

ANTITRUST, FRANCHISING & TRADE REGULATION SECTION

STATE BAR OF MICHIGAN

SECTION MEETING MINUTES

CALL TO ORDER, ATTENDEES, & MINUTES

On March 26, 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

Treasurer: David Janis

Stuart Bordman

David Grand

Justin Hakala

Fred Herrmann

Rick Juckniess

Atleen Kaur

Matthew Powell

John Schroder

Brock Swartzle

The attendees approved the last meeting's (February 12, 2010) minutes

PUBLICATIONS COMMITTEE REPORT

After some discussion, the conferees agreed on a May 18, 2010 article deadline for the next issue. For the following issue, Mr. Grand will write an article.

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 had arranged with Mr. Hakala to run an invitation for such feedback and suggestions in future e-newsletters. The last newsletter did include this invitation. Ms. Turner has attended the recent International Franchising Association meeting. In the next few months, Mr. Lederman will contact other state bar franchising sections for program and service ideas. The next franchise law and practice efforts will focus on articles for future e-newsletters, reviewing the feedback and suggestions, and reviewing the above recent meeting for feedback and suggestions.

EDUCATION/SEMINAR COMMITTEE REPORT

The attendees continued discussion of the upcoming seminar involving administrative law and antitrust law that Mr. Renfro 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. The seminar has room for a third speaker.

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 charges will be:

Section Members: \$30.00 (without lunch) and \$55.00 (with lunch)

Non-Section Members: \$50.00 (without lunch, but with section membership) and \$75.00 (with lunch).

Non-Section Members: \$30.00 (without lunch or section membership).

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 has followed up with the State Bar of Michigan on CLE credits, and the State Bar has responded that it would approve CLE credit. Mr. Renfro has also arranged for e-blasts to publicize the seminar. These e-blasts will begin in the next few weeks.

Mr. Morganti has been working on a joint event with the Ontario Bar Association's Antitrust Section. This event will occur on June 7, 2010 at the Ontario Bar Association Building in Toronto. The event will combine a class action presentation with a social event. The Chairperson of the Ontario Bar Association's Class Action Committee will host the event. It will feature a four-person panel:

Paul Novak will speak from the class action plaintiffs' viewpoint.
Todd Holman will speak from the class actions defendants' viewpoint.
Harvey Strospey will also speak from the class action plaintiffs' viewpoint.
Catherine Cade will also speak from the class action defendants' viewpoint.

The panel discussion will focus on Antitrust Class Actions in the United States and Canada. Specific subjects will include Multi-District Class Action Practice in the United States and its functional equivalent in Canada, and Antitrust Claims' pleading requirements.

The event will begin with dinner and drinks at 5:15 pm. The event will culminate with the panel discussion from 6:15 pm to 7:15 pm.

Mr. Morganti estimated that to cosponsor the event, the section would need to advance \$1,000.00-\$1500.00. The conferees approved an appropriation up to this amount for that purpose. Thus, the section will reimburse for registration expenses. The Ontario Bar Association will charge its members \$50.00 for admission to this event and non-members \$80.00. Regarding transportation to and from this event, Mr. Morganti informed us that a discount train travel price was available: Buying a round-trip ticket two weeks in advance would cost \$170.00, compared to a same day round-trip ticket costing \$250.00.

The attendees then discussed the E-Discovery Seminar. Mr. Morganti had suggested a possible E-Discovery seminar. He had 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. He will talk with Mr. Potter further about this seminar. Because of other section events, the attendees tabled further discussion of this seminar to August or September 2010.

Mr. Morganti informed us that two Econ One experts, Dr. Russell Lamb and Jeff Klink, had approached him and proposed to rent a Westin Book Cadillac room, and present a seminar in June 2010. They proposed a 45-minute presentation. They will provide food and drinks. After some discussion, the conferees agreed that August or September would generate more attendance. The conferees approved section funds for this seminar.

STATE BAR OF MICHIGAN ANNUAL MEETING

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

OTHER FUTURE EVENTS

Mr. Juckniess informed us of the results of his recent contacts with the Ann Arbor Art Museum on our planned event there. He reported that the museum had three spaces with different prices for our event:

Multi-Purpose Room: \$600.00.

Commons Room: \$1,000.00.

Lobby: \$5,000.00.

All three spaces' prices do not include catered food. Mr. Juckniess has a list of potential caterers.

Mr. Juckniess estimated that the event would cost about \$4,000.00 and suggested May 13, 2010 as the likeliest date. He asked the section to authorize him to choose the caterer and menu and moved for approval of an appropriation of funds up to that amount for the event. The conferees authorized him to choose the caterer and menu and approved the appropriation. E-blasts for this event will begin in the next few weeks.

SECTION COUNCIL MEMBERSHIP INFORMATION

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.

A special committee of volunteers, including Mr. Renfro, Mr. Pahl, Mr. Juckniess, and Mr. Lederman will meet in April or May 2010 and review the section bylaws and propose changes for the section's consideration at the section meeting occurring at the State Bar Annual 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 has checked the Michigan Legislature's web site and circulated further information on this subject. The attendees continued their discussion of this subject.

POSSIBLE STATE RULES OF PROFESSIONAL CONDUCT CHANGES

Mr. Lederman had 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

Mr. Janis reported that as of February 28, 2010, the section treasury had \$30,783.59.

NEXT MEETING

The next section meeting will occur on May 7, 2010, 12:00 PM, at Kerr Russell & Weber, PLC, 500 Woodward Avenue, Suite 2500, Detroit, Michigan 48226, (313) 961-0200.

Howard Yale Lederman, Section Secretary
219 Elm Street, Birmingham, MI 48009
(248) 642-3600
lederman@normanyatooma.com