LLCs, Partnerships and Unincorporated Entities Committee

2019 LLC Institute

November 7 – 8, 2019

Agenda
(as of 10/2/19)

(The ABA will seek 15.75 hours of CLE credit, including 2.0 hours of ethics credit, in 60-minute states and 18.8 hours of CLE credit, including 2.4 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 at Holland & Knight, LLP
100 N Tampa St #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)
Stetson Tampa Law Center, TPA – Class 135 + 136

8:00 a.m. - 8:15 a.m. Welcome; Housekeeping
Stetson Tampa Law Center, TPA – Class 135 + 136

8:15 a.m. - 10:15 a.m. Program (2 hrs.) Case Law Update (Non-Delaware)
Stetson Tampa Law Center, TPA – Class 135 + 136

Prof. Elizabeth “Beth” Miller (Baylor Law School, Waco, Texas); Kelley Bender (Chapman & Cutler, Chicago, Illinois); Sean Ducharme (Hunton Andrews Kurth LLP, Richmond, Virginia); 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  
Stetson Tampa Law Center, TPA – Class 135 + 136

10:30 a.m. - 12:00 p.m.  Program (1.5 hrs.) Delaware Case Law Update  
Stetson Tampa Law Center, TPA – Class 135 + 136

Lou Hering (Morris, Nichols, Arshe & 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)  
Stetson Tampa Law Center, Atrium

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  
Stetson Tampa Law Center, TPA – Class 135 + 136

Prof. Bradley T. Borden (Brooklyn Law), Michael D. Soejoto (Pircher, Nichols & Meeks LLP, Los Angeles, California)

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. – 3:45 p.m.  Break  
Stetson Tampa Law Center, TPA – Class 135 + 136
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
Stetson Tampa Law Center, TPA – Class 135 + 136

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); 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**
Westin Tampa Waterside – Channelside Room
725 S Harbour Island Blvd, Tampa, FL 33602

8:00 p.m. - 10:00 p.m. **Lubaroff Award Dinner** - (ticket price included in registration)
Channelside Room
Friday, November 8, 2019

7:30 a.m. - 8:00 a.m.  Breakfast (included in registration)
Stetson Tampa Law Center, TPA – Class 135 + 136

8:00 a.m. – 9:15 a.m.  Program (1.25 hrs.) Re-Imagining the Business Trust as a Sustainable Business Form
Stetson Tampa Law Center, TPA – Class 135 + 136

Prof. Lee-ford Tritt (University of Florida College of Law); Prof. Peter Molk (University of Florida College of Law)

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
Stetson Tampa Law Center, TPA – Class 135 + 136

Cristin C. Keane (Carlton Fields, P.A., Tampa, Florida); Prof. Gregg Polsky (Univ. of Georgia, Athens, Georgia); Warren P. Kean (Shumaker, Loop & Kendrick, LLP, Charlotte, NC)

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
Stetson Tampa Law Center, TPA – Class 135 + 136
11:00 a.m. – 1:00 p.m.  Program (2.0 hrs.) Mastering the Relationships, Ethics and the Law Firm
Stetson Tampa Law Center, TPA – Class 135 + 136

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

This program will address a lawyer practicing in a law firm has duties to clients, partners, and self that must be balanced. These relationships and interests are governed not only by the law of the particular entity, but also very much by the Rules of Professional Responsibility. This program will consider the interaction of the ethical, professional liability, and business law rules to which attorneys who practice as partners or members of a law firm face in the organization, operation and dismemberment of a law firm. Among the topics that will be discussed are balancing fiduciary duties to clients with fiduciary duties to partners, the ethical considerations attendant to novel relationships within the firm such as the non-equity partner, non-lawyer time keepers, issues surrounding dissociation from, and dissolution and merger of, a law firm.

1:00 p.m. - 1:30 p.m.  Luncheon: Working Committee Meeting (included in registration)
Stetson Tampa Law Center, Atrium

1:30 p.m. - 2:30 p.m.  Program (1.0 hrs.) The Lightning Round
Stetson Tampa Law Center, TPA – Class 135 + 136

Professor Christine Hurt (Brigham Young University, Provo, Utah); Scott E. Ludwig (Bradley Arant Boult Cummings LLP, Huntsville, Alabama); Suzanne C. Odom (Montgomery & Andrews, PA, Santa Fe, New Mexico); Stuart L. Pachman (Brach Eichler LLC, Roseland, New Jersey); Thomas E. Rutledge (Stoll Keenon Ogden PLLC, Louisville, Kentucky)

This lightning round panel will address a variety of topics, each presenter spending no more than 10 minutes on a discrete recent development or issue. For example, Stuart Pachman will address his recent article on succession in single-member LLCs, Suzanne Odom will address LLCs formed under Tribal Laws, and Tom Rutledge will address recent developments in diversity jurisdiction and unincorporated entities.

2:30 p.m. – 2:45 p.m.  Break
Stetson Tampa Law Center, TPA – Class 135 + 136
2:45 p.m. – 4:15 p.m.  
**Program (1.5 hrs.)**  
**Developments in Series LLC’s, Divisions and Other Organic Transactions**  
Stetson Tampa Law Center, TPA – Class 135 + 136  
Tarik Haskins (Morris, Nichols, Arsh & Tunnell LLP, Wilmington, Delaware); Marla Norton (Bayard, P.A., Wilmington, Delaware); Prof. Elizabeth “Beth” Miller (Baylor Law School, Waco, Texas)  
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.  

4:15 p.m. - 4:30 p.m.  
**Wrap-Up**