

STATE BAR OF MICHIGAN - BUSINESS LAW SECTION
COUNCIL MINUTES

March 7, 2019

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 March 7, 2019. Council members present were Kevin Block, Brendan Cahill (via telephone), Julia Dale, Bruce Haffey (via telephone), Shane Hansen, Mark Kellogg, Michael Molitor, John Schuring, Scott Timmer (via telephone), James Waggoner (via telephone), Ian Williamson (via telephone), and Christopher Yates (via telephone). In addition, Committee Chairs, Directors and Liaisons present were Celeste Arduino (via telephone), Judy Calton (via telephone), Donald DeLong (via telephone), Dee Dee Fuller (via telephone), Jordan Segal, Loukas Kalliantasis, Priya Marwah (via telephone), Daniel Minkus (via telephone), Mark Peters, Darrell Pierce (via telephone), and Douglas Toering. Others present were Amber Beebe (via telephone), James Carey, Alexis Chadderdon, Derek Hurt, Terri Shoop (via telephone), and Michael Eric Williams.

1. Call to Order and Determination of Quorum. Section Chair Kevin Block called the meeting to order at approximately 3:35 p.m. and determined that a quorum was present.

2. Approval of Minutes of December 1, 2018 Council Meeting. Mr. Block called for a motion to approve the Minutes of the December 1, 2018 Council meeting. A motion was made to approve the Minutes. The motion was seconded and unanimously approved, 12-0-0.

3. Treasurer's Report. A written Treasurer's Report has been provided by the Treasurer.

4. Chair's Report.

A. Law School Outreach. Mr. Block reported on recent and past outreach initiatives with law schools. The Section had an opportunity to speak with approximately 15 law students who are members of the Business Law Society at U of D Law School. The discussion related to the general transactional law practice, including taking the students through a business transaction. The Section would like to do something similar at U of D Law School as the panel discussion that has occurred at WSU next year. On March 5, U of D Law School had their bar association event which Mr. Block attended. Last year the Section participated in a panel discussion at WSU. The event was scheduled again this year, however it has been postponed due to weather. It is currently scheduled for March 27.

B. Update on Status of SB 1182 and 1183 (Loser Pays in Litigation Legislation). Mr. Block reported that SB 1182 and 1183 were discussed at the December Council meeting after being reviewed by the Commercial Litigation Committee. Council unanimously agreed that that the bills should be opposed. The Section officially opposed SB 1182 and 1183 with an explanatory note referencing substantive and procedural concerns voiced by Section members. This information was provided to the SBM by Mr. Block. This matter was scheduled to go before the Judiciary Committee. Mr. Toering was prepared to testify, however the bill has since been tabled.

C. Executive Committee Action Taken with Respect to Amendment to Bankruptcy Rule 2004(c). The Debtor/Creditor Rights Committee addressed this issue earlier this year. The Executive Committee took action in supporting the position taken by the Debtor/Creditor Rights Committee. Ms. Calton reported that the National Rules Committee was updating the bankruptcy discovery rule which applied to outside litigation. The rule was being updated to include all the defendants of electronic discovery, but didn't include a provision regarding proportionality of need for discovery and cost of a case. The Debtor/Creditor Rights Committee doesn't believe it should be mandated that the court consider these things, however that the court could consider the proportionality of the need for discovery and the cost/benefit. The Committee wrote letter on the topic. There will be a public hearing to address this issue.

D. Sponsorships.

(i) Women Lawyers Association of Michigan Sponsorship of 101st Annual Meeting (May 4, 2019 at the Park Place Hotel in Traverse City). Mr. Block reported that the Section has sponsored this event in the past at the \$250 level. This year the Section will support the event at the \$500 level, which includes registration for one attendee and a quarter page ad in the program.

(ii) Young Lawyers Section's 12th Annual Summit (May 17-19, 2019 at the Motor City Casino and Hotel in Detroit). The Section has sponsored this event in the past at the \$500 level. This year we will again sponsor the event at the \$500 gold level which includes being a room sponsor, getting an ad in the program, and recognition in the materials. Jeff Ammon has spoken at this event in the past. Mr. Block doesn't know if the YLS is looking for speakers, but he will inquire.

A motion was made to sponsor the Women Lawyers Association of Michigan 101st Annual Meeting and the Young Lawyers Section Annual Summit, both at the \$500 level. The motion was seconded and passed unanimously, 12-0-0.

5. Ad Hoc Committee on Diversity and Inclusion – Report and Recommendations. A written report was provided by the Ad Hoc Committee on Diversity and Inclusion. The Committee looked at the question of whether or not the Section should become more involved with diversity and inclusion activities. The Committee took a look at the ABA plans and various other resources and came to the conclusion that our Section would benefit from participation.

The Committee recommends the following:

1. The Section should become a signatory to the SBM Diversity Pledge.
2. The Section should establish a directorship that is engaged in finding diversity and inclusion opportunities for our Section. The directorship should work with the SBM in its activities and also find additional activities and ways to promote diversity.

A discussion ensued regarding who would serve on the directorship.

A motion was made for the Section to sign the SBM Diversity Pledge. The motion was seconded and passed, unanimously. 12-0-0.

A motion was made to establish a directorship on diversity and inclusion. The motion was seconded and passed unanimously, 12-0-0.

An announcement will be sent to the Section regarding the establishment of the directorship and seeking participation from Section members.

6. Committee/Directorship Reports.

A. Standing Committees.

(i) Business Courts Committee. A written report has been provided by the Business Courts Committee. Judge Yates reported that he is the Co-Chair of Legislative Committee for Michigan Judges and he is now in a position to help with pushing legislation.

(ii) Commercial Litigation Committee. A written report has been provided by the Commercial Litigation Committee. One side of litigants in The Rhea Brody Living Trust (Mich. Ct. App. Case Nos. 343813 and 345233; Oakland County Probate Court Case No. 15-3611379-TV) has requested that the BLS file an amicus brief. Generally, the issue deals with the jurisdiction of the Business Courts v. jurisdiction of the Probate Courts. The Section has a policy of not submitting amicus briefs unless requested by a court. The Section will not take a position. Mr. Toering will follow up with the requestor.

(iii) Corporate Laws Committee. A written report has been provided by the Corporate Laws Committee. Mr. Molitor reported that the Committee is working on a task force/study group to look at the shareholder oppression statute.

SB 115 has been introduced. LARA is not lead agency. The bill would require a certain number of females to be directors on boards of publicly traded corporations whose principal executive offices are located in Michigan. The Committee will review it as it raises a variety of questions and issues.

(iv) Debtor/Creditor Rights Committee. A written report has been provided by the Debtor/Creditor Rights Committee.

Judy Calton has decided to step down as Co-Chair of the Committee. It is proposed that (a) Marc Swanson become Co-Chair of the Committee with current Co-Chair, Judith Greenstone Miller, and (b) Shanna Kaminski become Vice Co-Chair with current Vice Co-Chair, Paul Hage. It is also proposed that Judy Calton be designated the Emeritus Past-Chair of the Committee. A motion was made to approve the new positions for the Committee as listed above. The motion was seconded and passed unanimously, 12-0-0.

Subcommittees of the Committee have reviewed two statutes, the Uniform Assignment of Rents Act and the Uniform Commercial Real Estate Receivership Act. The Committee has not yet formally considered and voted this proposed legislation, but plans to do so at its April 30, 2019 meeting. While Council has

endorsed the legislation, to the extent that the Committee has concerns or reservations regarding the legislation, the Committee may ask the Council to withdraw or delay its support.

(v) Financial Institutions Committee. No report.

(vi) In-House Counsel Committee. A written report has been provided by the In-House Counsel Committee.

(vii) Law Schools Committee. A written report has been provided by the Law Schools Committee.

(viii) LLC & Partnership Committee. A written report has been provided by the LLC & Partnership Committee. Mr. Kalliantasis reported that the Committee will be reviewing the LLC Act. The Committee is actively soliciting articles for the *Business Law Journal*.

(ix) Nonprofit Corporations Committee. A written report has been provided by the Nonprofit Corporations Committee.

(x) Regulation of Securities Committee. A written report has been provided by the Regulation of Securities Committee.

(xi) Small Business Forum. A written report has been provided by the Small Business Forum. Mr. Haffey reported that the Forum is planning a Spring program regarding drafting issues that arise in LLC agreements. The program will take place in southeast Michigan and also on either the west side of the State or in central Michigan.

(xii) Uniform Commercial Code Committee. A written report has been provided by the Uniform Commercial Code Committee.

B. Ad Hoc Committees:

(i) Ad Hoc Committee on Legal Opinions. No written report.

C. Directorships.

(i) Communication & Development Directorship. A written report has been provided by the Communication & Development Directorship.

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

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

(iv) Programs Directorship. A written report has been provided by the Programs Directorship. Mr. Minkus reported that the Directorship is actively planning the Business Law Institute which will take place on October 4 at the Amway Grand Plaza Hotel in Grand Rapids.

a. ICLE Liaison. A written report has been provided by the ICLE Liaison.

(v) Publications Directorship. No report.

D. Liaisons.

(i) Probate Section. No report.

(ii) Young Lawyers Section. No report.

7. Other Business and Announcements. Jordan Segal is interested in co-chairing the In-House Counsel Committee. Mr. Segal is general counsel at Eig14t Development. A motion was made to appoint Mr. Segal as Co-Chair of the In-House Counsel Committee. The motion was seconded and unanimously approved, 12-0-0.

Mr. Block reported that D.J. Culkar, former Chair of the Financial Institutions Committee, passed away the last week in February. A monetary donation to the American Cancer Society will be made in honor of D.J. in an amount to be determined by the Executive Committee.

8. Announcement of June 11, 2019 Council Meeting. The next Council meeting will take place on June 11, 2019 at 3:30 p.m. at Jaffe Raitt Heuer & Weiss, P.C. 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 12-0-0, the meeting was adjourned at 4:45 p.m.

Respectfully submitted,

By: _____
John T. Schuring
Secretary