

STATE OF MICHIGAN
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE
ASSEMBLY of the STATE BAR OF
MICHIGAN

Proceedings had by the Representative Assembly of
the State Bar of Michigan at Opal/Garnet Room, Suburban
Collection Showplace, Novi, Michigan on Thursday,
September 26, 2019, at the hour of 9:00 a.m.

AT HEADTABLE:

RICHARD L. CUNNINGHAM, Chairperson

AARON V. BURRELL, Vice-Chairperson

CHELSEA M. REBECK, Clerk

JANET K. WELCH, Executive Director

HON. JOHN CHMURA, Parliamentarian

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Novi, Michigan
Thursday, September 26, 2019
9:00 a.m.

R E C O R D

CHAIRPERSON CUNNINGHAM: Good morning. My name is Rick Cunningham, and for the past year I have had the honor of serving as the Chair of Representative Assembly. Before we begin the meeting, I am going to exercise a prerogative of the Chair and introduce to you some of the people here on the dais and out there in the audience that I think you really would like to know. I am going to start at your left, my right.

At the end, our executive director, Ms. Janet Welch, our tremendous executive director.

Next to Janet is the Honorable John Chmura from the Warren District Court. Judge Chmura has served a long time as our parliamentarian and provided a great deal of service to the Representative Assembly. For that, we appreciate it.

To your right, the far right, our Clerk, Ms. Chelsea Rebeck, and next to her, our Vice-Chair and soon to be Chair, Mr. Aaron Burrell.

As I look out in the audience, I see our outgoing State Bar President. We have

1 Jennifer Grieco. Jennifer, would you mind standing so
2 people can see.

3 PRESIDENT GRIECO: Good morning.

4 (Applause.)

5 CHAIRPERSON CUNNINGHAM: And we will be
6 joined later this morning by our incoming president,
7 Mr. Dennis Barnes.

8 It is 9:00, so we will call to order the fall
9 2019 session of the Representative Assembly. Is there
10 a quorum, Madam Clerk?

11 CLERK REBECK: There is a quorum.

12 CHAIRPERSON CUNNINGHAM: We will proceed then
13 with the adoption of the calendar. I would like
14 Jennifer Frost to take the microphone, please.

15 Have you seen Jennifer?

16 It might be a good time, while we wait for
17 Jennifer, to introduce to you our new general counsel
18 for the State Bar of Michigan. In the back there,
19 Katie Hennessey. You can see her right in the corner.

20 (Applause.)

21 CHAIRPERSON CUNNINGHAM: She will be taking
22 over for Mr. Flood and I think is officially now our
23 general counsel.

24 We are going to move on to filling vacancies,
25 and we will come back and discuss the calendar.

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Judge Brown, I see that you are here. Could you please proceed with the Nominating and Awards Committee report.

JUDGE BROWN: Good morning, everyone. You should have received a pink sheet with the slate of nominees for the filling of vacancies. Is there a motion to approve the slate?

VOICE: So moved.

JUDGE BROWN: Is there a second?

VOICE: Second.

JUDGE BROWN: Any discussion?

All in favor?

Opposed?

Motion passes. The nominees can come forward and take their seats. Thank you for joining us.

(Applause.)

CHAIRPERSON CUNNINGHAM: In the materials that you were sent, you were provided with a copy of the calendar, the proposed calendar. One comment that I would make is that we are on a pretty tight time schedule. If we don't finish by noon, we will either come back or table the remaining issues until next April, and that's a decision you are going to have to make, but I hope that it is possible that we can conform with the calendar and actually be out of here

1 by -- well, over to the Inaugural Luncheon, a very
2 important event, by noon.

3 So having realized that each of you have
4 already seen the calendar, have had time to review it,
5 I am going to ask now if there is a motion for
6 approval of the calendar.

7 VOICE: So moved.

8 CHAIRPERSON CUNNINGHAM: Second?

9 VOICE: Support.

10 CHAIRPERSON CUNNINGHAM: It has been moved
11 and seconded. All those in favor of adoption of the
12 calendar.

13 VOICES: Aye.

14 CHAIRPERSON CUNNINGHAM: Thank you.

15 Our next order of business will be the
16 Unsung Hero Award, and the presentation will be made
17 by our president, Jennifer Grieco. And I would note
18 that our incoming president just walked into the room,
19 Dennis Barnes. Dennis, would you stand so everyone
20 can see you.

21 (Applause.)

22 PRESIDENT GRIECO: Good morning, everyone.
23 Clarence Dass embodies the best of our profession. A
24 former special victims prosecutor, he is what we call
25 a legal first responder, one who jumps at the

1 opportunity to help those with immediate legal needs.
2 In his case it was Iraqis who were threatened with
3 deportation and victims of human trafficking, to name
4 just a few, but he did this work as an unsung hero.

5 After being diagnosed with stage four colon
6 cancer in April of 2017 and after starting what would
7 be 12 rounds of chemotherapy treatment, he learned of
8 the Iraqi deportation crisis, and that is when he
9 jumped in as a legal first responder.

10 Although he was told by his doctor that he
11 may not survive this diagnosis, he kept his cancer
12 quiet and he advocated for his clients, at times
13 staying with families all night at ICE headquarters.

14 He was running his office from his hospital
15 bed and working on cases within 24 hours of receiving
16 chemotherapy treatment because his clients needed
17 immediate help. Some of these people he was helping
18 on a pro bono basis.

19 He also advocated for his clients and their
20 issues and their cause on TV, on the radio, and in
21 interviews with the press, sometimes while connected
22 to an IV.

23 While he says that helping clients during his
24 personal health struggles ultimately helped him to
25 stay sane and to recover, I don't know how many of us

1 would have put clients first, who would have put
2 pro bono clients first in this situation when dealing
3 with our own health crisis and the knowledge that we
4 may not survive.

5 But Clarence Dass did. Why? Because, as he
6 stated, "I am a lawyer. My job, actually my life's
7 passion, is to advocate on behalf of those in need."

8 We are thankful that Clarence is now
9 cancer-free and can continue to do the good work that
10 he does as an advocate, as a leader, and as a
11 volunteer. Clarence makes me proud to be a lawyer. I
12 hope he makes you proud to be a lawyer, and that's why
13 he is this year's unsung hero. Clarence.

14 (Applause.)

15 MR. DASS: Well, thank you all so much. I
16 have been joking that there are easier ways to get an
17 award than that, but I will take whatever I can get.

18 First of all, Jennifer, thank you so much.
19 Jennifer has been a great friend of mine. We were
20 actually at an Oakland County Bar Association event
21 when I was in the middle of chemotherapy, I think it
22 was probably my fifth or sixth round, and she was
23 getting an award, and that's around the time that all
24 this Iraqi deportation stuff was happening, and she
25 has been an amazing role model for me, an amazing role

1 model for all of us in terms of the service that she
2 does, so I really appreciate her and everything she
3 did. And it's also great to see some of my familiar
4 faces and friends out here.

5 You know, this is kind of a weird award
6 because it's like I didn't choose to go through that.
7 I don't think many people choose to go through that,
8 but the context of it was, when I left the Oakland
9 County Prosecutor's Office after five years, I started
10 this little fledgling law firm, and within two weeks
11 of starting the law firm I started feeling
12 stomachaches and feeling fatigued all the time and
13 sort of losing weight, and I just didn't know why.
14 Most people choose to lose weight. I wasn't choosing
15 to lose weight. I just was.

16 And we went to the hospital, and I had just
17 met my girlfriend at the time, who is now my wife, who
18 is in the back, and we had gone out on our first date,
19 and I hadn't moved into my office yet, and I went to
20 this colonoscopy, and within a half hour I am finding
21 out that I have cancer.

22 So my immediate mind-set was what could we do
23 right now with all of what I just shared, and I
24 realized really quickly that the only thing I can do
25 to get better is to pretend like this isn't going on.

1 So I got the news, we went on a second date.
2 We went back to the office. I kept working, and then
3 we began chemo and kept going day in and day out, and
4 then things got really crazy. Fox 2 was calling, and
5 I was in the hospital, so I would go into the
6 bathroom, and would I do this interview over the phone
7 from the bathroom, and then I would leave and go to
8 ICE headquarters that night and do an interview with
9 Channel 7, and then I would wake up in the morning and
10 do a radio interview, because there were these needs
11 that were pressing and pressing and pressing, and I
12 was the only attorney that was showing up that spoke
13 Arabic.

14 I was the only attorney that a lot of these
15 people knew at the time, and there was no one else to
16 help, so we just kept doing it, and my little law firm
17 then gotten 10 clients and 15 clients, and I had no
18 staff, so I was then -- my wife was becoming my
19 paralegal. My mom was filing appearances for me while
20 I was at the hospital. My dad would call courts and
21 ask for adjournments. Really, this became a
22 full-fledged operation. I only say that because the
23 actual unsung heros of this year, in 2017, were those
24 people, those people that let me actually keep doing
25 this.

1 Like I said, my wife, Renee, is in the back,
2 and she on our second date committed to keep going
3 here through this journey, and I do remember right
4 after my big surgery at the end of the whole year of
5 2017 where I made her call a client and pretend like
6 she was my bill collector and, say, Hi, this is Renee
7 from the Dass Law Firm. We are calling just to follow
8 up on -- and I was in the hospital bed next door.

9 And, like I said, my sisters -- none of these
10 people are lawyers. I was teaching them how to go to
11 court and file appearances and file motions and things
12 like that. They kept me alive. The clients kept me
13 alive. This kept me alive.

14 And I am often asked why I shared it after a
15 year. And I will tell you, the minute I shared it,
16 there hasn't been a week that's gone by where I
17 haven't received a call from someone in our profession
18 or seeing someone at court in our profession who
19 hasn't approached me or told me that their sister,
20 their brother, their father, or they themselves had
21 received the test results that they didn't know the
22 future of, and they have seen what I went through and
23 seen that I came out of it, and for anyone that's ever
24 gotten that kind of news or knows someone who's gotten
25 that kind of news, one percent of hope is more than

1 enough hope. And if I have been able to give that to
2 anybody in our profession or those clients or anyone
3 out in our community, then it was worth it.

4 So I am thankful to you. I am going to try a
5 different way to get an award next time, but I really
6 am honored and honored to be in your presence. So
7 thank you.

8 (Applause.)

9 CHAIRPERSON CUNNINGHAM: Thank you, Clarence,
10 for your inspirations.

11 Our next award is the Michael Franck Award,
12 and it will be presented by Bernard Jocuns.

13 Bernard, could you come forward, please.

14 MR. JOCUNS: Good morning. I need to do my
15 best to truncate things, because Richard told me I
16 only have 45 minutes.

17 Anyway, Michael Franck was director of the
18 State Bar of Michigan who strived for improvements in
19 lawyer relations and public interest. There is even a
20 building named after him.

21 Intellectual honesty, compassion, diligence,
22 intestinal fortitude, and ethical dedication are the
23 foundations of the Michael Franck Award. When I think
24 of these qualities, one person comes to mind at the
25 top of that list, and that's attorney Mary Chartier.

1 Personally I met Mary after Listserv brought
2 a lot of us defenders together, and I had to make a
3 point of making her acquaintance, because she offered
4 yeoman's work on three cases that went up to the
5 Michigan State Supreme Court and was very successful
6 at it and dedicated her time. I thought that was
7 amazing.

8 A true leader has the ability to encourage
9 and push others without being overbearing, more often
10 than not being done in such a way that others do not
11 even realize just so you can get that pep talk or
12 moral boost without being devoid of getting on the
13 soap box. Giving back to your community and
14 profession is something that goes hand in hand,
15 especially with this award.

16 From donating time to saving animals on
17 doggie death row to restoring someone's dignity and
18 civil rights after a wrongful conviction, Mary
19 personifies the spirit of this award.

20 Adjectives merely do not do justice to
21 someone who is actively giving back and moving forces
22 in a positive direction. Starting a section of the
23 State Bar of Michigan, getting suckered into
24 contributing to the intelligence and coherent chapters
25 of books or just offering insight on a difficult case

1 are just some examples of the altruism to colleagues,
2 peers, and the legal profession as a whole that Mary
3 has given back.

4 A couple of things though real quick. How am
5 I doing? I still have another 43 minutes?

6 CHAIRPERSON CUNNINGHAM: Well.

7 MR. JOCUNS: Okay. As my 18-year-old
8 daughter would say -- she actually corrected me in
9 this -- there will be no golf class, and corrected me
10 with the following that, when I say give it up, please
11 give it up, and please, you know, give it up to the
12 queen of Mardi Gras several years running,
13 Mary Chartier.

14 (Applause.)

15 MR. JOCUNS: By default, she is also my
16 friend.

17 (Applause.)

18 MS. CHARTIER: Thank you so much. Thank you
19 so much to Bernie and for all of you for this award.
20 It means a tremendous amount to me.

21 I stood before you a couple of years ago
22 because I had nominated Marty Tieber for the
23 Unsung Hero Award. I can't think of anyone more
24 deserving than Marty, or at least I didn't think I
25 could think of anyone more deserving than Marty, until

1 I heard everything about Clarence today. What an
2 honor to share the stage with him this morning. I
3 think he is just an outstanding individual.

4 As Bernie said, criminal defense litigation
5 is my passion. We have defended both people and
6 animals on doggie death row. We actually recorded a
7 podcast yesterday about another dog who is on doggie
8 death row.

9 Doing what I do and being honored for it is,
10 again, a tremendous, tremendous feeling standing in
11 front of you today. I am really overwhelmed by it.
12 And we don't get a lot of honors or awards or
13 applauses, criminal defense lawyers. Anyone in this
14 room who is a criminal defense lawyer knows that. I
15 get far more hate mail than I do congratulatory
16 remarks.

17 One of the funniest e-mails that I have
18 gotten recently talked about all these horrible things
19 that would happen to me, but then, you know how you
20 have the signature line at the bottom, and it said --
21 you know, which obviously she didn't delete -- and it
22 said, Please have a calm and productive day. And that
23 was right after hearing about how God would strike me
24 down for defending someone in a high profile case.

25 So I want to thank all of you for recognizing

1 me for this, and I know that this means a lot for our
2 law firm, Chartier & Nyamfukudza. This means a lot
3 for everyone in our field, and thanks for all the work
4 that you do.

5 (Applause.)

6 MS. CHARTIER: If anyone is a fan of Murder
7 She Wrote, I can use this as a weapon. Thank you.

8 (Applause.)

9 CHAIRPERSON CUNNINGHAM: We will now move on
10 to our financial update, all the good news. The
11 presentation will be by our Executive Director,
12 Janet Welch, and James Horsch, the Finance and
13 Administration Director. So Janet and James.

14 EXECUTIVE DIRECTOR WELCH: Thank you very
15 much. So the agenda says planning for the next, as
16 the agenda says, financial update, but the slide says,
17 Planning for the next SBM fee increase, so I hope
18 that's not a bait and switch that got you here. It's
19 about going from inspiration to talking about a topic
20 that's like going to the dentist or scheduling a
21 dentist appointment.

22 It's a bit of a comedown, but I think there
23 is very good news that we need to celebrate as we
24 describe what needs to be done, but before I do that,
25 I want to talk just for a minute about the lawsuit

1 that was filed, Taylor V. State Bar of Michigan, about
2 a month ago, and I have had people say, So is this
3 really the worst possible coming, that the Bar is
4 coming to the end of a fee cycle at the same time that
5 they are being sued for their very existence as an
6 integrated bar, and my answer to that is no, because I
7 think that it's the same question that we need to
8 answer in both cases, which is what is the value of
9 the State Bar of Michigan to the public and to the
10 profession, and we have good answers in both cases.

11 I really commend you, the amicus brief that
12 the State Bar of Michigan filed in the 8th Circuit,
13 and for those of you who haven't been paying as minute
14 attention to the constitutional challenge to the
15 integrated bar as we are at the Michael Franck
16 building, the 8th Circuit came down on the side of the
17 integrated bar in its decision about a week after
18 Taylor V. State Bar of Michigan was filed. So I am
19 confident that we have the right answers, and I am
20 confident that this body and the State Bar of Michigan
21 will come to the right conclusions about how to move
22 forward in the environment that we are in.

23 That said, we need to talk about where we are
24 in the fee cycle, and I want to start with the basics,
25 starting with -- Carrie is moving us forward here --

1 starting with the very basic question of what the
2 State Bar of Michigan was created to do 85 years ago,
3 because that hasn't changed. We have been chartered
4 to aid in promoting improvements in the administration
5 of justice and the advancements in jurisprudence, aid
6 in improving relations between the legal profession
7 and the public, and aid in promoting the interests of
8 the legal profession in this state.

9 So the picture of what that looks like as we
10 have developed operations to carry out those missions
11 looks like this, and you can see that the entire
12 picture includes admissions and disciplines, so that's
13 the regulation of the legal profession.

14 State Bar of Michigan is tasked with the
15 unauthorized practice of law prosecution, practice,
16 and we have also picked up in that context practice
17 management services, ethics, lawyers and judges
18 assistance, client protection, public education,
19 character and fitness, access to justice, advocacy for
20 improvements in the law.

21 The center of everything we do is the very
22 mundane but really critical function, the database
23 management, and the price tag for that is what you
24 have been asked to consider and what your specific
25 charter is in the governance of the State Bar of

1 Michigan, which is to recommend to the Supreme Court
2 what it takes to carry out those functions.

3 So the next basic piece of information is how
4 license fees are set, and those of you who are not
5 brand new lawyers know that this used to be called Bar
6 dues, but we are trying to inculcate the term "license
7 fees" to drive home to lawyers in Michigan who do not
8 necessarily understand that what they are getting when
9 they pay the invoice that they get in September is
10 their license to practice law, and that if there were
11 not a State Bar of Michigan, they would still have to
12 pay a license fee to be in practice in Michigan.

13 So the process for setting those fees is
14 through the Michigan Supreme Court. They control what
15 that amount is, and the Representative Assembly, you,
16 have exclusive authority on behalf of the State Bar to
17 recommend a fee change in the State Bar portion of the
18 fees.

19 So we need to talk about the history of the
20 last fee increase, and that takes us all the way back
21 to 2003. Is anyone in the RA now who was in the RA in
22 2003? All right. Two. I see two hands.

23 So what the Representative Assembly
24 recommended in 2003 was a \$40 increase in the
25 State Bar portion of the active license fee, an

1 automatic inflation adjustment, which would have taken
2 us out of the common paradigm for member dues, which
3 is a cycle where you bring in more money at the
4 beginning than you need to run the operations and then
5 dip into those reserves towards the end so that you
6 extend the amount of time that you can go without
7 having to go back to ask for an adjustment.

8 We also asked that the Supreme Court raise
9 what was then an exemption, complete exemption from
10 paying a license fee for people over 70, to raise that
11 to 75. And the Supreme Court instead gave us half of
12 what we were asking for for the State Bar portion of
13 the license fee, but gave us \$20, and gave another \$20
14 to the disciplinary system. They instituted the \$15
15 Client Protection Fund fee. They eliminated the
16 over-70 exemption altogether, although that's been
17 slightly revised to take away the State Bar portion
18 for people who have been members of the Bar for 50
19 years subsequently. They instituted a new inactive
20 fee increase and late fee and reinstatement fee. So
21 that's what we have been operating on since 2003.

22 So I would like us to take just a second to
23 reflect on how long ago 2003 was. So here are some
24 things that were relevant in 2003, and you can think
25 about what was happening in your life in 2003. My

1 favorite one on this list is Mark Zuckerberg was
2 launching FaceMash at Harvard in 2003. We didn't even
3 have Facebook back then, and the last one, of course,
4 which is it was the last time the Tigers were as bad
5 as they are today.

6 MR. HORSCH: I just want to mention that
7 Chelsea was an undergrad in college in 2003. That's
8 how long ago.

9 EXECUTIVE DIRECTOR WELCH: So that's when
10 your license fees were last raised.

11 So let's look at what those fees are today.
12 \$180 for the State Bar portion, 120 for disciplinary,
13 and \$15 for the Client Protection Fund.

14 So that takes us to the question of the
15 moment, which is where are we in the fee cycle that we
16 are living within, because we don't have an
17 inflationary increase, and I am going to let
18 Jim Horsch explain the slide that he created, and I am
19 going to offer to you at the end of the presentation
20 the opportunity to tell us whether you want all of
21 these slides. Jim has dozens of these slides, and
22 this is a sample.

23 MR. HORSCH: This is an illustration that
24 shows that when you start to have expenses that exceed
25 revenues and your fund balance goes way down where you

1 are going to need more money -- you can see this in
2 the first part of the, all the way to the left -- and
3 then there is a fee increase, and that increases your
4 revenues and covers, more than covers your expenses,
5 so you are actually putting some away in your net
6 position fund, and then you get to a point in the fee
7 cycle where you are spending more than what you are
8 taking in, and your net position or your fund balance
9 starts to go down, and then you get to a point where
10 you are going to need an infusion of money, and that's
11 typically in the form of a fee increase.

12 EXECUTIVE DIRECTOR WELCH: Thanks, Jim. He
13 is up here to answer any difficult questions you might
14 come up with at the end, and you can see he has all of
15 the data and answers.

16 This is what has happened in terms of
17 cumulative inflation since 2003. If we had had the
18 inflation adjustment in place, the State Bar portion
19 of the fee that you now pay would be \$250 instead of
20 180.

21 So I think we need to reflect on the fact
22 that we are now in the longest fee cycle in modern
23 State Bar history. We didn't look back before 1970,
24 but from 1970 on, this is what the picture looks like,
25 and until I actually put this slide together with

1 Jim's data, I didn't realize that -- I knew it was the
2 longest cycle, but I didn't realize that because of
3 the fee cycle the increases are not tiny at the end of
4 each cycle and that the next longest cycle, the one
5 that began in 1977, was preceded by a \$90 increase in
6 fees.

7 So the conclusion that we are bringing you
8 toward is that the current dues cycle is approaching
9 its natural end, assuming business as usual, which
10 means in this case that we continue to perform the
11 operations we are performing the way that we are
12 performing them.

13 So where do we stand today? The mandatory
14 cost to practice in Michigan is the lowest of all
15 states. I am going to let Jim go through this data,
16 because he collected it.

17 MR. HORSCH: Thanks, Janet.

18 We compare ourselves constantly to other
19 integrated bars and other bar associations, and, if
20 you factor in the fact that Michigan does not have
21 mandatory continuing legal education and the fact that
22 compared to other integrated bars we are the 8th
23 cheapest in terms of our required fees or mandatory
24 fees, Michigan is actually the cheapest jurisdiction
25 in which to practice. And so 76 percent of the

1 integrated bars have higher required dues and fees.

2 EXECUTIVE DIRECTOR WELCH: The only thing I
3 would add to that is that in 17 voluntary bar
4 states -- that doesn't mean that all 17 voluntary bar
5 states have smaller dues. Some of them have higher
6 dues, but, in general, the voluntary bar states in
7 which you only get the license, you get none of the
8 benefits of being part of an integrated bar. You just
9 get the license. In those states, in general, that
10 average is lower than what we pay, but in some states
11 it's substantially higher, even in the voluntary bar
12 states.

13 So I am going to give this slide to Jim too,
14 because he will tell you a little bit about our
15 financial margin.

16 MR. HORSCH: So 2022 is a key date here,
17 because, according to our forecast, and we have had a
18 finance committee of the State Bar, and Chelsea and
19 Joe have actually served on that committee this past
20 year and participated in looking at what our forecast
21 is projecting. We are going to need to have something
22 in place by 2022, and so what happens is we look at
23 our financial capability as a percentage of our,
24 excuse me, our financial capability as a part of our
25 fund balance, and that has to be 33 percent. The fund

1 balance has to be 33 percent.

2 So what we do is we forecast this out, and if
3 you go to the next slide here, you can see the line
4 across here is our 33 percent minimum reserve line,
5 and in the 2020 there is a circle around the bar that
6 shows our budget, and we approved, the Board of
7 Commissioners approved a final \$1.8 million budget
8 that uses reserves for that 1.8 million, but it
9 actually means that expenses are exceeding our
10 incoming revenues by that amount.

11 So each one of those red bars projects the
12 expenses greater than revenues, and we continue to use
13 our fund balance, our reserve, until you get out to
14 2023, and September 2022 is the beginning of fiscal
15 year 2023, and we get below our minimum required
16 reserve, and so the point here is we are going to need
17 something by September of 2022.

18 EXECUTIVE DIRECTOR WELCH: So we want to give
19 you a sense of what we have been looking at
20 internally, what the preliminary options are. The
21 business as usual option that Jim has projected, which
22 is that if nothing changes based on expected inflation
23 and doing things at the Bar exactly the way we are
24 doing them now would require an \$80 increase for us to
25 be where we need to be in terms of the financial

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margin.

But we are also working on alternatives, and the alternatives under development -- this is just a synopsis, and it's a mix-and-match proposition -- would be, the choices would be to make some of the current services user-pay, sort of a more of a cafeteria element in the license fee, to eliminate some services altogether, to phase in increases of less than \$80, and to find even greater efficiencies, which is something that we have been doing all along of course, and which explains why the fee cycle has been as long, extraordinarily long as it has been.

So what are the next steps? I think I have got a minute to tell you what the next steps are. The staff's job is to continue to provide analysis of the finances, to develop the options further, the options that I have laid out, to test market ideas with leaders and stakeholders.

And your job is to ask questions that provide guidance for our efforts, to consult and test market options and ideas with your constituents, to weigh the proposals that come before you, to make the recommendation from the Representative Assembly, and to help sell the final product, whatever that may be.

So to summarize -- on time -- the State Bar

1 has carried out its mandate within fixed fees, a fixed
2 income, so to speak, for 16 years by operating
3 efficiently and covering inflation, and I want to,
4 while he is standing next to me, give Jim credit for
5 his extraordinary acumen in helping us carry out that
6 mandate.

7 We are nearing the end of the fee cycle, and
8 we need an increase no later than September 2022 if we
9 don't make changes in our operations.

10 The State Bar fees are lower than average
11 compared to other jurisdictions, including many
12 voluntary jurisdictions. The State Bar will compare
13 favorably, even with the business-as-usual fee
14 increase, but we are looking at options, and we will
15 be working with your leadership and the leadership of
16 the Board to bring proposals to the RA in FY 2020,
17 which is underway. So I am not sure we have time for
18 questions, but if we don't, Jim and I will be
19 available on an ongoing basis for any of your
20 questions.

21 CHAIRPERSON CUNNINGHAM: Well, since Bernard
22 didn't use his entire 45 minutes, why don't we take
23 that time for questions. When you ask the question,
24 would you come to the microphone, please, and identify
25 yourself by name and circuit number, please.

1 MR. BARNES: Good morning. John Barnes, 45th
2 circuit, St. Joe County.

3 I have a question for you. I saw or heard
4 mention an \$80 increase sounds like something you had
5 in mind. Were you kind of building into that enough
6 of a surplus that would take us through somewhat of a
7 fee cycle, or are you also anticipating that there
8 should be a cost of living increase into that that
9 would help to reduce the effect of a lengthy fee
10 cycle?

11 MR. HORSCH: That's a good question. The \$80
12 actually takes you another five or six years beyond
13 the increase, and the last time that a fee increase
14 was proposed we did look at an inflationary
15 adjustment, and I believe the Representative Assembly
16 approved having an inflationary adjustment to avoid
17 the very phenomena of the fee cycle, so if you have a
18 built-in inflation into your fees, then they keep up
19 with inflation and, effectively, you don't have a fee
20 cycle where you have a dues increase every several
21 years, right.

22 MR. PERKINS: Dennis Perkins, 44th circuit.

23 Do you expect to have a survey out for the
24 Bar membership at large with respect to this, and the
25 reason why I ask is that the information that you are

1 probably going to get from all of our members or our
2 membership could be very enlightening, and you may
3 find that a lot of people are in favor of a raise
4 without having to do a huge sales job.

5 EXECUTIVE DIRECTOR WELCH: So I used the word
6 test market intentionally, right, and I think part of
7 that test marketing is to figure out how to get
8 useful, maybe essential feedback prior to making the
9 decision. So that would be something that we would be
10 discussing with leadership and including how to frame
11 those questions and what questions to ask.

12 MR. PERKINS: As you know, timing is
13 everything, and the next time that we meet will be the
14 spring of 2020, and that ain't so far away from 2022,
15 and I am just wondering should we be looking at or is
16 it your intention to proceed by doing something now?

17 EXECUTIVE DIRECTOR WELCH: Yes, and the
18 dialogue is with you about what to ask, what questions
19 you think would be helpful to get answers to.

20 MR. PERKINS: I understand. Thank you.

21 MR. WIRTH: Good morning. Chris Wirth,
22 20th circuit.

23 I think, as you are discussing it, there are
24 fee increases with membership at large is a useful
25 metric for that. In addition to the idea of cost of

1 living or inflation would also be what the fee
2 increase is represented as a percentage of average
3 attorney compensation, because I think, you know, if
4 you are seeing substantial growth in attorney average
5 of compensation, then the licence fee seems like it's
6 not as big a deal, but if average attorney
7 compensation has been stagnant, I think many of the
8 members who are on the lower end of the compensation
9 structure are going to see the license fee increase as
10 a big hit.

11 EXECUTIVE DIRECTOR WELCH: And you just made
12 the point I was going to make. That's an very
13 sophisticated question because the growth of attorney
14 compensation has not been uniform throughout the
15 practices, and that's a tricky situation. We do need
16 to figure that out. We need to think about what that
17 means.

18 MR. WIRTH: Which is why I raised the
19 question, because I think attorneys on the lower end
20 of the compensation range, it's going to be a bigger
21 hit.

22 EXECUTIVE DIRECTOR WELCH: So are you
23 advocating the socialist response to the license fee
24 increase?

25 MR. WIRTH: It does seem like there is this

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growing gap between the upper and lower ends of attorney compensation.

EXECUTIVE DIRECTOR WELCH: Yeah, and just one final comment, that an integrated bar really, in looking out for the interests of the entire profession, does take into account how to help people who are struggling in their practices with practice management.

CHAIRPERSON CUNNINGHAM: Thank you, Janet. James, thank you.

The next item of business is I get my 45 minutes, which I will not use.

When I stood before you last year at this time, I told you that there were two initiatives that were very important to me that I had hoped to make some progress on in my tenure as your chair. One of them was if there is anything that can be done to ensure fair representations among juries, participation of all across the board, and to deal with that I appointed our Special Issues Committee, headed by Dave Gilbert, who is sitting here now, to start the process of exploring what, if any, recommendations can be made in regard to ensure jury fairness, and David reports that they have been working on that. They have been working quite

1 diligently over the past year, and he has indicated to
2 Aaron, and Aaron has indicated to us this is something
3 he would like to continue.

4 So my report to you is that, yes, we are
5 making progress and, yes, David has been tackling that
6 issue, along with his committee, but it's a long
7 process, and we will continue.

8 The second priority that I had, and this was
9 something that came before you in terms of a
10 resolution, was an examination of the governance of
11 the State Bar. What really is the Representative
12 Assembly? What do we really do, and what should we be
13 doing? What's the Board of Commissioners' role?
14 What's our relationship between them?

15 Now, you authorized the creation of a
16 governance task force, and that task force met. We
17 have hired a consultant to assist us in our work, and
18 the next step in this meeting is going to be a report
19 from that consulting company about the work that is
20 ongoing, so we have a video. Can we get it queued up
21 from someone?

22 (Video being played.)

23 MR. ENGLE: Hi, I am Mark Engle.

24 MR. HENRY: And I am Jeff Henry.

25 MR. ENGLE: We are with Association

1 Management Center. I might be a familiar face for
2 you. I was with you April 13th at the RA --

3 (Video interrupted.)

4 CHAIRPERSON CUNNINGHAM: We all know that
5 technology always works.

6 While we are waiting for that to get keyed
7 up, at the end of presentation I am going to talk
8 very, very briefly about some of the inquiries that we
9 have developed in the task force, things we are going
10 to examine, things we are going to look at, and we are
11 going to ask you to provide your input on each of
12 those inquiries.

13 Now, I know you have given or have already
14 received a list of those inquiries. We would like to
15 hear from you. We would like to see what your
16 thoughts are in each of those questions, and they will
17 be mentioned in the video, if we get the video going.

18 How are we doing back there?

19 VOICE: Working.

20 CHAIRPERSON CUNNINGHAM: Okay. Well,
21 naturally, I reviewed it, and I can give it to you,
22 maybe act it out for you, but I don't think --

23 EXECUTIVE DIRECTOR WELCH: Pantomime.

24 CHAIRPERSON CUNNINGHAM: Yeah, a little
25 pantomime, or at least maybe we get the sound.

1 The specific questions really look at our
2 role. I know that -- I can't tell you the number of
3 times I have heard about what is the Representative
4 Assembly and what do they do? And when I make these
5 general statements, like we are the final
6 policy-making authority for the State Bar, I get these
7 looks on people's faces that, okay, but what do you
8 really do? Why do you have it? What's the
9 justification for even existing? What can we do to
10 convince people? Ah, we have a video, so let's watch
11 the video.

12 (Video being played.)

13 MR. ENGLE: Hi, I am Mark Engle.

14 MR. HENRY: And I am Jeff Henry.

15 MR. ENGLE: We are with Association
16 Management Center. I might be a familiar face for
17 you. I was with you April 13th at the RA meeting in
18 Lansing, so it's good to be back with you, even though
19 we couldn't physically be with you, but our purpose
20 today is to share with you where we are in the process
21 in examining the governance and the opportunities to
22 advance performance for the State Bar of Michigan.

23 So our agenda for today is to give you an
24 update, but we don't want to assume that you remember
25 where we started from, so we are going to share with

1 you some of the objectives and principles of this work
2 and then some of the preliminary findings and the
3 journey we have taken along the way.

4 So the charter that was approved by the RA to
5 originally begin this work product is on the screen
6 right now. We are not going to read into in, but the
7 elements are that you are looking for change because
8 there has been change in the legal community. There
9 has been change in the Michigan statutes and the
10 governance elements that are impacting the
11 organization. Change is happening in how we examine
12 the change and the decision-making and the governance
13 elements around State Bar of Michigan. How do these
14 relate. So that's the purpose of the project that you
15 all have approved. We are looking at efficiencies,
16 some potential hurdles in structure that may be
17 causing us concern in advancing some of the
18 performance around the organization, what does that
19 look like?

20 So the ultimate goal statement is to advance
21 the State Bar of Michigan's governance structure and
22 scope to improve efficiency and effectiveness, enhance
23 member engagement, and build trust with members and
24 the public to further SBM's ability to fulfill its
25 mission.

1 So we created these objectives for the
2 Task Force at the very beginning, and some of these
3 words should really resonate with you. It's about
4 connection, engagement, and communication with
5 members. It's about building value for members. It's
6 about providing a support system that is timely and
7 has the ability to lead on important short-term and
8 long-term issues.

9 It's about simplifying the complexity of the
10 structure. It's about using online and communication
11 tools that did not exist when this structure was
12 created and incorporating them into how we make
13 decisions and how we inform strategy as an
14 organization.

15 It's about incorporating competencies while
16 respecting the balance and diversity elements in the
17 boardroom and amongst the RA. What does the
18 competency and the representational element look like
19 in today's environment versus when the organizational
20 structure was conceived many years and iterations ago?

21 It's also a matter of coming up with these
22 recommendations that are ultimately adapted or adopted
23 by the RA, the BOC, and ultimately the Supreme Court,
24 your decision authorities.

25 We are also positioning both the BOC and the

1 RA such that we are seeking engaged activity and
2 measuring that activity by the engagement of the RA.
3 Are we showing up? Are we actively engaged? Are
4 people seeking to be in these leadership bodies of the
5 RA and the BOC as one of the measures of performance
6 and engagement?

7 And then clearly we are looking for more
8 clarity around the definition of the roles and
9 functions, particularly between these two leadership
10 bodies, with the BOC and the RA.

11 Those are the objectives that the Task Force
12 has determined are important, and they have been
13 blessed by the Board.

14 What are the guiding principles that will
15 guide our work, and those include we need to phase in
16 implementation. We are not going to do this
17 overnight. We are not going to make changes
18 overnight. It's going to be over a period of time.

19 There is going to be transparency in the
20 process. We were with you in April. We are here
21 again today, and we are engaging you in this process,
22 and asking you to inform what it should look like so
23 that it works for you. That's the elements around
24 transparency in the process.

25 We need to make sure that there is timely and

1 decisive action taken throughout. We are not just
2 going through an exercise here. We do expect to
3 arrive at conclusions and ultimately impact the way
4 decisions and authority are pursued within SBM.

5 We want to make sure that the structure
6 allows us to be proactive in agenda as opposed to
7 necessarily reacting to things that are brought before
8 us. How can we look up and out versus down and in?

9 We also need to make sure that we are
10 building trust through member inclusiveness and a
11 consensus-based approach, and that can be done well in
12 today's environment in the way we communicate.

13 And also we need to make sure we are driving
14 efficiency, whether it's reducing cost or impacting
15 the way that we are making decisions, timing and
16 quality levels of decision.

17 So how is our journey coming along, our
18 methodology? The Task Force has been appointed. In
19 fact, we have had face-to-face two times, and they
20 have been engaged throughout the process and in
21 forming the questionnaires, interviews, and so on. So
22 I would say it's a pretty engaged task force that is
23 coming along in leading this process.

24 We have been through the discovery phase,
25 which means we have read your literature, we have

1 looked at the past studies, we have looked at the
2 bylaws and different operation elements within the
3 structure of SBM.

4 Jeff is going to get into the interviews and
5 the survey in a few minutes, and ultimately we are
6 going to be coming up with our findings. What are we
7 finding along the terms that's going to inform the
8 recommendations that we think are viable to advance
9 your governance structure? So that's where we are
10 going, and then the recommendations are due in March,
11 in time for your April 2020 session.

12 MR. JEFF: As Mark mentioned, part of our
13 process is to ensure that we engage the voice of the
14 members of the State Bar of Michigan, and we have done
15 that through a number of different channels at this
16 point in time.

17 We began with the survey of the Board of
18 Commissioners as we assess what is the current state,
19 and we tried to gain initial opinions about the future
20 structure of the State Bar.

21 I am here to share with you some of the
22 results from the survey from the Board of
23 Commissioners, as well as the survey from the
24 Representative Assembly that hopefully each of you
25 participated in in the recent past.

1 We began our process of discovery by
2 surveying the Board of Commissioners. Twenty-seven
3 members participated in the survey, and the results
4 were somewhat predictable, but also informative, and I
5 am here to share with you some of the highlights of
6 the findings from that survey.

7 One of the first questions dealt with, What
8 is the culture within the boardroom? And the
9 responses were very positive. There is a high degree
10 of respect between the board members, board member to
11 board member, board member to staff. There is also a
12 high degree of competence in their fellow board
13 members. So members felt that everyone sitting around
14 the table had the skills and the abilities to guide
15 the State Bar.

16 When we asked about the effectiveness of the
17 Board itself, again, very positive feedback.
18 Respondents felt that the Board was very effective in
19 managing the resources of the State Bar and in
20 debating and approving policies coming from the
21 State Bar of Michigan.

22 They also indicated a high degree of
23 satisfaction with their experience on the Board, and
24 most specifically with their respective commissioner
25 committees.

1 On the opportunity side, there were a couple
2 pieces of feedback. One, the survey respondents
3 indicated that there was a lack of nimbleness within
4 the State Bar, and that they also felt that they would
5 like to spend more time on generative thinking,
6 exploring those issues that are on the horizon that
7 are going to impact the State Bar and profession in
8 the future. How do you prepare for those issues? And
9 then be proactive rather than responsive to the items
10 that fall on our plate.

11 One other thing that came from the survey
12 that was reflected in the qualitative comments portion
13 of the survey dealt with or indicated that there was a
14 strong belief that geographic representation was a
15 necessary and important component to maintain in the
16 State Bar moving forward.

17 I am sharing this slide with you just to
18 indicate the response to a question about distinctions
19 between the roles of the Board of Commissioners and
20 the RA itself. We have asked the Board whether or not
21 those roles and functions were clearly defined and
22 people understood what was the appropriate function
23 and role of each body. Sixty-seven percent of the
24 Board of Commissioners did not agree that those roles
25 were clearly defined. There is opportunity there.

1 They indicated that it causes confusion, and there is
2 often debate about whether or not what items need to
3 go over to the RA for approval and review and those
4 that do not.

5 So there is opportunity here. Part of our
6 function and this project is to better define those
7 roles and the opportunities moving forward.

8 So after completing the Board of
9 Commissioners survey, we turned our attention to the
10 Representative Assembly. We sent surveys to 300
11 current and former members of the Assembly, and we had
12 a fairly healthy response rate. Over 130 members
13 submitted responses.

14 The survey was conducted in two phases. The
15 initial, talking about the operation and function of
16 the RA, and then phase two we explored opportunities
17 and did a little deeper dive on one or two of the
18 topics from the earlier phase of the survey.

19 So looking at those results, one of the first
20 questions asked about the RA's effectiveness in
21 developing, reviewing, and debating policy positions.
22 The feedback from the current members was very
23 positive. Each of those items -- drafting policy,
24 reviewing policy proposals, and debating policies --
25 82 to 85 percent of the respondents thought the RA was

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very effective or moderately effective in performing that function.

An interesting note, however, when looking at the survey, we provided an opportunity for people not only to fill in the quantitative portion of it but to also add their comments, to elaborate on certain portions of the survey, and it was very interesting that the qualitative piece, the comments sections, reflected much bigger diversity of opinion in the RA's effectiveness than the quantitative portion.

We cross-tabbed many of the survey results to look at where certain groups may have differences of opinion, and in total there weren't any that were significantly different with one exception, and that's that longer tenured members of the RA had a less favorable opinion regarding its effectiveness than those members that had served shorter periods of time.

So specifically, if you had served six years or more on the RA, that group tended to have a less favorable opinion regarding the effectiveness, and that's a somewhat unusual response. Typically the longer you serve on a body, the more favorable you believe the group is performing, the more likely you are to have a favorable opinion about its overall performance.

1 One area that the survey indicated there was
2 an opportunity to improve was in the RA's function and
3 role gathering information and sharing information
4 with the State Bar's constituents or members as a
5 whole.

6 So 52 to 55 percent of the respondents
7 indicated that the RA was not very effective at
8 soliciting feedback or informing constituents
9 regarding the outcomes and the decisions made by the
10 State Bar, so an opportunity to further reposition the
11 RA, an opportunity to further engage members at the
12 grassroots level.

13 When it came to the operations of the RA, one
14 of the questions of importance to us was whether or
15 not the RA is spending adequate time considering
16 issues that impact the future of the State Bar or
17 impact the future of the profession itself.

18 Again, very positive feedback. Seventy-three
19 percent felt that the RA did spend sufficient time.
20 Again, I'll indicate that the qualitative feedback,
21 which would suggest that the response was not quite
22 that favorable and that there was opportunity there,
23 but we will look at those items here in a few moments.

24 We also asked, similar to the Board of
25 Commissioners, we also asked the RA regarding the

1 divisions between the RA and the Board of
2 Commissioners, were those roles and functions clearly
3 defined? And, again, echoing what the Board of
4 Commissioners had to say, the majority indicated that
5 they were not. Fifty-eight percent disagreed or
6 strongly disagreed or simply didn't know whether or
7 not the roles and the functions were clear, clearly
8 defined, and were effectively communicated. So,
9 again, opportunity as we move forward.

10 Along those lines, similarly, when we asked,
11 many of the qualitative comments indicated that there
12 was a high degree of unfamiliarity with the Board of
13 Commissioners among the RA members. Many of them
14 don't see the engagement and the interactions there.
15 There were many comments suggesting opportunities to
16 improve interaction between the Board of Commissioners
17 and the RA. One comment shown here simply indicates
18 there needs to be better understanding, needs to be
19 better education, and there needs to be better
20 engagement between the bodies as they exist today.

21 There is also considerable divergence
22 regarding the role and, frankly, the need for the RA
23 moving forward. So a couple comments reflected here,
24 one supporting the continuation of the RA and, you
25 know, against centralization of power, and others

1 questioning the RA's role and the opportunity for
2 revising that role and making the RA more relevant in
3 the future.

4 When we asked here about the State Bar
5 nimbleness again, the members of the RA reflected
6 similarly to the opinions of the Board of
7 Commissioners more favorable, actually, feedback
8 regarding the nimbleness, but still a high percentage
9 that did not feel that the State Bar as a whole or the
10 RA had the opportunity to act timely and quickly, to
11 respond quickly to issues impacting the profession.

12 Some as the result of the size. Some felt
13 that having a 150-member body just contributed to
14 ineffectiveness. It's hard to mobilize an entity of
15 that size to respond quick, and the fact that it
16 doesn't meet frequently contributed to a lack of
17 nimbleness as well.

18 An interesting takeaway from that, however,
19 is that when we asked specifically about whether or
20 not the RA was meeting frequently enough or not, the
21 majority, 57 percent, said yes, that the current
22 schedule of two meetings per year is the right amount.

23 We also asked about the opportunities to meet
24 more frequently or to engage technology in
25 facilitating the more frequent meetings, and the

1 feedback there, there was strong support for use of
2 technology, high degree or high number of written
3 responses here and comments about the opportunity to
4 engage technology in facilitating the business of the
5 RA and to making it more effective and the opportunity
6 of improving engagement of RA members through the use
7 of technology, to extend that engagement to the
8 grassroots level, but I would temper that with they
9 were also talking about not meeting more frequently
10 just to meet but meeting more frequently if there is a
11 need for a meeting.

12 The membership as a whole is looking at
13 today's communicative tools and saying how might we
14 engage those into our operations as we look to improve
15 in our effectiveness and efficiency in performing our
16 responsibilities and duties?

17 Two final topics I would like to touch on.
18 One just dealt with the opportunity and the process
19 for recruiting new members and retaining RA members,
20 the ease or difficulty of that. Forty-eight percent
21 of respondents felt that recruiting members to serve
22 was difficult or very difficult. High degree, high
23 percentage of those didn't know, so it was actually 70
24 percent of those who an opinion or some understanding
25 of the process indicated that it was very difficult or

1 difficult to retain members to the Assembly.

2 And, finally, we asked questions about the
3 composition and the diversity of the RA itself. We
4 wanted to assure that the Assembly is reflective of
5 the membership as a whole and that we have diversity
6 of thought, diversity of profession, diversity of race
7 and gender, and the responses there suggested that
8 there is work to be done. People didn't feel that it
9 wasn't necessarily reflective, but they -- across the
10 board it was pretty universal that there are
11 opportunities to continue the efforts to build
12 diversity in the body itself.

13 MR. ENGLE: So what do you do with this
14 intelligence that we gathered, from the surveys, from
15 the interviews we conducted, from the literature
16 review that we did on the organization? So we
17 processed this with the Task Force. We came up with
18 these lines of inquiry. Now these are going to be
19 shared with you, and these are going to be developed
20 as we go along, so I am not going to read each of them
21 individually, but you can see the questions that we
22 are asking, the themes that we are pursuing for both
23 the RA and the BOC. So this is going to be your
24 opportunity to continue to inform our process and
25 where we are going without making ultimate

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recommendations here.

So what are the next steps in this process? As we continue, and we have not finished yet the interviews. We have finished the surveying, but we are going to be probing these lines of inquiry, and they will be informing to more of our upcoming interviews so that when we ultimately come up with these findings and these themes that are emerging, we will be able to inform some recommendations that will ultimately come back to the Board of Commissioners and ultimately to the RA to help inform a structure to advance performance for the future. What does that look like?

The timing on this is in March, so we do have ample time in the process to have you inform the process. Some of the key fundamental questions are are we using your time and intellectual capacity to advance performance for the State Bar of Michigan and the practice of law, or not? What does that look like? How do we use large bodies to advance discussions, to do environmental scanning and to advance positions and advocacy so that we are out in front as opposed to reacting to situations that are timely in the decision-making process and, therefore, constrained to a smaller group that make these

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decisions.

So these are the questions through the line of inquiry that we will be asking. You have the opportunity to weigh in on these. The time frame of the project is such that the findings are going to be really formalized in March, so we are still on this inquiry line. We are asking you to support this with providing your thoughts and comments, and here is the way to do that. You have got the Rep Assembly at Michbar.org, which goes to staff, and we are processing your comments, your input on these lines of inquiry that will help inform the ultimate recommendation.

There is no ultimate solution. There is no perfect governance structure, but what is it that we can do to advance the way you make decisions and distribute the authority within the State Bar of Michigan to advance organizational performance and to achieve the objectives you have set out to.

So it is a process. We've got till March, and then ultimately for your consideration in the April 2020 RA meeting.

So thank you for this time. We appreciate the project and engaging with the Task Force and with you in advancing performance for the State Bar of

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Michigan.

(Video concluded.)

CHAIRPERSON CUNNINGHAM: Just a couple quick comments before we take a break. Thank you.

As you heard in the video, 300 surveys went out. Three hundred people were questioned associated with the RA, the current members and former members. One hundred and thirty responded. That is a phenomenal rate on any type of a survey. So those of you who participated, thank you. Those of you who didn't, watch out. I will come out and take your dog. So next time participate, please.

The point I want you to take from the whole video would be simply that part of this process is going to rely on your comments, on what you see, the direction you would like to see the State Bar governance go. Very important, those inquiry lists, and they should be in your materials, and we will make sure that everybody has a list of those inquiries. Please, give it some time, some thought, and send them to that e-mail address. They will be considered. So we appreciate it very much, and please return at 10:25. Thank you. We will take a short break.

(Break taken 10:11 a.m. - 10:25 a.m.)

CHAIRPERSON CUNNINGHAM: We will get started,

1 please. As you probably noticed from looking at your
2 calendars, I missed something. I overlooked it, and I
3 have got to take responsibility for it and an apology
4 to you. We have never really approved the summary of
5 proceedings for the prior, you know, the prior meeting
6 last April.

7 VOICE: So moved.

8 VOICE: Support.

9 CHAIRPERSON CUNNINGHAM: Well, at this point
10 I am going to ask Jennifer Frost to give the report of
11 her committee in regard to the summary of proceedings.

12 MS. FROST: Thank you. Jennifer Frost from
13 the 39th circuit. It came to our attention,
14 thankfully, through Victoria King, who pointed out
15 that item number 11 of the summary of proceedings, the
16 last sentence was inaccurate, where, in fact, the last
17 meeting we did not have a discussion regarding that
18 proposal. There was a motion to waive the discussion,
19 and so I would like to propose an amendment to number
20 11, the last sentence, and you will see it up there on
21 your screen, that "upon motion made and supported," it
22 be changed to "upon a motion made and supported to
23 waive discussion, the proposal passed."

24 CHAIRPERSON CUNNINGHAM: Is there support?

25 VOICE: Support.

1 CHAIRPERSON CUNNINGHAM: Thank you. Motion
2 made and second. All in favor say aye.

3 VOICE: Aye.

4 CHAIRPERSON CUNNINGHAM: Any opposed?

5 (None opposed.)

6 CHAIRPERSON CUNNINGHAM: Motion passes.

7 Jennifer, we have then a motion to approve
8 them as amended.

9 MS. FROST: Yes, I so make that motion.

10 CHAIRPERSON CUNNINGHAM: And is there a
11 second for that motion?

12 VOICE: Support.

13 CHAIRPERSON CUNNINGHAM: Any discussion?

14 All those in favor.

15 VOICE: Aye.

16 CHAIRPERSON CUNNINGHAM: Any opposed?

17 (None opposed.)

18 CHAIRPERSON CUNNINGHAM: And I had number two
19 in the beginning to introduce a few people to you. We
20 had someone who joined us, and you will be seeing or
21 hearing from him more later. He will be performing
22 the oath of office in regard to incoming chair
23 Aaron Burrell, but I will point out to you that we
24 have the honor of having in our presence the
25 Honorable Leo Bowman, who is, in fact, I learned, a

1 former Representative Assembly member, I believe
2 served two terms on this very body. So Judge Bowman
3 is here, and you will see him later in the program
4 when he administers the oath to Aaron. He is in the
5 back. Thank you, Judge.

6 (Applause.)

7 CHAIRPERSON CUNNINGHAM: Our next item of
8 business goes to the proposal, the proposal to amend
9 Rule 6.005 of the Court Rules, and the presenters will
10 be Bernard Jocuns and Joshua Blanchard, and if I could
11 have you come forward, gentlemen, in regard to your
12 proposals.

13 When there is debate, I just remind you,
14 please use the microphone and identify yourself by
15 name and by circuit, please.

16 Carrie, this is our technology problem day.
17 Is there a way for them to use a clicker on their
18 presentation? Do we have a clicker to use up there or
19 a way to move this up?

20 MS. SHARLOW: Just look back at me, and I
21 will advance the slide, or say, Next slide.

22 CHAIRPERSON CUNNINGHAM: Thank you.

23 MR. JOCUNS: All right. Well, hello again.
24 We are here. We have a proposal in regards to
25 attorney presence at PSI interviews. I know there are

1 some defenders out there, judges, prosecutors, past
2 and present, et cetera, and this is something that I
3 found important, along with some of my other
4 colleagues that are defenders and appellate practice
5 as well, the problems at PSI interviews, and sometimes
6 people say too much, they don't say enough because
7 they are too nervous, and, unfortunately, some of our
8 clients have cognitive disabilities in which they
9 really don't understand a lot.

10 So just like they have in federal court where
11 this is actually a right, we would like the same in
12 the state court as well, and also in the spirit of the
13 State Bar's mantra from a few years back in regards to
14 having an equal access to justice.

15 So with all that in mind, my colleague,
16 friend, biking foe is going to explain this in a
17 little more detail, and I think we have a little
18 PowerPoint that's going to follow it as well, so I am
19 going to turn this over to Josh Blanchard.

20 MR. BLANCHARD: So I know a lot of you.
21 Those that I don't, I am Josh Blanchard. For another
22 24 hours I am the chair of the Criminal Law Section.

23 What we have -- for those that don't practice
24 criminal law on either side, a pre-sentence interview
25 is part of an investigation into a convicted

1 defendant's history and the facts of the case to
2 present the sentencing judge with hopefully a fuller
3 picture of what's going on.

4 There is a probation officer who interviews
5 the -- can we go back -- interviews the person about
6 the facts of the case and about the person's history.
7 And this interview is, in most cases -- most criminal
8 cases resolve by plea, and so this interview is one of
9 the most important parts of the criminal case, because
10 what's said here can increase the guidelines and can
11 impact, you know, what happens with the sentencing.

12 For example, OV-12, Offense Variable 12 and
13 13 deal with other criminal conduct, and someone who
14 is being questioned and makes certain statements or
15 doesn't fully explain what's going on, it can increase
16 their scoring, and so I think having the right to have
17 counsel present is important. I can't think of any
18 other situation where we tell a person you don't have
19 a right to have counsel present. A party in a civil
20 litigation gets their lawyer in everything they want,
21 but for some reason we don't have that right in a
22 criminal case. The next slide.

23 This is the federal rule. For those of you
24 who practice in federal court at all, you will be
25 familiar with the process. At a pre-sentence

1 interview in federal court, it's expected that the
2 lawyer show up. I am not aware of any place where
3 it's not the practice that the lawyer shows up, and
4 certainly you are entitled to be there under the rule.

5 There is some disagreement among the circuits
6 on whether there is a 6th Amendment right, but there
7 is a rule-based right, and so everyone shows up. If
8 we could have the next slide.

9 The problem is we don't have a similar rule
10 in Michigan right now. There is -- frankly, the Court
11 of Appeals just resolved it as there is not a
12 constitutional right to have counsel there. There is
13 not a prohibition against having counsel, except that
14 in many circuits MDOC takes the position that the
15 lawyer can't be present, and so the way that works in
16 practice is the criminal defendant goes in, meets with
17 the probation officer, is questioned, and we have
18 clients who for lots of different reasons don't --
19 they either say things that harm them, which, you
20 know, depending on your view, is either good or bad,
21 but also they are nervous and they don't tell the full
22 story, they don't give that full background, and so I
23 think having an advocate there to help explain things
24 and avoid miscommunication is important, because then
25 we end up giving our sentencing judges a fuller

1 picture of what's going on. If we could have the next
2 slide.

3 This is the proposed rule. There has been
4 some commentary from the Criminal Jurisprudence and
5 Practice Committee that the language in gray ought to
6 be taken out and just mirror the Federal Rule, and I
7 think that's probably right. That language in gray
8 doesn't add anything of real significance. And so the
9 language in white is really what we are after, that if
10 a defendant is going to be interviewed as part of a
11 pre-sentence investigation and the lawyer requests to
12 be present, he has got to be given notice of when it
13 is so that he can show up and participate so that he
14 can help his client and help the court.

15 And so that's what we are asking for. We are
16 asking that the Assembly adopt our proposal and ask
17 the Supreme Court to make this a court rule. We
18 have -- if I could have the next slide.

19 We have got support from the Access to
20 Justice Policy Committee, and then the Criminal
21 Jurisprudence and Practice Committee with the caveat
22 that they didn't like that introductory language, and
23 I think their comment is well taken. So I think we
24 will open it to discussion.

25 CHAIRPERSON CUNNINGHAM: We would need the

1 motion from the floor, either you or the
2 Representative Assembly.

3 MR. JOCUNS: Is there a motion on the floor
4 to discuss this matter?

5 CHAIRPERSON CUNNINGHAM: Read the motion,
6 please. Not yet. You have to make the motion before
7 we amend it.

8 MR. JOCUNS: Okay. Anyway, a motion to
9 approve the following motion, that all probation
10 officers who interview defendants as part of a
11 pre-sentence investigation must, upon request, give
12 defense attorney notice and reasonable opportunity to
13 attend the interviews.

14 VOICE: So moved.

15 CHAIRPERSON CUNNINGHAM: Is there a second?

16 VOICE: Second.

17 CHAIRPERSON CUNNINGHAM: And discussion? If
18 you have any comments, questions, please line up at
19 the microphone. Please identify yourself by name and
20 circuit number.

21 MR. PERKINS: You just answered the question
22 that I have. Dennis Perkins, 44th circuit.

23 Where it says upon request, the question I
24 have is whose request? The defendant's request, the
25 attorney's request? I think you just got done telling

1 me that upon the attorney's request, and that's what
2 your comments were prior to this motion. Why can't we
3 just put upon the attorney's written request?

4 I mean, I understand what the federal rule
5 says. With all due respect to the federal rules,
6 sometimes I am not a big fan of those, and I don't
7 practice in federal court. I practice criminal law in
8 state court. And so if it's the defendant's attorney
9 who is going to have to give the request, then that's
10 fine. If it's the defendant who has to give the
11 request, then that's fine, but when it says upon
12 request, that can be anybody. Could even be the
13 prosecutor's office, for all I know.

14 MR. BLANCHARD: I think all it does, if we
15 leave it as is, anybody can say give the defense
16 attorney notice, and then probation just has to give
17 notice. It doesn't require that the defense attorney
18 attend. It requires that he have an opportunity. I
19 can think of scenarios where the defendant might say,
20 I want my lawyer. The lawyer didn't make the request,
21 and that allows the defendant to still trigger the
22 right to have representation.

23 MR. PERKINS: A request for a family member.
24 I mean, how far do you go down the list?

25 I mean, let's face it. We have had a ton of

1 case law on offense variables and PVs and everything
2 else. All we are doing is setting ourselves up for
3 more appeals to go to the Court of Appeals on
4 something like this.

5 We now have the opportunity to make it clear.
6 Let's just make it clear. Upon request, to me, is way
7 too general, way too vague, because a parent of a
8 young person who is still an adult at 19 or 20 could
9 be making the request. He is not a party. He is not
10 the defendant or he is not part of the proceedings, he
11 or she, but I can see an appeals court saying, well,
12 you know, the parent should have been able to say
13 something to make that request.

14 Where does it stop? Where does it start? I
15 think you have got to have -- you have got to have
16 some specificity in that language, or we are just
17 creating a brand new situation for appeals all over
18 this state to back the Court of Appeals up more than
19 they are now.

20 MR. BLANCHARD: Thank you.

21 MR. WIRTH: Christopher Wirth, 20th circuit.
22 I support the adoption of the rule. I think it does
23 two things. One, as we just mentioned, I think it
24 lends itself to the efficient administration of
25 justice in the sense that it gives the attorney really

1 an opportunity to work with probation, to correct
2 errors that otherwise might appear in a PSI. There is
3 an opportunity to do that vis-a-vis a sentencing
4 memorandum, there is opportunity to do that at the
5 time of the sentencing, to correct those errors, but I
6 think involving attorneys in the process from the very
7 beginning would help to reduce the number of errors
8 that there are in PSIs that then have to be corrected
9 at the time of sentencing, so I support it from an
10 efficiency standpoint.

11 It's also my understanding that the PSIs tend
12 to travel with an individual who is remanded to the
13 MDOC and become a part of their MDOC file and stay
14 alive and well in Parole Board reviews and those types
15 of things as well, so I think there is an important
16 aspect to have the attorneys participate in the
17 narratives that are contained in those PSIs as they
18 travel and have a life beyond just the sentencing
19 date. Thank you.

20 MR. KLAASEN: Terry Klaasen of the 4th
21 circuit. I haven't heard anything about whether or
22 not it's typical that a prosecutor appears at these
23 proceedings and whether that makes any difference.
24 And, also, with regard to criminal defendants who are
25 not indigent and who are paying for their own

1 attorney, do they typically have that attorney present
2 at the proceeding? Because, obviously, if a defendant
3 is indigent and they are not paying for their
4 attorney, it's easy for them to say I want them to be
5 there, and then the question is who pays for this,
6 because that attorney, if he is going to spend his
7 time there, is going to have to get paid, and who is
8 going to pay the bill for that? So those are the
9 questions that I have.

10 CHAIRPERSON CUNNINGHAM: At that point, why
11 don't -- if you have a response to some of his
12 specific questions, please do.

13 MR. BLANCHARD: So I think it's not common
14 that a prosecutor appear at pre-sentence interviews
15 presently. In federal court it's also not common. It
16 would be a little bit difficult, because if the
17 prosecutor is trying to engage in direct questioning
18 of the defendant, you know, that becomes a little bit
19 difficult.

20 As far as the question about retained
21 counsel, right now there is not a difference between
22 retained or appointed counsel. Neither have a right
23 to be present. I have on many occasions shown up and
24 been on retained cases and been told to take a hike.
25 They won't let me in, because apparently I am not a

1 valuable part of the criminal justice process. So I
2 think that we need to embrace that the criminal
3 defense attorney has a role even in the pre-sentence
4 investigation.

5 MR. JOCUNS: Just to add in additional to
6 that, generally the prosecutor is not going to be at a
7 PSI interview, and it's not really their role. And in
8 regards to having the attorney present is so we can
9 avoid some of these things in a higher court, and that
10 way that person is able to assert his or her right
11 and, you know, make sure that everything is accurate
12 and actually makes things easier and more efficient.

13 CHAIRPERSON CUNNINGHAM: Our next speaker,
14 please.

15 MR. HAVIS: Thank you. Timothy Havis from
16 the 56th circuit.

17 I do rise in support of this proposal. As a
18 practicing criminal defense member of the Bar, also as
19 the public defender administrator for my county, I
20 also see the tenor, the tone of a written pre-sentence
21 report being very adversarial in nature from the
22 viewpoint of the probation agent itself, and when you
23 get a report a day or two in advance of the actual
24 sentencing date, you have very little amount of time
25 in order to respond fully when you are standing in

1 front of the judge as far as how to correct a mistake
2 in what your client says.

3 I think that, as one of the other speakers
4 said, this will lead to a greater efficiency in the
5 actual proceeding itself. It will make things go a
6 lot more smoothly. Everybody will be prepared.

7 In our circuit, I know we have gotten where
8 we get pre-sentence reports ahead of time, more so
9 than just a day or two, which is fine, but in district
10 court, invariably, we don't get them that far in
11 advance. I have practiced in many other jurisdictions
12 across the state, and generally there is the lack of
13 opportunity to correct something that is a mistake in
14 the report.

15 I believe that also I have seen in some cases
16 where, at least in district court cases, there is a
17 set date or a time for the pre-sentence report if you
18 have a client who is actually not in jail, so it's
19 very easy for the clerk's office to just simply put
20 that line on the Notice to Appear, that the attorney
21 is going to get anyway, so what that date is going to
22 be. It's a minor, simple correction or a simple key
23 stroke in that regard.

24 The only question -- I guess very long here.
25 The upon request language can be simply upon request

1 of a party. That narrows it into someone who is
2 involved here, not a family member. My only question
3 I have is what is the cure if that opportunity is not
4 presented in a reasonable fashion to the defense
5 attorney. Thank you.

6 MR. BLANCHARD: We don't -- I suppose we
7 haven't fashioned a remedy. Compliance is an
8 optional, and so I would expect if the rule is adopted
9 we'll have notice.

10 CHAIRPERSON CUNNINGHAM: Our next speaker.

11 MS. ZIMBELMAN: Jessica Zimbelman from the
12 30th circuit. One of the prior speakers mentioned the
13 importance of this document for those individuals who
14 were sentenced to MDOC, and I just want to reiterate
15 that when somebody is remanded to the custody of the
16 DOC, they go with three documents -- the sheriff's
17 questionnaire, judgment of sentence, and the
18 pre-sentence investigation report. So all programming
19 decisions, placement decisions, and parole decisions
20 are based primarily on the pre-sentence investigation
21 report, and it's absolutely essential that it's
22 accurate.

23 In my day job, I am with the State Appellate
24 Defender's Office, and I spend a lot of time trying to
25 correct pre-sentence reports on appeal, and this rule

1 would hopefully allow greater efficiency and less time
2 on appeals trying to fix this essential document, so I
3 support this rule fully.

4 MR. KOROI: Mark Korio, 3rd circuit. I have
5 a couple of comments on this. One thing I am
6 wondering about is the notice. Who gives the notice?
7 How is it given? I think if we do not -- I specify
8 those two instances you would have problems because
9 some probation officer may e-mail something out to an
10 attorney and he never gets it or he faxed it, attorney
11 never gets it, never shows up, if there is a problem
12 down the road that the court's trying to fix, so I
13 think there should be some built-in, as you do in the
14 like court rule giving civil procedure 21-7 where we
15 actually specify what that notice specifically is to
16 the defendant and his attorney to make sure it's
17 enforced.

18 The second aspect of an event is that if
19 there is a violation, what's going to be the remedy?
20 What if some attorney does not get a notice and he
21 wants to go to court? Does that just simply require
22 that the pre-sentence investigation and conference be
23 held over again? I don't know. That's something that
24 can be probably determined down the road by the court
25 system.

1 Another thing I want to point out is there is
2 a body of case law that I see of people who have
3 gotten in trouble in other cases because they have
4 made statements during the pre-sentence investigation
5 in order to admit they are involved in other crimes,
6 so those statements are then testified to by the
7 probation officer in a separate criminal proceeding.
8 So that's why, that's one of the main reasons that I
9 believe that the probation officers don't want defense
10 attorneys in there. It's for that very important
11 reason. I have seen it happen before.

12 Additionally, if we look at like a complex
13 hearing. In a parole hearing many jurisdictions have
14 purposely kept attorneys out of the parole process,
15 because they don't want the defense attorney there to
16 give them the -- the defendant will be coached somehow
17 and will not give accurate answers.

18 Finally, another reason they would want a
19 policy consideration is because if they are not
20 properly coached, they are less -- usually the people
21 are not articulate people. They are not people that
22 know how to present themselves to other people, and
23 they need the attorney to do it for them. And they
24 are at a disadvantage in parole hearings if they don't
25 have an attorney. Same thing goes in a proceeding

1 like this. They need somebody to help them present
2 their case, because it's a very critical aspect of the
3 proceedings, criminal proceedings, probably most.

4 I have seen in cases I have had with -- we
5 had the lifetime probation option in which whether a
6 person goes to prison or not is for that probation
7 officer recommend a lifetime probation versus a prison
8 term.

9 In certain counties, like Oakland County, if
10 you have one of those on your side, that's good. If
11 not, then the person, they will probably go to prison.
12 So I think it's a very crucial aspect of the criminal
13 process. I think that a criminal defense attorney
14 should have the right to notice and appear at these
15 proceedings. Thank you.

16 MR. STEINHARDT: Stephen Steinhardt,
17 16th circuit.

18 When I first saw this, my response was what a
19 great idea. This is an idea whose time is long
20 overdue. The concern is that overwhelmingly my cases
21 are court appointed. To take the time to properly
22 prepare for this half hour or hour interview, to drive
23 to be there, if it's court appointed, if it's not
24 paid, is this establishing duties and responsibilities
25 on the part of the attorney that could impact the

1 system to affect our reputation, our license when we
2 are not there. Is there now unequal justice because
3 some clients will have it and some can't, and the
4 bottom line is, the question was asked, Who pays?

5 I might receive some great job in that
6 initial stage, but if this is not tied to a forum
7 where the attorneys are paid, I am more concerned of
8 the problems that are going to be created as well. So
9 it's a great idea, but I think it has to be married
10 into the concept of who pays, and the money should be
11 there for both.

12 MR. BLANCHARD: So my response to that would
13 be, one, this does not create an obligation. It
14 allows an attorney to appear. My personal view is
15 that a lawyer ought to be there to attend and lawyers
16 ought to be paid for their work. MIDC is making great
17 strides in getting lawyers paid for their work, and
18 hopefully that will follow when this becomes a
19 requirement, but right now it doesn't create an
20 obligation. It just creates a right if a lawyer wants
21 to be there, and you can make that decision with your
22 client on whether you need to be there on a particular
23 case.

24 MR. STEINHARDT: If we can do both, that
25 would be a wonderful idea. Thank you.

1 MR. JOCUNS: And just one more thing in
2 regards to that. The suggestion in regards to this
3 proposal wasn't to add responsibility to defenders on
4 any level without being compensated for the services
5 or volunteering.

6 MR. KOHLER: I'm Tim Kohler, 16th circuit. I
7 will address that issue. Each one of the units that
8 is now compelled by MIDC to provide scheduling and all
9 that they have, each one of those can get a grant from
10 MIDC for additional cost, so that really that's going
11 to be addressed, that's going to be taken care of.

12 But I rise in support of this for several
13 reasons. I serve on the Criminal Jurisprudence and
14 Practice Committee. This issue dominated our
15 committee meeting when we last met, and the issues
16 that were addressed were upon request and there was
17 some discussion about who makes the request, and it
18 was targeted that the requester given an opportunity
19 for making a request is the defendant.

20 The attorney has notice of it because he is
21 given notice of it by the Probation Department, and
22 there is a time scheduling that can be worked out
23 between the attorney, whether it's a retained attorney
24 or a court-appointed attorney, and a place, whether
25 it's in a holding cell or someplace of confinement, or

1 whether or not it's in the office of the probation
2 officer. So those two issues I think really get
3 resolved, and I think that the language is good
4 language, and I rise in support of that.

5 MR. GILBERT: Josh, I realize -- Dave Gilbert
6 from the 37th circuit.

7 I realize a lot of us believe, a lot of
8 people believe that the pre-sentence interview is a
9 critical stage in a criminal prosecution. My issue
10 with this is that it's leading up to the discussion of
11 the defense attorney whether or not he wants to go to
12 the pre-sentence interview. Is this opening the door
13 for an ineffective assistance of counsel claim?

14 MR. BLANCHARD: So could there be litigation
15 about that? Yeah. Do I think if there is a right to
16 attend lawyers will start attending? Yeah, I think
17 so.

18 MR. GILBERT: Would it be better to make it
19 mandatory is what I am asking, because if you are
20 leaving it at the discretion of the defense attorney,
21 you are opening up the door that they should have
22 appeared; therefore, it's ineffective assistance of
23 counsel.

24 MR. BLANCHARD: I think it leaves it to the
25 discretion of the defendant and the defense attorney,

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and you can waive any right, and so it leaves that decision up to the parties.

MR. GILBERT: Well, on appeal typically when we are talking, well, they should have been here, then you have got a rule that requires or gives them the opportunity to be there. It's a critical phase. Why aren't they there when you have got a Court Rule saying they should be there?

MR. BLANCHARD: The law right now is it is not a critical phase, so it would not be under the current law.

MR. GILBERT: Thank you.

MR. JOCUNS: I have one more thing to add to that.

CHAIRPERSON CUNNINGHAM: No.

MR. JOCUNS: I am not allowed to?

CHAIRPERSON CUNNINGHAM: No, you are not.

MR. JOCUNS: Oh, I am being muted?

CHAIRPERSON CUNNINGHAM: You're being muted.

MR. JOCUNS: Why?

CHAIRPERSON CUNNINGHAM: There has got to be some sense of order, and to have two speakers go back and forth just doesn't make sense. We are ten minutes behind schedule at this point.

Proceed, Mr. Larky.

1 MR. LARKY: Sheldon Larky, 6th circuit. I am
2 in favor of this. Each of the previous speakers
3 talked about mechanics. This is not mechanics. This
4 is philosophy on behalf of the association. It tells
5 the world and it tells the Supreme Court that we
6 believe from a philosophical standpoint attorneys
7 should be present. Each one of these things about
8 requests or a reasonable notice or stuff like that is
9 really mechanics, and I would say that from a
10 philosophical standpoint I agree with this
11 wholeheartedly, and I would move to end debate in this
12 matter.

13 VOICE: Second.

14 CHAIRPERSON CUNNINGHAM: Is there any --
15 Judge, is there any discussion on a motion to end
16 debate?

17 JUDGE CHMURA: You make a motion to call the
18 question, which has to be made. Somebody could make
19 the motion to call the question.

20 CHAIRPERSON CUNNINGHAM: He did.

21 JUDGE CHMURA: Oh, he made the motion?

22 CHAIRPERSON CUNNINGHAM: Wasn't that your
23 request, Mr. Larky?

24 JUDGE CHMURA: Well, there was a motion made
25 to call the question?

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CHAIRPERSON CUNNINGHAM: Yes.

JUDGE CHMURA: Is there a second?

VOICE: Second.

CHAIRPERSON CUNNINGHAM: There is no debate on that.

All those in favor of calling the question and proceeding to vote.

Any opposed?

Okay. It passes. Thank you, gentlemen, for your presentation.

The question now is up on the notice, should the Court Rule be amended according to the language now on the board? Is that a correct statement of the motion, Mr. Jocuns?

MR. JOCUNS: Yes.

CHAIRPERSON CUNNINGHAM: All of those -- we are going to do this by your clickers, right? And the Clerk is standing by, and she will let us know when we can start.

CLERK REBECK: You are going to press A for yes and B for no, and the voting is open.

Voting is closed.

Motion passes. 84 yes, 18 no, and zero abstain.

CHAIRPERSON CUNNINGHAM: The motion passes.

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Thank you.

On to the next proposal. This is for proposed amendment to Rule 3.206 of the Michigan Court Rules. Mr. Mathew Kobliska is our presenter.

MR. KOBLISKA: Delegates Matt Catchick and Elizabeth Kitchen-Troop will also be presenting with me.

Good morning, friends and colleagues. Matt Kobliska, 6th circuit delegate. It's our proposal for your consideration this morning to amend MCR 3.206 to change the way we caption family law cases to move away from confrontational or oppositional pleading captions, and to be clear, we are talking about family law cases only.

Now, this is not substantive. Some might think it's inconsequential, except that it's not. The way that we do things in domestic cases, the words we use, the manner of presentation, this matters to litigants. We know that there are certain trigger words. For decades we have used the term "visitation", which is almost guaranteed to elicit an emotional response, but when we instead use "parenting time", it didn't. We have since statutorily stricken the "V" word from our lexicon.

When we talk about "legal custody", attorneys

1 who practice in this area and mediators will tell you
2 that you can often hit a brick wall, but when you talk
3 about "shared decision-making", quite often you will
4 get cooperation and abidement.

5 When we talk about "physical custody", again,
6 you are likely to hit a brick wall, but when we talk
7 about how to share parenting time, again, we can often
8 get cooperation. Now, all of these mean the same
9 thing from a legal perspective, but there are vastly
10 different perceptions on the part of parties.

11 Now, the commencement of a divorce action is
12 not a happy time. It's quite often the parties' first
13 brush with the legal system, and quite often they
14 didn't choose to be there. But research confirms what
15 we know, and that's that the start of a divorce action
16 is a potential flash point for domestic violence. But
17 even short of that, the manner in which a case is
18 presented at the outset can set the trajectory of the
19 case going forward.

20 The Family Law Section and the ADR Sections
21 of the State Bar drafted the proposal before you in
22 2014. Coincidentally, at the same time, or about the
23 same time, the Uniform Collaborative Law Act had been
24 enacted by the Michigan legislature. For those of you
25 who don't practice in this area, collaborative law is

1 a team approach which occurs mostly outside the legal
2 system. In fact, in many situations a case isn't even
3 filed until a settlement has been reached.

4 But there were no procedural rules to
5 instruct the courts how to deal with this new
6 avant-garde collaborative case, so the Michigan
7 Supreme Court convened a special committee to prepare
8 for post rules, which ultimately swallowed up this
9 Family Law Section/ADR Section proposal.

10 The result of this was that the Michigan
11 Supreme Court adopted new rules, 3.222 and 3.223,
12 which became effective just this year, just in April.
13 The final version even took it a step further and
14 indicated that captions shall be in the following
15 form, In the matter of Party A and Party B.

16 Now, this accomplished the goals of the
17 proposal, but collaborative cases represent a very
18 small subset of our cases. Safe to say they probably
19 take up less than five percent of domestic cases, and
20 I think much less than that. So at least 95 percent
21 of all cases have oppositional or confrontational
22 captioning. For those of us handling these difficult
23 cases, these things matter.

24 I would like to introduce Matt Catchick, 6th
25 circuit delegate, to discuss the specifics of the

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proposal.

MR. CATCHICK: Good morning, everyone. My name is Matt Catchick from the 6th circuit. Shout out to all my homies from the 248 circuit.

I am here to discuss the substance of this new Court Rule. You would be changing "plaintiff" to "petitioner" and "defendant" would then become "respondent". All Court Rules outside of MCR 3.200, which is the by the Court Rules governing domestic relations law, any Court Rules outside of 3.200 that apply to domestic relations actions, then we would have, any time there would be a reference to "plaintiff", it would apply to "petitioner", and "defendant" would apply to "respondent".

On now for a caption for an action for divorce. "Separate maintenance", which is kind of a quasi legal separation here in Michigan or annulment, for those, instead of one party versus another, which already sets everyone off for a very combative mode, which is never a good idea in family law, it would now read, "regarding the marriage of petitioner and respondent", or it could also be, "regarding the marriage of joint petitioner", in the event both people equally want to dump the other party.

In captions for other actions, such as child

1 support/child custody, those would now read,
2 "regarding the child or children of petitioner and
3 respondent", or "regarding the child or children of
4 joint petitioners". Once again, in a scenario where
5 the boyfriend/girlfriend or girlfriend/girlfriend or
6 boyfriend/boyfriend or pan and pan no longer want to
7 be together jointly and they equally agree on that.

8 I think that at the risk of bringing up a
9 criticism of this Court Rule some might say, This is
10 just another example of touchy feely-ism and, once
11 again, family law asking to be treated differently. I
12 would respectfully submit to all of you that nothing
13 could be farther from the truth. We strive very much,
14 given the sensitivity and the children and families we
15 are dealing with, to minimize acrimony, and I think
16 this goes a long with to bring this up to speed with
17 other states and jurisdictions.

18 There would be zero fiscal and staffing
19 impact to the Michigan State Bar, and we respectfully
20 request your support. Thank you so much for your
21 time.

22 MS. KITCHEN-TROOP: Hello. This is very
23 high, and I am very short. Elizabeth Kitchen-Troop.
24 I am from the 22nd circuit.

25 I am just going to talk through sort of the

1 survey of the country in terms of how they handle case
2 captioning, and you did get a supplemental document
3 that kind of goes through the various states and how
4 they handle it. As it turns out, actually coming
5 through procedural rules and codes for the entire
6 country takes a little bit of time. So I tried to
7 pick the part of the process here today that would be
8 the shortest, and I managed to hose myself.

9 Anyway, you will see in your materials
10 detailed out sort of what state does what, and please
11 enjoy those materials, but for those who don't want to
12 actually dig through it, the crib notes are
13 essentially 20 states approximately still do
14 "plaintiff" and "defendant" in domestic relations
15 cases. There are approximately 26 states that do
16 "petitioner" and "respondent", and the remaining
17 states have some blend of those two, some of which
18 differentiate based on whether or not there is a
19 consent agreement or whether or not it's a traditional
20 sort of litigation case.

21 So an example of that is Alaska. If the
22 domestic relations matter is up by consent, they refer
23 to it as "petitioner" and "respondent". If it is not
24 by consent, then they are still "plaintiff" and
25 "defendant".

1 So the trend here is pretty clear. The
2 majority of the states have made the shift and are
3 meeting the shift to a nonconfrontational case
4 captioning, and there is a lot of great reasons for
5 that that the two Matts outlined.

6 I will share that anecdotally in my practice,
7 which is entirely family law, I do about half
8 mediations and half where I am the counsel for the
9 litigants. I have gotten increasing amounts of
10 feedback from clients that they feel that the process
11 itself really sets people up to fail by pitting
12 parties against each other, and when you have cases,
13 particularly those that involve children, there is
14 really not room for that. There is not a clear winner
15 and loser. You are dividing wealth, you are dividing
16 assets, you are dividing up time with kids.

17 There are ample studies out there that show
18 how parents go through this process affects kids both
19 short-term and long-term, and I think to the extent
20 that we can try to make the process better for
21 families we should, and that's effectively what we are
22 asking the Rep Assembly to do.

23 So I am going to move for the adoption of
24 3.026.

25 VOICE: Second.

1 CHAIRPERSON CUNNINGHAM: The motion has been
2 made and support. Discussion? Again, when you go to
3 the microphone, please identify yourself by name and
4 circuit number.

5 VOICE: Call the question.

6 VOICE: Support.

7 CHAIRPERSON CUNNINGHAM: All those in favor
8 of calling the question.

9 VOICES: Aye.

10 Any opposed?

11 (None opposed.)

12 CHAIRPERSON CUNNINGHAM: On the main motion
13 then, we will proceed by clicker.

14 CLERK REBECK: Voting is open. Press A for
15 yes or B for no.

16 Voting is closed.

17 Motion passes, 97 yes, 9 no, zero abstain.

18 CHAIRPERSON CUNNINGHAM: Thank you. Thank
19 you.

20 Using the prerogative of the chair, I would
21 like to just do informally by a show of hands. Time
22 is getting tight. We definitely want to present the
23 consideration of the proposal on professionalism
24 principles. We have another that I am, quite frankly,
25 not sure of how -- whether this will be controversial

1 or not, whether it will be as the last proposal or be
2 more like the first proposal where there will be
3 vigorous debate.

4 So just by show of hands and without any
5 binding, how many would think that there is going to
6 be a discussion as to the amendment of the Court Rules
7 in regard, or the amendment of the Judicial Conduct
8 Canon on -- anybody think that's controversial? Is
9 that something we are going to be discussing?

10 (Show of hands.)

11 CHAIRPERSON CUNNINGHAM: From the large
12 number of hands here, I don't think it's going to be
13 in the same category as the motion that just passed by
14 97 votes. I think there is going to be a vigorous
15 discussion.

16 Quite candidly, we have time problems, and
17 for that reason I am going to propose several
18 solutions, and of course it's up to you by motions to
19 decide.

20 I would entertain a motion to postpone the
21 discussion and debate on the amendment to the judicial
22 conduct canon until the April meeting.

23 VOICE: So moved.

24 CHAIRPERSON CUNNINGHAM: If somebody wanted
25 to move. Is there a second for that?

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VOICE: Second.

CHAIRPERSON CUNNINGHAM: That being the case, I think this is an important enough issue to not be limited by time and to allow everyone a thorough discussion on it, so with that thought in mind, is there any discussion as to postponing this issue until April? Any discussion on that at all?

VOICE: So moved.

VOICE: Call the question.

JUDGE CHMURA: It's already been moved.

CHAIRPERSON CUNNINGHAM: Already been moved.
No discussion.

All those in favor of postponing the issue involving the proposed amendment to the code of judicial conduct -- we can do this by voice vote or hand vote. Raise your hands. If you are in favor of the -- raise your hand.

VOICE: Postponing?

CHAIRPERSON CUNNINGHAM: Yes, in favor of postponing, I'm sorry, postponing until April the debate, discussion, and consideration.

And those against, those who would like to do it today?

I think it's overwhelming. If there is anybody that would challenge it, let me know now, but

1 as I look up here now, I see an overwhelming to move
2 it, so I am going to say that that motion has passed,
3 and the matter will be postponed, and Judge Chmura
4 told me that's the correct way to phrase it, that that
5 is the motion, and it will be postponed for
6 consideration in April.

7 I would like to then move on to the, which
8 effectively puts us back on time, to the consideration
9 of the proposal on Professionalism Principles.
10 Mr. Pappas, Ed Pappas will be our presenter, along
11 with the State Bar President, Jennifer Grieco.

12 MR. PAPPAS: Thank you, Mr. Chair. My name
13 is Ed Pappas, and I am currently the chair of the
14 State Bar Professionalism Work Group, and I am here to
15 speak to you today to explain why I believe the
16 Professionalism Principles for lawyers and judges in
17 Michigan are important and necessary for our honorable
18 profession. Our current State Bar President, Jennifer
19 Grieco, will follow me and speak briefly as well on
20 this issue.

21 Last year on October 18 the State Bar of
22 Michigan and the Michigan Supreme Court held what we
23 hope is the first summit on professionalism at the
24 Michigan Supreme Court Hall of Justice. Approximately
25 80 judges and lawyers attended the summit. The idea

1 of the summit was to brainstorm about how we can
2 promote and sustain a culture of professionalism and
3 civility in the legal profession, and that's not to
4 say that we have a pervasive problem in our
5 profession, but there are still too many lawyers and
6 judges, experienced and inexperienced, who resort to
7 rude, hostile, insulting and offensive behavior. And
8 with incivility rising to a crisis level in our
9 society, including our dysfunctional government, there
10 is no more important time to address civility in our
11 profession. Lawyers and judges play an important role
12 in society and have responsibility to safeguard our
13 constitution, protect human rights, advance the rule
14 of law and ensure access to justice for everyone.

15 As former United States Supreme Court Justice
16 Warren Burger suggested, and I quote, The necessity
17 for civility is relevant to lawyers because they are
18 the living exemplars, and thus teachers, every day in
19 every case, and in every court, and their worst
20 conduct will be emulated more readily than their best.

21 Lawyers and judges have the opportunity to
22 teach the leaders and citizens of our great country
23 that you cannot have the dialogue necessary to resolve
24 important issues without civility and respect.

25 At the summit, the participants developed a

1 number of recommendations to bring professionalism and
2 stability to the forefront of the skills required to
3 be a truly successful lawyer and judge. One of the
4 recommendations is to have one set of professionalism
5 and civility guidelines adopted by the Supreme Court
6 for all lawyers and judges practicing in the state of
7 Michigan.

8 This is the first of many recommendations
9 that will be coming from the Professionalism Work
10 Group, but it may be one of the most important. As
11 the ABA has stated, Civility can be one of the most
12 important tools available to a lawyer or judge and,
13 when practiced consistently, can go far to enhance
14 dispute resolution, improve the image and reputation
15 of the profession, and improve the quality of life for
16 practitioners and judges.

17 Now, nobody believes that they are engaging
18 in uncivil behavior, and some lawyers and judges do
19 not recognize the nuts and bolts of what constitutes
20 professionalism. The professionalism, the principles,
21 and their commentary provide these nuts and bolts and
22 give clearer guidance to lawyers and judges on what
23 constitutes professionalism. And the commentary makes
24 clear that the Professionalism Principles are not
25 intended to form the basis for discipline,

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professional negligence, or sanctions.

If approved by the Representative Assembly and then the Michigan Supreme Court, these Professionalism Principles can be used in a variety of ways. Principles could be provided to lawyers with scheduling orders or at pro hac vice admissions or in conferences with lawyers or at swearing-in ceremonies for new lawyers or simply as reminders to lawyers who are acting unprofessionally. A lawyer can also provide copies to clients to educate them about the professional integrity required of Michigan lawyers and judges.

As ethics expert David Bernard said, Because incivility runs rampant in society and occurs too often in the legal profession, state bars need rules to change behavior on a large scale.

Many other states have adopted statewide civility guidelines for lawyers and judges, and the many lawyers and judges that I have spoken with welcome the idea of civility guidelines, not just for lawyers, but also for judges.

So the question is not why these professional principles are necessary, but what can the State Bar do to improve and foster civility in our profession and ultimately in our society? So I urge you to vote

1 in favor of the Professionalism Principles, and now I
2 will ask Jennifer to say a few words.

3 PRESIDENT GRIECO: Thank you, Ed. I greatly
4 appreciate Ed's work as the chair of the
5 Professionalism Task Force Committee, and he worked on
6 professionalism issues as past president and continued
7 to work on that. He created the professionalism and
8 action program that is at every law school in Michigan
9 now to educate our new lawyers, our new lawyers about
10 professionalism issues, and I have attended those
11 programs and worked this these law students about
12 professionalism issues, and I have always sat there
13 and thought that the people that need to be learning
14 about civility and professionalism are lawyers that
15 have been practicing for 20 years and not these brand
16 new law students.

17 But I did want to share just a couple things
18 with you, and that is that in my road show when I have
19 gone around the state all year, I talked about the
20 Professionalism and Civility Work Group and the idea
21 of Civility Principles, and it's been really well
22 received throughout the state. I know that some of
23 the smaller jurisdictions where you have a small
24 county bar association and everybody knows everybody,
25 civility may not be as big a problem, but certainly in

1 the metro Detroit area, certainly in the bigger
2 jurisdictions, the members that I have spoken with
3 have all been very receptive to the idea of Civility
4 Principles, that they are needed, and going through
5 them with like lawyers through the Inns of Court and
6 talking about what we expect from a civil lawyer.

7 The commentary of what a civil lawyer should
8 do is good. It's instructive, and it gives us all
9 some direction moving forward, so I am at this time
10 going to make a motion that the Civility Principles,
11 which again have been really well received throughout
12 the state, be adopted as amended in the blue sheet
13 that's in front of you and that's on the board. So
14 that's my motion.

15 CHAIRPERSON CUNNINGHAM: Is there a second?

16 VOICE: Support.

17 CHAIRPERSON CUNNINGHAM: Motion has been made
18 and supported. Is there any discussion? Again, if
19 you approach the microphone, identify yourself by name
20 and circuit number, please. Any discussion?

21 Hearing no discussion, I would ask for a
22 vote. Well, let's see. We are going to go back to
23 the clickers. This would be --

24 CLERK REBECK: Voting is open. A for yes, B
25 for no.

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Voting is closed.

Motion passes. 94 yes, 14 no, zero
abstained.

CHAIRPERSON CUNNINGHAM: Our next order of
business will be the nomination and election of the
clerk, but before proceeding on that, I have got to
make a comment in terms of an apology to the
presenters on the proposal for the amendment to the
Judicial Code of Conduct. I realize how hard you
worked on it to have it ready to have it here today.
I just think it's too important of a matter to rush
through, and, since the body did indicate that there
was going to be a need for discussion, and I think
it's pretty clear that there was a need for
discussion, we will put it -- you have put it over to
April. It's done. So that's done. It's been
decided. This is just in terms of an apology and a
recognition about how hard people worked to present it
today, but circumstances are such that we want to give
it a full hearing. So thank you to the proposers, the
proposed presenters.

We are moving on now to the nomination of the
clerk. We had one person express interest. In your
materials you got the background and the material for
our candidate, and I think he is known for most of us.

1 He is a long-term member, Nick Ohanesian, a long-term
2 member of the Assembly who has served as a committee
3 chair. His name is accepted into nomination.

4 At this time I am going to ask for any
5 further nominations from the floor.

6 VOICE: Move to close nominations.

7 VOICE: Second.

8 CHAIRPERSON CUNNINGHAM: All right. All
9 those in favor of closing nominations.

10 VOICES: Aye.

11 CHAIRPERSON CUNNINGHAM: As to the election,
12 all those in favor of the election of Nick Ohan -- I
13 always have a hard time with his name. Nick, tell us
14 your name, please.

15 MR. OHANESIAN: My name is Nick Ohanesian.

16 CHAIRPERSON CUNNINGHAM: And this is the man
17 who is asking for your vote. All those in favor.

18 Any opposed?

19 Nick, congratulations. You are now our new
20 clerk.

21 (Applause.)

22 CHAIRPERSON CUNNINGHAM: Our next order of
23 business, I believe, is the recognition of the
24 outgoing members. We have a number of members who
25 have completed their terms of service, and if we have

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the technical ability, we are going to put this up.

Can I ask each of these persons, please, to stand and be recognized. I see that a number of them are here, a few of them are not here. And, again, if you just go through, give your names.

Why don't you give your names, so these are all retiring members, beginning with Dave Gilbert, and we will just go through to make sure that each of them are recognized, appreciated individually. David.

MR. GILBERT: Dave Gilbert, 37th circuit.

MR. HOUGABOOM: Phil Hougaboom, 44th circuit.

MS. KROL: Kristen Krol, 56th circuit.

MR. JOCUNS: Bernard Jocuns, 40th circuit, which is Lapeer County.

MS. KASS: Kristin Kass, 41st circuit.

CHAIRPERSON CUNNINGHAM: Is there anyone back there? Over here, please.

MR. MOILANEN: Phil Moilanen, 4th circuit, Jackson.

MR. WEINER: Jim Weiner, 6th circuit.

MR. ROTENBERG: Steven Rotenberg, 6th circuit.

MR. GORNBEIN: Henry Gornbein, 6th circuit.

MR. HOLSOMBACK: Mark Holsomback, 9th circuit.

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MS. MEDLEY: Angela Medley.

CHAIRPERSON CUNNINGHAM: Thank you to each and every one of you.

(Applause.)

CHAIRPERSON CUNNINGHAM: One of the great things about this job is you get to share a stage or platform with some giants, some really, really giants in this field that we have all chosen, the profession we have all chosen, and I have the honor now of introducing one of those giants, and I am going to ask Judge Bowman to come forward, because he will be administering the oath to our incoming chair. But I have the honor of being able to introduce to you Oakland County Circuit Judge Leo Bowman.

Judge Bowman was a graduate of Oakland University, went on to the University of Detroit, now Detroit Mercy, but back in the days when he and I were there it was University of Detroit. Graduated in '81. He worked at the Pontiac City Council. He was kind of legal adviser for them, and then he was elected to the bench in 1988 in the Pontiac District Court. He served there for a stint as chief judge. He participated in too many community organizations really to even list or discuss. Early 2007, he was appointed by Governor Granholm to the Oakland County

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Circuit Court, where he sits today.

So, again, Judge Bowman, if you will come forward, please, and do the honors.

JUDGE BOWMAN: Thank you, Mr. Chair.

It's still morning, so good morning.

VOICES: Good morning.

JUDGE BOWMAN: Before I proceed with the task at hand, I would just like to say just a couple of words about the incoming chair. I am reminded by the gentleman that spoke earlier, that being Ed Pappas, one person that's older than I am, of the importance as he talked to you about professionalism. It's something that as a judge I have right at the top of the important things for lawyers, as well as myself, and it is that concept, that important principle, that when I think about Aaron, it comes to mind.

I met Aaron so many years ago that I don't want to recall them. Aaron was a student in law school, and it was one of those occasions where I was present at an outing. I think it was a Tiger's game actually. They were winning. It was a year that they were actually winning, and Aaron approached me and introduced himself, told me that he was a student and what he was interested in doing.

I was first impressed that he actually was

1 interested enough to approach me, and we talked for a
2 period of time, and, as I always do when I am in
3 outings, particularly with lawyers or law students, I
4 gave Aaron a card and told him he was always welcome
5 to come to the courtroom, come to chambers, any time.

6 Unlike most law students, Aaron took me up on
7 that, and he came to court and he sat and he watched
8 proceedings, and then eventually he came to a
9 circumstance where he wanted to come and intern in
10 chambers, and I agreed, and for a semester Aaron was
11 an intern in my chambers.

12 I was immediately impressed, first with his
13 intellect. He is much smarter than I am, and he was
14 then, and I am sure certainly that he is now, but it
15 was the way that he approached the law, that he
16 approached working in chambers that I was most
17 impressed with. I think in a word it's what Ed Pappas
18 talked about. It was the professionalism that he
19 brought to the position.

20 Subsequently he graduated, and it was this
21 firm, little firm in the state of Michigan, Dickinson
22 Wright -- I think you have probably heard of it -- he
23 was hired to come there. And so over the years we
24 have stayed in touch, and the singular thing that I
25 can say about Aaron is that he has this quiet

1 confidence that he brings to the practice of law. He
2 is professional. When he comes in court, he commands
3 the courtroom, but most importantly it's what Ed
4 Pappas talked about. He represents our profession in
5 the best way.

6 And so when he asked me would I be make
7 myself available to come and swear him in, I, of
8 course, said yes, because Aaron represents the best
9 about the practice of law. He carries the qualities
10 of our current president, Jennifer Grieco.

11 Jennifer, you were here. There you are. I
12 have known Jennifer for years as well, back when I had
13 hair, 20 pounds lighter, and she was a relatively new
14 lawyer.

15 He represents the qualities of Sheldon Larky,
16 also a titan of the profession. And then earlier I
17 had a chance to reacquaint myself with Janet Welch,
18 that again harkens to me to the time when I had hair,
19 I was much -- I didn't weigh as much and we were young
20 lawyers involved with the State Bar.

21 And so it is my pleasure. I am satisfied
22 that Aaron becoming the chair of this Assembly, that
23 this Assembly is in good hands. He represents the
24 best in the profession. With that, I am going to get
25 to the business at hand.

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Could you raise your right hand and just state your full name for the record.

VICE CHAIR BURRELL: Aaron Vaughn Burrell.

JUDGE BOWMAN: Repeat after me. I do solemnly swear --

VICE CHAIR BURRELL: I do solemnly swear --

JUDGE BOWMAN: -- that I will support the Constitution of the United States --

VICE CHAIR BURRELL: -- that I will support the Constitution of the United States --

JUDGE BOWMAN: -- and the Constitution of the State of Michigan --

VICE CHAIR BURRELL: -- and the Constitution of the State of Michigan --

JUDGE BOWMAN: -- and the Supreme Court Rules --

VICE CHAIR BURRELL: -- and the Supreme Court Rules --

JUDGE BOWMAN: -- concerning the State Bar of Michigan --

VICE CHAIR BURRELL: -- concerning the State Bar of Michigan --

JUDGE BOWMAN: -- and that I will faithfully discharge the duties --

VICE CHAIR BURRELL: -- and that I will

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faithfully discharge the duties --

JUDGE BOWMAN: -- of chair of the
Representative Assembly --

VICE CHAIR BURRELL: -- of chair of the
Representative Assembly --

JUDGE BOWMAN: -- of the State Bar of
Michigan --

VICE CHAIR BURRELL: -- of the State Bar of
Michigan --

JUDGE BOWMAN: -- according to the best of my
ability.

VICE CHAIR BURRELL: -- according to the best
of my ability.

JUDGE BOWMAN: Congratulations.

(Applause.)

VICE CHAIR BURRELL: Thank you very much.

First, to Judge Bowman, who is not just an
excellent jurist, but I count him as a mentor to me
and a great friend and someone who has demonstrated to
me, not only how to be an excellent lawyer, which is
something I am trying to become, but he also showed
me, again, how to be a great man, a great husband, a
great father.

So to Judge Bowman, to the State Bar family,
to my own family, to Dickinson Wright, represented by

1 Ed Pappas and Dan Quick, who are in the room, and to
2 all those individuals for whom I would be serving
3 moving forward, I just want to thank you.

4 At this time I think I have to acknowledge
5 the individual who is going out of this position,
6 Rick Cunningham. I talked a lot about him yesterday
7 at our State Bar Board of Commissioners meeting.
8 Certainly you can check the minutes if you want the
9 full report, but Rick Cunningham is a leader in this
10 profession. He is someone who has set the bar very,
11 very high in this position, but he sets the bar high
12 over his career, and it's going to take a very, very
13 diligent, concerted effort to even be half of what
14 Rick was able to accomplish.

15 So, with that, I would like to make a
16 presentation to our outgoing chair, Rick Cunningham,
17 with this wonderful plaque. The plaque reads: The
18 State Bar of Michigan honors Richard L. Cunningham,
19 Representative Assembly Chairperson 2018-2019,
20 Vice Chair 2017-2018, and Clerk 2016-2017, in
21 appreciation for distinguished service to the
22 Assembly, the State Bar, and all Michigan lawyers,
23 September 26, 2019.

24 (Applause.)

25 CHAIRPERSON CUNNINGHAM: And as my last act

1 before I ride off into the sunset, I will present the
2 gavel to our new chair. And with that in mind,
3 following the lead of our new chair, Denny Barnes, I
4 will ask is there a motion to --

5 MR. LARKY: Mr. Chair, you failed to notify
6 us of the committee chairs and their service.

7 CHAIRPERSON CUNNINGHAM: I think you are
8 absolutely right. We have them up there. Can I have
9 the committee chairs to stand, please. Nick,
10 Jennifer.

11 (Applause.)

12 CHAIRPERSON CUNNINGHAM: Thank you, Sheldon.

13 In the words of Denny Barnes, is there a
14 motion to adjourn? All those in favor say aye. All
15 those opposed, shut up.

16 (Proceedings concluded at 11:35 a.m.)

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1 STATE OF MICHIGAN)
)
2 COUNTY OF CLINTON)

3 I certify that this transcript, consisting
4 of 102 pages, is a complete, true, and correct transcript
5 of the proceedings had by the Representative Assembly on
6 Thursday, September 26, 2019.

7
8 October 4, 2019

Connie S. Coon, CSR-2709

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