

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

March 9, 2006

This meeting of the Council of the Business Law Section of the State Bar of Michigan was held at the State Bar of Michigan in Lansing, Michigan on Thursday, March 9, 2006 at 4:10 p.m., pursuant to notice duly given. Council members present: Diane Akers, John Dresser, Dee Dee Fuller, Mark High, Michael Khoury, Eric Lark, Paul Marcela, Patrick Mears, and Stephen Waterbury. Committee members present: Jeffrey Ammon, Timothy Damschroder, Ashish Joshi, Justin Klimko, Daniel Minkus, Cyril Moscow, Mark Peters, and Cynthia Umphrey. Others present: G. Ann Baker, Linda Cena, Lynn Chard, Lindsay DeRosia, David Foltyn, Edwin Lukas, Charles McCallum, and Terri Shoop, Section Administrator.

1. Call to Order and Determination of Quorum. Section Chairperson, Eric I. Lark, called the meeting to order at approximately 4:10 p.m. and determined with the other officers present that a quorum existed.

2. Approval of Minutes of December 3, 2005 Council Meeting. Mr. Lark requested changes in the third sentence of paragraph 4(b)(i) on page 2 to read as follows: "Mr. Lark stated that the goal of the Award is to find the person who best personifies the initiatives outlined in the Section's Mission Statement: (a) demonstrating the highest quality of professionalism, (b) fostering the highest quality of practice, (c) facilitating service and commitment, and (d) demonstrating ethical conduct and collegiality within the practice." Mr. Lark requested a change in the second sentence of the last paragraph on page 3 to read as follows: "Discuss with the Chair of the Young Lawyers Section the possibility of presenting a panel discussion on a topic of interest to Young Lawyers at one of the meetings of that Section." Mr. Lark requested a change in the last sentence of paragraph 5(a)(vii) on page 10 to read as follows: "The motion was seconded and passed with one abstention." Mr. McCallum requested a change in the first sentence in paragraph 7 on page 11 to read as follows: "Mr. Khoury reported that Charlie McCallum is the Vice-Chair Elect of the American Bar Association Business Law Section." Mr. Lark called for a motion to approve the Minutes of the Meeting of the Council from December 3, 2006 with the changes requested above. Pursuant to motion duly made and seconded, the Minutes were unanimously approved.

3. Treasurer's Report. A written Treasurer's Report is attached to these Minutes. Ms. Akers stated that there is a significant expense for printing, but this is an anticipated expense. Mr. Lark made a motion to approve the Treasurer's Report. The motion was seconded and unanimously approved.

4. Chairperson's Report.

a. Annual Award Update. Mr. Lark reported that the recipients of the Stephen H. Schulman Outstanding Business Lawyer Award have previously been unanimously approved by Council. Four individuals have been approved for the Award this first year and they will be honored at the Annual Meeting with

a plaque or other honorabilia. Mr. Lark will contact the State Bar to see if the Section can display a plaque on site in honor of the recipients. Appropriate press releases will go out to announce the award. Mr. Lark will attempt to contact appropriate Section members to contact the honorees before April 1. The Award Committee will coordinate the press release and plaques.

- b. Tax Tribunal- 1/20/06 letter from Jack Van Coevering. Mr. Lark discussed the January 20, 2006 letter he received from Jack Van Coevering, Chair of the Tax Tribunal. Mr. Van Coevering's letter states that Governor Granholm has asked David Hollister, Director of the Michigan Department of Labor and Economic Growth, to form a commission to study the Tribunal and recommend changes that would improve the adjudication of tax disputes in Michigan. Mr. Van Coevering asks for the Section's sponsorship in this endeavor. A discussion ensued regarding whether the Section should sponsor the commission. Mr. Ammon stated that the commission's activities primarily relate to the Taxation and Real Property Sections, with the exception of the commercial litigation component. Mr. Ammon will follow-up with Mr. Van Coevering to see what role the Section can play. Mr. Ammon will report to Mr. Lark before the June 3 Council meeting.
- c. Chairperson's Initiatives.

- i. Strategic Plan. Mr. Lark reported that many goals of the Strategic Plan which were discussed at the December 3, 2005 meeting have been accomplished. There are 6 or 7 goals left to be worked on. Mr. Lark indicated that some of these goals were his to accomplish and some were applicable to others. He will provide a further update as progress is made.
- ii. Section Development. Mr. Lark stated that Section is doing a great job with outreach. He reported that "The Business of Being a Business Lawyer" panel discussion took place on January 26. The event was planned by Tim Damschroder and Roger Mali and was very well-received. The Section is contemplating putting on the panel discussion in other locations.

Mr. Lark reported that Ed Lukas was appointed at the last Council meeting as the Liaison to Law Schools. Mr. Lukas has been very active and will give a report later in the meeting.

Mr. Lark stated that Business Boot Camp III has been a great success and is continuing.

The Third Annual Scholarship Award is underway. Tim Damschroder, Dee Dee Fuller, and Diane Akers will review the submissions.

Cynthia Umphrey will be chairing the Section's new Forum on Small Business.

iii. Annual Award. The Stephen H. Schulman Outstanding Business Lawyer Award was discussed above.

d. Other Business.

i. Michael Khoury/Mark High. Mr. Lark stated that because of a personal situation with Michael Khoury, Mark High is slated to become the next Chair of the Section for 2006-2007, and Mr. Khoury will remain as Vice-Chair for one more year. Mr. Lark called for a motion to approve Mr. High becoming the Chair of the Section in September 2006 and for Mr. Khoury remaining as Vice-Chair for the 2006-2007 year. Pursuant to motion duly made and seconded, the motion passed unanimously.

ii. Michigan Economy. Mr. Lark stated that the economy in Michigan is challenged and a discussion ensued regarding what the Section can do to help attract business to Michigan. Mr. Khoury suggested reaching out to entrepreneurial groups by speaking to them about legal issues, getting started in business, incentives for companies to keep people, etc. It was suggested that Mr. Lark could send a letter on behalf of the Section letting them know the Bar would like to help. The Michigan Venture Capital Association, 21st Century Jobs Funds, and the Capital Access Program were discussed. Mr. Damschroder will check with the State Bar to see if they will support this issue. Mr. Damschroder will report his findings to the Executive Committee.

iii. Executive Committee Meeting. Mr. Lark stated that before the June meeting, the officers will try to meet to discuss issues facing the Section and the status of Bylaw amendments. Ms. Baker stated that we have already addressed the Bylaw amendments and the amended Bylaws need only be submitted to the State Bar.

iv. Letter from Judge Roberts. Mr. Lark reported that he received a letter dated March 3, 2006 from the Hon. Victoria Roberts who is a member of the USDC's Pro Bono Committee. Judge Roberts sent this letter to all of the Section Chairs of the State Bar. The letter asks for a list of volunteer lawyers from the Section to review complaints for Pro Se litigants and agree to represent them if their complaint is found to have merit. She also asks for Section participation in a Law Day Program on May 2, 2006. A discussion ensued on this topic. Ms. Akers will

look into and decide how to proceed with this matter, and, if necessary, Ms. Shoop will distribute a survey to Section members through the listserv.

- v. 2007 Business Law Institute. A discussion ensued regarding the date and location for the 2007 Business Law Institute. Many venues, including Grand Traverse Resort, Soaring Eagle, St. John's, Eagle Crest, Dearborn Inn, Grand Hotel, Boyne Mountain, etc. as well as different times of year and themes were discussed. The Programs Directors will make a recommendation to the Executive Committee regarding dates and locations for the 2007 program before the June 3 Council meeting. Tim Damschroder and Paul Marcela will participate with the Programs Directors in the process.
- vi. Ad Hoc Committee Regarding Annual Meeting. The Committee will make a recommendation as to the date and location for the Annual Meeting to Council at the June 3 meeting.

5. Committee/Directorship Reports.

A. Standing Committees.

- (i) Agricultural Committee. No report.
- (ii) Commercial Litigation Committee. A written report of the Commercial Litigation Committee is attached to these Minutes.
- (iii) Corporate Laws Committee. A written report of the Corporate Laws Committee is attached to these Minutes. Mr. Klimko reported that the BCA amendments were passed.
- (iv) Debtor/Creditor Rights Committee. A written report of the Debtor/Creditor Rights Committee is attached to these Minutes. Ms. Miller (by telephone) reported that two bankruptcy judges have ruled that the Homestead Exemption is unconstitutional. The Committee would like the Section to advocate a proposed legislative modification of the new exemption statute for clarification purposes. MCL 600.5451 has been held by Judge Shefferly to be the exclusive source for taking State exemptions, negating many other exemptions available under State law. The Committee anticipates proposing a legislative fix to this problem so that individual debtors can avail themselves of all the potential exemptions available under State law. Ms. Miller and Ms. Calton will send something around to the Council which will better explain what the Committee is seeking. The Committee, at the request of Judge Rhodes, will participate in a seminar with other bankruptcy groups on Veteran's Day or Columbus Day.
- (v) Financial Institutions Committee. A written report of the Financial Institutions Committee is attached to these Minutes.

(vi) In-House Counsel Committee. No report. Mr. Marcela will be sending a letter to Section members asking for interest in becoming involved in the Committee. He will also be soliciting authors for articles.

(vii) Nonprofit Corporations Committee. A written report of the Nonprofit Corporations Committee is attached to these Minutes.

(viii) Regulation of Securities Committee. No report. Mr. Moscow stated the Uniform Securities Act of 2002 is attempting to get into the legislature and attempting to get sponsors again. Nothing new will pass this session, and the prognosis is not good on the bill.

(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 asked for Council approval for a budget of up to \$5,000 to hire Elliott Spoon to act as a reporter with respect to reviewing the Uniform Partnership Act and the Uniform Limited Partnership Act. A motion was made to increase the budget of the Unincorporated Enterprises Committee to \$8,000. The motion was seconded and passed with Michael Khoury abstaining.

Mr. Lark made a motion to approve the reports of the Committees of the Section. The motion was seconded and unanimously approved.

B. Ad Hoc Committees.

(i) Task Force on Attorney Client Privilege. A written report of the Task Force regarding Attorney-Client Waiver Issues is attached to these Minutes. Ms. Akers reported that a letter has been sent to Tom Cramner which he has approved. The State Bar of Michigan is preparing letters of appointment to the Task Force and will prepare press releases. The position of the Task Force will be presented in September and then the State Bar of Michigan will move forward. The ABA has asked all State Bars to form committees on this subject. Ms. Akers will survey the listserv regarding this issue. A discussion ensued regarding the position of the Section.

(ii) Small Business Ad Hoc Committee. A written report of the Small Business Ad Hoc Committee is attached to these Minutes. Ms. Umphrey reported that the goal of the Committee is to reach out and be attractive to small and mid-sized law firms. The Committee will focus on small businesses, closely-held businesses, and family businesses. The Committee is a subcommittee of the Programs Directorship. A motion was made to (1) establish the Small Business Forum with Cynthia Umphrey as its Chairperson, (2) allot a \$5,000 budget to the Small Business Forum, and (3) disband the Small Business Ad Hoc Committee. The motion was seconded and unanimously approved.

(iii) Business Court Ad Hoc Committee. Ms. Akers reported that the Committee is waiting for a response from Judge Grant.

Mr. Lark made a motion to approve the reports of the Ad Hoc Committees of the Section. The motion was seconded and unanimously approved.

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. Mr. Ammon reported that there are currently two vacancies on Council as only 13 of the 15 spots are filled. Mr. Ammon noted that these spots should be filled by the June or September Council meetings.

(iii) Programs Directorship. A written report of the Programs Director is attached to these Minutes.

(iv) Publications Directorship. A written report of the Publications Director is attached to these Minutes.

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

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

A motion was brought to approve the reports of the Directorships of the Section. The motion was seconded and unanimously approved.

5. Liaison Reports.

(a) Liaison to Law Schools. Mr. Lukas reported that presentations have been made at five of the six Michigan law schools with about 30 students attending each event. The students have been enthusiastic and have requested the following: (A) the establishment of a mentoring program, and (B) a one-day boot camp program in Ann Arbor in late April or May to help them with summer associate jobs. It was suggested that this program could be presented by 5th or 6th year associates and Mr. Lukas will look into presenting this program.

(b) ABA Section of Business Law. Mr. McCallum reported on various ABA Business Law Section programs.

A motion was brought to approve the Liaison Reports of the Section. The motion was seconded and unanimously approved.

7. Other Business and Announcements.

(a) Office of Financial and Insurance Services (“OFIS”). Linda Cena and Lindsay DeRosia of the OFIS gave an overview of the Offices’ services, discussed problems, and answered questions.

(b) ICLE. Lynn Chard of ICLE asked for co-sponsorship support of the Section for the annual Family and Closely-Held Business Seminar. Co-sponsorship would mean Section members can attend the Seminar for a discounted price.

Ms. Chard asked for \$2,500 from the Section to sponsor the Solo and Small Firm Institute to be held in October of 2006. Ms. Fuller and Ms. Umphrey will work with ICLE regarding the Institute.

A motion was made to co-sponsor the annual Family and Closely-Held Business Seminar and to sponsor the Solo and Small Firm Institute for 2006, including contributing \$2,500. The motion was seconded and passed unanimously.

8. Announcement of June 3, 2006 Meeting. The next meeting of the Business Law Section Council will be held on Saturday, June 3, 2006 at 7:30 a.m. at the Soaring Eagle Casino and Resort in Mt. Pleasant, Michigan.

9. 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, the meeting was adjourned at 6:45 p.m.

Respectfully submitted,

Mark R. High, Secretary