

**STATE BAR OF MICHIGAN  
BUSINESS LAW SECTION  
COUNCIL MINUTES**

**December 6, 2008**

This meeting of the Council of the Business Law Section of the State Bar of Michigan was held at Jaffe, Raitt, Heuer & Weiss, P.C. in Southfield, Michigan, on Saturday, December 6, 2008, pursuant to notice duly given. Council members present: Diane Akers, Judy Calton, Matthew Case, Marguerite Donahue, Dee Dee Fuller, Michael Khoury, Edwin Lukas, Christopher Maeso, D. Richard McDonald, Douglas Toering, Cynthia Umphrey, and Robert Wilson. Committee members present: Timothy Damschroder, Jane Forbes, Daniel Minkus, Mark Peters, Jerome Schwartz, and Daniel Sharkey. Others present: Ann Baker, James Carey, Dan Kopka, Thomas Morris, and Terri Shoop.

1. Call to Order and Determination of Quorum. Section Chairperson, Diane Akers called the meeting to order at approximately 10:15 a.m. and determined with the other officers present that a quorum existed.

2. Approval of Minutes of September 25, 2008 Council Meeting. Ms. Akers called for a motion to approve the Minutes of the Meeting of the Council from September 25, 2008. Pursuant to motion duly made and seconded, the Minutes were unanimously approved 12-0-0.

3. Treasurer's Report. A written Treasurer's Report is attached to these minutes. Mr. Lukas reported that the Section broke even last year. He stated that in the 2008-2009 fiscal year, revenues should be approximately the same as the preceding year. He further stated that according to the proposed budget, if all expenditures are made, the Section will have a \$13,000 deficit. A motion was made to approve the 2009 Budget (attached to these minutes). The motion was seconded and the Budget was unanimously approved 12-0-0.

4. Chairperson's Report. Ms. Akers reminded the group to forward information regarding meetings and events to Terri Shoop for posting on the website and to Mike Khoury and Jeff Van Winkle for inclusion in the e-newsletter.

(a) Attendance at Events. Ms. Akers reported that there has been a decline in attendance at some of the Section's events and we are unsure of the cause of the decline. Ms. Umphrey spoke about her unfavorable experiences using the SBM PR services and stated that attendance at SBF events had been better when the Section used the outside marketing services of Theresa O'Dea or Mike Scott. Theresa and Mike have a list of standard publications to which they send notices of our events and Ms. Umphrey will distribute this list. Ms. Umphrey reported that the Forum leaders have been unable to get the SBF on the west side of the state off the ground. Mr. Minkus commented that he believes pressures to bill hours play a part in low attendance at some seminars. Business Boot Camp attendance has been staying at the same level. At times there are a significant number of no shows (15%-20%). In general, the first session is packed and then attendance tapers off over the year. The numbers at the Dearborn Business Law Institute were disappointing. When the Business Law Institute was held at MSU, the numbers were in the high one hundreds. States with mandatory CLE have great attendance at

seminars; but states without mandatory CLE have low attendance. Mr. Carey stated that when the same date and place are used over time, attendance will increase.

(b) International Trade and Investment Mission. Ms. Akers reported that the Section has been approached regarding an international trade and investment mission. In late September at a meeting of the SBM Section leadership, Ed Pappas and Janet Welch spoke with Ms. Akers regarding the Governor's trade mission to the Middle East. Mr. Pappas and Ms. Welch believe it is good idea to have members of the SBM included on the mission. The International Law Section and the Business Law Section were asked to go with the Governor on the trip. After the meeting, Ms. Akers spoke with a group of former Chairs about the mission, but no mission has occurred thus far. It is expected that there will be future missions. Ms. Akers asked the group if the Section had an interest in sending someone on this kind of trip. The cost of the trip would be paid by the individual or their firm. A discussion ensued regarding the procedure for choosing someone for the trip. Ms. Calton suggested seeking volunteers. Ms. Fuller stated that an invitation to go on the mission should be extended to the entire Section membership. Mr. Khoury stated that he believes going on the trip would only be a realistic option for a retiree or someone with a very flexible schedule. Mr. McDonald and Ms. Umphrey indicated they do see a benefit to the Section in supporting a mission. Ms. Umphrey suggested putting notice in the e-newsletter and gathering a pool of volunteers. Ms. Akers will write something about a mission for the January e-newsletter. It was suggested that more than one person from the Section could attend. After a list of volunteers is accumulated, the Executive Committee would narrow the list.

(c) Ad Hoc Committee on Legal Opinions in Business Transactions. Ms. Akers reported on a memorandum from Justin Klimko regarding a proposed project related to legal opinions in business transactions. In the memorandum, Mr. Klimko makes a proposal to revive the Ad Hoc Committee on Legal Opinions in Business Transactions. The Committee developed and published a document in 1991 entitled "Report of the Ad Hoc Committee of the Business Law Section of the State Bar of Michigan on Standardized Legal Options in Business Transactions". The revived Committee would study and report on closing opinion matters in the wake of the substantial activity in this area at the state and national level since the issuance of the 1991 report. The Committee would not issue a new comprehensive report but rather would attempt to further the goal of development of national standards for delivery and interpretation of opinions while identifying Michigan-specific issues that state lawyers should consider. The Executive Committee will work with Mr. Klimko and most likely give him approval to move forward on this project before the March Council meeting.

5. Committee/Directorship Reports.

a. Standing Committees.

(i) Commercial Litigation Committee. A written report of the Commercial Litigation Committee is attached to these minutes. Mr. Sharkey reported that the Committee is planning a two to three hour seminar in March or April. Jay VandeWyngearde will take the lead on the project. David Frank is working on an article.

(ii) Corporate Laws Committee. A written report of the Corporate Laws Committee is attached to these Minutes. House Bill 3536 cleared the Senate and should make it through the legislature later this month.

(iii) Debtor/Creditor Rights Committee. A written report of the Debtor/Creditor Rights Committee is attached to these Minutes. Tom Morris and Chuck Bullock are working on the proposed revision to MCL 600.6023. The purpose of the amendment is (a) to make Michigan law consistent with banking law, (b) to add a few more items, such as health savings account benefits and educational savings accounts, and (c) to make Michigan law of debtor exemptions consistent inside or outside of bankruptcy. Mr. Morris reported that he met with Karoub & Associates and they are ready to go back to the legislature. This sort of legislation gets passed in a recession. Mr. Morris asked the Council for approval to move forward. A motion was made to allow the Debtor/Creditor Rights Committee to move forward with the revision to MCL 600.6023. The motion was seconded and passed unanimously 12-0-0.

(iv) Financial Institutions Committee. A written report of the Financial Institutions Committee is attached to these Minutes.

(v) In-House Counsel Committee. No report.

(vi) Law Schools. A written report of the Law Schools Committee is attached to these Minutes. Mr. Lukas reported that there is much work to be done. He stated that one of the Committee's objectives is to maintain contact with law students after they graduate. To this end, the Committee recently established a webpage on Facebook.com. Two panel discussions are being planned. One will be in Lansing in February at Cooley. The Spring Fling is planned for April. Students have indicated they want to hear about the practical aspects of being a business lawyer.

(vii) Nonprofit Corporations Committee. A written report of the Nonprofit Corporations Committee is attached to these Minutes. The Committee discussed future activities and decided to proceed immediately with two projects: (i) the preparation of a relatively short set of amendments to the Nonprofit Corporation Act and to the statute on dissolution of charitable purpose corporations that addresses some of the substantive and technical issues raised by PA 9 of 2008 and PA 222 of 2008; and (ii) the preparation of an update to the proposed bill previously approved by the Council providing more comprehensive amendments to the Nonprofit Corporation Act (that include, among other things, many of the changes made to the Business Corporation Act since 1982). A motion was made to approve the legislation described above amending the Nonprofit Corporation Act and the statute governing dissolution of charitable purpose corporations. The motion was seconded and passed unanimously 12-0-0.

(viii) Regulation of Securities Committee. A written report of the Regulation of Securities Committee is attached to these Minutes.

(ix) Uniform Commercial Code Committee. A written report of the Uniform Commercial Code Committee is attached to these Minutes.

(x) Unincorporated Enterprises Committee. A written report of the Unincorporated Enterprises Committee is attached to these Minutes. Mr. Minkus reported that the annual LLC program will be held in February.

b. Ad Hoc Committees.

(i) Uniform Securities Act (2002). No written report.

(ii) Ad Hoc Committee on Climate Change and Sustainability. Ms. Akers reported that one meeting was held and another is scheduled in December. Eight to nine people are on the Committee and thought is being given to expanding into other Sections and business areas. There is a program planned in March or April. The Committee is hopeful it will get the Governor to speak at the program.

c. Directorship Reports.

(i) Legislative Review Directorship. A written report of the Legislative Review Director is attached to these Minutes.

(ii) Nominating Directorship. A written report of the Nominating Director is attached to these Minutes.

(iii) Programs Directorship. A written report of the Programs Director is attached to these Minutes. Mr. Minkus reported that the Business Law Institute will take place on May 8-9 in Grand Rapids. The Directorship is trying to get high profile speakers or lobbyists to speak. Saturday's program will take the attendees through a fact pattern regarding an asset purchase agreement. On Friday night there will be a high end dinner and wine tasting event. Dinner is on site with food stations and wine pairings. All but one sponsor is back this year and Wells Fargo is a new sponsor. Mark Peters is doing a great job with the sponsorships.

a. Small Business Forum. No written report. Ms. Umphrey reported that four seminars on various topics are planned for this year: two at the Columbia Center in Troy, one in Macomb, and one at the Birmingham Community House. There will be a seminar on managing cash flow in January or February. The seminars are \$25 each and the attendees are 50% attorneys and 50% business owners and financial planners.

b. ICLE Liaison. A written report of the ICLE Liaison is attached to these Minutes.

(iv) Publications Directorship. A written report of the Publications Director is attached to these Minutes.

(v) Section Development. A written report of the Section Development Director is attached to these Minutes. Mr. Damschroder reported that they will hold a social event in Detroit early next year. There will be no program and will just be an event to let people know who we are.

(vi) Technology. A written report of the Technology Director is attached to these Minutes.

6. Other Business and Announcements. A discussion ensued regarding the economic situation and what we can do as a Section to be positive and have positive input during these tough economic times. Mr. Toering and Ms. Baker will work together to find ways the Section may be able to help. Mr. Minkus will write a blurb for the e-newsletter.

Mr. Khoury asked that people get calendar items to Terri Shoop, Jeff Van Winkle and himself for the website and e-newsletter.

7. Announcement of March 19, 2009 Council Meeting. The next meeting of the Business Law Section Council will take place at 3:00 p.m. at the State Bar of Michigan in Lansing. Dinner will follow the meeting.

8. Meeting Adjournment. There being no further business to come before the Council of the Business Law Section, upon motion duly made, seconded, and unanimously approved (12-0-0), the meeting was adjourned at approximately 12:15 p.m.

Respectfully submitted,

By: \_\_\_\_\_  
Robert Wilson, Secretary