

**ANTITRUST, FRANCHISING & TRADE REGULATION SECTION**

**STATE BAR OF MICHIGAN**

**OCTOBER 23, 2009 SECTION MEETING MINUTES**

**CALL TO ORDER, ATTENDEES, & MINUTES**

At about 12:00 Noon, Chairperson Blair Renfro called the meeting to order at Kerr Russell & Weber, 500 Woodward Avenue-#2500, Detroit, Michigan 48226, (313) 961-0200.. Besides Mr. Renfro, the meeting attendees were:

Vice Chairperson: Andrew Morganti

Secretary: Howard Lederman

Treasurer: David Janis

Stuart Bordman

Craig Essenmacher

Justin Hakala

Fred Herrmann

Warren Hunt

Rick Juckniess

Paul Novak

Brock Swartzle

Mitch Rapp

Pahl Zinn

The attendees approved the last two meetings' (September 18, 2009 and October 13, 2009) minutes.

**CONFIRMATION OF ELECTION OF OFFICERS AND ELECTION OF  
ADDITIONAL COUNCIL MEMBER TO FILL VACANCY**

The attendees confirmed the election of Mr. Morganti as Vice Chairperson, Mr. Lederman as Secretary, and Mr. Janis as Treasurer in compliance with the Section

Bylaws. From the last, October 13, 2009, meeting, Mr. Renfro noted the adjustment of the Section Council to comply with the Section Bylaws and the two remaining open Section Council vacancies. Mr. Juckniess filled one vacancy as the immediate past Chairperson ex officio. Mr. Renfro nominated Mr. Essenmacher for the other vacant position whose term expires in 2012. Mr. Juckniess seconded the nomination, and Mr. Essenmacher accepted the nomination. The attendees elected him to the vacant position.

### **PUBLICATIONS COMMITTEE REPORT**

In the last few days, Mr. Hakala has published and distributed the October 2009 E-Newsletter. The newsletter included notice of several upcoming events, especially the October 30, 2009 franchise law and practice seminar and the Great Lakes antitrust seminar.

Also, the next e-newsletter will include an announcement on the upcoming section member directory. At an earlier meeting, the conferees agreed to notify all section members of their opportunity to include their names, business addresses, business telephone numbers, business email addresses, legal specialties, biographical information, and photos this fall. The next e-newsletter will include this notification.

Mr. Renfro will review Mr. Juckniess' directory materials, like State Bar of Michigan samples. Mr. Juckniess suggested permitting each section member complete and forward a one-half to one-page form containing desired directory information. The attendees agree that the directory should provide for members' photos.

### **FRANCHISE COMMITTEE REPORT**

Mr. Lederman and Mr. Janis have completed the arrangements for the October 30, 2009 Franchising Law and Practice Seminar. Mr. Bordman, Mr. Herrmann, Mr. Lederman, and Mr. Lehman will speak on franchising law and practice subjects. The seminar date, time, and place are: Friday, October 30, 2009, 12:00 PM-5:00 PM, Hotel Baronette in Novi, Michigan. Eblasts and other publicity for the seminar to maximize attendance have occurred.

At the seminar, Mr. Bordman will speak on termination of franchises and related matters. Mr. Lederman will speak on franchisee and franchisor claims and defenses. Mr. Herrmann will speak on franchise law and practice areas involving motor vehicle dealerships (What obligations do vehicle manufacturers/franchisors have to vehicle dealers/franchisees?). Mr. Lehman will speak on antitrust and franchising subjects applicable to many kinds of vehicle dealers.

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

Regarding the Fall 2009 Franchising Law and Practice Seminar, see the above Franchise Committee Report.

On October 22, 2009, 12:00 Noon, Mr. Janis conducted a successful Real Estate Multi-Listing Service Antitrust Webinar. The attendees congratulated Mr. Janis for his efforts and success. They also discussed the technology's merits and problems and the need for improvement in the technology. The conferees saw the webinar format as a good, inexpensive way for people to keep in touch and for the section to communicate information.

The conferees discussed the upcoming October 26, 2009 Informant Panel event at the Townsend Hotel in Birmingham, Michigan. Ten section members have signed up, including Mr. Renfro, Mr. Morganti, Mr. Lederman, Mr. Essenmacher, Mr. Swartzle, Mr. Bordman, Ms. Mandell, and three others.

The attendees discussed the November 6, 2009 Great Lakes Institute, the multistate antitrust seminar, at the Hyatt Regency Hotel in Columbus, Ohio. The seminar will run from 8:30 AM to 4:00 PM. Mr. Renfro will speak there at a panel of current and former state antitrust law enforcers. Mr. Juckniess will also be there. The seminar will include a mock U.S. Supreme Court oral argument based on the *American Needle Case*. Seminar attendees will receive Continuing Legal Education credits.

On October 13, 2009, Mr. Renfro mentioned a possible seminar involving administrative law and antitrust law. He will contact an AT & T antitrust attorney, Bill Sherry. Mr. Morganti will contact the Ontario Antitrust Lawyers organization on its members' interest in this seminar. These efforts on this seminar will continue.

On October 23, 2009, conferees suggested some other future seminars. Mr. Renfro suggested a public utilities and regulation seminar. He has talked to the Presidents of DTE and Consumers Energy regarding this seminar. He suggested a Spring 2010 seminar date. He also suggested that the seminar be a full-day seminar in Lansing. Several conferees expressed support for this seminar.

Mr. Lederman suggested a joint professional responsibility seminar focusing on any new Rules of Professional Conduct that the Michigan Supreme Court might approve. He will contact the State Bar and other section leaders on this subject.

### **NEW STUDENT ASSISTANT**

Mr. Renfro and Mr. Hakala interviewed Mr. John Schroder, a law student, for the new student assistant position. Mr. Renfro informed the attendees of Mr. Schroeder of Mr. Schroder's impressive resume and recommendation. After discussion, Mr. Renfro moved for the section to approve Mr. Schroder's appointment, and Mr. Hakala seconded the motion. The conferees approved the appointment and set compensation as \$400.00 a month. Mr. Schroder's term will begin on November 1, 2009.

### **FUTURE EVENTS**

Mr. Lederman raised a University of Michigan Art or Historical Museum event. Mr. Juckniess said that the art museum is far more impressive than the historical museum. He will visit the art museum and bring back information for a possible April or May 2010 event.

Mr. Renfro raised the idea of a late Fall 2009 restaurant event, a dinner event. Mr. Juckniess suggested an early December 2009 timeframe and mentioned last year's similar successful event. Mr. Janis recalled that last year, he had looked into the Book Cadillac in Detroit for the event. Mr. Juckniess mentioned the Detroit Athletic Club. Mr. Morganti said that as he was a member, he could look into it and check whether the club would be available for December 4 and 11, 2009. Mr. Juckniess noted that since last year's event occurred in Downtown Ann Arbor, this year's event should occur in Downtown Detroit. Mr. Renfro estimated attendance at 20-40 people, similar to last year's attendance. He suggested a December 4, 2009 event date. When one member asked whether the State Bar would reimburse for spouses' attendance, Mr. Janis suggested asking the State Bar regarding any problems. Mr. Zinn urged that the event occur during the first week of December and noted that other holiday season events would be occurring later that month. The conferees agreed to look at the December 3, 4, and 5, 2009 period for the event.

## **SECTION COUNCIL MEMBERSHIP INFORMATION**

### **TERM EXPIRING 2010**

1. Stuart R. Bordman
2. David R. Grand
3. Mitch Rapp
4. Robert Wierenga

### **TERM EXPIRING 2011**

1. Atleen Kaur
2. Fred Herrmann
3. Paul Novak
4. James Adams

### **TERM EXPIRING 2012**

1. Brock Swartzle
2. Pahl Zinn
3. Kimberly Kefalas
4. Craig Essenmacher

### **OTHER SECTION COUNCIL MEMBERS**

1. Immediate Past Chairperson: Rick Juckniess

2. Ex-Officio Publications Editor: Justin Hakala
3. Michigan Department of Attorney General Member: Vacant

### **SECTION BYLAWS CHANGES**

At the July 24, 2009 section meeting, the following events occurred: Mr. Zinn circulated a draft of proposed section bylaws changes. Regarding Article II, Section 1, at the June 5, 2009 meeting, the attendees had voted to increase the annual section dues from \$15.00 to \$25.00. The increase will be effective for the 2009-2010 fiscal year beginning October 1, 2009. The attendees voted to strike Article II, Section 3 reading: "No person shall be eligible for election to the Council as a member at large who has served as a member of the Council during each of the six years immediately preceding the term for which the election is held." The conferees discussed Article II, Section 6, Paragraph b reading: "The Assistant Attorney General (or equivalent) having primary responsibility for antitrust enforcement with the Michigan Department of Attorney General" shall be an ex officio voting member of the Council. Mr. Renfro mentioned that the current Assistant Attorney General is not a section member. When Mr. Renfro has offered this individual rides to section meetings, this individual has refused. Mr. Renfro will find out if this provision is mandatory and inform the attendees at the next meeting. The conferees approved all the other proposed changes. **NOTE:** All the votes, except the dues increase, were subject to ratification at the next meeting occurring at the State Bar of Michigan Annual Meeting.

At the September 18, 2009 meeting, the attendees voted to ratify all the above changes and discussed the Assistant Attorney General situation further. Mr. Renfro and Mr. Lederman summarized earlier efforts to interest the Attorney General Department in participating. Mr. Renfro will approach Susan Sanford, the new head of the Department's antitrust enforcement section, to renew these efforts. The attendees voted to defer bylaw change action on this subject for another year to see if the Department responds to Mr. Renfro's or any later efforts.

At the October 23, 2009 meeting, Mr. Juckniess asked if a complete republication of the revised bylaws was necessary. Mr. Renfro and Mr. Lederman will investigate this and report back at a future meeting.

### **OTHER BUSINESS**

Mr. Janis informed the conferees of the State Bar's request to add two new account numbers, one for the student assistant and one for the telephone charges, for example for telephone conference charges relating to section meetings.

Mr. Renfro informed the attendees of the Michigan House of Representatives bill extending the state sales tax to certain kinds of legal services. Whether the bill mentioned legal services was unclear. Mr. Herrmann mentioned that Ms. Elizabeth Lyon of the State Bar was monitoring this issue. Mr. Juckniess stated that his law firm was lobbying against any sales tax on legal services. He explained that such a tax would put in-state

law firms at a competitive disadvantage against out-of-state law firms. Mr. Bordman added that his firm provides legal services for many out-of-state clients, who can go elsewhere. Mr. Juckniess suggested contacting the State Bar and obtaining an economist's opinion on any such extension of the state sales tax. Mr. Lederman suggested support for alternative revenue sources. After further discussion, Mr. Renfro stated that he would contact the State Bar, Ms. Lyon, on any bills proposing to extend the state sales tax to services.

### **TREASURER'S REPORT**

Mr. Janis will have a treasurer's report for the next meeting.

### **NEXT MEETING**

The next section meeting will occur in connection with the upcoming December 2009 section event. Mr. Renfro will inform members of the specific date, time, and location.

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