

ANTITRUST, FRANCHISING & TRADE REGULATION SECTION

STATE BAR OF MICHIGAN

SECTION MEETING MINUTES

CALL TO ORDER, ATTENDEES, & MINUTES

On November 11, 2011, at about 12:00 PM, Chairperson Pahl Zinn called the meeting to order at his 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 meeting attendees were:

Vice Chairperson: David Janis

Secretary: Howard Lederman

Treasurer: Frank Hamidi

Publications Committee Chairperson: Justin Hakala

Council Member: Lance Young

Council Member: Keith Essenmacher

Council Member: Matt Powell

Council Member: Blair Renfro

The attendees approved the last meeting's (October 26, 2011) minutes with a few minor corrections.

TREASURER POSITION

Mr. Hamidi has begun his treasurer duties, and his current term will continue until the next Annual State Bar 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. Due to the student extern situation outlined below, the next e-newsletter will come out in mid-to-later 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. Zinn has talked with a Cooley Law School student about the open extern position. The student said that he could begin work in January 2012. Mr. Zinn suggested making a conference room or a similar room in a council member's office available for the extern to use. Mr. Zinn has set up a suggested schedule. Since we have not had an intern this fall, and an intern's absence has delayed our section e-newsletter's publication, Mr. Hakala emphasized the need for an extern to be ready to start at the beginning of the fall semester. Mr. Zinn suggested contracting with the extern for the winter semester and continuing him or her on duty during next fall semester. But 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 will confer and work on a solution and 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. 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. Since the meeting, Mr. Lederman has received definite confirmation from Ms. Novak that she is designating the December 2012 State Bar Journal as our section's theme issue journal. She has asked us for the above list as soon as possible. **We will discuss 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. Mr. Lederman will bring 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.

EDUCATION/SEMINAR COMMITTEE REPORT

On October 28, 2011, the Third Annual Great Lakes Seminar occurred. It was simulcast. Five or six panels presented materials. About 50 people attended in person, and an unknown number watched the simulcast. From our section, Mr. Morganti attended. Mr. Renfro has received some planning materials for next year's seminar. He 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.

Mr. Morganti asked for a \$388.00 seminar fee reimbursement. He also asked for a \$220.00 hotel room reimbursement. Mr. Zinn and Mr. Janis pointed out that the State Bar might have a problem with the hotel room reimbursement. Mr. Morganti also asked for a section. After further discussion, the attendees approved the \$388.00 and \$130.00 reimbursements, but not the \$220.00 reimbursement.

LAW SCHOOL OUTREACH PROGRAM

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.

Mr. Zinn called the University of Detroit Law School's Acting Dean to set up an outreach meeting. He will continue to follow up for this purpose. Mr. Lederman called Cooley Law School Auburn Hills Campus' Career Services Director and Cooley Law School Ann Arbor Campus' Acting Dean and received favorable responses on scheduling outreach meetings. He expects to set at least one meeting by the next section meeting. Mr. Janis and Mr. Morganti called Wayne State University Law School to set an outreach meeting, and they will continue their efforts. Mr. Renfro discussed his Michigan State University Law School outreach efforts. He has been working with Mr. Wierenga and an assistant career counselor there. Mr. Renfro will continue his efforts. Council Member:

Mr. Zinn suggested setting a March 16, 2012 outreach meeting to coincide with our scheduled section meeting on that date. When he asked for a volunteer to try and set an outreach meeting at the University of Michigan Law School, Mr. Lederman volunteered to do so. Mr. Cafferty said that he would send Mr. Lederman information about various deans and antitrust, franchising, and trade regulation area professors.

Mr. Lederman emphasized the importance of following up with interested students after the outreach meetings to encourage them to join our section.

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

OTHER FUTURE EVENTS

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 continued their discussion of a winter social event. The following material is from earlier meetings for reference purposes: 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.

Mr. Janis informed us that the Birmingham Community House could reserve December 1, 2011, 6:00 PM-9:00 PM, for our section, but would require us to use its wine list. Mr. Zinn suggested that we could have a social hour there and forego the wine tasting. But several conferees expressed disenchantment with holding our event there. Mr. Renfro and Mr. Lederman expressed their preferences for a restaurant. After much discussion, the conferees agreed to hold our event at a restaurant in the same general area as the Birmingham Community House. Mr. Hamidi suggested the Bastogne restaurant in Royal Oak. Mr. Lederman expressed his concern over the event being too expensive if held in the Birmingham-Bloomfield Hills area. Mr. Hamidi will follow up on his suggestion. The attendees estimated that about 30 people would attend at \$50.00-\$60.00 a person for a total \$1,000.00 estimated expense. The attendees voted to approve \$1,000.00 for our winter social event.

Then, the attendees discussed a spring seminar event. At an earlier meeting, while Chairperson, Mr. Morganti had suggested approaching the Consumer Law Section for a joint seminar and suggested that the seminar could be an opportunity to increase our section's membership. Agreeing with both, Mr. Zinn will contact the Consumer Law Section Chairperson on the suggested joint seminar. He will also contact the Health Law Section Chairperson on a future joint seminar.

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.**

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 October 31, 2011, the section treasury had about \$15,548.83.

NEXT MEETING

The next meeting will be on Friday, December 16, 2011, 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 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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