

Report on 2019 Survey of Law Firm Opinion Practices

*By the Legal Opinions Committee of the ABA Business Law Section**

I. INTRODUCTION

Most law firms have policies and procedures for the preparation and delivery of legal opinion letters to recipients who are not their clients.¹ The policies typically identify the opinions a firm is willing and unwilling to give, and the procedures establish the steps opinion preparers² are expected or encouraged to take before they deliver an opinion letter on behalf of the firm. Firms often provide their lawyers with sample opinion letters and assign various responsibilities for the opinion letters their firm delivers to a committee or committees of the firm's lawyers (an "opinion committee").

In 2002, the Legal Opinions Committee of the American Bar Association Business Law Section circulated a confidential survey of law firm opinion practices (the "2002 survey"). In 2010, the committee conducted another, longer survey (the "2010 survey"), and in 2019 the committee conducted a third survey (the "2019 survey").³ The committee issued a report on the responses to the 2002

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1. In this report, "opinion letter" means a letter expressing a law firm's professional judgment regarding specified legal matters that is delivered by the law firm in a business transaction to a party or parties not represented by the law firm in the transaction, and "opinion" means a specific conclusion expressed in an opinion letter.

2. "Opinion preparers" means the lawyers in a law firm who prepare an opinion letter.

3. The surveys did not cover practices in preparing and giving tax, intellectual property, cross-border, and other specialized opinions.

The 2002 and 2010 surveys did not ask about firm practices in giving opinion letters in real estate transactions. In response to questions in the 2019 survey, almost all firms said they delivered opinion letters in real estate transactions (Appendix 1, Question 43), but less than one quarter delivered most of their opinion letters in those transactions. Appendix 1, Question 43.1. More than three quarters of firms that delivered those opinion letters said that their firm policies, practices, and procedures were the same for those opinion letters as for opinion letters in other transactions. Appendix 1, Question 43.2.

survey in 2004,⁴ and a report on the responses to the 2010 survey in 2013.⁵ This report describes and discusses the responses to the 2019 survey.

The committee received about 300 responses to the 2019 survey, compared to 50 responses to the 2002 survey and 252 responses to the 2010 survey.⁶ The 2019 survey responses included information on firm size and geographic location that the committee used to analyze the survey results.⁷ The questions in the 2019 survey and a tabulation of the responses are reproduced in Appendix 1 to this report.⁸ Tables derived from those responses are included in Appendix 2.

Firms responding to the 2019 survey ranged from small to very large⁹ and were geographically diverse.¹⁰ About one third indicated that they had their headquarters in either California, Massachusetts, New York, North Carolina, Pennsylvania, or Texas,¹¹ with the largest percentage in New York (11 percent).¹² While many firms had only one office, some had many, including in some cases many non-U.S. offices.¹³

This report provides an overview of the opinion practices of law firms of various sizes. Responses to the survey suggest a trend toward greater formality in the opinion practices of small firms, a trend that has been bringing the opinion practices of small firms into closer alignment with those of large firms. Responses also suggest that many firms of comparable size have similar opinion practices. Responses, however, portray a broad range of practices and should not be used as a basis for establishing standards, customary practice, or even best practices for opinion giving.¹⁴ The responses make clear that one-size-fits-all does not

4. See ABA Comm. on Legal Ops., *Law Office Opinion Practices*, 60 Bus. Law. 327 (2004) (providing the committee's report on the 2002 survey (the "2002 survey report")).

5. See ABA Comm. on Legal Ops., *Report on the 2010 Survey of Law Firm Opinion Practices*, 68 Bus. Law. 785 (2013) (providing the committee's report on the 2010 survey (the "2010 survey report")).

6. See *supra* notes 4 & 5.

7. Appendix 1, Questions 44, 44.5, 44.6.

8. Textual responses are not included in the appendices. Some, however, are summarized in the text or footnotes of this report. See, e.g., *infra* note 34.

9. Appendix 1, Question 44. In both the 2019 and 2010 surveys, firms with 200 or fewer lawyers represented about two thirds of responding firms, firms with fifty or fewer lawyers about one third, and firms with more than 500 lawyers about one quarter of responding firms. *Id.*; 2010 survey report, Appendix 1, Question 36.

10. Appendix 1, Questions 44.5, 44.6.

11. Appendix 1, Question 44.5. Some firms did not indicate where their headquarters were located. In 2010, about one third of responding firms had their headquarters in either California, the District of Columbia, Florida, New York, or Texas. 2010 survey report, Appendix 1, Question 39.

12. Appendix 1, Question 44.5. Responding firms had headquarters in every state except Alaska, Kansas, Kentucky, Montana, Nebraska, North Dakota, South Dakota, South Carolina, Vermont, West Virginia, and Wyoming. *Id.*

13. Appendix 1, Questions 44.3, 44.4. About one third of responding firms had an office in New York, California, or the District of Columbia. Appendix 1, Question 44.6

14. Opinion practices are continually evolving, and firms that responded to the survey may subsequently have changed their opinion practices. In addition, responses to specific questions may not convey subtleties. A firm, for example, may have indicated that it gave particular opinions or confirmations but may have limited their coverage or resisted giving them whenever possible. See, e.g., *infra* Section VII.B (survey responses suggest a trend toward limiting coverage of no-litigation confirmations).

come close to describing the opinion practices, either generally or with regard to specific matters, followed by law firms even of comparable size or location.

SUGGESTIONS ON HOW TO READ THIS REPORT

The following explanations are provided to assist the reader of this report.

Quantitative Terms. This report usually uses the following quantitative terms in referring to survey results:

| Descriptions of Quantitative Terms | |
|------------------------------------|-------------|
| Descriptive Term | Proportions |
| Small | 1% to 9% |
| Less than one quarter | 10% to 20% |
| About one quarter | 21% to 29% |
| About one third | 30% to 41% |
| About one half | 42% to 58% |
| About two thirds | 59% to 70% |
| About three quarters | 71% to 80% |
| More than three quarters | 81% to 90% |
| Almost all | 91% to 99% |

Calculations of Proportions. When this report or Appendix 1 states the proportion of firms that chose a particular answer to a question that asked firms to “check all that apply” from a list of possible answers, the proportion is usually calculated by dividing the number of firms that selected that answer by the number of firms that responded to that question.¹⁵ The “total” shown for “check all that apply” questions in Appendix 1 is usually the total number of firms that responded to the question.¹⁶

Proportions in this report and the appendices do not take into account firms that selected “no policy or established practice” or “not called for in firm’s practice” from a list of permitted answers to a question.¹⁷ Percentages in the appendices are rounded to the nearest whole number. When this report or Appendix 2

Alternatively, a firm might have had an informal practice not rising to the level of a policy or procedure and therefore not reflected in the response to a question.

15. See, e.g., Appendix 1, Question 1. Sometimes, however, the proportion is calculated by dividing the number of firms that selected a particular answer by the number of firms that selected a particular answer or answers to an earlier related question. See, e.g., Appendix 1, Question 38.2.

16. See, e.g., Appendix 1, Question 1. Sometimes, however, the total is the number of firms that selected a particular answer or answers to an earlier related question. See, e.g., Appendix 1, note 261.

17. See, e.g., *infra* note 138 (calculation of proportion of firms covering enforceability of arbitration provisions). When a firm selected “no policy or established practice,” an alternative proportion that takes that response into account is provided in a footnote. *Id.* See also *infra* Section VII.C, Comments,

discusses results by firm size, proportions take into account only firms that identified their firm size.¹⁸

Firm Size. In comparing survey responses of large firms with those of small firms, this report defines large firms as those with more than 200 lawyers and small firms as those with 200 or fewer lawyers.

Summaries and Comments. Each segment of this report is preceded by a brief bold italicized summary of its conclusions. In addition, the committee has provided italicized comments following some segments.

II. OPINION PRACTICE MANAGEMENT: GENERAL

A. POLICIES AND PROCEDURES FOR PROVIDING OPINION LETTERS AND GIVING PARTICULAR OPINIONS

Most firms had policies on whether to give particular opinions and on the content or wording of opinion letters or particular opinions. Almost all firms had procedures for providing opinion letters.

In 2019, about three quarters of firms had policies on whether to give particular opinions or types of opinions, a substantial increase from about one half of firms that had those policies in 2010.¹⁹ The increase in the proportion of small firms with those policies was much larger than for large firms.²⁰ However, large firms were still more likely than small firms to have those policies.²¹

Similarly, in 2019, about three quarters of firms had policies on the substantive content or wording of opinion letters or particular opinions. That also represented a substantial increase from 2010, particularly in the proportion of small firms.²²

In 2019, almost all firms, whether large or small, had procedures for providing opinion letters,²³ an increase from more than three quarters in 2010.²⁴

18. See, e.g., *infra* note 20; Appendix 2, Chart 1.

19. Appendix 1, Question 1; 2010 survey report, Appendix 1, Question 4. The 2010 survey asked whether the firm “prohibits unless waived the giving of specific Opinions”; the 2019 survey asked more broadly whether the firm had “policies on whether to give particular Opinions or types of Opinions.” The increase might have been influenced by the different wording of the questions.

20. The proportion of small firms increased from 47% in 2010 to 75% in 2019; the proportion of large firms increased from 69% to 88%. Appendix 2, Chart 1; 2010 survey report, Appendix 2, Chart 1.

21. *Id.*

22. Appendix 1, Question 1; 2010 survey report, Appendix 1, Question 4. The proportion of small firms increased from 40% to 71%, and the proportion of large firms increased from 49% to 80%. Appendix 2, Chart 1; 2010 survey report, Appendix 2, Chart 1. The 2010 question asked whether the firm “mandates unless waived the wording of specific Opinions.” The 2019 question asked more broadly whether the firm had “policies on the substantive content and wording of [its] Opinion Letters or particular Opinions.”

23. Appendix 1, Question 1; Appendix 2, Chart 1.

24. 2010 survey report, Appendix 1, Question 4. In 2010, almost all large firms and about three quarters of small firms had procedures for providing opinion letters. 2010 survey report, Appendix 2, Chart 1.

Comments: The substantial increase from 2010 to 2019 in the proportion of firms with policies on whether to give particular opinions and the content or wording of opinions and opinion letters may have been due to (i) bar reports, other publications and programs on those topics, (ii) a greater emphasis by firms on risk management in the opinion process, and (iii) recommendations by malpractice insurers. The larger increase in the proportion of small firms with those policies and with procedures may also have been influenced by (i) an increase in the number of opinion letters they were asked to give and (ii) greater exposure to practices of larger firms. Those increases also may have been influenced by differences in the wording of the questions in the two surveys as described in notes 19 and 22.

See *infra* Section III.B.2 (regarding the role of firm committees in preparing and improving firm policies and procedures).

In addition to the opinion policies and procedures they identified in response to the 2019 survey questions, many firms also have less formal opinion practices, typically including informal consultations among firm lawyers.

B. POLICIES AND PROCEDURES FOR REVIEWING OPINION LETTERS OF OTHER FIRMS

Few firms had policies on the acceptability of the content or wording of proposed opinion letters of other firms or procedures for reviewing those opinion letters.

Less than one quarter of firms had policies on the acceptability of the content or wording of opinion letters that other firms proposed to deliver to the firm's clients.²⁵ About one quarter of firms had procedures for reviewing opinion letters proposed by other firms.²⁶

Comment: Although few firms had policies on the acceptability of the content or wording of opinion letters delivered to their clients, many clients, especially financial institutions, have requirements or guidelines for their law firms to follow on the acceptability of the content and wording of opinion letters they receive.

C. AUTHORITY TO SIGN OR PROVIDE OPINION LETTERS

Most firms permitted only partners to sign or provide opinion letters.

More than three quarters of firms permitted only partners or lawyers with equivalent status to sign or provide opinion letters.²⁷ Textual comments indicated that some firms (i) permitted non-partners to sign if authorized by an appropriate procedure (e.g., approval by an opinion committee or a member of an opinion committee) or (ii) required a signature or approval by a specific partner or a partner having a particular position within the firm.

25. Appendix 1, Question 1.

26. *Id.*

27. Appendix 1, Question 2. Of the 312 firms answering this question, all but ten firms indicated that partners were permitted to sign or provide opinion letters. Sixty of those firms also selected other answers: (i) associates, (ii) "of counsel" or the like, or (iii) others.

III. OPINION PRACTICE MANAGEMENT: COMMITTEES

A. EXISTENCE AND NUMBER OF COMMITTEES

Most firms had at least one opinion committee. Since 2010, the proportion of small firms with opinion committees increased substantially.

About three quarters of firms in the 2019 survey had at least one opinion committee,²⁸ a proportion little changed since 2002.²⁹ As was true in 2010, almost all large firms had an opinion committee.³⁰ However, the proportion of small firms with an opinion committee increased substantially, from about one half in 2010 to about two thirds in 2019.³¹ Less than one quarter of firms, about three quarters of them large, had more than one opinion committee.³²

Comment: The increase from 2010 to 2019 in the proportion of small firms with an opinion committee illustrates a trend toward greater formality in the opinion practice of small firms mentioned in the Introduction. Presumably, large firms that have established more than one committee have done so to accommodate the complexity of their firm structures, e.g., multiple practice groups or offices in different states and countries.

B. COMMITTEE FUNCTIONS

(1) Reviewing, Clearing, or Approving Individual Opinion Letters

In most firms, opinion committees or their members reviewed, cleared, or approved at least some opinion letters. This was particularly true for small firms.

In about two thirds of large firms and almost all small firms, the firm's opinion committee(s), acting as a committee or through individual members, reviewed, cleared, or approved opinion letters.³³ For about two thirds of those committees, any member could review, clear, or approve opinion letters.³⁴

28. Appendix 1, Question 3.

29. 2002 survey report, Appendix, Question B.1; 2010 survey, Appendix 1, Question 1.

30. Appendix 2, Chart 2; 2010 survey report, Appendix 2, Chart 2.

31. *Id.*

32. Appendix 1, Question 3; Appendix 2, Chart 2. This was a slight increase from the small proportion of firms with more than one committee in 2010. *See* 2010 survey report, Question 1.

About three quarters of firms with more than one opinion committee allocated responsibility among those committees by practice group or area of law. Appendix 1, Question 3.1. The balance allocated responsibility by geography or function. *Id.* Another approach mentioned in textual comments was establishing one opinion committee for firmwide policies and separate opinion committees for individual practice groups.

33. Appendix 2, Chart 3. Committees of more than three quarters of all firms performed this function. Appendix 1, Question 4. An opinion committee or an opinion committee member could be a consulted partner in a second partner review. *See* Appendix 1, Question 22; *infra* Section IV.B. *See* also *infra* note 34 and related text regarding who could act for the opinion committee.

34. Appendix 1, Questions 4.1.1, 4.1.2. This practice was followed in about two thirds of firms whose opinion committees reviewed, cleared, or approved all or substantially all opinion letters and

About three quarters of opinion committees that reviewed, cleared, or approved opinion letters did so for substantially all opinion letters.³⁵ The balance did so for opinion letters for some but not all transactions.³⁶

(2) Preparing or Approving Firm Opinion Policies and Procedures

Most opinion committees, including almost all opinion committees in large firms, prepared or approved opinion policies and procedures for all firm practice groups and offices, in many cases consulting with or obtaining approval of others in the firm.

The opinion committees of more than three quarters of firms prepared or approved firm opinion policies or procedures, including almost all large firm opinion committees and about three quarters of small firm opinion committees.³⁷ The largest number, about two thirds of those firms, indicated that the full committee acted in this area; about one quarter said that the committee chair acted for the committee.³⁸ More than three quarters of firms with opinion committees exercising these functions said that policies or procedures prepared or approved by their opinion committees related to opinion letters delivered by all their practice groups and offices.³⁹

in about three quarters of firms whose opinion committees reviewed, cleared, or approved some (but not all or substantially all) opinion letters.

Firms were asked to choose from a list of who could act for the committee by checking all answers that applied, and some firms selected more than one answer. "Any committee member" was by far the most common response. Next common (each receiving less than one quarter of the responses) were two or more committee members acting together, the opinion committee chair, and the full committee. *Id.*

Some firms indicated in comments that who acted for the opinion committee depended on such factors as the nature of the transaction (e.g., size or complexity), the type of opinions being given (e.g., unusual, non-standard, reasoned, or complex), the type of issues involved (e.g., Uniform Commercial Code or true sale opinions), or the characteristics of lawyers acting (e.g., non-involvement in the transaction or geographic location).

35. Appendix 1, Question 4.1.

36. *Id.* Firms were asked to select all that applied from a list of practice areas whose opinion letters were typically reviewed, cleared, or approved, and some selected more than one answer. Of the firms that stated that the opinion committee reviewed opinion letters for some but not all transactions, more than three quarters did so for lending transactions, and about half for public or private securities offerings, mergers and acquisitions, true sales or substantive consolidations, or securitizations. Appendix 1, Question 4.1.3. Firms were not asked how many opinion letters were reviewed at the request of opinion preparers.

37. Appendix 1, Question 5; Appendix 2, Chart 4. In the 2002 survey, three quarters of firms said that their opinion committees "provide[d] written guidance about firm/departments policies on opinion giving." 2002 survey report, Appendix, Question C.1(c); see also *supra* Section II.A. regarding policies and procedures for providing opinion letters and giving particular opinions.

38. Appendix 1, Question 5.1. Firms were asked to select all that applied from a list of persons or groups who acted for the committee, and some firms selected more than one answer. Less than one quarter of firms indicated that any opinion committee member or two or more opinion committee members could act for the opinion committee. The answers selected by the fewest firms were one or more subcommittees and a designated (non-chair) opinion committee member. *Id.*

39. Appendix 1, Question 5.3. See *supra* note 3 about types of opinions not covered by the 2019 and 2010 surveys and regarding opinion letters in real estate transactions.

About one half of opinion committees preparing or approving policies or procedures usually obtained approval of or consulted with another person or group when taking that action;⁴⁰ less than another one quarter said they did so depending on the circumstances.⁴¹ Opinion committees most frequently obtained approval of or consulted with designated members of designated practice groups or the firm's general counsel (each in about one third of the opinion committees).⁴²

(3) Administering, Monitoring, or Waiving Compliance with Policies or Procedures

Most opinion committees administered, monitored, or waived firm policies and/or procedures for all practice groups and offices, in some cases consulting with or obtaining approval of others in the firm.

The opinion committees of about three quarters of both large and small firms administered, monitored, or waived compliance with firm opinion policies or procedures.⁴³ In contrast to the results of the earlier question on preparing or approving opinion policies and procedures, the largest number of firms (about one half) said that any committee member could act for the committee for this purpose.⁴⁴ About one third of firms selected the opinion committee chair, and about one quarter selected either any two or more committee members acting together or the full committee.⁴⁵

Only about one third of the opinion committees administering, monitoring, or waiving compliance with firm opinion policies or procedures usually consulted with or obtained the approval of another person or group;⁴⁶ another less than

40. Appendix 1, Question 5.2.

41. *Id.* Circumstances or issues calling for consultation or approval listed in comments included (i) need for expertise, (ii) risk management, professional responsibility, or firm liability issues, (iii) substantive (versus ministerial) issues, (iv) issues applying to a practice group, and (v) issues relating to "market practice" (in contrast to customary diligence or usage).

42. Appendix 1, Question 5.2.1. Firms were asked to select all answers that applied from a list of persons or groups who could approve or consult; some firms selected more than one answer. About one quarter of firms identified any member of a designated practice group or the firm's management committee. The answer selected by the fewest firms was the firm's managing partner.

Less than one quarter of firms selected "It depends" and provided textual answers. Those that did stated that who is consulted depended, for example, on the significance of the decisions being made, the type of opinion or substance of the issues involved, or whether an issue raised ethical or loss prevention concerns. Compare this list, with *supra* note 41 (circumstances calling for consultation or approval), and *infra* note 48 (persons consulted for administering, monitoring, or waiving policies and procedures).

43. Appendix 1, Question 6; Appendix 2, Chart 5.

44. Appendix 1, Question 6.1. Firms were asked to select all answers that applied from a list of persons or groups who could act for the committee; many firms selected more than one answer.

The largest number that answered Question 5.1 on approving opinion policies and procedures selected the full committee. *Supra* note 38 and related text.

45. Appendix 1, Question 6.1.

46. Compare Appendix 1, Question 6.2, with *supra* note 40 (accompanying text describing proportion of opinion committees consulting with others regarding preparing and approving opinion policies and procedures).

one quarter did so depending on the circumstances.⁴⁷ The opinion committees that consulted with or obtained the approval of another person or group did so most frequently with a designated member of a designated practice group (about one half), any member of a designated practice group (about one third), or the firm's general counsel (about one third).⁴⁸

More than three quarters of firms whose committees performed this function said that policies or procedures relating to administering, monitoring, or waiving compliance by their opinion committees applied to opinion letters delivered by all their practice groups and offices.⁴⁹

Comments: Opinion committees most often acted as a full committee when preparing or approving their firm's policies or procedures (see supra Section II.B.2) but through individual committee members when monitoring or waiving compliance with those policies and procedures. That may be explained in part by the need to act promptly on an issue raised by a particular opinion letter or the need for a waiver when an issue is identified during review of an individual opinion letter by an opinion committee member.

Likely for the same reasons, less consultation with or approval of others was required for this function than for preparing or approving policies and procedures.

(4) Preparing or Approving Sample Opinions, Opinion Letters, Supporting Documentation, or Other Materials

Most opinion committees prepared or approved sample opinions, opinion letters, supporting documentation, or other materials.

More than three quarters of large firms and about three quarters of small firms said that their opinion committees prepared or approved sample opinions, opinion letters, supporting documentation, or other materials.⁵⁰ About one half of those firms said that the full opinion committee acted for this purpose,⁵¹ and about one third said that the opinion committee chair acted for the committee.⁵²

47. Appendix 1, Question 6.2. Circumstances calling for consultation or approval listed in textual comments included (1) materiality or significance of the issue, (2) possible significant firm liability, and (3) need for someone experienced in the substantive area or nature of the opinion or the exception involved.

48. Appendix 1, Question 6.2.1. Firms were asked to select all answers that applied; some firms selected more than one answer.

Less than one quarter of firms selected "It depends," commenting, for example, that who is consulted or approves depends on (i) the importance, materiality, or complexity of the issues involved, (ii) the potential liability of the firm, (iii) the type of opinion involved, (iv) the size of the transaction, (v) whether an issue raised ethical or loss prevention concerns, or (vi) whether the issue involved a change of policy or the establishment of an important precedent; compare this list, with *supra* note 47 (circumstances calling for consultation or approval regarding administering, monitoring, or waiving compliance with policies and procedures), and *supra* note 42 (persons consulted regarding approval of policies and procedures).

49. Appendix 1, Questions 6.3, 6.4.

50. Appendix 1, Question 7; Appendix 2, Chart 6. Questions in the survey covered "forms," "samples," and "models." In this report, the word "samples" refers to all three. See *infra* Section V. Opinion Practice Management: Samples.

51. Appendix 1, Question 7.1. Firms were asked to check all answers that applied; some selected more than one answer.

52. *Id.* About one quarter of those firms selected any committee member.

About one third of opinion committees that prepared or approved samples usually obtained approval of or consulted with another person or group in taking that action,⁵³ with approval or consultation most frequently provided by a designated member of a designated practice group (about two thirds of those committees), any partner or equivalent of a designated practice group (about one third), or the firm's general counsel (about one third).⁵⁴

(5) Conducting or Overseeing Education or Training of Lawyers on Opinion Matters

Most opinion committees conducted or oversaw opinion education or training.

About three quarters of firms said that their opinion committees conducted or oversaw education or training of their lawyers on opinion matters.⁵⁵

(6) Other Committee Functions

Most opinion committees did not perform other functions.

More than three quarters of firms said that their opinion committees did not perform functions other than those addressed by the questions discussed above.⁵⁶ In comments, many of the remaining firms described other functions their opinion committees performed.⁵⁷

C. COMMITTEE MEMBERSHIP

In most firms, firm management selected opinion committee members. Those members almost always were partners and usually were business lawyers.

When firms were asked to identify who selected members of their opinion committees by choosing all that applied from a list, about two thirds of firms, regardless of size, chose their firm's management or management committee.⁵⁸

53. Appendix 1, Question 7.2. This proportion includes a small number of firms that said that whether they obtained approval or consulted "depends" and provided a textual explanation, e.g., depending on whether an affected practice group was represented on the committee.

54. Appendix 1, Question 7.2.1. Firms were asked to check all answers that applied; some selected more than one answer.

55. Appendix 1, Question 8. About two thirds of small firms and about three quarters of large firms. Appendix 2, Chart 7. See *infra* Section VI. Education.

56. Appendix 1, Question 9.

57. Other functions performed by opinion committees included liaison with global opinion committees, supervising and approving audit letter responses, reviewing non-reliance letters for diligence reports, enforcing policies regarding fees for opinion letters, addressing risk management issues, monitoring legal developments regarding opinion topics and best opinion practices, consulting on issues regarding opinion letters addressed to firm clients by other firms, supporting and monitoring bar association committees, reviewing work product supporting legal advice to clients, drafting opinion letters, and consulting on *ad hoc* opinion questions by firm lawyers.

58. Appendix 1, Question 10; Appendix 2, Chart 8. Firms were asked to check all answers that applied and some selected more than one answer.

About one quarter of firms chose the opinion committee chair, and less than one quarter practice groups or the opinion committee itself.⁵⁹

Almost all firms said that the members of their opinion committees typically were partners or the equivalent.⁶⁰ More than three quarters said that each member typically was a business lawyer.⁶¹ When asked to identify from a list the types of lawyers currently serving on their opinion committees, the largest number of firms selected a lawyer expert in opinion practice (about three quarters) or a real estate lawyer (about two thirds).⁶²

IV. OPINION PRACTICE MANAGEMENT: CONSULTATION

A. EXISTENCE AND APPLICATION OF REVIEW PRACTICES

Most firms required or expected opinion preparers to consult with or obtain approval from a consulted lawyer before delivering an opinion letter.

More than three quarters of firms had a policy or practice regarding opinion preparers' consulting with or obtaining approval from a consulted lawyer⁶³ (a "consultation") before delivering an opinion letter.⁶⁴ About three quarters of those firms required or expected a consultation for all or substantially all opinion letters,⁶⁵ with another 10 percent requiring or expecting it for some opinion letters.⁶⁶ The balance only encouraged a consultation for all or substantially all or

59. Appendix 1, Question 10. About one third of large firms and less than one quarter of small chose the opinion committee chair. Appendix 2, Chart 8.

A small number of firms chose "it depends on the committee," or "other," and provided comments. Most suggested a collaborative process involving more than one group or person (e.g., the opinion committee suggested members for approval by the management committee or equivalent, practice groups suggested members for approval by the management committee, or the opinion committee selected members with the approval of department chairs).

60. Appendix 1, Question 11. Included in that proportion was less than one quarter of firms that said that was true with limited exceptions. Several firms commented that "senior counsel" or "of counsel" could serve as committee members, and a few said associates or retired partners could serve. See *supra* note 27 and related text (regarding lawyers who can sign or provide opinion letters).

61. Appendix 1, Question 12. Included in that proportion was less than one quarter of firms that said that was true with limited exceptions. Several firms explained that others could serve, for example, a representative of a practice group, a tax lawyer, a bankruptcy lawyer, a litigator, a real estate lawyer, an ERISA lawyer, a municipal bond lawyer, an IP lawyer, the general counsel, or a member of the professional responsibility committee. The question was unclear whether "business lawyer" included tax lawyers, real estate lawyers, or other non-litigators providing services to business clients.

62. Appendix 1, Question 13. The list did not include "a business lawyer." Other selections included a representative of one or more designated practice groups (about one half), a tax lawyer (about one third), a bankruptcy lawyer (about one third), and a litigator (about one quarter). Firms were asked to select all responses that applied, and some selected more than one.

63. See *infra* Section IV.B. Consulted Lawyer (regarding who can be a consulted lawyer).

64. Appendix 1, Question 14. Almost all large firms and about three quarters of small firms had such a policy or practice. Appendix 2, Chart 9.

65. Appendix 1, Question 18. This is an increase from the proportion responding to a question on the same subject in the 2010 survey, but the wording of the questions was sufficiently different that they do not permit a conclusion regarding any change in practice. 2010 survey report, Question 7. See *infra* note 76.

66. Appendix 1, Question 18.

for some opinion letters.⁶⁷ Almost all firms applied their consultation practice to all offices and practice groups.⁶⁸

The relatively few firms whose consultation policy applied to only some opinion letters were asked to select all that applied from a list of circumstances calling for a consultation.⁶⁹ The circumstances selected most frequently, by about three quarters of those firms, were (i) the opinion letter or particular opinions were significantly different from the firm's form, sample, or model, (ii) the opinion letter covered a matter requiring expertise not possessed by the opinion preparers, (iii) the opinion letter presented issues that are not straightforward, not easily resolved, or not previously addressed by the firm, or (iv) the opinion letter was not routine.⁷⁰

Almost all firms with a consultation policy said that exceptions were rarely, if ever, made.⁷¹

Comment: Consultation with another lawyer before an opinion letter is delivered continues to be the prevailing practice of law firms

B. CONSULTED LAWYERS

The lawyers eligible to serve as consulted lawyers were almost always partners and usually were members of an opinion committee. Typically, the opinion preparers could select the consulted lawyer from among those eligible.

Almost all firms with a consultation policy called for the consulted lawyer to be a partner or equivalent.⁷² However, some firms (less than one quarter) permitted exceptions.⁷³

67. *Id.* The balance was less than one quarter of firms that had a policy, some of which only encouraged a consultation for all or substantially all opinion letters, and others for only some opinion letters.

68. Appendix 1, Question 16. The question asked whether this was true as a general matter. About three quarters said that the details of the practice did not vary from practice group to practice group or from office to office. Appendix 1, Question 17.

69. Appendix 1, Questions 18.1, 18.2. Some firms selected more than one answer.

70. *Id.* Other frequently selected answers were: (i) delivering the opinion letter posed unusual risks because of the nature of the transaction (about two thirds of those firms), (ii) delivering the opinion letter posed unusual risks because of the size of the transaction (about one half), and (iii) only one partner was working on the deal (less than one quarter).

In responding to a similar question in 2010, the largest number of firms (about two thirds) selected: (a) the opinion letter (i) was significantly different from the firm's standard model, (ii) presented issues that were not straight forward, or (iii) presented issues that were not easily resolved, or (b) giving an opinion posed unusual risks because of the nature of the transaction. 2010 survey report, Appendix 1, Question 8.

71. Appendix 1, Question 19. About one third of firms answering the question said that exceptions were never made.

The largest number of firms (about one half) that allowed exceptions said that the chair or another member of the opinion committee or the opinion committee itself could approve exceptions. About one quarter of those firms allowed the consulted lawyer to approve exceptions. Only 14 percent of firms that permitted exceptions allowed an opinion preparer alone to approve an exception. Appendix 1, Question 19.1.

72. Appendix 1, Question 23. This is consistent with the result in the 2010 survey. See 2010 survey report, Appendix 1, Question 10.

73. For example, some firms commented that they permitted senior lawyers, special counsel, or others with special expertise to serve as consulted lawyers. Some firms permitted an entire opinion committee to be the consulted lawyer. Appendix 1, Question 22; See *infra* text at note 74

When asked to identify all that applied from a list of those who could serve as consulted lawyers, the largest number of firms selected (i) any member of an opinion committee (about two thirds), (ii) a lawyer with expertise in at least one of the legal areas addressed by the opinion letter (about one third), (iii) any partner or equivalent in the firm (about one third), (iv) a designated member or other designee of an opinion committee (about one quarter), (v) an entire opinion committee (about one quarter), or (vi) both a committee or a member or designee of a committee and a lawyer with such expertise (about one quarter).⁷⁴ Usually, opinion preparers were permitted to select the consulted lawyer from among those eligible to serve in that capacity.⁷⁵

About one half of large firms and about two thirds of small firms said that they did not prohibit the consulted lawyer from being otherwise involved in the transaction.⁷⁶ More than three quarters of firms did not prohibit the consulted lawyer from being otherwise involved with the client.⁷⁷

Comment: The question in the 2019 survey regarding the involvement of the consulted lawyer in the transaction did not address the extent of that involvement. Therefore, the fact that two thirds of firms responding to the question said that they did not prohibit the consulted lawyer from being otherwise involved in the transaction does not mean that lawyers selected as consulted lawyers often were involved in the transaction or that the extent of a lawyer's involvement in the transaction was not a negative factor in the selection of a consulted lawyer.

C. RESPONSIBILITIES OF THE CONSULTED LAWYER

Responsibilities of consulted lawyers were primarily to identify issues raised by an opinion letter and to serve as a resource for the opinion preparers.

When asked to select all that applied from a list of possible responsibilities of the consulted lawyer, about three quarters of firms and in some cases more selected (i) answer questions of the opinion preparers, (ii) determine whether the opinion

74. Appendix 1, Question 22. About two thirds of the firms answering a similar question in the 2010 survey selected a member or members of an opinion committee, and about half (as compared to one third in 2019) selected a lawyer or lawyers with expertise in the area addressed by opinions. 2010 opinion survey report, Question 9A. See *supra* Section III.B.1 (discussing the function of opinion committees and their members in reviewing, clearing, or approving individual opinion letters).

75. Appendix 1, Questions 22.2–10.

76. Appendix 1, Question 20; Appendix 2, Chart 10.

In the 2010 survey, about one quarter of firms answered “not required” to a single compound question that asked whether they both (i) required a consultation and (ii) required that it be with a lawyer not otherwise involved in the transaction: “Does your firm have a policy that unless waived requires consultation with a lawyer or group not otherwise involved in the transaction before an Opinion Letter is delivered?” 2010 survey report, Appendix 1, Question 7. The 2019 question separately asked firms that already said they had a policy or practice regarding consultation whether they required the consultation to be with a lawyer not otherwise involved in the transaction: “Does your firm’s policy or practice regarding consultation call for the Consulted Lawyer not to be otherwise involved in the transaction?” Appendix 1, Question 20. Differences in the way the questions in the 2010 and 2019 surveys were worded prevent drawing conclusions about whether opinion practice in this regard changed materially from 2010 to 2019.

77. Appendix 1, Question 21.

letter raises special concerns, (iii) identify issues on the face of the opinion letter, (iv) determine that the form of the opinion letter satisfies the firm's policy or practice, (v) be satisfied about the substance of matters within the consulted lawyer's expertise, and (vi) be satisfied about matters determined by the consulted lawyer or opinion preparers to require special attention.⁷⁸ About one half of firms indicated that the role of the consulted lawyer was to sign off on delivery of the opinion letter, and about one third said that the consulted lawyer's role was to determine whether any special procedures were required. Only about one quarter called for the consulted lawyer to (i) review backup documentation or otherwise determine that sufficient work had been done to support the opinions being given, or (ii) concur in the opinion letter as if the consulted lawyer had prepared the opinion letter.⁷⁹

D. WHEN DOES CONSULTATION OCCUR?

Most firms did not have a policy or practice about the timing of a consultation. About half of those that did called for it to take place before a draft opinion letter was provided to the opinion recipient or its counsel.

About two thirds of firms said they did not have a policy or practice on when the consulted lawyer should first be consulted.⁸⁰ Of those firms that had a policy or practice, about one half called for a consultation to occur before a draft of the opinion letter was provided to the opinion recipient or its counsel,⁸¹ and less than one quarter called for a consultation to occur when the need for the opinion letter was identified.⁸² Only about one quarter of firms called for a follow-up consultation before the opinion letter was delivered.⁸³

E. MEMORIALIZING CONSULTATION

Most firms did not memorialize the consultation.

Only about one third of firms called for the consultation to be memorialized.⁸⁴ A consultation was typically memorialized by a notation on an internal copy of the opinion letter or by a memo to the firm's opinion letter file or transaction file.⁸⁵

78. Appendix 1, Question 25. The choices most often selected in the 2010 survey, each by about three quarters of the firms that responded to the question, were (i) identify matters on the surface of the opinion letter that raise questions or are unusual and (ii) determine whether the opinion letter requires special procedures or raises special concerns due to the nature of the transaction or client, the relationship between the opinion preparers and the client, or some other reason. 2010 survey report, Appendix 1, Question 14.

79. Appendix 1, Question 25.

80. Appendix 1, Question 24.

81. Appendix 1, Question 24.1. In 2010, about one quarter of firms said that the consulted partner was to become involved before circulation of the opinion letter to the other side. 2010 survey report, Appendix 1, Question 13.

82. Appendix 1, Question 24.1.

83. Appendix 1, Question 26.

84. Appendix 1, Question 27.

85. Appendix 1, Question 27.1.

V. OPINION PRACTICE MANAGEMENT: SAMPLES

A. SAMPLE OPINION LETTERS AND OPINIONS

Most firms made available to their lawyers one or more sample opinion letters or opinions. Although typically permitting exceptions, about half required or expected use of the samples as a starting point in the preparation of the opinion letters, a substantial increase since 2010.

More than three quarters of firms made available to their lawyers sample opinion letters or sample opinions.⁸⁶ Typically, those samples were prepared or approved by (i) an opinion committee, (ii) members or designees of an opinion committee, or (iii) a lawyer or lawyers in one or more designated practice groups or with specialized expertise.⁸⁷

About one half of firms with sample opinion letters or sample opinions required or expected their use as a starting point in the preparation of opinion letters, representing a substantial increase from 2010.⁸⁸ In 2019, about one third encouraged their use as a starting point but did not require or expect it.⁸⁹ More than three quarters of firms that required or expected use of sample opinion letters or sample opinions permitted exceptions,⁹⁰ most frequently exceptions that were approved by an opinion committee, the chair or another member of an opinion committee, or the consulted lawyer.⁹¹

B. SAMPLE SUPPORTING DOCUMENTATION

About one half of firms called for a supporting memo or checklist for at least some of their opinion letters.

About one half of firms required, expected, or encouraged preparation of a supporting memo, checklist, or similar supporting documentation for at least

86. Appendix 1, Question 28. This represented a small increase from about three quarters of firms that responded to the 2010 survey question and said they had one or more sample opinion letters or sample opinions. 2010 survey report, Appendix 1, Question 17.

87. Appendix 1, Question 28.1. Firms were asked to select all that applied from a list of who could prepare or approve sample opinion letters or sample opinions; some firms selected more than one answer. Each of the three answers shown in the text above was selected by about the same number of firms. Some firms commented that they used samples in bar association reports. See *supra* Section III. B.4 (regarding the role of opinion committees in preparing and approving samples).

88. Appendix 1, Question 28.2. In responding to the 2010 survey, less than one quarter of firms that had sample opinion letters, and about one quarter of firms that had sample opinions, said that use of those samples was mandatory if not waived. About two thirds of those firms said that use of the respective samples was preferred but not required. 2010 survey report, Appendix 1, Question 18.

89. Appendix 1, Question 28.2. Less than one quarter said that use of samples was discretionary with opinion preparers. *Id.*

90. Appendix 1, Question 28.2.1.

91. Appendix 1, Question 28.2.1.1. Firms were asked to check all that applied from a list of who was authorized to approve exceptions; some firms selected more than one answer. Each of the answers in the text above was selected by about one half of the firms answering the question. About one third of the firms answering the question said that an opinion preparer could approve an exception. *Id.* The most common selected answers to a similar question in the 2010 survey were that (i) a member or members of an opinion committee (about one half) and (ii) an opinion committee itself (about one quarter) could approve an exception. 2010 survey report, Question 23.

some opinion letters,⁹² an increase from about one third in 2010.⁹³ About two thirds of firms that answered the question had one or more forms or samples of supporting documentation, up from about one third in 2010.⁹⁴

VI. EDUCATION

Most firms routinely offered training or education to their lawyers on opinion matters, using a variety of techniques. Opinion committees or their members or designees often had that responsibility. Many firms, most of them large, offered internal seminars or presentations and required or expected attendance by at least some lawyers, usually associates.

When firms were asked to choose all that applied from a list of types of training or education they routinely provided their lawyers on opinion matters, the answer most frequently chosen was encouragement of lawyers to review or use treatises, bar reports, form or sample opinion letters or opinions, or other resources made available to them by the firm (about two thirds of both large and small firms).⁹⁵ About one half of firms chose (i) discuss opinion topics at practice group or similar meetings (about two thirds of large firms and about one half of small firms), (ii) offer internal seminars or presentations (about two thirds of large firms and about one third of small firms), and (iii) distribute memoranda, newsletters, or other opinion-related materials produced outside the firm (about one half of both large and small firms).⁹⁶ Less than one quarter of firms⁹⁷ said they did not offer any of the listed methods of training or education.⁹⁸

About one half of firms that offered internal seminars or presentations required or expected (and not just encouraged) at least some lawyers to participate in or attend them.⁹⁹ When asked to describe which lawyers were required or expected to participate or attend, the group most frequently identified was associates.¹⁰⁰ Of firms that advised their lawyers of programs given by outside providers, about three quarters did not require or expect lawyers to attend.¹⁰¹

92. Appendix 1, Question 29.

93. 2010 survey report, Appendix 1, Question 19.

94. Appendix 1, Question 29.1; 2010 survey report, Appendix 1, Question 20.

95. Appendix 1, Question 30; Appendix 2, Chart 11.

96. *Id.* The description of distributed materials in (iii) may be duplicative of the description in the first sentence of encouraging lawyers to review "other resources made available to them by the firm."

Items receiving fewer selections were (in descending order by number of selections) (i) encourage lawyers to review or use annotations to or other comments on the firm's sample opinion letters, (ii) distribute memoranda, newsletters, and/or other opinion related materials produced inside the firm, and (iii) advise lawyers of programs by external providers.

97. Specifically, fourteen percent (14%).

98. *Id.* A few firms commented that they offered other resources, e.g., the ABA Legal Opinions Committee newsletter, Working Group on Legal Opinions materials, and presentations by an insurance carrier.

99. Appendix 1, Question 30.1

100. Some firms mentioned lateral partners or all new lawyers, and others identified a larger group, for example all transactional lawyers.

101. Appendix 1, Question 30.2.

Firms were asked to choose all that applied from a list of who was responsible for education or training. The answers most frequently selected, each by about one half of firms, were (i) members or designees of an opinion committee,¹⁰² (ii) an opinion committee or committees,¹⁰³ and (iii) one or more partners with transactional practices involving opinion letters.¹⁰⁴ About one third of firms selected a lawyer or lawyers in one or more designated practice groups.¹⁰⁵ A small number of firms, mostly large, had a separate internal education committee.¹⁰⁶ A few firms mentioned other responsible parties, for example, the firm's general counsel or practice groups.

VII. LIMITATIONS ON OPINIONS AND CONFIRMATIONS

A. OPINIONS ON LAW OF ANOTHER STATE

(1) Delaware Opinions

Almost all non-Delaware firms gave routine opinions on the status, power, and authority of Delaware corporations and limited liability companies, and most gave them on Delaware limited partnerships. Most non-Delaware firms also gave opinions on the issuance of equity interests by those Delaware entities. About one half of non-Delaware firms gave opinions on the limited liability of members of Delaware limited liability companies and limited partners of limited partnerships. More large firms gave those opinions than small firms.

Only a small number of responding firms had an office in Delaware that gave, or advised opinion preparers in other firm offices on, opinions on Delaware law.¹⁰⁷

Almost all firms without an office in Delaware gave routine opinions—i.e., opinions not involving novel or complex legal issues—without consulting Delaware counsel on the entity status and power of, and authorization of specified actions by, Delaware corporations¹⁰⁸ and limited liability companies (“LLCs”),¹⁰⁹ and more than three quarters gave those opinions on Delaware

102. Appendix 1, Question 31. About one half of large firms and about one third of small firms. Appendix 2, Chart 12.

103. Appendix 1, Question 31. About one half of large firms and about one quarter of small firms. Appendix 2, Chart 12. *See supra* Section III.B.5. Opinion Practice Management: Committees, Committee Functions, Conducting or Overseeing Education or Training of Lawyers on Opinion Matters.

104. Appendix 1, Question 31. About one quarter of large firms and about one third of small firms. Appendix 2, Chart 12.

105. Appendix 1, Question 31.

106. *Id.*; Appendix 2, Chart 12.

107. Appendix 1, Question 32.

108. Appendix 1, Question 33. In 2019, all large non-Delaware firms and more than three quarters of small non-Delaware firms gave those opinions on Delaware corporations. Appendix 2, Chart 13. In 2010, about three quarters of non-Delaware firms gave those opinions, including almost all large firms and about two thirds of small firms. 2010 survey report, Appendix 1, Question 26; Appendix 2, Chart 10; *see also infra* note 111. In the 2010 survey, the comparable question included opinions on issuance of stock as well as entity status, power, and authorization.

109. Appendix 1, Question 33. In 2019, almost all large non-Delaware firms and more than three quarters of small non-Delaware firms gave those opinions on LLCs. Appendix 2, Chart 14. In 2010, about three quarters of non-Delaware firms gave those opinions, including almost all large firms and

limited partnerships.¹¹⁰ The proportion of firms, particularly small firms, that gave the foregoing opinions increased since 2010.¹¹¹

About three quarters of non-Delaware firms gave routine opinions without consulting Delaware counsel on the issuance of stock of Delaware corporations,¹¹² membership interests in Delaware LLCs,¹¹³ and partnership interests in Delaware limited partnerships.¹¹⁴

About one half of both large and small non-Delaware firms gave routine opinions without consulting Delaware counsel on the limited liability of members of Delaware LLCs and limited partners of Delaware limited partnerships.¹¹⁵

Firms described numerous and varied limitations on giving the above opinions. For example, some firms had special procedures for opinions on the limited liability of members of LLCs or limited partners of limited partnerships or for determining whether to involve Delaware counsel. Several firms commented that they limited their opinions on Delaware business entities to the relevant Delaware statutes without covering Delaware judicial decisions interpreting those statutes.

Comment: The practice of non-Delaware firms giving routine opinions on Delaware business entities is not surprising in light of the widespread use of Delaware business entities in transactions on which closing opinions are delivered and the familiarity of non-Delaware lawyers with the legal issues underlying routine opinions.

about one half of small firms. 2010 survey report, Appendix 1, Question 26; Appendix 2, Chart 10; see also *infra* note 111.

110. Appendix 1, Question 33. In 2019, almost all non-Delaware large firms and about three quarters of non-Delaware small firms gave those opinions on Delaware limited partnerships. Appendix 2, Chart 13. In 2010, about two thirds of non-Delaware firms gave those opinions, including more than three quarters of large firms and about one half of small firms. 2010 survey report, Appendix 1, Question 26; Appendix 2, Chart 10; see also *infra* note 111.

111. See *supra* notes 108–10 and accompanying text. Proportions in that text and those notes do not take into account firms that selected “not called for in practice.” See *supra* Section I. Introduction: Suggestions on How to Read This Report: Calculations of Proportions. An exact comparison of responses to the question on the entity status opinion in the 2019 and 2010 surveys is not possible because, unlike the 2019 survey, the 2010 survey did not give firms the option of responding “not called for in practice.” Therefore, some firms that responded “no” in 2010 may have done so because they were not asked to give those opinions. However, even if all firms making that selection in 2019 were counted as “no,” more firms gave those opinions in 2019 than in 2010.

112. Appendix 1, Question 33. Almost all large non-Delaware firms and about two thirds of small non-Delaware firms gave those opinions. Appendix 2, Chart 13.

113. Appendix 1, Question 33. About three quarters of large non-Delaware firms and about two thirds of small non-Delaware firms gave those opinions. Appendix 2, Chart 13.

114. Appendix 1, Question 33. More than three quarters of large non-Delaware firms and about two thirds of small non-Delaware firms gave those opinions. Appendix 2, Chart 13.

115. Appendix 1, Question 33. In 2010, about one third of non-Delaware firms gave those opinions on Delaware LLCs and limited partnerships. 2010 Report, Appendix 1, Question 26. If all firms that selected “not called for in practice” in 2019 were counted as “no,” the proportions did not change between 2010 and 2019. See *supra* note 111.

In 2010, about one half of large non-Delaware firms and one quarter of small non-Delaware firms gave those opinions on Delaware LLCs and limited partnerships. 2010 Report, Appendix 2, Chart 10.

(2) Other States

Few firms without an office in a state gave opinions on that state's entity law (other than Delaware's) or that state's contract law.

Few firms without an office in a state gave opinions on the entity law of that state (other than the entity law of Delaware).¹¹⁶ That was true for the corporation laws of Nevada and Maryland, two states where out-of-state businesses are sometimes incorporated.¹¹⁷

Except for New York contract law, less than one quarter of firms said they gave opinions on the contract law of states (including Delaware) in which they did not have an office without consulting local counsel.¹¹⁸ Responses to a question regarding the giving of opinions on New York contract law by firms without an office in New York were not reliable enough to draw any conclusions about whether non-New York firms gave opinions on New York contract law without consulting New York counsel.¹¹⁹

About two thirds of firms, both large and small, said that, when they gave an opinion on the law of a state (other than Delaware) in which the firm did not have an office, the opinion typically was reviewed by a lawyer in the firm who was licensed or practiced in the state whose law was covered by the opinion.¹²⁰

(3) UCC Opinions

Most firms gave opinions without consulting local counsel on Article 9 of the UCC of a state or states in which they did not have an office. About one half also gave those opinions without consulting local counsel on Article 8 of the UCC.

116. Only about one quarter of firms said they gave opinions on the entity law of a state in which they did not have an office (other than Delaware, Nevada, and Maryland, which were covered by other questions). Appendix 1, Question 35.

117. Appendix 1, Question 35. Less than one quarter of both large and small non-Nevada firms gave opinions on the Nevada Corporations Code; about one quarter of large non-Maryland firms and only a small number of small non-Maryland firms gave opinions on the Maryland General Corporation Law. Appendix 2, Chart 14. The proportions for all firms were little changed since 2010. Appendix 2, Question 35; 2010 survey report, Appendix 1, Question 28.

118. Appendix 1, Question 35. Firms responding to the questions likely understood "local counsel" to mean a firm with an office in and expertise in the law of the state on whose law it was giving the opinion.

The firms that said they gave opinions on the contract law of a state (other than New York and Delaware) in which they did not have an office were asked to identify the state or states on whose contract law they gave those opinions. No particular state was mentioned frequently, and the practice of giving those opinions most likely was based on unique characteristics of each firm's practice, clients, or lawyers.

119. In response to a question directed to firms that did not have an office in New York, about one third of firms said that they gave opinions on New York contract law without consulting local New York counsel. Appendix 1, Question 35. However, cross references to a question about office locations suggest that about one half of the firms answering yes and less than one quarter of the firms answering no to this question actually had an office in New York. In 2010, less than one quarter of non-New York firms said they gave those opinions. 2010 report, Appendix 1, Question 28.

120. Appendix 1, Question 36; Appendix 2, Chart 15. This question was worded to apply to an opinion on the law generally of another state.

About three quarters of firms gave opinions without consulting local counsel on Article 9 of the Uniform Commercial Code (the “UCC”) of a state or states in which the firm did not have an office.¹²¹ About one half of firms¹²² also gave those opinions without consulting local counsel on Article 8 of the UCC.¹²³ Some firms that gave those opinions commented that they gave them only on the Delaware UCC or did not cover case law.¹²⁴

Comments: The form of the question did not permit firms to indicate whether they gave opinions generally on the UCCs of other states or only on Articles 8 and 9 of the UCCs of one or a few states. Several firms commented that they gave opinions only on Articles 8 and 9 of the Delaware UCC.

Perfection of a security interest by filing usually is governed by the UCC of the state under whose laws the entity granting the security interest is organized. Many business entities organized under Delaware law have headquarters and operations in other states. Firms that otherwise do not give opinions on the UCC of other states often give them on Articles 8 and 9 of the Delaware UCC, presumably because the UCC is highly uniform from state to state and these opinions are called for with sufficient frequency to justify maintaining competence with respect to Delaware’s Articles 8 and 9.

Many firms expressly base their Article 8 and 9 opinions on a publicly available compilation of the UCC as adopted in each state.

B. NO-LITIGATION CONFIRMATIONS

Most firms gave no-litigation confirmations, but many resisted giving them and when they gave them limited their scope.

About three quarters of firms gave confirmations regarding the absence of legal proceedings (“no-litigation confirmations”) against the client on whose behalf they were delivering an opinion letter.¹²⁵ However, many of those firms resisted giving no-litigation confirmations, and about half gave them only sometimes.¹²⁶

121. Appendix 1, Question 37. The three quarters consisted of more than three quarters of large firms and about two thirds of small firms. Appendix 2, Chart 16. In 2010, about two thirds of firms gave those opinions, including about three quarters of large firms and only about one half of small firms. 2010 survey report, Appendix 1, Question 27; Appendix 2, Chart 11. The proportion for all firms in 2019 was about two thirds if firms that answered “not called for in practice” are included in the calculation as if they answered “no.” See *supra* note 111. In both surveys, the question referred to the possibility of relying on a publicly available compilation of the UCCs of other states.

See *supra* note 120 (text regarding review by firm lawyers who are licensed or practice in the other state whose law is covered).

122. About two thirds of large firms and one third of small firms. Appendix 2, Chart 16.

123. Appendix 1, Question 37.

124. These were the most frequent responses to a request to describe any limitation on giving those opinions.

125. Appendix 1, Question 38.

126. *Id.* Firms that said they gave no-litigation confirmations only sometimes explained their answer by indicating, for example, that they only gave no-litigation confirmations for long-standing

Almost all firms that gave no-litigation confirmations covered pending legal proceedings.¹²⁷ About half also covered legal proceedings threatened in writing, but only a small number covered legal proceedings threatened orally.¹²⁸

About two thirds of firms limited their no-litigation confirmations to proceedings about which their firm or specified firm lawyers had knowledge.¹²⁹ About one half limited their no-litigation confirmations to proceedings in which their firm represented the client,¹³⁰ and about one half to proceedings that could adversely affect the transaction.¹³¹ Only about one quarter of firms limited their opinions to proceedings that could adversely affect the client.¹³²

Comments: Many firms described their reluctance to give no-litigation confirmations in responding to both the 2010 and 2019 surveys. This reluctance may be attributable to a general aversion to providing factual rather than legal conclusions and court decisions holding against firms that gave no-litigation confirmations.

The questions did not ask whether firms limited their no-litigation confirmations to “material” legal proceedings.

Firms that did not include a knowledge qualifier may have done so because they limited their no-litigation confirmations to legal proceedings that could adversely affect the transaction or in which the firm represented the client. In the case of a legal proceedings that could adversely affect the transaction, the proceeding would normally be known to the opinion preparers and, in the case of a legal proceeding in which the firm is representing the client, the proceeding could be readily identified by the opinion preparers by a review of the firm’s litigation docket for the client.

C. OTHER LIMITATIONS¹³³

In giving no breach or default opinions, most firms expressly covered only agreements identified in a list and did not regularly cover financial covenants

clients, in particular types of transactions (e.g., opinions to certain government agencies), or when they had given them before for the same client or in similar transactions.

127. Appendix 1, Question 38.1. Firms were asked to select all that applied from a list of possible limitations on these confirmations; some firms selected more than one limitation.

Question 38.1 and several following questions asked firms to describe their practice “as a general rule.” Appendix 1, Questions 38.1–41.

128. Appendix 1, Question 38.1. About three quarters of firms responding to a similar question in the 2010 survey did not prohibit coverage of written threats and about one half did not prohibit coverage of oral threats. 2010 survey report, Appendix 1, Question 32. Because the question in the 2019 survey was worded differently from its counterpart in the 2010 survey, no conclusions can be drawn regarding any change in practice.

129. Appendix 1, Question 38.2. See Section B, Comments, ¶ 3. Firms were asked to select all that applied from a list of possible limitations on these confirmations; some firms selected more than one limitation. About three quarters of firms indicated that they used a knowledge limitation in response to a similar question in the 2010 survey. 2010 survey, Appendix 1, Question 31.

130. Appendix 1, Question 38.2. This represents an increase from about one third in 2010. 2010 survey report, Appendix 1, Question 32.

131. Appendix 1, Question 38.2.

132. *Id.*

133. The questions discussed in this Section C were not asked in the 2010 survey. Each question asked firms to describe their practice “as a general rule.” See *supra* note 127.

in those agreements. Most firms did not give enforceability opinions covering arbitration clauses in agreements in domestic U.S. transactions.

(1) No Breach or Default Opinions¹³⁴

About two thirds of firms, including three quarters of large firms, expressly limited the agreements covered by no breach or default opinions to agreements identified in a specified list.¹³⁵ The remaining one third of firms, mostly small firms, expressly limited the agreements covered to agreements known to their firm.¹³⁶

More than three quarters of large and small firms said that they did not regularly cover breaches of financial covenants.¹³⁷

Comments: At least one bar association has taken the position that no breach or default opinions do not cover financial covenants unless they do so expressly.¹³⁸ Because the question in the survey regarding coverage of financial covenants did not ask whether firms expressly excluded financial covenants from the opinion's coverage, responses do not permit a conclusion as to how often firms that said they did not cover financial covenants excluded coverage expressly. Also, because the question asked whether firms "regularly" covered financial covenants, responses do not permit a conclusion as to how often firms that responded that they did not regularly cover financial covenants nonetheless sometimes covered them.

Some firms that responded "no policy or established practice" to the question about financial covenants or enforceability of arbitration clauses might have done so because they did not often receive requests for those opinions or had not adopted a position regarding coverage of those covenants or clauses. However, that selection also could simply mean that in the absence of a policy or practice their lawyers were free to give those opinions.

(2) Enforceability of Arbitration Clauses

About two thirds of large and small firms did not regularly cover the enforceability of provisions requiring arbitration in agreements in domestic U.S. transactions.¹³⁹

134. No breach or default opinions typically say that the client's entering into (and sometimes performing its obligations under) an agreement will not result in a breach of or default under other agreements to which the client is a party.

135. Appendix 1, Question 39; Appendix 2, Chart 17. About one half of small firms so limited their opinions. *Id.*

136. Appendix 1, Question 39. Less than one quarter of large firms and about one half of small firms so limited their opinions. Appendix 2, Chart 17.

137. Appendix 1, Question 40; Appendix 2, Chart 18. Less than one quarter of firms selected either "prefer not to cover financial covenants but sometimes will" or "it depends on the provision or the situation." The proportion in the text excludes firms that responded by selecting "no policy or established practice." If those firms were included in the denominator, about two thirds of firms (rather than more than three quarters) did not regularly cover financial covenants in their no breach or default opinions.

138. CORPS, COMM. OF THE BUS. LAW SECTION OF THE STATE BAR OF CAL., LEGAL OPINIONS IN BUSINESS TRANSACTIONS (EXCLUDING THE REMEDIES OPINION) 2005 REPORT (Oct. 2007 Printing—as Revised), https://www.americanbar.org/groups/business_law/committees/opinions/tribar/.

139. Appendix 1, Question 41; Appendix 2, Chart 19. Proportions in the text exclude firms that responded by selecting "no policy or established practice." If those firms were included in the denominator, about one half of firms did not cover the enforceability of these arbitration provisions.

VIII. ARCHIVES

About one half of firms maintained a file or archive of opinion letters they had delivered, but few maintained a file or archive of opinion letters delivered to their clients by other firms.

About one half of firms maintained a file or archive of opinion letters delivered by their firm, but less than one quarter maintained a file or archive of opinion letters delivered by other firms.¹⁴⁰ About one half of firms that maintained a file or archive used an electronic index or search tool to retrieve information from it.¹⁴¹

IX. CONCLUSION

Like the 2002 and 2010 surveys, the 2019 survey revealed a broad range of approaches to opinion practice. Although the 2019 survey indicated some significant differences, the practices of large and small firms were for the most part closer in 2019 than in 2010. The Committee thanks the many firms that participated in the 2019 survey and is hopeful that the results will be helpful to firms in designing and administering their opinion practices.

140. Appendix 1, Question 42.

141. Appendix 1, Question 42.1.

APPENDIX I

NOTE: All percentages in this Appendix are rounded to the nearest whole number.

Percentages do not take into account firms that selected “no policy or established practice” or “not called for in firm’s practice” from a list of permitted answers to a question. The number of firms that selected that answer is subtracted from the total number of firms that responded to the question before making calculations of percentages.

As is true for all questions, percentages for questions that call for firms to “check all that apply” from a list of possible answers are reported for each selected answer separately. Those percentages are usually calculated by dividing the total number of firms that selected each answer by the number of firms that responded to that question. In this Appendix, that total is shown as the “total” for the question, and is less than the sum of firm answers in the column above the total if any firm selected more than one answer.

I. FIRM OPINION PRACTICE MANAGEMENT GENERALLY
A. PROCEDURES AND POLICIES FOR PROVIDING OPINION LETTERS, GIVING PARTICULAR OPINIONS, AND REVIEWING OPINION LETTERS PROPOSED BY OTHER FIRMS

1. Does your Firm have: (Please check all that apply.)

| | | |
|---|--------------------|--------------------|
| - Procedures for providing Opinion Letters | 279 | 97% ¹⁴² |
| - Policies on whether to give particular Opinions or types of Opinions | 226 | 79% |
| - Policies on the substantive content or wording of your firm’s Opinion Letters or particular Opinions | 216 | 75% |
| - Procedures for reviewing Opinion Letters of other law firms addressed to your firm’s clients as part of transactions | 67 | 23% |
| - Policies on the substantive content or wording of Opinion Letters of other law firms addressed to your firm’s clients | 31 | 11% |
| Total | 288 ¹⁴³ | |

¹⁴² See the note at the beginning of this appendix.

¹⁴³ The total number of firms that answered this question. See the note at the beginning of this appendix.

B. AUTHORITY TO SIGN OR PROVIDE OPINION LETTERS

2. Which lawyers in your firm are permitted to sign or provide Opinion Letters? (Please check all that apply.)

| | | |
|---|--------------------|--------------------|
| - Partners or lawyers with equivalent status | 302 | 97% ¹⁴⁴ |
| - Associates or lawyers with equivalent status | 7 | 2% |
| - Lawyers designated “special counsel,” “of counsel,” “senior counsel,” or the like | 30 | 10% |
| - It depends (Please explain.) | 21 | 7% |
| - Other (Please explain.) | 12 | 4% |
| Total | 312 ¹⁴⁵ | |

II. OPINION PRACTICE MANAGEMENT: COMMITTEES

A. EXISTENCE AND NUMBER OF COMMITTEES

3. How many opinion committees does your firm have? (Please check only one.)

| | | |
|-----------------|-----|-----|
| - None | 70 | 23% |
| - One | 199 | 65% |
| - More Than One | 38 | 12% |
| Total | 307 | |

3.1 How is responsibility allocated among your firm’s various opinion committees? (Please check all that apply.)¹⁴⁶

| | | |
|---|-------------------|--------------------|
| - By practice group or area of law | 28 | 76% ¹⁴⁷ |
| - By geography (e.g., by office location) | 9 | 24% |
| - By function (e.g., one committee (or its members) approves opinion policies and another (or its members) reviews Opinion Letters to be provided by your firm) | 7 | 19% |
| - Other (Please describe.) | 7 | 19% |
| Total | 37 ¹⁴⁸ | |

144. See the note at the beginning of this appendix.

145. The total number of firms that answered this question. See the note at the beginning of this appendix.

146. Answered only by firms checking the third answer of Question 3.

147. See the note at the beginning of this appendix.

148. The total number of firms that answered this question. See the note at the beginning of this appendix.

B. COMMITTEE FUNCTIONS

(1) Reviewing, Clearing, or Approving Opinion Letters

4. Does/do your firm's opinion committee(s) (including action by committee members) review, clear, or approve individual Opinion Letters to be provided by your firm?¹⁴⁹

| | | |
|-------|-----|-----|
| - Yes | 192 | 81% |
| - No | 46 | 19% |
| Total | 238 | |

- 4.1 Which of the following better describes what your firm's opinion committee or committees do (or what members do on behalf of the committee or committees)? (Please check only one answer.)¹⁵⁰

| | | |
|---|-----|-----|
| - Review, clear, or approve all or substantially all Opinion Letters | 144 | 77% |
| - Review, clear, or approve some (but not all or substantially all) Opinion Letters | 44 | 23% |
| Total | 188 | |

- 4.1.1 Which of the following act for your firm's opinion committee or committees in taking this action? (Please check all that apply.)¹⁵¹

| | | |
|--|--------------------|--------------------|
| - The full committee | 14 | 10% ¹⁵² |
| - One or more subcommittees | 2 | 1% |
| - Any committee member | 97 | 68% |
| - The committee chair | 13 | 9% |
| - A designated committee member (other than the chair) | 9 | 6% |
| - Two or more committee members, acting together | 24 | 17% |
| - Other (Please describe.) | 19 | 13% |
| Total | 143 ¹⁵³ | |

- 4.1.2 Which of the following act for your firm's opinion committee or committees in taking this action? (Please check all that apply.)¹⁵⁴

| | | |
|-----------------------------|---|--------------------|
| - The full committee | 7 | 16% ¹⁵⁵ |
| - One or more subcommittees | 5 | 11% |

149. Answered only by firms that selected either the second or third answer to Question 3.

150. Answered only by firms that checked "yes" to Question 4.

151. Answered only by firms that selected the first answer to Question 4.1.

152. See the note at the beginning of this appendix.

153. The total number of firms that answered this question. See the note at the beginning of this appendix.

154. Answered only by those who checked the second answer to Question 4.1.

155. See the note at the beginning of this appendix.

| | | |
|--|-------------------|-----|
| - Any committee member | 34 | 77% |
| - The committee chair | 11 | 25% |
| - A designated committee member (other than the chair) | 6 | 14% |
| - Two or more committee members, acting together | 2 | 5% |
| - Other (Please describe.) | 2 | 5% |
| Total | 44 ¹⁵⁶ | |

4.1.3 Opinion Letters that are reviewed, cleared, or approved typically relate to which of the following practice areas? (Please check all that apply.)¹⁵⁷

| | | |
|---|-------------------|--------------------|
| - Public securities offerings (debt or equity) | 22 | 50% ¹⁵⁸ |
| - Private securities offerings (debt or equity including, e.g., private equity & venture capital) | 25 | 57% |
| - Lending | 38 | 82% |
| - Securitizations | 19 | 43% |
| - Substantive consolidation or true sales | 19 | 43% |
| - Mergers and acquisitions | 23 | 52% |
| - Other (Please describe.) | 7 | 16% |
| Total | 44 ¹⁵⁹ | |

(2) Preparing or Approving Firm Policies and Procedures

5. Does/do your firm's opinion committee(s) (including actions by committee members) prepare or approve firm opinion policies or procedures?¹⁶⁰

| | | |
|-------|-----|-----|
| - Yes | 201 | 86% |
| - No | 33 | 14% |
| Total | 234 | |

5.1 Which of the following act for your firm's opinion committee or committees in taking this action? (Please check all that apply.)¹⁶¹

| | | |
|-----------------------------|-----|-----|
| - The full committee | 115 | 59% |
| - One or more subcommittees | 17 | 9% |
| - Any committee member | 39 | 20% |
| - The committee chair | 48 | 25% |

156. The total number of firms that answered this question. See the note at the beginning of this appendix.

157. Answered only by those who checked the second answer to Question 4.1.

158. See the note at the beginning of this appendix

159. The total number of firms that answered this question. See the note at the beginning of this appendix.

160. Answered only by firms that checked the second or third answer to Question 3.

161. Answered only by those firms that checked "yes" to Question 5.

| | | |
|--|-----|-----|
| - A designated committee member (other than the chair) | 15 | 8% |
| - Two or more committee members, acting together | 27 | 14% |
| - Other (Please describe.) | 9 | 5% |
| Total | 195 | |

5.2 Which of the following best describes your firm's practices in taking this action?¹⁶²

| | | |
|--|-----|-----|
| - Your firm's opinion committee(s) usually obtains the approval of or consults with another person or group in taking this action | 90 | 47% |
| - Your firm's opinion committee(s) usually does not obtain the approval of or consult with another person or group in taking this action | 73 | 38% |
| - It depends (Please explain.) | 30 | 16% |
| Total | 193 | |

5.2.1 Who consults or approves? (Please check all that apply.)¹⁶³

| | | |
|---|--------------------|--------------------|
| - The firm's general counsel | 42 | 35% ¹⁶⁴ |
| - One or more designated members of a designated practice group or groups | 46 | 39% |
| - Any partner (or equivalent) of a designated practice group or groups | 29 | 24% |
| - The firm's management committee | 30 | 25% |
| - The firm's managing partner | 20 | 17% |
| - It depends (Please explain.) | 18 | 15% |
| Total | 119 ¹⁶⁵ | |

5.3 As a general matter, do firm opinion policies or procedures relating to preparation or approval of Opinion Letters by the opinion committee or committees relate to Opinion Letters covered by this survey delivered by all of your firm's practice groups?¹⁶⁶

| | | |
|---|-----|-----|
| - Yes | 161 | 83% |
| - No (Please list practice groups that deliver Opinion Letters of the types covered by this survey that are not dealt with by your firm's opinion committee or committees.) | 33 | 17% |
| Total | 194 | |

162. Answered only by firms that checked "yes" to Question 5.

163. Answered only by those firms that checked the first or third answer to Question 5.2.

164. See the note at the beginning of this appendix.

165. The total number of firms that answered this question. See the note at the beginning of this appendix.

166. Answered only by those firms that checked "yes" to Question 5.

5.4 As a general matter, do firm opinion policies or procedures relating to preparation or approval of Opinion Letters by the opinion committee or committees relate to Opinion Letters covered by this survey delivered by all of your firm's offices?¹⁶⁷

| | | |
|---|-----|-----|
| - Yes | 175 | 90% |
| - No (Please list offices that deliver Opinion Letters of the types covered by this survey that are not dealt with by your firm's opinion committee or committees.) | 20 | 10% |
| Total | 195 | |

(3) Administering, Monitoring, or Waiving Compliance with Policies or Procedures

6. Does/do your firm's opinion committee(s) (including actions by committee members) administer, monitor, or waive compliance with firm opinion policies or procedures?¹⁶⁸

| | | |
|-------|-----|-----|
| - Yes | 183 | 79% |
| - No | 48 | 21% |
| Total | 231 | |

6.1 Which of the following act for your firm's opinion committee or committees in taking this action? (Please check all that apply.)¹⁶⁹

| | | |
|--|--------------------|--------------------|
| - The full committee | 46 | 26% ¹⁷⁰ |
| - One or more subcommittees | 10 | 6% |
| - Any committee member | 86 | 48% |
| - The committee chair | 56 | 31% |
| - A designated committee member (other than the chair) | 13 | 7% |
| - Two or more committee members, acting together | 43 | 26% |
| - Other (Please describe.) | 16 | 9% |
| Total | 178 ¹⁷¹ | |

6.2 Which of the following best describes your firm's practices in taking this action?¹⁷²

| | | |
|---|----|-----|
| - Your firm's opinion committee(s) usually obtains the approval of or consults with another person or group in taking this action | 66 | 38% |
|---|----|-----|

167. Answered only by those firms that checked "yes" to Question 5.

168. Answered only by those firms that checked the second or third answer to Question 3.

169. Answered only by those firms that checked "yes" to Question 6.

170. See the note at the beginning of this appendix.

171. The total number of firms that answered this question. See the note at the beginning of this appendix.

172. Answered only by those firms that answered "yes" to Question 6.

| | | |
|--|-----|-----|
| - Your firm's opinion committee(s) usually does not obtain the approval of or consult with another person or group in taking this action | 86 | 49% |
| - It depends (Please explain.) | 23 | 13% |
| Total | 175 | |

6.2.1 Who consults or approves? (Please check all that apply.)¹⁷³

| | | |
|---|-------------------|--------------------|
| - The firm's general counsel | 32 | 36% ¹⁷⁴ |
| - One or more designated members of a designated practice group or groups | 40 | 46% |
| - Any partner (or equivalent) of a designated practice group or groups | 28 | 32% |
| - The firm's management committee | 9 | 10% |
| - The firm's managing partner | 11 | 13% |
| - It depends (Please explain.) | 15 | 17% |
| Total | 88 ¹⁷⁵ | |

6.3 As a general matter, do firm opinion policies or procedures relating to administering, monitoring, or waiving compliance by the opinion committee or committees relate to Opinion Letters covered by this survey delivered by all of your firm's practice groups?¹⁷⁶

| | | |
|---|-----|-----|
| - Yes | 151 | 86% |
| - No (Please list practice groups that deliver Opinion Letters of the types covered by this survey that are not dealt with by your firm's opinion committee or committees.) | 25 | 14% |
| Total | 176 | |

6.4 As a general matter, do firm opinion policies or procedures relating to administering, monitoring, or waiving compliance by the opinion committee or committees relate to Opinion Letters of the types covered by this survey that are delivered by all of your firm's offices?¹⁷⁷

| | | |
|---|-----|-----|
| - Yes | 150 | 91% |
| - No (Please list offices that deliver Opinion Letters of the types covered by this survey that are not dealt with by your firm's opinion committee or committees.) | 15 | 9% |
| Total | 165 | |

173. Answered only by those firms that checked the first or third answer to Question 6.2.

174. See the note at the beginning of this appendix.

175. The total number of firms that answered this question. See the note at the beginning of this appendix.

176. Answered only by firms that answered "yes" to Question 6.

177. Answered only by firms that answered "yes" to Question 6.

(4) Preparing or Approving Form, Sample, or Model Opinions, Opinion Letters, Supporting Documentation, or Other Materials

7. Does/do your firm’s opinion committee(s) (including actions by committee members) prepare or approve forms, samples, or model Opinions, Opinion Letters, supporting documentation, or other materials?¹⁷⁸

| | | |
|-------|-----|-----|
| - Yes | 186 | 82% |
| - No | 41 | 18% |
| Total | 227 | |

7.1 Which of the following act for your firm’s opinion committee or committees in taking this action? (Please check all that apply.)¹⁷⁹

| | | |
|--|--------------------|--------------------|
| - The full committee | 90 | 50% ¹⁸⁰ |
| - One or more subcommittees | 26 | 14% |
| - Any committee member | 44 | 24% |
| - The committee chair | 55 | 30% |
| - A designated committee member (other than the chair) | 22 | 12% |
| - Two or more committee members, acting together | 34 | 19% |
| - Other (Please describe.) | 8 | 4% |
| Total | 182 ¹⁸¹ | |

7.2 Which of the following best describes your firm’s practices in taking this action?¹⁸²

| | | |
|--|-----|-----|
| - Your firm’s opinion committee(s) usually obtains the approval of or consults with another person or group in taking this action | 61 | 34% |
| - Your firm’s opinion committee(s) usually does not obtain the approval of or consult with another person or group in taking this action | 109 | 60% |
| - It depends (Please explain.) | 12 | 7% |
| Total | 182 | |

7.2.1 Who consults or approves? (Please check all that apply.)¹⁸³

| | | |
|---|----|--------------------|
| - The firm’s general counsel | 22 | 30% ¹⁸⁴ |
| - One or more designated members of a designated practice group or groups | 43 | 59% |

178. Answered only by firms that checked the second or third answer to Question 3.

179. Answered only by firms that answered “yes” to Question 7.

180. See the note at the beginning of this appendix.

181. The total number of firms that answered this question. See the note at the beginning of this appendix.

182. Answered only by firms that answered “yes” to Question 7.

183. Answered only by firms that checked the first or third answer to Question 7.2.

184. See the note at the beginning of this appendix.

| | | |
|--|-------------------|-----|
| - Any partner (or equivalent) of a designated practice group or groups | 22 | 30% |
| - The firm's management committee | 8 | 11% |
| - The firm's managing partner | 10 | 14% |
| - It depends (Please explain.) | 12 | 16% |
| Total | 73 ¹⁸⁵ | |

(5) Conducting or Overseeing Education or Training of Lawyers on Opinion Matters

8. Does/do your firm's opinion committee(s) (including actions by committee members) conduct or oversee education or training of your firm's lawyers on opinion matters?¹⁸⁶

| | | |
|-------|-----|-----|
| - Yes | 168 | 75% |
| - No | 57 | 25% |
| Total | 225 | |

(6) Other Committee Functions

9. Does/do your firm's opinion committee(s) (including actions by committee members) perform any other functions not covered by earlier questions?¹⁸⁷

| | | |
|-------|-----|-----|
| - Yes | 37 | 16% |
| - No | 188 | 84% |
| Total | 225 | |

C. COMMITTEE MEMBERSHIP

10. How are members of your firm's opinion committee or committees appointed? (Please check all that apply.)¹⁸⁸

| | | |
|---|-----|--------------------|
| - By firm management or management committee | 145 | 64% ¹⁸⁹ |
| - By firm general counsel | 12 | 5% |
| - By practice groups | 42 | 19% |
| - By opinion committee chair | 50 | 22% |
| - By the committee itself | 42 | 19% |
| - It depends on the committee (Please explain.) | 6 | 3% |

185. The total number of firms that answered this question. See the note at the beginning of this appendix.

186. Answered only by firms that checked the second or third answer to Question 3.

187. Answered only by firms that checked the second or third answer to Question 3.

188. Answered only by firms that checked the second or third answer to Question 3.

189. See the note at the beginning of this appendix.

| | | |
|----------------------------|--------------------|----|
| - Other (Please describe.) | 14 | 6% |
| Total | 226 ¹⁹⁰ | |

11. Is each committee member typically a partner (or equivalent) in your firm?¹⁹¹

| | | |
|--|-----|-----|
| - Yes | 179 | 80% |
| - Yes, with limited exceptions (Please describe.) | 40 | 18% |
| - No (Please describe who else can be a committee member.) | 5 | 2% |
| Total | 224 | |

12. Is each committee member typically a business lawyer?¹⁹²

| | | |
|--|-----|-----|
| - Yes | 165 | 74% |
| - Yes, with limited exceptions (Please explain.) | 36 | 16% |
| - No | 22 | 10% |
| Total | 223 | |

13. Do any of your firm's opinion committees currently have as a member: (Please check all that apply.)¹⁹³

| | | |
|--|--------------------|--------------------|
| - A litigator | 55 | 26% ¹⁹⁴ |
| - A bankruptcy lawyer | 74 | 34% |
| - A tax lawyer | 88 | 41% |
| - An IP lawyer | 25 | 12% |
| - A real estate lawyer | 152 | 70% |
| - A lawyer expert in opinion practice | 165 | 76% |
| - A representative of one or more designated practice groups | 99 | 46% |
| - Your firm's general counsel | 45 | 21% |
| - A representative of the firm's client intake committee | 9 | 4% |
| - Another person from firm management (Please identify.) | 19 | 9% |
| Total | 216 ¹⁹⁵ | |

III. FIRM OPINION PRACTICE MANAGEMENT: CONSULTATION

14. Does your firm have a policy or practice regarding Opinion Preparers consulting with or obtaining approval by another lawyer or lawyers

190. The total number of firms that answered this question. See the note at the beginning of this appendix.

191. Answered only by firms that checked the second or third answer to Question 3.

192. Answered only by firms that checked the second or third answer to Question 3.

193. Answered only by firms that checked the second or third answer to Question 3.

194. See the note at the beginning of this appendix.

195. The total number of firms that answered this question. See the note at the beginning of this appendix.

(the “Consulted Lawyer”) before providing an Opinion Letter? (Note: The Consulted Lawyer could be a firm opinion committee(s) or one or more members thereof.)

| | | |
|-------|-----|-----|
| - Yes | 245 | 83% |
| - No | 49 | 17% |
| Total | 294 | |

15. As a general matter, which of the following best describes your firm’s policy or practice regarding consultation or approval?¹⁹⁶

Consultation or approval is called for:

| | | |
|---------------------------------|-----|-----|
| - Usually, with some exceptions | 90 | 37% |
| - Only in particular cases | 30 | 12% |
| - Always | 122 | 50% |
| Total | 242 | |

16. As a general matter, does your firm’s policy or practice regarding consultation or approval apply to all of your firm’s practice groups and offices that give Opinions of types covered by this survey?¹⁹⁷

| | | |
|------------------------|-----|-----|
| - Yes | 219 | 91% |
| - No (Please explain.) | 23 | 10% |
| Total | 242 | |

17. Do the details of the policy or practice vary from practice group to practice group, or from office to office?¹⁹⁸

| | | |
|-------------------------|-----|-----|
| - Yes (Please explain.) | 53 | 22% |
| - No | 187 | 78% |
| Total | 240 | |

18. Which of the following best describes your firm’s policy or practice regarding consultation or approval? (Please check only one box.)¹⁹⁹

| | | |
|---|-----|-----|
| - (a1) Opinion Preparers are required or expected to consult or seek approval regarding all or substantially all Opinion Letters | 188 | 78% |
| - (a2) Opinion Preparers are required or expected to consult or seek approval regarding some (but not substantially all) Opinion Letters | 24 | 10% |
| - (b1) Opinion Preparers are encouraged (but not required or expected) to consult or seek approval regarding all or substantially all Opinion Letters | 18 | 7% |

196. Answered only by firms that checked “yes” to Question 14.

197. Answered only by firms that checked “yes” to Question 14.

198. Answered only by firms that checked “yes” to Question 14.

199. Answered only by firms that checked “yes” to Question 14.

| | | |
|---|-----|----|
| - (b2) Opinion Preparers are encouraged (but not required or expected) to consult or seek approval regarding some (but not substantially all) Opinion Letters | 12 | 5% |
| Total | 242 | |

18.1 In what situations is consultation or approval called for? (Please check all numbered items that apply.)²⁰⁰

| | | |
|--|-------------------|--------------------|
| - The Opinion Letter or particular Opinions are significantly different from your firm's form, sample, or model | 20 | 83% ²⁰¹ |
| - Delivering the Opinion Letter poses unusual risks because of the size of the transaction | 15 | 63% |
| - Delivering the Opinion Letter poses unusual risks because of the nature of the transaction | 17 | 74% |
| - The Opinion Letter presents issues that are not straightforward, not easily resolved, or not previously addressed by your firm | 18 | 75% |
| - Only one partner or equivalent is working on the transaction | 6 | 25% |
| - The Opinion Letter is not routine (For example, it is not a type your firm often provides or is not being given as a repeat Opinion Letter in a series of closings in the same transaction for the same client.) | 18 | 75% |
| - The Opinion Letter covers a matter requiring expertise not possessed by Opinion Preparers (For example, the Uniform Commercial Code, the federal securities laws, or the law of a particular state.) | 20 | 83% |
| - Other (Please explain.) | 0 | 0% |
| - Your firm's policies are not specific (Please explain.) | 1 | 4% |
| - Total | 24 ²⁰² | |

18.2 In what situations is consultation or approval called for? (Please check all numbered items that apply.)²⁰³

| | | |
|--|----|--------------------|
| - The Opinion Letter or particular Opinions are significantly different from your firm's form, sample, or model | 9 | 75% ²⁰⁴ |
| - Delivering the Opinion Letter poses unusual risks because of the size of the transaction | 5 | 42% |
| - Delivering the Opinion Letter poses unusual risks because of the nature of the transaction | 7 | 58% |
| - The Opinion Letter presents issues that are not straightforward, not easily resolved, or not previously addressed by your firm | 10 | 83% |
| - Only one partner or equivalent is working on the transaction | 1 | 8% |

200. Answered only by firms that checked a2 to Question 18.

201. See the note at the beginning of this appendix.

202. This is the total number of firms that answered this question. See the note at the beginning of this appendix.

203. Answered only by firms that checked b2 to Question 18.

204. See the note at the beginning of this appendix.

| | | |
|--|----|----------------|
| - The Opinion Letter is not routine (For example, it is not a type your firm often provides or is not being given as a repeat Opinion Letter in a series of closings in the same transaction for the same client.) | 11 | 92% |
| - The Opinion Letter covers a matter requiring expertise not possessed by Opinion Preparers (For example, the Uniform Commercial Code, the federal securities laws, or the law of a particular state.) | 9 | 75% |
| - Other (Please explain.) | 1 | 8% |
| - Your firm's policies are not specific (Please explain.) | 1 | 8% |
| - Total | 12 | ²⁰⁵ |

19. Which of the following best describes your firm's practice regarding exceptions to your firm's policy or practice requiring or expecting consultation?²⁰⁶

| | | |
|------------------------------|-----|-----|
| - Exceptions are never made | 80 | 36% |
| - Exceptions are rarely made | 124 | 55% |
| - Exceptions are often made | 21 | 9% |
| Total | 225 | |

19.1. Who can approve an exception? (Please check all that apply.)²⁰⁷

| | | |
|--|-----|--------------------|
| - An Opinion Preparer | 20 | 14% ²⁰⁸ |
| - The Consulted Lawyer (Defined as another lawyer who, under your firm's policy or practice, consults with Opinion Preparers about or approves an Opinion Letter or an Opinion before an Opinion Letter is delivered.) | 42 | 29% |
| - An opinion committee | 61 | 42% |
| - The chair or another member or members of an opinion committee | 66 | 46% |
| - A lawyer or lawyers designated or approved by an opinion committee or committee member(s) | 13 | 9% |
| - A lawyer or lawyers having position(s) in management of your firm or relationships with a relevant client or clients | 23 | 16% |
| - A lawyer or lawyers in one or more designated practice groups or with special expertise | 28 | 19% |
| - A lawyer or lawyers designated in some other way (Please explain.) | 2 | 1% |
| - Your firm's general counsel | 24 | 17% |
| - Depends on the situation (Please explain.) | 6 | 4% |
| Total | 145 | ²⁰⁹ |

205. This is the total number of firms that answered this question. See the note at the beginning of this appendix.

206. Answered only by firms that checked "yes" to Question 14.

207. Answered only by firms that checked the second or third answers to Question 19.

208. See the note at the beginning of this appendix.

209. This is the total number of firms that answered this question. See the note at the beginning of this appendix.

20. Does your firm's policy or practice regarding consultation call for the Consulted Lawyer not to be otherwise involved in the transaction?²¹⁰

| | | |
|--|-----|-----|
| - Always | 67 | 28% |
| - In some but not all situations (Please explain.) | 29 | 12% |
| - No | 145 | 60% |
| - Total | 241 | |

21. Does your firm's policy or practice regarding consultation call for the Consulted Lawyer not to be otherwise involved with the client?²¹¹

| | | |
|--|-----|-----|
| - Always | 10 | 4% |
| - In some but not all situations (Please explain.) | 24 | 10% |
| - No | 203 | 86% |
| - Total | 237 | |

22. Who can the Consulted Lawyer be? (Please check all that apply.)²¹²

| | | |
|---|--------------------|--------------------|
| 1. An entire opinion committee | 55 | 23% ²¹³ |
| 2. Any member of an opinion committee | 152 | 64% |
| 3. A designated member or members or other designee of an opinion committee | 64 | 27% |
| 4. Any lawyer in your firm | 8 | 3% |
| 5. Any partner or equivalent in your firm | 84 | 35% |
| 6. A lawyer or lawyers with expertise in at least one of the legal areas addressed in the Opinion Letter | 100 | 41% |
| 7. A lawyer or lawyers with expertise in at least one type of transaction that is the subject of an Opinion in the Opinion Letter | 57 | 24% |
| 8. Both a committee or a member(s) or designee(s) of a committee and a lawyer with such expertise | 56 | 23% |
| 9. A lawyer from a list of designated lawyers who may serve as a Consulted Lawyer | 19 | 8% |
| 10. A lawyer in one or more designated practice groups | 12 | 5% |
| 11. Your firm's general counsel | 22 | 9% |
| 12. Other (Please describe.) | 20 | 8% |
| Total | 239 ²¹⁴ | |

210. Answered only by firms that checked "yes" to Question 14.

211. Answered only by firms that checked "yes" to Question 14.

212. Answered only by firms that checked "yes" to Question 14.

213. See the note at the beginning of this appendix.

214. This is the total number of firms that answered this question. See the note at the beginning of this appendix.

22.1 Who prepares the list of designated lawyers who may serve as the Consulted Lawyer? (Please check all that apply.)²¹⁵

| | | |
|---|-------------------|--------------------|
| - An opinion committee or a member or members of an opinion committee | 9 | 50% ²¹⁶ |
| - One or more practice groups (or a member or members of a practice group(s) responsible for or expert in all or a portion of the transaction | 3 | 17% |
| - Firm management or your firm's general counsel | 8 | 44% |
| - A combination of the foregoing (Please describe.) | 3 | 17% |
| - Other (Please describe.) | 2 | 11% |
| Total | 18 ²¹⁷ | |

22.2 Do the Opinion Preparers have discretion to select which member of an opinion committee will be the Consulted Lawyer?²¹⁸

| | | |
|---|-----|-----|
| - Yes | 138 | 94% |
| - No (Please indicate who makes the selection.) | 9 | 6% |
| Total | 147 | |

22.3 Do the Opinion Preparers have discretion to select which designated member or members or other designee of an opinion committee will be the Consulted Lawyer?²¹⁹

| | | |
|---|----|-----|
| - Yes | 51 | 82% |
| - No (Please indicate who makes the selection.) | 11 | 18% |
| Total | 62 | |

22.4 Do the Opinion Preparers have discretion to select which lawyer in your firm will be the Consulted Lawyer?²²⁰

| | | |
|---|---|------|
| - Yes | 8 | 100% |
| - No (Please indicate who makes the selection.) | 0 | 0% |
| Total | 8 | |

215. Answered only by firms that checked answer 9 in Question 22.

216. See the note at the beginning of this appendix.

217. This is the total number of firms that answered this question. See the note at the beginning of this appendix.

218. Answered only by firms that checked answer 2 in Question 22.

219. Answered only by firms that checked answer 3 in Question 22.

220. Answered only by firms that checked answer 4 in Question 22.

22.5 Do the Opinion Preparers have discretion to select which partner or equivalent in your firm will be the Consulted Lawyer?²²¹

| | | |
|---|----|-----|
| - Yes | 79 | 95% |
| - No (Please indicate who makes the selection.) | 4 | 5% |
| Total | 83 | |

22.6 Do the Opinion Preparers have discretion to select which lawyer or lawyers with expertise in at least one of the legal areas addressed in the Opinion Letter will be the Consulted Lawyer?²²²

| | | |
|---|----|-----|
| - Yes | 84 | 87% |
| - No (Please indicate who makes the selection.) | 13 | 13% |
| Total | 97 | |

22.7 Do the Opinion Preparers have discretion to select which lawyer or lawyers with expertise in at least one type of transaction that is the subject of an Opinion in the Opinion Letter will be the Consulted Lawyer?²²³

| | | |
|---|----|-----|
| - Yes | 50 | 93% |
| - No (Please indicate who makes the selection.) | 4 | 7% |
| Total | 54 | |

22.8 Do the Opinion Preparers have discretion to select which committee or a member(s) or designee(s) of a committee and a lawyer with such expertise will be the Consulted Lawyer?²²⁴

| | | |
|---|----|-----|
| - Yes | 46 | 84% |
| - No (Please indicate who makes the selection.) | 9 | 16% |
| Total | 55 | |

22.9 Do the Opinion Preparers have discretion to select which lawyer from a list of designated lawyers will be the Consulted Lawyer?²²⁵

| | | |
|---|----|------|
| - Yes | 18 | 100% |
| - No (Please indicate who makes the selection.) | 0 | 0% |
| Total | 18 | |

221. Answered only by firms that checked answer 5 in Question 22.

222. Answered only by firms that checked answer 6 in Question 22.

223. Answered only by firms that checked answer 7 in Question 22.

224. Answered only by firms that checked answer 8 in Question 22.

225. Answered only by firms that checked answer 9 in Question 22.

22.10 Do the Opinion Preparers have discretion to select which lawyer in one or more designated practice groups will be the Consulted Lawyer?²²⁶

| | | |
|---|----|-----|
| - Yes | 9 | 82% |
| - No (Please indicate who makes the selection.) | 2 | 18% |
| Total | 11 | |

23. In general, does your firm's policy or practice regarding consultation call for the Consulted Lawyer to be a partner or equivalent in your firm?²²⁷

| | | |
|---|-----|-----|
| - Yes, always | 174 | 74% |
| - Yes, with exceptions (Please describe.) | 45 | 19% |
| - No | 15 | 6% |
| - Total | 234 | |

24. Does your firm's policy or practice address when the Consulted Lawyer is supposed to be first consulted?²²⁸

| | | |
|-------|-----|-----|
| - Yes | 81 | 35% |
| - No | 154 | 66% |
| Total | 235 | |

24.1 When is the Consulted Lawyer supposed to be first consulted? (Please check the one answer that best describes your firm's policy or practice.)²²⁹

| | | |
|---|----|-----|
| - When the need for an Opinion Letter is identified | 10 | 11% |
| - When negotiation of an agreement calling for an Opinion Letter begins | 6 | 7% |
| - When drafting of the Opinion Letter begins | 7 | 8% |
| - Prior to providing the draft Opinion Letter to the other side | 45 | 50% |
| - Any time prior to delivery of the Opinion Letter | 14 | 16% |
| - At some other time (Please describe.) | 8 | 9% |
| Total | 90 | |

226. Answered only by firms that checked answer 10 in Question 22.

227. Answered only by firms that checked "yes" to Question 14.

228. Answered only by firms that checked "yes" to Question 14.

229. This was supposed to have been answered only by firms that checked "yes" to Question 24, but a few additional firms answered it.

25. Which of the following are responsibilities of the Consulted Lawyer?
(Please check all that apply.)²³⁰

| | | |
|---|--------------------|--------------------|
| - Determine that the form (as distinguished from the substance) of the Opinion Letter satisfies your firm's policy or practice | 170 | 72% ²³¹ |
| - Answer questions of the Opinion Preparers | 211 | 89% |
| - Determine whether the Opinion Letter raises special concerns | 208 | 88% |
| - Determine whether the Opinion Letter requires special procedures (due, for example, in either case, to a legal matter addressed by the Opinion Letter, the nature, size, or type of transaction, the particular client involved, or the relationship between the Opinion Preparers and the client) (Please describe.) | 97 | 41% |
| - Be satisfied about matters determined by the Consulted Lawyer or Opinion Preparers to require special attention | 174 | 74% |
| - Be satisfied about the substance of matters within the Consulted Lawyer's expertise | 168 | 71% |
| - Identify issues on the face of the Opinion Letter (e.g., unusual wording, apparently incorrect Opinion) | 193 | 82% |
| - "Concur" in the Opinion Letter as if the Consulted Lawyer had been an Opinion Preparer | 68 | 29% |
| - Review backup documentation or otherwise determine that sufficient work was done to support Opinions being given | 65 | 28% |
| - Sign off on delivery of the Opinion Letter | 123 | 52% |
| - Other (Please describe.) | 8 | 3% |
| - It depends on the situation (Please explain.) | 9 | 4% |
| Total | 236 ²³² | |

26. Does your firm have a policy or practice calling for a follow-up consultation with the Consulted Lawyer before the Opinion Letter is provided (for example to confirm that any issues previously identified have been addressed or that no new issues or problems have arisen)?²³³

| | | |
|-------|-----|-----|
| - Yes | 68 | 29% |
| - No | 166 | 71% |
| Total | 234 | |

230. Answered only by firms that checked "yes" to Question 14.

231. See the note at the beginning of this appendix.

232. This is the total number of firms that answered this question. See the note at the beginning of this appendix.

233. Answered only by firms that checked "yes" to Question 14.

27. Does your firm's policy or practice call for consultation between the Consulted Lawyer and the Opinion Preparers ordinarily to be memorialized?²³⁴

| | | |
|-------|-----|-----|
| - Yes | 78 | 34% |
| - No | 155 | 67% |
| Total | 233 | |

- 27.1 How? (Please check all that apply.)²³⁵

| | | |
|---|-------------------|--------------------|
| - By a notation on an internal copy of the Opinion Letter | 42 | 54% ²³⁶ |
| - By a memo in a firm file or archive of Opinion Letters | 26 | 33% |
| - By a memo in the transaction file | 21 | 27% |
| - In some other way (Please describe.) | 20 | 26% |
| Total | 78 ²³⁷ | |

V. OPINION PRACTICE MANAGEMENT: SAMPLES

28. Does your firm have one or more sample Opinion Letters or sample Opinions?

| | | |
|-------|-----|-----|
| - Yes | 249 | 88% |
| - No | 34 | 12% |
| Total | 283 | |

- 28.1 Who prepares or approves sample Opinion Letters or sample Opinions? (Please check all that apply.)²³⁸

| | | |
|---|--------------------|--------------------|
| - An opinion committee | 108 | 43% ²³⁹ |
| - Member(s) or designee(s) of an opinion committee | 99 | 40% |
| - A lawyer or lawyers in one or more designated practice groups or with specialized expertise | 114 | 46% |
| - Other (Please describe.) | 13 | 5% |
| Total | 249 ²⁴⁰ | |

234. Answered only by firms that checked "yes" to Question 14.

235. Answered only by firms that checked "yes" to Question 27.

236. See the note at the beginning of this appendix.

237. The total used to calculate percentages is the number of firms that checked "yes" to Question 27. See the note at the beginning of this appendix.

238. Answered only by firms that checked "yes" to Question 28.

239. See the note at the beginning of this appendix.

240. This is the number of firms that checked "yes" to Question 28.

28.2 Which of the following best describes your firm’s policy or practice regarding the use of sample Opinion Letters and sample Opinions?²⁴¹

| | | |
|---|-----|-----|
| - Use is expected or required as a starting point | 134 | 54% |
| - Use is encouraged as a starting point, but not expected or required | 76 | 31% |
| - Use is completely discretionary with Opinion Preparers | 25 | 10% |
| - Use depends on the situation (Please explain.) | 13 | 5% |
| Total | 248 | |

28.2.1 When use of sample Opinion Letters or Opinions is required or expected, are any exceptions permitted?²⁴²

| | | |
|-------|-----|-----|
| - Yes | 125 | 87% |
| - No | 19 | 13% |
| Total | 144 | |

28.2.1.1 Who is authorized to approve those exceptions? (Please check all that apply.)²⁴³

| | | |
|--|--------------------|--------------------|
| - An Opinion Preparer | 39 | 30% ²⁴⁴ |
| - The Consulted Lawyer | 55 | 43% |
| - An opinion committee | 60 | 47% |
| - The chair or another member or members of an opinion committee | 65 | 50% |
| - Your firm’s general counsel | 16 | 12% |
| - A lawyer(s) designated or approved by an opinion committee or a committee member or members | 23 | 18% |
| - A lawyer(s) having identified position(s) in management of your firm or relationships with a client or clients | 7 | 5% |
| - A lawyer(s) in one or more designated practice groups or with special expertise | 8 | 6% |
| - A lawyer(s) designated in some other way (Please explain.) | 1 | |
| - Depends on the situation (Please explain.) | 5 | 4% |
| Total | 129 ²⁴⁵ | |

241. Answered only by firms that checked “yes” to Question 28.

242. Answered only by firms that selected the first or last answer to Question 28.2.

243. Supposed to have been answered only by firms that checked “yes” to Question 28.2.1, but a few additional firms answered it.

244. See the note at the beginning of this appendix.

245. This is the total number of firms that answered this question. See the note at the beginning of this appendix.

29. Does your firm require, expect, or encourage preparation of a supporting memo, checklist, or similar supporting documentation for at least some Opinion Letters?

| | | |
|-------|-----|-----|
| - Yes | 129 | 47% |
| - No | 146 | 53% |
| Total | 275 | |

- 29.1 Does your firm have one or more forms or samples of such supporting documentation?

| | | |
|-------|--------------------|-----|
| - Yes | 91 | 70% |
| - No | 40 | 31% |
| Total | 131 ²⁴⁶ | |

VI. EDUCATION

30. Aside from one-on-one training in actual practice and making opinion materials available to its lawyers, does your firm routinely do any of the following to train or educate its lawyers on opinion matters? (Please check all that apply.)

| | | |
|---|--------------------|--------------------|
| - 1. Discuss opinion topics at practice group or similar meetings | 162 | 60% ²⁴⁷ |
| - 2. Distribute memoranda, newsletters, and/or other opinion related materials produced outside the firm | 129 | 48% |
| - 3. Distribute memoranda, newsletters, and/or other opinion related materials produced inside the firm | 91 | 34% |
| - 4. Encourage lawyers to review or use treatises, bar reports, form, or sample Opinion Letters or Opinions, or other resources made available to them by your firm | 175 | 64% |
| - 5. Encourage lawyers to review or use annotations to or other comments on your firm's form or sample Opinion Letters | 104 | 38% |
| - 6. Offer internal seminars or presentations | 136 | 50% |
| - 7. Advise lawyers of programs by external providers | 78 | 29% |
| - 8. Other (Please describe.) | 9 | 3% |
| - 9. None of the above | 38 | 14% |
| Total | 272 ²⁴⁸ | |

²⁴⁶ It is not clear why more firms answered this question than checked "yes" to Question 29.

²⁴⁷ See the note at the beginning of this appendix.

²⁴⁸ This is the number of firms that answered this question and also reported their firm size. See Appendix 2, Chart 11; see also the note at the beginning of this appendix.

30.1. Is participation in or attendance at internal seminars or presentations required or expected (and not just encouraged) for any lawyers in your firm?²⁴⁹

| | | |
|---|-----|-----|
| - Yes (Please describe which lawyers: e.g., associates, partners, transactional associates, transactional partners, lateral lawyers.) | 72 | 53% |
| - No | 63 | 47% |
| Total | 135 | |

30.2 Is participation in or attendance at programs by external providers required or expected (and not just encouraged) for any lawyers in your firm?²⁵⁰

| | | |
|---|----|-----|
| - Yes (Please describe which lawyers: e.g., associates, partners, transactional associates, transactional partners, lateral lawyers.) | 18 | 23% |
| - No | 60 | 77% |
| Total | 78 | |

31. In general, who in your firm is responsible for education or training on opinion matters? (Please check all that apply.)

| | | |
|--|--------------------|--------------------|
| - An opinion committee or committees | 102 | 44% ²⁵¹ |
| - Member(s) or designee(s) of an opinion committee | 109 | 47% |
| - A lawyer or lawyers in one or more designated practice groups | 64 | 28% |
| - One or more partners or with transactional practices involving Opinion Letters | 92 | 40% |
| - A separate internal education committee | 18 | 8% |
| - Other (Please describe.) | 9 | 4% |
| Total | 233 ²⁵² | |

VII. LIMITATIONS ON OPINIONS AND CONFIRMATIONS²⁵³

A. DELAWARE OPINIONS

32. Does your firm have an office in Delaware that gives or advises Opinion Preparers in other firm offices on Opinions on Delaware law?

249. Answered only by firms that selected answer 6 to Question 30.

250. Answered only by firms that selected answer 7 to Question 30.

251. See the note at the beginning of this appendix.

252. This is the number of firms that answered this question and also reported their firm size. See Appendix 2, Chart 12; see also the note at the beginning of this appendix.

253. Firms selecting “not called for in practice” or “no policy or established practice” to questions in this Section VII are not counted in calculating percentages. However, the “total” in questions with either selection is of all firms answering the question, including those that made that selection. See the note at the beginning of this appendix.

| | | |
|-------|-----|-----|
| - Yes | 22 | 8% |
| - No | 263 | 92% |
| Total | 285 | |

33. When asked, does your firm give Opinions (at least those not addressing novel or complex legal issues) on the following matters regarding Delaware entities without consulting Delaware counsel?²⁵⁴

1. Entity status and power and authorization of specified actions by corporations

| | | |
|------------------------------|-----|-----|
| - Yes | 221 | 93% |
| - No | 18 | 8% |
| - Not Called for in Practice | 17 | |
| Total | 256 | |

2. Entity status and power and authorization of specified actions by limited partnerships

| | | |
|------------------------------|-----|-----|
| - Yes | 189 | 86% |
| - No | 31 | 14% |
| - Not Called for in Practice | 29 | |
| Total | 249 | |

3. Entity status and power and authorization of specified actions by limited liability companies

| | | |
|------------------------------|-----|-----|
| - Yes | 214 | 91% |
| - No | 22 | 9% |
| - Not Called for in Practice | 18 | |
| Total | 254 | |

4. Issuance of stock of corporations

| | | |
|------------------------------|-----|-----|
| - Yes | 166 | 80% |
| - No | 42 | 20% |
| - Not Called for in Practice | 39 | |
| Total | 247 | |

²⁵⁴ Answered only by firms that checked “no” to Question 32. See *supra* note 111 (regarding effect on percentages when firms selected “Not Called for in Practice”).

5. Issuance of partnership interests in limited partnerships

| | | |
|------------------------------|-----|-----|
| - Yes | 131 | 72% |
| - No | 52 | 28% |
| - Not Called for in Practice | 51 | |
| Total | 234 | |

6. Issuance of membership interests in limited liability companies

| | | |
|------------------------------|-----|-----|
| - Yes | 154 | 75% |
| - No | 51 | 25% |
| - Not Called for in Practice | 41 | |
| Total | 246 | |

7. Limited liability of limited partners of limited partnerships

| | | |
|------------------------------|-----|-----|
| - Yes | 84 | 47% |
| - No | 95 | 53% |
| - Not Called for in Practice | 63 | |
| Total | 242 | |

8. Limited liability of members of limited liability companies

| | | |
|------------------------------|-----|-----|
| - Yes | 90 | 50% |
| - No | 89 | 50% |
| - Not Called for in Practice | 62 | |
| Total | 241 | |

B. OTHER STATES²⁵⁵

35. When asked, without consulting local counsel, does your firm give Opinions (at least those not addressing novel or complex legal issues) on the following laws when your firm does not have an office in the applicable state?

Nevada Corporations Code

| | | |
|------------------------------|-----|-----|
| - Yes | 30 | 14% |
| - No | 188 | 86% |
| - Not Called for in Practice | 59 | |
| Total | 277 | |

255. See *supra* note 111.

Maryland General Corporation Law

| | | |
|------------------------------|-----|-----|
| - Yes | 29 | 14% |
| - No | 177 | 86% |
| - Not Called for in Practice | 61 | |
| Total | 267 | |

New York Contract Law

| | | |
|------------------------------|-----|-----|
| - Yes | 78 | 41% |
| - No | 113 | 59% |
| - Not Called for in Practice | 40 | |
| Total | 231 | |

Delaware Contract Law

| | | |
|------------------------------|-----|-----|
| - Yes | 40 | 17% |
| - No | 191 | 83% |
| - Not Called for in Practice | 30 | |
| Total | 261 | |

Contract Law of any state other than New York or Delaware

| | | |
|------------------------------|-----|-----|
| - Yes | 36 | 15% |
| - No | 199 | 85% |
| - Not Called for in Practice | 30 | |
| Total | 265 | |

Entity Law of any state other than Delaware, and other than (1) the Nevada Corporation Law or (2) the Maryland General Corporation Law

| | | |
|------------------------------|-----|-----|
| - Yes | 60 | 25% |
| - No | 181 | 75% |
| - Not Called for in Practice | 29 | |
| Total | 270 | |

36. When an Opinion on the law of another state in which your firm does not have an office (other than Delaware) is given by your firm, is it typically reviewed by a lawyer in your firm who is licensed or practices in the state whose law is covered by the Opinion?

| | | |
|-------|-----|-----|
| - Yes | 90 | 70% |
| - No | 39 | 30% |
| Total | 129 | |

C. UNIFORM COMMERCIAL CODE OPINIONS²⁵⁶

37. When asked, without consulting local counsel, does your firm give Opinions on the following Articles of the Uniform Commercial Code (as reported in a publicly available compilation, or otherwise) of a state or states in which your firm does not have an office? (Please check only one box in each line.)

| | Yes | % | No | % | Not called for in Practice | Total |
|--------------|-----|-----|-----|-----|----------------------------|-------|
| 1. Article 8 | 119 | 53% | 106 | 47% | 50 | 275 |
| 2. Article 9 | 184 | 71% | 75 | 29% | 15 | 274 |

D. NO-LITIGATION CONFIRMATIONS

38. Does your firm give confirmations of any kind regarding the existence of legal proceedings (“no-litigation confirmations”)?

| | | |
|-------------------------------|-----|-----|
| - Yes | 102 | 37% |
| - Sometimes (Please explain.) | 106 | 38% |
| - No | 70 | 25% |
| Total | 278 | |

38.1 As a general rule, which of the following do your firm’s no-litigation confirmations cover: (Please check all that apply.)²⁵⁷

| | | |
|----------------------------------|-----|--------------------|
| Pending litigation | 197 | 98% ²⁵⁸ |
| Litigation threatened in writing | 113 | 56% |
| Litigation threatened orally | 14 | 7% |
| Total | 202 | |

38.2 As a general rule, are your firm’s no-litigation confirmations limited to proceedings: (Please check all that apply.)²⁵⁹

| | | |
|--|-----|--------------------|
| - That could adversely affect the client generally (with or without a materiality qualifier) | 58 | 28% ²⁶⁰ |
| - That could adversely affect the transaction | 105 | 50% |

256. See *supra* note 111.

257. Answered only by firms that checked “yes” or “sometimes” in Question 38.

258. Percentages in this column in Questions 38.1 and 38.2 are of the total of firms that answered “yes” and “sometimes” in Question 38.

259. Answered only by firms that answered “yes” or “sometimes” to Question 38.

260. Percentages in this column in Questions 38.1 and 38.2 are of the total number of firms that answered “yes” or “sometimes” in Question 38.

| | | |
|---|--------------------|-----|
| - In which your firm represents the client | 109 | 52% |
| - Of which your firm or specified lawyers in your firm have knowledge | 142 | 68% |
| Total | 208 ²⁶¹ | |

E. NO BREACH OR DEFAULT

39. As a general rule, in giving an Opinion that entering into an agreement for a transaction will not result in a breach of or default under other agreements, does your firm expressly limit the coverage of the Opinion to other agreements that are:

| | | |
|----------------------------------|-----|-----|
| - Identified in a specified list | 167 | 62% |
| - Known to your firm | 86 | 32% |
| - No limitation | 4 | 1% |
| - Other (Please describe.) | 17 | 6% |
| Total | 274 | |

F. FINANCIAL COVENANTS

40. Bar association reports differ on whether opinion givers should cover financial covenants when giving no breach or default Opinions. As a general rule, in giving an Opinion that entering into an agreement for a transaction will not result in a breach of or default under other agreements, does your firm regularly cover financial covenants in the other agreements?

| | | |
|--|-----|-----|
| - Yes | 8 | 4% |
| - No | 182 | 83% |
| - Prefer not to cover financial covenants but sometimes will (Please explain.) | 18 | 8% |
| - It depends on the provision or the situation (Please explain.) | 12 | 6% |
| - No policy or established practice ²⁶² | 54 | |
| Total | 274 | |

G. ARBITRATION CLAUSES

41. As a general rule, in giving an Opinion on the enforceability of an agreement in a wholly domestic U.S. transaction, does your firm regularly cover provisions requiring arbitration?

261. This is the total number of firms that answered “yes” or “sometimes” in Question 38.

262. See note at the beginning of this Appendix; see also *supra* note 111.

| | | |
|---|-----|-----|
| - Yes | 52 | 25% |
| - No | 142 | 67% |
| - Prefer not to cover arbitration provisions but sometimes will (Please explain.) | 12 | 6% |
| - It depends on the provision or the situation (Please explain.) | 5 | 2% |
| - No policy or established practice ²⁶³ | 61 | |
| Total | 272 | |

VIII. ARCHIVES

42. Does your firm maintain a file or archive of: (Please check all that apply.)

| | | |
|---------------------------------------|--------------------|-----|
| -Opinion Letters your firm has given | 147 | 55% |
| -Opinion Letters given by other firms | 48 | 18% |
| -Neither of the above | 121 | 45% |
| Total | 268 ²⁶⁴ | |

42.1. Does your firm use an electronic index or search tool to retrieve information from the Opinion Letters in the file(s) or archive(s)?²⁶⁵

| | | |
|-------------------------|-----|-----|
| -Yes (Please describe.) | 82 | 55% |
| -No | 67 | 45% |
| Total | 149 | |

IX. REAL ESTATE OPINIONS

43. Does your firm deliver Opinion Letters in real estate transactions?

| | | |
|-------|-----|-----|
| -Yes | 245 | 91% |
| -No | 25 | 9% |
| Total | 270 | |

43.1 Which of the following best describes your firm's opinion practice?²⁶⁶

| | | |
|---|-----|-----|
| -Most Opinion Letters delivered by your firm are in real estate transactions | 47 | 19% |
| -Many but not most Opinion Letters delivered by your firm are in real estate transactions | 132 | 54% |

263. See *supra* note 111.

264. This assumes that each firm that maintained a file or archive of opinion letters given by other firms also maintained a file or archive of its own opinion letters.

265. Answered only by firms that checked either the first or second answer to Question 42.

266. Answered only by firms that selected "yes" in Question 43.

| | | |
|---|-----|-----|
| -Few Opinion Letters delivered by your firm are in real estate transactions | 66 | 27% |
| Total | 245 | |

43.2 Do your firm's policies, practices, or procedures for preparation and delivery of Opinion Letters in real estate transactions differ from those for Opinion Letters in other transactions?²⁶⁷

| | | |
|-------------------------------|-----|-----|
| -Yes (Please explain.) | 30 | 12% |
| -No | 201 | 82% |
| -It depends (Please explain.) | 12 | 5% |
| Total | 245 | |

X. FIRM CHARACTERISTICS

44. Please indicate the number of lawyers in your firm.

| | | |
|------------------|-----|-----|
| -1-10 | 34 | 13% |
| -11-25 | 26 | 10% |
| -26-50 | 24 | 9% |
| -51-200 | 74 | 27% |
| -201-500 | 40 | 15% |
| -501-1,000 | 42 | 17% |
| -More than 1,000 | 30 | 11% |
| Total | 270 | |

44.1 Please rate the importance of your firm's opinion practice on a scale of 1 to 5, where 1 signifies that your firm seldom delivers Opinion Letters and 5 signifies that representing clients in business transactions is an important part of your firm's practice requiring frequent delivery of Opinion Letters. (Please check only one answer.)

| | | |
|-------|-----|-----|
| -1 | 21 | 8% |
| -2 | 34 | 13% |
| -3 | 62 | 23% |
| -4 | 60 | 23% |
| -5 | 89 | 34% |
| Total | 266 | |

267. Answered only by firms that checked "yes" to Question 43.

44.2 Approximately how many attorneys in your firm practice in the areas in which Opinion Letters covered by this Survey are issued??

| | | |
|----------|-----|-----|
| -1-10 | 80 | 30% |
| -11-25 | 50 | 19% |
| -26-50 | 22 | 8% |
| -Over 50 | 115 | 43% |
| Total | 267 | |

44.3 How many offices does your firm have?

| | | |
|---------------|-----|-----|
| -1 | 78 | 29% |
| -2-5 | 84 | 31% |
| -6-10 | 38 | 14% |
| -More than 10 | 68 | 25% |
| Total | 268 | |

44.4 How many of your firm's offices are outside of the United States?

| | | |
|---------------|-----|-----|
| -None | 191 | 71% |
| -1 | 11 | 4% |
| -2-5 | 30 | 11% |
| -6-10 | 18 | 7% |
| -More than 10 | 21 | 8% |
| Total | 271 | |

44.5 Please indicate the location of your firm's headquarters

| | |
|------------------|----|
| Alabama - AL | 1 |
| Alaska - AK | 0 |
| Arizona - AZ | 6 |
| Arkansas - AR | 1 |
| California - CA | 17 |
| Colorado - CO | 5 |
| Connecticut - CT | 2 |
| Delaware - DE | 8 |
| Florida - FL | 10 |
| Georgia - GA | 6 |
| Hawaii - HI | 3 |
| Idaho - ID | 2 |
| Illinois - IL | 9 |
| Indiana - IN | 2 |
| Iowa - IA | 2 |

| | |
|-----------------------------------|--------------------|
| Kansas - KS | 0 |
| Kentucky - KY | 0 |
| Louisiana - LA | 4 |
| Maine - ME | 4 |
| Maryland - MD | 4 |
| Massachusetts - MA | 11 |
| Michigan - MI | 6 |
| Minnesota - MN | 3 |
| Mississippi - MS | 2 |
| Missouri - MO | 5 |
| Montana - MT | 0 |
| Nebraska - NE | 0 |
| Nevada - NV | 1 |
| New Hampshire - NH | 2 |
| New Jersey - NJ | 10 |
| New Mexico - NM | 2 |
| New York - NY | 28 |
| North Carolina - NC | 11 |
| North Dakota - ND | 0 |
| Ohio - OH | 8 |
| Oklahoma - OK | 4 |
| Oregon - OR | 4 |
| Pennsylvania - PA | 11 |
| Puerto Rico - PR | 1 |
| Rhode Island - RI | 1 |
| South Carolina - SC | 0 |
| South Dakota - SD | 0 |
| Tennessee - TN | 4 |
| Texas - TX | 12 |
| Utah - UT | 1 |
| Vermont - VT | 0 |
| Virginia - VA | 8 |
| Washington - WA | 3 |
| Washington, D.C. - DC | 5 |
| West Virginia - WV | 0 |
| Wisconsin - WI | 2 |
| Wyoming - WY | 0 |
| Outside the U.S. | 8 |
| I decline to answer this question | 6 |
| Total | 245 ²⁶⁸ |

268. This is the total number of firms answering the question.

44.6 Please indicate each U.S. state in which your firm has an office.

| | |
|---------------------|----|
| Alabama - AL | 6 |
| Alaska - AK | 3 |
| Arizona - AZ | 15 |
| Arkansas - AR | 1 |
| California - CA | 83 |
| Colorado - CO | 26 |
| Connecticut - CT | 11 |
| Delaware - DE | 26 |
| Florida - FL | 42 |
| Georgia - GA | 24 |
| Hawaii - HI | 3 |
| Idaho - ID | 6 |
| Illinois - IL | 42 |
| Indiana - IN | 3 |
| Iowa - IA | 3 |
| Kansas - KS | 0 |
| Kentucky - KY | 2 |
| Louisiana - LA | 9 |
| Maine - ME | 6 |
| Maryland - MD | 14 |
| Massachusetts - MA | 34 |
| Michigan - MI | 11 |
| Minnesota - MN | 11 |
| Mississippi - MS | 5 |
| Missouri - MO | 8 |
| Montana - MT | 2 |
| Nebraska - NE | 2 |
| Nevada - NV | 13 |
| New Hampshire - NH | 6 |
| New Jersey - NJ | 28 |
| New Mexico - NM | 6 |
| New York - NY | 97 |
| North Carolina - NC | 25 |
| North Dakota - ND | 2 |
| Ohio - OH | 12 |
| Oklahoma - OK | 6 |
| Oregon - OR | 9 |
| Pennsylvania - PA | 27 |
| Puerto Rico - PR | 1 |
| Rhode Island - RI | 3 |

| | |
|-----------------------------------|----|
| South Carolina - SC | 7 |
| South Dakota - SD | 1 |
| Tennessee - TN | 8 |
| Texas - TX | 60 |
| Utah - UT | 7 |
| Vermont - VT | 0 |
| Virginia - VA | 23 |
| Washington - WA | 15 |
| Washington, D.C. - DC | 96 |
| West Virginia - WV | 1 |
| Wisconsin - WI | 6 |
| Wyoming - WY | 1 |
| I decline to answer this question | 13 |

APPENDIX 2

Charts Derived from Selected Survey Responses (By Firm Size)²⁶⁹

CHART 1

QUESTION 1

FIRM OPINION ACTIVITIES

Please indicate whether your firm has any of the following policies or procedures (Please check all that apply.)

| | Number of Firm Lawyers | | | | | | | Total ²⁷⁰ |
|---|------------------------|-----------|-----------|-----------|-----------|-----------|-----------|--------------------------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Procedures for providing Opinion Letters | 18 | 21 | 21 | 73 | 38 | 42 | 30 | 243 |
| Policies on whether to give Opinions or types of Opinions | 17 | 13 | 13 | 56 | 34 | 37 | 27 | 197 |
| Policies on the substantive content or wording of your firm's Opinion Letters or particular Opinions | 18 | 14 | 12 | 54 | 26 | 35 | 29 | 188 |
| Procedures for reviewing Opinion Letters of other law firms addressed to your firm's clients as part of transactions | 10 | 4 | 6 | 18 | 6 | 11 | 3 | 58 |
| Policies on the substantive content or wording of Opinion Letters of other law firms addressed to your firm's clients | 5 | 3 | 3 | 9 | 1 | 6 | 0 | 27 |
| TOTAL²⁷¹ | 24 | 21 | 21 | 73 | 40 | 42 | 30 | 251²⁷² |

269. See the note at the beginning of Appendix 1.

270. This is the total number of firms that checked each answer and designated their firm size.

271. This is the total number of firms that answered Question 1 by firm size. In some cases, the total is less than the sum of the column because some firms checked more than one answer.

272. This is the total number of firms that answered Question 1 and designated their firm size.

CHART 2

QUESTION 3
NUMBER OF FIRMS WITH OPINION COMMITTEES

How many opinion committees does your firm have?

| | Number of Firm Lawyers | | | | | | | Total |
|---------------|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| None | 23 | 11 | 5 | 14 | 3 | 2 | 1 | 59 |
| One | 11 | 13 | 19 | 54 | 32 | 32 | 19 | 180 |
| More than one | 0 | 1 | 0 | 7 | 5 | 8 | 10 | 31 |
| TOTAL | 34 | 25 | 24 | 75 | 40 | 42 | 30 | 270 |

CHART 3

QUESTION 4
OPINION COMMITTEE REVIEW OF INDIVIDUAL OPINION LETTERS

Does/do your firm's opinion committee(s) (including action by committee members) review, clear, or approve individual Opinion Letters to be provided by your firm?

| | Number of Firm Lawyers | | | | | | | Total |
|-------|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Yes | 11 | 13 | 17 | 56 | 32 | 24 | 18 | 171 |
| No | 0 | 1 | 2 | 5 | 5 | 16 | 11 | 40 |
| TOTAL | 11 | 14 | 19 | 61 | 37 | 40 | 29 | 211 |

CHART 4

QUESTION 5
 OPINION COMMITTEE PREPARATION OR APPROVAL OF OPINION
 POLICIES OR PROCEDURES

Does/do your firm's opinion committee(s) (including actions by committee members) prepare or approve firm opinion policies or procedures?

| | Number of Firm Lawyers | | | | | | | Total |
|-------|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Yes | 8 | 10 | 14 | 47 | 35 | 37 | 27 | 178 |
| No | 3 | 5 | 5 | 12 | 2 | 3 | 2 | 32 |
| TOTAL | 11 | 15 | 19 | 59 | 37 | 40 | 29 | 210 |

CHART 5

QUESTION 6
 OPINION COMMITTEE ADMINISTRATION, MONITORING, OR
 WAIVING OF POLICIES OR PROCEDURES

Does/do your firm's opinion committee(s) (including action by committee members) administer, monitor, or waive compliance with firm opinion policies or procedures?

| | Number of Firm Lawyers | | | | | | | Total |
|-------|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Yes | 8 | 13 | 14 | 47 | 28 | 33 | 22 | 165 |
| No | 3 | 2 | 5 | 14 | 9 | 7 | 6 | 46 |
| TOTAL | 11 | 15 | 19 | 61 | 37 | 40 | 28 | 211 |

CHART 6

QUESTION 7

OPINION COMMITTEE PREPARATION OR APPROVAL OF SAMPLES

Does/do your firm's opinion committee(s) (including actions by committee members) prepare or approve forms, samples, or model Opinions, Opinion Letters, supporting documentation, or other materials?

| | Number of Firm Lawyers | | | | | | | Total |
|-------|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Yes | 9 | 9 | 14 | 51 | 27 | 37 | 27 | 174 |
| No | 2 | 6 | 5 | 10 | 10 | 3 | 2 | 38 |
| TOTAL | 11 | 15 | 19 | 61 | 37 | 40 | 29 | 212 |

CHART 7

QUESTION 8

OPINION COMMITTEE RESPONSIBILITY FOR EDUCATION
OR TRAINING

Does/do your firm's opinion committee(s) (including actions by committee members) conduct or oversee education or training of your firm's lawyers on opinion matters?

| | Number of Firm Lawyers | | | | | | | Total |
|-------|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Yes | 6 | 8 | 11 | 44 | 32 | 31 | 25 | 157 |
| No | 5 | 7 | 8 | 17 | 5 | 9 | 4 | 55 |
| TOTAL | 11 | 15 | 19 | 61 | 37 | 40 | 29 | 212 |

CHART 8

QUESTION 10
WHO APPOINTS FIRM COMMITTEES?

How are members of your firm’s opinion committee or committees appointed?
(Please check all that apply.)

| | Number of Firm Lawyers | | | | | | | Total ²⁷³ |
|---|------------------------|-------|-------|--------|---------|----------|--------|----------------------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| By firm management or management committee | 10 | 8 | 9 | 37 | 26 | 22 | 25 | 137 |
| By firm general counsel | 0 | 0 | 0 | 1 | 5 | 3 | 2 | 11 |
| By practice groups | 0 | 3 | 1 | 12 | 9 | 9 | 6 | 40 |
| By opinion committee chair | 1 | 0 | 4 | 7 | 8 | 12 | 14 | 46 |
| By the committee itself | 0 | 1 | 8 | 10 | 6 | 8 | 7 | 40 |
| It depends on the committee (Please explain.) | 0 | 1 | 1 | 1 | 1 | 2 | 0 | 6 |
| Other (Please describe.) | 0 | 1 | 0 | 2 | 3 | 4 | 2 | 12 |
| TOTAL ²⁷⁴ | 11 | 14 | 19 | 61 | 37 | 40 | 29 | 211 ²⁷⁵ |

CHART 9

QUESTION 14
CONSULTATION POLICY AND PRACTICE

Does your firm have a policy or practice regarding Opinion Preparers consulting with or obtaining approval by another lawyer or lawyers (the “Consulted Lawyer” before providing an Opinion letter? (Note: The Consulted Lawyer could be a firm opinion committee(s) or one or more members thereof.)

| | Number of Firm Lawyers | | | | | | | Total |
|-------|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Yes | 23 | 18 | 20 | 63 | 36 | 39 | 28 | 227 |
| No | 11 | 8 | 4 | 12 | 4 | 3 | 2 | 44 |
| TOTAL | 34 | 26 | 24 | 75 | 40 | 42 | 30 | 271 |

273. This is the total number of firms that checked each answer and designated their firm size.

274. This is the total number of firms that answered Question 10 by firm size. In some cases, the total is less than the sum of the column because some firms checked more than one answer.

275. This is the total number of firms that answered Question 10 and designated their firm size.

CHART 10

QUESTION 20

INVOLVEMENT OF CONSULTING LAWYER WITH THE TRANSACTION

Does your firm's policy or practice regarding consultation call for the Consulted Lawyer not to be otherwise involved in the transaction?

| | Number of Firm Lawyers | | | | | | | Total |
|---|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Always | 3 | 4 | 3 | 13 | 13 | 15 | 12 | 63 |
| In some but not all situations (Please explain.) | 3 | 2 | 3 | 6 | 4 | 4 | 6 | 28 |
| No | 17 | 12 | 14 | 44 | 19 | 20 | 10 | 136 |
| TOTAL | 23 | 18 | 20 | 63 | 36 | 39 | 28 | 227 |

CHART 11

QUESTION 30

FIRM LAWYER OPINION EDUCATION

Aside from one-on-one training in actual practice and making opinion materials available to its lawyers, does your firm routinely do any of the following to train or educate its lawyers on opinion matters? (Please check all that apply.)

| | Number of Firm Lawyers | | | | | | | Total ²⁷⁶ |
|---|------------------------|-------|-------|--------|---------|----------|--------|----------------------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Advise lawyers of programs by external providers | 9 | 5 | 6 | 29 | 15 | 7 | 6 | 77 |
| Discuss opinion topics at practice group or similar meetings | 14 | 9 | 14 | 44 | 29 | 27 | 21 | 158 |
| Distribute memoranda, newsletters, and/or other opinion-related materials produced inside the firm | 5 | 3 | 5 | 28 | 12 | 18 | 17 | 88 |
| Distribute memoranda, newsletters, and/or other opinion-related materials produced outside the firm | 12 | 11 | 8 | 40 | 15 | 18 | 18 | 122 |
| Encourage lawyers to review or use annotations to or other comments on | 12 | 5 | 7 | 23 | 11 | 20 | 23 | 101 |

Continued

276. This is the total number of firms that checked each item and designated their firm size.

Continued

| | Number of Firm Lawyers | | | | | | | Total |
|--|------------------------|-------|-------|--------|---------|----------|--------|--------------------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| your firm's form or sample opinion letters | | | | | | | | |
| Encourage lawyers to review or use treatises, bar reports, form or sample Opinion Letters, or Opinions, or other resources made available to them by your firm | 17 | 15 | 15 | 49 | 24 | 24 | 25 | 169 |
| None of the above | 10 | 7 | 4 | 8 | 2 | 4 | 0 | 35 |
| Offer internal seminars or presentations | 1 | 2 | 8 | 36 | 28 | 28 | 28 | 131 |
| Other (Please describe.) | 1 | 0 | 0 | 4 | 1 | 3 | 0 | 9 |
| TOTAL ²⁷⁷ | 34 | 26 | 24 | 75 | 40 | 42 | 30 | 271 ²⁷⁸ |

CHART 12

QUESTION 31

RESPONSIBILITY FOR OPINION EDUCATION

In general, who in your firm is responsible for education or training on opinion matters? (Please check all that apply.)

| | Number of Firm Lawyers | | | | | | | Total ²⁷⁹ |
|--|------------------------|-------|-------|--------|---------|----------|--------|----------------------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| A lawyer or lawyers in one or more designated groups | 4 | 7 | 8 | 17 | 11 | 7 | 7 | 61 |
| A separate internal education committee | 0 | 0 | 0 | 4 | 3 | 4 | 7 | 18 |
| An opinion committee or committees | 5 | 6 | 5 | 27 | 18 | 23 | 14 | 98 |
| Member(s) or designee(s) of an opinion committee | 5 | 5 | 11 | 28 | 21 | 16 | 17 | 103 |

Continued

277. This is the total number of firms that answered Question 30 by firm size. In some cases, the total is less than the sum of the column because some firms checked more than one answer.

278. This is the total number of firms that answered Question 30 and designated their firm size.

279. This is the total number of firms that checked each item and designated their firm size.

Continued

| | Number of Firm Lawyers | | | | | | | Total |
|---|------------------------|-------|-------|--------|---------|----------|--------|--------------------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| One or more partners or equivalent with transactional practices involving Opinion Letters | 16 | 8 | 7 | 28 | 13 | 11 | 9 | 91 |
| Other (Please describe.) | 0 | 1 | 0 | 1 | 2 | 2 | 1 | 7 |
| TOTAL ²⁸⁰ | 24 | 18 | 19 | 65 | 38 | 38 | 29 | 231 ²⁸¹ |

CHART 13

QUESTION 33

OPINIONS ON DELAWARE ENTITIES BY NON-DELAWARE FIRMS

When asked, does your firm give Opinions (at least those not addressing novel or complex legal issues) on the following matters regarding Delaware entities without consulting Delaware counsel?²⁸²

| | Number of Firm Lawyers | | | | | | | Total |
|--|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Entity status and power and authorization of specified actions by corporations | | | | | | | | |
| Yes | 18 | 22 | 19 | 62 | 37 | 34 | 25 | 217 |
| No | 6 | 3 | 4 | 5 | 0 | 0 | 0 | 18 |
| Not Called for in Firm's Practice | 8 | 1 | 2 | 3 | 0 | 0 | 0 | 14 |
| TOTAL | 32 | 26 | 25 | 70 | 37 | 34 | 25 | 249 |
| Entity status and power and authorization of specified actions by limited partnerships | | | | | | | | |
| Yes | 17 | 15 | 14 | 51 | 35 | 29 | 24 | 185 |
| No | 7 | 6 | 4 | 8 | 1 | 5 | 0 | 31 |
| Not Called for in Firm's Practice | 8 | 5 | 5 | 7 | 0 | 0 | 1 | 26 |
| TOTAL | 32 | 26 | 23 | 66 | 36 | 34 | 25 | 242 |

Continued

280. This is the total number of firms that answered Question 31 by firm size. In some cases, the total is less than the sum of the column because some firms checked more than one answer.

281. This is the total number of firms that answered Question 31 and designated their firm size.

282. Proportions in the report do not take into account the selection of "Not Called for in Firm's Practice" in these questions.

Continued

| | Number of Firm Lawyers | | | | | | | Total |
|---|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Entity status and power and authorization of specified actions by limited liability companies | | | | | | | | |
| Yes | 19 | 22 | 16 | 59 | 37 | 32 | 25 | 210 |
| No | 5 | 3 | 5 | 7 | 0 | 2 | 0 | 22 |
| Not Called for in Firm's Practice | 8 | 1 | 2 | 3 | 0 | 1 | 0 | 15 |
| TOTAL | 32 | 26 | 23 | 69 | 37 | 35 | 25 | 247 |

| | Number of Firm Lawyers | | | | | | | Total |
|--|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |

| | | | | | | | | |
|-----------------------------------|----|----|----|----|----|----|----|-----|
| Issuance of stock of corporations | | | | | | | | |
| Yes | 10 | 15 | 14 | 44 | 30 | 30 | 20 | 163 |
| No | 9 | 5 | 8 | 12 | 3 | 2 | 3 | 42 |
| Not called for in Firm's Practice | 13 | 6 | 2 | 8 | 3 | 1 | 1 | 34 |
| TOTAL | 32 | 26 | 24 | 64 | 36 | 33 | 24 | 239 |

| | | | | | | | | |
|---|----|----|----|----|----|----|----|-----|
| Issuance of partnership interests in limited partnerships | | | | | | | | |
| Yes | 9 | 8 | 7 | 38 | 26 | 25 | 18 | 131 |
| No | 9 | 6 | 9 | 13 | 6 | 6 | 3 | 52 |
| Not Called for in Firm's Practice | 14 | 12 | 7 | 11 | 3 | 1 | 3 | 51 |
| TOTAL | 32 | 26 | 23 | 62 | 35 | 32 | 24 | 234 |

| | | | | | | | | |
|---|----|----|----|----|----|----|----|-----|
| Issuance of membership interests in limited liability companies | | | | | | | | |
| Yes | 11 | 12 | 11 | 44 | 26 | 27 | 19 | 150 |
| No | 9 | 5 | 9 | 13 | 7 | 5 | 3 | 51 |
| Not Called for in Firm's Practice | 12 | 9 | 3 | 7 | 3 | 2 | 2 | 38 |
| TOTAL | 32 | 26 | 23 | 64 | 36 | 34 | 24 | 239 |

| | Number of Firm Lawyers | | | | | | | Total |
|--|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |

| | | | | | | | | |
|---|----|----|----|----|----|----|----|----|
| Limited liability of limited partners of limited partnerships | | | | | | | | |
| Yes | 9 | 6 | 6 | 22 | 14 | 18 | 6 | 81 |
| No | 13 | 10 | 10 | 23 | 14 | 10 | 13 | 93 |

Continued

Continued

| | Number of Firm Lawyers | | | | | | | Total |
|---|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Not Called for in Firm's Practice | 10 | 10 | 7 | 18 | 7 | 3 | 5 | 60 |
| TOTAL | 32 | 26 | 23 | 63 | 35 | 31 | 24 | 234 |
| Limited liability of members of limited liability companies | | | | | | | | |
| Yes | 9 | 8 | 7 | 23 | 17 | 17 | 6 | 87 |
| No | 13 | 9 | 10 | 22 | 12 | 9 | 12 | 87 |
| Not Called for in Firm's Practice | 10 | 8 | 6 | 18 | 7 | 4 | 6 | 59 |
| TOTAL | 32 | 25 | 23 | 63 | 36 | 30 | 24 | 233 |

CHART 14

QUESTION 35
OPINIONS ON OTHER STATE LAW

When asked, without consulting local counsel, does your firm give Opinions (at least those not addressing novel or complex legal issues) on the following laws when your firm does not have an office in the applicable state?²⁸³

| | Number of Firm Lawyers | | | | | | | Total |
|----------------------------------|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Nevada Corporations Code | | | | | | | | |
| Yes | 1 | 1 | 4 | 8 | 8 | 7 | 1 | 30 |
| No (or rarely) | 20 | 19 | 13 | 51 | 28 | 26 | 28 | 185 |
| Not Called for in Firm Practice | 13 | 6 | 7 | 19 | 3 | 5 | 1 | 54 |
| TOTAL | 34 | 26 | 24 | 78 | 39 | 38 | 30 | 269 |
| Maryland General Corporation Law | | | | | | | | |
| Yes | 0 | 0 | 1 | 7 | 8 | 8 | 4 | 28 |
| No (or rarely) | 18 | 20 | 13 | 50 | 27 | 25 | 22 | 175 |
| Not Called for in Firm Practice | 15 | 6 | 10 | 17 | 2 | 5 | 1 | 56 |
| TOTAL | 33 | 26 | 24 | 74 | 37 | 38 | 27 | 259 |

Continued

²⁸³ Proportions in the report do not take into account the selection of "Not Called for in Firm Practice" in this question.

Continued

| | Number of Firm Lawyers | | | | | | | Total |
|--|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| New York Contract Law | | | | | | | | |
| Yes | 3 | 3 | 2 | 25 | 19 | 18 | 6 | 76 |
| No (or rarely) | 19 | 20 | 16 | 39 | 8 | 8 | 3 | 113 |
| Not Called for in Firm Practice | 12 | 3 | 5 | 7 | 2 | 5 | 3 | 37 |
| TOTAL | 34 | 26 | 23 | 71 | 29 | 31 | 12 | 226 |
| Delaware Contract Law | | | | | | | | |
| Yes | 4 | 4 | 3 | 13 | 8 | 7 | 0 | 39 |
| No (or rarely) | 18 | 19 | 18 | 51 | 30 | 29 | 24 | 189 |
| Not Called for in Firm Practice | 11 | 2 | 3 | 7 | 1 | 3 | 0 | 27 |
| TOTAL | 33 | 25 | 24 | 71 | 39 | 39 | 24 | 255 |
| Contract Law of any state other than New York or Delaware | | | | | | | | |
| Yes | 6 | 2 | 5 | 9 | 6 | 5 | 2 | 35 |
| No (or rarely) | 19 | 21 | 16 | 57 | 31 | 30 | 24 | 198 |
| Not Called for in Firm Practice | 9 | 3 | 3 | 9 | 1 | 3 | 0 | 28 |
| TOTAL | 34 | 26 | 24 | 75 | 38 | 38 | 26 | 261 |
| Entity Law of any state other than Delaware, and other than (1) Nevada Corporation Law or (2) the Maryland General Corporation Law | | | | | | | | |
| Yes | 6 | 2 | 7 | 17 | 9 | 11 | 5 | 57 |
| No (or rarely) | 19 | 20 | 14 | 51 | 27 | 26 | 24 | 181 |
| Not Called for in Firm Practice | 9 | 4 | 3 | 6 | 1 | 3 | 0 | 26 |
| TOTAL | 34 | 26 | 24 | 74 | 37 | 40 | 29 | 264 |

CHART 15

QUESTION 36
REVIEW OF OPINIONS ON OTHER STATE LAW

When an Opinion on the law of another state in which your firm does not have an office (other than Delaware) is given by your firm, is it typically reviewed by a lawyer in your firm who is licensed or practices in the state whose law is covered by the Opinion?

| | Number of Firm Lawyers | | | | | | | Total |
|-------|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Yes | 4 | 3 | 4 | 33 | 21 | 17 | 6 | 88 |
| No | 5 | 4 | 4 | 7 | 8 | 8 | 3 | 39 |
| TOTAL | 9 | 7 | 8 | 40 | 29 | 25 | 9 | 127 |

CHART 16

QUESTION 37
OPINIONS ON THE UCC OF OTHER STATES

When asked, without consulting local counsel, does your firm give Opinions on the following Articles of the Uniform Commercial Code (as reported in a publicly available compilation, or otherwise) of a state or states in which your firm does not have an office?²⁸⁴

| | Number of Firm Lawyers | | | | | | | Total | | |
|---------------------------------|------------------------|-------|-------|--------|---------|----------|--------|-------|----|-----|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | | | |
| Article 8 | | | | | | | | | | |
| Yes | | | 5 | 7 | 5 | 32 | 26 | 21 | 20 | 116 |
| No | | | 17 | 13 | 12 | 30 | 9 | 13 | 7 | 101 |
| Not Called for in Firm Practice | | | | | | | | | | |
| | | | 13 | 7 | 7 | 10 | 4 | 6 | 1 | 48 |
| TOTAL | | | 35 | 27 | 24 | 72 | 39 | 40 | 28 | 265 |
| Article 9 | | | | | | | | | | |
| Yes | | | 13 | 15 | 14 | 48 | 34 | 31 | 24 | 179 |
| No | | | 13 | 11 | 8 | 23 | 5 | 9 | 4 | 73 |

Continued

²⁸⁴ Proportions in the report do not take into account the selection of "Not Called for in Firm Practice" in this question.

Continued

| | Number of Firm Lawyers | | | | | | | Total |
|---------------------------------|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Not Called for in Firm Practice | 8 | 1 | 2 | 4 | 0 | 2 | 0 | 17 |
| TOTAL | 34 | 27 | 24 | 75 | 39 | 42 | 28 | 269 |

CHART 17

QUESTION 39

NO BREACH OR DEFAULT OPINIONS

As a general rule, in giving an Opinion that entering into an agreement for a transaction will not result in a breach of or default under other agreements, does your firm expressly limit the coverage of the Opinion to other agreements that are:

| | Number of Firm Lawyers | | | | | | | Total |
|--------------------------------|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Identified in a specified list | 10 | 7 | 12 | 41 | 34 | 34 | 27 | 165 |
| Known to your firm | 16 | 17 | 12 | 30 | 5 | 5 | 1 | 86 |
| No limitation | 1 | 1 | 0 | 1 | 0 | 0 | 1 | 4 |
| Other (Please describe.) | 6 | 1 | 0 | 4 | 1 | 3 | 1 | 16 |
| TOTAL | 33 | 26 | 24 | 76 | 40 | 42 | 30 | 271 |

CHART 18

QUESTION 40

NO BREACH OR DEFAULT OPINIONS ON FINANCIAL COVENANTS

As a general rule, in giving an Opinion that entering into an agreement for a transaction will not result in a breach of or default under other agreements, does your firm regularly cover financial covenants in the other agreements?²⁸⁵

| | Number of Firm Lawyers | | | | | | | Total |
|--|------------------------|-----------|-----------|-----------|-----------|-----------|-----------|------------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Yes | 1 | 1 | 0 | 1 | 2 | 2 | 1 | 8 |
| No | 15 | 17 | 20 | 47 | 33 | 27 | 21 | 180 |
| Prefer not to cover financial covenants but sometimes will (Please explain.) | 2 | 1 | 1 | 4 | 1 | 4 | 4 | 17 |
| It depends on the provision or the situation (Please explain.) | 3 | 1 | 1 | 4 | 0 | 1 | 2 | 12 |
| No policy or established practice | 12 | 6 | 2 | 20 | 4 | 8 | 2 | 54 |
| TOTAL | 33 | 26 | 24 | 76 | 40 | 42 | 30 | 271 |

CHART 19

QUESTION 41

OPINIONS ON ENFORCEMENT OF ARBITRATION PROVISIONS

As a general rule, in giving an Opinion on the enforceability of an agreement in a wholly domestic U.S. transaction, does your firm regularly cover provisions requiring arbitration?²⁸⁶

| | Number of Firm Lawyers | | | | | | | Total |
|---|------------------------|-------|-------|--------|---------|----------|--------|-------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| Yes | 8 | 4 | 7 | 15 | 9 | 5 | 4 | 52 |
| No | 15 | 15 | 12 | 40 | 19 | 21 | 17 | 139 |
| Prefer not to cover arbitration provisions but sometimes will (Please explain.) | 0 | 0 | 0 | 2 | 1 | 4 | 5 | 12 |

Continued

²⁸⁵ Proportions in the report do not take into account the selection of "No policy or established practice" in this question.

²⁸⁶ Proportions in the report do not take into account the selection of "No policy or established practice" in this question.

Continued

| | Number of Firm Lawyers | | | | | | | Total |
|--|------------------------|-----------|-----------|-----------|-----------|-----------|-----------|------------|
| | 1-10 | 11-25 | 26-50 | 51-200 | 201-500 | 501-1000 | >1,000 | |
| It depends on the provision or the situation (Please explain.) | 0 | 2 | 0 | 1 | 0 | 2 | 0 | 5 |
| No policy or established practice | 10 | 4 | 5 | 18 | 11 | 10 | 3 | 61 |
| TOTAL | 33 | 24 | 24 | 76 | 40 | 42 | 29 | 269 |

