

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

**December 3, 2005**

This meeting of the Council of the Business Law Section of the State Bar of Michigan was held at Jaffe Raitt Heuer & Weiss in Southfield, Michigan on Saturday, December 3, 2005 at 10:10 a.m., pursuant to notice duly given. Council members present: Diane Akers, John Dresser, Dee Dee Fuller, Mark High, Michael Khoury, Eric Lark, Paul Marcela (via telephone), and Richard Sundquist. Committee members present: Judy Calton, Timothy Damschroder, Jane Forbes, Ashish Joshi, Justin Klimko, Roger Mali, Daniel Minkus, Mark Peters, and Cynthia Umphrey. Others present: G. Ann Baker, David Eberhard, Edwin Lukas, 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 10:10 a.m. and determined with the other officers present that a quorum existed.

2. Approval of Minutes of September 15, 2005 Council Meeting. Mr. High requested the addition of Dee Dee Fuller's name in the third sentence of paragraph 9 to read as follows: "The Committee will consist of Mark High (Chair), Cynthia Umphrey, Dan Minkus, David Foltyn, and Dee Dee Fuller." Mr. Lark called for a motion to approve the Minutes of the Meeting of the Council from September 15, 2005 with the requested change to paragraph 9. 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. The report includes a financial statement, budget requests, and financial information regarding the Annual Meeting and Business Law Institute. Committee Chairs and Directors who have not submitted a budget request for 2005-2006 to the Treasurer should do so as soon as possible. Mr. Lark made a motion to approve the Treasurer's Report. The motion was seconded and unanimously approved.

4. Chairperson's Report.

a. Quarterly Council Meetings.

i. March 9, 2006. Mr. Lark reported that the March Council meeting will be held on Thursday, March 9, 2006 at 4:00 p.m. at the State Bar in Lansing. A dinner location will be determined and announced in advance of the meeting.

ii. June 3, 2006. The Business Law Institute is scheduled for June 2 and 3 at Soaring Eagle Casino & Resort in Mt. Pleasant. The Council meeting will be held on Saturday, June 3 at 7:30 a.m.

- iii. September 2006. The Annual Meeting will be held in Southeast Michigan in September 2006. The date and location will be announced at an upcoming meeting.
- iv. December 2006. Mr. Lark indicated the December Council meeting will be held at Kerr, Russell & Weber's office in either Troy or Detroit. The date and time of the meeting will be announced at an upcoming meeting.

b. The Three Initiatives.

i. Annual Award Ad Hoc Committee Report and Recommendation. Mr. Lark reported that an Annual Award Ad Hoc Committee consisting of Mr. Lark, Dan Minkus, David Foltyn, and Jeff Ammon was formed at the last Council meeting. The Committee's Report and Recommendation is attached to these Minutes. Mr. Lark stated that the goal of the Award is to find the person who best recognized 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 a forum to promote ethical conduct and collegiality within the practice. Mr. Lark stated that the award would be presented annually at the September meeting. The recipient would be given a plaque or other memento, and, if permitted by the State Bar, a plaque would be displayed in Lansing. Someone familiar with the honoree would give a speech in their honor. Mr. Lark indicated that that the Award will be an opportunity for the Section to get press and that the Award will be announced in the Business Law Journal, Crain's, and other appropriate forums. The Committee recommends that the Award be called the Stephen H. Schulman Outstanding Business Lawyer Award. Each year there will be one honoree, however, there will be multiple honorees in 2006. The Committee recommends the following lawyers for 2006: Cy Moscow, Martin Oetting, Hugh Makens, and Jim Bruno. A motion was made to approve the Committee's recommendations and for the Committee to proceed with implementation of the Award. The motion was seconded and passed unanimously.

ii. The Strategic Plan. Mr. Lark discussed the updated Strategic Plan and its goals and measurable outcomes.

**MISSION: FACILITATE SERVICE AND COMMITMENT AND PROMOTE ETHICAL CONDUCT AND COLLEGIALITY**

**Goal: Encourage member participation generally.**

**Objective: Host special events such as a golf outing, museum event or river cruise.**

**Measurable Outcomes: Plan and carry out one event during 2005.**

The meeting participants discussed the process of getting members involved in Section activities. It was suggested that ad hoc committees be set up to deal with individual participation projects. It was recommended that the Section go to outstate areas and promote activities locally through ad hoc committees. Several ad hoc committees could be formed to address different areas of the State. With respect to the measurable outcome of planning and carrying out one event, Mr. Damschroder and Mr. Mali indicated they are working on putting an event together.

**Goal: Increase participation by attorneys from locations other than metropolitan Detroit and Grand Rapids.**

**Objective: Conduct meetings with firms in Lansing, Kalamazoo, Traverse City and the Saginaw-Midland-Bay City regions.**

**Measurable Outcomes: (1) The Development Director, perhaps with the assistance of an ad hoc committee selected by him or her, will meet with the principal administrators and their business law practice leaders of firms in the areas listed by the end of 2005, to discuss the benefits of participation in Section matters and the opportunities for members of these firms to participate.**

**(2) The Program Directors will discuss ways of cooperating with other Sections of the State Bar that already have substantial participation from practitioners from these areas, particularly the tax, real property and probate/estate planning groups.**

**(3) Add at least one Council member in 2005 or 2006 who is not from metropolitan Detroit or Grand Rapids.**

Mr. Damschroder, with the assistance of an ad hoc committee, will tackle this objective. It was suggested that members who contact the Section with a desire to become involved be used to meet this goal. Mr. Khoury discussed what we can offer local bar associations. He suggested providing a Business Law Update which could include some of the same topics presented at the Business Law Institute. The Section would provide speakers for the event. He suggested the program would be used as a means of pitching Section activities. Mr. Marcela indicated he would be interested in helping with activities in the Bay City – Midland area. Mr. Damschroder, Mr. Mali and the officers will follow-up on this goal and begin to establish activities.

**Goal: Increase participation by Young Lawyers.**

**Objective: Sponsor informal after-work receptions in local settings.**

**Measurable Outcomes: Hold a jointly-sponsored event each year with the Young Lawyers Section of the State Bar, at a convenient location in the**

**principle metropolitan areas of the State and have at least 25 attendees. 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.**

The Section is sponsoring a program with the Young Lawyers Section on January 26, 2006 at the Skyline Club entitled "The Business of Being a Business Lawyer". This event will be at no charge to the attendees. Mr. Minkus, Mr. High, Mr. Damschroder, Mr. Foltyn, and Shirley Kaigler of Jaffe Raitt will be presenters at this open panel discussion. An announcement will be circulated to our listserv and the Young Lawyers Section listserv within the next few weeks. The event will be limited to 80 people and will include lunch. Typically Young Lawyers Section events sell out quickly.

Mr. Mali was contacted by Wayne State University regarding mentors for law students who want to be business lawyers. It was suggested that the Section appoint a liaison to law schools to address this issue.

**Objective: Continue the associate training series ("Boot Camp") with ICLE.**

**Measurable Outcomes: Conduct the Boot Camp program during the Fall of 2005 and 2006 and attract at least 100 participants from at least eight of the major law firms around the state.**

There are approximately 43 registrants in Grand Rapids and 170 in Beverly Hills. Actual attendance at the program is down. Of the registrants, approximately one-half are attending in Grand Rapids and one-third are attending in Beverly Hills. Boot Camp is running smoothly as it is a repeat program.

**Goal: Encourage students to develop an interest in business law.**

**Objective: Continue the annual writing scholarship award program.**

**Measurable Outcomes: Develop an advocate for the program at each of the six Michigan law schools, who will encourage students to participate in the writing program, perhaps in conjunction with the satisfaction of course work that is part of the law school's curriculum. Discuss with the Federal Bar Association how its writing program of a similar nature is being administered and explore the possibility of joining together with that group to enhance the corporate writing program.**

The Section is conducting the Annual Scholarship Award program for its third year. Papers are submitted prior to the June meeting and Mr. Damschroder, Ms. Fuller, and Ms. Akers read and judge the submissions. The Section usually receives 6-8 entries per year. This Award was established in an effort to let law students learn of the Section. Goldie Adele of Cooley Law School currently helps

the Section administer the program. Mr. Adele contacts his counterparts at other Michigan law schools and together they circulate the Section's announcement to law students. A discussion ensued regarding ways to make Award program more attractive. A liaison to the law schools was discussed. After discussion, it was decided that Ed Lukas would serve as the Section's liaison to the law schools. Mr. Lukas will contact Mr. Adele regarding the Award. A motion was brought to make Mr. Lukas the Section's Liaison to Law Schools. The motion was seconded and passed unanimously.

**Goal: Improve internet and other technology services.**

**Objective: Enhance the Section's Website to increase usage.**

**Measurable Outcomes: Assess the use of the website and each of its component parts on a daily or weekly basis.**

**Objective: Add a Recruiting Module to the Website.**

**Measurable Outcomes: Technology Director and officers or Council members designated by the Chair will work to develop a format for this module by the end of 2005.**

**Objective: Add information about the members of each Committee to the website.**

**Measurable Outcomes: The Section Administrator should contact each Committee Chair and ascertain which members of the Committee should be identified on the website, and then convey this information to the Webmaster for uploading.**

The components of the Section's website were discussed. The website is informational, not substantive. The meeting participants were reminded that if a committee or ad hoc group is having any kind of event, Ms. Shoop should be notified so it can be posted on the website.

**Goal: Collect information about Section Members.**

**Objective: Update the Section's listserv information on an annual basis.**

**Measurable Outcomes: Establish a schedule for annual updating, beginning after the annual Section dues deadline of February 28 has passed, with completion targeted for April 30 of each year.**

**Objective: Review and update the membership questionnaire to capture meaningful data for posting on the Section website.**

**Measurable Outcomes: Finalize questionnaire and disseminate it electronically to all members by June 30. Post data results by September 15, 2005.**

The Section's database was discussed. The database contains contact information for our members together with information obtained through surveys. It takes considerable time and effort to keep the database up to date and the tool is rarely used. A discussion ensued regarding the use of the database. Ms. Shoop was asked to send a list to each committee chair of all Section members who responded to surveys that they practice in that committee's area. Each committee Chair will then send an email to this list of people in an effort to obtain new committee members.

Conducting further surveys and the use of a survey service was discussed. Mr. Khoury will look into the issue of surveys.

### **MISSION: EXPAND RESOURCES FOR MEMBERS**

**Goal: Provide a regularly-published high-quality written communication to Section members.**

**Objective: Continue support for the Michigan Business Law Journal, including possibilities for cost reduction.**

A discussion ensued regarding the Business Law Journal. The Journal is available on the Section website and by hard copy. It was determined that Section members want to continue to receive the Journal by hard copy. The meeting participants discussed the possibility of publishing two journals, the possibility of publishing periodic newsletters, and the ICLE publishing contract.

**Goal: Continue to sponsor a Business Law Section annual spring meeting.**

**Objective: The Program Committee co-chairs shall consider and report on the following issues: (1) Participation with ICLE, (2) Location and scheduling, (3) Breadth of program focus, and (4) Networking and social opportunities.**

**Measurable Outcomes: The Program Committee should prepare its report to the Council at its quarterly meeting held in September in order to permit sufficient time for implementing any recommended changes.**

The Program Directors will meet and go through the goals outlined in the Strategic Plan. A discussion ensued regarding the location of the Business Law Institute, how to increase attendance, and what kind of event the Section wants it to be. The successes of other sections were discussed.

**Goal:** Continue to sponsor programs for Continuing Legal Education.

**Objective:** Continue presenting CLE programs on topics of our choice.

**Measurable Outcomes:** Program Directors and Chairs of active Section Committees will meet with representatives of ICLE to map out a calendar of seminars to be presented over the next 12-15 months.

The Section is meeting its goals and objectives in this area.

**MISSION: PROMOTE IMPROVED LEGISLATION AND  
REGULATION FOR BUSINESS**

**Goal:** To review Michigan's laws affecting business formation, capital raising, corporate governance and related legal matters, and make recommendations concerning the improvement of such laws, in order to maintain Michigan's ability to attract and retain new business enterprises and to encourage growth in entrepreneurship.

**Objective:** The Section committees should consider ways of monitoring legal developments in their respective areas of interest and should report annually to the Section Council about any recommended changes that are deemed desirable for Michigan's business community. The Legislative Review Director shall determine whether the State Bar has retained a lobbying firm or lobbyist to assist in legislative initiatives in the event one is needed.

**Measurable Outcomes:** The Chair shall request each Committee Chair to implement this annual analysis and report.

The meeting participants discussed the use of lobbyists, the lobbyists used by Nonprofits, giving consideration to using a lobbyist from Public Affairs Associates, if it is essential to use a lobbyist or just to use someone with time, and if we should consider a lobbyist on retainer. It was determined that, at this time, the Section does not require a lobbyist on retainer.

**Goal:** Provide assistance to state government administrators with respect to rule making for the agencies charged with regulating business in Michigan.

**Objective:** Determine whether the various executive departments in the State government have an interest in proposing or revising administrative rules and obtaining assistance from the Section.

**Measurable Outcomes:** The Chair shall contact appropriate representatives of the State departments that have responsibility for business

**regulation and make known to them that the Section resources are available to assist in rule-making.**

Mr. Lark will follow-up on this topic.

#### **MISSION: SECTION ADMINISTRATION**

**Goal: Maintain the involvement of the Section Administrator at an appropriate level.**

**Objective: Monitor the activities of the Section Administrator to periodically re-define the scope of the Administrator's duties.**

**Measurable Outcomes: Chair of the Council shall meet periodically with the Administrator to evaluate the demand on her or his time and devise strategies for efficient utilization of the Administrator's talents.**

Mr. Lark will meet with Ms. Shoop to accomplish this goal.

**Goal: Continue Support for the "Access to Justice" Programs of the State Bar.**

**Objective: Continue an annual \$5,000 contribution.**

The Section recently made its annual \$5,000 contribution.

**Goal: Identify the optimum utilization of Council officers and Directors.**

**Objective: Evaluate periodically the proper functions for Council officers and Directors.**

**Measurable Outcomes: The Chairperson and Chairperson-Elect shall jointly prepare job descriptions for each of the Council's officers and directors, taking into account the various responsibilities that each of these persons has been assigned in this Strategic Plan.**

Mr. Lark and Mr. Khoury will work on implementation of this goal.

**Goal: Define a role for past Chairs who would like to continue to be involved with the Council.**

**Objective: Solicit past Chairpersons to determine their interest in assuming a role in Section administration; host an annual leadership dinner in the fall of each year to which all current Council members and past Chairpersons are invited.**

**Measurable Outcomes: Survey the past Chairpersons to determine their interest in continuing with Section administration or specific projects.**

Mr. Lark will follow-up with the officers regarding formal gestures with respect to past Chairpersons. The Section will continue with the annual meeting dinner.

**Goal: Establish policies for designating committee chairpersons and evaluating their performance.**

**Objective: Annually evaluate committee chairs to ensure that those who do not perform adequately will not continue to serve simply because of Council inaction or inattention.**

**Measurable Outcomes: Request a report from each Committee Chairperson regarding the committee's goals and objectives for the next 12 to 24 months, and its needs for additional support from the Section, if any.**

The committee chairs/directors will be asked for the above information with their report for the March meeting. The officers will review committees/directorships on an annual basis.

iii. Section Development. This topic was addressed in connection with the Strategic Plan.

c. Other Business.

i. Sponsorship. The Section's current policy is to not sponsor anything unless it is being put on by the Section. Requests need to be approved by the Chair. As a rule, if a program is being put on or sponsored by one law firm, it is not appropriate for the Section to sponsor it. A motion was made to have sponsorship decided by the officers and to not sponsor activities sponsored by one law firm. Committee sponsorship must also be approved by officers. The motion was seconded and passed unanimously.

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 with regard to HB 5315-5323 were passed by the House. PA 212 and 217 regarding filing issues and fees were discussed. The Committee

would like to withdraw its support for HB 5322. A motion was brought to withdraw the Section's support of HB 5322 in light of the adoption of PA 217. The motion was seconded and passed unanimously.

(iv) Debtor/Creditor Rights Committee. A written report of the Debtor/Creditor Rights Committee is attached to these Minutes.

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

(vi) In-House Counsel Committee. A written report of the In-House Counsel 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 the Nonprofit Corporation Act has not been revised since 1982 and that amendments have been in the making for years. She indicated that a memorandum outlining the technical information with respect to the amendments is attached to the Committee's report. The amendments have not been formally endorsed. The Committee would like the Section to endorse the amendments with a goal of not including anything controversial. Ms. Forbes expects the Attorney General's office to oppose the amendments. Mr. Klimko asked about the oppression section of the amendments and a discussion ensued on the topic. A motion was made to endorse the amendments subject to looking at the issue of oppression. The motion was seconded and passed with one abstention.

(viii) Regulation of Securities Committee. No report.

(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.

B. Ad Hoc Committees.

(i) Business Court Ad Hoc Committee. A written report of the Business Court Ad Hoc Committee is attached to these Minutes. Ms. Akers reported that the House Judiciary Committee refused to endorse the statute unless it has the support of the State Court Judges Association. The Committee attended a lunch with Judge Grant and Judge Alexander of the Association to discuss the issue which was met with hostility by the Association. Judge Grant told the Committee the idea would cost too much money and wanted to know why the Committee wants to fix something that is not broken. Judge Grant also indicated that the Bar does not provide support and training opportunities to judges. The judges indicated that as the statute is written, every circuit in the State would have a business court although not every circuit needs a business

court. They believe this should be changed. The Committee will go back to court staff to suggest a pilot program and will continue its efforts.

(ii) Small Business Ad Hoc Committee. The Committee will defer its recommendation until the March meeting.

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.

(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 Committees and Directors. The motion was seconded and unanimously approved.

6. Liaison Reports. No reports.

7. Other Business and Announcements. Mr. Khoury reported that Charlie McCallum is the Vice Chair Elect of the American Bar Association Business Law Section. Mr. McCallum will be appointed the chair at the ABA BLS Spring meeting to be held in Tampa, Florida in April.

Mr. Lark reported that the officers plan to meet after the first of the year to discuss pending issues. One issue to be addressed are the Bylaws which need minor revision.

Mr. Minkus announced that Jeff Ammon will become the managing partner at Miller Johnson as of January 1, 2006 and congratulated Mr. Ammon.

8. Announcement of March 9, 2006 Meeting. The next meeting of the Business Law Section Council will be held on Thursday, March 9, 2006 at 4:00 p.m. at the State Bar offices in Lansing, 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 1:40 p.m.

Respectfully submitted,

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Mark R. High, Secretary