

ANTITRUST, FRANCHISING & TRADE REGULATION SECTION

STATE BAR OF MICHIGAN

SECTION MEETING MINUTES

CALL TO ORDER, ATTENDEES, & MINUTES

On February 12, 2010, at about 12:00 Noon, Chairperson Blair Renfro called the meeting to order. Besides Mr. Renfro, the meeting attendees were:

Vice Chairperson: Andrew Morganti

Secretary: Howard Lederman

James Adams

Stuart Bordman

Craig Essenmacher

Justin Hakala

Rick Juckniess

John Schroder

Rebecca Turner

Pahl Zinn

The attendees approved the last meeting's (January 8, 2010) minutes with three changes and corrections.

PUBLICATIONS COMMITTEE REPORT

Mr. Hakala has published and distributed the December 2009 E-Newsletter. The attendees discussed possible cost savings from emailing the newsletter only, as opposed to emailing and mailing. Several members expressed their views that they did read the mailed copy. Thus, the attendees rejected the idea of restricting distribution to email only. The attendees also discussed possible layout changes, but they did not see any need to change the layout. Mr. Hakala will email his State Bar contract for informational purposes. After some discussion, the conferees agreed on a February 19, 2010 article deadline for the next issue. Mr. Renfro will write an article on state action in relation to antitrust law. Mr. Lederman and Mr. Bordman will write a franchise law article.

Mr. Hakala will check the e-blast list to make sure that it includes all section members.

Regarding the section directory, at the December 14, 2009 meeting, Mr. Renfro stated his intent to review Mr. Juckniess' directory materials, like State Bar of Michigan samples, in the near future. Mr. Schroder will begin work on the directory to incorporate section members' pictures and short biographies (one short paragraph). Mr. Hakala reported that on content, the State Bar standards are flexible. He will incorporate section members' State Bar of Michigan information into the directory. He stated his intent to communicate design options and to have the section finalize the directory design at a near-future meeting.

FRANCHISE COMMITTEE REPORT

To obtain section members' feedback and suggestions for future franchise law and practice efforts and programs, Mr. Lederman has arranged with Mr. Hakala to run an invitation for such feedback and suggestions in future e-newsletters. Ms. Turner has attended the recent International Franchising Association meeting. The next franchise law and practice efforts will focus on articles for the February 2010 E-Newsletter, reviewing the feedback and suggestions, and reviewing the above recent meeting for feedback and suggestions.

EDUCATION/SEMINAR COMMITTEE REPORT

Mr. Renfro has progressed in developing the seminar involving administrative law and antitrust law that he had suggested at the October 13, 2009 meeting. He entitled the seminar: *Finding the Right Balance A Look at the Relationship Between Antitrust Enforcement and Regulation for Public Utilities*. He circulated the seminar's draft agenda. Bill Schur, AT & T's Senior Deputy General Counsel, is set to speak at the seminar. A section member, Paul Novak of the Milberg Law Firm in New York, is also set to speak. Mr. Schur will speak on regulators', such as the Federal Trade Commission's, merger approval requirements and their contradictions and inconsistencies. Mr. Novak will speak on Regulatory Defenses to Antitrust Enforcement. A third speaker will speak on another subject.

The seminar's date and time will be May 19, 2010, 8:30 AM. The seminar will flow into the lunch period. The seminar room will be next door to the lunch room. The location will be The University Club, East Lansing, Michigan. Renting the seminar room will cost \$250.00. The minimum meal charge will be \$14.00 per person. If we spend \$15.00 per person, the Ute Club will waive the room rental. The seminar will be open to Administrative Law Section members. Mr. Morganti will contact the Ontario Antitrust Lawyers organization on its members' interest in this seminar. Mr. Renfro will follow up with the State Bar of Michigan on CLE credits. He will forward the seminar materials to the State Bar of Michigan. After its response, other state bars will receive the materials and respond.

At the December 14, 2009 and January 8, 2010 section meetings, the conferees had discussed several seminar fee proposals, with \$90.00 and \$100.00 emerging as the two most probable fees. Mr. Lederman had checked with the State Bar of Michigan and had reported its feedback that these fees were similar to other sections' comparable seminar fees. At the next meeting, the conferees will set the seminar fee.

Mr. Morganti has been working on a joint event with the Ontario Bar Association's Antitrust Section. He is working towards a June 7, 2010 event date in Toronto. He will see if the State Bar of Michigan's International Law Section wants to participate in planning and co-sponsoring the seminar. Efforts on this seminar will continue.

At the January 8, 2010 meeting, Mr. Morganti presented some information on his proposed E-Discovery Seminar. Mr. Morganti suggested a possible E-Discovery seminar. He mentioned his friend, Aaron Potter of Precision Discovery, who does E-Discovery seminars for law firms. According to Mr. Morganti, Mr. Potter has offered to do a one hour seminar for section members. Several conferees expressed interest in the seminar. Some attendees noted that this seminar might interest the Litigation Section. Mr. Morganti proposed the Westin Book Cadillac Hotel, 1128 Washington Boulevard, Detroit, Michigan 48226 as a possible location. Regarding a seminar date, Mr. Renfro suggested March or April of 2010. The section will continue to discuss this seminar idea at the next meeting.

The conferees then discussed the upcoming annual State Bar of Michigan Bar Leadership Seminar. State Bar sections' chairpersons and vice chairpersons' usually attend these seminars. Mr. Juckniess stated that based on his experience as section chairperson and vice chairperson, attendance at this seminar was important for forming strategic alliances with other sections. Mr. Renfro also stated that attendance was valuable. The conferees agreed that attendance was important. Mr. Renfro will present the attendance costs for approval at the next meeting.

The attendees also discussed the upcoming Second Annual Fall 2010 Great Lakes Institute. This year's seminar will occur in October 2010. At last November's seminar, Mr. Renfro and Mr. Zinn attended. They spoke about the institute favorably. They cited the good presentations, good debate, Federal Trade Commission regulators' participation, and state attorney general regulators' participation as institute high points. A planning committee for the next institute is forming. Mr. Renfro and Mr. Morganti will be planning committee members.

Mr. Juckniess talked with the Institute of Continuing Legal Education's [ICLE's] Educational Director, Sheldon Stark, on ICLE's future participation. Mr. Stark responded that for ICLE, the institute was not a moneymaker. Thus, absent a \$2,000 flat fee, ICLE would not participate in this year's institute. But ICLE will listen to any counterproposal. Mr. Juckniess felt that the State Bar of Michigan's participation in the institute was important. Mr. Renfro felt that ICLE's participation was not valuable enough to justify it requested fee.

STATE BAR OF MICHIGAN ANNUAL MEETING

Mr. Renfro signed the section up to meet on the Friday of the meeting from 12:30 PM to 2:00 PM.

OTHER FUTURE EVENTS

At earlier meetings, the attendees had discussed an Ann Arbor Art Museum event. Mr. Juckniess has asked the museum for possible dates and other information. He will report on his feedback at the next meeting.

SECTION COUNCIL MEMBERSHIP INFORMATION

Mr. Renfro called the conferees' attention to the council members' terms expiring in 2010 with a view to the upcoming annual meeting elections.

TERM EXPIRING 2010

1. Stuart R. Bordman
2. David R. Grand
3. Mitch Rapp
4. Robert Wierenga

TERM EXPIRING 2011

1. Atleen Kaur
2. Fred Herrmann
3. Paul Novak
4. James Adams

TERM EXPIRING 2012

1. Brock Swartzle
2. Pahl Zinn
3. Kimberly Kefalas
4. Craig Essenmacher

OTHER SECTION COUNCIL MEMBERS

1. Immediate Past Chairperson: Rick Juckniess
2. Ex-Officio Publications Editor: Justin Hakala
3. Michigan Department of Attorney General Member: Vacant

SECTION BYLAWS CHANGES

At the October 23, 2009 meeting, Mr. Juckniess had asked if a complete republication of the revised bylaws was necessary. Mr. Lederman had reported on his information from the State Bar on this subject. The complete republication requirement depended on whether and how the section members had received notice and information on the revised bylaws. He had recalled that through the section minutes, section members had received notice and information on the revised bylaws. He had furnished this information to Mr. Zinn, who will communicate with the State Bar on whether the notice and information would make complete republication unnecessary.

After communicating with the State Bar of Michigan, Mr. Zinn reported that Article 9, Section 2, contained the applicable requirements. He commented that the bylaws were antiquated and needed substantial changes. Several other attendees expressed agreement. Mr. Zinn will email the bylaws, including a redlined version, to the section's council members and officers and ask them to forward comments for discussion at the next meeting.

POSSIBLE STATE SALES TAX ON LEGAL SERVICES

At the October 23, 2009 meeting, Mr. Renfro had informed the attendees of the Michigan House of Representatives bill extending the state sales tax to certain kinds of legal services. Whether the bill mentioned legal services was unclear. Mr. Herrmann mentioned that Ms. Elizabeth Lyon of the State Bar was monitoring this issue. Mr. Juckniess stated that his law firm was lobbying against any sales tax on legal services. He explained that such a tax would put in-state law firms at a competitive disadvantage against out-of-state law firms. Mr. Bordman added that his firm provides legal services for many out-of-state clients, who can go elsewhere. Mr. Juckniess suggested contacting the State Bar and obtaining an economist's opinion on any such extension of the state sales tax. Mr. Lederman suggested support for alternative revenue sources. After further discussion, Mr. Renfro stated that he would contact the State Bar, Ms. Lyon, on any bills proposing to extend the state sales tax to services.

At the December 14, 2009 meeting, Mr. Schroder had reported that the state legislature had not voted on any recent bill incorporating a sales tax on legal services, and that any bill possibly incorporating such a provision was in committee with no action imminent. Mr. Juckniess had reported that he was working on a document opposing any such provision. At the January 8, 2010 meeting, Mr. Schroder had produced a detailed memorandum regarding possible effects of a state sales tax on legal services. The conferees had no information that any action on such a tax was imminent.

Mr. Lederman reported that the just-proposed state budget contained a proposed sales tax on several categories of services, including services. Mr. Schroder reported that only two states have enacted a sales tax on legal services. The conferees discussed which legal services the proposed sales tax would affect. Mr. Schroder will check the Michigan Legislature's web site and circulate further information on this subject.

POSSIBLE STATE RULES OF PROFESSIONAL CONDUCT CHANGES

Mr. Lederman reported that in early December 2009, the Michigan Supreme Court had posted these proposed changes on its website for comment, and that the comment deadline was March 1, 2010. He added that so far, he had not received any information on any seminars on the proposed changes. He mentioned that any such seminars would probably occur after the Court had adopted any changes.

TREASURER'S REPORT

Since Mr. Janis could not attend the meeting, he could not present the treasurer's report.

NEXT MEETING

The next section meeting will occur on March 26, 2010, 12:00 PM, at Miller Canfield Paddock & Stone, PLC, 101 North Main Street, 7th Floor, Ann Arbor, Michigan 48104 (734) 668-7798, juckniess@millercanfield.com.

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