

January 2008 Newsletter

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January 2008 Newsletter of the Business Law Section of the State Bar of Texas

Message from the Chair

As Chair of the Business Law Section, I am pleased to report to you on some of the activities of the Business Law Section and its Committees.

- Last Spring, the Council determined that the Section needs a major upgrade to its website. Our committees produce a tremendous amount of useful information; however, we have not been as timely as we would like in getting that information to our members. As further discussed below, we anticipate that we will launch the new website in the next few months allowing our members more current access to information regarding the Section's activities.

- The *Texas Journal of Business Law* has successfully transitioned to South Texas College of Law and, will soon be publishing its second issue since the move with articles on choice of entity, the Texas margin tax, and current developments. Future issues will have articles on the Texas Business Organizations Code, updates to Article 9 of the Uniform Commercial Code, and Sarbanes Oxley.

- Many of our committees are actively working on substantive projects. The Opinion Law Committee is currently reviewing the proposed multi-state report on the *Role of Customary Practice in the Preparation and Understanding of Third-Party Legal Opinions*. The Business Organizations Code Committee is reviewing the *Texas Business Organizations Code* for potential clean-up matters. The Securities Law Committee is reviewing the SEC's proposed revisions to Regulation D and other rules involving private offerings. For more information on the Section's committees, please see our website <http://www.texasbusinesslaw.org/committees.html>.

I want to thank our immediate past chair, John Ale, for his service in 2006-2007, as well as the entire Council for their efforts.

Scott G. Night

Chair, Business Law Section, 2007-2008

ABA Business Law Section Spring Meeting

The ABA Business Law Section will be holding its Spring Meeting in Dallas on April 10-13, 2008. Our Section will be a program sponsor and a number of members of the Business Law Section are participating in the Host Planning Committee and/or the many committee meetings and presentations at the Spring Meeting. This will be a tremendous event with more than 2,000 lawyers attending from across the United States and abroad. Members of the State Bar of Texas can take advantages of lower registration fees. We will be providing more information on the meeting in the coming months.

For more information concerning the meeting
<http://www.abanet.org/buslaw/meetings/2008/spring/>

Personal Information Restriction Designation

Governor Rick Perry signed into law legislation that allows lawyers to keep confidential the following information if contained in State Bar records: home address, home telephone number, social security number, email address, and date of birth. This amendment to Section 552.1176 of the Texas Government Code takes effect on September 1, 2007.

In accordance with this new law, attorneys who want to restrict this personal information from public access can do so either electronically, or by completing the Restriction for Public Access of Personal Information document ([Click here to download PDF](#)) and submitting a signed copy to the State Bar of Texas via mail, email (in Adobe PDF format to memmail@texasbar.com) or via fax to (512) 427-4124.

The fastest way for you to make this designation is to click on the following link which will allow you to make this designation ONLINE with no paper, faxing or stamps!

[Online Personal Information Restriction Designation](#)

If the above link does not work, please access the survey by copying the url <http://texasbar.informz.net/survistapro/s.asp?id=787> into your browser's address bar.

PLEASE NOTE: If you DO NOT make this designation to the State Bar of Texas, the above information- with the exception of email address and SSN which are protected under another statutory provision- can be released to the public upon request.

Attorneys whose home address is the only address on file who choose to restrict it for public access should consider providing an alternate public contact (or office) address for clients or potential clients by updating the "office address" in their online Attorney Profile contact information on the State Bar website (www.texasbar.com).

If you have any questions, contact the State Bar Membership Department at (800) 204-2222, ext. 1383, or locally at (512) 427-1383.

Preserving the Attorney-Client Privilege

The Law of Lawyers Committee is focused on preserving the attorney-client privilege. In November 2007, the United States House of Representatives passed H.R. 3013 "The Attorney-Client Privilege Protection Act of 2007," which would prevent any federal agency or agent from forcing a corporation or employee to waive the attorney-client privilege or turn over documents protected by the work product doctrine. H.R. 3013 is a bi-partisan bill supported by the Chairman and Ranking Member of the Full and Subcommittee of jurisdiction.

H.R. 3013 is a legislative reaction to the Department of Justice position articulated in the Thompson memorandum (2003) and the subsequent McNulty memorandum (2006), which focused, among other things, on whether a target company or individual in a criminal prosecution in order to be considered as “cooperating” in the federal probe for sentencing purposes (i) would be required to waive the attorney-client privilege or the work product doctrine; or (ii) would be required to waive any advanced costs or indemnification of an employee that might be the focus of the investigation. The McNulty memorandum is a softer and gentler version of the Thompson memorandum, which was drafted to address corporate fraud.

The Federal banking agencies, led by the Federal Reserve, are advocating for an exception to H.R. 3013 as a result of a provision in the Financial Services Regulatory Relief Act of 2006, which permits an individual or a financial institution to disclose privileged information and documents to federal or state banking agency without waiving the privilege to third parties other than the banking agency. This provision is codified at 12 U.S.C. 1828(x). H.R. 3013 as passed by the House contains an exception for this authority from the policy of protecting the privilege reflected in H.R. 3013. A companion bill, S. 186 is pending in the United States Senate.

For more information on the Law of Lawyers Committee
<http://www.texasbusinesslaw.org/proethics.html>

ABA-sponsored national Working Group on Legal Opinion holds seminar

The ABA-sponsored national Working Group on Legal Opinions held its third semi-annual seminar in NYC on October 30. Representatives of bar association groups, including the Texas Business Law Section, and law firms from around the country participated. Topics discussed included: responsibilities and concerns of opinion recipients and of local counsel, foreign counsel opinions, opinions to accountants, rating agencies and regulators, assignable opinions, opinions on due authorization of preferred stock, structured finance and merger and acquisition opinions, and current and upcoming bar reports. Copies of the seminar handbook are available for purchase by contacting the ABA Section of Business Law at (312) 988-5680 or e-mailing ruppr@staff.abanet.org.

Upcoming CLE Programs

The Section sponsors or co-sponsors a number of continuing legal education seminars each year, including a free CLE program to its members every year at the State Bar of Texas Annual Meeting. In some instances, discounts on registration fees are available to members of the Section. Upcoming CLE programs include the following:

Texas Business Organizations: Choice of Entity and Formation 2008

San Antonio - May 23, 2008

Click here

[http://www.texasbarcle.com/CLE/COSearchResults.asp?cbMyAreas=1&sSearchCity=*&sSearchMediums=LVTSW&sSearchMonthYear=*&sSortBy=Date] for more information

State Bar Annual Meeting—Business Law and Corporate Counsel CLE

Houston—June 26th and 27th in 2008

Thursday, June 26, 2008 is a free CLE with more information to come in the next newsletter.

Advanced Business Law Course

Dallas—October 16th and 17th in 2008