

Opinion Letters to Clients – Developing Customs and Usages for the Role and Responsibilities of Lawyers in Preparing Opinion Letters to Clients

**LLCs, LPs and Partnerships
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Lawyer Advice and Opinions

Lawyers render advice and opinions *to their clients*, written and verbal, and render written opinions *to third parties*, at the request of their clients (a “*third-party opinion*”).

This presentation addresses (i) the considerable differences in these two types of opinions and in the circumstances in which they arise, (ii) where, if at all, those differences share common ground, and (iii) the need to develop customs and usages for client opinions and the guidance afforded by the Bandera decision.

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Client Opinions

Client opinions (i) address, in varied ways, a variety of unique contexts and legal issues (and often mixed legal-factual issues), (ii) are principally subject to rules of professional responsibility owed to the client, and (iii) are *not* prepared and understood under any *customs and usages* developed by its practitioners.

Because the Bandera decision is at the core of today’s presentation, this presentation focuses on *written opinions* to a client (“*client opinions*”); however, much of the guidance provided by Bandera should be considered when providing verbal advice and other forms of opinions to a client.

[Slides 5-14; Compared to Third-Party Opinion, Slides 28-31]

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Client Opinion

- Communication by attorney to client
- Relied on solely by client/to guide client
- Coverage: context; facts; law; diligence performed; assumptions (stated or unstated); agreed to by, and subject to informed agreement or direction of, client
- Advice and the background confidential and privileged

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Client Opinion

- Examples of opinions covered:
 - government approvals or requirements to undertake or complete a project
 - whether a disposition results in sale of all or substantially all assets or otherwise requires shareholder or indenture holder consent
 - satisfaction of contractual condition (e.g., Bandera)
 - interpretations of Partnership or LLC agreement
 - other formal advice requested by the client

each of which requires diligence that varies with the context

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