

STATE OF MICHIGAN  
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE  
ASSEMBLY of the STATE BAR OF  
MICHIGAN

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EXCERPT

Proceedings had by the Representative  
Assembly of the State Bar of Michigan at Lansing Community  
College MTEC Center, West Campus, 5708 Cornerstone, Seminar  
Rooms 1-4, Lansing, Michigan, on Saturday, April 26, 2014,  
at the hour of 9:30 a.m.

AT HEADTABLE:

KATHLEEN ALLEN, Chairperson

VANESSA WILLIAMS, Vice-Chairperson

Daniel Quick, Clerk

JANET WELCH, Executive Director

HON. JOHN CHMURA, Parliamentarian

ANNE SMITH, Staff Member

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1                   Next we have Janet Welsh, who is executive  
2                   director for the State Bar, and Anne Smith at the very  
3                   end of the stable who has put this together every year  
4                   for 15 years now. Is that about right?

5                   MS. SMITH: About 12.

6                   CHAIRPERSON ALLEN: Feels like 15 sometimes.  
7                   Without her help, we wouldn't be here today. So thank  
8                   you, thank you very, very much.

9                   I am going to certify that a quorum is  
10                  present. I would like to know, Mr. Quick, is there a  
11                  quorum?

12                 CLERK QUICK: There is a quorum.

13                 CHAIRPERSON ALLEN: Thank you, sir.

14                 And you also have the calendar in your  
15                 packet. Since we have a quorum, we are going to move  
16                 for the adoption of the calendar, so we have  
17                 Ms. Kathleen Kakish at the podium.

18                 MS. KAKISH: Thank you, Madam Chair.  
19                 Kathy Kakish, 3rd circuit. On behalf of the Rules and  
20                 Calendar Committee, I move that the calendar that is  
21                 before the Assembly, which was included in the packets  
22                 of materials that were mailed to the members on  
23                 March 27th, be adopted.

24                 UNIDENTIFIED SPEAKER: Second.

25                 CHAIRPERSON ALLEN: Any discussion? No

1 discussion, all in favor yes.

2 Opposed. No opposed, the calendar is  
3 adopted. Thank you very much, Ms. Kakish.

4 Also included is the summary of proceedings  
5 for the September 19th, 2013, and you had an  
6 opportunity to review those, and I would like to  
7 entertain a motion now to enter the summary of  
8 proceedings. Do I hear a motion?

9 UNIDENTIFIED SPEAKER: So moved.

10 CHAIRPERSON ALLEN: Second?

11 UNIDENTIFIED SPEAKER: Support.

12 CHAIRPERSON ALLEN: Any discussion? No  
13 discussion heard.

14 All in favor? I didn't hear that. Yes?

15 Any opposed.

16 The minutes or the summary of proceedings for  
17 the September 19, 2013 are approved.

18 Now it's time to do the vacancies. I would  
19 like to have Judge Jeffrey Nellis come to the podium,  
20 who is chair of the Nominations and Awards Committee,  
21 to fill our vacancies. Thank you, Judge, for your  
22 continued assistance and help in this area.

23 JUDGE NELLIS: Good morning. I am  
24 Jeff Nellis from Ludington, and it's been a privilege  
25 and an honor to serve as the chair of this committee

1           again this year.

2                       Just a comment which has nothing to do with  
3           this, but have you ever noticed how it is always sunny  
4           and nice on the Assembly meetings? I have been coming  
5           to these meetings for years, and it is always sunny  
6           and beautiful, so might be a good day to plan a  
7           vacation.

8                       I want to first acknowledge the folks on my  
9           committee. They put in a lot of hard work. So if you  
10          could stand when I read your name. John Mucha from  
11          the 6th circuit, Pam Enslin from the 9th circuit,  
12          Bill Renner from the 15th circuit, Douglas Kaye from  
13          the 3rd circuit, and Shenique Moss from the 30th  
14          circuit. Thank you.

15                      I also want to, like Kathleen, acknowledge  
16          Anne Smith. For those of you who are new or don't  
17          know, Anne and her staff put in a tremendous amount of  
18          time getting these meetings ready and with the  
19          organization, and there is a lot that really goes into  
20          putting one of these together, so I think we should  
21          give Anne a round of applause.

22                      (Applause).

23                      JUDGE NELLIS: I always embarrass her every  
24          year, so I didn't want to forget this year.

25                      I also want to acknowledge the executive

1 board, Kathy, Vanessa and Dan. Again, with our  
2 vacancies, sometimes we end up having to kind of  
3 scramble at the end. We learn about new vacancies  
4 within a week or two before this meeting, and they  
5 have been very helpful and instrumental in getting our  
6 vacancies filled, so I appreciate your help as well.

7 At this time I would like to go through the  
8 list, and I do believe everyone should have a copy of  
9 the list, but I am just going to read these off. From  
10 the 3rd circuit Audrey Monaghan, from the 6th circuit  
11 Patrick Crandell, from the 9th circuit  
12 Mark Holsomback, from the 10th circuit John Lozano,  
13 from the 12th circuit Andrew Sarazin, from the 13th  
14 circuit William Brott, also from the 13th circuit  
15 Lea Sterling, from the 20th circuit Ronald Foster,  
16 from the 31st circuit Timothy Cook, from the 31st  
17 circuit Gregory Stremers, from the 36th circuit  
18 Theresa Cypher, from the 39th circuit Jennifer Frost,  
19 and from the 57th circuit Steven Cross.

20 At this time I would make a formal motion to  
21 have these individuals seated to serve as  
22 representatives of their respective circuits in this  
23 esteemed body.

24 UNIDENTIFIED SPEAKER: So moved.

25 UNIDENTIFIED SPEAKER: Support.

1                   CHAIRPERSON ALLEN: Did I hear a second?  
2           Thank you. Any discussion?  
3                   MR. ABEL: Are those people present?  
4                   JUDGE NELLIS: Yes.  
5                   MR. ABEL: Are they all present?  
6                   CHAIRPERSON ALLEN: Yes.  
7                   MR. ABEL: Thank you.  
8                   CHAIRPERSON ALLEN: Any further discussion?  
9           All in favor.  
10                  All opposed.  
11                  Okay. Thank you very much. Can you please  
12           come to your seats and thank you very much for joining  
13           this Assembly.  
14                  Again, as I said, I thank you for taking your  
15           time today to be here.  
16                  (Applause).  
17                  CHAIRPERSON ALLEN: As you noticed, we did  
18           the calendar, when the calendar was drafted, I put  
19           some discussions with regard to the president of the  
20           State Bar and our executive director later in the  
21           afternoon because I thought the proposals were  
22           important for our discussion and you have them early  
23           in the morning, and for me earlier in the morning is  
24           usually more fresh and people are more thoughtful and  
25           they are not looking at the clock to run and beat the



1 pavement and get home.

2 MS. KAKISH: Point of order, can't hear.

3 CHAIRPERSON ALLEN: Can you hear me now?

4 MS. KAKISH: Yes.

5 CHAIRPERSON ALLEN: So I changed the  
6 schedule, and I changed the schedule to help move  
7 things along, as well as to allow the thoughtfulness  
8 in the morning. But I also decided this year that we  
9 would help with our voting, and in front of you are  
10 clickers. This is going to be the first time that we  
11 have ever had clickers. Does everybody have a clicker  
12 in front of them? These clickers are going to be used  
13 to vote. So rather than typically we would stand and  
14 say yes, no, and we would count, we are going to use  
15 the clickers to tabulate, and we have, and I want to  
16 make sure it's 1, 2. One, 2 and 3, but ours are going  
17 to be basically 1 and 2, so we do have 1, 2, and 3.

18 The important thing is when we are done with  
19 these clickers there is going to be boxes out by the  
20 registration desk. Please put these clickers in that  
21 box, and it's important because I know, like for me,  
22 we always get these name tags, and we never return our  
23 name tags. We get home and look in the mirror and  
24 think, oh, I forgot to put the name tag in the box.  
25 So I have a collection of 20 or 30 of these name tags,

1           so I don't want any more souvenirs, and these cannot  
2           be souvenirs, because these are \$47 apiece. So we are  
3           going to put them in the boxes. So to remind you  
4           again, we don't want to put them in the briefcase and  
5           just forget. I am bringing it to your attention when  
6           we leave, we need to have them all.

7                     Anne is taking now the ones that are not are  
8           empty spots and so that everybody has one, but we are  
9           not having extras float about. And if I don't return  
10          these clickers, I would have to work with Anne the  
11          rest of the year, and Anne will not let me work with  
12          her because she will shoot me if we don't have all  
13          these clickers back. Okay.

14                    We are now moving towards the proposals, and  
15          our first proposal is consideration of recommendations  
16          and/or comments to Michigan Supreme Court  
17          Administrative Order No. 2014-5, and the proponent is  
18          Carl Chioini. Carl, would you please come to the  
19          podium.

20                    MR. CHIOINI: Good morning, everybody. I  
21          hope you all had an opportunity to review the  
22          materials, because I am sort of counting on that. If  
23          not, it will be on the screen.

24                    We are here this morning to talk about the  
25          consideration and the comments of the Supreme Court on

1           Administrative Order 2014-5. When I first heard about  
2           this, I really didn't know a lot about it, and  
3           Kathleen informed me about it, and since that time did  
4           my homework. But we have got to back up a little bit.

5                        There is a bill out there by the Senate,  
6           Senate Bill 743, that was introduced January 23rd of  
7           this year that's a proposal to eliminate the mandatory  
8           bar status of the State Bar of Michigan. This is a  
9           very hot button topic, I am sure you are all aware of  
10          it, whether we are going to continue as a mandatory  
11          bar or not.

12                       The Board of Commissioners took immediate  
13          action on this in February, on February 6, 2014, and  
14          they took the position to oppose the bill. They  
15          immediately contacted the Supreme Court, and they  
16          offered the Supreme Court their full resources and  
17          cooperation for a meaningful review of the issue. So  
18          it's on a fast track. It's moving very quickly from  
19          January when the senate bill was introduced and then  
20          to January 23rd when the bill was there, and then to  
21          the Board of Commissioners responding to the  
22          Supreme Court that they would be cooperating.  
23          Ultimately it got down to us, and that's one of the  
24          reasons we are here this morning.

25                       In February of 2014 the Michigan

1 Supreme Court created the administrative order that we  
2 are talking about, this 2014-5, and created a  
3 task force to address whether the State Bar, with  
4 their current programs and their activities, supports  
5 the status as a mandatory bar. The Supreme Court took  
6 that step forward. They created a task force. The  
7 Task Force was charged with determining whether or not  
8 the State Bar dues and its activities can be  
9 accomplished by means less intrusive on individual's  
10 First Amendment rights in view of the Falk decision.  
11 At the same time the order also provided that the  
12 Task Force would report and include proposed revisions  
13 of the Administrative Orders of the Court Rules and  
14 the governance of the State Bar of Michigan.

15 In your materials the Task Force is listed,  
16 the members of the Task Force who are going to report,  
17 and one of the things we have to consider this morning  
18 is our involvement in that. If you look at the  
19 proposed motion that's in your materials, that  
20 specifically says -- is that on the board? It's not.  
21 Just missing my one piece of information.

22 The motion before the body this morning is  
23 should the Representative Assembly make  
24 recommendations and/or provide comments to this  
25 Task Force created by this Administrative Order 2014-5

1 or directly to the Supreme Court on whether the role  
2 and functions of the Assembly support the State Bar's  
3 status as a mandatory bar; and, number two, on any  
4 proposed revisions of the administrative orders and  
5 court rules governing the State Bar as they relate to  
6 the Assembly in order to improve the governance and  
7 operation of the State Bar through the following two  
8 steps, and it's a two-step approach.

9 We are asking to create a special commission,  
10 recently established by the Chairperson, with the  
11 responsibility to summarize and make recommendations  
12 at this meeting on April 26 and incorporate them as  
13 part of an Assembly report responsive to  
14 Administrative Order 2014-5 and submit the reports to  
15 the Task Force or the Supreme Court or directly after  
16 review by this Assembly as a practical and  
17 recommendation to them.

18 If that's the case, then we would have a  
19 discussion this morning, if you approve that, of the  
20 April 26 meeting for members to comment to provide  
21 paragraphs one and two above.

22 That is the motion that's before you this  
23 morning to generate something to the Supreme Court or  
24 to the State Bar to give them our thought, so to  
25 speak, on whether or not this bill should pass or not.

1 Any support?

2 UNIDENTIFIED SPEAKER: Second.

3 CHAIRPERSON ALLEN: Any discussion? No  
4 discussion being heard --

5 MR. CHIOINI: We get to use our clickers?

6 CHAIRPERSON ALLEN: Get to use your clickers  
7 now.

8 All in favor. Use your clickers.

9 UNIDENTIFIED SPEAKER: Which one do we click?

10 CLERK QUICK: One for yes, two for no, three  
11 for abstain.

12 UNIDENTIFIED SPEAKER: How do you know it  
13 works?

14 MR. CHIOINI: We will find out in a minute.

15 CLERK QUICK: It's working.

16 Motion passes.

17 CHAIRPERSON ALLEN: Motion passes.

18 For the discussion, I thought rather than  
19 have just a group of people come down and talk various  
20 ideas and thoughts, I chunked the concepts down. We  
21 are going to have 25 minutes for each concept, three  
22 minutes per person to talk. You can come up three  
23 different times, because the concepts are going to be  
24 different. They may interrelate, but I am allowing  
25 for you to come back, because I think this is

1           important.

2                       Now, when we discuss it to begin with, it's  
3 going to be, I have entitled it the governance, okay.  
4 How the role and the function of the RA supports the  
5 State Bar status as a mandatory Bar. Is this the  
6 least intrusive upon the First Amendment rights? I  
7 would like you to think about that, and there are  
8 other options if you haven't already thought about it  
9 and want to talk. We are changing this rule, and we  
10 have the rule in front of you.

11                      Everybody see this yellow piece of paper.  
12 The Rule 6, the Rule 6, Powers, one, The  
13 Representative Assembly, the final policy-making body  
14 of the State Bar. No petition may be made for an  
15 increase in the State Bar dues except as authorized by  
16 the Representative Assembly.

17                      Would we change this rule to change the  
18 governance of this policy and make final policy-making  
19 body authority to go with the Board of Commissioners,  
20 because, as you know, we have a Board of Commissioners  
21 and the RA, so the Board of Commissioners would make  
22 the final policy, they implement it, and we become an  
23 advisory board to the Board of Commissioners. And we  
24 would look at items that are assigned to it, the RA,  
25 by the Board of Commissioners and/or the

1 Supreme Court. Would this make the Bar, State Bar,  
2 less intrusive upon the First Amendment rights of  
3 individuals?

4 Another concept, define the type of policy  
5 the Board of Commissioners decides and the type of  
6 policies the RA wants to decide.

7 Another concept, the Board of Commissioners  
8 makes policy but is ratified by the RA.

9 Another concept, what types of policy does  
10 the RA want to ratify with total control.

11 Now, those are some questions that, to be  
12 able to hear what your thoughts are with regard to the  
13 change of this policy and this rule, of Rule A within  
14 our policy, our body of what we do, I would like to  
15 have our thoughts, because if we don't have our  
16 thoughts right now of what we really want, either  
17 remain the way we are or other options, we won't have  
18 the time in the future to be able to discuss this or  
19 present these ideas to the Task Force.

20 The next 25 minutes would be about the inside  
21 of the RA. How do we function more effectively?  
22 There has been some criticisms that we are not that  
23 effective, we are irrelevant. People don't like  
24 coming here because we don't do a lot. Members really  
25 don't like it, okay. So we need to look at this. If



1           this is true, this is the time and place to look at  
2           it.

3                       How do we function more effectively? Loosen  
4           the rules to be able to come to the floor to bring  
5           subject matters to the floor for discussion? Is the  
6           membership too large? Do we want it larger, do we  
7           want it smaller? Do we want 25 people, do we want  
8           five, do we want 200? We are right now at 150. We  
9           began in 1972. Forty-two years later we have moved to  
10          150 people. Our membership as of March is 43,000  
11          members. Do we fairly and accurately represent, based  
12          upon the diversity and the size, these members?  
13          Maybe, maybe not.

14                      UNIDENTIFIED SPEAKER: Point of order. Do we  
15          know how many members are in attendance today out of  
16          150?

17                      CHAIRPERSON ALLEN: Anne, can you find that  
18          out for us. We have a quorum, but we will find out  
19          how many are here.

20                      How often should we meet. Right now the  
21          Court Rules, as stated here, we meet two times a year.  
22          We are required by two times a year. We can meet  
23          often, we can meet more often if we want to, because  
24          our rules of procedure don't limit us to amount of  
25          times you want to meet, but it limits us to a minimum

1 amount of time to meet, which is two years by Court  
2 Rule, or two times by Court Rules. Do we want to meet  
3 more? Do we want to meet less? How do we want to  
4 meet?

5 Technology, do we want to improve the RA  
6 function with technology? Do we want to do virtual  
7 meetings? Do we want to meet twice a year and have  
8 virtual meetings at other times? Do we want to be  
9 able to use our sources throughout the state of  
10 Michigan so that we have people in the U.P., so they  
11 don't have to travel. Do we want to be able to by  
12 teleconference and webinars? Everybody is doing that  
13 now. I have been to a number of webinars. Maybe  
14 that's something we also want to incorporate. It is  
15 not going to be one or the other. It could be a mix.  
16 We will have this discussion as well.

17 131 attending, and we have 150 members.  
18 That's better than any party I ever had.

19 Email proposals. We email the proposals, it  
20 goes directly to the entire membership, and then we  
21 have a link from your membership to you so there can  
22 be discussion and there can be ongoing communication.  
23 Maybe that would be helpful.

24 Electronic voting. So we have electronic  
25 voting, but because some people don't like electronic

1           voting, an option with electronic voting is pass a  
2           proposal by a super majority. Maybe that's something  
3           we want to take a look at.

4                     We also use the internet. Maybe we can,  
5           rather than have wordsmithing here, change of numbers,  
6           letters, paragraphs, maybe what we want to do is do a  
7           noncontent language amendment at committee, and then  
8           it comes here, we vote up or we vote down. And the  
9           discussion with regard to the proposals or the Court  
10          Rules could be online and then go directly to the  
11          committees for their input and come back.

12                    Right now we have to have proposals here 45  
13          days beforehand. Maybe you want to shorten that.

14                    Then the last 25 minutes are going to be  
15          anything your thoughts are, okay. Not anything. No,  
16          not anything, but your thoughts with regard to the RA  
17          and how it functions and its role as Rule 6, okay.  
18          Because some of these areas that we just talked about  
19          may not fit in what you think is good, and that's what  
20          the beauty of this room is about, are ideas that other  
21          people don't think of. And so I want at least 20  
22          minutes to discuss that.

23                    I have spoken to quite a few people in the  
24          last two weeks here at the RA. I called them directly  
25          to tell them how important this is and to be here and

1 discuss, because today is make it or break it day so  
2 that we can have your thoughts, and I have had a  
3 couple people have some really good ideas, and they  
4 don't fit with these categories, sort of, but I would  
5 like them to come to the floor too to discuss and see  
6 what you have to say.

7 And what we are going to do is we are going  
8 to take this information and we are going to compile  
9 it and we also have two other committees working. We  
10 have the Assembly Review Committee, which is Carl's  
11 committee, and Special Issues Committee to look at the  
12 rules. And we are going to take that information you  
13 have and bring it to the Special Committee so they can  
14 decipher and break it down to see what's the most  
15 helpful and important for the RA, and we are going to  
16 get the transcript and we can expedite that so we can  
17 discuss it and review it.

18 The Special Issues Committee, the Special  
19 Committee, is going to be diversified by people who  
20 have years of experience with the RA and some younger  
21 people, because of the role of technology I thought  
22 was important, and if anybody has been looking at the  
23 demographics of the practice, we are having more  
24 younger people here also. So I wanted to open this up  
25 so we have more diversity so we can use those roles of

1           technology that some people have lived with and go  
2           forward. So I think I have said enough, and -- oh,  
3           there is one more thing.

4                       As of yesterday we have had, there was the  
5           president of the State Bar put together a work group,  
6           and they evaluated the Court Rules, and yesterday they  
7           presented their findings to the Board of  
8           Commissioners, and the Rules Committee recommended no  
9           changes to the current structure of the RA or its  
10          function. And that again is this, so they recommended  
11          no changes to the current RA structure or function.  
12          The BOC, it had decided to defer any changes to this  
13          committee to us, to this body, and the Board of  
14          Commissioners conferred that and agreed that if any  
15          changes were to be made, substantively or  
16          procedurally, it was going to be in our court.

17                      So we are here to discuss it, and you can  
18          come down to your microphones, and let's begin.  
19          Again, we are going to begin with the governance  
20          issue, twenty-five minutes for that. Please state  
21          your name and your circuit when you begin.

22                      MR. LINDEN: Jeff Linden, 6th circuit. Good  
23          morning. Thank you, Madam Chair and distinguished  
24          members of the Representative Assembly and any guests  
25          who haven't been announced yet who are in the room.

1                   I had sat as a member/participant of the  
2                   Special Issues Committee who met a couple of weeks ago  
3                   to discuss the matter, and we had thoughts addressing  
4                   this, the first topic, and the issue of the  
5                   Supreme Court's request on is there a lesser role or a  
6                   lesser governance that would be less intrusive on  
7                   First Amendment rights of our members, and we attacked  
8                   that fairly substantively. And that's the issue, the  
9                   fundamental issue for us is the State Bar and the way  
10                  the proposed bill came up was whether or not those  
11                  people who don't agree with the positions taken by the  
12                  Bar and the expenditure of their dues or whether there  
13                  really is for First Amendment or actually under the  
14                  Keller Supreme Court analysis ideological purposes as  
15                  opposed to the functional purposes of the performance  
16                  of the legal system in the state of Michigan. And my  
17                  personal view, and the committee, I think, consensus  
18                  was that this body is one of the best ways to mitigate  
19                  against imposition of First Amendment constriction on  
20                  individual members.

21                  This body is composed of, we just heard, 150  
22                  members from across the state, across all political  
23                  lines. It's not a political body. Young members, old  
24                  members, et cetera. In the years I have been on the  
25                  Representative Assembly, which I didn't count, but

1           it's, I think, middle of the road for those here, I  
2           have heard many issues that have been brought up that  
3           have been contentious, and those in the larger  
4           circuits, the circuits with the largest members, tend  
5           not to necessarily carry the day on any given issue.  
6           The smaller voices, the smaller circuits, the smaller  
7           opinions, they get heard here, and they often have  
8           fantastic ideas that are then debated and change the  
9           outcome of the policy decision of the State Bar.

10                   And that is the point. If you eliminate a  
11           body like this or eliminate the forced nature of the  
12           State Bar as a mandatory, I think you lose the voice  
13           of the smaller voice to come and get heard. Anybody  
14           can come to a meeting, anybody can raise a proposal.  
15           It gets debated. They all get taken seriously. The  
16           only limitation may be somewhat in the functioning, in  
17           that we only meet twice a year and we meet for a  
18           limited number of hours, some issues may not get the  
19           discussion that everybody wishes they get, and perhaps  
20           in the way we function with maybe pre-meeting vetting  
21           or pre-discussion, you know, it might facilitate that,  
22           but I think it's one the best bodies.

23                   The other issue that we had thought of was  
24           the complaint that people are being forced to pay  
25           money for ideological or political speech that the Bar

1           then takes that they don't agree with.

2                       I don't know about you, but I did a survey of  
3           one and myself, and the last time I was paid by  
4           State Bar funds to be here, I can't remember. I think  
5           we are all volunteers. So the State Bar spends money  
6           for these meetings on administration and coordination,  
7           photocopying, services, food to facilitate, but it  
8           doesn't spend money on the policy decisions or any  
9           ideological decisions that are presented here, and I  
10          think the issue is largely communication.

11                      I think despite the work we do and the years  
12          that we have been here, the Bar at large doesn't  
13          really have a good concept of what we do and how we  
14          protect their free speech rights and how we don't make  
15          policy against the minority. There is no way to  
16          factor in -- I am running out of time. There is no  
17          way to factor in every small opinion, but every  
18          opinion gets a voice here, and I think that should not  
19          be lost and I think it should be elevated to a point  
20          where it's obvious and broadcast to the community.

21                      CHAIRPERSON ALLEN: Thank you.

22                      MR. POULSON: Barry Poulson, 1st circuit.  
23          Our esteemed chair asked me to speak today, and I was  
24          shocked. Anyway, as to governance, I think if the  
25          governance becomes the decision making through the



1 central committee, then we will become a rubber stamp.  
2 We can simply buy one that says, Yeah, we agree. I  
3 don't think that's the point.

4 There is an engineering concept -- I have 40  
5 years as a software engineer -- called group mind.  
6 This is a group mind. We call each other, we talk, we  
7 think, we puzzle out things, we come here on the floor  
8 and debate, and I think the decision-making process  
9 that flows out of this is phenomenal. I don't know  
10 that anyone has not been heard. I think that we have  
11 a full spectrum of strange political thought, all the  
12 way from mine, who revers Attila the Hun as an  
13 agrarian reformer, to other folks that look at things  
14 quite a bit differently.

15 Wherever there should be a time I do oppose  
16 use of State Bar money on what I consider the  
17 political initiatives, because they are so far to the  
18 left wing I can't see them from Hillsdale, but I think  
19 this has been a phenomenal State Bar. They are  
20 efficient, they are effective, they are dedicated, and  
21 even if the dues become free, I will pay for it, but I  
22 don't like to see the commissioners become the  
23 decision maker. I think this group does it quite  
24 well.

25 Now, later when we get to the technological

1 phase, I will speak again briefly on efficiency.

2 Thank you.

3 MR. PAVLIK: Adam Pavlik of the 26th circuit.  
4 I think that, first of all, I would like to point out  
5 that I am strenuously opposed to the effort to make  
6 this a voluntary as opposed to mandatory bar. I think  
7 that the Bar provides a variety of services that have  
8 to be provided by someone. Unauthorized practice of  
9 law investigations, character and fitness evaluations,  
10 so on and so forth, and so I think it's important for  
11 those services to be uniquely responsive to lawyers as  
12 a group, and a mandatory bar facilitates that.

13 I would say, however, that the proposals to  
14 move toward a voluntary bar are, in my opinion,  
15 attempting to capitalize on the fact that our  
16 membership tends not always to understand where their  
17 Bar dues go. They pay the money in, and I certainly  
18 know that when I speak to my constituents about this,  
19 I got over and over and over again people saying,  
20 Sure, why not go to a voluntary bar. If it saves us  
21 5, 10 bucks a year on dues, that's fine. I think that  
22 reflects a degree of resentment of the typical member  
23 of the State Bar in not understanding where their Bar  
24 dues go.

25 The solution to that that I see is to

1           strengthen the governance role that this body has in  
2           actually running the State Bar. Right now in some  
3           respects we are a bit of an adjunct to the Board of  
4           Commissioners, because it's the Board of Commissioners  
5           that actually run this organization. I think that as  
6           we are demonstrating here today with the 150-ish  
7           people who are members of this body, we are much  
8           closer to our membership than the Board of  
9           Commissioners is. I know that my members know who  
10          their representative in the Assembly is. They don't  
11          know who their commissioner is on the Board of  
12          Commissioners.

13                    If we had a stronger governance role in  
14           approving the budget, in approving the way money gets  
15           spent in the State Bar, I am convinced that that would  
16           deflect much of the pressure to move toward a  
17           voluntary bar, because I think it would reduce some of  
18           the concerns that the median member of our  
19           organization has. They see it in dollars and cents  
20           terms. They don't always understand the decisions  
21           that are made from a budgetary standpoint by the Board  
22           of Commissioners. I am not sure that there is always  
23           as much transparency there as there could be, and if  
24           this body was more responsible for those kinds of  
25           decisions, I think that would improve the legitimacy

1 of a mandatory bar in the eyes of our membership, and  
2 if that happens, I am skeptical that the effort to  
3 move toward a voluntary bar would keep streaming  
4 forward.

5 Now, obviously that raises challenges. Would  
6 we have to meet more often if we had more extensive  
7 governance role? Possibly. We would also have to  
8 work out what our relationship would be with the Board  
9 of Commissioners. Would we be a bicameral  
10 organization where something has to pass the Board of  
11 Commissioners and this body, like in Washington where  
12 it has to get through the House and the Senate. I  
13 mean, those are things that could be debated, but my  
14 baseline is that we should have a stronger governance  
15 role in the State Bar.

16 CHAIRPERSON ALLEN: Thank you very much.

17 MR. ENGELHARDT: Chad Engelhardt from 22nd  
18 circuit, Ann Arbor.

19 First of all, I imagine, like most people, or  
20 everyone in this room, I am strongly in favor of a  
21 mandatory, united State Bar, but the issue that I want  
22 to talk to you about is, when it comes to legislation  
23 and informing the Legislature of the impact of its  
24 actions on our profession, on the role of lawyers and  
25 on our civil justice system and criminal justice

1           system, lawyers have a significant obligation to  
2           inform the Legislature, many of whom are not lawyers,  
3           about what impact their actions may have on our  
4           society. What are the impacts of the laws that they  
5           are empowered to pass, should they pass them, and what  
6           will be the impact?

7                       Oftentimes these are just decisions that have  
8           to be made and positions that have to be taken on a  
9           very short-term basis, sometimes a matter of days or  
10          weeks. This is a body that meets twice a year, and  
11          one of the things that I would strongly urge is  
12          restraint by this body that we not put our pride in  
13          front of the effectiveness of the State Bar to act.  
14          One of the things that I would encourage is not to  
15          undermine in any way the role of the Board of  
16          Commissioners and our leadership. We have  
17          professionals, such as Peter Cunningham, who do a  
18          wonderful job in advocating us in Lansing and  
19          assisting us in educating the Legislature.

20                      If you were to compare tools, we are a  
21          powerful tool. We are over 150 people. We represent  
22          a very wide swath of the entire State Bar, but in many  
23          ways we are like an ax, and in some situations we are  
24          not the right tool for the job. In some situations we  
25          need a more nimble, a more responsive, a more precise

1 tool, and in that situation, such as in pending  
2 legislation in Lansing, the Board of Commissioners and  
3 our professionals, our officers, are in a better  
4 position to do that.

5 With our size and with our power does come a  
6 bit of unwieldiness, and we have to respect the  
7 professionalism and the wonderful job that our leaders  
8 have done. When you look at what Bruce Courtade did  
9 as president or Brian Einhorn have done as president,  
10 what I have no doubt Tom Rombach will do as president,  
11 what Janet Welch has done as executive director. They  
12 have provided significant leadership, and we should  
13 not take any action which undermines our position or  
14 effectiveness as a State Bar, and I am concerned that  
15 in the way that these things are being presented today  
16 and decisions that are being asked to be made today  
17 that we truly don't have enough information in front  
18 of us, that we have not discussed this information,  
19 debated the positions or proposals that are in front  
20 us, and that we take more time to study them before  
21 making any action. Thank you.

22 MS. KAKISH: Thank you. Kathy Kakish, 3rd  
23 circuit. I now speak as a current member of the  
24 Assembly, but also as a former chair of the Assembly,  
25 2008-2009.

1                   The meeting today, I understand quite well,  
2                   is not to discuss the question whether the State Bar  
3                   should remain mandatory. What we are discussing is  
4                   the future of the Assembly itself, the Representative  
5                   Assembly. It seems to me that we are discussing the  
6                   future of the Assembly because there is a possibility  
7                   that the Assembly will somehow become a scapegoat in  
8                   exchange for keeping the State Bar mandatory. Those  
9                   are my beliefs.

10                   My thoughts are this: A representative  
11                   assembly that is representative of all walks of the  
12                   professional life, the legal profession, and this  
13                   Assembly is indeed that, is an essential element for a  
14                   mandatory bar. Mandatory bar, we do need a  
15                   Representative Assembly.

16                   Now, I know there was discussion as to the  
17                   creation of the Task Force that is bringing this issue  
18                   today here before us, but the very underlying incident  
19                   that was used to start all this is a position actually  
20                   that the Representative Assembly took at the September  
21                   meeting back in 2010. I went back to the transcript  
22                   of that meeting. On page 36 of that transcript it  
23                   shows that a question was raised from the floor about  
24                   whether the proposal on the Michigan Campaign Finance  
25                   Act was Keller permissible. The response was that the

1 attorney for the State Bar had reviewed the proposal  
2 and found that it was, indeed, Keller permissible, and  
3 I believe there is a strong argument that it is.

4 Now, I raise this point about the underlying  
5 incident not to discuss the Keller merits of that  
6 particular proposal or to place any blame on anyone or  
7 to point fingers or to raise the question why the  
8 State Bar leadership at the time sent our resolution  
9 to a state agency rather than exclusively directly to  
10 the Supreme Court. However, I do raise this because  
11 it shows two important things.

12 First, it shows that the Assembly itself  
13 understands its responsibilities and understands the  
14 limits to its responsibilities.

15 Second, if, indeed, this particular proposal  
16 that was debated by the Assembly back in 2010, if,  
17 indeed, it were precluded by Keller, it was not a  
18 deliberate act on the part of the Assembly to overstep  
19 its boundaries, and the solution to this thing or  
20 mistake, if it is, is not to scrap the Assembly at the  
21 expense of maintaining a mandatory bar, by no means,  
22 and this one mistake should not be used by those who  
23 disagree with the Assembly and would like to see it  
24 gone.

25 Now, having said that, today represents a



1           remarkable opportunity for the Assembly and its  
2           future, and I welcome it. There is, as was mentioned  
3           before, there is no other body within the State Bar  
4           that represents all 57 counties and their circuit  
5           courts. No other body that has lawyers from all walks  
6           of the profession, sparsely populated areas to densely  
7           populated areas, solo practitioners, midsize, and  
8           large law firms, private and public attorneys,  
9           et cetera, et cetera, and the list goes on.

10                    Coupled with this is the fact that it is  
11           always amazing to see, and we will see this afternoon  
12           as we discuss the four afternoon proposals, how  
13           viewpoints and concerns with all its accompanying  
14           wisdom and expertise that this body brings to the  
15           State Bar. And I repeat, wisdom and expertise. It is  
16           tremendous. I have been a chair of the Representative  
17           Assembly. I am a member, and every single meeting  
18           amazes me at the depth of knowledge, expertise,  
19           dedication that this body brings.

20                    I must disagree with the gentleman who spoke  
21           before me as related to --

22                    CHAIRPERSON ALLEN: Time.

23                    MS. KAKISH: Time. Okay, it will be in the  
24           next round. Thank you very much.

25                    MR. SMITH: Please, at the three-minute mark,

1           throw something at me or get one of those giant keys  
2           to just pull me aside. I will try to be quick.

3                     Joshua Smith, 30th circuit, two points.

4                     First of all, as nearly everybody has pointed  
5           out, the Representative Assembly is the closest to the  
6           Bar membership, period. It's not difficult to get  
7           elected to the Representative Assembly, and that's a  
8           good thing. It means that younger, different types of  
9           people can get in here who haven't necessarily been  
10          practicing for a long time or at a large firm. That's  
11          a huge plus, because most of our membership hasn't  
12          necessarily been doing either of those things. We  
13          have a diverse membership. This body reflects it  
14          better than any other. And that leads into the second  
15          point.

16                    In terms of a mandatory bar, by requiring bar  
17          membership, it means that in terms of this body, this  
18          body is going to be much more representative of a much  
19          more diverse group of people. If you take away that  
20          mandatory bar membership, you are going to get a much  
21          more selective group, mainly people whose, A,  
22          employers will pay for it and, B, who can much more  
23          easily afford it, and you are going to really lose  
24          that bottom, you know, the tier of lawyers who maybe  
25          are working for legal aid or maybe the State of

1 Michigan and don't make quite as much money, or  
2 younger. That would be a tragedy. Thank you.

3 JUDGE NELLIS: Jeff Nellis, 51st circuit. I  
4 am going to keep this short and sweet, but I think,  
5 and it's a very it complicated topic, but I can  
6 summarize it in one word. The concept is diversity,  
7 and that's what this body has. Diversity in a lot of  
8 ways, but especially geographic diversity, which I  
9 think is very important. Like other people have  
10 indicated, we have at least one representative from  
11 each circuit, and if we want our Bar to be responsive  
12 to the needs of its members, I can think of no better  
13 way than to have a body that has this kind of access  
14 and has a member in every single circuit. So to me  
15 this provides diversity, it provides access, and I  
16 just think that that's why we are an important body  
17 and we need to keep that in mind.

18 MR. HILLARD: Martin Hillard, 17th circuit.  
19 I agree with the earlier speaker that the mandatory  
20 bar is a separate issue from the role of the  
21 Representative Assembly, but briefly on that first  
22 part, the mandatory versus voluntary bar as it relates  
23 to First Amendment concerns. The concern is greater  
24 actually with a voluntary bar because that's more  
25 prone to adopting one political viewpoint or another

1           or advocating that, yet in the eyes of the public the  
2           Bar is going to represent all lawyers. So although  
3           your money may not be going towards those advocacies,  
4           the perception that you support those ideas as a  
5           lawyer because the Bar does would persist.

6                        But with respect to the role of the  
7           Representative Assembly -- a couple of the pieces of  
8           paper out here -- the Rule, as it relates, the  
9           Representative Assembly is the final policy-making  
10          body of the State Bar. We are the Representative  
11          Assembly. As earlier speakers have said, we have the  
12          larger membership, we have the greater membership base  
13          coming from each circuit versus the commission  
14          districts.

15                       The larger the body, the more likely it is  
16          responsive and reflective of the views of membership.  
17          The greater danger, and not to cast aspersions on our  
18          fine Board of Commissioners, but whenever you have a  
19          smaller body, it's easier for that smaller body to  
20          divert in one direction or another.

21                       I have been on this body several years. We  
22          have had many different proposals come up, some that  
23          have passed overwhelmingly, some that have passed or  
24          failed closely, some that have failed overwhelmingly,  
25          but we have had thoughtful reflection on each of those

1 ideas. We are a greater reflection of the body as a  
2 whole, and in terms of the First Amendment  
3 opportunities of our membership, the other piece of  
4 paper is the list of appointments to vacancies that  
5 Judge Nellis and his group brought before us, and this  
6 is reflective of every meeting I have been at.

7 As the earlier speaker said, it's not  
8 difficult if you want to serve on this body to be  
9 here. As Judge Nellis said in his presentation on  
10 this report, you have to go scraping the last week or  
11 two as these vacancies become known to get people to  
12 serve. That's how I started on this body was to fill  
13 a vacancy that I was asked three days before the April  
14 meeting if I would serve, and I am glad I said yes.

15 But the point, is if you are a member of the  
16 State Bar and you want your voice heard, you want to  
17 take on a leadership role, this is the body you have  
18 the opportunity to do it in, not on the Board of  
19 Commissioners. So I think keeping the large role of  
20 this body will serve those First Amendment interests,  
21 not defeat them. Thank you.

22 MR. FLESSLAND: Dennis Flessland from the 6th  
23 circuit. Just three quick points.

24 I think the State Bar does a pretty good job  
25 of drawing the line with political versus legal

1 issues. I really don't have any complaints with how  
2 the State Bar has done that. I don't feel that they  
3 have overstepped the line, really handled it pretty  
4 well.

5 Secondly, if we are going to keep a mandatory  
6 bar in the state, I think the Representative Assembly  
7 is an essential component of having a mandatory bar  
8 for all the reasons that have been stated here today,  
9 and I echo those.

10 The other point I want to make or mention is  
11 that when I hear complaints from members of the Bar,  
12 our colleagues about the State Bar of Michigan, they  
13 don't talk about political activities. They talk  
14 about bloated bureaucracy and the palatial office  
15 building in Lansing. I hear chuckles. Other people  
16 have heard the same thing. I don't want to comment on  
17 the merits of that, and, you know, it may be a  
18 communication problem, but I just wanted to bring that  
19 to your attention so that you could keep that in mind  
20 and the commissioners could keep it in mind, because  
21 that's the complaint I hear, not political issues.  
22 Thanks.

23 CHAIRPERSON ALLEN: Thank you.

24 MR. LABRE: Rob LaBre from 43rd circuit.

25 I think everybody in this room probably

1 agrees that regardless of whether we are a voluntary  
2 or mandatory bar, we should still be here. We should  
3 not disband this, meaning we become voluntary, there  
4 is still going to be a bar. We should be part of  
5 that. We should still gather and help out with that  
6 process. If we are mandatory, we should not be  
7 disbanded. We should still be here.

8 One of the questions that I had is this  
9 Task Force that's being created appears to have broad  
10 discretion in making recommendations to the  
11 Supreme Court about what they want to do with us.  
12 That leaves us to decide to leave recommendations to  
13 them what they should do. If we remain silent, they  
14 won't know. Maybe there will be assumptions that we  
15 are irrelevant and that we don't care enough. This  
16 proposal that we be present and that we voice our  
17 opinion, be it to make us more relevant so that we can  
18 balance out perhaps the Board of Commissioners and  
19 their decisions, considering the issues the 22nd  
20 circuit brought up, or merely to prevent us from being  
21 disbanded. We should be there for that. We should be  
22 there for that, and that's why I would recommend we  
23 adopt this proposal.

24 CHAIRPERSON ALLEN: We are down at 25  
25 minutes, but since these two individuals have been

1 standing there, let's take them too.

2 MS. KRISTA HAROUTUNIAN: Krista Licata  
3 Haroutunian, 6th circuit.

4 I stand in favor of the mandatory bar, as  
5 well as keeping the RA and Board of Commissioners  
6 structure the way it is. I also bring up the idea  
7 from a governance perspective. This body started a  
8 long time ago when there were only 12,000 lawyers.  
9 Now we have 43,000 lawyers. It would seem that we  
10 still need to exist and we still need to have the  
11 diversity of every circuit and every practice area  
12 still be here and talk and represent them, and so that  
13 seems even more critical than it was in '72.

14 The other point I bring up very quickly would  
15 be that if there is an issue as to governance and to  
16 maybe correcting things that weren't necessarily as  
17 closely focused on or as energetically looked at,  
18 which is to have the RA and the BOC have a Keller vote  
19 and also have a Keller analysis done by counsel. So  
20 you first have a counsel opinion as to Keller  
21 permissibility and then have a Keller vote by the  
22 respective body, and then, assuming it passes, have a  
23 vote on the issue. And that would seem to me to make  
24 it clear to everyone who is watching that we are  
25 taking it real seriously as to the topic matters that



1 we are addressing. And if anyone is worried about the  
2 Keller part, we could also say that there would be a  
3 super majority for the vote after we heard the opinion  
4 of the counsel and then have a simple majority as to  
5 the topic once it came past the Keller test.

6 So I think that that would certainly address  
7 issues of, well, maybe we are not focusing closely  
8 enough on certain things or keeping the restraint that  
9 the Keller decision and the administrative order from  
10 the Supreme Court mandate us as a mandatory bar to do.  
11 Thank you.

12 MR. PHILO: John Philo from 3rd circuit.

13 I somewhat view -- I don't think the context  
14 can be ignored. I view the free speech issue as very  
15 much a red hearing. I respectfully disagree with  
16 Barry, who I have learned a lot from listening to him  
17 come to this microphone. I come from a body of  
18 attorneys that is liberal, that is avowedly so. There  
19 is about two of us in the room.

20 UNIDENTIFIED SPEAKER: Sitting next to each  
21 other.

22 MR. PHILO: We view this as, the community of  
23 the attorneys I come, a very conservative institution,  
24 and I think the differing viewpoints here is a good  
25 thing and reflects well on this body in that there

1 needs to be an institutional voice and a voice that is  
2 exchanged and moderated. I do not see this body as  
3 out front on issues, and that's fine, because the role  
4 of this body is to speak for everyone in the body. I  
5 don't think we should be tepid about the areas where  
6 we have spoken, and I think that's important.

7 I practiced in Illinois, which has a  
8 voluntary bar, and the voices in the voluntary bar  
9 there are not a reflection of the bar of the state.  
10 You are a member if your firm pays for it, and that's  
11 about it, and the other folks are members of their  
12 individual practice bars. That's what we will be  
13 losing.

14 I would just like to echo, I think if there  
15 is a mandatory bar, it is essential that there be this  
16 body. It is a unique body among bar associations, and  
17 it does represent the voices moderated through all the  
18 membership that speak for our practice and our  
19 profession. That's all.

20 CHAIRPERSON ALLEN: Thank you.

21 The next is how do we function more  
22 effectively? And let's talk also, you know, about the  
23 rules of what we want to hear. How can we be more  
24 effective in terms of maybe the concepts of the  
25 policies. Maybe we are more effective is if that

1 policy is actually given to us to review rather than  
2 we create it on our own or we are a body that just  
3 receives that policy from either the Supreme Court,  
4 the Board of Commissioners. Does that make us  
5 effective? Let's talk about that as well.

6 Let's talk about the membership. We spoke  
7 about that in the last concept being too large or too  
8 small.

9 How often should be meet, let's talk about  
10 that, and the role of technology, how does that play  
11 for each and every person?

12 MR. POULSON: Barry Poulson, 1st circuit. I  
13 will speak only to technology, because that's my  
14 field, 40 years of computing. I know there are only  
15 two liberals in the room, but it's no coincidence they  
16 are seated right behind me. That worries me.

17 I learned to program computers in 1964. I  
18 had the first online system, so I worked on interstate  
19 networks in '68. I ran the largest computer network  
20 in the U.S. at one point, four time zones, and now my  
21 children are in the same field, so what I see is, my  
22 son's job for his new start-up is cyber medicine. He  
23 is working on a system where the doctors and the  
24 technology and instrumentation serve the rural people  
25 through electronics. I celebrated my grandson's

1 birthday with a family meeting on Skype, as I am sure  
2 many people do.

3 I love this book. This is a beautiful book,  
4 but the content is really what I need, and that can  
5 come to me electronically, so one of the steps is  
6 electronic book. But the other steps are to begin to  
7 look into technology.

8 Today we voted in less than a minute. We had  
9 votes that went on forever, people standing up and  
10 sitting down and raising the wrong hand and whatever.  
11 That's a step, and I think those steps can come down  
12 the road. We can meet effectively electronically and  
13 share our things.

14 We already do electronic emails back and  
15 forth. I know that's part of our group mind is we  
16 share our opinions and stuff back and forth. So I am  
17 all for the methodical approach to technology, and  
18 where methodical comes in is because not everybody is  
19 comfortable with it, and that's understandable. Some  
20 people are just not as young as I am and haven't seen,  
21 you know, what technology can do.

22 So I am all for the technology. I would like  
23 to be on the committee. I will serve and work well  
24 apolitically, because what's technology got to do with  
25 politics, except for like Al Gore. He didn't invent

1           it. I am sorry.

2                       So I am very much in favor of the continued  
3           use of technology to make this group effective and  
4           efficient but not necessarily with so many road miles.  
5           Thank you.

6                       MS. PARKER: Hello. I am Alisa Parker from  
7           the 37th circuit. I have just two quick points about  
8           more efficiency in the body. My first point is I have  
9           been a part of the Representative Assembly for a few  
10          years now, and one of the things that I found when I  
11          first got here was really trying to find my footing  
12          and how do I know what the Representative Assembly  
13          does, just how do I fit in here, and so as people are  
14          coming into the Assembly I think it's not echoed that  
15          we feel it is an important body.

16                      One of the ways that technology could be  
17          helpful is really bringing in the newer members and  
18          informing them about what the Assembly does and then  
19          staying connected. I know that we are all very busy  
20          and meetings can be hard to get to, but even using  
21          technology for that connectivity to members of the  
22          body so that we are more connected, we are more cued  
23          into what's going on more than just twice a year I  
24          think would be very vital, and it would help more  
25          members to connect to the body sooner rather than

1           having to be here a couple times before they feel like  
2           they have a footing here.

3                       MS. MCNAMARA: Anne McNamara, 47th circuit.

4                       With regards to improvements that we could  
5           make as a body in terms of more technological types of  
6           things, I think that would be great, but not at the  
7           expense of our participation.

8                       I have been a member of this Assembly a  
9           couple different times now. Back in the olden days,  
10          maybe 15, 25 years ago, us Uppers attended by a  
11          teleconference several times. It did not work well.  
12          It's not the same participation. You know, you can  
13          attend, for example, a court hearing by phone. It's  
14          not the same as being there. It's very similar to  
15          that.

16                      I think where technology could really help is  
17          transmitting information to us ahead of time. For  
18          example, rather than sending packets in the mail, if  
19          we were to receive some of those things and arguments  
20          with regards to them ahead of time by emails, it would  
21          be also easier for us to share with other members of  
22          the Bar in our areas, but I strongly urge not to take  
23          away the presence of us being here at least twice a  
24          year. It's very important. Thank you.

25                      MS. GLASS: Good morning. My name is

1 Alana Glass from the 6th circuit.

2 I am speaking today regarding the Assembly's  
3 role in technology. I would disagree with many of the  
4 comments that have already been stated. As someone  
5 who has started blogging and developing websites,  
6 albeit not as long as my colleague here in the  
7 1st circuit, I do see that there is this tremendous  
8 value and how technology can connect us and can  
9 connect our profession.

10 I also agree with the previous speaker that  
11 what we should not do is allow technology to prevent  
12 us from coming together as a body. I think there is a  
13 healthy balance in having technology but also personal  
14 one-on-one interaction, which you cannot necessarily  
15 achieve by just videoconferencing and  
16 teleconferencing.

17 So at the end of the day my recommendation  
18 would be that we do explore ways that technology can  
19 be efficient in terms of being green. How many pieces  
20 of paper did we, you know, print today, whereas I  
21 notice a number of colleagues have their iPads and  
22 Smartphones up and running. But then also too, our  
23 Assembly coming together, and so meeting and engaging  
24 with each other. Thank you.

25 MR. GILBERT: David Gilbert, 37th circuit. I

1           agree with most of my colleagues on what we are  
2           talking about as far as trying to stay relevant to  
3           what we have going on here. I believe we should have  
4           two mandatory meetings, but we should take advantage  
5           of technology or videoconferencing and things of that  
6           nature.

7                        I note that the Criminal Law Section, we meet  
8           once a month to go over pending legislation. In this  
9           particular case we are dealing with legislation that  
10          came out in January. We are lucky we have a meeting  
11          in April to deal with it. Many times legislation is  
12          done by the time we actually have a meeting. So if we  
13          want to be relevant, we need to actually be responsive  
14          enough to be there when legislation is still pending.  
15          This time, like I said, we got lucky.

16                       We have got the ability to videoconference,  
17          we have the ability to meet online. We also have the  
18          ability to meet in groups smaller than 150 people. We  
19          only need a quorum of 50. That kind of bothers me in  
20          a way that we just need a quorum of 50 to actually  
21          hold a meeting, a special meeting, but we could hold  
22          those special meetings at different places throughout  
23          the state.

24                       MR. PAVLIK: Hi, Adam Pavlik. When I spoke  
25          earlier, I misidentified my circuit. I said the 26th,



1 but I represent the 54th. My friend from the 26th  
2 waved at me before I started speaking. I lived there  
3 for three-and-a-half years. So I wanted to help out  
4 our poor reporter up there to get that right.

5 A couple of things. I think that the number  
6 of times we meet in the year depends a lot on the  
7 nature and quantity of work we have to do. So I am  
8 not sure you can bifurcate the two. I just wanted to  
9 point that out.

10 Second, just as a kind of related to the  
11 prior remarks, I kind of like getting the packet in  
12 the mail. If there is one person making the plug for  
13 getting the packet in the mail, that will be me.

14 And then the last thing is I just wanted to  
15 point out, I think that people, in my opinion, people  
16 have a tendency, not necessarily this group but people  
17 overall, have a tendency to be too confident in the  
18 ability to have an effective electronic or video  
19 meeting. I would point out that Roberts Rules of  
20 Order, which is our parliamentary manual, requires  
21 that for it to be a proper meeting there has to be the  
22 opportunity for simultaneous aural communication among  
23 all participating members equivalent to those of  
24 meetings held in one room or area. That's in  
25 Section 9 of Roberts Rules of Order. I am, frankly,

1           skeptical that we will be able to pull that off in a  
2           group of 150 people all somehow Skyping in or  
3           teleconferencing in and meet that standard. I think  
4           that, as a prior speaker observed, when you try to  
5           teleconference in, it's likely to produce an  
6           unsatisfying result.

7                        So, frankly, I think that what we are doing  
8           here is fine. The key is making sure that the work  
9           that we have to do is relevant, and if it is, I don't  
10          think anyone will have a problem with us getting  
11          together two or three or four times a year to do that  
12          relevant work. Thank you.

13                      MS. KAKISH: Kathy Kakish, 3rd circuit. To  
14          follow up on what was just discussed, to present the  
15          relevant work before the Representative Assembly, and  
16          that is to bring the proposals that the Assembly works  
17          best on. There are three points that I would like to  
18          make with respect to bringing in the proposals.

19                      One, how closely are we actually working with  
20          the Bar sections and the committees to help them raise  
21          their issues with respect to concerns that they have  
22          so that we can help them bring these proposals before  
23          us? Many of the Assembly members are appointed to the  
24          committees and sections as liaisons. How effective  
25          are we in bringing all of this together?

1                   Second, here we are a group of 150 members.  
2           Each of us knows how things work well in our circuits,  
3           and each of us know how things work well in our  
4           professions, but we also know what does not work well.  
5           What is the mechanism whereby even the members here  
6           can bring up proposals and be helped in drafting them?  
7           That's where perhaps review of the rules concerning  
8           drafting, special issues should be looked at so that  
9           individuals will have access to and help to submit  
10          their own proposals.

11                   Now, another point is that it's not only the  
12          Assembly that should change in how it does its  
13          business. There must be a change to how the State Bar  
14          and the Assembly work together.

15                   Look to item 1D in your Assembly materials.  
16          It's the item titled Summary of the Board of  
17          Commissioners Minutes. Look at page number three  
18          there. There is a list of proposed amendments to  
19          rules and legislation that the Board of Commissioners  
20          or its committees had to resolve on behalf of the  
21          Assembly. They took positions on these, in part  
22          because of the time deadlines that have been mentioned  
23          earlier by a couple of the members.

24                   There are time deadlines for responses to  
25          these proposals that are set forth by the

1 Supreme Court or the Legislature, and there has to be  
2 a solution to this. There has to be had a solution to  
3 what's happening whereby our work is being presented  
4 to the Board of Commissioners only because we don't  
5 meet the time deadlines, and that's where the number  
6 of the meetings of the Assembly can come in.

7 Also, the rules concerning the Representative  
8 Assembly should be changed to lessen the time and the  
9 nature of serving the material to the members before  
10 the meeting.

11 And there is another item. I don't believe  
12 that this was ever done before, but the Supreme Court  
13 could be easily approached. Perhaps we should work  
14 with the Supreme Court to set the public deadlines in  
15 a way that would allow us to work with these  
16 proposals, and so there is a lot to look at. How do  
17 we work within the State Bar itself?

18 And the third point is that we are not the  
19 only state bar representative assembly in the  
20 United States. The State Bar of Michigan has excelled  
21 in looking at other mandatory bars, examining how they  
22 do business, and we went beyond them. We are one of  
23 the best state bars in the United States.

24 Did we actually look to any representative  
25 assembly within the state bar throughout the

1 United States and see how they are operating, how they  
2 gather their proposals, and perhaps we can similarly  
3 adopt them, enhance them, and become the best  
4 representative assembly of a mandatory bar in the  
5 United States. Thank you very much.

6 MR. LINDEN: Jeff Linden, again 6th circuit.

7 Briefly just on some of the things I noted  
8 about our effectiveness. When we were discussing the  
9 issues in the Special Issues Committee, we did this  
10 simple thing of looking on the State Bar web page in  
11 the sections that define the role of Representative  
12 Assembly. And we were all surprised to find that  
13 there is very little information there. There is a  
14 small two-line segment on the Representative Assembly  
15 page about what we do, and there is a link that links  
16 you to more information, which pretty much only goes  
17 into the historical background of the Keller decision  
18 and things like that, but there is no discussion  
19 that's easily accessible to the membership at large  
20 about what the Representative Assembly is, how we  
21 represent the larger body of the Bar, and what we do  
22 here, and that seems to me a profoundly simple thing  
23 to fix from a communications standpoint in the larger  
24 scope of thing.

25 There are other things. For those of us who

1           aren't well known by our constituencies, there are  
2           things the Bar could do in sending out its  
3           publications of the Bar Journals or the newsletters to  
4           list on a circuit-by-circuit basis, these are your  
5           Representative Assembly members. If you want to bring  
6           a proposal before the Bar, these are your people to  
7           contact.

8                        I don't think that's out there for people who  
9           maybe don't know how to look for it or aren't  
10          necessary motivated to go out there. Just to make it  
11          very easy and user friendly for people would help the  
12          impression, which seems to be one of the issues that  
13          the State Bar doesn't adequately represent the voice  
14          of all political and all personal views of its  
15          membership. Little things like that I think can go a  
16          long way to improving the function of the  
17          Representative Assembly and the efficiency with  
18          regards to the issues that brought us here. Thank  
19          you.

20                       MR. HILLARD: Martin Hillard, 17th circuit.

21                       I think we need to look at how we do  
22          business, particularly the point that Ms. Kakish had  
23          raised about the issues that come before us, and  
24          perhaps a lot of it is because we only meet twice a  
25          year, but it seems to be rather hit or miss. Some

1 issues come to us, some don't. Some sections advocate  
2 their own issues that don't go through us. The Board  
3 of Commissioners take up a number of issues that we  
4 never see, and, again, maybe part of it is that we  
5 only meet two times a year and the deadlines come and  
6 go between meetings. And that brings me to the issue  
7 of technology.

8 I am a great believer in the use of  
9 technology where it will work in our favor. There are  
10 a lot of things that we do that we can do  
11 technologically. The officer reports. Even some of  
12 these somewhat perfunctory matters we vote on, like  
13 filling of vacancies. I don't remember there every  
14 being a heated debate over whether one of the  
15 committee's nominees to fill vacancies should be  
16 approved or not, and that certainly could be handled  
17 even more perfunctory than what it already is and save  
18 a bit of time, opening up these meetings to taking on  
19 a longer list of issues.

20 But, as some of the earlier speakers have  
21 talked about, we have got to be careful with use of  
22 technology, because if we stop meeting in person, we  
23 lose a great deal of value. There is something about  
24 meeting here in person and building the relationship,  
25 sort of get to know each other, and there has been

1 more than once that my opinion on something has  
2 changed, not from what was in the proposal, not from  
3 what was said by the microphone, but, you know,  
4 sitting next to Tom TerMaat and knowing that that  
5 affects his practice area and what do you think of  
6 this, and he'd point out the practical problems or the  
7 practical positives of a proposal, and that, you know,  
8 has affected my view, and we lose that if we do it all  
9 electronically.

10 I teach part time at our local community  
11 college. I am ground classes, as we call it these  
12 days, as well as online classes. There is positives  
13 to both, but you lose something in the online classes.  
14 You can gain something too, but losing that contact,  
15 losing that ability for the back and forth, in person,  
16 the more asynchronous it becomes, you lose something  
17 of value.

18 So let's use technology. Let's improve our  
19 efficiencies with it, but don't turn everything over  
20 to it. Thank you.

21 MR. SMITH: Joshua Smith, 30th circuit. Two  
22 quick points.

23 One, seems like it might be a good idea to  
24 increase the membership of the Representative  
25 Assembly, given that the membership of the State Bar



1           itself has increased over the years. Obviously with  
2           an increased membership of the RA you are going to  
3           have better representation of the membership.

4                     And a second point is that at the meetings  
5           themselves, and when I was on the Rules and Calendar  
6           Committee, I was like a broken record on this, but the  
7           focus should be more on the substantive work that we  
8           are doing in the discussion rather than what can often  
9           seem like an endless round of speeches. I remember  
10          one of the meetings, I got back to my office the  
11          following day. My constituents and workmates asked,  
12          What happened at the State Bar meeting? I said, Well,  
13          I heard a lot of speeches, and that's essentially what  
14          happened. Today is great, because we have a lot of  
15          substantive stuff that we are discussing and going  
16          over, but a lot of times it just seems like here is  
17          another speech, here is another speech, and I think  
18          the focus shouldn't be on that, nor should it be on  
19          things that we could get done at the committee level.  
20          Great case in point is the newly appointed members.  
21          Thank you.

22                     CHAIRPERSON ALLEN: Thank you. Why don't we  
23          take a break. We have another 20 minutes, and this is  
24          going to be the more open area of anything. If you  
25          want to talk about the type of policies you want and

1           if there is a location where policy should come from,  
2           what people want to hear. We are going to do that 20  
3           minutes after our break. We were supposed to leave at  
4           11:00 for our break, so let's take that now because we  
5           have got 10 minutes. We can take a 10-minute break  
6           and come back for the next part.

7                           (Break taken 10:51 a.m. - 11:07 a.m.)

8           CHAIRPERSON ALLEN: We are back in session,  
9           and my goal again is to make sure everybody gets out  
10          on time, if not earlier.

11                          Okay. So we are in the last 20 minutes of  
12          discussion, and I want to throw another idea out  
13          there, and this discussion is going to be things that  
14          we didn't talk about yet. So how about this idea.  
15          Say the Task Force, or that is to say the Task Force,  
16          the Supreme Court or some type of decision, that we do  
17          remain as a mandatory bar, what is going to be the  
18          role of our policy making decision, and if it has to  
19          be changed, how do you view it? This is just going to  
20          be an idea, okay, and then any other ideas that you  
21          are thinking of outside what we have discussed.

22                          MR. BARRON: Richard Barron from the  
23          7th circuit.

24                          Madam chair, I have been on this body off and  
25          on since probably the 1980s, so I have had an

1           opportunity to see a lot of people come and go and  
2           have an opportunity to observe this part of the Bar.

3                       I am very encouraged by the remarks that have  
4           been made by most of the people in the body. I think  
5           they review a sense of seriousness and purpose and  
6           commitment to this institution. Everybody here, as  
7           somebody pointed out, isn't getting paid, and it is a  
8           nice day outside. But we need to stand up and speak  
9           for the Bar and for the Representative Assembly,  
10          because there are people out there who would like to  
11          neuter both organizations in my opinion.

12                      I think that Senate Bill 743 was wrong. I  
13          think that's why the Board of Commissioners  
14          unanimously rejected it, and I think that it  
15          represents the worst of partisan political effort to  
16          attack, in my judgment, one of the best state bars in  
17          the United States as far as I can tell.

18                      I think that the Representative Assembly has  
19          been responsible for many of the improvements in the  
20          Bar and in our justice system over the years, albeit  
21          not perfectly, and I have served on the Assembly  
22          Review Committee and made specific suggestions for  
23          improving it.

24                      The State Bar has done well over the years,  
25          precisely because it is a unified bar, and it has been

1           since 1935. We understand that it's only by working  
2           together that we can accomplish our goals and  
3           represent ourselves and our clients. The State Bar of  
4           Michigan staff is, in my judgment, extremely  
5           competent, extremely dedicated, hard-working people,  
6           and that certainly goes for the volunteer attorneys,  
7           such as the members of this body who are here this  
8           afternoon.

9                        I don't, like other speakers, I don't view  
10           that the Representative Assembly has violated the  
11           Keller decision in any way. As pointed out, this was  
12           done thoughtfully and with advice of counsel on the  
13           specific issue, as on every other issue. This is a  
14           nonpartisan body made of people with widely divergent  
15           political views, and I don't believe standing up or  
16           standing against the introduction of dark money into  
17           judicial races is an inappropriate thing for the  
18           State Bar of Michigan to opine on.

19                       I think it's important that we focus on the  
20           big picture and we continue to do what we are doing  
21           this morning, which is to begin to discuss ways to  
22           improve what we do, whether that's through technology  
23           or more frequent meetings.

24                       The reasons why this body is necessary to the  
25           Bar have been discussed by other people, and I won't

1 repeat those here today.

2 I would conclude by saying I think we need to  
3 strongly affirm the importance of a mandatory state  
4 bar. Number two, I think we need to emphasize the  
5 integral importance of the continuation of the  
6 State Bar of Michigan on this point, and, number  
7 three, we need to internally come up with improvements  
8 and ways to make ourselves more meaningful, more  
9 efficient and more representative and not to wait for  
10 outside parties to try to do it for us. Thank you.

11 MR. GILBERT: David Gilbert, 37th circuit.

12 I agree with everything he just said. I  
13 don't think we did anything wrong in 2010. I think we  
14 should just do our jobs. I think we are doing exactly  
15 what we are supposed to be doing. I don't think there  
16 are any changes necessary.

17 CHAIRPERSON ALLEN: Thank you. Sir.

18 MR. FLESSLAND: Dennis Flessland, 6th  
19 circuit.

20 One of the problems that we have sometimes is  
21 the role of the Representative Assembly. The last few  
22 meetings where we have had some meaningful things to  
23 fight about here is the most fun I have ever had on  
24 the Representative Assembly, and the people who  
25 brought those issues to the group should be commended,

1           and I appreciate it. But along those same lines, we  
2           sometimes, I think, have a tendency to become too much  
3           of nitpickers in a way, and let me give an example.

4                        When we deal with a court rule recommendation  
5           that we have, the Supreme Court is not going to let us  
6           draft the details of that court rule, but our opinions  
7           and our values and our judgements of the impact of  
8           that court rule are important to them, but sometimes  
9           we get consumed arguing over details of the grammar  
10          and the comma and things like that and let the broader  
11          principles kind of fall to the wayside, and I think  
12          sometimes when we debate certain issues we should keep  
13          in mind that it's the principles and values that we  
14          represent, of the lawyers that we represent that need  
15          to be expressed and that sometimes the details of the  
16          proposal are not the most important. Sometimes we get  
17          lost in those details and good values don't get passed  
18          on.

19                       The second thing I wanted to mention is that  
20          when I check my listing -- I am a member of the  
21          Character and Fitness Committee for my county as  
22          well -- and when I check the Bar Journal, my listing  
23          in the Bar Journal to make sure that I am still a  
24          member and haven't been kicked out, it shows that I am  
25          a member of the Character and Fitness Committee in my

1 circuit. I am wondering if it might not be possible  
2 to list us as members of the Representative Assembly  
3 in our State Bar listing too so that, you know, I have  
4 opposing counsel on a case and I see that guy is a  
5 member of the Representative Assembly, I could mention  
6 some Bar issue that I had with him, because somebody  
7 else here earlier mentioned that we are not always  
8 known, and that might be a cheap and easy way to let  
9 our colleagues know that we are a member of the  
10 Assembly.

11 MR. CRAMPTON: Jeff Crampton, 17th circuit.  
12 If you want an example of diversity, all you have to  
13 do is look at the height of this microphone.

14 I just want to make three quick points. The  
15 first is, I was looking on the website, and it talks  
16 about the creation of the Representative Assembly. I  
17 just want to read this to people. I know you can read  
18 it, but I am going to read it for you.

19 In 1970 the State Bar Board of Commissioners  
20 noted that due to a large increase in membership there  
21 was a lack of opportunity for meaningful contact  
22 between members of the Bar and the Board. When the  
23 State Bar was founded in 1935, there were 4,278  
24 members represented by a Board of 21 commissioners.  
25 By 1971 there were near 12,000 members and only 23

1           commissioners. A special committee to review the  
2           structure of the Bar commented, and this is a quote, A  
3           board which involves only 23 individual points of view  
4           cannot adequately represent the range and variety of  
5           viewpoints to be found in so large and diverse a  
6           membership, particularly with respect to policy  
7           decisions, which is exactly what everybody is talking  
8           about here today.

9                        I found it interesting that the last speaker  
10           talked about when we debated the court rules. That  
11           was my first Representative Assembly meeting when  
12           Elizabeth Jamieson was the chair, and we had all  
13           these -- the Taylor court had proposed a number of  
14           rules to change trial practices, and so we debated  
15           those things, and this was my first meeting. I am  
16           like, you got to be kidding me, because we were  
17           debating where commas went and things like that, but  
18           what was really interesting was, in the afternoon,  
19           after lunch, there was word sent to us that the  
20           members of the Supreme Court had been sitting in the  
21           back of the room listening to the debate to get our  
22           perspective, and they told us, Listen, stop bogging  
23           down on the minute stuff. We just want your input on  
24           what these changes are going to be.

25                        So they listened to us. They sat here and



1           listened to us. They don't always do that. We  
2           sometimes have to tell them what we think, but they  
3           sat here and they listened to us, and they did make  
4           changes to a lot of it. Some of it they went with  
5           what we liked, some of it they didn't. But they did,  
6           they listened to us and they made changes.

7                     The other point I want to make is, I don't  
8           know how many of you have ever looked at Rule 6, but  
9           the very first thing it says, The Representative  
10          Assembly is the final policy-making body of the  
11          State Bar. No petition may be made for an increase in  
12          State Bar dues except as authorized by the  
13          Representative Assembly. That's this body. And I  
14          don't know, but if we end up with a nonvoluntary bar,  
15          not only will we be paying, those of us that want to  
16          remain members, be paying bar dues, but you can be  
17          guaranteed that there is going to be a user fee or a  
18          tax or something that the State will impose on us to  
19          regulate us, because if we are not regulated by  
20          ourselves, the state will regulate us, and if they do  
21          that, they will impose user fees, and we'll have no  
22          say in that. I am telling you what, when the  
23          Legislature needs to raise money, what's the first  
24          thing they do? Sin taxes and user fees, and, boy,  
25          lawyers are going to be right at the top of the list.

1                   I think if we want to control our destiny,  
2                   this body is needed, and it's needed whether or not we  
3                   have a mandatory bar, but it's really needed if we  
4                   have a mandatory bar. Thank you.

5                   MR. ROMANO: Thank you. I am Vince Romano,  
6                   3rd circuit. I rise to speak in favor of the  
7                   continuation of the mandatory bar and this body in  
8                   largely the same format as it now exists.

9                   The most salient point that I have heard  
10                  today involves the fact that whether we have a  
11                  mandatory or a voluntary bar, a deliberative body of  
12                  this type is going to be necessary to meaningfully  
13                  address the issues that will come before whatever kind  
14                  of a bar it is, mandatory or voluntary, and I think we  
15                  ought to make that point strongly in whatever response  
16                  we make here to the Task Force or beyond.

17                  Second, I believe that a lot of people have  
18                  identified some of the ways we can tweak this body,  
19                  and I would suggest that we employ our deliberative  
20                  skills, somehow get those compiled and bring them back  
21                  before us when we have more time to kind of look at  
22                  them and check them off on a list. But I urge you to  
23                  support the mandatory bar and support the continuation  
24                  of this body. Thanks.

25                  MR. ANTKOVIK: Good morning. Matt

1           Antkoviak, 48th circuit.

2                       I first want to say that I do support the  
3           mandatory bar, and I am also in favor of the  
4           continuation of this body.

5                       The issue that I want to raise this morning  
6           is not one of whether the Assembly is relevant, but  
7           how can we be more relevant to our constituency? I  
8           will give you an example. I sent out all the  
9           proposals to the full Bar in Allegan County, and I was  
10          looking for input. I thought, well, here is a chance  
11          for folks to say I don't like paying those Bar dues  
12          anymore. Matt, go to Lansing and tell them dump it.  
13          I heard from one person. I was sorely disappointed in  
14          that. In fact, the only proposal that I can recall in  
15          recent years that really drew a lot of attention was  
16          the change to the Court Rule that said that plea  
17          negotiations in criminal cases had to be on the  
18          record.

19                      Now, we all know what kind of hailstorm that  
20          would cause, but my point is how do we become more  
21          relevant to our constituents? In our world, time is  
22          money. We are all busy. Some of us barely have time  
23          to grab a sandwich for lunch. How are we to be better  
24          members of this body? How do we communicate to our  
25          constituents the important issues?

1                   We seem to live in a world of urgency, and  
2                   where is the sense of urgency that we have that we  
3                   need to communicate? And maybe I am telling on  
4                   myself. Perhaps I should have made more phone calls  
5                   about these issues. I would like to talk for a few  
6                   minutes and maybe someone has some ideas as to how we  
7                   can be better members of this body so that people say,  
8                   yes, it's important; yes, that's an issue that I want  
9                   to be heard on and someone needs to make a decision  
10                  that's critical in that area.

11                  CHAIRPERSON ALLEN: Do you have a suggestion?

12                  MR. ANTKOVIK: Here is how my life works.  
13                  It's probably like most of yours. We have schedules.  
14                  We hit the office and we run. What's the first thing  
15                  we got to do, make sure that we are prepared for our  
16                  cases. Sometimes we are waiting. I might have a few  
17                  minutes to talk with a colleague, hey, what do you  
18                  think about that issue? Maybe as we are standing  
19                  waiting for a prosecutor or waiting to negotiate a  
20                  deal or for the judge or something like that, we could  
21                  talk about these issues.

22                  I love the idea of technology, but the truth  
23                  is life is about relationships. People can easily  
24                  delete emails. I do it myself, even important ones,  
25                  notices from the State Bar. I will be honest. The

1 reality is that, unfortunately, the State Bar for a  
2 lot of folks is getting your dues, having to pay those  
3 when it comes in. We pay them, because that's what we  
4 have to do, and heaven forbid we get a letter from the  
5 grievance section.

6 But we need to be more relevant. The cases  
7 that come out, those updates, we need to find a way to  
8 make those practical. How do we do that? Well, it  
9 has to be urgent. Talk to other colleagues. That's  
10 hard to do though, unless you are purposeful. I don't  
11 know. Our Bar meeting, our Bar association in the  
12 county meets four times a year. That's not really a  
13 tremendous amount of time to be able to facilitate  
14 those issues. So apart from just those conversations,  
15 I don't know. Does anybody else have any ideas?

16 CHAIRPERSON ALLEN: We'll have that on the  
17 floor. Thank you, sir.

18 MR. POULSON: Barry Poulson, 1st circuit.

19 First, briefly, as an intermediate step in  
20 technology is a concept called the blog, and I know  
21 our young colleague here, way ahead of me, and I know  
22 another member talked to me whose technology is so far  
23 beyond what I am able to comprehend, but that blog  
24 situation, a lot of people have interactions and  
25 conversations and threads, the technology is in there.

1           You may be involved in them already. If not, you can  
2           find one.

3                       I know my tanker client is getting ready to  
4           fight a big battle tomorrow against Russian tankers to  
5           decide whether to advise Obama to have a land war  
6           against Russia. So you can imagine it's a discussion  
7           of politics, but it's a real thing. Hundreds of  
8           thousands of us communicate with that blog in nice  
9           threads, and it works.

10                      I am suggesting that an intermediate step,  
11           before going to fully online meetings that could  
12           disenfranchise people or an optional one which could  
13           disenfranchise the U.P., that we have some  
14           consideration of creation of a blog with issue  
15           discussion. I am not capable and leading it. I am  
16           glad to participate in it. I know the technology  
17           exists.

18                      Second thing, question for the Chair. Is  
19           Section 5, Terms, on the goldenrod thing appropriate  
20           for discussion at this time? That's about terms of  
21           office.

22                      CHAIRPERSON ALLEN: Sure.

23                      MR. POULSON: Every few years this seat sits  
24           empty. Thank God, Hillsdale County is silenced. But  
25           that comes about because you can't succeed yourself.

1 I work hard to try to get people to take over this  
2 thing. All I have to do is go to a meeting, I write  
3 my letter to the constituents. I can't get anybody to  
4 come. So what I am discerning here is -- I hesitate  
5 to say that there is a plot by the big counties to  
6 disenfranchise the little counties, but I think there  
7 is a puzzle there that could be solved. I don't know  
8 why they have term limits on it. Maybe there is a  
9 good reason, so somebody doesn't get stuck to the  
10 chair, but it's a problem, and so I would ask the  
11 collective membership to think about that at some  
12 point. Thank you.

13 MR. RIGGLE: I am James Riggle from the 50th  
14 judicial circuit in the Upper Peninsula.

15 The Supreme Court has asked us to look to see  
16 if the Bar functions can be done with means less  
17 intrusive to First Amendment rights of its members and  
18 the idea of abolishing this group. Aren't we doing  
19 that right now? Aren't we providing a forum for the  
20 expression of urgent views, your First Amendment  
21 rights, as it is? If we abolish the Representative  
22 Assembly, then where do those rights, where do those  
23 views get expressed? So I am certainly in favor of  
24 the mandatory bar and continuing the Representative  
25 Assembly.

1                   I agree to the use of technology, that the  
2                   world is evolving and if we don't evolve with it, we  
3                   will be the victims of technology. We have to be able  
4                   to respond to this type of proposal that was made in  
5                   January about our Bar more quickly than we are. I  
6                   agree that there should be the two in-person meetings,  
7                   but I also agree that there should be electronic  
8                   communications, webinars or email even, to allow us to  
9                   respond, and we should have a procedure developed on  
10                  when we will use technology and how. Two more  
11                  electronic meetings would seem to be appropriate.

12                  As to the State Bar using money to express a  
13                  political view, all our judges are elected, or they  
14                  are supposed to be elected, and the public perception  
15                  of those judges is certainly a State Bar concern, and  
16                  the dark money altered that perception, as it has, in  
17                  a very negative way, and I think that's a legitimate  
18                  concern of the State Bar, because it reflects on the  
19                  State Bar, it reflects on the judges, it reflects on  
20                  the law, and it reflects on all of us as lawyers as we  
21                  are working the system where the playing field is not  
22                  level. So I have no problem with Mr. Courtade's  
23                  remarks.

24                  CHAIRPERSON ALLEN: Thank you.

25                  MR. HILLARD: Martin Hillard, 17th circuit.



1                    Couple of suggestions, Madam Chair. First,  
2                    with respect to the communication to members, perhaps  
3                    putting our proposals on the website with a prominent  
4                    link on the home page so that members may quickly get  
5                    to it. Perhaps even an email blast from the office  
6                    before our meeting with a listing of the proposals in  
7                    the link for them to read them in more detail and the  
8                    earlier suggestion on how to find out who their  
9                    Assembly members are, maybe even a link to the blog  
10                   spot that Barry just volunteered to moderate.

11                   And the second suggestion I have is our  
12                   technology here. Why don't we use this all the time  
13                   and, when we report the results of the actions on  
14                   those proposals on the website and whomever they are  
15                   sent to, report the vote. It means something maybe if  
16                   it passed 131 or however many people we have here  
17                   today to zero, that that reflects that this diverse  
18                   body, geographically, politically and otherwise, all  
19                   supported it, or that it passed, you know, 70 to 61,  
20                   that it maybe passed, but it reflects that we are not  
21                   all of one mind and that we are not just jamming ideas  
22                   down the throat to say that this is what the Bar is  
23                   saying. Just a couple of suggestions. Thank you.

24                   MR. MORGAN: Ken Morgan from the 6th circuit.  
25                   My practice is largely national. As a

1 percentage, I probably do only about 20, 25 percent in  
2 Michigan. When I began to do that, I thought that  
3 what I was going to find was a better quality of  
4 communication and lawyering in places like California,  
5 New York, Chicago and elsewhere. What I found is  
6 that's not true. What I found is lawyers around the  
7 country are in the same circumstance we are as far  
8 communicating with each other. Everybody is too busy,  
9 everything is moving faster than it used to, there is  
10 more to lose, but what I have found is in those places  
11 where the bar has created the method of communicating,  
12 it goes easier. The lawyers work better together, and  
13 they do actually, it surprised me a bit, they have a  
14 more collegial relationship when they are dealing with  
15 each other.

16 I think that this body is First Amendment. I  
17 can't imagine someone who would argue that a  
18 legislature should not exist because it interferes  
19 with the First Amendment rights of the citizens. So  
20 the very notion of that I have a hard time with.

21 This body has to exist. How it exists  
22 becomes a more interesting question to me, and it  
23 seems as if an attack on it generally or an attack on  
24 the integrated bar is an impetus for improvement. I  
25 think that improvement can really be here. I think

1           that this bar can become better than elsewhere if this  
2           organization embraces the kinds of communication  
3           technology we are talking about.

4                   And the face-to-face, it's essential. We are  
5           lawyers who self-select to be in a social position, a  
6           profession where we deal with people. We can't  
7           dispense with that either, but we can do so much with  
8           a lot less than we used to. It's not as expensive.  
9           There are only 130-some people here. There are  
10          organizations ten times bigger than that that  
11          communicate more effectively with technology they can  
12          buy off the shelf.

13                   So there should be a group that focuses on  
14          that. Those that haven't used it, it's going to be a  
15          little harder. Once you use it, you are going to like  
16          it better than not having it. To me there is no  
17          question this organization has to push forward to take  
18          the tractors out and just change the conversation. So  
19          that's all I'd like to say.

20                   CHAIRPERSON ALLEN: Thank you.

21                   MR. LARKY: My name is Sheldon Larky from the  
22          6th circuit. A lot of people this morning asked me to  
23          stand up, and I will stand up and talk.

24                   I am one of those rare people in the room.  
25          My P number starts with a 1, which means that I have

1           been around for a while. I think I was 15 when I got  
2           that number, by the way.

3                       However, I have been on the Representative  
4           Assembly, as my brother from the 7th circuit has  
5           indicated, I think I have been on the Representative  
6           Assembly since the mid-eighties, and the only way I  
7           get off is I am term limited, so I am probably one of  
8           the more consistent people here, and I have to give  
9           you a background story.

10                      Background story is I am heavily involved in  
11           politics. In my local bar association, I am the  
12           co-chairman of our legislative committee and have been  
13           for almost two decades, and I read every single bill,  
14           every single piece of legislation that comes out of  
15           the House or Senate of Michigan. In the 44 years that  
16           I have been an attorney, not once ever has there ever  
17           been a bill introduced to take away the mandatory  
18           State Bar. And it's only been brought because  
19           Bruce Courtade and the Board of Commissioners and our  
20           Assembly took a position regarding the openness  
21           regarding judicial elections. That's what brought  
22           this all about. And we are now arguing and we are now  
23           fighting with ourselves and we are fighting with the  
24           Legislature to try to convince them to not change the  
25           state law that was enacted in 1933, I think, because

1 in '35 we got the State Bar, to fight against the  
2 mandatory State Bar.

3 What happens if Michigan goes to a voluntary  
4 State Bar? Let me give you the easiest example. When  
5 I was chairman of the Oakland County Bar Association's  
6 membership committee, we had a little under a thousand  
7 members. In the two years that I served as the chair,  
8 we were able to double the membership from about 800  
9 to about 1600. Membership now in the Oakland County  
10 Bar, which is the largest bar association, voluntary  
11 bar of Michigan, is 3,000 members. There are almost  
12 12,000 lawyers in Oakland County, which means only one  
13 out of every four lawyers belongs to the largest  
14 voluntary bar in the state.

15 What's going to happen if we become a  
16 voluntary bar? For those of us in this room, the  
17 answer is we will pay the bar dues. We will pay the  
18 bar dues, because we are bar trekkies, all 131 of us  
19 are bar trekkies. What's going to happen though to  
20 our brothers and sisters who are not in this room?  
21 Are they going to look at the maybe upwards of \$400 a  
22 year that they have to pay for bar dues, are they  
23 going to look at that as, well, maybe we should, we  
24 could save that money?

25 As someone said initially, if we don't pay

1           the bar dues, the state is going to take it from us.  
2           The state is going to take us and they are going to  
3           impose numbers, and those numbers are not going to  
4           take care of the disciplinary functions that we help  
5           pay for every year. It's not going to take care of  
6           all the things that we protect the small person and,  
7           frankly, the big corporations as we do our activities  
8           in this association.

9                        So the question really is -- we did A, we  
10           approved A that says summarize our comments and  
11           recommendations made April 26. That's what it says we  
12           have to do. I would urge the committee to do the  
13           following: One, in no uncertain terms say to the  
14           Task Force and to the Supreme Court and to the  
15           Legislature, as the final policy-making Bar, policy  
16           positions of the 43,000 members, we urge the  
17           continuation of the mandatory bar, that's number one.  
18           That should be the first line of that report.

19                       Second line is we believe that the system  
20           works, the bar system works, and we believe that --  
21           what's wrong with what we have done for almost the  
22           last 80 years as a bar association? If it isn't wrong  
23           from the standpoint of big generalities, why dismantle  
24           it? Why does it have to be dismantled if it's  
25           working? To all of us in this room, especially those

1 in the smaller communities, ladies and gentlemen in  
2 the smaller communities, whether in Hillsdale or  
3 Menominee, our brothers and sisters are too busy. We  
4 are the eyes and ears of them. If you want, maybe we  
5 ought to do like congress. They talk about our  
6 constituency. I think we ought to mandate the  
7 State Bar ought to pay us to have constituency offices  
8 and have constituency hours. It isn't going to work.

9 Let's be honest, it's not going to work,  
10 because people are satisfied with what's going on. If  
11 you are satisfied with what you are doing -- yeah, you  
12 can grouse about we ought to have a law, we ought to  
13 do this, the judge should have done that, but if we  
14 live day by day and we are successful and we have been  
15 successful for almost the last 80 years, why do we  
16 have to change a thing? Why do we have to change a  
17 thing? We don't have to change our goal.

18 Section 1 of the rule is exactly what we  
19 should be, and yet, I agree, that there have been many  
20 meetings personally where I sat there and said, oh,  
21 hell, we are going to talk about commas and we are  
22 going to talk about T's and Q's, and we are going to  
23 talk about this rule. Guess what, we are lawyers. We  
24 love to nitpick. Why not? Why not do that? It's  
25 part of the process. It's part of discussing this.

1           You don't think the Supremes do that when they have a  
2           court rule decision. They talk about nitpicking. We  
3           can do it too. So we are 150 people. We have 150  
4           opinions of it. All right, big deal. We will come to  
5           a consensus, and like my brother from the 3rd circuit  
6           who says there is only two liberals in this room. I  
7           can count more. Matt Abel makes it three.

8                     But the bottom line is, the bottom line is  
9           we, all of us bring our wants and our needs to this  
10          room, and we try to bring the wants and needs of our  
11          constituents, but our constituents for the most part  
12          don't know what we are doing. They don't.

13                    Let's be honest about it. Larger circuits,  
14          like I am in the 6th, I don't know how many members we  
15          have. We have 20-some members. Do you think that all  
16          20 of us go out and sing Kumbaya to all of our people?  
17          No, we don't. Do the people come to us? No, not  
18          always. But when there is a major issue, we bring it  
19          back, we talk about it, we discuss it.

20                    So the bottom line, I think, is part A of  
21          what we voted yes on, I think we have to send a clear,  
22          concise message.

23                    Just one last thing. I think personally for  
24          over the years what has really disturbed me personally  
25          is the annual meeting. At the annual meeting I think



1 we make a serious mistake. The serious mistake is  
2 many of us are members of various sections and  
3 committees, and we would like to go to those meetings,  
4 and they interfere with the Representative Assembly.  
5 And if there is anything, I wouldn't have the  
6 Rep Assembly meeting on the State Bar day. I would  
7 have it meet some other time. I don't think we have  
8 to meet at the annual meeting. It doesn't make sense  
9 personally, and there is no reason for us to coincide  
10 with it. I think we should be able to spend time in  
11 our various committees and various sections.

12 And I personally, after having being on this  
13 RA for this many years, I like to talk to people. I  
14 love to meet people. I want to talk and shake  
15 Tom Rombach's hand, and I want to tell a dirty joke to  
16 somebody around here. And I want to find out who is  
17 interacting with me, and this body does that, and it  
18 gives me, ladies and gentlemen, I don't know about  
19 you, it gives me a network to find new business.

20 Forgive me for saying it. You want an  
21 attorney in Hillsdale? You better talk to somebody  
22 here. You want an attorney in Menominee? They are  
23 here. And they think that they are dedicated. I want  
24 that dedicated person. Thank you.

25 MR. HERRMANN: Fred Herrmann, 3rd circuit. I

1 rise in support of the mandatory bar and the  
2 continuation of this body. Mr. Larky is always a  
3 difficult act to follow. I will do my best.

4 Picture for a minute your least sophisticated  
5 client. The person comes to you knowing very little  
6 about the law or the legal system or even the  
7 structure of lawyers in the State Bar. Bring that  
8 person into this meeting and witness this debate that  
9 we are having today. That's the person we serve.  
10 That's why we exist as a profession. And although  
11 today we have been discussing the structure of the  
12 Representative Assembly and the State Bar with respect  
13 to lawyers themselves, our ultimate purpose is to  
14 serve that client.

15 We are a body not just representing lawyers.  
16 We represent those clients and their interests as  
17 well. That's why the State Bar exists. That's its  
18 fundamental and primary purpose, not to serve lawyers,  
19 but to serve their clients. The work we do here, the  
20 rules we debate, the policies we discuss, they are all  
21 before us for the ultimate purpose of serving those  
22 clients.

23 If we take away the structure we have today,  
24 the ability to talk to one another, the ability to  
25 discuss issues with people up in the Upper Peninsula

1           who perhaps don't have the infrastructure support that  
2           we have downstate, how are those clients going to  
3           benefit when we are all islands floating out there on  
4           our own just trying to do our best without coming  
5           together?

6                        The issues we debate, the viewpoints we get  
7           from across the state allow us to create better policy  
8           and create better rules that ultimately serve those  
9           clients, and, if we give that up, we take away that  
10          structure, we are hurting the public, and that's what  
11          we are all about, and that's why I support this.

12                       CHAIRPERSON ALLEN: Thank you.

13                       MR. WEINER: Jim Weiner from the 6th circuit.  
14          I have also been a member of the Representative  
15          Assembly almost since I became an attorney in the  
16          early 1990s, except for the mandatory one year sitting  
17          off when I served my two terms. It's been a very  
18          rewarding, personally, and I hope the Bar, experience  
19          for me and everybody else.

20                       I come out in front in favor of a mandatory  
21          bar. I can't imagine not having a mandatory bar. I  
22          haven't practiced in a state that didn't, except  
23          Illinois, as I understand, doesn't have a mandatory  
24          bar, but they have the same dues structure as we do  
25          anyways.

1                   I can't imagine the State Bar without the  
2                   Representative Assembly. This body does do -- at  
3                   times it doesn't seem like it does a lot of work, but  
4                   it really does. I think it grounds the Board of  
5                   Commissioners, it grounds the State Bar as something  
6                   that is representative of all attorneys, and I think  
7                   that it's very, very important for us to recognize  
8                   that.

9                   We have all sorts of viewpoints, and  
10                  sometimes we do argue about commas, but I remember  
11                  times when we have come up here and something has been  
12                  presented to us and it doesn't say what the drafter  
13                  has intended. So sometimes we have to debate those  
14                  commas, we have to make those changes just to make  
15                  sure that the Court Rules, or whatever rules that we  
16                  are looking for, mean on paper what we intended it to  
17                  mean. A misplaced comma, a misplaced period, or the  
18                  wrong word in a certain area can make a major  
19                  difference.

20                  For those of you that practice administrative  
21                  law, for those of you that deal with legislation day  
22                  in and day out, you understand that. A change in the  
23                  law, a change in a single word can mean a  
24                  significant -- make a significant difference to what a  
25                  law, regulation, court rule means. So I don't think

1           that's bad. Sometimes there are ways we can  
2           streamline it.

3                     There are ways, whether it's an email blast  
4           or blog, it gives people ten days to respond and do  
5           that and things like that, especially now with the  
6           cloud out there that we can all have access to. There  
7           are ways that we can make ourselves even more relevant  
8           for those things and get the Representative Assembly's  
9           input on documents, on regulations, on acts and not  
10          have to deal with it at a meeting every six months and  
11          not have to wait.

12                    There are times, whatever we do, if we do put  
13          that in, I hope that we all realize that there is a  
14          failsafe, that we should put in a failsafe for that so  
15          that when there is something that rises to a certain  
16          importance that people feel strongly about that is  
17          very, very divisive, that it is adjourned to a  
18          mandatory meeting. It is adjourned to one of the six  
19          meetings. If we all agree on something, there is no  
20          reason to bring it before this Assembly on one of  
21          these days. So I just want to put that together.

22                    CHAIRPERSON ALLEN: Thank you.

23                    We only have five minutes before lunch, and  
24          this is the first time that I am going to have all of  
25          you people in one room to ask a question. And this is

1 something that I struggle with as being Chair. What  
2 types of issues do you want to hear? Because we have  
3 got five minutes to give some ideas to get a feel.  
4 What type of issues do you want to hear? Anybody? Do  
5 you want just only court rules? Come up and tell me.  
6 What do you want to hear?

7 MR. SMITH: Less speeches. Joshua Smith,  
8 30th circuit.

9 Somebody right next to me suggested that some  
10 of the speeches and awards ceremonies actually could  
11 be done in the annual lunch. Everybody is there, more  
12 people than you have in the Rep Assembly. The person  
13 gets the recognition that they, quite frankly, deserve  
14 and a broader group of people get to hear their  
15 speech, their acceptance, and their story.

16 CHAIRPERSON ALLEN: Thank you. Got three  
17 minutes before lunch starts.

18 MS. KAKISH: Kathy Kakish, 3rd circuit. I  
19 don't think that we should make any preferences. Any  
20 court rule, any legislation that properly belongs  
21 before the Assembly should be submitted before the  
22 Assembly, and to limit our work would actually defeat  
23 the purpose of the role of the Assembly.

24 MR. WEINER: Jim Weiner 6th, circuit. I  
25 agree with that. I don't think we need to limit what

1 comes before us as much as we need to be efficient  
2 about it. I remember one time -- it was very, very  
3 important -- was the Supreme Court wanted this  
4 Assembly to come out in favor of appointment of judges  
5 rather than election of judges, which would require an  
6 amendment to the state constitution, and, in fact, we  
7 had a special Representative Assembly meeting for  
8 that, and we came out strongly in favor of elected  
9 judges and continuation. I think that's important.

10 CHAIRPERSON ALLEN: Thank you.

11 MS. BRANSDORFER: Liz Bransdorfer from the  
12 17th circuit. I think this body needs to reach out to  
13 the committees of the State Bar and to the sections of  
14 the State Bar and to invite those groups, smaller  
15 groups of our constituents to let us know what are the  
16 issues that affect their members' daily practices and  
17 what they think would make the practice of law better  
18 for the lawyers and for the clients that we represent,  
19 and that this group ought to take affirmative steps to  
20 invite those groups to let us know what's important,  
21 and then we ought to listen to those smaller  
22 constituencies. We shouldn't be limited to things  
23 that are going to affect every lawyer in this state.  
24 Those smaller constituencies have very important  
25 concerns.

1 MS. KRISTA HAROUTUNIAN: Krista Licata  
2 Haroutunian, 6th circuit.

3 I think in sort of echoing what a lot of the  
4 other members have said, but I think one of the things  
5 to do is to look at the liaisons. We were talking to  
6 some people in the break and, you know, we were  
7 talking about what about the liaisons, and I think  
8 Kathy Kakish maybe mentioned that as well. What about  
9 the liaisons? I mean, the commission, I think, has  
10 liaisons, but the RA has liaisons. I am not exactly  
11 sure, I haven't thought it through enough to know, but  
12 I am not exactly sure how to bring that out, but there  
13 has got to be a better way of bringing out what the  
14 liaisons learn at those sections and other meetings  
15 and bring that to us and maybe be a little more active  
16 in those meetings to say, Do you want the RA to look  
17 at this? Obviously they are talking about different  
18 things and that those issues could come out most  
19 effectively through the liaisons, because we have  
20 people there, and those are our people. Those are our  
21 RA people. So anyway, that was the thought I had.

22 CHAIRPERSON ALLEN: Thank you.

23 MR. PHILO: John Philo from 3rd circuit.

24 I would just oppose anything that seeks to  
25 narrow what we discuss. I think that just confining



1           ourselves to court rules, we have a greater duty, and  
2           I think it was well said, we have a duty to the  
3           public, and that is what we are about. We may express  
4           that as we should talk about the things that affect  
5           the practice of law, but that's in relation to the  
6           public, and I think it's filtered through that, and  
7           that sort of arbitrary narrowing I think diminishes  
8           our role and the value of our role.

9                         CHAIRPERSON ALLEN: Thank you.

10                        MR. MEKAS: Pete Mekas, 49th circuit. Our  
11           body has a lot of experience bringing in here a lot of  
12           knowledge and very important, not only issues, but  
13           arguments. Is there a way, especially with our new  
14           emphasize on technology, that when a speaker comes  
15           before the microphone, can we put his name or her name  
16           on the board? With some circuits that have 20  
17           representatives, not all of us know who all of them  
18           are. We try to make notes as to who they are, but I  
19           just wonder if there is a way that we can flash the  
20           name and the circuit instead of just hearing it and  
21           scurrying to write it down.

22                        CHAIRPERSON ALLEN: Thank you.

23                        Lunch. Okay, we made it. I adjourn the  
24           meeting so we can go to lunch, and our lunch is from  
25           11:50 and we will begin at 12:45.

1 (Lunch break 11:53 a.m. - 12:48 p.m.)

2 CHAIRPERSON ALLEN: Thank you, everybody.

3 Can we take our seats. We are now back in session.

4 MR. CHIOINI: I would like to take the  
5 opportunity quickly to thank you for all your input  
6 this morning. It's invaluable to us at the State Bar  
7 and the Representative Assembly. We are going to take  
8 that information that you gave us and the questions  
9 that you had, we are going to give it to our  
10 committee, and let me give you the names of the  
11 committee, so if you want to communicate something to  
12 them, you can do that by email or however you like.  
13 Richard Barron, who you met with earlier this morning.  
14 Michael Blau is also here. Kim Breitmeyer, who is  
15 here. Myself, Lee Hornberger. Krista Haroutunian, I  
16 think she was here earlier, in the corner.  
17 Robert LaBre and Eilisia Schwarz. Thank you again,  
18 and all of your information will be given to the  
19 committee to give to the task force.

20 Oh, the vote, I forgot the vote, because we  
21 are new at the clickers. The vote was 97 to 3 in  
22 favor of the proposal. We will try to do that again  
23 the next time. Thank you.

24 CHAIRPERSON ALLEN: Thank you, Carl, very  
25 much.

1                   We are now at consideration of proposal for  
2                   MCR 2.602(B) (5), entry of consent judgment. The  
3                   proponent is Dan Quick, not only our clerk, but also  
4                   the chair of the Civil Procedure and Courts Committee.

5                   CLERK QUICK: Thank you. Daniel Quick, 6th  
6                   circuit. I am here before you as the representative  
7                   of the Civil Procedures and Courts Committee. For the  
8                   benefit of the new members, I thought I would take a  
9                   moment to describe the process here.

10                   When the Civil Procedures and Courts  
11                   Committee originates a court rule proposal and it  
12                   passes that committee, it comes only and directly to  
13                   the Representative Assembly for your consideration.  
14                   Should the Representative Assembly vote in favor of a  
15                   proposal, it is then submitted to the Michigan  
16                   Supreme Court for action.

17                   The Michigan Supreme Court may do a number of  
18                   things with it, including absolutely nothing, or it  
19                   may open an ADM file, in which case it will solicit  
20                   comments from the public and practitioners and  
21                   additional sections of the Bar.

22                   So in the event that something is passed by  
23                   the Representative Assembly on these court rule  
24                   proposals, it's not the final say. It doesn't go  
25                   directly into your court rule books, but it advances

1 the dialogue to the court, which then has great  
2 discretion in terms of how it handles the matter. So  
3 for our new members I thought maybe that description  
4 of process was useful.

5 Our first item today is a repeat, for those  
6 of you who were here previously. This is a proposed  
7 amendment to 2.602, addition subsection 5, to provide  
8 an expressed mechanism for the entry of consent  
9 judgments. The Court Rules do not at the moment call  
10 expressly as to how these are supposed to be handled  
11 and dealt with. They are used increasingly by  
12 parties, typically in settlement discussions, as a  
13 part of a settlement package, and the Court Rule  
14 specifies how it should be presented to the court,  
15 opportunity for an opposing party to challenge whether  
16 the triggering event, in fact, has occurred, and that  
17 is the right granted, unless the order itself says it  
18 can be entered without notice, both before the actual  
19 entry of the consent judgment and then there is an  
20 additional window after the entry of the judgment for  
21 a party to come forward and challenge and say  
22 essentially, hey, that should have never happened.  
23 That triggering event for the entry of the consent  
24 judgment was never satisfied, and the trial court  
25 retains complete discretion in terms of how that be

1 handled.

2 This proposal has gone through our Rules and  
3 Drafting Committee, and I would move the Assembly to  
4 adopt the resolution regarding MCR 2.602(B)(5).

5 CHAIRPERSON ALLEN: Is there a second?

6 UNIDENTIFIED SPEAKER: Second.

7 CHAIRPERSON ALLEN: Discussion?

8 MR. LINDEN: Good afternoon. Jeff Linden,  
9 6th circuit. I had just a question. I don't know  
10 with regard to the discussion, but with regard to the  
11 no notice to the opposing party of entry if it's  
12 contained in the judgment section, coupled with the  
13 subsection (D) of the proposal, which has basically a  
14 right to have a hearing within 21 days of service of  
15 the judgment, my question is, if you want and were  
16 preserving the right to challenge entry of the  
17 judgment after it's entered, why permit an option to  
18 have the inability to challenge it while it's pending  
19 but before entry? And I understand the argument of  
20 being it's a negotiated situation with a consent  
21 judgment. My concern is in the circumstances where an  
22 adhesion contract type situation might be drafted with  
23 consent judgment language in it where the party who is  
24 affected by entry of it doesn't have any opportunity  
25 to say whether the conditions have been met or not

1           before entry, and it's a different universe to try and  
2           undue the court action after the fact than to raise  
3           the argument that the judge then has before entry, and  
4           I want to know if that was addressed by the committee  
5           and if a slight modification might be available to  
6           alleviate that concern.

7                       CLERK QUICK: This goes back to what  
8           originally came before the Assembly where there was an  
9           additional subsection 6 which dealt more with the  
10          situation that you just gave in your example. If you  
11          look at the language in 5, it only deals with, first  
12          of all, where there is already an action pending  
13          between the parties or was pending previously, and it  
14          only applies when there is an actual proposed judgment  
15          signed and approved by the parties thereto or their  
16          counsel of record.

17                      So if I understood your hypothetical  
18          correctly and there is something in a credit card, you  
19          know, terms abuse buried in page 37 in small print,  
20          that doesn't satisfy this standard. You would have to  
21          have a judgment actually signed by the plaintiff and  
22          the defendant or their counsel to be able to submit it  
23          to the court and invoke this rule.

24                      The logic in terms of the ordering of things  
25          is that, and the Michigan Court of Appeals has said

1           this, that a consent judgment, even though, obviously,  
2           all judgments carry force of law, really is a  
3           different animal than a judgment that's a result of a  
4           deliberative process, a jury or a trial, and it is a  
5           matter of contract between the parties. So if the  
6           parties contracted for entry without notice in order  
7           to move things quickly, as ought to happen if, in  
8           fact, the trigger event had occurred and the party  
9           entitled to enter the consent judgment, then it does  
10          get entered, but we did think it appropriate to have a  
11          check on that process beyond the judge, which is to  
12          provide the party notice and give them that de novo  
13          opportunity after the fact to come in and say, no, it  
14          shouldn't have been entered for X or Y or there is a  
15          mathematical error. So that at least was the thinking  
16          of the committee.

17                   MS. BRANSDORFER: Liz Bransdorfer from the  
18                   17th circuit. You have a 14-day notice before the  
19                   hearing on a motion to enter the judgment if the  
20                   judgment doesn't provide for entry without notice.  
21                   But then in the last sentence it says, If the debtor  
22                   does not file and serve specific objections within  
23                   that time, the court shall enter the judgment.

24                   Every other motion that gets filed, you can  
25                   appear at the hearing and object. Was it intentional

1           that the debtor didn't have the opportunity to simply  
2           appear at the hearing and object and there did, in  
3           fact, have to be something filed in writing before the  
4           hearing date? And if that's intentional, I would like  
5           to know why, because it is so different, I think  
6           people would get tripped up.

7                       CLERK QUICK: I will just explain to you the  
8           rationale. Keep in mind, again, this is only when you  
9           have already had an action and both parties have  
10          signed the judgment or their counsel have, and this  
11          scenario is I now have filed a motion for entry of the  
12          consent judgment. So, like any motion, if the court  
13          has the discretion and somebody hasn't filed a  
14          response brief, to simply grant the relief requested  
15          in the motion. So we wanted to clarify that unless  
16          the party against whom the judgment is being entered  
17          doesn't come forward with some specific objection,  
18          that the court has the authority to enter that order.

19                      Again, I think that's completely consistent  
20          with already the motion rules that require a response,  
21          but also to avoid a stringing out of the process where  
22          a motion gets filed, no response brief is filed, the  
23          debtor comes in and hems and haws at a hearing, and  
24          the judge say, Well, what am I supposed to do with  
25          this? We wanted to make it clear that there is a



1 process, you got to follow the process.

2 MS. BRANSDORFER: Yes, but the judge doesn't  
3 have discretion; the judge shall enter the judgment.

4 CLERK QUICK: Right. If they waive the  
5 opportunity to file their objection, that's right.

6 MS. BRANSDORFER: So that is the intent of  
7 the rule?

8 CLERK QUICK: Yes, it is.

9 MR. PAVLIK: Adam Pavlik, 54th circuit. At  
10 the September meeting when this first came up -- by  
11 the way, I would just like to lead off, I support this  
12 in substance. I think this is a fine change to the  
13 Court Rules. I think this gets at my discomfort with  
14 some of the knocks that were made on debating  
15 punctuation and whatnot earlier. I think that some of  
16 that stuff can be very important, and I think this is  
17 a good example of that.

18 I said at the September meeting that I felt  
19 like this proposal, as much as I supported it in  
20 substance, is, in my opinion, somewhat archaically  
21 worded, and I would just give you one example of  
22 something that I think is a drafting issue with this,  
23 which is if you look at (B) (1), (2), (3) and (4), they  
24 are all complete sentences, but (B) (5) is not a  
25 complete sentence. Just as an example of something, I

1 think that's suboptimal work product for us to send to  
2 the Supreme Court, and, frankly, if I had my druthers,  
3 I would recommit this to the pertinent committee and  
4 have them improve upon it in that respect. Whether  
5 there is any support in this group for that or not, I  
6 don't know, but that's my take on this,  
7 notwithstanding my substantive support for the intent  
8 behind this proposal.

9 MR. ROTENBERG: Steven Rotenberg, 6th  
10 circuit. I am just wondering if this rule is  
11 redundant, because a judgment is a final order, and  
12 you can enter an order with everybody waiving notice  
13 and presentment and signing off on it, and I am just  
14 wondering if we are muddying the Court Rules by having  
15 something that we could already do, and I am just  
16 wondering why we are messing with something that we  
17 can already do and just codifying it in a way that  
18 could add to confusion. I don't see how this improves  
19 stuff. If you dislike something that was entered,  
20 there is opportunity to challenge it within seven days  
21 if it was improperly entered. There is already a  
22 21-day appeal, or even for other good cause shown, a  
23 year to show that something was done improperly in  
24 various other sections of the Court Rules. I am just  
25 wondering why we need to add suspenders to the belts

1           that are already there.

2                   CLERK QUICK: Two responses come to mind.  
3           First, our committee, like the RA, consists of  
4           practitioners across the state in different practice  
5           areas -- large firms, small firms, public and  
6           private -- and there was a strong consensus that  
7           consent judgments tend to confound the courts because  
8           there is not expressed provisions dealing with them,  
9           especially in a situation which this rule  
10          contemplates, where it may expressly call for entry  
11          without having to file a motion and go through all the  
12          normal procedures that you might go through in another  
13          context. So that was the rationale. So the consensus  
14          of the committee was different than your observation,  
15          which is that it is not belts and suspenders and that  
16          you need something expressed in order to make the  
17          court feel more clarity in terms of what it's doing.

18                   MR. FALKENSTEIN: Peter Falkenstein, 22nd  
19          circuit. This is my first meeting. I am a new  
20          member, so excuse me if I go back to Judgments 101  
21          here just to try and catch up to where we are.

22                   I note in the background section here that  
23          cognovit, also known as pocket judgments, are  
24          recognized statutorily. What I am curious about is  
25          how does this new rule put a gloss on the statutory

1 recognition or the precedent that has established  
2 that, and will there be any change, substantive  
3 change, to those of us who have used the pocket  
4 judgment in the past that we are going to have to be  
5 aware of? It's not abundantly clear how this  
6 interplays with the statutory provisions.

7 CLERK QUICK: I will tell you that the intent  
8 as to the cognovit statute was to recognize that even  
9 though the statute exists there wasn't clear  
10 implementing language in the Court Rules, so it was  
11 meant to actually recognize the statutory right that  
12 existed, also to recognize other scenarios, but  
13 certainly to recognize the statutory right, and  
14 provide a clear path for its operation in the courts,  
15 that was the intent.

16 MR. RENNER: William Renner, 15th circuit.  
17 Quick question for clarification. With respect to the  
18 Court Rule, it deals, at the second sentence of (5),  
19 the creditor and debtor. Does that mean that this  
20 Court Rule only applies to what we might commonly  
21 refer to as a collection case, or can this Court Rule  
22 be used to apply to anything?

23 CLERK QUICK: It's intended to -- it says the  
24 word -- that's why the word "thereto" is included.  
25 It's meant to capture the parties to that judgment.

1           So if, you know, it's Joe versus Susie, one of them is  
2           the creditor and one is the debtor in that scenario.

3                   MR. RENNER: So, for example, you couldn't  
4           use this in a real estate judgment or --

5                   CLERK QUICK: No, you could use it anywhere,  
6           but in the context of the judgment, right, somebody is  
7           a creditor and somebody is a debtor, and this is a  
8           consent judgment.

9                   UNIDENTIFIED SPEAKER: Only if it were money.

10                   MR. RENNER: Rather than saying plaintiff and  
11           defendant, it says creditor/debtor, which seems to me  
12           to be --

13                   CLERK QUICK: It was not meant to be limiting  
14           in the sense you just described.

15                   UNIDENTIFIED SPEAKER: Can you say all  
16           parties and/or their attorneys?

17                   MR. TERMAAT: Tom TerMaat, 17th circuit. I  
18           had a question about the creditor and debtor language  
19           there. Maybe, correct me if I am wrong, but I think  
20           technically they are not really creditors and debtors  
21           until after the judgment is already entered, right?  
22           So at this point when they are submitting it to the  
23           court, they are just either proposed or alleged. Did  
24           the committee look at that language, adding a  
25           qualifier, or did they intentionally use that

1 language?

2 CLERK QUICK: Well, as I said, the intent was  
3 to capture the parties which are going to affect the  
4 judgment. So all parties would probably be  
5 overbroad -- I heard somebody make a comment -- as  
6 there may be multiple parties that the judgment  
7 doesn't affect. You wouldn't necessarily have all  
8 parties to the litigation. I understand the comment,  
9 but I am just telling you what the intent was.

10 MR. TERMAAT: Would it be more appropriate to  
11 put proposed or purported or alleged or something in  
12 front of those terms, because at that point they are  
13 not creditors or debtors yet?

14 MR. WEINER: James Weiner, 6th circuit. May  
15 I offer a friendly amendment and say, instead of the  
16 creditors and debtors, say the parties bound by the  
17 judgment or their counsel? That would eliminate the  
18 need for a signature of parties not bound.

19 CLERK QUICK: I would accept that.

20 MR. KOROI: Mark Koroi, 3rd circuit. This  
21 situation comes up a lot in the creditor/debtor  
22 context, mostly in collection cases, and there has to  
23 be some due process what I believe include this case  
24 that protects the defendant. Many of these people in  
25 these type of cases are unrepresented parties being

1 defendants. You have a collection train on one side,  
2 you have unrepresented party on the other side,  
3 especially in district court, and there has to be some  
4 type of method where people go in, file objections and  
5 do something, at least I think does provide it. What  
6 I have seen in the history of court case also is that  
7 judges have no guidance. Every judge's office has its  
8 own policy how they address these type of cases.

9 The tip-off case is a lawsuit is filed for  
10 \$10,000, for example, and the parties will agree if  
11 you pay 5,000 payments, we will enter a dismissal with  
12 prejudice. Before that it will be dismissal without  
13 prejudice. And some judges say, once it's thrown out  
14 without prejudice, I have no jurisdiction afterwards;  
15 it's done. And they will not -- or this will provide  
16 for some kind of meat where the judge actually has  
17 power to take this type of case and enter in those  
18 terms.

19 It's going to be more and more common with  
20 the advent of the financial collapse of 2008, and we  
21 have situations where the courts are being flooded  
22 with these collection cases. Credit card cases, all  
23 types of collection cases are flooding the courts, and  
24 I believe that this type of particular rule is  
25 necessary to guide the judges on what to do. But

1 typically what I have seen is that there will be a  
2 settlement for X amount of dollars. If there is  
3 default, the affidavit is entered. Meanwhile, it gets  
4 off the judge's docket via, this is without prejudice,  
5 and if everything is paid for, a dismissal with  
6 prejudice will enter. If not, a judgment will enter  
7 for the full amount or greater amount, so it uses the  
8 incentive for the debtor to pay the money on time, and  
9 so this particular rule, I believe, in whatever form  
10 it's finally entered, is needed in the court system to  
11 guide the judges and the parties or attorneys on how  
12 to do this.

13 CLERK QUICK: Thank you. Your comments, and  
14 I didn't want to read the whole rule, because we have  
15 addressed it before, but I point out in subsection (C)  
16 the requirement of an affidavit by the submitting  
17 party or their counsel averring as to the basis of the  
18 judgment. So, again, it's something signed under  
19 penalty of perjury, yet an additional protection that  
20 the judgment being sent into the court is being  
21 properly submitted.

22 MR. PAVLIK: I just was going to raise a  
23 point of order, and if no one else is rising to speak,  
24 it may be moot, but I was wondering what the question  
25 on the floor is? Are we going to vote on the



1 amendment, or is discussion going to be as to the  
2 merits of the proposal itself?

3 UNIDENTIFIED SPEAKER: I call the question.

4 PARLIAMENTARIAN CHMURA: Before we call a  
5 question, we have what's called a friendly amendment.  
6 Robert's Rules hates friendly amendments, they do, and  
7 the reason why is because when you adopt a friendly  
8 amendment, you don't get a chance to vote on the  
9 amended motion, and Robert's Rules thinks that  
10 everybody should have a chance to vote on what the  
11 amendment is separately from the motion itself, and if  
12 the maker of the motion accepts the friendly  
13 amendment, you don't get a chance to vote on that, you  
14 are now voting on something else.

15 However, it's always been the practice of  
16 this body, at least since I have been around, which is  
17 five years, and I think even before that, to do  
18 friendly amendments. The tradition is that we just do  
19 it that way, we accept it that way.

20 So I guess really the question before the  
21 Assembly is whether it wants to, I don't want to say  
22 suspend Robert's Rules of Order, but at least put that  
23 one provision aside and go by way of friendly  
24 amendment instead of voting on it separately. You  
25 could do it by unanimous consent, which means saying

1           that no one had an objection, we will just accept the  
2           friendly amendment and vote. The motion would be as  
3           the provision is amended, instead of voting  
4           separately.

5                     MR. LARKY: I move to accept the friendly  
6           amendment.

7                     UNIDENTIFIED SPEAKER: Second.

8                     CHAIRPERSON ALLEN: All in favor?

9                     It passes.

10                    PARLIAMENTARIAN CHMURA: So to answer your  
11           question.

12                    UNIDENTIFIED SPEAKER: One in every crowd.

13                    PARLIAMENTARIAN CHMURA: What is before the  
14           Assembly now is the proposal, as amended. Whether or  
15           not that should actually be passed or not is currently  
16           pending.

17                    CLERK QUICK: There was a motion to call the  
18           question.

19                    PARLIAMENTARIAN CHMURA: There was a motion  
20           call the question.

21                    CHAIRPERSON ALLEN: All in favor. Now you  
22           can use the clickers. We are voting now.

23                    MR. HILLARD: Call the question.

24                    UNIDENTIFIED SPEAKER: Point of order. Are  
25           we voting on whether to vote on the question?

1                   PARLIAMENTARIAN CHMURA: No, you are voting  
2                   on that.

3                   CHAIRPERSON ALLEN: We are voting on that,  
4                   because we --

5                   UNIDENTIFIED SPEAKER: We need to vote on  
6                   whether to call the question.

7                   CHAIRPERSON ALLEN: We did.

8                   UNIDENTIFIED SPEAKER: We voted on whether to  
9                   accept the amendment.

10                  CHAIRPERSON ALLEN: No, we did not vote on  
11                  accepting the amendment, because we had discussion  
12                  that the amendment was a friendly amendment. We voted  
13                  on that to move it along so that we would move now to  
14                  this. There was a motion to call the question. We  
15                  called the question.

16                  PARLIAMENTARIAN CHMURA: That requires a  
17                  two-thirds majority.

18                  CHAIRPERSON ALLEN: Now we are voting on  
19                  this.

20                  MR. HILLARD: There was a motion on the floor  
21                  to accept the amendment. That's what we voted on.

22                  PARLIAMENTARIAN CHMURA: What we are voting  
23                  on now is whether or not to end debate, call the  
24                  question. It was seconded. That's a nondebateable  
25                  motion. It requires two-thirds majority.

1 UNIDENTIFIED SPEAKER: Madam Chair, please  
2 state the question before us.

3 PARLIAMENTARIAN CHMURA: This is on whether  
4 to end debate. If this passes, then we vote on the  
5 proposal.

6 UNIDENTIFIED SPEAKER: Tell us when it's  
7 time.

8 CLERK QUICK: Vote now on calling the  
9 question, please.

10 UNIDENTIFIED SPEAKER: Technology is  
11 wonderful.

12 CLERK QUICK: We will do it by webinar next  
13 time.

14 UNIDENTIFIED SPEAKER: Some of us already  
15 voted.

16 CLERK QUICK: We cleared it. You cannot vote  
17 more than once, unless you collected clickers from  
18 other people.

19 Any final votes?

20 The vote is 93 to 9 with two abstentions.

21 UNIDENTIFIED SPEAKER: Now we vote on that?

22 CLERK QUICK: The voting is now open on the  
23 main motion. Any final votes?

24 The vote is 75 to 28.

25 UNIDENTIFIED SPEAKER: Which way?

1 CLERK QUICK: Up.

2 CHAIRPERSON ALLEN: The proposal 2.602(B)(5),  
3 entry of consent judgment with the friendly amendments  
4 as stated on the screen, passes 75 to 28.

5 CLERK QUICK: Thank you. The next item is a  
6 proposed amendment to MCR 2.305(A)(1) to add the  
7 language you see there. It is intended to clarify  
8 that a subpoena cannot be issued in a case until the  
9 guidelines of 2.306(A)(1) have been he met, which by  
10 way of summarizing basically means somebody has had  
11 enough time to show up in a case and be active in it.

12 Some counsel have taken the position that as  
13 soon as you file a lawsuit you have the authority to  
14 start firing off third-party subpoenas and deposition  
15 notices, even though the defendant maybe even hasn't  
16 been served with the underlying complaint and, hence,  
17 obviously, is not in a position to address the  
18 subpoena.

19 The committee believes that that is not the  
20 intent of the Court Rules, in that there is language  
21 already, in terms of the interplay between 2.305 and  
22 2.306, that speaks to this issue, but it is not  
23 perfectly clear. So in the desire to try to achieve  
24 perfect clearness, on what we have undoubtedly failed,  
25 as I am about to be told, the intent was to the make

1           it very clear that the 2.306(A) (1) timing requirements  
2           apply on these subpoenas.

3                   UNIDENTIFIED SPEAKER:   Second.

4                   CLERK QUICK:   Thank you.   Motion and second.  
5           Yes, sir.

6                   MR. FALKENSTEIN:   Peter Falkenstein, 22nd  
7           circuit.   The first sentence says, Subpoenas should  
8           not be issued except in compliance.   Why does it not  
9           say "shall not" instead of "should not".

10                   CLERK QUICK:   I don't know.

11                   MR. FALKENSTEIN:   I would offer a friendly  
12           amendment that the rule be, Shall not be issued except  
13           in compliance.

14                   CLERK QUICK:   I would accept that amendment.

15                   UNIDENTIFIED SPEAKER:   Second on the  
16           amendment.

17                   CLERK QUICK:   Now we need a motion on the  
18           amendment.

19                   PARLIAMENTARIAN CHMURA:   Just ask, is there  
20           any objection to accepting that as a friendly  
21           amendment.

22                   MR. PAVLIK:   Adam Pavlik, 26th circuit.   I,  
23           once again, support this proposal in substance.  
24           However, I would note, and I don't have my copy of the  
25           Court Rules right here in front of me, but I believe

1           if you consult, I think it's MCR 2.310(C)(1), this is  
2           inconsistent with that, because MCR 2.310(C)(1)  
3           specifically allows for the service of this kind of a  
4           subpoena with the filing of the complaint. I think  
5           that this is a fine thing, but I would not amend  
6           MCR 2.305 to provide this language. I would instead  
7           direct this amendment to MCR 2.310, which is the court  
8           rule that governs demands for the correction of  
9           documents which are initiated by a subpoena of this  
10          sort.

11                       CLERK QUICK: I do have the benefit of the  
12          Rules here. 2.310 deals with requests to a party.

13                       MR. PAVLIK: Uh-huh, and this --

14                       CLERK QUICK: Not dealing with subpoenas,  
15          which would be to nonparties.

16                       MR. PAVLIK: I see. Notwithstanding that, I  
17          guess -- okay, I understand what you are saying.  
18          Okay. Thank you.

19                       CLERK QUICK: Thank you.

20                       MR. KOROI: Mark Koroi, 3rd circuit. I just  
21          want to point out I do oppose this for a number of  
22          reasons, the most salient of which I have had  
23          situations in the practice of law where, for instance,  
24          I represent a third party who may have, for instance,  
25          a machine that's allegedly defective by the

1 manufacturer. The plaintiff's attorney will then file  
2 a lawsuit, and they then will have an expert examine  
3 the particular machine that may be in my client's  
4 custody and issue a report whether or not they believe  
5 there is anything defective about the design.

6 If that expert report comes back negative,  
7 the case is dismissed. If it comes back positive, the  
8 case goes forward. There is really no reason at that  
9 point for opposing side to have notice of this  
10 particular type of situation, because all it is is  
11 giving the plaintiff an opportunity to see if he has a  
12 case at all. They can't discover if they have a case  
13 until an opportunity to view something that may be in  
14 the control of a third party. It's analysis to  
15 hospital records in medical malpractice suits, but in  
16 that case at least you get that from a third party.  
17 In a products liability case you cannot.

18 So I do believe that the way the language is  
19 here, I do not believe it covers -- it covers  
20 situations in which a defendant may benefit from the  
21 fact who's on the case to expend money, and the  
22 plaintiffs benefit because that's a situation where  
23 they would be open to sanctions for filing a frivolous  
24 lawsuit because they get to have their opportunity to  
25 look at expert report, they could look at the machine,



1 get an expert report done, and decide whether or not  
2 to go forward with the lawsuit and serve papers upon  
3 the defendants.

4 So in this particular case I don't like the  
5 language here. It's too overly broad. I am sure  
6 there are situations where there are abuses that do  
7 occur, and if it was there merely to address those  
8 abuses, it would be a far better rule, but in this  
9 current language I cannot support it.

10 CLERK QUICK: Thank you. Let me just  
11 indicate that 2.306(A)(1) does contain language which  
12 permits parties to seek leave of the court if they  
13 want to get it sooner than the rule would otherwise  
14 allow. So there is the ability in the right  
15 circumstance to go to court and get that authority.  
16 So that's a partial response. Yes, sir.

17 MR. ROTENBERG: Steven Rotenberg, 6th  
18 circuit. While I somewhat agree that this rule  
19 addresses something -- let me clarify, because I have  
20 had in my personal experience fights over whether or  
21 not discovery has begun or not. I don't have my Court  
22 Rules with me, but the phrase "rules of discovery  
23 shall be liberally construed" comes to mind here, and  
24 I just don't see why we should be narrowing this in  
25 this matter.

1                   CLERK QUICK: Well, I don't want to repeat  
2                   what I said earlier. I mean, obviously, if one party  
3                   is not represented and there is a bunch of third-party  
4                   discovery taking place, that's a potential for abuse,  
5                   and in the federal system, of course, there is no  
6                   discovery kicked off until after the initial Rule 16  
7                   conference and the parties have an opportunity,  
8                   everybody is sort of at the table before someone says  
9                   go. So that's the intent.

10                   MR. ROTENBERG: Okay.

11                   MR. LARKY: Call the question.

12                   UNIDENTIFIED SPEAKER: Is there support for  
13                   that?

14                   MR. ROMBACH: You can't call the question  
15                   unless they are acknowledged by the microphone. You  
16                   have to be the speaker.

17                   UNIDENTIFIED SPEAKER: You want to  
18                   acknowledge him?

19                   CLERK QUICK: No.

20                   Yes, sir.

21                   MR. MORGAN: Kenneth Morgan, 6th circuit.  
22                   The rule as drafted is slightly inconsistent with  
23                   2.303, which pertains to the preservation of testimony  
24                   by way of deposition prior to an action of appeal.  
25                   Under that rule, the Court can issue an order

1           authorizing the taking of depositions, but the text of  
2           that rule does not authorize the court to then in its  
3           order compel the person to attend, that instead speaks  
4           to the use of other devices under the rules, which I  
5           presume, as I read it, to mean the subpoena.

6                     As you propose it, one could go to court,  
7           obtain the authority to go get the deposition, but not  
8           have the means to compel the attendance of the person  
9           whose testimony is to be preserved. There should be,  
10          in my view, some reference to 2.303 so that it's clear  
11          that in that circumstance a subpoena could be issued  
12          as authorized by the court.

13                    CLERK QUICK: The committee did recognize  
14          that, and it felt it was handled by virtue of the  
15          language that exists in 2.306(A)(1), which says, Leave  
16          of court, granted with or without notice, may be  
17          obtained to get the deposition beforehand. So it's --

18                    MR. MORGAN: You think it's tied in there?

19                    CLERK QUICK: -- built in there because of  
20          the leave of the court's discretion.

21                    CHAIRPERSON ALLEN: Any further discussion?  
22          None being heard.

23                    CLERK QUICK: Voting is open. Any further  
24          votes?

25                    Vote is 81 yes, 16 no, 3 abstain.

1                   CHAIRPERSON ALLEN: Proposal 2.305(A) with  
2                   the amendment of "shall" passes at 81 yes, 16 no.

3                   CLERK QUICK: Thank you again.

4                   Next item is a proposed change to  
5                   MCR 2.003(D) (3) (a), just perceived to be a little bit  
6                   of a hole in the rules where you have a chief judge  
7                   who has also been disqualified and what happens. The  
8                   existing practice, we confirmed with the SCAO, is  
9                   exactly what this rule says, which is if the, normally  
10                  that if the trial court is disqualified it would go to  
11                  the chief judge, but if the chief judge is  
12                  disqualified or it's a one-judge court, then the SCAO  
13                  would pick a judge from a different circuit to hear  
14                  the matter. So this just memorializes existing  
15                  practice. It really just identifies a gap in the  
16                  Court Rule in terms of possible scenarios and trying  
17                  to address it.

18                  So I would move that the Assembly recommend  
19                  the adoption of this proposed amendment,  
20                  2.003(D) (3) (a).

21                  UNIDENTIFIED SPEAKER: Second.

22                  CHAIRPERSON ALLEN: Discussion? No  
23                  discussion?

24                  CLERK QUICK: Voting is open.

25                  Any final votes.

1 Vote tally is 98 to 5, 98 in favor.

2 CHAIRPERSON ALLEN: 2.003(D) (3) passes 98 to  
3 5.

4 CLERK QUICK: Thank you again.

5 Last but not least is the proposed  
6 modification to MCR 2.403(G) (1). The recommendation  
7 calls for the advance notice of the names of the case  
8 evaluators before you actually show up at case  
9 evaluation. It was proposed in recognition of issues  
10 where case evaluator names are not disclosed, then it  
11 turns out that one of the case evaluators has a  
12 conflict, which then causes infirmities in the panel  
13 or sort of run around at the last minute trying to  
14 find a replacement panelist who then hasn't read the  
15 materials, et cetera, et cetera.

16 The proposal is to add that language to  
17 (G) (1), and I would move that the Assembly recommend  
18 the adoption of this amendment to 2.403 (G) (1).

19 UNIDENTIFIED SPEAKER: Support.

20 CHAIRPERSON ALLEN: Discussion? There not  
21 being discussion, it's time to vote.

22 MR. FLESSLAND: No, no, you are not going to  
23 get off that easy.

24 Dennis Flessland, 6th circuit. The concern  
25 that I have is, in all the years I have been

1 practicing, both as a case evaluator and as an  
2 advocate in these cases, I have never run across a  
3 situation where we had to disqualify a mediator, and I  
4 have never heard of a situation where that has  
5 happened, so my guess is that it's a pretty rare,  
6 pretty rare event, and that to require, especially in  
7 the big circuits, to require the number of cases they  
8 have to evaluate to send out notices every time one  
9 evaluator can't be there or they change evaluators  
10 because of a schedule problem I think puts way too  
11 much of a burden on the ADR clerks in the big circuits  
12 in particular, and for very little benefit for a  
13 situation that doesn't happen very often. If it does  
14 happen, I suppose that if there is a serious conflict  
15 the attorney who feels he is disadvantaged or he or  
16 she is disadvantaged can just say, I don't want to go  
17 ahead, and refer it to the assigned judge to rule on  
18 it or deal with the issue some way like that, but it  
19 seems to me changing these names and notifying all the  
20 people who are going to evaluate on a particular day  
21 that a panel member has changed is a burden to the  
22 administration.

23 CLERK QUICK: Let me just say in partial  
24 response, obviously in the bigger circuits, Wayne and  
25 Oakland for example, there is e-filing, and it's

1           pretty easy to push a notice out. That was  
2           considered.

3                       JUDGE NELLIS: Jeff Nellis, 51st circuit. As  
4           a person who practiced and was a case evaluator, I can  
5           tell you, in small counties this comes up fairly  
6           often, so I don't know if the rule was crafted with  
7           the smaller counties in mind, but I would rise in  
8           support of it, because sometimes you are dealing with  
9           a relatively small pool of case evaluators who have an  
10          expertise in the subject matter, and conflicts do come  
11          up just by virtue of the fact there is a limited  
12          number of attorneys who are both practicing and  
13          sometimes serving.

14                      CLERK QUICK: Yes, sir.

15                      MR. KOROI: Mark Koroi, 3rd circuit. I was  
16          going to say, I have been a case evaluator for a  
17          number of years in Macomb County and Wayne County, and  
18          the situation in Macomb County, they do give notices  
19          out to all the litigant attorneys of who the people  
20          that are going to be the mediators in the circuit are  
21          beforehand, and it's been twice in my particular  
22          experience that I had to recuse myself as a  
23          mediator/case evaluator, and one time the advanced  
24          notice helped, got me out early in the case. The  
25          other case I had, it was brought, at least learned

1           that one of the witnesses in the case, it was on the  
2           day of the hearing, and I recused myself, and  
3           everything went okay, but this situation does happen  
4           even in the larger circuits, which I practice.

5                     I think it's a good rule, so we ought to  
6           cover this type of issue on the date of hearing and  
7           all of a sudden you get a new mediator, because as a  
8           case evaluator/mediator, the trouble is you are  
9           getting high volume of cases every single day, and if  
10          we have to switch places with another panel, a  
11          different room, that particular case evaluator then  
12          has to learn, get up to speed on that new case.  
13          That's hard to do. This advanced notice I think  
14          protects everyone and is a smooth change to a neutral,  
15          somebody that's neutral, as opposed to somebody  
16          subject to disqualification, and I think it's a good  
17          rule to have.

18                    CLERK QUICK: Thank you.

19                    CHAIRPERSON ALLEN: No further discussion, we  
20          call the vote.

21                    CLERK QUICK: Voting is open. Any final  
22          votes?

23                    The vote is 101 yes, 6 no.

24                    CHAIRPERSON ALLEN: MCR 2.403(G)(1) passes  
25          101 yes to 6 no.



1                   CLERK QUICK: Thank you very much, ladies and  
2 gentlemen.

3                   (Applause.)

4                   CHAIRPERSON ALLEN: Thank you, Dan.

5                   We are now moving towards -- we are early  
6 also -- the 2014 award recipients. May I ask  
7 Judge Nellis to come back to the podium as the  
8 Assembly's Nominating and Awards Committee chair to  
9 present the proposed individuals for the  
10 Michael Franck and the Unsung Hero Award.

11                  JUDGE NELLIS: Good afternoon. I will start  
12 with the Unsung Hero Award, and this award is given to  
13 an attorney who exhibits the highest standards of  
14 practice and commitment for the benefit of others.  
15 This year's nominee is Susan F. Reed of Detroit. She  
16 was nominated by Elizabeth Jolliffe. Her complete  
17 information is in the packet, but just a couple of  
18 comments.

19                  Susan has focused her lengthy practice in the  
20 area of criminal law with distinction. She frequently  
21 receives the most troubling criminal assignments  
22 because she has done such an exceptional job with  
23 challenging situations. It's also noteworthy that she  
24 has served as an adjunct professor at Detroit College  
25 of Law, is president of the Wayne County Defense Bar,

1           and is a former teacher in the Detroit Public Schools.  
2           So we thought that she, in particular, was an  
3           excellent pick for this year's Unsung Hero Award. So  
4           at this point in time I would move for the nomination  
5           of Susan Reed as this year's recipient.

6                         UNIDENTIFIED SPEAKER: Support.

7                         CHAIRPERSON ALLEN: All in favor?

8           Discussion.

9                         Support. Discussion? No discussion. All in  
10          favor?

11                        JUDGE NELLIS: I believe the motion carries.

12                        Secondly, the Michael Franck Award. This  
13          award is given to an attorney who has made an  
14          outstanding contribution to the improvement of the  
15          profession. This year's proposed nominee is  
16          Julie Fershtman. She was nominated by Frank Hamilton  
17          Reynolds.

18                        As most of you know, she was the chair of  
19          this body. She has served as the president of the  
20          Michigan State Bar. Quite frankly, her  
21          accomplishments are really too numerous to mention  
22          here today. Again, the information is in our packet,  
23          but we really felt on our committee that her career  
24          and what she has accomplished really exemplifies the  
25          principles that Michael Franck stood for, and so at

1           this time it gives me great pleasure to move for the  
2           nomination of Julie Fershtman as the recipient of the  
3           Michael Franck Award.

4                   UNIDENTIFIED SPEAKER: Support.

5                   CHAIRPERSON ALLEN: Discussion? No  
6           discussion, vote.

7                   UNIDENTIFIED SPEAKER: We are not going to  
8           use our clickers?

9                   CLERK QUICK: No.

10                  CHAIRPERSON ALLEN: All in favor say aye.  
11           Objections?

12                  Thank you, Judge, for your presentation with  
13           regard to the Michael Frank and the Unsung Hero Award.

14                  Next I would like to welcome to the podium  
15           our State Bar President, Brian Einhorn.

16                   (Applause.)

17                  PRESIDENT EINHORN: This is what you want,  
18           right, speeches? I was sitting back there and  
19           thinking, well, one thing everybody is most consistent  
20           on is they want to do away with speeches, so I took it  
21           personally. But I am still going to give you one.  
22           The reason I became Bar president is that I like to  
23           give speeches, so that's it.

24                  But some of you may or may not know, I have  
25           been practicing law almost as long as Larky. Actually

1 longer than lark, and I have a lower P. number.

2 I have been successful in any definition of  
3 what a successful lawyer would be as far as people I  
4 represent and people who are still willing to pay me  
5 to represent them and as far as the practice goes and  
6 starting with a small firm and becoming a bigger firm.  
7 And so I did this, the Bar presidency and getting  
8 involved with the Board of Commissioners somewhat on a  
9 lark, but because I wanted to sort of give back, and  
10 because I thought I would have the time to do it.  
11 Maybe not so much.

12 But I like lawyers. I mean, my practice  
13 pretty much involves representing lawyers and  
14 sometimes an occasional judge, and I have come to  
15 appreciate what we do, and I have come to appreciate  
16 that when I go and meet with a lawyer client, the  
17 first thing they say somewhere along the line is, hey,  
18 I knew I never should have represented that idiot, and  
19 secondly is that people aren't going to like me  
20 because I am a lawyer.

21 The first part is probably true. The second  
22 part is not. I mean, I have tried, I don't know, 20,  
23 25 legal malpractice cases in my career, and the jury,  
24 so long as your client hasn't done something that, you  
25 know, there is lawyer jokes about, are appreciated.

1           The juries like what the lawyer did. They understand  
2           how hard the individual lawyer worked to provide the  
3           representation to the client.

4                     And what I like most about lawyers, though,  
5           is that we make sure that the system works. We make  
6           sure that the justice system functions. We make sure  
7           that there is access to the courts, and we make sure  
8           that the access to the courts are at least maintained  
9           at a minimum and hopefully expanded. And we do it  
10          better when we do it collectively than we do as an  
11          individual.

12                    If Brian Einhorn says to a group of four or  
13          five people that the fact that people don't get access  
14          to the court and it's too bad or that this judge was  
15          not elected in a fair way or that this judge maybe had  
16          \$2 million contributed to his or her campaign and we  
17          don't know who contributed and doesn't that sound  
18          badly, I mean, people say yeah, yeah, yeah, but if  
19          Brian Einhorn says it as the president of the Bar,  
20          it's a big deal. Not because I am any different than  
21          when I said it as an individual or if I said it as a  
22          group. The message is there. And we make the message  
23          best when we are making it as a group.

24                    So if you want to try to determine whether we  
25          are better off as a mandatory bar or a voluntary bar,

1 I say we are probably better off as a mandatory bar  
2 because we have more people. A lot of the things we  
3 do at the Bar, some of the functions we do at the Bar,  
4 we probably could do and would do even if we were a  
5 voluntary bar, and, believe me, there are a couple  
6 major advantages of being a voluntary bar. We  
7 wouldn't have to be worried about what we say. I  
8 mean, if you don't like what I am saying as your  
9 leader as a voluntary bar, then you walk. But we as  
10 an organization can make the point, and we don't have  
11 to be worried about who we might piss off. That's a  
12 Latin term.

13 So that's one of the, what I have found, to  
14 be the major advantage of being a mandatory bar is  
15 that we have the resources to do many of the things  
16 that need to be done, not for ourselves, not for our  
17 practice, somewhat for our practice, but for the  
18 justice system that most of us got into the practice  
19 of law to make sure is maintained.

20 So, I mean, there are programs that the Bar  
21 has engaged in, I mean, one being the Crossroads Task  
22 Force, which is three or four years now ago, but they  
23 recommended a bunch of programs -- business court,  
24 realignment of judges, elimination of certain courts,  
25 realization of where the customers are. I mean,

1           that's what the litigants are. That's what the people  
2           who go through the court systems are, they are  
3           customers, and understanding the way that we can  
4           provide those customers with better service. And the  
5           Crossroads did it by using the resources of the  
6           State Bar and the research capabilities of the Bar and  
7           providing the time for the Bar and providing the  
8           research for the people who served on the Crossroads,  
9           and there is a lot of positive things that came as a  
10          result of it because we had the resources to do it.

11                    If we were a voluntary bar, we probably  
12          couldn't. I belong to the Oakland Bar. There is  
13          3,200 members. They make their point, but still,  
14          3,200 people don't have the same impact as allegedly  
15          43,000 of us do.

16                    So when Bruce Courtade and Janet Welch wrote  
17          a letter to the Secretary of State and said something  
18          really crazy -- I mean, the fact that the  
19          Representative Assembly the year before that voted  
20          unanimously that we would have disclosure in judicial  
21          elections, the fact that the Board of Commissioners  
22          subsequently had a subcommittee that included some  
23          pretty conservative people associated with  
24          conservative groups that agreed that you need to have  
25          disclosure in judicial elections, and the fact that we

1           wrote to the Secretary of State and just pointed out  
2           the obvious, hey, when you are having elections, we  
3           can't have what issue ads are involved with judges.  
4           Tell Judge Einhorn that he ought to be fair. Okay,  
5           good. But why do we also let this issue ad -- you  
6           know, when Brian Einhorn was a lawyer, he represented  
7           a rapist and said it was okay.

8                         That's not an ad to vote against Brian  
9           Einhorn or in favor of Brian Einhorn. We know what  
10          they want. It's an issue ad, because it's telling  
11          Brian Einhorn, when you become a judge or now that you  
12          are a judge, be fair. That's issue ad, and,  
13          therefore, the people who contribute to the issue ad  
14          don't have to be disclosed.

15                        Is anybody bothered by it? Well, of course  
16          we are. Everybody here who voted on it was bothered  
17          by it. As I have gone around the state and talked to  
18          various groups, I haven't gotten one person yet -- of  
19          course, I told them if they raise their hand I would  
20          shoot them -- but I haven't gotten one person yet who  
21          has suggested that it was a bad position.

22                        And when people say that the Bar shouldn't be  
23          involved in ideological activities, well, we shouldn't  
24          be if we are involved in ideological activities that  
25          are not Keller permissible, but if they are Keller



1           permissible and having a fair justice system so that  
2           we know that when some circuit court judge or  
3           supreme court judge has had a million dollars  
4           contributed to him or her by Brian Einhorn or by some  
5           group that Brian Einhorn is behind and so that when  
6           you are on the other side of a case with me, you might  
7           want to raise to that justice or that judge that maybe  
8           he or she should disqualify themselves. And if they  
9           don't want to, you can then raise it to the entire  
10          court. That's the justice system. That way we know  
11          that when a person is going to hear the case, we have  
12          a reasonable crack at having it fair, and that's all  
13          we said. That's all we said.

14                       And as I have listened to the discussion here  
15          this morning, some people, they said, you know, we may  
16          need to be careful about the positions that we take on  
17          certain things. So long as it's Keller permissible,  
18          if you want to go through a process of having the  
19          super majority to determine whether something is or is  
20          not Keller permissible, I guess that's okay if you are  
21          worried about whether or not you are doing something  
22          correctly or not. But this is as Keller permissible  
23          as anything I have ever seen in the eight or nine  
24          years that I have been on the Board of Commissioners.  
25          It is -- and Janet Welsh doesn't like to hear me say

1           this -- it is the best thing that's happened, that we  
2           have done as a Bar since I have been associated with  
3           the Board of Commissioners. We have done other good  
4           things. The task force was a good thing. Indigent  
5           defense was a good thing. But this got attention. It  
6           got attention to the people who should have had  
7           attention drawn to it. And what was the reaction?  
8           They didn't like it that we said it. That's it. They  
9           didn't like that we had a voice and that people heard  
10          it.

11                        Isn't that what we want to be? Isn't that  
12          what we want? Don't we want to be a relevant group of  
13          people? And we were. And to have somebody suggest  
14          that we should be a voluntary bar because we said  
15          something they don't like to hear is scary to me. To  
16          be afraid of making a statement because it might piss  
17          somebody off -- again that Latin word -- is not  
18          something that I would think any of us would want to  
19          be a part of. I know I don't.

20                        So we have nothing to apologize for that  
21          letter. We should loudly scream to anybody who thinks  
22          it's wrong. Explain that we can engage in -- what's  
23          an ideological issue anyway? Is an ideological issue  
24          something that, because I don't -- I am a member of  
25          the Republican party or the Democratic party and my

1 caucus thinks that, for example, I don't think people  
2 who are on the boards of corporations should sit on  
3 juries when a corporation is a defendant, because they  
4 are going to be too sympathetic to a defendant or a  
5 plaintiff. So we are going to, as a caucus, we are  
6 going to pass, propose a statute and pass a statute,  
7 or try to, that says, Members of boards of  
8 corporations cannot sit on juries when corporation is  
9 a party to the case. So the Bar goes, Wait a minute.  
10 We are now denying access to a jury of peers because  
11 some group thinks that these people will not be fair  
12 to their client? I mean, wouldn't we oppose it? So  
13 we oppose it.

14 Let's give the democratic party saying that  
15 they did this. They are in control and they say it's  
16 an ideological issue. This is what we believe in, and  
17 the fact that you don't agree with it is ideological  
18 and we are opposed to it, so, therefore, the bar  
19 should not engage in it.

20 That's not what we are supposed to do. We  
21 are supposed to take a look at what is on the table.  
22 Is it a statute? Does it meet Keller? And, believe  
23 me, I have been more frustrated by our Board of  
24 Commissioners' decisions about what is and what's not  
25 Keller permissible. If I was making the decisions,

1           there is a whole bunch of things that I think is  
2           Keller permissible that others might not. So we have  
3           been very restrictive about what we think is and is  
4           not Keller permissible. That's all we have to  
5           continue to do.

6                        So when you are sitting around trying to  
7           decide what role the Representative Assembly has, and  
8           I will tell you, and I have expressed it to people  
9           privately, I get frustrated by the Representative  
10          Assembly sometimes, and I get frustrated, not because  
11          of who you are or what you go about, but how long it  
12          takes to get something done.

13                       Yesterday, for example, at the Board of  
14          Commissioners meeting we looked at the rules involving  
15          the State Bar, and we made some proposed changes or  
16          suggested changes which we will submit to the task  
17          force. And a couple people said, well, you know, it  
18          ought to have been in the Representative Assembly,  
19          because they make a determination on policy. Well,  
20          so, therefore, we wait 45 days or until September for  
21          the Representative Assembly to meet to evaluate  
22          whether or not we should submit this to the task force  
23          which will have already been shut down for four  
24          months?

25                       I mean, you can't be a policy-making body --

1 I am okay with you being a policy-making body, but you  
2 need to be responsive so that things can get done in a  
3 responsive way. If the Bar is going to consider, for  
4 example, the Court of Claims, which we were never able  
5 to consider, but if we were going to consider the  
6 Court of Claims and we had some time to do it and had  
7 decided that it's a policy-making issue, the  
8 Representative Assembly would not be hearing it until  
9 today. That is not how an effective organization  
10 should function.

11 So when you are evaluating what you are going  
12 to do, I wouldn't limit what you do. I mean, somebody  
13 suggested or somebody asked, Kathleen asked, well,  
14 should you be only looking at Court Rules or should  
15 you only be looking at statutes? No, you should not  
16 be limited to anything you are going to do, but you  
17 have to do it in a way that's effective. And there is  
18 no answer as to what might be effective. Taking a  
19 year to evaluate something in the right case might be  
20 the effective way to do it. Taking ten days to do it  
21 in another case might be the effective way to do it.  
22 So you need to adjust your rules so that you can  
23 function that quickly, I think, or take as much time  
24 as you want.

25 So in any event, it's been an interesting six

1 or seven months, and I have gotten to meet some very  
2 interesting people. I have had some interesting  
3 conversations, but I will tell you that there is no  
4 one so far, other than maybe Alan Falk, who thinks  
5 that a voluntary bar is a good idea, and there is no  
6 one who thinks that the Bar's position on the letter  
7 to the Secretary of State was a bad decision.

8 Thank you for making that policy decision and  
9 directing us, and good luck in making sure you  
10 function, because we don't know what the task force is  
11 going to do. No one knows what the task force is  
12 going to do, and, frankly, I mean, this is  
13 Brian Einhorn's opinion, period, because everything is  
14 Brian Einhorn's opinion, period, but the task force  
15 is, I think, very pro bar in its organization. I  
16 mean, you have got the incoming president of the Bar,  
17 you have got the executive director of the Bar. You  
18 have got three other sitting members of the Board of  
19 Commissioners on it. You have got two former  
20 presidents. The only three people who aren't, to my  
21 knowledge, associated with the Bar, or have been, is  
22 Professor Reed and Peter Ellsworth and a senator who  
23 is a lawyer, and maybe in the years past they have.

24 So I don't think the task force is going to  
25 do anything significant. I do hope that the task

1 force doesn't try to limit our public policy, because  
2 there are occasions where we need to be the voice of  
3 that public policy. My concern is more the court,  
4 because they are going to be looking for money in the  
5 election in 2014, and if they are going to say the Bar  
6 has done a wonderful job, the people who were paying  
7 money are going to say, Well, you didn't do anything  
8 for us. So I am a little concerned about what they  
9 might do, but I am not concerned about the task force.

10 Anyway, thank you for taking time to listen  
11 to my speech, and assuming we are still around in  
12 September, I promise the speech will be short.

13 (Applause.)

14 CHAIRPERSON ALLEN: Thank you,  
15 President Einhorn.

16 Our next speaker is Janet Welch, executive  
17 director of the State Bar.

18 (Applause.)

19 EXECUTIVE DIRECTOR WELCH: Thank you,  
20 Kathleen. What I am about to say I think will come as  
21 a surprise to those of you who have heard me speak to  
22 you, which is that it's my habit before I speak to you  
23 to script out what I am going to say and to lose sleep  
24 over it for about two weeks in advance, and the reason  
25 I do that -- there are three reasons. One is that I

1 am not a very good extemporaneous speaker. The other  
2 is that there are about 150 of you and, you know, out  
3 of respect for your time, I want to make sure that  
4 what I have to say is tight and well scripted. And  
5 the third reason is that everything that's said into  
6 this mike is transcribed and lives forever in history,  
7 and that's very intimidating.

8 But I did not do that this time. I lost  
9 sleep over this meeting, but I didn't lose sleep  
10 crafting remarks in advance of this meeting because  
11 the topic that you were dealing with was so big and so  
12 important and I knew I was going to speak after and  
13 that I really wanted to listen extremely carefully to  
14 what you had to say and take that in, and I didn't  
15 want to be focused on remarks that I had thought about  
16 before listening to you. So I am being slightly  
17 extemporaneous here and it makes me nervous.

18 What you engaged in today is what the people  
19 of the state of Michigan and lawyers need. The  
20 attention that you have paid to the issues and what  
21 you brought here today on this beautiful day is  
22 something that I appreciate tremendously as executive  
23 director. Being executive director is a humbling  
24 experience. I am your servant. You can call me any  
25 time. You can catch me after the meeting. You can



1 email me. I am yours. But the way I can best show my  
2 gratitude to you today, I think, is to say thank you  
3 and to give you back eight minutes of this beautiful  
4 April day. I agree that for the most part speeches  
5 are not what you need to be about, and you were about  
6 what you needed to be about today. So thank you.

7 (Applause.)

8 CHAIRPERSON ALLEN: I am going to try to wrap  
9 up earlier so that I do let you go, because I would  
10 like to be out of here before 2:15, when I am supposed  
11 to be speaking, so we are early on the agenda.

12 I want to do a couple housekeeping matters  
13 first. You have your forms from the RA committee.  
14 Those have to be completed and sent to Anne. Without  
15 these forms -- we talked about process, we talked  
16 about engagement, we talked about working and making  
17 us relevant, making us better. We cannot have those  
18 things if you do not participate. Participation means  
19 filling these out and signing it and providing it.  
20 Because we don't know who you are. You can fill it  
21 out, but that's not going to be helpful. So let's  
22 fill it out, make sure you give it to Anne. And,  
23 Anne, can this be done electronically also?

24 I would like to repeat. Sign it today, and I  
25 am going to send it again electronically on Monday so

1           that you can have it, you can fill it out also, but  
2           that doesn't mean you can't fill it out today. I am  
3           just giving another option, because some people might  
4           be tired of writing.

5                       Also, this year, very important, our  
6           president-elect, Tom Rombach, I think he is still  
7           sitting here -- Tom, you want to raise your hand. He  
8           is working this year with vice-chair Vanessa Williams,  
9           and they are going to appoint RA members to the  
10          State Bar committees. So they are going to work in  
11          conjunction with each other, so that we are not -- we  
12          are kind of tag teaming. So we are not doubling up  
13          and having two people at the same place. It makes no  
14          sense. Again, efficiency, be more effective, and  
15          that's something that we are going to try to implement  
16          this year.

17                      So you received an electronic selection, and  
18          that has to be completed. The due date is Monday.  
19          Due date is Monday, but, as lawyers, we always have a  
20          little extra time. We calendar it for Monday, it's  
21          due on the 30th, which is Wednesday, all right, but I  
22          want you guys, everybody to shot for Monday, but you  
23          actually have till Wednesday. They changed the date  
24          for us.

25                      Additionally, these clickers, very important,

1 a couple things with regard to them. You want to  
2 thank the Representative Assembly review team. Carl's  
3 team got these, and you asked for them, so that's why  
4 we are trying them out, to see how effective they are.  
5 It did cut down time with regard to voting. Aside  
6 from the process, we are trying to figure out how  
7 everything works and is moving along, but in theory,  
8 it seems like it's going to be very functional, and  
9 it's much nicer than saying out loud, like we did a  
10 couple times.

11 Secondly, again, I mentioned earlier they are  
12 \$40 a piece. We did not buy these, okay, so we need  
13 to have these returned, again. Because if these are  
14 not returned, Anne is going to get after me. I work  
15 at Legal Aid, and I cannot afford each and every one  
16 of these. So please, please return these. These are  
17 going to be by the desk where you came in in boxes.  
18 They are not garbage cans. They are boxes for these.  
19 So remember, please, put those in there.

20 I think that's it. Those are all the  
21 housekeeping matters. Anne, is there anything else?  
22 We have to pass out these attendance sheets. Please  
23 sign them and hand them back to Anne as well.

24 My closing remarks, you have heard a lot of  
25 speeches today. You don't need any more. I thank

1           everybody for coming here and the purpose, and the  
2           most important part of this meeting was for this  
3           morning, to hear each and every person to what they  
4           want. We can sit as committees and try to figure out  
5           what people really want, we can send out surveys to  
6           see what people really want, but to have you present  
7           and talk and at least have the opportunity to express  
8           your own feelings of what you want is the most  
9           important thing, and I thank each and every one of you  
10          for coming here, taking the time out of your day and  
11          getting up from your seat and coming to this  
12          microphone.

13                   I know your time is precious, especially on a  
14          weekend, because you have families and you have things  
15          to do and you have taken your time away from your  
16          families, and thank you very, very much for doing  
17          that. And I think that we received a lot of valid and  
18          very good information. Concrete information, not just  
19          I like it. Concrete information to make us better, to  
20          improve who we are. And, again, if you have any other  
21          questions, you have the name of the committees, and we  
22          will email that out with that form that we are going  
23          to be sending to you to complete on Monday, so if you  
24          have any other questions, please, please email us if  
25          you have other thoughts so that we have more

1 information.

2 Does anybody have any questions? No, good.

3 Meeting is adjourned.

4 (Proceedings concluded at 2:00 p.m.)

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1 STATE OF MICHIGAN )  
 )  
2 COUNTY OF CLINTON )

3 I certify that this transcript, consisting  
4 of 141 pages, is a complete, true, and correct transcript  
5 of the proceedings and testimony taken in this case on  
6 Saturday, April 26, 2014.

7  
8 May 27, 2014

\_\_\_\_\_  
9 Connie S. Coon, CSR-2709  
831 North Washington Avenue  
Lansing, Michigan 48906

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