

---

# NABL: THE FIRST FORTY YEARS

*"Spectacular People, Excellent Leaders, Lawyers of Conscience"*

---



---

2019

## **NABL: The First Forty Years**

*"Spectacular People, Excellent Leaders, Lawyers of Conscience"*

- Fred Kiel

### **INTRODUCTION**

NABL is the preeminent association of lawyers engaged in the practice of municipal finance. NABL members represent all municipal market participants, serving as bond counsel, underwriter's counsel, disclosure counsel, issuer counsel, lender's and borrower's counsel, and performing other critical roles in municipal financings, whether public or private. NABL currently has approximately 2,800 members, practicing in all 50 states and the District of Columbia, and delivering legal opinions and providing legal advice in connection with approximately \$250-350 billion of new bond offerings annually.

NABL's strength derives from this diversity of municipal market clients and its reputation for providing objective, knowledgeable, and informative guidance regarding all aspects of municipal finance, including tax, securities, and municipal law. As such, NABL members, in addition to the active role they play in connection with NABL-sponsored educational events, are regularly requested to speak at similar such events sponsored by other market participants and regulators. We also provide testimony at Congressional hearings, and provide input, both formally and informally, to municipal market regulators.

Why was NABL founded, and by whom? What guiding principles have allowed NABL members to serve as the "legal architects of America's infrastructure" over the last forty years? The following recap of NABL's forty-year history provides some answers to those questions, even as it looks ahead to the further development of this history between now and NABL's 50th anniversary.

### **THE FOUNDING OF NABL**

In the 1970s, the Practising Law Institute (PLI) offered the only educational opportunity remotely relevant to the practice of bond law. Though PLI was useful, it was expensive and the information was often stale due to the repetition of speakers. Dissatisfied with PLI, Fred Kiel, through Chuck Carlson's *Bond Case Briefs*, invited bond lawyers to participate in a workshop for bond lawyers, by bond lawyers. A workshop faculty was organized by Fred, Chuck and Rita Carlson, and the inaugural Bond Attorneys' Workshop was held in September 1976, attended by 120 bond lawyers.

Following the first Workshop, the faculty met to elect a chair for the 1977 Workshop. During this meeting, Bernie Friel suggested that they should also consider forming a professional association made up of bond lawyers, following the lead of the trial lawyers. According to Bernie, this suggestion was met with such deafening silence that he thought his suggestion had not been heard. At the 1977 Workshop, however, Dick Weill distributed a survey soliciting interest in forming an association of

bond lawyers. When Bernie received the survey, he immediately called both Dick Weill and Ruth West (chair of the 1978 Workshop) to inquire about an organizational meeting for the nascent association. It being clear that this was of more interest to Bernie than anyone, Ruth nominated him as chair of the study committee.

Using the 1977 Workshop attendance list and Dick's survey results, Bernie called a meeting for anyone interested on June 27, 1978. An estimated 20-30 bond lawyers attended the meeting and agreed that such an organization should be created, but did not agree as to its form. Some thought that the organization should be affiliated with the American Bar Association while others thought it should remain independent. In an effort to reach consensus, two committees were formed: one, led by Tom Currier, to advocate for ABA affiliation and the other, led by Fred Kiel, to contend for an independent organization.

Each committee drafted a report on its findings, and all registrants for the 1978 Workshop were invited to attend a meeting on September 20, 1978, to discuss the two proposals. After lively discussion, a consensus was reached favoring the formation of an independent organization. Three resolutions were promptly passed: it was resolved to form an independent association of bond lawyers without ABA affiliation; it was resolved that the initial membership of the association would consist of registrants for the Fall 1978 Workshop who paid the requisite membership fee; and it was resolved that a committee consisting of Tom Currier, Phil Dorweiler, Fred Kiel, Jim Perkins, Donald Hodgman, Bernie Friel, plus six others to be selected by those six, formulate a proposal for the creation of the association prior to January 1, 1979. On September 21, 1978, the committee selected Leo Beauclair, Ruth West, Willis Ritter, George Mack, Manly Mumford and Don Howell to complete the group.

At a meeting on September 22, 1978, an initial slate of officers was elected and duties were assigned. Jim Perkins agreed to draft a statement of purpose that now, over forty years later, reflects favorably both on the vision of the founders and on the commitment of their successors to achieve those goals:

*"The purpose of the Association shall be to promote the public good by: (1) Educating its members and others in the law relating to state and municipal obligations, (2) Providing a forum for the exchange of ideas as to law and practice in this field, (3) Improving the state of the art in this field, (4) Providing advice and comments at the federal, state and local levels with respect to legislation, regulations, rulings and other action, or proposals therefor, affecting state and municipal obligations, and (5) Providing advice and comments with regard to state and municipal obligations in proceedings before courts and administrative bodies through briefs and memoranda as a friend of the court or agency."*

Those five foundational principles remain intact today, supplemented with two further purposes:

*"(6) Providing leadership by developing, responding to and participating in proposals to improve the state of the law and practice in the field of public finance; and (7) Disseminating information on developments in the field; providing services*

*which facilitate interchange among members regarding professional opportunities; and undertaking other activities intended to further the shared professional interests of the members.”*

On February 5, 1979, the National Association of Bond Lawyers was incorporated as an Illinois nonprofit corporation and the committee of twelve became its board of directors with Bernie Friel as President, Manly Mumford as Vice-President, Fred Kiel as Secretary and Ruth West as Treasurer.

Over the ensuing forty years, NABL has proven consistently true to its overarching goals of educating its members, improving the standards of practice and providing meaningful commentary to policymakers.

## **EDUCATING ITS MEMBERS**

Emerging as it did from the initial Bond Attorneys Workshop in 1976, education has been one of NABL's top priorities from the beginning. Rejecting concerns about "educating the competition," NABL's more experienced lawyers have always been willing to teach those who are newer to the profession or to a particular area of expertise. In addition to educating its members, NABL has opened its Workshops to non-NABL members as well. Attendees regularly include representatives of the SEC, IRS, Treasury, and other agencies, as well as numerous other municipal industry participants.

NABL's educational efforts have been successful due in no small measure to the adoption of a faculty rotation policy that ensures the exchange of fresh ideas and information. In addition, the open format of the Workshop and other seminars encourages active dialogue among participants and panelists.

Though the Workshop has been the backbone of its educational efforts, NABL has offered a host of other educational opportunities. For instance, in response to the momentous Tax Reform Act of 1986, a two-day "Tax Implementation Workshop" was held at which documentation templates were distributed for discussion among NABL members, with input from federal legislative and regulatory leaders who brought their own unique understanding of the intent of various provisions of the Act. Similarly, following the more recent enactment in 2017 of the Tax Cuts and Job Act, several educational teleconferences were conducted by NABL to debrief its members regarding legislative changes affecting the public finance field. For several years, NABL focused special attention on tax matters at the annual Tax Seminar, and on legislative and regulatory matters at the Washington Seminar. Those seminars were subsequently consolidated into the annual Tax and Securities Law Institute. In addition, the Fundamentals Seminar has long served as an essential step in the training of newer members of the profession. Most recently, NABL's educational offerings were rebranded under the title "NABL U", with NABL's Education Committee providing unified leadership for the three primary in-person offerings each year – simply referred to now as the Workshop, the Institute, and the Essentials.

As telecommunication and online options have expanded, NABL's educational

opportunities have kept pace. Virtually every major development impacting public finance is followed quickly by a teleconference, webinar or online offering that brings together experts from NABL membership and key agency and municipal market participants. For example, when the SEC launched an enforcement action known as the Municipalities Continuing Disclosure Cooperation (MCDC) Initiative in 2014 to address “potentially widespread violations of the federal securities laws by municipal issuers and underwriters of municipal securities,” NABL sprang to action with two teleconferences prior to the effective date of that initiative. In addition, while libraries have in many instances been replaced by online research tools, NABL members continue to keep NABL publications on their shelves for easy reference, including the Federal Securities Laws of Municipal Bonds Deskbook and the Federal Taxation of Municipal Bonds Deskbook. NABL leadership is also exploring options for the creation of community functions on the NABL website, where members can interact with each other in real time to explore issues of common interest.

## **IMPROVING THE STANDARDS OF PRACTICE**

"Improving the state of the art in this field" was another key element that drove the formation of NABL. This lofty goal presented some significant challenges due to the array of viewpoints regarding what constituted improvement of the practice. NABL is a member-driven organization, and its members include sole practitioners as well as lawyers from megafirms; lawyers at boutique bond firms and lawyers at general practice firms; and lawyers from every state in the country. One of NABL's finest achievements has been its success in keeping such a diverse group of lawyers productively engaged in healthy and constructive dialogue about issues of common concern.

An early and important step taken to improve the standards of the practice was the publication in 1982 of the Model Bond Opinion Project. Troubled by client demands to express opinions outside the scope of their expertise, NABL members developed a model bond counsel opinion that provided industry-wide consensus, not to mention a defense against unreasonable demands. The model opinion project was followed quickly by the publication of Model Engagement Letters for bond counsel.

Buoyed by the positive reception of these publications, NABL began developing additional tools to assist bond lawyers in their practice, including treatises on The Function and Professional Responsibilities of Bond Counsel and The Selection and Evaluation of Bond Counsel. Later in the decade of the 1980's, NABL added several additional guidance pieces, including the extensive Disclosure Roles of Counsel, as well as three reports issued by a special NABL committee that addressed Standards of Practice; The Question of Lawyer Competence and Professionalism, Lawyer Proliferation in Public Finance Transactions; and Alternative Approaches for Improvement of Standards of Practice.

Those early publications, which have been repeatedly updated and supplemented with additional “model” projects and white papers, reflect the continued zeal of NABL leadership to create high and consistent standards among lawyers engaging in the field of tax-exempt finance. Those searching for an explanation for

this role as guardian of the profession need look no further than the unflattering attention given to the municipal market during the 1980's, during which multiple pieces of tax reform legislation were passed that curtailed elements of the issuance of bonds, and state and local governments were increasingly perceived by the federal government as "just another special interest group." Bond lawyers were not spared this criticism, with one politician announcing that bond lawyers were financing massage parlors and houses of ill repute, while another lumped bond lawyers together with deadbeat dads. NABL's efforts to address those misperceptions by providing high standards for practice established the foundation upon which NABL has subsequently built its reputation as a trusted, knowledgeable, independent technical advisor upon whom legislators, regulators and municipal market participants can rely for thought leadership.

NABL continues to support its membership both through independent publications of thoughtful commentary as well as through collaboration with GFOA, SIFMA and other industry groups in the creation of model documentation, compliance checklists, and similar materials. The production of such resources may be sua sponte, but it may also be driven by market events. For example, Detroit's 2013 bankruptcy led to the publication of a paper on the impact of bankruptcy on general obligation bonds. Others, such as the 501(c)(3) model opinion project, reflected NABL's efforts to respond to specific needs expressed by its members. NABL's collaborative efforts were never more in evidence than with the Public Pension Disclosure Task Force, which was convened by NABL in 2012 and included every major municipal market participant in the development of "considerations for preparing official statement disclosure regarding pension funding obligations" in response to heightened attention from the SEC, investors, and news media.

## **PROVIDING MEANINGFUL COMMENTARY TO POLICYMAKERS**

Commenting on pertinent legislation and regulations was included in NABL's initial statement of purposes, and took on critical importance early in NABL's history due to the onslaught of federal tax reform in the 1980's. Rather than lobbying in the traditional sense, NABL presented itself to legislators as subject matter experts, a valuable resource providing objective advice and technical expertise. Supported by a series of highly effective governmental affairs directors, NABL established itself as a respected voice in Washington. Examples of NABL's involvement over the years are extensive and impossible even to summarize, but include such items as:

- *Tax Reform Act of 1986*: As Congress searched for revenues to pay for the tax expenditures embedded in the 1986 Tax Act, tax-exempt bonds became a direct target for elimination (a theme that has repeated on numerous occasions throughout NABL's forty-year history). As a result, NABL members routinely testified at Congressional hearings regarding the role and importance of tax-exempt bonds, and actively worked to resist useless duplication of restrictions and needless complexity in the 1986 Act.
- *Anthony Commission*: NABL members served an important role in the

preparation of the 1989 Report to Congressman Beryl F. Anthony Jr. entitled “Preserving the Federal-State-Local Partnership: The Role of Tax-Exempt Financing”, which was created by the Anthony Commission on Public Finance for the purpose of educating Congress on the importance of ensuring that state and local governments had access to tax exempt financing without undue restrictions and burdens.

- *Tax Law Matters:* Creating an effective and workable tax regulatory scheme regarding the issuance of tax-exempt bonds has been a consistent work in progress for Treasury and the IRS, and NABL has worked alongside the government for decades to make sure both the practical and the technical were taken into account. The result has been many successful comment projects addressing such matters as allocation and accounting, issue price, private business use, TEFRA, tax credit bonds, sponsored research, the definition of essential government function, record retention, IRS Form 990, the integration of yield restriction and rebate, qualified hedge provisions, and the list goes on.
- *Securities Law Matters:* Since Congress created the Municipal Securities Rulemaking Board (MSRB) in 1975, NABL has worked closely with both the MSRB and the SEC regarding municipal market disclosure issues. For example, in 1993 NABL addressed the SEC's interest in the municipal bond market and secondary market disclosure by issuing (along with a group of industry representatives) the Joint Statement on Improvements in Municipal Securities Market Disclosure. With the MSRB's 2009 launch of the Electronic Municipal Market Access (EMMA) website and the increasing transparency of the municipal market, the SEC increased both its own investigations into perceived market disclosure issues and further empowered the MSRB to regulate that market. In 2010 and 2011, the SEC conducted field hearings with public investors and municipal market participants, seeking input for what became its 2012 “Report on the Municipal Securities Market.” NABL members were invited by the SEC to speak at those field hearings, and NABL sent comprehensive comment letters to the SEC, helping to shape the outcome of that Report. In response to the SEC's ensuing MCDC Initiative, NABL acted quickly, educating its members about the difficult choices presented to many issuers, borrowers and underwriters by the enforcement action, while also leveraging its reputation as a reliable broker of technical expertise to provide insight to SEC staff about the costs and inefficiencies imposed by the initiative on the market as a whole, encouraging enhanced disclosure practices through substantive rulemaking rather than through the employment of unduly burdensome and wide-reaching enforcement activity.
- *The Great Recession... and other catastrophes:* On numerous occasions throughout NABL's history, current events have yielded special measures impacting the field of public finance. The Great Recession of 2008-09 was no exception. Starting with the bursting of the

subprime mortgage bubble in late 2007, commercial banks experienced serious credit and liquidity challenges. The impact on the municipal market was dramatic, with the downgrade of banks and municipal bond insurers, the collapse of the auction rate securities market, failed remarketings of variable rate demand bonds, and the implosion of several investment banks. NABL's response was multi-faceted. Many NABL members' practices, and their clients' businesses, were badly shaken during this period, and NABL redoubled its efforts to help members understand and respond to those challenges. In addition, as a new Administration reached the White House with a mandate to get the economy moving again, Congress immediately turned its attention to the "stimulus legislation" embodied in the American Recovery and Reinvestment Tax Act of 2009. NABL leadership consulted extensively with tax legislative staff to craft workable provisions within the extensive new Build America Bond and related tax-credit bond measures contained in that legislation. This was not the first time, however, that bonds were the vehicle to channel relief to Americans. Following the September 11, 2001 attack on the World Trade Center, for example, Congress authorized \$8 Billion of "Liberty Bonds" to revitalize Lower Manhattan. Similarly, following the devastation of Hurricane Katrina in August, 2005, Congress enacted the Gulf Opportunity Zone Act of 2005, authorizing \$14 Billion of "GO Zone Bonds" as a direct and effective vehicle for the delivery of relief to affected communities. Once again, NABL members played an important role in the creation of those pieces of legislation, among many others.

## **COMMITMENT TO DIVERSITY**

NABL's commitment to diversity is long-standing and a reflection of the diversity of the U.S. public finance practice generally. The first female president of NABL was the late Sharon Stanton White in 1986. She has since been followed by eight more female presidents. In 2006, the Diversity Committee was created with the express purpose of encouraging and facilitating long-term participation in NABL by diverse NABL members and to create and maintain an atmosphere of inclusion around all NABL committees, projects and programs regardless of the member's gender, gender identity, race, ethnic background, religion, age and sexual orientation.

## **LOOKING AHEAD**

While NABL has moved from infancy through adolescence into full maturity as an organization, the Association remains as vibrant as ever in its pursuit of the statement of purpose on which it was founded. The education of NABL members has never been more critical, as increasingly complex financing strategies, rapid developments in federal tax and securities laws, and increasing demands from trade and service organizations representing all segments of the municipal finance industry, require NABL's attention and response. The result is constant evaluation of existing programs as well as aggressive developments in providing new offerings. NABL U is

not only a new brand for NABL's educational offerings, but an important restructuring of the manner in which NABL oversees, coordinates and delivers those educational presentations.

The Association is also keenly aware that its standards of practice are living and dynamic and must be regularly evaluated to reflect the events that impact our practice. As a result, the foundational materials of our organization are frequently reviewed, revised and updated. Beyond that, NABL seeks to assure a level playing field for all members, both in terms of the dissemination of information regarding legal developments in the field, and also by providing forums in which members can collaborate with each other to ensure that its members have access to the best available thinking in the field.

Finally, NABL remains a respected voice in the municipal finance industry in addressing legislative and regulatory matters impacting the industry. Whether defending the very existence and continuation of tax-exempt bonds or parsing complex and often obscure regulations to guard against unintended consequences, NABL understands that it wears the mantle of technical expert and trusted advisor on behalf of all its members.

If past is prologue, NABL's agenda of action each year, like our daily lives, will be regularly interrupted by the unexpected. The Association remains committed to serving its members by offering timely and thoughtful input in all matters of interest to our profession, and by channeling necessary and useful information back to its members to assist them in making sound legal judgments. Our effectiveness in fulfilling this mission is critical to assuring a healthy and stable public finance market.

William A. Holby  
King & Spalding LLP  
Atlanta, Georgia

Antonio D. Martini  
Hinckley Allen  
Boston, Massachusetts

NABL's 40<sup>th</sup> Anniversary; February 5, 2019