

**STATE BAR OF MICHIGAN
BUSINESS LAW SECTION
COUNCIL MINUTES**

December 7, 2013

Pursuant to notice duly given, a meeting of the Council of the Business Law Section of the State Bar of Michigan was held at Honigman Miller Schwartz and Cohn in Detroit, Michigan on Saturday, December 7, 2013. Council members present were Matthew Allen, James Carey, Judy Calton, Jennifer Consiglio, Julia Dale, Mark Kellogg, Richard McDonald, Thomas Morris, Mark Peters, Gail Straith, Douglas Toering, and Jeffrey Van Winkle. Committee members and Directors present were John Dresser, Marguerite Donahue, Dee Dee Fuller, Mark High, Patrick Mears and Daniel Minkus. Others present were Jeff Kirkey and Terri Shoop.

1. Call to Order and Determination of Quorum. Section Chairperson, Jeffrey Van Winkle, called the meeting to order at approximately 10:15 a.m. and determined that a quorum was present.

2. Approval of Minutes of September 26, 2013 Council Meeting. Mr. Van Winkle called for a motion to approve the Minutes of the meeting of the Council from September 26, 2013. Pursuant to motion duly made and seconded, the Minutes were unanimously approved 12-0-0.

3. Treasurer's Report. A written Treasurer's Report is attached to these Minutes. Mr. Toering discussed the report. Mr. Van Winkle called for a motion to approve the Treasurer's Report. Pursuant to motion duly made and seconded, the report was unanimously approved 12-0-0. A discussion ensued regarding cost saving alternatives for the *Michigan Business Law Journal* (the "Journal").

4. Chairperson's Report.

A. Madugula Amicus Brief. Mr. Van Winkle reported that the Madugula v Taub Amicus Brief was approved by Council on December 2 at a Special Meeting of the Council.

B. Budgeting. Mr. Van Winkle reported that the budgeting process is complete. The officers assisted the Treasurer in finalizing the budget.

C. Committees. Mr. Van Winkle thanked the Committee Chairs who provided membership lists and asked those who did not to provide a list. These lists can be used to identify active members and candidates for Council. Mr. Van Winkle asked the Committee Chairs for suggestions to make Council meetings more useful and valuable.

5. Committee/Directorship Reports.

A. Standing Committees.

(i) Commercial Litigation Committee. A written report of the Commercial Litigation Committee is attached to these Minutes. Mr. Toering reported on a proposed change to the MCR on special case evaluation panels which was referred to the Committee. He believes it is an overall good idea, but may not be of interest to the Section with respect to taking an official position and should probably be handled by another section. Mr. Toering stated that the Committee will review the proposal, but will likely not recommend that the Section take a position.

(ii) Corporate Laws Committee. A written report of the Corporate Laws Committee is attached to these Minutes. Mr. Carey reported on the amicus brief *Madugula v Taub* which was filed on December 3. The oral argument on the case is schedule for December 10. Thanks to Doug Toering, Jim Carey, Justin Klimko and Cy Moscow who all did a great deal of work on the project.

(iii) Debtor/Creditor Rights Committee. A written report of the Debtor/Creditor Rights Committee is attached to these Minutes. Ms. Calton reported that the Committee is working with the Michigan Supreme Court on MCR 2.621 and 2.622:

Ms. Calton reported on proposed revisions to the MCR regarding agreement on receivers by the Michigan Supreme Court. The rule was rewritten by the court and the court is asking the Committee to review and comment on it. The issue presented in the change is if parties agree to a receiver or if a party moves for a receiver and the other party does not object, then the court should appoint that receiver unless the judge explains otherwise. The Committee supports the change and is seeking approval to comment favorably. Thomas Morris proposed that Council endorse the rule except submit to the Court three things to consider: (1) the rule should not allow suit for a sole purpose of obtaining appointment of a receiver, (2) receivership should not be over a person, and (3) the fiduciary proposal suggests that the receiver would not be a fiduciary for other purposes. A motion was made to authorize Judy Calton to send a letter to the court asking it to consider and adopt Mr. Morris's three comments as BLS comments. The motion was seconded and passed 12-0-0. When the rule is finalized, the Committee will likely host a seminar on the subject and contribute an article for the *Journal*.

(iv) Financial Institutions Committee. No report. Mr. Van Winkle reported that he is working with Jim Breay to identify a Committee Chair.

(v) In-House Counsel Committee. A written report of the In-House Counsel Committee is attached to these Minutes. Mr. Van Winkle reported that the Committee is trying to deal with increased membership. The Section will continue its ship of the Crain's event. Kim Yapchai inquired about a regular column for the Committee in the *Journal*. This is a good idea, but a commitment is needed regarding authoring the column.

(vi) Law Schools. A written reports of the Law Schools Committee is attached to these Minutes.

(vii) Nonprofit Corporations Committee. A written report of the Nonprofit Corporations Committee is attached to these Minutes. Ms. Forbes reported that amendments to the Nonprofit Corporation Act, the Dissolution of Charitable Purpose Corporations Act and the LLC Act that are based on drafts prepared by the Committee and approved by the Council were introduced in the Legislature in October as SB 623, 624 and 625. Hearings will take place in October. Representatives of the Department of Licensing and Regulatory Affairs appeared at the hearing and have subsequently provided written comments discussing policy issues and suggesting technical changes. Ms. Dale reported that Karoub incorrectly stated that she had drafted the amendments. Mr. Carey stated that we need to carefully monitor the actions of Section lobbyists. Mr. Van Winkle directed Ms. Forbes to ask Karoub for better communication between lobbyists and the Section. A motion was made to engage Karoub Associates to assist with the amendments for a one year contract in 2014 not to exceed \$5,000 if necessary. The motion was seconded and passed 12-0-0. Mr. Carey reminded Ms. Forbes that the contract must be approved by the SBM general counsel before it is signed by the Section Chair.

(viii) Regulation of Securities Committee. A written report of the Regulation of Securities Committee is attached to these Minutes. The House and Senate have adopted Michigan's version of crowd funding,. The Committee is responsible for the next issue of the *Journal*. Please submit any appropriate articles.

(ix) Uniform Commercial Code Committee. A written report of the Uniform Commercial Code Committee is attached to these Minutes.

(x) Unincorporated Enterprises Committee. A written report of the Unincorporated Enterprises Committee is attached to these Minutes. Mr. Minkus reported that this year's LLC Update seminar with ICLE will be a studio seminar limited to case law and statutory update. The Committee will help to educate business courts regarding unincorporated enterprises. The Committee needs to decide if it wants to continue with UPA and RULPA initiatives.

B. Ad Hoc Committees.

(i) Diversity. A written report of the Diversity Ad Hoc Committee is attached to these Minutes. Ms. Dale reported that the Committee is planning an event for February 18.

C. Directorship Reports.

(i) Legislative Review Directorship. A written report of the Legislative Review Director is attached to these Minutes.

(ii) Nominating Directorship. A written report of the Nominating Director is attached to these Minutes.

(iii) Programs Directorship. A written report of the Programs Director is attached to these Minutes. Business Boot Camp I in Grand Rapids was a success, with attendance up from prior years to 105 and positive reviews. Currently there are 129 registrations for the Plymouth session in January. 17 firms have registered at the firm level. The Directorship intends to do Business Boot Camp II in Grand Rapids in November 2014 and in Plymouth in January 2015.

The Business Law Institute is in the planning stages and the Directorship and ICLE have had many meetings to discuss the event. The Institute will be an educational session on June 6, including a lunch speaker. Mr. Minkus asked every committee to submit suggested topics and speakers for the Institute. On Saturday, June 7, each Committee will be expected to hold a meeting of the committee before the Council meeting at 10:30 a.m. It is hoped that scheduling the committee meetings will increase attendance at the BLI. The Directorship is exploring ideas for Friday night activities including a scrolling supper, a sit down dinner, and a pub crawl. Stout Risuis Ross will sponsor a cocktail reception on Friday night.

A discussion ensued regarding moving the 2015 BLI to September to be combined with the Annual Meeting and Grand Rapids' Art Prize. The event would consist of a full day educational session on Friday followed by a Friday night Schulman Award presentation and dinner. Committee and council meetings would occur on Saturday. The advantage of combining the events include a cost savings, the Art Prize draw, and increased attendance. The disadvantage of combining the events is one less event at which our members gather. ICLE supports the combined event. Items to consider when planning the event are avoiding Jewish holidays and the SBM annual meeting, and early room reservation. A motion was made supporting the Programs Directorship moving forward with investigating the coordination of the BLI with the Annual Meeting and Art Prize. The motion was seconded and passed unanimously 12-0-0.

a. Small Business Forum. A written report of the Small Business Forum is attached to these Minutes.

b. ICLE Liaison. A written report of the ICLE Liaison is attached to these Minutes. Mr. Kirkey reported that ICLE is excited to try new ideas for the BLI. ICLE will do fewer one-half day and full day seminars. ICLE will do 50 on-demand webcasts in 2014, including the LLC annual update. ICLE may do an entrepreneur/startup institute in 2015. The redesigned ICLE partnership was discussed.

(iv) Public Relations and Social Media. A written report of the Public Relations and Social Media Director is attached to these Minutes. Ms. Consiglio reported that the Section is priced out of working with large marketing firms. If you have suggestions regarding marketing firms, please provide them to Ms. Consiglio. Mr. Van Winkle will schedule a conference call before the March meeting with the Executive Committee and Committee Chairs interested in marketing. Ms. Consiglio will circulate her existing research to the group.

(v) Publications Directorship. A written report of the Publications Director is attached to these Minutes. Mr. McDonald reported that we have had no interest regarding advertising opportunities in the *Journal*. The cost of the *Journal* was discussed. The only way to cut costs is to convert the electronic version to html format which initially will be costly. Mr. Carey reported that major changes are coming to the SBM website in 2014 which will require changes to the BLS website.

(vi) Section Development. A written report of the Section Development Director is attached to these Minutes.

(vii) Technology. A written report of the Technology Director is attached to these Minutes.

D. Liaisons.

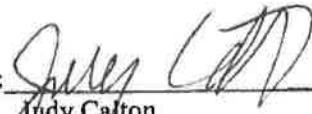
(i) Probate Section. No report. Mr. Dresser reported on various probate topics.

6. Other Business and Announcements.

7. Announcement of March 6, 2014 Council Meeting. The next meeting of the Business Law Section Council will take place on March 6, 2014 at 3:00 p.m. at the State Bar of Michigan in Lansing.

8. Meeting Adjournment. There being no further business to come before the Council of the Business Law Section, upon motion duly made, seconded, and unanimously approved 12-0-0, the meeting was adjourned at approximately 11:56 a.m.

Respectfully submitted,

By: 
Judy Calton
Secretary