BEST PRACTICES PROTOCOLS

for the Production of

THE CONSTRUCTION LAWYER

I. Purpose of The Construction Lawyer: The Construction Lawyer ("TCL") is the law journal of the Forum. The purpose of the journal is to serve the Forum’s educational mission by distributing scholarly articles and other materials to Forum members. TCL also provides opportunities for Forum members to publish.

II. Participants and Roles (including the Role of ABA Publishing)

A. Editor: The Editor (selected by, and serving at the pleasure of the Forum Chair and Governing Committee) has total responsibility for the content and timely publication of TCL, including selection of articles and other features, editing of articles, interfacing with other Forum groups about TCL, etc. The Editor also appoints the Contributing Editors. The Editor regularly reports about TCL to the Publications Committee and to the Governing Committee. The Editor is appointed for a three-year term.

B. Associate Editor: The Associate Editor (also selected by, and serving at the pleasure of, the Forum Chair and Governing Committee) assists the Editor in any and all aspects of the production of the journal and is expected to play a significant role in the selection and editing of articles. The Associate Editor is appointed for a three-year term. After that term is over, the person who served as Associate Editor is historically appointed to serve as Editor.

C. Contributing Editors: Several Contributing Editors assist the Editor and Associate Editor. They are appointed by, and serve at the pleasure of, the Editor. One or two of these is typically
designated as the author/co-author of the Hard Hat Case Notes and any other regular columns. Contributing Editors are expected to edit (and/or give a second read to) between one and three articles per year and also to assist in the final proofreading of the journal before it goes to press. There is no term for Contributing Editors. Having Contributing Editors work in that capacity for two to four years (with people rotating off and new appointments made from time to time) is the best way to make sure that additional Forum members get the opportunity and to bring new energy to the work of editing TCL. It is expected that the Contributing Editors will have a significantly reduced time commitment to the journal compared to the Editor and the Associate Editor.

D. Coordinating Editor and ABA Publishing: Prior to 2017, ABA Publishing had an employee designated as the Managing Editor for TCL (Tom Campbell served in that role for many years) who was responsible for all of the work performed by ABA Publishing, including layout, proofreading, artwork, and Bluebooking. However, in spring of 2017, ABA hired a vendor (currently a group called Escendant) to fulfil that role. ABA Publishing appoints a Coordinating Editor (currently Lori Lyons) to act as a liaison between the Editor and the outside vendor and to coordinate with ABA Publishing with regard to development, layout, and publication of TCL. The Coordinating Editor rarely attends Forum meetings and so his/her role can easily be underestimated. Any new Editor is strongly encouraged to speak to, and if possible meet with, the Coordinating Editor early in his/her tenure as the relationship between the Editor and the Coordinating Editor is an important one.

E. Steps for Publication of Each Edition. The Editor’s role in the publication of TCL can vary depending on the current practices of ABA Publishing. Currently, the process is as follows: (1) The Editor provides the Coordinating Editor with all content for the next edition/issue of TCL and advises on the order in which the articles should appear. (2) The Coordinating Editor arranges for layout of the edition and lets the Editor know the number of pages, so that the Editor can increase or decrease as necessary (need even number of pages in multiples of four). (3) The Senior Designer from ABA Publishing (currently Tamera Kowalski) contacts the Editor regarding the cover art. (4) The Coordinating Editor contacts all authors to get permission to use the material and headshots. (5) The Coordinating Editor sends the page proofs to all authors for a final edit. (6) The Editor and the author return the page proofs with any edits. (7) The Coordinating Editor finalizes the edition.
III. **Length and Publication Schedule**

A. Length: The Editor should discuss the target length of *TCL* with the Chair, Governing Committee, and Publications Committee from time to time. The cost to the Forum increases with length. In the current 8.5 X 11 format, the target length is between 42 and 56 pages, although the publication might be made longer from time to time.

B. Four Issues Per Year: *TCL* comes out four times a year. Three of the issues are timed to come out shortly before the Mid-Winter (Winter issue), Annual (Spring issue), and Fall (Fall issue) Forum programs. A fourth issue (Summer issue) comes out in approximately July of each year.

C. Meeting Deadlines: Meeting deadlines is crucial to the success of *TCL*. ABA Publishing has consistently remarked that the Forum in general and *The Construction Lawyer* in particular have distinguished themselves among ABA groups for their timely submissions, which gives ABA staff the time they need to conduct proofreading and Bluebooking and improves the overall quality of the publication.

D. Putting Together the Publication Schedule: In approximately April of each year, the Editor is asked by ABA Publishing to put together a publication schedule for the year (beginning with the Fall issue, and continuing to the Summer issue for the following year). A sample publication schedule is attached. By far the most important date on the schedule is the deadline for submission to ABA publishing, which is 65-70 days before the target date for distribution of the publication to Forum members. The interim deadlines before “Submission to ABA Publishing” are “targets” for different purposes and any particular editor might choose different dates and/or timeframes.

E. Generally, it is recommended to limit distribution of this publication schedule. The Editor must have what the authors consider to be final articles well in advance of the deadline for submission of articles to ABA publishing.

IV. **Selecting Articles, Sources of Articles, and Guidelines to Authors**

A. Selection of Articles: The Editor is responsible for selecting articles to include in the publication. The process works best when
it is collaborative and it is hoped and expected that the Associate Editor will also come up with ideas for articles. In addition, the Editor works with the Governing Committee, Publications Committee, Division Chairs, and Forum members about article ideas.

B. Sources of Articles: There are a number of sources of articles.

1. Program Papers: One excellent source of articles are the conference papers for Forum programs. Different Editors may have different views about the optimum number of articles that should be drawn from Forum program materials but there is no question that it is an excellent source for at least some content. One reason is that a well attended Forum program may draw 400 Forum members whereas *The Construction Lawyer* goes to every Forum member, approximately 7,000. In addition, many Forum program papers work very well as journal articles, are excellent, and when they appear in a journal, they are more likely to be cited by courts, used by academics, and to be of resource to the public and the bar in general.

2. Other Sources: Other sources of papers and articles include breakfast presentations, Division presentations, revised (ideally expanded) book chapters from Forum books, and ad hoc contributions from Forum members and others.

C. Guidance to Would-Be Authors: Excellent, common questions posed to the editors of *TCL* are, “How do I get published? What is the best way to approach the matter if I have an idea for an article?” The best answers make it clear that there is no hard and fast rule. Any number of ways are effective, depending on how far along the would-be author is in his/her thinking about the topic, styles, etc. *TCL* has published excellent articles where the first item reviewed was a synopsis or an outline (upon which the Editor or Associate Editor have offered comments or feed back). Most authors simply write the article and provide a near final draft for review, and that also works well. It is useful to make potential authors aware of the detailed index of *TCL* articles that appears on the Forum’s website and is regularly updated. From time to time, authors have an idea for an article that is too similar to a recent article or too similar to an article that is soon to come out, unbeknownst to the would be author. Although there is no requirement to do so, in these situations, reaching out to the editor of *Construct!*, the journal of the ABA Construction Litigation
section, or another journal, can be an excellent way to give service to a Forum member.

D. Coordination with Under Construction: The Editor of TCL should work closely with the editor of Under Construction to make decisions about where articles are to be published. Generally, the longer ones go in The Construction Lawyer and the shorter ones in Under Construction. With the advent of publication of Under Construction in electronic form, there may be an opportunity to publish longer or medium length papers in Under Construction.

E. Guidelines to Authors: The editors of TCL have put together a set of Guidelines for Authors. From time to time, the Editor should review this set of guidelines and make sure that it is current and continues to serve the best interests of the publication. A copy of the current guidelines is attached.

V. Editing Articles

A. Most Time Consuming Task: The single most time consuming task for the editors of The Construction Lawyer is the editing of articles, which take up the bulk of the publication. Notwithstanding these facts, editing articles is an art, and only advice and guidelines for this important task can be set forth here.

B. Advice and Guidelines: The following is a list of considerations for editors of TCL articles: most articles can and should be made shorter; most articles can and should be edited for clarity, internal constancy, and for adherence to the TCL house style; editors should edit and suggest and not re-write major portions of articles; a significant amount of attention should be given to the beginning of articles so that the framework and purpose of the article is clear to the reader; some promising articles need to be broadened because they are too focused on the law of a particular jurisdiction (frequently, the home jurisdiction of the author).

VI. Columns, Regular Features, and Book Reviews

A. Chair’s Column

B. Notes from the Editor
C. Hard Hat Case Notes: Traditionally, TCL has published a column called Hard Hat Case Notes that summarizes cases of interest to the national construction bar.

1. Authors: For the last several years, two Contributing Editors (rotated from time to time), have written the column, and this has been their contribution to the publication (i.e., the Hard Hat Case Note authors are generally not asked to edit articles or proof read other portions of the publication). A term of three to four years is a good guideline. There is some advantage in staggering the rotation. The Editor should talk to any new “team” of Hard Hat Case Note authors early in their working relationship to encourage them to communicate, work together, determine a strategy for selecting cases, and coordinate the write-ups.

2. Guidelines for Hard Hat Case Notes: The following guidelines should be reviewed, modified as appropriate from time to time, and implemented:

   a) Length: Length will vary by case, of course, but generally, 1 to 3 pages, double spaced for each case.

   b) Case Selection: We favor very recent cases of interest to the national construction bar. The more variety (subject matter, courts, regions), the better. Federal government contract materials should be covered.

   c) Format: Please start with a short headline/caption, then the summary, then the citation (parallel citations encouraged). See a recent issue for exemplars.

   d) Content of Case Summary: The write ups should succinctly summarize the holding and reasoning of the decision. The write ups should avoid commentary on whether the holding is “good” or “bad.” However, commentary on why the case is of interest is encouraged.

   e) Party Names: There is no hard and fast rule, but party names should be avoided as should “plaintiff”
or “appellant.” Rather, write ups should identify the parties by their common industry “role” (e.g., owner, prime contractor, surety, subcontractor, engineer, etc.).

f) Write Ups by Others: From time to time, Forum members will send a case write up that can be used in the Hard Hat Case Notes. In moderation, this is useful, as it encourages participation and lightens the load on the HHCN authors. Credit should be given at the end of the write up as follows:
(Contributed by {Name}, {Affiliation}, {City}.)

D. Legislative Updates: From time to time, TCL has run Legislative Updates, and an Editor may wish to include more or even make Legislative Updates a regular feature.

1. Type of Legislative Updates: In general, there are two types of legislative updates: (1) a report about legislation on a particular topic, not necessarily limited to very recent legislation and (2) a report about very recent legislation impacting the industry.

2. Guidelines for Reports About Legislation on a Particular Topic: Guidelines for this type of Legislative Update are the same as for articles in general.

3. Guidelines for Reports About Very Recent Legislation:

   a) Length: Length will vary by statute, of course. A single change might be summarized in one single paragraph. A major revision or addition of a set of provisions may take several pages to summarize.

   b) Selection of Legislation: Very recent only. What was passed in the current or immediately preceding legislative term in the jurisdiction. Statutes should be of interest to the national construction bar (as a trend or innovation; or because it poses a trap for the unwary).

   c) Format: Use the Hard Hat Case Notes as a pattern. Please start with a short headline/caption which
identifies the state. Then the summary. Then the citation (parallel citations encouraged).

d) Content of the Summary: The write ups should compactly summarize the new legislation and identify the statute added, deleted or amended. The write ups should avoid commentary on whether the legislation is “good” or “bad.” However, commentary/insights on the following are encouraged: the perceived need for the legislation; how it relates to other legislation; why the legislation is of interest; who sponsored the legislation; and what issues are left unresolved.

e) Authors are given credit at the end of each summary by name, affiliation and city.

E. Book Reviews: Reviews of books about construction law and practice are another regular feature. Most Forum books are reviewed but the book reviews should not be limited to Forum books.

VII. What We Send to ABA Publishing: The most important deadline for the editors of TCL is the deadline to email articles to ABA Publishing.

A. TOC and Edited Articles: On or before the deadline, the Editor sends to ABA Publishing a Table of Contents (exemplar attached) and Word versions of the edited articles, columns, features (if any), and book reviews (if any).

B. Topics, Length of Articles, Etc.: The Table of Contents should list the Editor’s estimate of the length of each article as well as the topic for each article (discussed below), ideas for the cover illustration, and any other changes for the issue (e.g., a change in Forum leadership to list on the credits).

1. Topics: The Editor should identify the subject matter for each article from the attached list. From time to time the Editor may add to the list of subject matters, but this should be kept to a minimum because this subject matter list is used in the master index and so consistency is a value.

2. Estimating Length: Estimating the length in TCL of an article is difficult and uncertain if based on the number of
pages of a Word document. A far better way, and one that will result is a good estimate is to use the Word Count feature of Word, taking care to identify the number of regular text words and the number of words in the endnotes, which the Word Count feature will count, as follows:

a) First page of a column or article: 750 Word Count words = 1 TCL page.

b) Regular text after the first page: 825 Word Count words (excluding endnotes) = 1 TCL page.

c) Endnotes: 1,100 Word Count words = 1 TCL page.

VIII. Final Proofreading

A. Approximately 30 days before the target publication date, ABA Publishing sends by email to the editors of TCL and to each author “page proofs” of the publication for a final review. This process is ably managed by ABA Publishing but the editors of TCL need to be aware of it.

B. ABA Publishing sends the entire issue to the Editor and Associate Editors. Contributing Editors are given segments of the publication (approximately ten pages each). Authors are given their articles.

C. This is a proofreading stage only. Substantive changes are very difficult to make, and easily lead to mistakes at this stage. From time to time, a change in law or other extraordinary reason requires more major changes to be made, and ABA Publishing will do their best to accommodate. The editors of TCL should make sure that the authors know that the final version is Word is essentially final.

IX. Index

A. There is a detailed index of all past TCL issues on the Forum’s website. The index is a searchable .pdf and lists each article by subject matter and author(s).
B. After each issue comes out, the Editor (or his/her designee) updates the index and sends the update to the Forum’s webmaster (currently, Dave Owen) for posting.
### The Construction Lawyer Publication Dates in 2016-2017

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<td>Receive: HHCN, Legislative Update, Columns (Forum Chair, Editor, Diversity Chair)</td>
<td>Z/N; E/Z, Heckman; Branca; Theising</td>
<td>May 13, 2016</td>
<td>July 22, 2016</td>
<td>Nov. 14, 2016</td>
<td>Feb. 2, 2017</td>
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<td><strong>E-mail Finalized Articles to ABA [65-70 Days Between “Email Finalized Articles to ABA” and “Copies Received at Forum Meeting Site”]</strong></td>
<td>Editor</td>
<td>May 20, 2016</td>
<td>July 29, 2016</td>
<td>Nov. 21, 2016</td>
<td>Feb. 9, 2017</td>
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<td>July 29, 2016</td>
<td>Oct. 4, 2016</td>
<td>January 31, 2017</td>
<td>April 26, 2017</td>
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<td>Forum Meeting Dates [This is a reference date only. The &quot;Copies Received&quot; Date is the True, Drop Dead Date.] No summer meeting, date is to calendar events only</td>
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<td>July 31, 2016</td>
<td>Oct. 6, 2016</td>
<td>Feb. 2, 2017</td>
<td>April 28, 2017</td>
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ABA FORUM ON THE CONSTRUCTION INDUSTRY

The Construction Lawyer

Submission Format and Guidelines for Articles

Editor is Michael A. Branca (202-293-8815 ex. 7116, MBranca@pecklaw.com). The Associate Editor is John Foust (415-971-9181, jfoust@nixonpeabody.com).

Generally, the editors are not looking for articles on particular topics. Authors are encouraged to submit ideas for articles, or outlines of articles, to the Editor and/or Associate Editor. A comprehensive, up-to-date index of past issues is on the Forum’s website.

Articles should be national in scope. Scholarly articles with substantial endnotes are more likely to be published.

Preferred Length: 15 to 30 double spaced pages, subject to exceptions agreed to by Editor.

Headings: Only two levels of headings; main headings in bold; subheadings in bold italics; capitalize first letter of each word only other than prepositions, articles, and conjunctions of four letters or less. Headings should not be all caps. Headings should be in the same font size as the text, with no auto-formatting.

Author attribution limited to author’s name, firm name, and city.

Format for Citations:
- Form in accordance with The Blue Book.
- Please make sure the endnotes are checked for format and substance before submission.
- Case name only, not full cite, in text of article.
- Please use italics, not underlined, for case names in text.
- Please use endnotes, not footnotes.
- Case names should be in regular font in endnotes, not italics or underlined, unless a shortened version of the citation is used, in which case italics should be used.
- Please do not use the shortened version of a citation unless the citation is within five endnotes of the previous citation.
- Please use small caps for book and periodical names
- Order of case citation within signal unless one case is more important than the others: United States Supreme Court by date; F.3d, F.2d by date; F. Supp. 2d, F.Supp. by date; state cases alphabetically and by date for cites within the same state.
- Please do not use supra in case citations.
ABA FORUM ON THE CONSTRUCTION INDUSTRY
The Construction Lawyer
Submission Format and Guidelines for Articles
(continued)

X. GRAMMAR AND STYLE:
   ➢ Generally, in accordance with The Chicago Manual of Style.
   ➢ Please use comma before “and” in a series of three or more words or phrases.
   ➢ No comma before “and” if only two words or phrases are in a series.
   ➢ Please use comma before “and” if two sentences are connected by the word “and”.
   ➢ Please use capitals sparingly. Court is capitalized only where citing to the Supreme Court. Board is not capitalized.
   ➢ Omit useless words and phrases.
   ➢ Spell out numbers one through ninety-nine.
   ➢ Please use should, would, could, and may sparingly.
   ➢ Prefer active voice.
   ➢ Please do not write in the first person.
   ➢ Short is better.
   ➢ Please do not provide exhaustive statement of facts of a case.

Before publication, authors will be asked to send their photographs (black & white preferred) to Lori Lyons with ABA Publishing (the.construction.lawyer@gmail.com). Also, before publication, authors will be asked to sign the standard ABA copyright assignment, including disclosure of any previous publication of same or similar text elsewhere.
The Construction Lawyer—Contents for Winter 2018 Issue
Vol. 38, No. 1, Winter 2018

Michael A. Branca, Editor
John Foust, Associate Editor

Issue (Volume 38, Number 1, Winter 2018)
Target Length: 40-48 pages
Publication Deadline: January 31, 2018
Deadline for Submittal to ABA Publishing: December 20, 2017

Working Cover Theme: We have several articles on federal statutory regimes, including the False Claims Act and the Foreign Corrupt Practices Act, so perhaps something about playing by the rules

Contents:

2 pages: Cover page, table of contents.
1 page: Notes from the Editor, Michael A. Branca.
1 page: Comments from the Chair, Wendy Venoit.
6 pages: Adam Lasky, Roadmap to Bid Protests at the U.S. Court of Federal Claims [Government Contracts; Courts and Boards]
5 pages: Alana Riksheim, When Prevailing Wages DO Not Prevail: The Davis-Bacon Act in the Context of Public-Private Partnerships after CityCenter DC [Employment & Labor; Project Delivery]
1 page: Remembering Holy Gwyn, A Tribute by Buck Hinke.
SUBJECT INDEX FOR THE CONSTRUCTION LAWYER

Alternative Dispute Resolution (Arbitration, Mediation, Partnering, DRB’s, etc.)
Bankruptcy
Best Practices
Bid and Award
Book & Software Reviews
Building Information Modeling
Changes
Claims (Preparation, Submission, Certification, Damages, Design Responsibility, False Claims Act, etc.)
Completion
Contract Forms and Contract Drafting
Contract Interpretation
Courts and Boards
Damages
Defects, Construction Warranties and Negligence
Design-Build Contracting
Design Responsibility & Liability
Disadvantaged Businesses
Discovery
Economic Loss Principle and Privity
Employment & Labor
Environmental
Equitable Remedies
Ethics
Evidence and Experts
Financing
Force Majeure/Insurance/Sureties
Government Contracts
Implied Obligations
Indemnity
Insurance/Defects
Insurance & Insured Risk
Intellectual Property
International
Internet Research
Limitations on Actions (e.g., Statutes of Limitation, Sureties, Statutes of Repose)
Litigation Procedures (Filing, Discovery and Trial)
Miscellaneous
Payment and Performance Security
Payment and Collection (Bankruptcy, Debtor-Creditor, Liens, Miller Act)
Project Delivery
Project Management (e.g., Construction Management, Inspection and Administration
Scheduling and Delays
Site Conditions
Subcontracting
Sureties
Taxes and Accounting
Termination
Warranties