

## STATE BAR OF MICHIGAN

Meeting of the Representative Assembly  
of the State Bar of Michigan

Proceedings had by the Representative Assembly of the State Bar of Michigan via videoconference technology on Saturday, April 25, 2020, at the hour of 9:30 a.m.

Officers:

Aaron V. Burrell, Chairperson  
Chelsea M. Rebeck, Vice-Chairperson  
Nicholas Ohanesian, Clerk  
Hon. John Chmura, Parliamentarian

**Chairperson Burrell:** Alright, well, good morning, everyone. The meeting of the assembly is called to order. I want to thank you for attending this our first virtual meeting of the Representative Assembly. These are certainly extraordinary times and we appreciate everyone's patience and everyone's participation.

Before we begin, I wanted to review some of the ground rules we've established for this first ever virtual RA meeting. Everyone's microphone will be muted throughout the meeting, so that we will be able to hear whoever is presenting to the body. If you want to speak when any item is open for discussion, please raise your virtual hand by clicking the raise hand button in the participant participation panel. People with raised hands will be recognized in the order that they raised their hands and you will be unmuted by State Bar staff. The chat function is set so that you can only send messages to the State Bar Michigan staff who are hosting this meeting. If you experience any difficulties during the meeting, please send one of the co-hosts a message and they will assist you. Voting on procedural matters will be carried out by voice vote where we will unmute everyone to allow for voting. On substantive matters, we're going to vote using the polling feature within the zoom application.

We will let you know when you should see a poll on your screen to vote. If you do not see the poll after a few moments, please send a chat message to the "Vote & Tech Help" receiver and a State Bar staff member will assist you. In our testing, the polling function worked about 90% of the time, but if there are widespread problems, we have backup voting methods that we can utilize.

When a second to a motion is required, State Bar staff will unmute everyone's microphone, and then once the motion has been seconded, everyone's mic will be muted.

Please, to the extent feasible, limit background noise so that when we unmute everyone's microphone there isn't too much feedback. Also, allow the State Bar staff to control your muting functions. Also, when you speak, please remember, as with any Representative Assembly meeting, to state your circuit number.

We have taken the steps to help ensure that we can run an efficient and orderly meeting that will allow for meaningful participation by everyone. Despite these well-developed plans and the hours of practice by our State Bar staff for which we are eternally grateful, the meeting may be a little clunky at times. So I thank you in advance for your patience and we will learn from this experience and no doubt we will get better from it. And with that we will get started with the meeting.

The first order of business for today's meeting is a certification of a quorum and the chair at this time will recognize our clerk, Nick Ohanesian.

**Clerk Ohanesian:** A quorum of members is present.

**Chairperson Burrell:** Thank you Nick. The next order of business is the adoption of the proposed calendar, which will be led by Jennifer Frost, chair of the Rules & Calendar committee. Jennifer?

**Jennifer Frost, 39<sup>th</sup> Circuit:** I move to adopt the calendar as proposed and emailed to the members and posted on the State Bar website.

**Chairperson Burrell:** Thank you, Jennifer. Is there a second?

**Daniel Florip, 26<sup>th</sup> Circuit:** Second.

**Chairperson Burrell:** The motion has been made and seconded. Is there any discussion or members of the proposed calendar? If so, please indicate by raising your virtual hand.

At this time, the chair will recognize John Chau. Actually, at this point, Darling Garcia has her hand up, but I'm not certain if that's for this particular amendment.

**Darling Garcia, 30<sup>th</sup> Circuit:** No, it's not. I'm sorry.

**Chairperson Burrell:** Thank you. Are there any amendments with respect to the proposed calendar? Alright. Well, seeing no further discussion, we will open voting on the proposed calendar. We're going to try to take the voice vote on the procedural matters. So the State Bar Michigan staff will now unmute everyone briefly for the voice vote. So, all in favor of approving the proposed calendar, signify by saying aye.

**Various voices, including Angela Cole, 42<sup>nd</sup> Circuit:** Aye.

**Chairperson Burrell:** Are there any opposed? The calendar is adopted. Approval of the summary of proceedings. For that, we go back to **Jennifer Frost**. Jennifer?

**Jennifer Frost, 39<sup>th</sup> Circuit:** I move to adopt the summary of proceedings.

**Chairperson Burrell:** Thank you, Jennifer. Is there a second?

**Various voices:** Second.

**Chairperson Burrell:** A motion has been made and seconded. Any discussion or any amendments of the summary of proceedings of the September meeting. Please indicate at this time by raising your virtual hand. I see the hand at this time of Christina DeMoore of the 52nd circuit.

**Christina (Tina) DeMoore, 52<sup>nd</sup> Circuit:** I apologize. That was in error.

**Chairperson Burrell:** No worries. No worries. I also see Diane Hutcherson of the Third Circuit.

**Diane Hutcherson, 3<sup>rd</sup> Circuit:** That was an error too.

**Chairperson Burrell:** No worries. No worries. We're all getting through this together. Thank you so kindly. Alright. Seeing no further discussion, we'll open the voting on the summary of proceeding. Once again, we're going to vote on these procedural matters through a voice vote. The SBM staff will unmute everyone's microphone briefly for the voice vote. To adopt the summary of proceedings, respond by saying 'aye.'

**Various voice, including William Renner II, 15<sup>th</sup> Circuit and Diane Hutcherson, 3<sup>rd</sup> Circuit:** Aye. Aye.

**Chairperson Burrell:** Any opposed? The summary of proceedings is approved. Next on the agenda is the filling up the vacancies. For that I would turn the virtual podium over to Mark Jane, our chair of the Nominating & Awards Committee.

**Mark Jane, 22<sup>nd</sup> Circuit:** Good morning, everyone. The Nominating & Awards Committee has been hard at work over the past six months filling vacancies. The memo in your materials lists out 20 new members over 14 circuits. I would like to make the motion to accept these appointees into the Representative Assembly. Is there a second?

**Various voices including Sheldon Larky, 6<sup>th</sup> Circuit:** Second.

**Chairperson Burrell:** Okay, Mark. A motion has been made and seconded. Is there any discussion? Please signify by raising your hand. Alright. Seeing none, we will take this vote through a voice vote. The State Bar of Michigan staff will now unmute everyone briefly for the voice vote. All in favor of accepting these appointees into the Representative Assembly, please signify by saying Aye.

**Various voices including Angela Medley, Rob Buchanan:** Aye

**Chairperson Burrell:** Is there any opposed? The motion is adopted. Congratulations to all the new members and welcome to the Representative Assembly. The next item on our agenda is the

Nominations of the Representative Assembly awards and for that the Chair will recognize again, Mark Jane.

**Mark Jane, 22<sup>nd</sup>:** The Nominating & Awards Committee reviewed nominations for the 2020 Unsung Hero Award, and we are putting forth the nomination of Clark Andrews for the award. Information about Clark Andrews was included in your materials. Are there any other nominations from the floor? If so, signify by raising your hand. Seeing none, I move that Clark Andrews receive the 2020 Unsung Hero Award. Is there a second?

**Various voices including Laura Polizzi and Daniel Florip:** Second.

**Chairperson Burrell:** Thank you, Mark. A motion has been made and seconded. We will take this to a voice vote once more. All in favor of Clark Andrews receiving the Unsung Hero Award, please signify by saying Aye.

**Various voices including Karen Geibel, Dallas Rooney:** Aye

**Chairperson Burrell:** The motion is adopted.

**Mark Jane, 22<sup>nd</sup> Circuit:** [inaudible]...of the State Bar of Michigan. While the Nominating & Awards Committee is not able to put forth a nomination on its own, it did receive an internal recommendation of retired 36th Circuit Court Judge William Buhl. The additional materials you received on Friday included a letter regarding this nomination. As a result, on behalf of the Nominating & Awards Committee, I would like to put forth his nomination to the floor. Thus, I move that Judge Buhl receive the 2020 Michael Franck Award. Is there a second?

**Various voices including Nicholas Ohanesian, Ellsworth Stay:** Second.

**Chairperson Burrell:** The motion has been made and seconded. We will conduct a voice vote at this time, once more. All in favor of William Buhl receiving the Michael Franck Award, please signify by say Aye.

**Various voices including Mark Teicher, James Brennan, Charles Wojno, Gregory Bringard:**  
Aye

**Chairperson Burrell:** Are there any opposed? The motion is adopted. We will present the awards to the recipients hopefully in person at our September meeting. Thank you again, Mark Jane. Appreciate you, sir. The next item on our agenda is the Chair's Report, and I will be brief.

Fellow representatives, State Bar leadership, and all those who may be watching me on YouTube. It is my great honor to serve this year as chair of this august body and preside over the Representative Assembly's first virtual meeting. Before I begin my remarks and substance, I do want to thank State Bar staff...and particularly Janet Welch, Peter Cunningham, Katie Hennessy, Carrie Sharlow, as well as those helping with me behind the scenes. Michelle Erskine, Janna Sheppard, and Judge Chmura,

and others for making this virtual meeting possible. We debated as a leadership team regarding the feasibility and desirability of holding a virtual meeting and after weighing all the factors, Chelsea, Nick and I, along with the State Bar determined it best to proceed. I thank you for your willingness to embark on these uncharted waters with us and to help this body take its next step towards the future.

Two years ago, under the leadership of Representative Assembly Chair, Joseph McGill, we laid the groundwork for virtual meetings that we would hold in addition to our in-person meetings, to confront and address issues of immediate and pressing nature. We envisioned a nimble assembly that at a moment's notice, would be able to call a meeting via available technology and address an issue prior to our next in-person meeting. Although this situation is quite different than that. We are now ready because of Joe's leadership and along with Rick Cunningham. To proceed virtually in this meeting and I wish to thank them as well for their contributions.

Since September of 1972, the Representative Assembly has served as the final policy-making body of the State Bar. This body has helped the State Bar navigate certain of the most difficult times in its existence. From events that have challenged the public confidence and officials and the rule of law, to those that brought devastation and tragedy, our State Bar has been a pivotal guiding force in Michigan and the Representative Assembly has been instrumental in the work.

It is in times of great challenge, that we as lawyers are reminded of our call to be gatekeepers of justice. Those lawyers advance the cause of the executive and the line work. They have ensured access to justice for those without means. They have advocated for marginalized populations. They've invited the promise and our oath to never reject the cause of the defenseless or the oppressed.

Now today we gather virtually and collectively facing one of the most single profound challenges of our time - COVID-19. COVID-19 has changed the way we practice law, interact with our colleagues and our clients, and care for our families and friends. It has impacted us in untold ways, and we are only now learning of this lasting influence. We all know someone who has been personally afflicted with this illness. And for those of you who will be the loss of one or caring for someone who is fighting through, my prayers are with you.

COVID-19 although unique in its breadth and scope, is not unlike other major crises that we have confronted that have challenged our resolve and as in times past, lawyers have to stand at the watchtower, to ensure that we guarantee those promises in our founding and governing documents, and that those promises inure to all citizens of every background and socio-economic status. It is during those crises that lawyers have an obligation to return to their position as defenders of the defenseless, protectors of the Constitution, voices for the voiceless. Which is why I call upon you, the leaders of the Bar to rise to this moment of challenge where there is a need, offer your services. Where there is opportunity to help – lend a hand. Where someone is seeking guidance, be their resource. In times of controversy, you as a bar leader, have a responsibility to come to the aid of those in need. The Representative Assembly is taking its role in this crisis seriously. Many of you have already stepped up to the plate and assisted the State Bar of Michigan with survey responses to the court administration survey. The State Bar thanks you for your contributions. And I have asked

the Chair of the Special Issues Committee, Nicole Evans, to examine what more the Representative Assembly can do during this pandemic. She and her committee are looking at ways to enhance access to the court system, provide resources to the public, and offer assistance to lawyers during this time.

I've also asked the Committee to examine issues pertinent to diversity. As many are aware, this pandemic has impacted all people, but has disproportionately impacted certain diverse populations in this country. And during these times of uncertainty, those from diverse populations are often among the most exposed to adverse employment actions, displacement, and economic upheaval. As my discussions with Greg Conyers and other diversity leaders across the state have confirmed, this can happen to individuals who are in the general population, but also to members of the Bar. Which is why I've asked my Special Issues committee chairperson to explore diversity issues, relative to both the Representative Assembly and the State Bar in general, with the objective of sharing a diverse cross-section of lawyers, appear in our ranks and serve in their communities across the state. And in that vein, I intend to appoint a standing Diversity Committee to address these issues for this body on an ongoing and continuing basis.

Finally, we hope to emerge from this crisis, a stronger Bar. The Representative Assembly will do its part and act this year by being a meaningful partner in the development of the next iteration of governance structure.

Whatever the future may hold for the State Bar, you as leaders, can take comfort in the fact that you helped mold it and guided, and you individually will have an opportunity to participate in it moving forward. Indeed, we all play a role in the future of the Bar. Although things are uncertain today, we can remain optimistic for the future knowing that we will continue in our role as public servants and as leaders in our Bar and in our communities. From my family to yours, stay safe and stay well. That's the chairs report.

And at this time, we'll move on to the proposals of the meeting and I'd like to recognize at this time, Sean Myers, the Representative Assembly representative from the Third Circuit and the proponent of the proposal to amend Rule 6.110. Sean.

**Sean Myers, 3<sup>rd</sup> Circuit:** Thank you and good morning, everyone. My name is Sean Myers. I'm a representative from Third Circuit and I'm an attorney at Cannabis Council in Detroit. I'd like to thank the Chair, and all the members of the Assembly for allowing this important resolution to be brought before the Assembly. This resolution proposes a small amendment to Michigan Court Rule 6.110(C) to eliminate ambiguity and to bring the rules in line with state statutes related to calling of witnesses at preliminary examinations and criminal cases. And for an explanation to the resolution, I'd like to introduce somebody who probably needs no introduction for many of you, former Representative Assembly member Mr. Bernie Jocuns, who I hope is in the room.

**Bernard Jocuns:** I am here. Am I out of time-out now?

**Sean Myers, 3<sup>rd</sup> Circuit:** Yes.

**Bernard Jocuns:** Oh, and Aaron, that was a wonderful statement. That was very well thought out and heartfelt.

Anyway, this proposal, I won't take too long. And thank you for the kind words, Sean. We'll start with, what is a preliminary examination? Several states have preliminary examinations or what is referred to as preliminary hearings. In Michigan at the district court level, when a person is charged with a felony, you're entitled to a preliminary examination. And at that hearing, the district judge makes a determination by a preponderance of the evidence, if that case is bound over to circuit court to prosecute the matter for a felony. And this is something that's done in several different states and it's one of the things that have been unique to Michigan. There's case law that goes back to Michigan from 1970.

The *Duncan* case and you know more nation-wide *Coleman v. Alabama*. So, in addition to that, we have a statute in Michigan, and we have a court rule under MCL 766.12, and I'm paraphrasing, as you all have materials in front of you, it indicates that at preliminary examination that parties shall call witnesses, subpoena them at the time and place of this hearing. However, under the court rule, it doesn't quite say the same. It doesn't really have that same punch. It says "may".

And why are we here today? So we can unify the statute and the court rule and prevent, you know, parties from having to file motions to quash, and no disrespect to my friends at the MAAC and SADO office that, you know, to avoid appeals. Michigan Supreme Court interlock *Ettore* appeals that are unnecessary and to really get the bench on board because this is something that's right. It's important. And as you see in your materials, there was also a nice statement from retired Judge Hugh Clarke. So that's all I really have at this point.

Oh. There is one more - There's a recent MSC decision that was a direct remand interlock *Ettore* appeal in February of this year. And that was *People v. Brown*. So, you know, we have precarious timing for this, for the proposal here. So, I guess now would be the appropriate time for questions or discussion.

**Chairperson Burrell:** Thank you. Are you going to make a motion Bernie?

**Bernard Jocuns:** I don't think I can do that. I believe that someone else has to make that motion. Because I am no longer a member. I'm not a member, Aaron.

**Chairperson Burrell:** Thank you. Well, we need a motion from a member of the Representative Assembly so we can open discussion. Do I have a motion to approve the proposed amendment to MCR 6.110?

**Sean Myers, 3<sup>rd</sup> Circuit:** Thank you. I'd like to make that motion.

**Chairperson Burrell:** Motion has been made. Is there a second? I see, I see individuals indicating seconds, but we have to unmute everyone.

**Various voices including Elizabeth Joliffe, Timothy Havis, Yolanda Bennett:** Second.

**Chairperson Burrell:** Motion has been made and seconded. Is there any discussion regarding this proposal? Please raise your virtual hand and you will be unmuted once you are recognized. At this time, the chair recognizes Stephen Gobbo, 30<sup>th</sup> Circuit.

**Stephen Gobbo, 30<sup>th</sup> Circuit:** Good morning to you all. The only question, Steve Gobbo from the 30th Circuit - I'm questioning whether the language should be consistent within the rule and changing the word "shall" to "must", and "must" being the new mandatory.

**Chairperson Burrell:** You have to allow or unmute Sean or Bernie, so they can respond.

**Sean Myers, 3<sup>rd</sup> Circuit:** I don't personally have an objection to that. I would take that as a friendly amendment. What do you think Bernie?

**Bernard Jocuns:** I appreciate the sentiment and in regard to that, but Michigan case law is clear that "shall" means "must," and I would prefer to have the strong language of "shall" versus "must." And there's plenty of case law on that. So, that's why that word was included instead of "must." I know it's an idiosyncrasy, but that's the logic behind it. So, I'm declining the friendly amendment at this time.

**Sean Myers, 3<sup>rd</sup> Circuit:** I agree.

**Chairperson Burrell:** At this time, thank you, at this time, the Chair recognizes Shel Larky, 6<sup>th</sup> Circuit.

**Sheldon Larky, 6<sup>th</sup> Circuit:** Ladies and gentlemen, my name is Sheldon Larky and I'm 6<sup>th</sup> Circuit member. I'm also a Magistrate in a district court. This has been approved by the District Court Judges Association, and we believe that it makes complete sense to have this universal throughout the entire state, and the consistency with the court rule is consistent with the statute on the word of "shall" and I endorsed the idea of this amendment - a party of this motion. Thank you.

**Chairperson Burrell:** Thank you Shel. The next individual on our list is Tom Howlett. At this time the Chair recognizes Tom Howlett, 6<sup>th</sup> Circuit.

**Thomas Howlett, 6<sup>th</sup> Circuit:** Good morning, Tom Howlett from the 6<sup>th</sup> Circuit. I am a civil practitioner. So, my questions really are informational due to my lack of familiarity with some of the procedures. I took a look at what I think is MCL 766.12, and I did not see the language that has been alluded to in the proposal. It talks about the accused being, if he wishes to, shall be sworn examining/cross examining. He may be assisted by Council and such examination. So, I'm wondering if the, if there's another statutory provision that's been referred to.

My second question relates to whether, as written, a court would have any discretion to



not allow a number of witnesses, in the way that it's written, it would appear, that so long as the defendant wishes to subpoena and call witnesses, there would be no discretion that the court would be allowed to exercise in determining whether a witness could be subpoenaed or testify, so, I just wonder if there is any sort of unlimited nature to the proposal that causes the court to lose any discretion that would otherwise apply and be available to any judge in any proceeding.

**Bernard Jocuns:** Thank you for sharing that. The statute is the statute. It allows parties to subpoena witnesses - call them without a doubt. And if I understand what your question was correctly, Tom, the Rules of Evidence still apply. You know, if something's not relevant, it's not relevant. MRE 401 through 403 - that's fair game all day. This isn't like a let's say, an abuse/neglect proceeding, where the rules of evidence don't necessarily matter, and they can be put on hold, but that, hopefully, that clarifies your question. I mean, the judge still has discretion that allows someone to call witnesses, without a doubt, but the rules of evidence aren't going to be put at a standstill, you know, hope that might be something else that comes up in the future.

**Sean Myers, 3<sup>rd</sup> Circuit:** And just a to add as a point, on the statute that we're referencing, 766.12 specifically reads, "...after testimony and support of the prosecution has been given, the witnesses for the prisoner, if he have any, shall be sworn and examined, and cross examined, and he may be assisted by counsel on such examination and then the cross examination of the witnesses in support of the prosecution..." and as the way the court rule currently reads, it appears to give the judge discretion as to whether to allow these witnesses where the state statute that gives the authorization, specifically says "shall," and that's also why we're using the same language.

**Chairperson Burrell:** Thank you. Is there any further discussion, relative to the proposed motion? Alright. Seeing none, we need to remove our guests to the waiting room before we start the voting. We will bring you back to announce the vote result. At this time, our clerk, Nicolas Ohanesian, will lead us through the voting procedure. Nick?

**Clerk Ohanesian:** Please vote now. If you're having trouble voting, please send a message to the Co-host labeled "Vote and Tech Help". Please make sure to click "Submit" when you have voted.

**Chairperson Burrell:** So, everyone please remember to allow the host to control the muting feature during the agenda. We thank everyone for their patience. Voting is live at this point, but our State Bar of Michigan staff are tabulating their results.

**Clerk Ohanesian:** I now have the results: We have 110 in support; 6 opposed; and 2 abstains.

**Chairperson Burrell:** Thank you. Mr. Clerk. The motion passes. Thank you, also, Sean and Bernie. Very much appreciate it.

The next item on our agenda is the consideration of Proposed Amendment to the Code of Judicial Conduct 2F. Returning RA members will remember that this was originally presented on the September 2019 agenda and was postponed due to time constraints. The proposal comes from the Woman Lawyers Association of Michigan which has formed a coalition for impartial justice with a

number of other groups listed in the proposal synopsis. As per our rules, local bar associations are permitted to present and at this time, the Chair will recognize Alena Clark, President of the Women Lawyers Association of Michigan, Donna MacKenzie, and Roquia Draper to present.

**Alena Clark:** Good morning. My name is Alena Clark. Before we get started, I did want to give a shout out to Carrie Sharlow and Peter Cunningham and Chairman Burrell. I appreciate your guys' hard work; I know that this has been a huge undertaking, and we certainly the opportunity to be able to speak with you all.

I am joined by my incoming president, Roquia Draper (although I'm not sure where she is on the screen, but hopefully you can see her, and uh...(Roquia: Good morning, everyone) and Donna MacKenzie, our immediate past president. So before I started, and I am going to be brief because I know that you guys have been in this meeting for some time now, I just want to talk a minute about what we are actually doing.

The rule itself as it is currently written is three sentences, and what we are seeking to do is just change one of those sentences. So as the rule is written right now, and I'm sure you saw this in a letter that came out yesterday that you should have all received because us, along with the Washtenaw County Bar, is proposing an adoption of the comments as well.

So I just want to make sure everybody is clear with what we are doing. The first sentence is going to remain unchanged: "A judge should not allow activity as a member of an organization to cast doubt on the judge's ability to perform the function of the office in a manner consistent with the Michigan Code of Judicial Conduct, laws of the state, and Michigan and United States constitutions." The current sentence says, "A judge should be particularly cautious with regard to membership activities that discriminate or appear to discriminate on the basis of race, gender, or other protected personal characteristics." And the last sentence, which we are not changing, is "Nothing in this paragraph should be interpreted to diminish a judge's right to the free exercise of religion." The only sentence that we want to change or the word we're asking you adapt to change is that second sentence, which would instead of saying, "A judge should be particularly cautious..." it will say, "A judge shall not hold membership in any organization that practices invidious discrimination on the basis of religion, race, national origin, ethnicity, sex, gender identity, or sexual orientation." I want you to drop down to the comment section because I know that for a lot of you this has been kind of the point of concern was what does "invidious" mean, and that's going to be addressed in comment 2, which was a suggestion made by the Michigan District Court Judges who adapted this proposal as well and made this recommendation. Unfortunately, because we received the letter of support from the Michigan District Court Judges in the time of COVID, not everybody in the coalition was able to meet with their respective committees or boards or membership, so that's why the proposal is being brought on behalf of the Women Lawyers Association and the Washtenaw County Bar to bring these comments in because they really do shed a lot of light on what I think a lot of people's concerns are.

So I'm going to point you to number two, which says "An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for

admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather depends upon how the organization selects members as well as other relevant factors such as whether the organization is dedicated to the preservation of a religious, ethnic, or cultural values of legitimate common interest to its members or whether it is an intimate, purely private organization whose membership limitations could not be constitutionally prohibited.”

Okay, so that's what we're proposing, but I want to give you a little bit more background so you kind of know where we're coming from and why and how this all came about. For those of you that are not familiar with our organization, we are one of the oldest women bar associations in the entire country; we just celebrated our 101st birthday, and as part of our membership, we are also members of national organizations such as the National Conference of the Women's Bar Associations and others like that. This last year, in 2019, we went to a National Women's Bar Conference in San Francisco. Some of you may have been there because we mirror the ABA meetings, so you might run into some of our members, and there was an ABA meeting going on at the same time. And as part of this conference, there was a presentation called “Women of Color in the Practice of Law,” and it was put on by Paulette Brown and Amanda Green, who is, I believe, the current president of the National Conference of Women Bar Association.

For those of you that are not familiar with Paulette Brown, she's the first female African-American president of the American Bar Association, and she is remarkable. She has done a lot of really amazing things. So one of the things that they talked about was unconscious bias and how sometimes you need an interrupter. And a good interrupter the bar associations can help bring back to their states is the modification of certain rules to make sure that we are doing everything we can to eradicate discrimination and have truly inclusive system of justice because as you know judges are the face of our justice system, so these rules are important. And Paulette Brown worked with the ABA and helped create a lot of these rules. So we left that conference feeling very inspired and thought, you know what, where's Michigan at with this, what are we doing? So we came back to Michigan and I have to give a shout out to my committee because I'm really grateful they did not impeach me because during this last summer, instead of resting, they actually did a lot of research, and there were two important things that we discovered about this particular rule.

First, the Representative Assembly was actually ahead of the curve back in 1993, and we adopted this rule. It was already brought by the Representative Assembly; it passed through the Representative Assembly; the State Bar president at that time wrote a very articulate and great article about this rule and why it was important. And if you're curious about that, you can look at the report that was with our original materials that you should have reviewed back in the fall, and I know they were included now. And so we're like, okay, Michigan was already there, for whatever reason, which we don't know why; here's a number of things that could have happened; the Supreme Court did not choose to adopt the rule.

So, we fast forward to 2007, and that's when the ABA developed the model rule, and they created this rule after they put together a lot of committees. They did a lot of research and they have a lot

more time and resources than we do, and they developed this model rule with the comments. And what we further discovered is that 43 states in the country and the Federal Bar Association have already adopted this rule. Michigan is one of seven states that has not done so yet. So here we are 30 years later, and we still haven't adopted this rule. So Women Lawyers thought, "Okay, let's make sure that we're creating a rule that is truly inclusive," so we reached out to all of the affinity bars that we could and local bar associations and said, "Okay, here's what we're thinking; check this language out; does this reflect your membership and what your goals are? What do you think, what do you want added? What do you want deleted?"

You know we had a very candid conversation, and that's where that language comes from in that second sentence that we're seeking to change. So if you're wondering where I came from, that's where it came from. Three questions that we really encounter that should have also been submitted to you in the frequently asked questions, and I understand there was a little typo in one of them: a b instead of q...You want to peruse through those while I'm talking, that's totally fine, but there's three questions that we encountered quite frequently, but I think probably a lot of you might have as well, that I do want to address.

The first one is the religious aspect. Now this actually came to us through the American Indian Law Section. When I first... This is the one of the committees I was assigned to because we divided them up. And when I first spoke to them, they said, "Okay, let's look at the rule, we'll talk about it and get back to you." And one of the other tribal court judges called me and she said, "Alena, we think this is a really great rule. As you're aware, native people are marginalized; often they usually get the brunt of a lot of discrimination; we can see that now with COVID in the Navajo Nation and things like that." She said, "we like this rule, but a lot of our judges are members of the Native American Church, and you can't be a member of the Native American Church if you are not native, and that's because we believe the Creator gave us certain medicines that we cannot share with other people. So our judges are concerned that we're members of a church that does discriminate and would they have to leave these organizations as a result." And the answer is no, because that is already accounted for in the current language of the rule, which is this third sentence that says, "Nothing in this paragraph should be interpreted to diminish the judge's right to the free exercise of religion." There's a reason why it's the First Amendment: it's important. I don't think that any of us would ever want to seek to infringe on anybody's right to freedom of religion. So that was fine, which is why now the American Indian Law Section is a member of this coalition.

The second question that we encountered often is, well, isn't the Women Lawyers Association kind of discriminating? I mean you're for women. And the answer is no, because we do allow membership for men. The question is whether you invidiously discriminate. And there's a difference there: we have our membership that's open to men. Is our primary purpose to promote women in the legal profession? Absolutely; that's in our mission statement; it's important as it is with many other minority bars; it is important to promote these particular minority interests, but it doesn't mean you can't be a member if you're not "fill in the blank."

And I think it's important that we really consider when you adopt a new rule you look at how other jurisdictions enforce them. In all of the 43 other states that have adopted this rule, they still have

their minority and specialty bar associations and they still have judges that are members. For example, they have the Women Lawyers Association, they have a Black Judges Association, they have a Hispanic Bar Association, a Latino Bar Association, Inuit Bar Association, I mean, fill in the blank. Because as you can see from the comment, it's not as easy as just looking at the membership roll. It's the arbitrary discrimination that we're trying to avoid because of the appearance of impropriety that it creates.

So to answer that question: no, it does not affect any of the judges' ability to be members of the specialty bar associations, and I will point out we specifically spoke with the National Bar Association. And for those of you that are not familiar with that that is a predominantly African-American bar association—one of the oldest bar associations in this country, and they were very clear that, yes, we have these rules in our states, and it does not change a judge's ability to be a member, so no impact there.

The last question, and I promise you I'm almost done: the last question is the enforcement, like who decides what this means, who's going to enforce it. And the answer is that it is the same as every single other judicial canon: it's the Judicial Tenure Commission; they will be in charge of this, it is the same thing as legislative branch creating a rule and then the executive branch enforcing it. They are elected officials, and some appointed people from what I understand, that will look at whether there's an allegation of a violation of a rule, and I know the judges kind of have a beef that they don't know that they're being investigated until, in fact, it is substantiated, but that's a separate issue. And if you want to create a coalition that modifies the civil procedure of the Judicial Tenure Commission, hit me up. I will consider joining your coalition. But that's not the issue here. This proposal does nothing to modify what the JTC is already doing. They're going to look at it, they're going to go through, examine the comment, you know, see what they think, and then go from there.

So this isn't really as big of a leap as people think that it may be initially. And I understand that when something's new when you're kind of like, Wait, why are we doing this? But that's why we're doing it. I think that, and I know the coalition agrees, that this is really in line with what our State Bar values already are. I mean, we took a diversity pledge, so this is kind of saying, let's not just talk about it—let's *be* about it, and that's what this proposal is. So unless Roquia or Donna has anything additional that they would like to add....No. Okay. I think that concludes our presentation and I'll be available for questions if anybody has any.

**Chairperson Burrell:** Thank you, Alena. At this point I will entertain a motion to approve this amendment to the Code of Judicial Conduct. For the purpose of making the motion the chair will recognize the Honorable Alyia Hakim.

**Judge Hakim, 16<sup>th</sup> Circuit:** [inaudible]...amendment to the Michigan Code of Judicial Conduct 2F.

**Chairperson Burrell:** Thank you, Judge. Is there a second to the motion? (Several voices). Thank you, the motion has been made and seconded. Is there any discussion regarding this proposal? At this time, raise your virtual hand and you will be unmuted once you are recognized. All right, at this time the chair will recognize Shel Larky, 6th Circuit. Please unmute Shel.

**Sheldon Larky, 6<sup>th</sup> Circuit:** So, placing the comment that you've added, of the additional comment, if that's so then I'm in favor of this.

**Chairperson Burrell:** Thank you, Shel. At this time the chair will recognize Mark Koroï, Third Circuit.

**Mark Koroï, 3<sup>rd</sup> Circuit:** Hi. Mark Koroï, Third Circuit. I do have some concerns regarding this. I've read some of the opposition viewpoints that have been published by various groups, and one issue that I've noticed that's been raised has been addressed is the fact whether there's a problem at all with members of the judiciary joining organizations that do in fact invidiously discriminate. And if that is an issue, who are these organizations and whether in systems where judges have joined these organizations. Additionally, I think the focus in this particular rule is going to place as we placed on the actions of the organization, rather than the judge who's being sought to be disciplined or investigated. There's a center issue here that's been raised by one of the organizations. And I think that's a very valid point is that we don't really know what initially an organization, especially with a larger group of people that judge may belong to what they're doing internally what they're doing externally vis-a-vis issues that are discriminating in nature. So, therefore, I think that this creates a problem of enforcement whether that there's fundamental fairness in the rule. There's also been some issues raised by some of the opponents of this, of whether the, the actual criteria is void for vagueness whether or not we're giving adequate notice to judges what you know what necessarily is constitutes invidious discrimination. I think there's been attempts to try to resolve that by something. If this does come to a head and there is a judge that is going to be investigated based on this rule, I think there's a great likelihood that that judge is going to take them into court and fight these particular issues in court doesn't mean it was raised, and I hope to see that that type of situation avoided. I know in the past that we've had certain judges that were investigated for campaign literature and there were issues. I think it was Judge Chmura from Warren had fought these issues in federal court, and I think there was for some of the issues are raised and in fact upheld by the federal courts, so I think these issues are new, but I think that I do have real concerns about the way this rule is written and how it's going to be implemented, enforced, we look at the judiciary traditionally as in history this country as an institution that protects the rights of the marginalized people's being *Brown versus Board of Education*, be it in the 1960s supporting civil rights protections to people who demonstrate and they're really a bastion in our country to protect marginalized peoples, and I think that this particular rule may place them under a microscope and one of the issues I've seen raised, I believe was by a judges' group that indicated that this is when you weaponize against certain judges for political reasons. And I think that's a good point that very often judges who make unpopular decisions are targeted by certain groups and their behaviors questioned. And do we want that situation here. So I think I really am sympathetic and I think I really appreciate the efforts of the groups that have brought this rule to attention. I think they are doing this in good faith but I think on the other hand, I think my concerns are the constitutionality of the proposed rule, and secondly, whether or not this proposed rule is really needed in Michigan if there are concrete examples where this has occurred, I would really like to see it brought to the attention of the Assembly. Thank you.

**Chairperson Burrell:** Thank you, Mark. Before I let the other individuals speak, do Alena or Roquia or anyone have a response to that particular comment?

**Alena Clark:** Yeah. So obviously I understand, like, some people had wanted concrete examples of what's happening. That was not the approach that we wanted to take. We are very cognizant of the judges being elected officials. The last thing we wanted to do was to point something out before the rule was even clear that it was being violated. So we're not going to throw any particular organization under the bus. It's our hope that this will function like a trigger and they will leave these organizations, if they exist. If you want to know if any of these organizations exist, just google supremacist groups in Michigan, and you can see that they exist. What we're trying to do is avoid the appearance of impropriety by implementing this rule and giving some reassurance to the public that when you appear in front of a judge, they're not going to be member of an organization that is a hate group for all intents and purposes for whatever you may be on the opposite side of that that group. Now I understand there's some trepidation about the enforcement of the rule, but if it were that big of a problem 43 other states wouldn't have adopted it. I mean this ABA model rule was created almost 20 years ago. It hasn't changed; it hasn't been modified; it hasn't been removed or revoked. It's been functioning for two decades, and if it were that big of a problem, I really have a hard time believing that 43 other states wouldn't have still kept that rule. We're one of seven that has not yet. And in terms of the investigation and things like that, again, that is up to the JTC and that doesn't change anything. I mean, right now there's already present rules that keep judges from doing things like accepting particular gifts. I mean, there's limitations on being a judge, and rightfully so. I mean, they're serving a very important role. So this is not really that big of a change in that regard. It's going to be enforced the same way. Any other fill-in-the-blank rule of the judicial canon would be enforced so....

**Chairperson Burrell:** Thank you, Alena The chair at this time recognizes Ed Haroutunian, Sixth Circuit.

**Edward Haroutunian, 6<sup>th</sup> Circuit:** Thank you, Mr. Chairman. Ed Haroutunian from the Sixth Judicial Circuit. Part of the...my question really has already been responded to. And the question really was, are there any problems that have occurred in the state of Michigan where this kind of situation has arisen. I understand the issue of specific examples which is not wanted to be set forth, but I guess the question is are there other situations that exist that or have existed, where this particular rule is felt to be necessary to be put forward now.

**Chairperson Burrell:** Alena, feel free to respond.

**Alena Clark:** I mean, I think that my response would be the same. The rule is not for necessity. It's for the appearance purposes and I mean, I'm sure you can imagine, for example, if you know that the judge is a member of something like a white supremacy group and you're a minority how you or your litigant might feel appearing before that person. I mean, we're really trying to avoid, you know, pointing anybody out specifically because I really believe that probably a vast majority of our judges are not members of these organizations, and it's not going to create any big change.

**Chairperson Burrell:** Thank you, Alena, I understand that Timothy Denney is having difficulty raising his hand, but at this time the chair would recognize Timothy Denney.

**Timothy Denney:** I am Timothy Denny. I'm the chairperson of the Religious Liberty Law Section of the State Bar of Michigan. I thank you for the privilege of speaking to you today regarding the proposed change to the judicial code that is designed to restrict judges from membership in certain voluntary associations. I'm not going to repeat our written position that has already been submitted to you. I have three points I'd like to make, and the first one is that the free exercise of religion exemption in the code will not protect religious liberty.

Some of you are saying to yourself, Mr. Denney, why are you here? The proposed code changes specifically retain the language, indicating that nothing in this paragraph, shall be interpreted to diminish the judge's right to the free exercise of religion, so where's the beef? The beef is that the current legal protections for free exercise of religion do not provide any significant barrier to interfering with the judge's religious activities under this situation. Under the Federal Constitution in 1990 in the US Supreme Court's *Smith* case, the famous peyote case, the Court ruled that the free exercise of religion clause does not exempt a religious individual from complying with a generally applicable law. That's a law that applies to everyone equally. Because this proposed code change would apply to all judges, it could be argued that it is a rule of general applicability, and therefore under the First Amendment, a judge would not be exempt from obeying it on the grounds of free exercise of religion. Under the Michigan Constitution, the protections for free exercise are better than the Federal Constitution, but not by much. Unlike the federal constitutional analysis under Michigan's constitution, if government interferes with a person's religious practice, it must pass the strict scrutiny test. This means that the government must prove that the interference is justified by a compelling state interest. In most courts that the government must satisfy the compelling state interest test the government loses, not so much in Michigan. In 1998, the Michigan Supreme Court ruled in a case that the government interest in enforcing Michigan civil rights law was sufficient to justify interference with a person's free exercise of religion. After that case some of the judges lost the next election. There was a motion for reconsideration granted. The newly constituted Court vacated the free exercise ruling and remanded the case back because the trial court had never actually ruled on the free exercise issue.

So what's our lesson from this case? We are never more than one election away from a Michigan Supreme Court ruling that enforcing civil rights provisions or provisions like that is enough to justify interfering with the free exercise of religion. So what's that mean here? That means that whether you look at the free exercise of religion under the federal or the Michigan Constitution, it provides little more than fig leaf protection for religious liberty. That means that the free exercise of religion exemption in the judicial code might well not prevent a judge from being punished for being a member of a religious community whose views do not follow this rule. We are not willing to gamble our judges' religious liberty on a fig leaf. This proposed change should be rejected.

My second point is that this proposal is inconsistent with our constitutional heritage. We have a constitutional heritage that protects dissenting views and voluntary associations that espouse those views. I offer several examples. In 1943 in the *Barnett* case, the Supreme Court ruled that a child could



not be punished for refusing to say the Pledge of Allegiance to the Flag. In that ruling the Court noted that under our First Amendment laws “must permit the widest toleration of conflicting viewpoints.” It noted “the freedom to differ is not limited to things that do not matter much, that would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.” And then the Court famously stated this: “If there's any fixed star in our constitutional constellation, it is that no official can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.” Our Constitution also protects disfavored community groups as well. In 1958, there was a US Supreme Court case in which the state of Alabama tried to run the NAACP out of the state by requiring that the group disclose its membership list. The Court ruled that this violated the First Amendment. This case is a reminder to us that we ought to always be suspicious of government when it tells us that it will advance justice by silencing or punishing dissenting views or associations or its members that promote them. Alabama failed in shutting down the NAACP of Alabama. That group later gave rise to Dr. Martin Luther King. Just remember that yesterday's dissenter in an unpopular association can become tomorrow's civil rights icon. Our constitutional heritage is based on public discussions being made through robust public debate, not by trying to run disfavored groups or their members out of the public square. This proposal looks like the latter and should be rejected.

My third point is that the proposed change gives fuel to those who want to end mandatory State Bar. In June of 2018, the US Supreme Court ruled in the *Janis* case that the First Amendment bars the state from requiring public employees to join a union as a condition of their employment. Last year, relying on that case, a Michigan attorney sued the State Bar, arguing that the First Amendment bars the state from requiring an attorney to join the State Bar and pay dues as a condition of practicing law in Michigan. One of the claims in that case is that forcing them to join the State Bar and paying State Bar dues interfered with their First Amendment freedom of association. If the State Bar seeks to promote a rule that can punish judges based on the voluntary community groups they join, it will add fuel to the fire of those who argue that the State Bar unlawfully interferes with their freedom of association. The timing of this proposal could not be worse. By promoting a rule that expressly interferes with freedom of association, you will help prove this litigant's point. If this litigant wins, judges will not even need to become members of the State Bar to serve on the bench and this proposed change will become meaningless. Does this body really want to tell the State Bar's attorney, yes, if you join the State Bar, we really do want to restrict who you associate with in voluntary community groups, even if there's no evidence a judge who was a member of those groups does not follow the law on the bench. After telling the State Bar attorney that, does this body really want to tell the federal judge with a straight face that no, the State Bar does not interfere with a member attorney's freedom of association.

In conclusion, this Religious Liberty Law Section respectfully asks you not to adopt this change to the judicial code. I thank you for the privilege of addressing the Representative Assembly on this important issue.

**Chairperson Burrell:** I thank you very kindly, Mr. Denney. At this time, I would give the proponents a brief opportunity to respond—Alena or others.

**Alena Clark:** Yeah, I'll be I'll be very brief. I, it seems that he's taking issue with the federal and state constitutions for the freedom of religion. Our proposal has nothing to do with modifying the Constitution. I'd also like to point out any concerns that a federal judge may have the Federal Bar Association has already adopted this rule and the sentence that relates to "nothing in this paragraph should be interpreted to diminish the judge's right to freedom of religion" already exists. So we're not touching that rule. It's already there and whether or not we have a state bar association doesn't affect the canons; the canons will be still there. So....

**Chairperson Burrell:** Thank you, Alena. At this point, the chair recognizes John Barnes, 45th District Court. Or 45th Circuit.

**John Barnes, 45<sup>th</sup> Circuit:** Is my audio working?

**Chairperson Burrell:** Yes.

**John Barnes, 45<sup>th</sup> Circuit:** Looks like it. Thank you. I have a couple concerns. I'm most concerned about the appearance that although the statement I think is kind of a political statement, it's encouraging inclusion, I think, is what the proponent was saying, one of the primary things that they were aiming for is we work on. I don't see any demonstrated problem to fix that would require this being a mandatory provision that would restrict somebody who's a judge from being a member of any organization. Like the previous speaker said, you're talking about restricting an individual's ability to be a member of an organization. I am not in favor of invidious discrimination, but that's different from restricting individual judges' abilities to be members in organizations. I just don't see that there's a problem that requires this being passed in order to fix the problem. Secondly, and this is related, I have a big problem with a definition of the protected classes listed. This goes further than current constitutional jurisprudence by, in effect, adding new protected classes which go further than our federal or state constitutional interpretations. Ethnicity, gender, sexual orientation are being added. I don't think that they're currently constitutionally protected classes. What they are is they are controversial issues in today's age. And I think these people in these classes are understandably seeking recognition and inclusion. But I don't think we as a Bar can add them to in effect make them protected classes when our courts have not said these are constitutionally protected classes. So you're going further than court jurisprudence and law in restricting judges' abilities to be members in organizations that may not like some of those people or may not agree with that. I don't happen to have problems with people with different ethnicity, gender and sexual orientation issues, but they are hard to define. In fact, some of the people in that status are themselves in transition. So who's to define what those classes even are? So I don't think we need to be adding them to something that prohibits membership in an organization that might be searching for how to deal with those things because they are controversial. And then the last thing is it looks to me like this is almost crossing over into political activity, which is as you know, one of the things we're not supposed to do. These are controversial issues. I think these groups are seeking recognition, and by adding them to this, I think we're crossing over the line that *Keller* makes, and that's a bad thing to do. And now's a really bad time to do it since our state's currently involved in litigation on that. Thanks.

**Chairperson Burrell:** Thank you, John. As a brief reminder, everyone please keep your comments brief. We have a number of people who do want to speak on this topic. At this time, the Chair recognizes Kevin Klevorn, 33rd circuit.

**Kevin Klevorn, 33<sup>rd</sup> Circuit:** Thank you. Kevin Klevorn, I'm the 33rd circuit representative for Charlevoix County. I thought when this first came out, it was incumbent on me to reach out to all the judges in my circuit to ask, "Well, what do you think about it," because I agree with Mr. Barnes from the 45th circuit. I didn't see a demonstrated it, but maybe I didn't know all of the issues that were out there and uniformly, all of the judges are in opposition to this proposal. Because of the delay, I have had the time to reach out to judges in adjacent counties to me. One is the district judge. And again, by the way, all of the district judges I talked to would disagree with the Executive Committee, the Executive Board of the Michigan District Judges Association. One district judge has already had to deal with a traditional tenure complaint, simply by accepting a speaking invitation to a pro-life event. And so just imagine the type of club that this particular proposal could be used against judges and so the comments that I had uniformly were in opposition to this. One judge, first reaction he had was, "Who are they targeting?!" and that again, really falls in line with what the judicial conduct public policy position of the Judicial Section had to say. So, they were uniformly against it; and the judges I talked to her uniformly against it.

I will give you one anecdotal illustration...the very same term 'invidious discrimination' was used by Vanderbilt University to kick the Christian group "InterVarsity" off their campus and we currently have University in litigation with Wayne State University in our own state over the same kind of issue—this type of term 'invidious discrimination' is used as a club; it is used to weaponize people against a differing opinions to kick them out. And so, we don't even have a statute of limitations in this. I mean, you can't go back in time, maybe and pick on a judge that was a member of the Boy Scouts or had a kid in Boy Scouts fifteen years ago and they never resigned their membership.

So that's the second point, I guess I would have to make, is that this term is used in opposition to a lot of people with just differing opinions. So, I agree with Mr. Denney that we need to have a marketplace that allows for a good review of differing opinions.

The last thing I will say is that three years ago, the American Bar Association proposed an amendment to our model rule 8.4. That is the misconduct section that all lawyers have to abide by, and they've been proposed that we include discrimination as misconduct. So, if you don't think that this is not going to be the foundation for a uniform proposed rule for all lawyers, then I think you're naive. You just have to recognize that the ABA proposes these kinds of things; but that is something that is just going to be the foundation to have all lawyers be prohibited from controversial memberships, in my opinion.

So, in 1990. our Civil Liberties Committee vigorously and unanimously opposed this type of proposal and I would agree we do the same thing 30 years later. Thank you.

**Chairperson Burrell:** Thank you, Mr. Klevorn. At this time, I would give the proponents again another opportunity to respond.

**Alena Clark:** I just I want to point out that we're not limiting judges and organizations in general, there is a limiter on the ambiguous. The reason is because the judge is supposed to be unbiased. The notion of limiting what a judge can do is not novel notion. It's something that the rules already do because of the desire to have an impartial and unbiased judge so there's already limitations. This change is not seeking to do anything additional. If there was some sort of cataclysmic, sky-falling result that occurred, I would say that the other 43 states that have adopted this rule already probably would have changed it, but they haven't. We're one of only seven that has not adopted this rule and the world still keeps turning, so...

**Chairperson Burrell:** Thank you, Alena. At this time the Chair recognizes Matthew Eliason, 12th circuit.

**Matthew Eliason, 12<sup>th</sup> Circuit:** Hello, good morning everyone hear me?

**Chairperson Burrell:** Yes.

**Matthew Eliason, 12<sup>th</sup> Circuit:** Yes, I look at this and this is nothing but politically charged. It's rule that the ultimate arbiter wars are the voters every six years or report or years, whatever the term for judges is. There are enough rules on the judges to begin with that suppress their freedom to be involved in things like rotary. I've looked at that language and that language and googling whatever a hate group is will also bring up the Federalist Society, for example. This is nothing more than adding a Roman censor to free speech; the idea that somehow it can be narrowed down and then you have the right to the free exercise of religion, that's great, but what about free speech and freedom of association. Of course, as the judge, there are certain restrictions that you're going to have. I don't think this is necessary. I think Mr. Barnes was right on point that he doesn't see a demonstrated problem. And there isn't. There may be 43 states that have adopted it without problems; we've got a state here in Michigan that has adopted it or not adopted it and I don't see major problems. If there are, the voters can take care of it. What this does is it takes ideological talking points and services filter or pre-filter what the voters may or may not want. So ultimately, it's wholly unnecessary and, although there may be good intent, the good intent is probably the intent through the eyes of the creators of this rule. As such, I think that it should be somewhat rarely defeated. Thank you.

**Chairperson Burrell:** Thank you, Matthew. The Chair recognize Marla Linderman, 22nd circuit.

**Marla Linderman, 22<sup>nd</sup> Circuit:** Thank you. Marla Linderman, 22nd circuit. This is my first meeting. I've been listening to the comments and I appreciate everyone's voice. But one of the things I keep hearing is we don't need to do this because there's no problem, and that would mean that we are a reactionary board, not a leader.

I would hate to think that the reason we have language we have now is because we had a problem...because there was racism being shown by judges. Did we have to wait till we saw problems to fix it? That's one question I have.

Two: I do do this area. Oh, and I probably should throw out there, I am a former president of the Women Lawyers. Very proud former president, but I do not speak for them, nor am I on their board anymore. But ‘invidious discrimination’... there are thousands of cases and what invidious discrimination is—this is a term of art. And if we put this in the rule, it will not be considered ambiguous, it would be considered as if knowledge that those terms, as they've been defined before, were intended. So, I think the biggest ambiguous concern really would not hold up in court of law.

Also, I'm definitely aware of cases where ethnicity, same sex have been upheld in the federal courts and state courts, so I'm not sure what we're really expanding? It could be that people think those cases are controversial, but there is support out there that these are protected categories. And that's all I have to say.

**Chairperson Burrell:** Thank you, Marla. At this time, the Chair recognizes Laura Polizzi, 16th circuit.

**Laura Polizzi, 16<sup>th</sup> Circuit:** Hello, Laura Polizzi, 16th circuit. I wanted to address a couple things. So, I know that the it just came to my attention that the Michigan District Judges Association did approve this on February 25, 2020; there was a letter sent to the Representative Assembly. As well, Michigan has twenty-seven hate groups. If judges or anyone in here doesn't know about them, it's because you're not part of them, which is great. This rule is supposed to, you know, the purpose of it is regarding the appearance of impropriety. Most judges again, don't support these groups, but I agree with what Marla just said before me. Why should we wait till this becomes a problem to address it? Being that 40 other states have adopted this rule. It shouldn't be something that is out of the ordinary for us to consider adopting. Also, it isn't typical for judges to belong to ethnic organizations or religious organizations? This doesn't limit their ability to do that. This clearly states and some paragraph, for it was email to all of you. It says a judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this rule. So, so long as those groups are not discriminatory, a judge can belong to all of them. So, I disagree, and I feel like this is being distorted. Thank you.

**Chairperson Burrell:** Thank you, Laura. At this time, the Chair recognizes Gerry Mason, 31st circuit.

**Gerry Mason, 31<sup>st</sup> Circuit:** Hello. My concern is first that this proposal is unconstitutional. It'll have a chilling effect on joining certain organizations because nowadays, just about everything gets classified as racist or a hate group if somebody doesn't agree with it for one reason or the other. Secondly, it's not necessary for this appearance, and thirdly, it is political in nature. And my concern isn't that we're not going to have judges and hate groups. My concern is, is people will define a group. It's not a hate group—as a hate group to persecute somebody for political reasons, whether it be in a confirmation hearing or in some kind of an election. And we've entered a period of hyperbole and political correctness in our society that is just nuts. I'll give you an example, I serve on the advisory board of the Salvation Army. We stand for love acceptance; all people matter and all people have the potential to be more than they are. We are, we serve people in need without discrimination and we are, in fact, the largest provider of services to the LGBTQ community. We serve a person in need

every 30 seconds. Well, this past holiday season, I think it was the Chik-Fil-A Foundation, cut our funding because they said we discriminated against gay people, the LGBTQ community. And it's just not true, but because they had a bone to pick with Moses and the 10 commandments, which we had nothing to do with—that was more than 2,000 years before the Salvation Army was established, they were labeling us as someone who discriminates. And that's why this proposal is scary...because things aren't as they seem anymore. And this is just be weaponized against some woman or some poor man who's trying to get a judicial appointment or running for judge, when in their heart of hearts, they want to serve all people, help all people, and love all people. They want to see people have a better life and be treated fairly. But because they volunteered for the Salvation Army or in my case, I'm a Freemason, (I'm not active now, but I was involved; I helped the Shriners and stuff with their hospitals and volunteered for them), that you know you'll get labeled as some kind of a racist or a bigot because you participated in one of these groups. And it's just, unfortunate we're in an age now of hyperbole and extremism and it's too bad, because we need diversity. It's an important part, and we must stand and fight for it, but we also need diversity of thought, diversity of opinion, and the First Amendment needs to be protected at all costs. Thank you, Mr. Chairman.

**Chairperson Burrell:** Thank you very much. At this time, the Chair will recognize Stephen Gobbo, 30<sup>th</sup> circuit.

**Stephen Gobbo, 30<sup>th</sup> Circuit:** Yes sir, thank you, Mr. Chair. Stephen Gobbo, from the 30th circuit. I think I have two points to make the. The first is that the word 'invidious' by itself is somewhat defined in, in a way that it says unfairly discriminating unjust. So, you're placing it before as the word discrimination, as an adjective. It sounds like a big word, but the meaning is actually, "likely to arouse or incur resentment or anger and others." And I think some of the points that the prior speakers have made a kind of speaks to that. The second point is that while the commentary and some of the clarifications are very helpful, it's not part of the black letter text in the canon. So, when you are going to have an interpretation, and I think this is what a lot of the individuals that have spoke before are concerned about, whoever is going to be doing that interpretation may come up in a different conclusion than what you, I, or anybody else would come up with. So, it's somewhat, I think, problematic just by the definition. And I would actually make a motion to change the word 'invidious' to 'unlawful' and at least this way, you have some standard in terms of an organization if it was determined to be acting on lawfully, constitutionally or otherwise, at least you have some type of standard that's in that text. I so make that motion to change the word.

**Chairperson Burrell:** Thank you, Mr. Gobbo. There's been a motion to amend the present motion on the floor. Is there a second to Mr. Gobbo's motion?

[Background noises]

**Chairperson Burrell:** Tell me if I'm hearing anyone, let me know.

**Edward Haroutunian, 6<sup>th</sup> Circuit:** Support.

**Chairperson Burrell:** Motion has been supported. We need to consider the motion on the floor before we proceed with further discussion on the overall proposal if your hand is currently raised, we're now going to lower your hands and then we're going to ask you to raise your hands again—relative to the motion to amend. Alright, relative to the motion to amend I see hands are raising now.

This time the Chair will recognize Shel Larky, 6<sup>th</sup> circuit.

**Sheldon Larky, 6<sup>th</sup> Circuit:** Yeah. Mr. Chair, I am I am in favor of changing us to 'unlawful'. Therefore, there is a complete definition and the Judicial Tenure Commission can make a decision. I agree that 'invidious' could be interpreted by political reasons 'unlawful' could not is more specific, I agree with Mr. Gobbo.

**Chairperson Burrell:** And thank you Mr. Larky. Before we go, can I open the floor to our Parliamentarian, Judge Chmura, please?

**Judge Chmura:** I couldn't...made second to that motion, that motion to amend correct? That's what we have?

**Chairperson Burrell:** Correct. So, we have a, we have a motion on the amendment, and then we have a second.

**Judge Chmura:** Okay, so procedurally, now you've got to open the floor up to debate on the amendment. The debate should be limited to only whether that motion should be amended to change the one word to 'unlawful', that's where we are.

**Chairperson Burrell:** Thank you Judge. At this time the Chair recognizes Ed Haroutunian and please limit your comments to the amendment only.

**Edward Haroutunian, 6<sup>th</sup> Circuit:** Thank you. I, I agree with Mr. Larky and also Mr. Gobbo with regard to the amendment and would support the amendment. Thank you.

**Chairperson Burrell:** Thank you. At this time, the Chair recognizes Brian O'Keefe, 6<sup>th</sup> circuit.

**Brian O'Keefe, 6<sup>th</sup> Circuit:** I know...my hand is up inappropriately. Thank you.

**Chairperson Burrell:** Thank you. At this time, the Chair recognizes Jessica Zimbelman, 30<sup>th</sup> circuit.

**Jessica Zimbelman, 30<sup>th</sup> Circuit:** I would like to hear from the proponent of this what the effect of that change might be. I would imagine it could be problematic. As a person who supports the original version as proposed, I'd be interested to hear her explanation.

**Chairperson Burrell:** Thank you, Jessica. Would the proponents like to respond?

**Alena Clark:** Yes, thank you. We would object to the modification of the word. As Marla Linderman spoke up who actually practices in this area one, and for those of you who are not familiar with this area law, this is a term of art, it is already defined by the comments section. It is, you know, well thought out and put in there, purposefully and it's in the model rule by the American Bar Association and the Federal Bar Association and the other bars, that are in the vast majority of the country have this word included. And I think that it would be a disservice to all of the committees who did a lot of work on this, and all of the sections, who put a lot of thought and work into this language to turn and change it. I don't know what the consequences will be of changing of that word. I haven't researched that I haven't really researched the, the intent of this language.

**Chairperson Burrell:** Thank you Alena. At this time the chair recognizes Adam Strong, 56<sup>th</sup> circuit, relative to the amendment.

**Adam Strong, 56<sup>th</sup> Circuit:** Thank you. I would oppose the amendment to include the word 'unlawful'. As the proponents stated 'invidious' does have prior caselaw. And I think looking at a group that would unlawfully discriminate, as a previous speaker mentioned, the sheer number of hate groups that exist and they are continued to allowed to exist under the First Amendment, obviously. So, a membership of those that could be something that is not unlawfully discriminating, because obviously they can continue to exist now, whereas they would be considered to be invidiously discriminating. I think that to look at something that is just declared 'unlawful' is not forward thinking enough, and I agree with the previous comments about how we should not be a reactionary. It should not be something that's reactionary to look for a specific problem, to address a specific thing. And I think that the broader term of 'invidiously' properly allows for that and upholds the conduct that I think we want to see our judiciary uphold, that we want to see them represent. So, I would oppose the amendment.

**Chairperson Burrell:** Thank you, Mr. Strong. At this time, the chair recognizes Mark Koroi, 3<sup>rd</sup> circuit.

**Mark Koroi, 3<sup>rd</sup> Circuit:** Thank you. Regarding this proposal, this is Mark Koroi, 3<sup>rd</sup> Circuit. I just want to echo the previous speaker, Mr. Strong's words, I think that the term unlawful is different from invidious discrimination because, for the simple reason that there's - in this country, in the state - there's many hate groups whose activities are protected under the First Amendment. There's famous Supreme Court decisions, there's a Skokie decision. There are other cases out there, the Westboro Baptist Church. There's involved situations where the US Supreme Court has recognized broad protections for people engaged in hate speech and there's really no question that it is protected so the idea of the term lawful would do a lot to emasculate the intent of the rule, as proposed by these proponents. So I think unlawful therefore should be not included as an amendment to this particular rule. Thank you.

**Chairperson Burrell:** Thank you. At this time the Chair will recognize John Philo - 3<sup>rd</sup> Circuit.

**John Philo, 3<sup>rd</sup> Circuit:** Yeah, I won't go on, I agree with the last two speakers - invidious actually has a more defined standard. It is pretty clear judges are already prohibited from engaging invidious



discrimination in terms of hiring, courts are in terms of their hiring, in terms of their contracts for supplies, etc. It's a well-recognized term within the, you know, community and within the legal world with respect to discriminatory contact. Unlawful might be interpreted as synonymous but it's not the term of art that invidious is, that's all.

**Chairperson Burrell:** Thank you. At this time the chair recognizes Marla Linderman -22nd circuit.

**Marla Linderman, 22<sup>nd</sup> Circuit:** I guess while I have some time to react to John, I'm going to echo what he said. I think that while on first glance unlawful seems like it'd be fine and seems to be the same, but it really, I don't think, would be. Invidious is more throughout an organization. It's not a one-time event and I'd be concerned that you have a, you know, you get a decision from a court that something was wrong in an organization and that would make them unlawful. I think it really expands the definition much more than you think it would. I think invidious is very well defined. I think it's what is meant and I think that when you have all these other bar associations using that language, if we deviate, it could backfire. I think it may end up making the rule - well, it would – it would be said that unlawful, you knew about invidious, you chose not to do it. You must admit to something else. And that's the rules of statutory interpretation and that would be applied to these kinds of things. So I really feel like changing that is going to cause us to go down a road that no one intends.

**Chairperson Burrell:** Thank you. At this time the chair recognizes Sean Myers - 3rd Circuit.

**Sean Myers, 3<sup>rd</sup> Circuit:** Hello everyone, I would just like to point out there's an article that was put out by the State Justice Institute regarding this issue specifically and it indicates that several states, including Maine, Minnesota, North Carolina, Oregon, Texas, and Washington prohibit membership in organizations that practice unlawful discrimination as we're talking about. It's sort of the minority view but some states do actually use the word unlawful and view invidious as more of a broader term, and I'd just like to point that out. That's my comment.

**Chairperson Burrell:** Thank you. This time the chair recognizes Christopher Wirth - 20<sup>th</sup> Circuit.

**Christopher Wirth, 20<sup>th</sup> Circuit:** Good morning. I actually was going to make the same point. We've been talking about Michigan being in the minority of states not having already adopted this rule, but that there are a number of states that while the rule may exist in spirit it very substantially in its language, including the use of unlawful instead of invidious or adding other qualifiers, such as in Texas's rule making it a unknowing membership - presumably they mean that the that the judge knows that the organization is practicing invidious discrimination because we would hope that judges know basically who their membership is with. But my question for the proponents of the proposal is, can you give us, can you give us kind of the lay of the land with respect to all the variations among the jurisdictions who have adopted a rule like this with respect to adopting unlawful versus invidious discrimination or other significant deviations from the ABA model? Because it seems like there's pretty broad variation out there, even though we're, you know, suggesting that, you know, 43 states have all signed on to the same thing, and nobody's had any problems with it.

**Chairperson Burrell:** Proponents may respond.

**Alena Clark:** Yes, that was provided to you. It is an appendix to the report that was provided initially back in August and re-provided to you for this meeting today so it should be in that bound book that you received. I know I looked at it. We took a lot of time to put together a table of every single state in the country with their language and a citation to their role, so it is already there.

**Chairperson Burrell:** And good this time to recognize, relative to the amendment only again, Toi Dennis - 22nd circuit.

**Toi Dennis, 22<sup>nd</sup> Circuit:** Hi, there. This is my first meeting and but I would just like to point out the basic definition of invidious discrimination is treating a class of persons unequally in a manner that is malicious, hostile, or damaging where as we all know that the unlawful or illegal is not something that is always applied to discrimination, so I think I'm in disagreement with changing the word because it does not have the same meaning or the same purpose or intent.

**Chairperson Burrell:** Thank you. If you have any further discussion, relative to the amendment, please raise your virtual hand or let our staff know if you're having technical trouble doing that.

**Chairperson Burrell:** At this time the chair recognizes Dennis Perkins - 44<sup>th</sup> Circuit.

**Dennis Perkins, 44<sup>th</sup> Circuit:** Thank you, Mr. Chairman. I'd like to call the question at this time.

**Chairperson Burrell:** Thank you. There's been a request to call the question. I'll go to my parliamentarian at this time.

**Judge Chmura:** Yes. At this point, you just ask for a second to that motion to call the question, and the motion to call the question only pertains to the amendment, not the original motion.

**Dennis Perkins, 44<sup>th</sup> Circuit:** That is correct.

**Chairperson Burrell:** Thank you Judge. Is there a second to the motion to call the question? I see Shel giving me the two sign.

**Judge Chmura:** You now have a second. If there's a second to the motion, the motion to call the question is non-debatable. It needs a two-thirds majority to pass. So you simply vote on whether the amendment should be voted on immediately without further debate.

**Chairperson Burrell:** And, to clarify Judge, we are voting on whether to call the question.

**Judge Chmura:** We're voting on whether to end debate on the motion to amend.

**Chairperson Burrell:** Understood, so because there's no discussion or debate allowed on this particular vote, at this point we will take a vote on whether to call the question. I want to yield to our clerk for voting instructions.

**Judge Chmura:** Remember, you need a two-thirds majority for that motion to pass to end debate.

**Chairperson Burrell:** Thank you, Judge.

**Clerk Ohanesian:** All right, please vote now. If you are having trouble voting, please send a message to the co-host labeled Vote & Tech Help. Please make sure to click submit when you have voted.

**Chairperson Burrell:** I think we're still waiting for state bar staff to...

**Clerk Ohanesian:** Know what we don't have? We don't have a poll. If you can't see the poll yet...

**Chairperson Burrell:** That's correct. One moment. They've asked for one moment while they configure that vote.

**Clerk Ohanesian:** Okay, the poll is now up.

**Chairperson Burrell:** And it is whether to end debate here and begin with the voting on the proposal.

**Clerk Ohanesian:** Please remember to click submit after you have marked your choice. <pause> Alright, the polls are, I believe the poll is now closed. The vote is 117 in support, 4 opposed, and 1 abstain.

**Chairperson Burrell:** Thank you, Mr. Clerk. So at this point we will call the question on the amendment. And again, the amendment was to change the word invidious to unlawful as written in your materials. If there is no - at this point, we actually can't have any further discussion; therefore, I will call the question and I will return it to Nick Ohanesian for voting instructions on the amendment.

**Clerk Ohanesian:** Okay, please vote now. If you're having trouble voting please send a message to the co-host labeled Vote & Tech Help and make sure you click submit when you have voted. Thank you. <pause> Okay, polls are closed. The vote is 36 in support, 82 opposed, 5 abstentions.

**Chairperson Burrell:** Thank you, Mr. Clerk. The vote to amend was defeated so the proposal at this point is as it is presently drafted in our materials – quote “A judge shall not hold membership in any organization that practices invidious discrimination on the basis of religion, race, national origin, ethnicity, sex, gender identity, or sexual orientation.” At this time, and unless our parliamentarian tells me different, we can return to the discussion on the proposal in general.

**Judge Chmura:** That's correct. We're back to where we were before the motion to amend was made.

**Chairperson Burrell:** Thank you Judge. This time the chair recognizes Mark Jane.

**Mark Jane, 22<sup>nd</sup> Circuit:** Oh yes, hello. I just have a, first of all I'd like to say I'm the president of the Washtenaw County Bar Association. I know we've joined the coalition for this proposal but I'm not speaking in my capacity as the President of the Washtenaw County Bar Association for this, I'm speaking in my capacity as a Rep Assembly member so these are my own views. I do not believe this motion, this proposal, is political at all. I mean, everything nowadays can be construed as political but I think arguing traditional ethics by the bar association speaks right to the heart of what is germane to the practice of law, so I think that this is well founded for us to take this subject up. And second of all, I do not see this as chilling speech because litigants deserve to know that they will get a fair hearing...and thank you.

**Chairperson Burrell:** Thank you, Mark. I understand that Elizabeth Kitchen-Troop wishes to speak but is having technical difficulties at this time. The chair recognizes Ms. Troop.

**Elizabeth Kitchen-Troop, 22<sup>nd</sup> Circuit:** Thank you. Yes, I am having technical difficulties with the raising hand component. I just wanted to state that I stand in full support of this proposed amendment. I believe that the time is now for us to join the overwhelming majority of states across the country that relate to this issue and just want to remind everybody that we're one of 7 states that hasn't adopted such an issue or such a proposed amendment. The appearance of impropriety occurs when reasonable minds with knowledge of all relevant circumstances disclosed by reasonable inquiry would conclude that a judge's honesty, integrity, impartiality, temperament, or fitness to serve as judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. At the end of the day, to me, this is the sentiment of "With great power comes great responsibility." This is not about differing opinions. I believe that this is about assurances to the public and to litigants that you can overhear a case with impartiality. So I would fully support this amendment and ask that we move to support it.

**Chairperson Burrell:** Thank you. This time the chair recognizes David McCreedy.

**David McCreedy, 3<sup>rd</sup> Circuit:** Yeah. Just a point of information, the proponents have talked about, in order to figure out who these hate groups are, to Google it, which I did, and I found the list of the 27 hate groups that they referenced, one of which is the southeast Michigan Tea Party. So if this were to pass, apparently a judge would not be able to belong to the Tea Party. Another organization is the Thomas Moore Law Center out of Ann Arbor that's listed as a hate group. Previous - this was founded by Tom Monaghan from Domino's Pizza. According to Wikipedia, at least, the center's current president and chief counsel is Richard Thompson, who is a former Oakland County Prosecutor. Among those who have sat on the center's advisory board are Senator Rick Santorum, former Senator and retired Rear Admiral Jeremiah Denton, former Major League Baseball Commissioner Bully Kuhn, Catholic academic Charles Rice, Mary Cunningham, AG, and Ambassador Alan Keyes. So those would be the kind of people that you would be excluding from being a judge in the state of Michigan. Thank you.

**Chairperson Burrell:** Thank you. At this time the chair recognizes Alyia Hakim – 16th Circuit.

**Judge Hakim, 16<sup>th</sup> Circuit:** Hi, I just want to say that my official position...just give me one second. <background noise> <chuckles> Sorry, I got kids. Yeah. Um, I just want to state that my official position as a district court judge is that I joined with the Michigan District Court Judges Association in supporting this proposed amendment. It is extremely important that our judges demonstrate values that include neutrality - neutrality and impartiality to all people. Membership by a judge in an organization that uses invidious discrimination to exclude people from its membership does not reflect that value and gives the appearance and impression that the judge will not be impartial to these exact excluded individuals in their court rules. As judges, it's our job to reflect the values of the bench both when we're on it and when we're off it, and the most important value that we bring is impartiality and neutrality. By being part of a membership in an organization that does not reflect those values and discriminates against people, it undermines the judicial system and the values of us as judges when we are on the bench. And we cannot expect people to come in and believe that they will be treated fairly and with impartiality if they know that our judges are part memberships - parts of memberships in groups that exactly exclude against them. For that reason, I fully support this as a district court judge and I believe it's important that this proposed amendment is adopted. Thank you.

**Chairperson Burrell:** At this time the Chair recognizes Paul Yancho - 9<sup>th</sup> Circuit.

**Paul Yancho, 9<sup>th</sup> Circuit:** Thank you very much, Paul Yancho, 9<sup>th</sup> Circuit. This is my first meeting. I appreciate being able to participate. Thank you. I'll keep it brief, from what I've heard so far from opponents to this there's a big evidence - a big focus on rights of judges, I can understand that. But the Code of Judicial Conduct already imposes restrictions on judges and it treats them differently than other people and I just went over what I think, reading this, are the two most important statements in the canon. One - A judge should always be aware that the judicial system is for the benefit of the litigant and the public, not the judiciary. If I am a person coming in front of a judge, I want to know that they are holding that true. Canon two - A judge must expect to be the subject of constant public scrutiny, a judge must therefore accept restrictions on conduct that might be viewed as burdensome by the ordinary system and should do so freely and willingly. And what this, I see, is burdensome, at most, it isn't prohibiting them from being a judge. What it is doing is trying to focus them on not being discriminatory and I am in support of the change. Thank you.

**Chairperson Burrell:** Thank you. At this time the chair recognizes Matthew Kobliska, 6<sup>th</sup> Circuit.

**Mathew Kobliska, 6<sup>th</sup> Circuit:** Thank you. Motion to call the question.

**Chairperson Burrell:** Right. There has been a motion to call the question. Do I have a second? I see Shel giving me the second. So the motion has been moved to call the question and seconded. Unless my Parliamentarian tells me anything different.

**Judge Chmura:** I will. That's correct. Again, this is a motion to essentially end debate. It's not debatable. And it's been seconded, so you vote on it immediately. It needs a two-thirds majority to pass, if two-thirds of those voting wished to end debate, debate is ended. If you don't get two-thirds then we continue to debate.

**Chairperson Burrell:** Thank you Judge. At this time we'll go to our Clerk, Nicholas Ohanesian, for voting instructions.

**Clerk Ohanesian:** Alright. Please vote now. If you're having trouble voting, please send a message to the co-host labeled Vote & Tech Help. Please make sure to click submit when you're done voting. The poll is now up. <pause> Okay, the tally of the vote - 108 in favor, 14 opposed, with no abstentions.

**Chairperson Burrell:** Thank you, Mr. Clerk, that's a two-thirds majority and therefore we have to move to the call the question. At this time we need to remove our guests to the waiting room to begin the start of the voting. We will call you back after we announce the vote results. Again the question: Should the representative assembly support the proposed amendment to the Michigan Code of Judicial Conduct 2-F as presented in your materials? At this time I will return to Nick, who will give us voting instructions.

**Clerk Ohanesian:** Once again, please vote now. If you're having trouble please send a message to the co-host labeled Vote & Tech Help and make sure you click Submit after you have voted. The poll is now up. <pause> Okay, the polls are now closed. The tally is as follows: 76 in support, 46 opposed, 1 abstain.

**Chairperson Burrell:** Thank you, Mr. Clerk. The motion passes. I'd like to thank, very much, our presenters, and to everyone, frankly, who participated in today's discussion on this proposal. You guys have shown that, number one, this is a very important topic that required a very meaningful debate, so I appreciate that, and also you prove that this is a viable mechanism for doing these kinds of debates, so very well with that. I also want to thank our State Bar of Michigan staff. This is the conclusion of our meeting, so I'd like to thank our State Bar of Michigan staff once again, State Bar of Michigan leadership, all of the prior chairs who have been encouraging us, definitely the Representative Assembly leadership Nick and Chelsea, and everyone. This has been a success, primarily because you guys came in and were ready to participate in a very true and meaningful way. We just want to thank you so very kindly for doing that and taking time yet again out of your Saturday afternoons to do your service to the bar. Well, that's it, everybody. At this time, I'll entertain a motion to adjourn the meeting. I hope you enjoy your Saturday afternoon, if you, if you approve that motion please raise your hand, just raise your hand. All right, I'm see hands raised all over. Looking good, everybody. All right. What was that? The motion is adopted, this meeting is adjourned. We hope to see you, hopefully in person, in person, in Grand Rapids on September 17<sup>th</sup>. Stay safe, stay healthy, and enjoy the rest of your weekend. See ya, everybody.