

ANTITRUST, FRANCHISING & TRADE REGULATION SECTION

STATE BAR OF MICHIGAN

SECTION MEETING MINUTES

CALL TO ORDER, ATTENDEES, & MINUTES

On April 6, 2012 at about 12:00 PM, Chairperson Pahl Zinn called the telephone meeting to order. The meeting attendees were:

Vice Chairperson: David Janis

Secretary: Howard Lederman

Treasurer: Frank Hamidi

Council Member: Patrick Cafferty

Council Member: Matthew Powell

Council Member: Blair Renfro

The attendees approved the last meeting's (February 17, 2012) minutes subject to addition of the treasurer's information.

PUBLICATIONS COMMITTEE REPORT

As agreed at the February 17, 2012 meeting, Mr. Lehman will talk with Professor Crane about an extern for next school year beginning in Fall 2012. The Section will resume its search for a student intern for this Fall.

On or about February 1, 2012, Mr. Lederman had forwarded four Michigan Bar Journal theme issue article commitments to his designated contact. Mr. Lederman will write on the franchise law franchise definition and its significance. Mr. Steinberg will work with Mr. Lederman on his article. Mr. Janis will write on arbitration as applied to antitrust or franchise cases. Mr. Juckniess will write on antitrust and intellectual property, antitrust counterclaims in intellectual property lawsuits. Mr. Powell and other Schiff Hardin section members will work with Mr. Juckniess on his article.

All article drafts are due to Mr. Lederman by July 18, 2012. All final articles are due to Mr. Lederman by September 1, 2012. At a future meeting, we will need to assemble a small committee to write the brief introduction to all the articles. This is an action item for the May 18, 2012 meeting or the meeting after that.

FRANCHISE COMMITTEE REPORT

Since our overall April 6, 2012 section meeting, the April 13, 2012 franchise practitioners group meeting at Jaffe Raitt was successful. The turnout was good. The practitioners discussed a practical subject that a group member, Mr. Steinberg, had suggested. The next meeting will occur on June 8, 2012 at Jaffe Raitt. This meeting will feature a debate between Mr. Lederman and another franchise practitioner and Mr. Witus and Mr. McLeod on whether the Michigan Franchise Investment Act [MFIL] preempts non-breach of contract common law claims, like common law fraud.

EDUCATION/SEMINAR COMMITTEE REPORT

Regarding the Fourth Annual Great Lakes Seminar, Mr. Renfro is on the planning committee. He has distributed a memorandum outlining developments. The seminar's date will be November 2, 2012. The seminar's focus may be the FTC Act and consumer protection. Section members are considering presentation topics. Mr. Juckniess will speak on the Idaho potato case. Mr. Novak will be on a panel focusing on how the U.S. Department of Justice decides which antitrust lawsuits to pursue and how the Department prepares the cases for trial and final settlement negotiations. Mr. Juckniess urged these members to contact Mr. Renfro to discuss their interest and topics by late April 2012. The agenda idea deadline is May 1, 2012. Mr. Renfro will update seminar information at future section meetings. Mr. Zinn will contact other state bar antitrust sections, like Illinois and Indiana, on next year's seminar with a view to boosting Michigan's attendance.

Mr. Zinn reported on the ABA Antitrust Section meeting. One panel focused on how to decide to sue an internet cartel for price fixing and similar antitrust law violations. Other panels focused on two big antitrust cases, including the WalMart Case.

At our December 16, 2011 meeting, the attendees had discussed three possible joint educational programs: A joint Antitrust, Franchising, Trade Regulation-Health Care Law Sections program, a joint Antitrust, Franchising, Trade Regulation-Consumer Law Sections, and a joint Antitrust, Franchising, Trade Regulation-Intellectual Property Law Sections program. The first would include consumer law. Mr. Zinn suggested a format like the Fall 2011 Antitrust Seminar format. Other council members will suggest presenters for these seminars to Mr. Zinn. The attendees also began discussing a joint seminar-social event possibility.

At our January 20, 2012 meeting, the attendees resumed their discussion of the above possible joint educational programs. Regarding the joint Antitrust, Franchising, Trade Regulation-Business Law Sections program suggested at an earlier meeting, for the Fall 2012 seminar, Mr. Zinn suggested a two-part panel discussion. The first part would focus on the vehicle industry wire harness investigation case. The cognizant court heard oral argument on this case on January 31, 2012. The second part would focus on the vehicle industry's failure to implement compliance programs. The industry has not created any continuing compliance or even basic compliance programs.

Mr. Zinn suggested asking the Business Law Section to join our section in a three-part discussion expanding the above subject from a national to an international focus. Our section would focus on compliance, and the Business Law Section would focus on other matters.

Regarding the joint Antitrust, Franchising, Trade Regulation-Health Care Law Sections program, the attendees focused on the antitrust-health care law intersection, third-party health care reimbursements, group purchasing organizations, and FTC antitrust enforcement regarding health care industry mergers. The attendees noted that the FTC had rejected a Georgia health care industry merger recently. Mr. Zinn highlighted that sharing expenses with the Health Care Law Section would drive down our section's costs.

Concerning the joint Antitrust, Franchising, Trade Regulation-Consumer Law Sections program, Mr. Zinn noted that the Consumer Law Section's mission statement was similar to our sections. The attendees also noted the new Consumer Protection Agency head resulting from the President's recent recess appointment and potential agency regulations coming soon.

Another attendee suggested the Small Firm, Solo Practice Section as another joint seminar presenter. The attendees agreed to discuss this idea at a future meeting.

On all the above potential educational programs, the attendees discussed whether we want one well-known keynote speaker to increase attendance? Mr. Juckniess recalled that our section had arranged for well-known keynote speakers to drive attendance at past seminars with some positive and some mixed results.

At our February 17, 2012 meeting, the attendees discussed a joint event with the Federal Bar Association [FBA]. At the April 6, 2012 meeting, Mr. Zinn reported that since FBA has set its Spring schedule, this joint event will not occur until later. The attendees had discussed inviting U.S. Attorney Barbara McQuade to discuss antitrust enforcement efforts at an anti-trust specific meeting. Mr. Zinn or Mr. Juckniess will call her and propose this event. The caller will also ask her about pending cases of interest. As an alternative, Mr. Juckniess suggested that if Ms. McQuade is unavailable, Magistrate Graham would be an alternative. When we set the joint event date, time, and place, an e-blast to all section members to publicize the event will follow.

We will continue our discussion of this future joint FBA-Section event at our next meeting.

Mr. Janis informed us of an annual June 2012 franchising program event. He will post information on our section's LinkedIn site.

The Franchise Practitioners Group will discuss possible educational event opportunities for franchise attorneys at a future meeting.

LAW SCHOOL OUTREACH PROGRAM

On April 4, 2012, beginning at about 4:30 PM, Mr. Zinn, Mr. Janis, and Mr. Lederman conducted a section outreach program at the University of Detroit Law School. outreach program date. Several students and the assistant dean of career services attended. After the meeting, Mr. Zinn, Mr. Janis, and Mr. Lederman gathered with several students at a nearby bar. Some students showed interest in joining the section.

Mr. Lederman has set a May 24, 2012 Cooley Law School (Auburn Hills Campus) outreach program date. This outreach program is on. Mr. Zinn and Mr. Lederman will attend. Mr. Steinberg might attend. **At our next section meeting, we need to get a head count of section attendees.**

Mr. Juckniess is working on a Michigan State University Law School outreach program for Fall 2012. The conferees agreed to defer other efforts until closer to Fall 2012. **As we discussed at the last, February 17, 2012 and January 20, 2012 meetings, for the near-future period, this program's priority will be less than the others discussed below. But beginning with our August 2012 meeting, this program will become a priority.**

SECTION LINKEDIN SITE

Mr. Zinn has gotten our Linked-In site up and running. Our LinkedIn group has about 13 members. The conferees discussed building the site. Mr. Zinn has emailed a posting schedule to all council members. While initial response was good, it has since fallen off. In early May 2012, Mr. Zinn emailed a new posting schedule to all council members. At our February 17, 2012 meeting, the conferees had discussed whether our LinkedIn Site should be open or closed. The conferees agreed that the site should begin as closed, and, at the right time, become open.

We will continue our discussion of the LinkedIn site at our next meeting.

FUTURE SOCIAL EVENTS

The attendees continued their discussion of a Spring social event in conjunction with a Spring seminar. Mr. Zinn talked with the Federal Bar Association [FBA], which informed him that it had set its Spring schedule. But FBA was open to a Fall 2012 or Winter 2012 event. We will discuss possible seminar and social event ideas and related price information at a future meeting. Whether to charge and how to charge for such a joint event remain open.

For our Spring event, the attendees decided on a May 18, 2012, 4:00 PM, combined section meeting and social event at the Royal Oak Brewery in Downtown Royal Oak or Brady's in Ferndale. Mr. Janis will check on these locations and notify all section council members of the chosen location. Mr. Lederman pointed out **that if we choose the Royal Oak Brewery, attendees should park in a parking structure, rather**

than on the street. The Royal Oak Police Department watches the meters carefully and tickets without mercy. At our February 17, 2012 meeting, the conferees had agreed to encourage all council members to invite at least one other colleague to the combined meeting & social event.

The conferees deferred further discussion of the Summer 2012 social event. At our February 17, 2012 meeting, the conferees had agreed on the Ann Arbor rooftop bar idea. They had discussed a possible combined business meeting-social event format, like the Spring combined event. The conferees will discuss format, dates and times at our next meeting. **We will continue our discussion of our Summer 2012 social event at our next meeting.**

At our February 17, 2012 meeting, the conferees had begun discussion of our Fall 2012 social event. The State Bar's Annual Meeting will be in Grand Rapids. Thus, few section members will be there. As a result, most members attending the section meeting will do so by phone, and the meeting will be a call-in meeting. Therefore, the conferees agreed to separate our Fall 2012 social event from the Annual Meeting. The above 2012 Summer Social Event ideas will serve as a starting point for our discussion. At our April 6, 2012 meeting, the conferees discussed a separate social event located in the Metro Detroit or Ann Arbor areas, where most active section members practice. **We will continue our discussion of our Fall 2012 social event at our next meeting.**

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. Blair Renfro
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 following materials appear from earlier meetings for reference purposes. 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. **At the December 16, 2011 meeting, Mr. Zinn informed us that we need to act to make sure that all our changes, including the annual dues increase, go into effect on October 1, 2012.**

Since our April 6, 2012 meeting, Mr. Zinn has circulated proposed bylaws changes for feedback. Several council members have responded with feedback. We need to discuss how to address this feedback and the bylaws approval process and schedule at our next meeting.

TREASURER'S REPORT

Mr. Hamidi presented the treasurer's report. As of February 28, 2012, the section treasury had about \$16,020.53.

NEXT MEETING

The next meeting will be a combined business meeting-social event on May 18, 2012 2012, at 4:00 PM, at the Royal Oak Brewery, 215 East Fourth Street, Royal Oak, Michigan 48067, about 1-2 blocks east of Main Street, (248) 544-1141, <http://www.royaloakbrewery.com>. **Attendees should park in a parking structure, rather than on the street. The Royal Oak Police Department watches the meters carefully and tickets without mercy.**

/s/Howard Yale Lederman, Section Secretary
1900 South Telegraph Road, Suite 201
Bloomfield Hills, Michigan 48302
(248) 481-2000
hlederman@normanyatooma.com