

FINANCIAL INSTITUTIONS COMMITTEE

REPORT PREPARED FOR THE DECEMBER 2, 2006 COUNCIL MEETING

1. 2006-2007 Budget Request.

\$150.

2. Next Scheduled Meeting of the Committee

Working on scheduling next meeting for January or February.

3. Council Approval

None.

4. Membership

The Committee has approximately 70 members. A detailed agenda for each meeting is sent to each member of the Committee.

We regularly request that Committee members identify women or minority attorneys who might be interested in joining the Committee.

5. Accomplishments Toward Committee Objectives

The primary Committee objective is to provide to members information on statutory, regulatory and judicial developments that affect financial institutions. This objective is accomplished by periodic Committee meetings.

6. Meetings and Programs

At each meeting a representative of the Michigan Office of Financial and Insurance Services reports on OFIS's legislative and regulatory initiatives, any litigation to which OFIS is a party and other matters of interest to the Committee. Also, representatives of the Michigan Bankers Association and the Michigan Credit Union League report on their legislative agendas and any litigation in which they are involved, whether as a party or as *amicus curiae*. Members of the Committee report on topics of interest.

The most recent meeting of the Committee was held on November 3. Attached to this report is a summary of that meeting.

At Dick Lavolette's suggestion, we will explore the possibility of holding a meeting next Spring at the new facility of the Detroit branch of the Federal Reserve Bank of Chicago.

7. Publications

The Committee has primary responsibility for articles for the Summer 2007 issue of the Michigan Business Law Journal. The Committee is beginning the process of developing articles for that issue.

8. Legislative/Judicial/Administrative Developments

See the attached summary of the Committee's last meeting.

The Michigan Bankers Association has been working with OFIS in preparing relatively extensive amendments to the Michigan Banking Code. At each meeting Committee members are asked to submit suggestions for additional amendments.

9. Analysis of Applicable Strategic Plan Issues

The Committee's work on the Banking Code amendments helps "enhance the legislative and regulatory environment for conducting business in Michigan" (Mission Statement). Committee meetings help "foster the highest quality of professionalism and practice in business law" (Mission Statement).

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SUMMARY OF NOVEMBER 3, 2006, MEETING OF FINANCIAL INSTITUTIONS

COMMITTEE OF THE STATE BAR BUSINESS LAW SECTION

1. OFIS Report

Richard Lavollette, Chief Deputy Commissioner of OFIS, reported the following:

- Mortgage lending in Michigan is way down because the housing market is down.
- The Michigan legislature has enacted payday lending and money transmitter laws. OFIS is gearing up to staff for its enforcement responsibilities under these laws.
- OFIS has hired seven new examiners for mortgage lending. OFIS receives over 600 complaints per year regarding mortgage companies.
- OFIS has created a new Office of General Counsel, which will have enforcement responsibilities. The Office will be headed by John Schoonmaker.
- OFIS is beefing up its staffing in the securities regulation area.
- Information technology is a big concern of OFIS and all of the federal regulators. OFIS is working on a written policy.
- Subpoenas to OFIS is an area of concern.
- He expects a couple more federal thrifts to convert to state charters.
- OFIS recently issued a statement regarding signage where two banks owned by the same holding company want to use similar signage.
- BCBSM is seeking to acquire M Care.
- There are 144 banks and thrifts in Michigan. None are CAMEL-rated 4 or 5. OFIS receives 2-5 new bank applications each year.

2. MBA Report

Matt Hanley of the Michigan Bankers Association reported the following:

- The major legislative focus currently is business tax restructuring.

- MBA is supporting a bill to amend certain of the trust provisions of the Banking Code.
- MBA is supporting bills in the following areas:
 - Abandonment of mortgaged property.
 - Mortgage fraud.
 - Titling of snowmobiles.
 - Interchange fees.
- Matt reported that next year Congress is likely to review the whole area of consumer reports and privacy. In addition, data breach legislation is likely at the federal level.

Matt distributed copies of several bills.

3. MCUL Report

Mike Defors of the Michigan Credit Union League reported that elder abuse is an emerging issue. He also described key aspects of the process by which a credit union may be converted to a bank. Mike distributed materials on this subject.

4. Rodney Martin of Warner Norcross & Judd LLP reported on two cases pending in the U.S. Supreme Court on appeal from the 9th Circuit. One involves what constitutes “adverse action” under FCRA. The other addresses when a violation is “willful.”
5. Shane Hansen of Warner Norcross & Judd LLP reported on the implications of amendments to the federal securities laws that were enacted by the Regulatory Relief Act of 2006.
6. Jim Breay of Warner Norcross & Judd LLP reported on the extensive procedures that a lender must now follow when it wants to determine whether there is a notice of federal tax lien pending against an entity, as a result of the decision of the 6th Circuit in *Spearing Tool*.
7. Jim Breay distributed a packet of materials to each attendee, as follows:
 - An article by Jim entitled *The Unfortunate Consequences of Spearing Tool*, to be published in The Banking Law Journal.
 - Interagency Guidance on Nontraditional Mortgage Product Risks.
 - Opinion of 6th Circuit in *Moyer v. Froeming*.

- Industrial loan companies.
- New regulations regarding consumer credit to servicemembers and dependents.
- Priority of garnishment of a bank account over a perfected security interest in the account. *C & H Sugar Co., Inc. v. Solstice Industries, Inc.*
- Financial Services Regulatory Relief Act of 2006.
- SEC Timetable for final Gramm-Leach-Bliley rules.
- ABA UCC/Uniform Law News (September and October 2006).
- Litigation Report from the Office of the General Counsel of the American Bankers Association (November 1, 2006).