

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

March 18, 2010

Pursuant to notice duly given, a 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 on Thursday, March 18, 2010. Council members present were Judy Calton, James Carey, Matthew Case, Marguerite Donahue, David Eberhard, Dee Dee Fuller, Edwin Lukas, Christopher Maeso, D. Richard McDonald, Judy Miller (via telephone), Thomas Morris, Douglas Toering and Robert Wilson. Committee members present were Ann Baker, Jane Forbes, Mark High, Justin Klimko, Mark Peters, Jerome Schwartz. Others present by invitation Michael Buckles, Julia Dale, Michael Khoury, Jennifer Powell, Terri Shoop, and Thomas Worth.

1. Call to Order and Determination of Quorum. Section Chairperson, Dee Dee Fuller, called the meeting to order at approximately 3:00 p.m. and determined that a quorum was present.

2. Approval of Minutes of December 5, 2009 Council Meeting. Ms. Fuller called for a motion to approve the Minutes of the Meeting of the Council from December 5, 2009. Pursuant to motion duly made and seconded, the Minutes were unanimously approved 13-0-0.

3. Treasurer's Report. A written Treasurer's Report is attached to these Minutes. Ms. Donahue reported that total revenue decreased 1.3% compared to the previous year. Total expenses to date are approximately \$38,000, representing an increase over the previous year. The ending fund balance as of February 28, 2010 was \$223,940. Ms. Donahue indicated that the SBM revised the Expense Voucher form, and she agreed to email it to everyone for their use. She further advised that, when Section members submit an Expense Voucher seeking reimbursement for expenses associated with a meeting where food or beverage is served, a list of attendees must be attached to the Voucher. The Section made a \$5,000 donation to Access to Justice for the 2009-2010 fiscal year. The Section is uncertain whether a donation to Access to Justice was made during the 2008-2009 fiscal year. Ms. Donahue will investigate and, if a donation was not made, the Section will consider making another \$5,000 donation in 2009-2010 fiscal year. Ms. Donahue agreed to report on this issue at the May meeting.

4. Chairperson's Report.

(a) Survey Results and Strategic Plan. Ms. Fuller thanked the Strategic Plan Committee for their commitment to the project. She then reported on the results of the Committee's recent survey. Of the 155 Members who responded to the survey, 87% of them believe the *Business Law Journal* is very important. Educational programs, Need-to-Know alerts and the e-newsletter were also identified as important resources. Only 21% of the respondents rated social events as being important to them. The Section has spent significant time working on Section development, but it appears that Members desire that each social event also have an educational element. It was agreed that Tim Damschroder and Roger Mali, both of whom are

involved in drafting the Strategic Plan, and should address this issue there. Ms. Fuller stated that the Section should promote and expand its use of the *Business Law Journal*.

Ms. Fuller noted that, while some committees are very active, others are not. The current Strategic Plan establishes consistencies for committees, but no directives. The Strategic Plan Committee is working to include additional directives in the new Strategic Plan. Committees will be expected to meet at least once annually; more frequent meetings will be encouraged. Committee Chairs will be evaluated as to whether or not they are performing their duties. The goal with respect to these new directives is to initiate more meaningful committee activity and involvement. Another directive will require Chairs to monitor legislation and discuss it with committee members.

The goal of the Committee is to finish the draft Strategic Plan by the end of April. The Plan will be emailed to Council in early May. The Council will reserve time at the May 21 Council meeting to review the revised Plan. The goal is to have the revised Strategic Plan approved before the end of the year. Ms. Fuller requested approval for a Section-sponsored dinner to thank the Committee members for their efforts. This request was approved.

(b) Section Interest Coordination. Ms. Fuller stated that Council must identify a way to facilitate the involvement of Section Members who express an interest in becoming involved in Section activities. She recommended that the Section establish a procedure for the same. Ms. Donahue agreed to lead this initiative.

(c) State Bar – Business Law Section Statistics. The SBM provided the Section with statistical information for 2009, and the information is attached to these Minutes.

(d) Miscellaneous Issues. Jeff Van Winkle has asked that all committees keep in mind that information regarding all events should be sent to Terri Shoop and Jeff Van Winkle to make sure they are posted on website and included in the e-newsletter.

5. Committee/Directorship Reports.

a. Standing Committees.

(i) Commercial Litigation Committee. A written report of the Commercial Litigation Committee is attached to these Minutes. An event was held in November which was co-hosted with the Michigan Defense Trial Counsel (“MDTC”). The Committee will try to do an event with both MDTC and the Litigation Section every other year. The Committee has been asked to opine on full-time college students being excused from jury duty and rule changes regarding legal publication notices. After discussion, the Council recommended support. A motion was made in favor of supporting the recommendations of the Commercial Litigation Committee with respect to supporting full-time college students being excused from jury duty and rule changes regarding legal publication notices. The motion passed 12-1-0.

(ii) Corporate Laws Committee. A written report of the Corporate Laws Committee is attached to these Minutes. Mr. Klimko reported that Jim

Carey and he have been refining draft language for the Business Corporation Act amendments and anticipate circulating the language to the Committee in the next several days.

(iii) Debtor/Creditor Rights Committee. A written report of the Debtor/Creditor Rights Committee ("DCRC") is attached to these Minutes. The Council listened to reports of the DCRC and the Creditors Bar Association regarding proposed changes to the certain bankruptcy exemptions under state law. Council considered the merits of the Section supporting personal judicial exemptions that may negatively impact businesses attempting to collect from individual debtors in Michigan. A discussion followed. Council previously approved a DCRC expenditure of \$5,000 for a lobbyist to advance the statutory amendments. To date, the DCRC has paid the lobbyist \$4,000. Since the lobbyist has been unable to identify a legislator willing to support the revisions, it has temporarily suspended its efforts on the proposed legislation. The lobbyist has agreed to relieve the DCRC of the \$1,000 balance if the Section decides to withdraw its support of the legislation. A motion was made to stay the Council's support for the legislation at this time so that the Council may reconsider its support for the legislation at the May 21 Council meeting. Council members agreed to consider and be prepared to discuss at such meeting (a) whether or not the Section's support of the legislation is consistent with the Section's mission to "review and promote improvements to Michigan's business legislation and regulations," and (b) whether or not the Section should take a position on legislation when there is a conflict on the Council as to which side the Section should support. The motion passed 9-4-0.

(iv) Financial Institutions Committee. A written report of the Financial Institutions Committee is attached to these Minutes.

(v) In-House Counsel Committee. No report. A discussion ensued about what the Committee would do on an ongoing basis. Mr. Case stated that he views the Committee as a liaison to the Association for Corporate Counsel ("ACC"). Ms. Fuller indicated she would like to see the Committee be more active and hold meetings. She stated that over 500 members of the Section are in-house counsel. The Committee presents a great opportunity to interact with these Members. It was suggested that perhaps the committee should be a directorship. Ms. Fuller agreed to survey the Committee members to find out what services they wanted the Section to provide. She agreed to report the results at Council meeting in May.

(vi) Law Schools. A written report of the Law Schools Committee is attached to these Minutes. Mr. Lukas encouraged people to attend the Spring Fling event. The Committee is looking for a volunteer to serve as liaison to University of Michigan School of Law.

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

(viii) Regulation of Securities Committee. A written report of the Regulation of Securities Committee is attached to these Minutes.

(ix) Uniform Commercial Code Committee. No report.

(x) Unincorporated Enterprises Committee. A written report of the Unincorporated Enterprises Committee is attached to these Minutes.

b. Ad Hoc Committees.

(i) Ad Hoc Committee on Climate Change and Sustainability. No report.

(ii) Michigan Ad Hoc Committee on Legal Opinions. A written report of the Michigan Ad Hoc Committee on Legal Opinions is attached to these Minutes.

c. Directorship Reports.

(i) Legislative Review Directorship. A written report of the Legislative Review Director is attached to these Minutes. The Homeowner Construction Lien Recovery Fund is essentially insolvent. HB 5830 through 5835 have been introduced to amend the Construction Lien Act to eliminate the fund and amend other statutes to eliminate references to the fund.

On March 17 the House Committee on Appropriations reported out a substitute for HB 5830. The bill eliminates the homeowner construction lien recovery fund and includes a provision to protect homeowners if they pay the contractor but the contractor fails to pay a subcontractor or a supplier.

(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.

a. Small Business Forum. A written report of the Small Business Forum is attached to these Minutes. The next seminar will occur in May and the topic will be export opportunities for small businesses. Mr. Toering asked the Council to consider whether the BLS should institute a diversity initiative with respect to increasing minority participation and asked that the topic be added to Agenda for the May meeting.

b. ICLE Liaison. A written report of the ICLE Liaison is attached to these Minutes. Ms. Donahue asked for approval to co-sponsor eight ICLE seminars: (1) Liquor Licensing; (2) Legal Issues in Medical Marijuana in Michigan, (3) Advising a Business Through a Workout, (4) 2011 LLC and Business Entity Update; (5) Asset Protection Planning in the Current Financial

World; (6) Section 363 Bankruptcy Sales; (7) Preventing and Handling Data Security Breaches; and (8) Annual Business Law Institute. There is no cost to the Section to co-sponsor these seminars and BLS members will receive a discount. A motion was made to approve co-sponsorship for the eight seminars listed above. The motion passed 13-0-0.

(iv) Publications Directorship. A written report of the Publications Director is attached to these Minutes. Mr. McDonald reported that it is time to renew our agreement with ICLE regarding the *Business Law Journal*. A copy of Agreement is marked to show changes. ICLE does great job and we certainly want to continue with them. The Agreement is simple and straightforward. It includes 3% per year built in increase for ICLE's fee. A Committee is working with the SBM regarding advertising for the *Journal*. We will talk to ICLE about advertising, including putting print ready ads in the *Journal*. A motion was made to extend the 3-year contract with ICLE and to give Richard McDonald authority to negotiate the Agreement with ICLE. The motion passed 13-0-0.

(v) Section Development. A written report of the Section Development Director is attached to these Minutes. The Section has a proposal for a PR promotional package. The Directorship requested authority to approve the promotional package. Funds have been budgeted for this project. The goal with the promotional package is to provide more services to Members, to set up a Facebook page, and to help with an awareness campaign. The Directorship will move forward on this project.

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

6. Other Business and Announcements. Geoff Scott, the Section's Representative Assembly contact, introduced himself. Mr. Scott stated that if the Section takes a position on legislation, he will help.

Ms. Fuller stated that when a Committee is looking to hold an event, please check with Terri as she may have ideas for venues.

Mr. Carey thanked Justin Klimko for the work he is doing on behalf of the Section and again congratulated him on winning the Schulman Award. Mr. Carey presented Mr. Klimko with a blown up and framed picture from the Schulman Award.

7. Announcement of May 21, 2010 Council Meeting. The next meeting of the Business Law Section Council will take place on Friday, May 21, 2010 at the Amway Grand in Grand Rapids. The meeting begins at 11 a.m. and includes lunch.

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 (13-0-0), the meeting was adjourned at approximately 5:14 p.m.

Respectfully submitted,

By: _____
Edwin J. Lukas, Secretary