

## ANTITRUST, FRANCHISING & TRADE REGULATION SECTION

### STATE BAR OF MICHIGAN

#### SECTION MEETING MINUTES

#### CALL TO ORDER, ATTENDEES, & MINUTES

On December 16, 2011, at about 12:00 PM, Chairperson Pahl Zinn called the meeting to order at Miller Canfield Paddock & Stone, PLC, 101 North Main Street, 17<sup>th</sup> Floor, Ann Arbor, Michigan 48104, (734) 668-7798, [juckniess@millercanfield.com](mailto:juckniess@millercanfield.com). The meeting attendees were:

Secretary: Howard Lederman

Treasurer: Frank Hamidi

Council Member: Lance Young

Council Member: Matthew Powell

Section Member: Fred Herrmann

Section Member: Jessica Frost

The attendees approved the last meeting's (November 11, 2011) minutes with the upcoming addition of the Treasurer's Report.

#### 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. Due to the student extern situation outlined below, the next e-newsletter will come out in mid-to-late January 2012. Mr. Lederman will forward his article to Mr. Hakala on or before January 15, 2012.

The conferees continued their discussion of the section student extern situation. Mr. Young has received an interested student's resume. Mr. Herrmann might also have a candidate in mind. Mr. Young will send the final position posting to Mr. Herrmann for his use.

Since the State Bar requires the extern to work under a defined time contract. At our last meeting, Mr. Hakala estimated that the extern will work about 10-20 hours per month drafting content and forwarding it to Mr. Hakala. Mr. Zinn, Mr. Hakala, and Mr. Young have considered a solution and will inform us of their solution at our next meeting. **We will discuss the solution at our next meeting.**

Mr. Lederman has been in contact with the State Bar Journal editor, Ms. Novak, on a theme issue. Based on the council's affirmative vote at the November 11, 2011 section meeting, he has reserved December 2012 as our section's theme issue journal issue. A theme issue involves four or five articles and an introduction covering our section's major focus areas.

Mr. Lederman has 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. She has asked us for the above list as soon as possible. Mr. Lederman will write a franchise law article, and Mr. Zinn will write an antitrust law article. We need to forward our article commitments (4-5 article commitments) to Ms. Novak's designee by February 1, 2012. Mr. Lederman will circulate the time line for theme issue articles. **We will discuss additional potential authors and subjects at our next meeting.**

### **FRANCHISE COMMITTEE REPORT**

Mr. Lederman confirmed the November 18, 2011 lunch meeting for franchise practitioners at Mr. Bordman's office. Four attorneys attended. The meeting went well. They agreed on a format and approximate intervals for future meetings. The format will involve one group member writing an article for discussion at each meeting. Mr. Lederman has brought a sign-in sheet and food receipt to the treasurer for reimbursement. Mr. Lederman is also working on the No Reliance Provisions article for the next section e-newsletter. Mr. Lederman has set the next Franchise Practitioners Group meeting for January 27, 2012 at Mr. Bordman's office. He has also set an April 13, 2012 meeting at Mr. Mandel's office.

### **EDUCATION/SEMINAR COMMITTEE REPORT**

Regarding the Fourth Annual Great Lakes Seminar, Mr. Renfro will be on the planning committee. 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.

The attendees 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. **We will continue discussing these possible programs at our next meeting.**

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

## LAW SCHOOL OUTREACH PROGRAM

Mr. Zinn has set an April 4, 2012 University of Detroit outreach program date. Mr. Lederman has set a May 24, 2012 Cooley Law School (Auburn Hills Campus) outreach program date. Mr. Juckniess is working on a Michigan State University Law School outreach program for Fall 2012. The possibility of a Joint University of Detroit-Wayne State University Law School program remains open. Mr. Lederman will work with Mr. Juckniess on a possible University of Michigan outreach program. The idea of contacting Professor Crane there came up. Mr. Lederman will also work on a possible Cooley Law School-Ann Arbor Campus outreach program.

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

**We will continue our discussion of the outreach program at our next meeting.**

## SECTION WEB SITE

For reference purposes, the material from earlier meetings 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.

Mr. Zinn reported back on his Linked-In and Facebook discussions. His State Bar contact recommended Facebook over Linked-In as more accessible, especially to younger practitioners. But Mr. Zinn pointed out that the section includes many older practitioners. He explained that on Linked-In, we can create a home forum with links, post messages, or create a blog. We can comment on U.S. Department of Justice, Federal Trade Commission, and similar state regulatory agencies' announcements and decisions on antitrust, franchising, consumer, and trade regulation subjects. Mr. Zinn suggested starting a section Linked-In page and assign council members 1-2 weeks to watch the page on a rotating schedule. He proposed to test the Linked-In page for 6-8 months. He also pointed out that compared to Linked-In, Facebook was more open to non-section members. Mr. Zinn stated that he wanted to begin developing a Linked-In page. When Mr. Renfro moved for approval of a \$100.00 fund for this purpose, the conferees approved this amount.

Mr. Zinn has continued to work on the Linked-In project. He expects to finish the Linked-In page scan soon. Aaron Solinus has the computer background necessary to help us complete the project. Mr. Juckniess will also be working on the project. The conferees discussed links to other web sites, such as the U.S. Department of Justice Antitrust Division, the Federal Trade Commission, and other relevant web sites.

**We need to continue our discussion of the Linked-In project at our next meeting.**

## **FUTURE SOCIAL EVENTS**

The conferees discussed our successful December 6, 2011 winter social event. Those attending enjoyed the food, the environment, and the atmosphere. Mr. Janis and Mr. Hamidi did excellent work in scheduling the event during difficult holiday season on short notice. Mr. Hamidi reported that the State Bar has reimbursed for the holiday dinner.

Then, the conferees discussed a possible late April-early May 2012 social event or combined seminar-social event. Mr. Zinn suggested a cocktail hour at the restaurant at the top of the Renaissance Center in Downtown Detroit, where section members could bring guests. He also suggested inviting older lawyers, who belonged to our section before its May 2006 renaissance. The conferees also discussed the idea of awarding an honor to a judge, attorney, or someone else for his or her accomplishments. **We will continue our discussion of these ideas and our Spring 2012 activities at our next meeting.**

Next, the conferees discussed a Summer 2012 social event. One attendee suggested the Ann Arbor Summer Festival. After some discussion, the conferees agreed that the event was not right for our section. Mr. Juckniess suggested the Ann Arbor Natural History Museum. Another conferee suggested the Arbor Brewing Company. Mr. Juckniess will look into these possibilities and inform us further. **We will continue our discussion of our Summer 2012 activities at our next meeting. Next meeting's attendees need to bring their ideas to 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.**

### **OTHER BUSINESS**

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. Hamidi presented the treasurer's report. As of November 30, 2011, the section treasury had about \$16,757.91.

### **NEXT MEETING**

The next meeting, the January 20, 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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