

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

**March 12, 2015**

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, Michigan on Thursday, March 12, 2015 at 3:30 p.m. Council members present were Kevin Block, Judy Calton, Marla Carew, James Carey, Jennifer Consiglio, Julia Dale, Shane Hansen, Mark Kellogg, Thomas Morris, Mark Peters, Gail Straith, Douglas Toering, and Christopher Yates (via telephone). Committee Chairs and Directors present were Dee Dee Fuller, Patrick Haddad (via telephone), Mark High, Justin Klimko, Daniel Minkus (via telephone), Jennifer Oertel and Darrell Pierce (via telephone). Others present were Jennifer Grieco (via telephone), Laura Johnson, Michael Khoury, Daniel Kopka, John Schuring, and Terri Shoop (via telephone).

1. Call to Order and Determination of Quorum. Section Chairperson James Carey called the meeting to order at approximately 3:30 p.m. and determined that a quorum was present.

2. Approval of Minutes of December 6, 2014 Council Meeting. Mr. Carey called for a motion to approve the Minutes of the December 6, 2014 Council meeting. 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. Calton reported that expense reimbursement requests require the business expense to be substantiated. With respect to reimbursement for Section events, words such as "networking" should be used instead of words like "party". Ms. Calton reported that budgeting for the next fiscal year will be done earlier in the year to be in line with the actual fiscal year end instead of the calendar year end. After discussion regarding the budget, a motion was made to approve the Treasurer's Report. The motion was seconded and unanimously approved 13-0-0.

4. Chairperson's Report. Mr. Carey reported on activities that are keeping the Section busy including draft securities rules and Nonprofit Corporation Act Amendments. Mr. Carey reported that Julia Dale has been elevated to Deputy Director of the Corporations, Securities & Commercial Licensing Bureau. Ms. Dale will write an ongoing column for the *Business Law Journal*. Ann Baker's final column will appear in the next issue of the *Journal*. Mr. Carey stated that the Section recently filed a Lobby Report with the State of Michigan. The report is free if filed on time, but there is a fee if filed late. This year's filing was timely, so no fee was incurred. The Court of Appeals 50<sup>th</sup> celebration is approaching. In connection with this event, the Section was asked for the most significant Court of Appeals case in the last 50 years and the Section responded with *Estes v Fabricating*. Mr. Carey reported that House Bill 4198 (Anti-Trust Reform, Noncompetition Agreements) was submitted and would be discussed further under New Business. The Section was asked by a party in a lawsuit to write an amicus brief on *Bernstein v Seyburn Kahn, et al.*, but the request was denied.

Mr. Carey reported that in February the Section signed a letter agreement with Crain's for the in-house counsel event on June 10 at the Westin Book Cadillac in Detroit. The Section is a co-sponsor of the event but there is no financial commitment.

Mr. Carey will attend the ABA leaders conference in Chicago April 30-May 1. Most expenses for this event are underwritten by the ABA.

The Michigan Bar Leaders Forum will take place June 12-13, 2015 at the Grand Hotel on Mackinac Island. Mr. Carey is unable to attend. Historically the Section has sent one person to the event as it would conflict with the Business Law Institute. Since the Forum does not conflict with the BLI this year, Douglas Toering and Mark Peters may attend (Judy Calton is not available). A motion was made to send two Section representatives to the Michigan Bar Leaders Forum on June 12-13, 2015 at the Section's expense. The motion was seconded and unanimously approved 13-0-0.

Mr. Carey reported that there has been no word on a response to the mandatory bar question.

5. Committee/Directorship Reports.

A. Standing Committees.

(i) Commercial Litigation Committee. A written report was provided by the Commercial Litigation Committee. Any ideas for future events should be forwarded to Mr. Toering.

(ii) Corporate Laws Committee. A written report was provided by the Corporate Laws Committee. Mr. Klimko reported that the Committee has a new reporter and is moving forward with drafting amendments.

(iii) Debtor/Creditor Rights Committee. A written report was provided by the Debtor/Creditor Rights Committee. Ms. Calton reported that the Committee is holding a seminar on May 14 on electronic discovery in bankruptcy issues.

(iv) Financial Institutions Committee. No report.

(v) In-House Counsel Committee. No report.

(vi) Law Schools. A written report was provided by the Law Schools Committee.

(vii) LLC & Partnership Committee. No written report. Ms. Carew reported that she is working to schedule a quarterly program with a social event.

(viii) Nonprofit Corporations Committee. A written report was provided by the Nonprofit Corporations Committee. Ms. Oertel reported that there have been significant amendments. The Committee held a meeting with an educational

component on March 10 and 19 members attended. The Committee is polling its members to find out what is important to them. Michigan Community Resources has asked the Committee to endorse its application to the Michigan State Bar Foundation as they are looking for a grant to support online educational programs. The Committee has not yet decided if they want to make the endorsement, but wanted to consult Council on approvals needed if they wanted to make the endorsement. A discussion ensued including past similar requests and history. A motion was made granting the Executive Committee authority to act on the issue of endorsing the Michigan Community Resources' application to the Michigan State Bar Foundation if a decision is needed before the June Council meeting. The motion was seconded and unanimously approved 13-0-0.

(ix) Regulation of Securities Committee. A written report was provided by the Regulation of Securities Committee. Mr. Haddad reported that the Committee finished reviewing a draft of the proposed Michigan securities rules at the request of the Corporations, Securities and Commercial Licensing Bureau. The State is in the process of digesting the Committee's comments and will commence the formal rulemaking process under the Michigan Act.

(x) Small Business Forum. A written report was provided by the Small Business Forum. Mr. Toering indicated that the Forum welcomes any suggestions for future events.

(xi) Uniform Commercial Code Committee. A written report was provided by the Uniform Commercial Code Committee.

B. Directorship Reports.

(i) Communication & Development Directorship. A written report was provided by the Communication and Development Directorship. Mr. Block reported that he and Ms. Consiglio met with Mike Scott and Mr. Scott offered ideas of things he can bring to the Section. The Directorship does not see a big role for Mr. Scott. A discussion ensued regarding lack of participation in the Section by its members and ideas to increase participation.

(ii) Legislative Review Directorship. A written report was provided by the Legislative Review Director.

(iii) Nominating Directorship. A written report was provided by the Nominating Director.

(iv) Programs Directorship. A written report was provided by the Programs Directorship. The Annual Meeting will be held on September 25, 2015. The Annual Meeting, Business Law Institute and Schulman Award will be combined into one event. The program has been set and speakers have been identified. Business Boot Camp II was successful. There were 256 registrations for the November and January sessions and the event earned \$2,700. The

Directorship discussed what to do this year regarding a boot camp session and concluded that we will take a year off and offer Business Boot Camp I in 2016.

a. ICLE Liaison. A written report was provided by the ICLE Liaison. ICLE has requested co-sponsorship (no financial commitment) at four upcoming studio seminars: (i) Advising Your Clients on Data Security, (ii) Handling Contract Disputes, (iii) Trends in Business Court Practice, and (iv) LLC Update. A motion was made to approve co-sponsorship of the ICLE studio seminars: (i) Advising Your Clients on Data Security, (ii) Handling Contract Disputes, (iii) Trends in Business Court Practice, and (iv) LLC Update. The motion was seconded and approved unanimously 13-0-0.

(v) Publications Directorship. A written report was provided by the Publications Director.

C. Liaisons.

(i) Probate Section. No report.

6. New Business.

A. New Website. Mr. Carey reported that our current website format is member only. This is a default set by the SBM, but it can be changed. Publications Director thinks the *Business Law Journal* should be available to general public. A discussion ensued. A motion was made to open the website if technically feasible to the general public. The motion was seconded and unanimously approved 13-0-0. Mr. Carey will follow up with the SBM.

B. House Bill 4198 – Antitrust Reform Act. Mr. Carey reported that HB 4198 was introduced into the House. The bill seeks to amend the section of the Antitrust Reform Act that currently permits an employer to have a non-compete agreement with employees so that such agreements would generally be void, and only non-compete agreements entered into in connection with the sale of a business would be enforceable under this section. Judge Alexander and Judge Yates are currently working to further understand the bill. A discussion ensued about action on the matter. Judge Yates recommended monitoring for the time being and reaching out to Representative Lucido. Mr. Toering will contact Peter Lucido as a constituent and Council member.

C. Banner Ads on Website. A discussion ensued about whether or not we can accept banner ads on our website. Thompson Reuters has an interest in advertising. Mr. Carey will investigate this opportunity.

7. Other Business and Announcements. Ms. Dale reported on changes at the State of Michigan.

8. Announcement of June 4, 2015 Council Meeting. The next meeting of the Business Law Section Council will take place on June 4, 2015 at 3:30 p.m. at Jaffe Raitt Heuer & Weiss in Southfield.

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 13-0-0, the meeting was adjourned at approximately 5:10 p.m.

Respectfully submitted,

By: \_\_\_\_\_  
Mark Peters  
Secretary