

ANTITRUST, FRANCHISING & TRADE REGULATION SECTION

STATE BAR OF MICHIGAN

SECTION MEETING MINUTES

CALL TO ORDER, ATTENDEES, & MINUTES

On October 26, 2011, at about 12:15 PM, Chairperson Pahl Zinn called the meeting to order. This meeting was a telephone meeting. The meeting attendees were:

Vice Chairperson: David Janis

Secretary: Howard Lederman

Acting Treasurer: Andrew Morganti

Publications Committee Chairperson: Justin Hakala

Council Member: Pat Cafferty

Council Member: Frank Hamidi

Council Member: Rick Juckniess

Council Member: Joe Muzingo

Council Member: Paul O'Neill

Council Member: Matt Powell

Council Member: Lance Young

The Call-In Number was (877)-352-9775. The Code was 8001954436. The Moderator Code was 2575.

The attendees approved the last meeting's (September 16, 2011) minutes.

TREASURER POSITION

Mr. Pahl emphasized that with his considerable experience, Mr. Janis can help the new treasurer learn his duties rapidly. Mr. Janis outlined the treasurer's duties. We anticipate filling this position at the next meeting.

PUBLICATIONS COMMITTEE REPORT

At Mr. Zinn's suggestion, the conferees decided to publish the e-newsletter quarterly, rather than bimonthly, and to include a feature article. Mr. Lederman will write the first feature article on No Reliance Provisions and forward it to Mr. Hakala by December 1, 2011. Our next e-newsletter will come out by December 15, 2011. He stated that our decision to email the newsletter and forego hard copy mailing has saved the section substantial costs.

The conferees discussed the section student extern situation. Mr. Hakala reported that the outgoing extern had completed her work and forwarded all her invoices for her services. We have begun our search for a new extern. Mr. Hakala has been talking with an associate at his firm. Mr. Young will contact Cooley Law School for candidates. Mr. Lederman will furnish the job description. Mr. Juckniess will check with Miller Canfield associates to see who is interested. Mr. Hakala estimated that the extern will work about 10-20 hours per month drafting content and forwarding it to Mr. Hakala. **We will discuss our search results at our next meeting.**

Mr. Lederman has been in contact with the State Bar Journal editor, Ms. Novak. She has informed him that our section can reserve a 2013 month for a theme issue. A theme issue involves four or five articles and an introduction covering our section's major focus areas. The conferees voted to do a theme issue in 2013 and authorized Mr. Lederman to inform Ms. Novak of our interest. On September 24, 2011, Mr. Lederman contacted Ms. Novak and informed her of our theme issue interest. She responded immediately that the following 2012 and 2013 months are available:

November –December 2012

February-March 2013

June-December 2013

Just after the meeting, Mr. Lederman received further information from Ms. Novak on preliminary theme issue matters. These included a general list of 3-5 authors and subjects, including a mix of antitrust, franchising, and trade regulation issues. **We will discuss potential authors and subjects at the next meeting.**

FRANCHISE COMMITTEE REPORT

Mr. Lederman has contacted three more franchise attorney section members, and based on new feedback, he proposed a lunch meeting for November 18, 2011 to discuss their needs, how our section can meet their needs, and related matters. Mr. McLeod and Mr. Witus, two of the members, were in attendance. At the last meeting, the conferees agreed to fund this lunch meeting. Mr. Bordman has offered his office as the meeting location. Mr. Lederman will contact the franchise attorney section members on desired locations and email them with a definite day within the next week.

EDUCATION/SEMINAR COMMITTEE REPORT

For reference purposes, the relevant material from earlier meetings, with updates, follows:

Planning for the Third Annual Great Lakes Antitrust Seminar is continuing and progressing. The states involved are Michigan, Pennsylvania, Ohio, and Indiana. The seminar date will be October 28, 2011, and the location will be at the Sheraton Hotel in Columbus, Ohio. The planners have not agreed on the attendance fee, but Mr. Zinn will announce the fee to the section as soon as he receives this information. Mr. Renfro has received the agenda. Mr. Zinn will forward the agenda and a power point summary to all section council members. He stated that the section would pay for five members to attend and urged council members interested in improving their antitrust law and practice capabilities to sign up. Mr. Renfro will moderate a panel on state enforcement of antitrust laws. The panel will include state attorney general department attorneys. The number of panel members will be three. Mr. Wierenga will be a panel member on hot topics.

To help Mr. Renfro in his moderator efforts, Mr. Zinn renewed his earlier suggestion that our section sponsor a happy hour before the dinner occurring on the night before the seminar. Mr. Zinn estimated the cost as \$1,000. Mr. Zinn will communicate with Mr. Renfro on this estimate. Then, Mr. Zinn will bring the proposed funding commitment to the section council for a vote at our next meeting.

Mr. Zinn announced that the seminar will be simulcast on the Ohio State Bar website. Mr. Zinn reiterated that for antitrust lawyers seeking to increase their knowledge and understanding of antitrust law, actual attendance far surpassed simulcast attendance. Unlike actual attendees, simulcast attendees cannot attend the informal events connected with the seminar and thus miss some significant learning opportunities.

At the June 2011 section meeting, Mr. Zinn had estimated that at the First Annual Great Lakes Antitrust Seminar, the total attendance was about 200-250 people. At the Second Annual Great Lakes Antitrust Seminar, the total attendance was similar. He estimated that about 50-75 people would attend the cocktail hour before the dinner. This year's dinner location will be the Ohio Bar Association building. The Planning Committee had not yet decided on a point hotel to recommend to prospective attendees. The seminar may include a night before dinner package deal.

LAW SCHOOL OUTREACH PROGRAM

For reference purposes, material from earlier meetings with updates follows:

The conferees discussed resumption of the law school outreach program in the upcoming fall. Mr. Lederman reported that he had preliminary contact with the Cooley Law School, Auburn Hills Campus, Career Services Officer. He reported further contact and stated that he would confirm late February or early March 2011 presentations at the Auburn Hills and Ann Arbor campuses. One attendee mentioned that he had received information from Professor Steven Sarmak of the Cooley Law School, Ann Arbor

Campus, that his campus would like us to include this campus in its outreach program. Mr. Lederman responded that he would contact Professor Sarmak and work with both campuses to schedule our section's outreach presentations during February and early March 2012.

Regarding the Wayne State University Law School event, Mr. Janis has followed up with Professor Stephen Calkins, but Professor Calkins has not responded. Mr. Morganti responded that due to his new position as Dean of Undergraduate Students, Professor Calkins might be too busy to be an effective contact. Mr. Morganti suggested Professor Henning, who teaches mainly white collar crime and might be a good alternative contact. Professor Hennings writes the New York Times white collar crime blog. Mr. Janis will contact him to schedule the outreach event there. At the June 10, 2011 section meeting, the conferees had also discussed a joint Wayne State Law School-University of Detroit Law School event at a bar to increase attendance. The conferees resumed discussion of this idea. The conferees will decide on whether to do joint or separate events at a Fall 2011 section meeting. Mr. Renfro will contact a professor at the Michigan State University Law School to schedule an event there. Mr. Zinn will contact the Dean of the University of Detroit Law School. Mr. Zinn and Mr. Janis will discuss the joint presentation idea at a future meeting.

The conferees discussed the various law schools' responses to our outreach efforts. The Cooley Law School (Auburn Hills Campus) and University of Detroit responses were good. Regarding the University of Michigan, Mr. Morganti reported that he received little or no support from the antitrust law professors and other law school officials in his outreach efforts. Therefore, he suggested dropping our University of Michigan Law School outreach efforts. The conferees will review his suggestion and decide wither to drop these outreach efforts at a Fall 2011 section meeting. Efforts to arrange a Michigan State University Law School outreach event will continue. Mr. Morganti and Mr. Zinn will contact professors and officials there.

At the November 5, 2010 section meeting, the conferees had divided the responsibilities for contacting the area law schools and arranging outreach dates, times, and contents. As revised, these responsibilities are as follows:

Cooley Law School (Auburn Hills Campus and Ann Arbor Campus): Mr. Lederman

University of Detroit: Mr. Zinn

Wayne State University Law School: Mr. Janis

University of Michigan: Mr. Morganti

Michigan State University Law School: Mr. Renfro

SECTION WEB SITE

For reference purposes, the material from an earlier meeting follows:

The attendees will discuss section web site improvements at a future section meeting. By then, everyone will have reviewed our section's web site for possible improvements. Mr. Zinn had suggested adding links to the ABA sections corresponding to our section's substantive law areas, the Federal Communications Commission, the Department of Justice, and other organizations likely to be of interest. Mr. Morganti had emphasized the importance of a schedule showing upcoming events. Mr. Lederman had suggested looking at other State Bar of Michigan sections' web sites for ideas. The attendees focused on several goals, like making our web site more attractive and useful for section members, in-house counsel, law students, and others interested in our substantive areas.

Our above web site discussion led the attendees to discuss social media, including creation of section social media sites. Mr. Zinn suggested that creating a Linked-In site should be the first step. He asked for a council subcommittee to create it. He added that he would talk with a State Bar representative on this. Mr. Zinn envisioned a Linked-In site, where section members could post comments. He suggested that the site should include links to other Linked-In sites, like the American Bar Association Antitrust and Franchising Sections. Mr. Juckniess and Mr. Lederman supported Mr. Zinn's ideas. Mr. Juckniess explained that Linked-In site will enable our section and its members to communicate with more people. Mr. Zinn explained that the site can help us interest more attorneys and law students in our section. After the subject of possible section members' response to the Linked-In site idea, Mr. Zinn mentioned the Estate Section composed mainly of older members, who had resisted email, stood firm on snail mail, and run into conflict with the State Bar. Mr. Hakala emphasized that we will learn more about the site's capabilities and uses from learning to use it. He mentioned that Mr. Morganti has contacts with many antitrust lawyers nationwide and worldwide.

Conferees suggested some other possible uses. The Linked-In site can help us cross-pollinate with other state bar sections in our practice areas. An example would be consumer law sections. We could have all our section information in one place, just like our regular web site. Mr. Renfro suggested that we could post our externship opportunities there. Mr. Zinn will report back on his discussion with the State Bar on the Linked-In site.

OTHER FUTURE EVENTS

Due to his new position as Wayne State University's Dean of Undergraduate Students, the conferees tabled further discussion of a possible March 2012 event featuring him in Northville.

At an earlier meeting, Mr. Zinn suggested a possible panel event on antitrust law and intellectual property law. We will discuss his suggestion at a near-future meeting.

The conferees discussed a winter social event. Mr. Juckniess suggested a cocktail hour and hors d'ouerves. One attendee suggested a wine tasting at the Birmingham Community House, which required a \$300.00 rental fee and had December 1, December 8, and December 15, 2011 open dates. The menu accorded with our ideas. The rental fee and the food and drink prices were reasonable. Mr. Morganti recalled that our section's best social event turnouts had occurred for Ann Arbor and Detroit events. Mr. Juckniess suggested a Downtown Ann Arbor event and mentioned that parking was easy and the area a good one. He identified the Jolly Pumpkin as a good place for our event. Mr. Zinn and Mr. Lederman responded that our section's membership demographics information shows that a majority of section members practice out of Oakland County, and we had never had an Oakland County event. After further discussion, Mr. Janis agreed to circulate a memo, where section members could respond with their available dates. Mr. Juckniess and Mr. Zinn stated their preference for December 1 or 8, 2011. Further, the attendees agreed that members' spouses could attend the event.

SECTION COUNCIL MEMBERSHIP INFORMATION

TERM EXPIRING 2012

1. Brock Swartzle
2. Keith Essenmacher
3. Kimberly Kefalas
4. Craig Essenmacher

TERM EXPIRING 2013

1. Patrick Cafferty
2. Lance Young
3. Rick Juckniess
4. Ari Lehman

TERM EXPIRING 2014:

1. Frank Hamidi
2. Joseph Muzingo
3. Paul O'Neill
4. Matt Powell

OTHER SECTION COUNCIL MEMBERS

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

SECTION BYLAWS CHANGES

The October 2010 State Bar Journal published the approved section bylaws changes discussed at the last three meetings, and a Section E-Mail Newsletter contained these changes. Mr. Morganti has faxed them to the State Bar sections coordinator, Heather Anderson.

At the January 14, 2011 meeting, Mr. Zinn had informed the conferees that a State Bar individual had informed him that our section's bylaws needed to go through the formal bylaws changes and bylaws approval processes again, because apparently certain bylaws referred to nonexistent articles, or because other minor discrepancies were present. Mr. Lederman responded that he saw no need to redo the entire process over a few minor changes, and that he could see such a need only if a major problem with notice or approval of the changes existed. He emphasized that no such problem existed. After some discussion, Mr. Zinn agreed to lead in reviewing and changing the bylaws to make them easier to amend.

Mr. Zinn has continued communications with the State Bar to resolve these issues. The attendees agreed that if any further communications with the section membership on these issues were essential, they will be by e-mail to save time, money, and effort. He asked for the conferees' opinion on whether publishing our reapproved section bylaws changes in the State Bar Journal was necessary. Mr. Lederman responded that given the State Bar's bylaws position, publication would be necessary. The conferees unanimously passed a motion to increase section membership dues to \$25.00 beginning October 1, 2011.

Mr. Zinn reported that the completion process for the section bylaws amendments was almost complete. He stated that according to the State Bar's General Counsel, if we communicate the section's annual membership dues increase to the State Bar before it mails the annual dues notices, the dues increase can go into effect. Also, the General Counsel stated that before the dues increase becomes effective, the section must publish notice of the dues increase in the State Bar Journal. Given the publication deadlines involved, the notice must be in the September 2011 State Bar Journal. Mr. Zinn has followed up on this. Finally, Mr. Zinn mentioned the need for 10 Section Council members to sign a document confirming approval of the amendments.

Mr. Zinn reported on his negotiations with the State Bar's General Counsel, Mr. Flood. They have agreed on final bylaws changes. But we will not be able to notify the section membership before the upcoming annual meeting. So, before and at the September 2012 annual meeting, we will notify the section members of the bylaws changes and of the September 2012 vote to approve or disapprove the bylaws changes. Mr. Zinn reported that according to Mr. Flood, notifying the section members in time for pre-October 1, 2011 section ratification of the bylaws changes is not possible. Mr. Lederman asked whether this unjustified and prolonged bylaws changes delay has impacted on our earlier-approved section annual membership dues increase to \$25.00. This increase brought our section into line with other similar sections. The section officers investigated this issue and found that the annual dues increase would not go into

effect until October 1, 2012. **If this information has changed, it will be an agenda item for the next meeting.**

OTHER BUSINESS

Mr. Zinn will forward a section events summary to the State Bar within the next five days.

Mr. Zinn has created an email listserve and will create an updated powerpoint. He and Mr. Morganti will send the updated powerpoint to Mr. Renfro, who will update various members' positions.

The following materials are from earlier meetings for reference purposes:

Mr. Zinn had informed us that he has been updating the Antitrust Digest. He explained that before the section became moribund about 10 years, and before Mr. Herrmann revived it in April-May 2006, Mr. Irwin Alterman had compiled, edited, and published an Antitrust Digest. Since then, Mr. Zinn has been continuing this process. He mentioned the *Velassis*, *Ice Package*, and *Pay-Tel* Cases as examples of important antitrust digest cases that he has added. He suggested adding an electronic version to our section's website with a link from the website to the digest. He also suggested asking Mr. Alterman to write the forward. Further, Mr. Zinn suggested that the new student editor can compile, edit, and publish possible Franchise Law and Consumer Law digests. The conferees welcomed Mr. Zinn's efforts and suggestions.

Mr. Zinn explained that we could set up a Lexis alert for new decisions and developments in our section's practice areas and an organization by subject with links to administrative and court decisions. Mr. Juckniess also suggested a digest arrangement. **We will continue our discussion of the digest at our next meeting.**

TREASURER'S REPORT

Mr. Janis presented the treasurer's report. As of September 30, 2011, the section treasury had about \$12,500. While this amount is low, it does not reflect annual dues payments beginning to roll in as of late September 2011. Mr. Janis estimated that annual dues would bring in about \$5,000.

NEXT MEETING

The next meeting will be on Friday, November 11, 2011, at Mr. Zinn's firm's Troy, Michigan office: Dickinson Wright, PLLC, 2600 Big Beaver Road, Suite 300, Troy, Michigan 48084, (248) 433-7200, pzinn@dickinson-wright.com.

The December 16, 2011 meeting will be at Mr. Juckniess' firm, Miller Canfield Paddock & Stone, PLC, 101 North Main Street, 17th Floor, Ann Arbor, Michigan 48104, (734)668-7798, juckniess@millercanfield.com.

The January 12, 2012 meeting will be a call-in meeting. The agenda will include the call-in number and conference code.

/s/Howard Yale Lederman, Section Secretary
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