginia); and Dan Sheridan (Stark & Stark, Lawrenceville, New Jersey)

This panel will discuss recent LLC and partnership cases other than from Delaware on various topics of significance, including cases dealing with fiduciary duties and veil piercing and cases illustrating pitfalls in drafting operating agreements.
10:15 a.m. - 10:30 a.m.  Break

10:30 a.m. - 12:00 p.m.  **Program (1.5 hrs.) Delaware Case Law Update**

Lou Hering (Morris, Nichols, Arst & Tunnell LLP, Wilmington, Delaware); Tammy Mercer (Young Conaway Stargatt & Taylor, LLP, Wilmington, Delaware); Prof. James J. Wheaton (Boston University School of Law, Boston, Massachusetts)

This panel will discuss recent LLC and partnership cases from Delaware on various topics of significance, including cases dealing with fiduciary duties, the implied covenant, dissolution, application of the void and voidable doctrine and cases illustrating issues arising in drafting operating agreements. Jim Wheaton will provide an update on recent bankruptcy decisions of interest.

12:15 p.m. - 1:30 p.m.  **Luncheon & Keynote Address** (included in registration)

Keynote Address by Donald J. Weidner, Dean Emeritus and Alumni Centennial Professor at Florida State University College of Law and Reporter on the Revised Uniform Partnership Act (1994)

1:30 p.m. - 3:30 p.m.  **Program (2 hrs.) Contribution Default Remedies in LLC Operating Agreements**

Prof. Bradley T. Borden (Brooklyn Law), TBD

This panel will discuss the economic, tax, and legal aspects of contribution-default remedies, which often appear in LLC operating agreements. Such remedies include member-to-member loans, member-to-entity loans, interest dilution, and distribution offsets. Some agreement mix and match remedies. The economic and tax effects of contribution-default remedies can vary significantly from remedy to remedy. The dilutive effect can be either natural or punitive and latent or patent. Despite the ubiquity of such remedies, they have received relatively little attention in commentary or seminars. Although contribution-default remedies appear to be drafted with hopeful prospects of profitability in mind, the few cases that have considered their legal effect relate to failed arrangements. This panel will also discuss those cases and drafting ideas that can addresses the legal doctrines that emerged from the case law.

3:30 p.m. – 3:45p.m.  Break
3:45 p.m. - 5:45 p.m.  **Program (2 hrs.) LLC Agreements That Went Wrong, and How to Fix Them: Case Studies and War Stories**

Peter A. Mahler (Farrell Fritz, P.C., New York, New York), Ladd Hirsch (Winstead, Dallas, Texas), Prof. Meredith R. Miller (Touro Law, Central Islip, New York, New York) and Louis T.M. Conti (Holland & Knight LLP, Tampa, Florida)

*This panel will examine recent case law involving LLC member disputes involving interpretation of operating agreement provisions which were not carefully considered, properly drafted, or which resulted from unequal leverage; as well as how the panel members have addressed those issues in counseling their clients, including a few war stories from the trenches.*

7:00 p.m. - 8:00 p.m.  **Cocktail Hour**

8:00 p.m. - 10:00 p.m.  **Lubaroff Award Dinner** - (ticket price included in registration)

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**Friday, November 8, 2019**

7:30 a.m. - 8:00 a.m.  Breakfast (included in registration)

8:00 a.m. – 9:15 a.m.  **Program (1.25 hrs.) Re-Imagining the Business Trust as a Sustainable Business Form**

Prof. Lee-ford Tritt (University of Florida Law); TBD

*By drawing upon trust law and corporate law, this program will articulate and discuss an interdisciplinary, systematic application of business trusts as an alternative organizational form to corporations for the socially-conscious business management construct.*

9:15 a.m. – 10:45 a.m.  **Program (1.5 hrs.) Federal and State Tax Issues Relating to Compensation and Pass-Through Entities**

Cristin Keane (Carlton Fields, P.A., Tampa, Florida); Prof. Gregg Polsky (Univ. of Georgia, Athens, Georgia)

*This panel will discuss the current state of taxation of service providers to pass-through entities, including choice of entity issues, incentive compensation structures, equity-based compensation, carried interests, treatment of LLC members as limited partners for self-employment tax purposes, Section 83, and Section 409A.*

10:45 a.m. – 11:00 a.m.  Break
11:00 a.m. – 12:30 p.m.  **Program (1.5 hrs.) Ethics**

A.J. Singleton (Stoll Keenon Ogden PLLC); Robert R. Keatinge (Holland & Hart, Denver, Colorado); Gerald V. Neisar (Niesar & Vestal LLP, San Francisco, California)

*This program will address ethical considerations in the organization, operation and dismemberment of a law firm and its partners?*

12:30 p.m. - 1:00 p.m.  **Luncheon: Working Committee Meeting** (included in registration)

1:00 p.m. - 3:00 p.m.  **Program (2.0 hrs.) Developments in Series LLC’s, Divisions and Other Organic Transactions**

Tarik Haskins (Morris, Nichols, Arsht & Tunnell LLP, Wilmington, Delaware), TBD

*This program will examine recent amendments to the Delaware LLC Act regarding series LLCs and panelists will discuss some of the issues confronted by practitioners in using series LLCs and how practitioners can draft provisions in their LLC Agreement to improve the likelihood that the applicable horizontal liability shield will be respected outside of the jurisdiction of formation of the series LLC.*

3:00 p.m. – 3:15 p.m.  **Break**

3:15 p.m. - 4:45 p.m.  **Program (1.5 hrs.) LLC Governance Structures, Duties and Protection of Managers**

John Mark Zeberkiewicz (Richards, Layton & Finger, PA, Wilmington, Delaware), TBD

*This panel will discuss recent cases in which the courts have imported principles of corporate law into the realm of alternative entity law based on the organizational structure of the entity in question. It will also examine the consequences, from a litigation standpoint, of various drafting decisions with regard to an entity’s governance structure and the provisions, if any, modifying duties, exculpating managers and other parties, and granting rights to indemnification and advancement of expenses.*

4:45 p.m. - 5:00 p.m.  **Wrap-Up**