

STATE OF MICHIGAN  
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE  
ASSEMBLY of the STATE BAR OF  
MICHIGAN

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Proceedings had by the Representative Assembly of  
the State Bar of Michigan at DeVos Place, Ballroom A,  
Grand Rapids, Michigan, on Thursday, September 27, 2018, at  
the hour of 10:15 a.m.

AT HEADTABLE:

JOSEPH P. MCGILL, Chairperson

RICHARD L. CUNNINGHAM, Vice Chairperson

JANET WELCH, Executive Director

HON. JOHN CHMURA, Parliamentarian

CARRIE SHARLOW, Staff Member

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Grand Rapids, Michigan  
Thursday, September 27, 2018  
10:31 a.m.

R E C O R D

CHAIRPERSON MCGILL: Good morning. I am Joseph McGill, Chair of the Representative Assembly. I would like to welcome you all to our meeting for September 27th here at the DeVos Place. Thank you very much, all, for attending, and I would like to introduce our officers. We have Aaron Burrell, who is our Clerk.

(Applause.)

CHAIRPERSON MCGILL: Richard Cunningham, who is our Vice Chair and incoming Chair.

(Applause.)

CHAIRPERSON MCGILL: Janet Welch, the Executive Director of the State Bar of Michigan.

(Applause.)

CHAIRPERSON MCGILL: And our Parliamentarian, Judge John Chmura.

(Applause.)

CHAIRPERSON MCGILL: The first order of business is certification of a quorum, which I will turn over to our clerk, Aaron Burrell.

CLERK BURRELL: There is a quorum present,

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Mr. Chair.

CHAIRPERSON MCGILL: Thank you very much.

And the next order of business is the adoption of the proposed calendar, which you all received in advance of today's meeting. I would like to call member Philip Moilanen.

MR. MOILANEN: Mr. Chairman, on behalf of the Rules and Calendar Committee, we move the adoption of the proposed calendar.

VOICE: Second.

CHAIRPERSON MCGILL: Is there any discussion with respect to the proposed calendar? Any changes to the calendar?

Hearing none, all those in favor, please indicate by saying aye.

Any opposed?

Any abstentions?

Hearing none, motion carries. Thank you very much.

MR. MOILANEN: Mr. Chairman, I would also move the approval of the April 21, 2018 Summary of Proceedings.

CHAIRPERSON MCGILL: Is there a motion, or is there a second to the motion?

VOICE: Support.

1 CHAIRPERSON MCGILL: Is there any discussion  
2 with respect to the Summary of Proceedings of our  
3 April 21st, 2018 meeting? Any changes, any additions?

4 Hearing none, I will call the question. All  
5 those in favor, please indicate by saying aye.

6 Any opposed?

7 Any abstentions?

8 Hearing none, the motion carries.

9 Our next order of business is with respect to  
10 the issue of filling vacancies, and I believe we have  
11 a number of folks here that will be filling seats.  
12 Call to the podium member Judge Michael Brown.

13 MR. BROWN: Good morning. You should have  
14 received a memo with the nominees for the open  
15 positions. I move to approve the slate of nominees.

16 CHAIRPERSON MCGILL: Is there a second to the  
17 nomination?

18 VOICE: Second.

19 CHAIRPERSON MCGILL: Is there any discussion  
20 with respect to the filling of the various seats which  
21 Judge Brown has indicated and the materials have been  
22 submitted to you prior to the meeting? Any additions?  
23 Any nominations from the floor?

24 Hearing none, I will call the question. All  
25 those in favor, please indicate by saying aye.

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Any opposed?

Any abstentions?

Hearing none, the motion carries.

For those who are going to be joining us, I invite you now to come and take your seats, and congratulations.

(Applause.)

CHAIRPERSON MCGILL: Moving quickly on to our next order of business on the calendar, item number three, which is the presentation of the Unsung Hero Award, and our presenter this morning is Attorney Ellen Molly Burns. Molly, could you come up, please.

MS. BURNS: Thank you, Mr. McGill. Thank you very much to the members of the Representative Assembly for accepting my nomination. It is an honor to be here.

Good morning, my fellow colleagues. My name is Ellen Mollie Burns, and I am very proud to be a part of the 0.54 percent of all attorneys in the United States who has a disability. 0.54 percent. We are a staggering minority.

Most would never denounce support for people with disabilities. After all, it would be cruel to deny support for people who face daily obstacles and challenges that most will never have to encounter

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their entire lives. But who will hire us?

I recently read an article which discussed how the legal industry has failed attorneys with disabilities. The article focused on the fact that law firms often incorrectly view disabilities as weaknesses or inabilities, and I can certainly relate.

I have two severe digestive illnesses which prevent my body from being able to properly digest food. Just over a year ago, after nearly a decade-long battle, I had no choice but to get a permanent feeding tube in order to save my life. The feeding tube provides my only source of nutrition and constitutes a life-sustaining medical device.

Despite proudly becoming the only known 24/7 tube-fed attorney in the country, I discovered that some attorneys frowned upon me because of my feeding tube. However, eventually I met an attorney named Michele Fuller. Michele saw beyond my disability. She focused on my talents and my accomplishments. Critically, she recognized that I had been battling my health for almost my entire career, thus making my achievements all the more impressive, and she hired me.

I determined that the only way to properly thank her for hiring me after I got my feeding tube

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was to nominate her for the Unsung Hero Award. Yet Michele should also be applauded for her relationship with the disability community.

Michele has spent the majority of her career advocating for individuals with disabilities, as well as their caregivers. While her practice is located in Macomb County, she has come to be known as one of the top special needs planners in the country. She has authored numerous articles and books and routinely travels the country speaking to other professionals to educate them about special needs planning.

My fellow colleagues, the 2018 Unsung Hero, Michele Fuller.

(Applause.)

MS. FULLER: Thank you, everyone. My gosh, I don't think that's ever happened in my life. Thank you. And thank you so much, Mollie, for everything you have done and for the heart and the beautiful letter that you wrote on my behalf. That is really exceptional. Thank you so much, and you have really overcome so much in your life, and you are an inspiration, and really you are the unsung hero, if anyone, in this room. So thank you so much. Thank you.

(Applause.)



1 MS. FULLER: And thank you on behalf of  
2 everyone that we work for, that we strive for, for  
3 people who have no voice and need us to advocate on  
4 their behalf. And I also have to thank -- I have four  
5 wonderful children and my wonderful husband, who is  
6 one of the leading nationally-recognized attorneys in  
7 special needs trust planning based in California, so  
8 thank you, honey. He has helped make me a better  
9 lawyer, better speaker, and inspired me to be generous  
10 and share my knowledge and experience.

11 So thank you, and thank you to the  
12 Representative Assembly for your confidence in me and  
13 for selecting me. This is quite a honor. Thank you  
14 so much.

15 (Applause.)

16 CHAIRPERSON MCGILL: The good news is I  
17 didn't break the camera, which is always a positive.

18 The next item on the agenda is the  
19 presentation of the Michael Franck Award, which this  
20 year is going to United States District Court Judge  
21 Victoria Roberts. I would like to thank, first and  
22 foremost, the officers of the Representative Assembly  
23 for suggesting that we nominate Judge Roberts for this  
24 award, and in particular Aaron Burrell's work on this  
25 was instrumental, and I can't thank Aaron enough for

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making the suggestion and helping us to get the Assembly to approve this award, which was, by any means, a very easy task for us to do.

The Michael Franck Award in pertinent part requires that this award will be presented to a lawyer who has made an outstanding contribution to the improvement of the profession. Judge Victoria Roberts more than qualifies as a recipient of this award. Her accomplishments are too numerous to list, and I will not endeavor to do so at this point, but I am happy to say that she is a proud graduate of Saint Martin de Porres High School, which came out of the same catholic league that I did.

However, as an offer of proof with respect to the material portions of the requirements of the Michael Franck Award, specifically that the awardee has made a contribution to the improvement of the profession, I submit the following: Judge Roberts has been a leader or instrumental in the following programs: The Just the Beginning Foundation, which exposes minority high school students to the opportunities in the law.

The Wolverine Bar Association's Judicial Externship Program, which seeks to increase the representation of minority law graduates in judicial

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clerkships, both in state and federal court.

She has been instrumental in the recent establishment of the University of Detroit Mercy's low income pro se litigant clinic, which provides limited scope representation and legal assistance to pro se nonprisoner litigants in the U.S. District Court in Detroit.

She was elected and served as the first black president of the State Bar of Michigan. She has trained lawyers and judges in Kenya and Malaysia. She has lectured on various complex areas of the law in Serbia, Peru, Thailand, Botswana, Namibia, and Nepal. She has been awarded the State Bar of Michigan's Roberts P. Hudson Award and Champion of Justice Award. All of these points are well taken, unrefuted, and certainly qualify her as a recipient of the Michael Franck Award.

However, in order to get a better understanding of her ethos and pathos, I took an opportunity to interview a couple of her colleagues to get a better sense for who Judge Roberts actually is, and instead of trying to recite those conversations with you, I will give you a snippet of some of the things that I was told about Judge Roberts.

She is humble. She is never driven by

1           ambition. She works super hard. She is willing to  
2           stand for what she believes is right. She has vast  
3           capability. She never does things for recognition,  
4           but rather the work is the reward. So I am convinced  
5           that Judge Robert's passion for the law has, in fact,  
6           resulted in an improvement of the profession and has  
7           led others to do so, and, in fact, is a significant  
8           inspiration for all of the members of the  
9           Representative Assembly.

10                       As John Quincy Adams once said, If your  
11           actions inspire others to dream more, learn more, do  
12           more, and become more, you are a leader.

13                       Certainly Judge Roberts is a leader in  
14           improving the profession, and it is with great honor  
15           and it is my pleasure to now present her with the  
16           Michael Franck Award.

17                       (Applause.)

18                       JUDGE ROBERTS: Good morning, everyone.  
19           First I want to say I brought my own cheering section.  
20           The past presidents of the State Bar, please stand.

21                       (Applause.)

22                       JUDGE ROBERTS: So I am a part of that  
23           illustrious club. They were meeting earlier today and  
24           said they were going to come and be here, so I thank  
25           you.

1                   In 1987, I had been practicing law for 11  
2                   years. I had immersed myself in the Detroit Bar, in  
3                   the Women Lawyers of Wayne County, and in the  
4                   Wolverine Bar Association and had just finished my  
5                   term as president of the Wolverine Bar, and I had said  
6                   I am done with Bars, with Bar associations. I am  
7                   never doing anything again related to a bar  
8                   association, and I went on vacation.

9                   I came back in about a week, and I had three  
10                  or four messages from then Supreme Court Justice  
11                  Dennis Archer, and I called him. He said, Well, I  
12                  tried to reach you, but I couldn't, so I appointed  
13                  you -- I submitted your name to be appointed as a  
14                  member of the Board of Commissioners of the State Bar  
15                  of Michigan.

16                 And I was mad. I was absolutely furious,  
17                 because I was done, right, with bar stuff, and I went  
18                 and talked to my managing partner, George Bedrosian.  
19                 I said, George, can I say no to this? He said,  
20                 Absolutely not, you cannot stay no, and there it  
21                 began, and there became my introduction to  
22                 Michael Franck, who was then the Executive Director of  
23                 the State Bar of Michigan, and Michael Franck  
24                 absolutely, that meeting Michael was absolutely  
25                 transformative.

1                   He had such a commitment to the State Bar of  
2 Michigan. His commitment was to make it the best in  
3 the United States. He had such a commitment to  
4 professionalism and ethics and to diversity and to  
5 reaching out to more and broadening the umbrella of  
6 the State Bar so that it included so many people who  
7 had not been represented in the State Bar in the past.  
8 And so I learned from him.

9                   I learned about the vision of the State Bar,  
10 about its obligations, about leadership, and Michael  
11 said to me after a few months that you are going to  
12 become president of the State Bar of Michigan, and he  
13 made it one of his missions, and I cannot thank him  
14 enough for guiding me, for shepherding me, and for  
15 making it possible for me to accomplish so many of the  
16 things that Joe mentioned.

17                   When Joe and Aaron came to tell me that I was  
18 getting this award, I was absolutely overwhelmed. I  
19 was overcome, I was overjoyed, because Michael has  
20 been such a spirit in me and has really inspired so  
21 much of the work that I have done, and so I thank all  
22 of you for this award. Thank you.

23                   (Applause.)

24                   CHAIRPERSON MCGILL: Our next order of  
25 business, calendar item number five, Presentation on

1 Recent Developments in First Amendment Jurisprudence  
2 and Mandatory Bar Associations. I am very pleased to  
3 again introduce and welcome our executive director,  
4 Janet Welch, to the podium, who is an expert in this  
5 area and many others.

6 EXECUTIVE DIRECTOR WELCH: Thank you, Joe.  
7 Good morning, everyone.

8 So the good news this morning is that my  
9 remarks are not a reversion to the tradition of having  
10 the Executive Director speak to the Assembly, even if  
11 there is nothing of particular significance to be  
12 reported on. Today is the opposite of that.

13 Today I am speaking to you on what's been  
14 going on in First Amendment jurisprudence related to  
15 the mandatory Bar, a presentation that has immediate  
16 relevance to two items you will consider today,  
17 actually -- the resolution to establish a Task Force  
18 on the Scope of Operation, Structure, and Governance,  
19 and the proposal to support the legalization of  
20 marijuana. Even more importantly for you, in whose  
21 hands, along with the Board of Commissioners, rests  
22 the well-being of this Bar, these developments are  
23 directly related to the future of the State Bar of  
24 Michigan and all other mandatory bars.

25 If you went to law school, like I did,

1 because you were enthralled with constitutional law  
2 and you wanted to make a difference, today is your  
3 lucky day. Buckle up. This is a momentous time to be  
4 a member of the final policy-making body of a  
5 mandatory state bar.

6 On Monday of this week, the U.S.  
7 Supreme Court considered at its Long Conference  
8 whether to hear a case challenging the State Bar of  
9 North Dakota. That case asked the Court to overturn  
10 Keller V State Bar of California, the 1992 case that  
11 set the framework for how mandatory bars can co-exist  
12 with the First Amendment. That case is Fleck V Wetch,  
13 and its disposition threatened to up-end the customary  
14 operations of mandatory state bars in the  
15 United States, and in the extreme, to end mandatory  
16 bar membership altogether in the upcoming court  
17 session.

18 So as of 70 minutes ago we know now that the  
19 Court did not grant cert in the Fleck case or relist  
20 it, but before I go into detail about the  
21 jurisprudence that led up to the North Dakota case and  
22 why, even though the Court denied cert, the challenges  
23 it poses are not going away. It's important to  
24 understand how the mandatory bar itself came into  
25 being, starting -- and I promise you I will move along



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quickly -- with the 12th century.

A Law Review article published in 1935, which was the year that the State Bar came into being, described the origins of the Bar this way. In England, the legal profession arose in the 12th and 13th centuries. One of the early glimpses we have of it is in 1292, so that's 77 years after the Magna Carta, when the king, representing the public interest, placed the control of the Bar in the hands of the justices. This delegation of authority was sustained by a long line of statutes in which Parliament conferred the power to the courts, and the courts, by a series of court orders, accepted and exercised it.

The present arrangement indicates a minimum of public control, with the burden to maintain professional standards resting primarily on the Court and profession. So that sounds familiar, fortunately.

The author contrasts this comparatively stable state of affairs with the United States, where he writes, the record is marked by violent swings of the pendulum. At first, in colonial times the Bar was the object of such vigorous popular distrust that the public regulation even reached the point of legislation prohibiting lawyers from practicing.

1                   When the services of the limited profession  
2                   finally were recognized as essential, which didn't  
3                   occur until after the Jacksonian era, the courts, in  
4                   general, exercised control over the Bar, as in  
5                   England.

6                   For our purposes today, literally today,  
7                   what's important is that out of this turmoil in the  
8                   20th century, 31 states and the District of Columbia,  
9                   in statute or by the exercise of judicial power, chose  
10                  the British model of regulation of the legal  
11                  profession through a mandatory or unified or  
12                  integrated bar. Pick your term.

13                  So here is where things stand today. Carrie,  
14                  can you give us the map. Does that look green to you?  
15                  Any of that look green? No, it looks bluish. All  
16                  right. The miracle of technology. Oh, they are  
17                  coming in.

18                  So the white states here -- it's animated,  
19                  sorry. The white states are the nonunified states,  
20                  and in those states we need to remember lawyers still  
21                  have to pay a fee for the right to practice law.  
22                  There is just no Bar speaking officially for the  
23                  profession. The colored states are unified. The  
24                  darker colors are states that were unified by their  
25                  state supreme court. The others were unified by

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statute.

So on the far right around Washington, D.C., those are checkerboard states that have both a unified and voluntary bar. The outlined states -- so the red outlined states deserve a note. In Nebraska, right in the middle there, in 2014 the state supreme court retained mandatory bar membership but segregated dues for licensing functions and made payment to the State Bar for other purposes voluntary. This is what the insiders in the Bar world called the worst of all possible solutions.

In California, just this year -- the professional association functions as the State Bar of California, largely centered around the sections, were spun off into a voluntary California Bar association. So they are beginning to, when that takes full effect, they will begin to look sort of checkerboard, and the self-governing features of the State Bar of California have been shrunk.

In Arizona, which was also outlined -- in Arizona, which has had successive attempts by the legislature in the last few years to deunify the Bar. The state supreme court in January queried the entire Bar by questionnaire about their views on a bifurcated dues model, along the lines of the Nebraska model, but

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has not yet released the results.

Finally, five days ago in the state of Washington, a chief justice of the Washington Supreme Court sent a letter to that Bar's Board of Governors, which is a mandatory bar, which said, in part, and I quote, I am writing to advise you that the Court has made several important decisions that affect the Bar. In light of pending lawsuits regarding the legal status of bar associations around the country, as in recent case law, the Court has decided unanimously to undertake a comprehensive review of the structure of the Bar. Because our review will include governance, the Court, by a majority vote, has decided that all boarding action on proposed bylaw amendments should be deferred until further notice from the Court; thus the Court is directing that no action be taken on any proposed bylaw amendments at this time.

So what's going on here? Why those states and not others? Who is next?

So let's look a little closer at the map. The first state to unify was North Dakota in 1921, almost a hundred years ago. So I am usually kind of a crackerjack ace at finding patterns, and I can't find any pattern in this map.

You can't see the date from where you sit,

1 but the first ten states were in this order:  
2 North Dakota, Alabama, Idaho, Nevada, Utah,  
3 South Dakota. Back to the south, Mississippi,  
4 North Carolina and Kentucky. The next two were  
5 Michigan and Oregon. They were close behind the first  
6 ten. The last six states to unify were Wisconsin,  
7 Georgia, South Carolina, Rhode Island, New Hampshire,  
8 and finally Hawaii in 1989.

9 So I am calling your attention to this lack  
10 of pattern or coherence because it persists in the way  
11 mandatory bars have developed. There are literally 32  
12 different models for the mandatory bar, and the great  
13 variations in how mandatory bars function will  
14 seriously complicate the creation of a unified front  
15 to defend the model of the mandatory bar and its role  
16 in attorney regulation. So now let's talk about the  
17 constitutional challenges to the mandatory bar as of  
18 this moment.

19 Although the first mandatory bar was created  
20 in 1921, the first legal challenge didn't reach the  
21 Supreme Court for another 40 years. In that case,  
22 Lathrop V Donohue, the second case indicated up there,  
23 a six-member majority rejected the claim of a  
24 Wisconsin lawyer that he could not constitutionally be  
25 compelled to join and financially support a state bar

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association that attempted to influence legislation with which he disagreed.

In rejecting the challenge, the Lathrop majority relied on a labor case, Railway Employees V Hanson, which is the first case you see there. Hanson, in turn, had analogized union membership to bar association membership as follows: In rejecting Hanson's claim of abridgement of his rights of freedom of association, the Court concluded there is no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer, who by state law is required to be a member of an integrated Bar, just because.

A concurring opinion in Lathrop agreed that Hanson, quote, surely laid at rest all doubt that a state may constitutionally condition the right to practice law upon membership in an integrated bar association, a condition fully as justified by state needs as the union shop is by federal needs.

So to summarize, mandatory union dues in Hanson were okay because mandatory bar dues were okay, and then mandatory bar dues were okay in Lathrop because mandatory union dues were okay in Hanson. Let the bootstrapping begin.

The challenges to the mandatory bar were

1 undeterred by the assertion that all doubt had been  
2 laid to rest about the mandatory bar. New appeals to  
3 the U.S. Supreme Court came from Wisconsin, Florida,  
4 California, and Michigan. Leave was granted in the  
5 mid-eighties in the Florida case, and then the court  
6 decided that leave was improvidently granted.

7 Finally, in 1990 the court decided the case,  
8 with which we are all familiar, Keller V. State Bar of  
9 California. So Keller is where the state has placed  
10 constitutional restrictions on mandatory bars to rest  
11 as of this moment. Since Keller, the U.S.  
12 Supreme Court has not made any pronouncements about  
13 the mandatory bar, but it has had a lot to say about  
14 unions and mandatory dues. Hold that thought.

15 As you know, Keller held that mandatory bar  
16 dues may only be used for activities germane to the  
17 purpose for which compelled association is justified;  
18 that is, regulating the legal profession and improving  
19 the quality of legal services, and then only if the  
20 expenditures are necessarily or reasonably incurred  
21 for those purposes.

22 The Michigan Supreme Court in an  
23 administrative order translated Keller's formulation  
24 of these two permissible subject areas into a list of  
25 topics on which the State Bar may expend mandatory

1           dues. You have seen that list presented to you when  
2           you were asked to decide whether your pronouncement on  
3           a public policy matter is Keller permissible.

4                       Like the Lathrop court, the Keller court  
5           leaned heavily on the analogy between mandatory bars  
6           and unions, stating explicitly, there is a  
7           substantial analogy between the relationship of the  
8           State Bar and its members on the one hand and the  
9           relationship of employee unions and their members on  
10          the other.

11                      The case they relied on was a 1975 Michigan  
12          case, Abood versus Detroit Federation of Teachers, and  
13          although the unanimous Keller court placed  
14          restrictions on the State Bar's use of compulsory  
15          dues, it, like the Lathrop court, suggested citing  
16          Lathrop that the constitutionality of the mandatory  
17          bar was beyond doubt.

18                      As of June, that doubt about mandatory bar  
19          constitutionality may be creeping back into the  
20          conversation as the U.S. Supreme Court in Janus V  
21          AFSCME overturned Abood, holding five-four that  
22          compelled dues for public sector unions violates the  
23          First Amendment right for freedom of association, and  
24          therein lies the source of instability of the current  
25          state of affairs.



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Janus analyzed the state need for a union shop for public employees and finding them wanting. In strong language, Janus applied a strict scrutiny standard for assessing the justification for the imposition of mandatory dues used for public employees rather than a rationale basis test.

Whether the state needs justifying a mandatory bar can survive such scrutiny is the question that was raised in Fleck. Here is the bottom line of the Janus majority. Quote, the First Amendment is violated when money is taken from nonconsenting employees for a public-sector union. Employees must choose to support the union before anything is taken from them.

Accordingly, neither an agency fee nor any other form of payment to a public-sector union may be deducted from an employee, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay.

How exactly Janus' conclusions apply to mandatory bars is anyone's guess. Justice Alito's majority is silent about Keller, but the Kagan dissent is not. She says that Abud is embedded in the law in a way not many decisions are and references Keller as an example, which brings us back to Fleck and the

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State Bar of North Dakota.

Although Keller affirmed the validity of the integrated bar in general, it explicitly sidesteps the issue of freedom of association highlighted in Janus. That is the issue that is front and center in Fleck and any Fleck successors.

Keller addressed the question of a bar association's constitutional use of mandatory dues. What about advocacy that is not supported by compulsory dues. If the R.A. takes the position that a single member does not want to be associated with, even if the Bar spends no money advocating that position, is that enough to violate the First Amendment? The Janus decision invites that question.

An amicus brief filed in the Janus case by 24 past presidents of the District of Columbia Bar, an integrated bar, argued that overturning Abood likely would, quote, spawn additional time-consuming and expensive lawsuits by bar members who do not want to pay their mandatory bar dues, unquote.

Such lawsuits, the past president said, would severely restrict this countries 32 mandatory bars from their critical work serving the state's interest in regulating the legal profession and improving the quality of legal services.

1                    Their prediction is already coming to pass.  
2                    The first challenge post-Janus citing Janus came from  
3                    a member of the Oregon State Bar Association on  
4                    August 29th. Two days later, a Washington state  
5                    lawyer amended a lawsuit already before the  
6                    9th Circuit against the Bar on other grounds to  
7                    include Janus-based arguments.

8                    So here are my thoughts on where I think we  
9                    stand as of literally this moment. If we are going to  
10                    survive as a mandatory bar, we must resolve an  
11                    identity crisis we have had since we were created as a  
12                    mandatory bar. Our mission statement, as entrenched  
13                    in Court Rule, has not changed in 84 years. There it  
14                    is. State Bar of Michigan shall, under these rules,  
15                    aid in promoting improvements in the administration of  
16                    justice and advancements in jurisprudence, in  
17                    improving relations between the legal profession and  
18                    the public, and in promoting the interest of the legal  
19                    profession in this State.

20                    Are we an entity of the state serving the  
21                    interests of the public, or are we an association of  
22                    lawyers serving the interests of our members? We are  
23                    both, but the second mission is always subordinate to  
24                    the first, and that is something that even the first  
25                    leaders of the State Bar of Michigan knew. Otherwise,

1 we are simply what our critics have taken to calling  
2 mandatory bars, a glorified trade association, and  
3 usually they use a different adjective than  
4 "glorified".

5 Our first priority in the face of this  
6 constitutional challenge, I think, is to distinguish  
7 ourselves from unions. We are not a union. We are  
8 not a public employee union. Lawyers are not  
9 employees of the state. We are not professional union  
10 members, and we are not members of just any  
11 profession. We are, each and every one of us,  
12 regardless of how we are using our law license,  
13 officers of the court. We are members of the one  
14 profession whose activity carries out a public  
15 function created by the state, exclusive to the state,  
16 but not paid for by the state.

17 We have all heard the most frequent complaint  
18 about the State Bar. I don't get anything for my  
19 dues. Have you heard that? I hear it on a regular  
20 basis. That's a question that reveals that the member  
21 thinks the mission of the State Bar is only to promote  
22 the interests of the legal profession, the interests  
23 of each member. And our standard answer is to respond  
24 as if that's true. We took up a long list of services  
25 and products that benefit our members in their

1 practices, benefits that often deliver savings far in  
2 excess of annual dues, which is a wonderful thing.  
3 The e-journal, the Bar Journal, Casemaker, advocacy  
4 for the Michigan Supreme Court and the legislature,  
5 et cetera, et cetera.

6 But the more honest and powerful answer is  
7 this, what members of the unified bar get from the  
8 State Bar of Michigan is the ability to hold ourselves  
9 out as officers of the court and to have a say in how  
10 the profession is regulated. That the mandatory bar  
11 can also serve the interests of our members more cost  
12 effectively because we are unified and have a  
13 predictable stream of revenue is a happy byproduct of  
14 our status as a unified bar, not a reason for it.

15 So, a mandatory bar does not exist for its  
16 members' benefit. It is not a union, nor is it a  
17 glorified trade association. A mandatory bar is a  
18 dynamic repository of the collective expertise of the  
19 officers of the court about the justice system they  
20 have sworn an oath to. Mandatory state bars are an  
21 efficient vehicle for all of us as officers of the  
22 court to carry out our duty to maintain and improve  
23 that system at no expense to the public.

24 That's the raw rationale for a mandatory bar,  
25 this unique and ancient bargain between the state and

1 the legal profession in which lawyers collectively  
2 shoulder and finance a portion of their responsibility  
3 for their role in the justice system. It's often  
4 described as lawyer self-regulation or lawyer  
5 self-government, which actually overstates our  
6 authority, but is, nonetheless, unique and  
7 immeasurably valuable. The alternative is being  
8 licensed by the state as any other profession.

9 So let there be no mistake about our unique  
10 status, which I think is the key to preserving the  
11 mandatory bar. We are a mandatory bar because, and  
12 only because, in the view of the government, it serves  
13 a public interest for lawyers to be members of the  
14 State Bar, and serving the public interest as a  
15 mandatory bar is a mission worth fighting for and a  
16 fight we are well prepared for.

17 The State Bar of Michigan has long been a  
18 leader in advancing the cause of justice for the  
19 public we serve, and Michael Franck was an enormous  
20 advocate for that. In recent times we are also known  
21 for forging a vision for serving the public even  
22 better in the 21st century, so I look forward to  
23 waging that fight for you and with you for the public.  
24 Thank you.

25 (Applause.)

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CHAIRPERSON MCGILL: Thank you very much, Janet, for those well-informed and well-thought-out comments.

Our next item is reflected in tab number six, the item six on our calendar, which is the consideration of a proposal on Task Force on State Bar Scope of Operation, Structure, and Governance, and I will just indicate that this particular item is the product of much work that has taken place between the officers of the Representative Assembly and the Executive Committee of the Board of Commissioners. This originated from a retreat that we called for with the Board of Commissioners leadership to help to delineate lines of communication and lines of authority between the Board of Commissioners and the Representative Assembly, which, from my humble observation, were, at a minimum, somewhat confused, so as a result of that initial retreat, which took place in January, and the work that has taken place since then over these many, several months, we have what's reflected in tab number six, and at this time I would like to call to the podium incoming State Bar of Michigan President Jennifer Grieco and our Vice Chair, Richard Cunningham.

MS. GRIECO: Thank you. Good morning,

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everyone. How are you?

I am here to speak to you on the proposal on the Task Force on the State Bar Scope of Operation, Structure, and Governance that you have in your materials. As we just heard from Janet, the State Bar strives to improve justice, advancements in jurisprudence, and relations between the legal profession and the public. To achieve these important goals, the State Bar of Michigan must be responsive, effective, and nimble. Not only has the constitutional landscape in which we operate changed over the last 84 years, changes in technology, access to information, and the practice of law have evolved at a rapid pace, and the State Bar has struggled with responding to these changes under its current governance structure, which was designed in 1935 and modernized in 1972 with the addition of the Representative Assembly to more fully represent our expanding membership.

Our governance was put in place before the development of the internet and daily reliance on e-mail and cell phones. Indeed even the practice of law has changed significantly with increasing specialization within the profession and development of legal tools, like Westlaw, Legal Zoom, e-filing,



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et cetera.

The State Bar's ability to effectively achieve its mission in the 21st Century has been a topic of discussion among State Bar of Michigan members and leadership, as noted by Joe. Joe McGill discussed with Janet Welch how to, in his words, reinvigorate the R.A. Janet had observed that every one of the R.A.'s dedicated and talented chairpersons during her tenure has pursued the exact same objective, generally focusing on conference calls and strategy for the R.A. to work harder by increasing communication to Bar members so we can generate more meaningful proposals for you all to consider. She suggested that it might be time to dig deeper into State Bar governance and policy development as a whole, and especially if we look at closely what is the core mission of the State Bar of Michigan.

That conversation, as noted, resulted in several meetings of the officers of the Board of Commissioners and the R.A., as well as two of your recent chairs, Dan Quick and Fred Herrmann. This great group brainstormed on ways to improve public policy decision-making, but over time too many things became apparent. One, in order to effectively address big picture State Bar governance issues, we needed

1 more stakeholders, more voices were needed, including  
2 leaders from sections, committees, local and affinity  
3 bars, and we needed more expertise on restructuring  
4 options for an organization as large and as complex as  
5 the State Bar of Michigan.

6 This summer your survey results, our  
7 respondents told us we were definitely moving in the  
8 right direction, that you want to engage more  
9 effectively in public policy, and that you are open to  
10 change. And in a second Rick Cunningham will discuss  
11 some of those survey results with you.

12 So this resolution here today is the first  
13 step in a serious effort to bring the State Bar of  
14 governance into the 21st Century. Yesterday the Board  
15 of Commissioners unanimously supported the resolution,  
16 the same resolution that is in your materials, and so  
17 I am here to ask the Representative Assembly to do the  
18 same today. Thank you.

19 (Applause.)

20 VICE CHAIR CUNNINGHAM: Hello, I am Rick  
21 Cunningham from the 3rd circuit. I am speaking as a  
22 proponent as to the resolution.

23 Frankly, the world is changing, and we are  
24 going to have to change with it. You have heard some  
25 discussion this morning about the need for that

1 change. Well, I will tell you what we are considering  
2 here is the most important issue you are going to face  
3 this week. The most important. Who says it's the  
4 most important? Well, Janet was telling us why it's  
5 important. Jennifer was telling us why it's  
6 important. But who is the one that really told us  
7 that it's important? You.

8 Thanks to the leadership of the Bar, there  
9 was a survey done as to how you feel about this issue  
10 of governance. Out of 120 people, we got responses  
11 from 79. Now, any of you who have done surveys know  
12 that's phenomenal, 79 people responding. It is a  
13 matter of importance.

14 The survey is going to provide the very  
15 valuable guidance to a task force, if you approve that  
16 task force, but there are some things that were  
17 mentioned that I would like to tell you about today,  
18 because I think that's important, and it shows how  
19 important you believe this issue to be. It is clear  
20 that R.A. members want to be more substantially  
21 engaged in meaningful public policy, including  
22 generating public policy items. That's what you want.

23 Over 97 percent, 97 percent of the survey  
24 responders thought it was either very important or  
25 important for the R.A. to provide input on legislative

1 and policy matters, and maybe so that diverse views  
2 can be considered before the State Bar takes a  
3 position. Ninety-seven percent thought it was very  
4 important or important to provide input.

5 There is also a finding from that survey, a  
6 realization from that survey that there is confusion  
7 as to how the State Bar of Michigan is run and the  
8 relationship between us, the R.A., and the Board of  
9 Commissioners. There were comments, I think, that  
10 were very enlightening. Clear lines of responsibility  
11 are needed. I wish I knew more about the governance  
12 of the Bar. That's a comment coming from an R.A.  
13 member. I wish I knew more about governance of the  
14 Bar. The governance structure is unwieldy, and it is  
15 clunky, a recognition that we've got to change. The  
16 world is changing around us.

17 We know from the survey the members are  
18 interested in utilizing technology. They want to  
19 become more engaged. They want to meet more often.  
20 They want to make timely and responsive public policy  
21 decisions. And members still find these in-person  
22 meetings to be valuable. Eighty-seven percent of the  
23 survey responders thought it was very important or  
24 important to meet in person to discuss proposed  
25 legislation and policy proposals.

1                   So we are asking the R.A. to support the  
2                   formation of a task force to examine our current  
3                   structure to look at things and the way they are  
4                   really working and to make changes or recommend  
5                   changes to the structure. We want to be more  
6                   effective, we want to be more efficient, and we need  
7                   to change in light of some of the ongoing issues that  
8                   we must face as a mandatory bar.

9                   This group, this task force, will make  
10                  potential recommendations for governance, but it's  
11                  going to come back to you. The task force will be  
12                  reporting to the Bar leadership and to the  
13                  Representative Assembly, so it's not delegating away  
14                  any responsibility. It's just allowing them to  
15                  perform this function, to come and bring it back to  
16                  you. I urge you to support this proposal. Thank you.

17                  (Applause.)

18                  CHAIRPERSON MCGILL: Having heard all that, I  
19                  will accept a motion to approve the proposal as  
20                  drafted and reflected in tab number six of our  
21                  materials. Is there such a motion?

22                  VOICE: So move.

23                  CHAIRPERSON MCGILL: Is there support?

24                  VOICE: Support.

25                  CHAIRPERSON MCGILL: Having heard a motion

1 and support, I will open up discussion with respect to  
2 the proposal reflected in tab six.

3 Hearing none, I will ask the clerk,  
4 Mr. Burrell, to let us know if we are ready to open  
5 the vote.

6 CLERK BURRELL: Voting is open. A for yes, B  
7 for no, C for abstain.

8 CHAIRPERSON MCGILL: Last call.

9 CLERK BURRELL: Voting is closed. The  
10 results of the vote, Mr. Chair, 97 yes, 4 no, 3  
11 abstentions.

12 CHAIRPERSON MCGILL: The motion passes.  
13 Thank you very much, and congratulations. You are  
14 definitely going to be in for an interesting ride on  
15 all of these issues.

16 The next calendar item is with respect to a  
17 proposal to amend our Permanent Rules of Procedure  
18 under the Assembly Review provision of the rules, and  
19 I will call to the podium Mr. Nicholas Ohanesian.

20 MR. OHANESIAN: Thank you, everybody. My  
21 name is Nick Ohanesian. I am a representative from  
22 the 17th circuit. I also serve as the chair of the  
23 Assembly Review Committee. The proposal you have in  
24 front of you today is a group effort by the Assembly  
25 Review Committee. The members of this committee are

1 John Blakeslee of the 13th circuit; Mark Holsomback of  
2 the 9th circuit; Diana Langdon, the 12th circuit; and  
3 Jill Nylander of the 7th circuit. I would also like  
4 to acknowledge the valuable assistance of the Drafting  
5 Committee in refining this proposal.

6 The purposes of this amendment to the  
7 Permanent Rules of Procedure of the Representative  
8 Assembly and the recommendations of the Board of  
9 Commissioners is to amend the bylaws of the State Bar.  
10 The purpose is to fill a gap in the ability of this  
11 organization to perform business.

12 As it stands right now, our only opportunity  
13 to execute votes and to, therefore, conduct business  
14 is twice a year at our meetings. The purpose of the  
15 amendment is to enable us to conduct business in  
16 between those meetings under appropriate  
17 circumstances.

18 Briefly, to summarize the way the proposal is  
19 designed to work, upon application of the Board of  
20 Commissioners or a member of the R.A. to the Committee  
21 on Rules and Calendar, the committee shall consider  
22 the appropriateness of the proposal for a virtual  
23 meeting and a vote. Upon a majority vote of the  
24 committee, notice gets sent out to all the members of  
25 the R.A. and an internet-based discussion forum shall

1 be convened that is open to view by all members of the  
2 Bar, with posting privileges limited to members of the  
3 Representative Assembly. No less than 21 days -- the  
4 minimum of 21 days from the date of the notice a vote  
5 shall be conducted with the majority of the members of  
6 the R.A. or a two-thirds majority of the members of  
7 the R.A. needed for passage. Otherwise, we follow the  
8 same rules we would normally follow in a regular R.A.  
9 meeting.

10 The main purpose here is in situations where,  
11 for example, to explain where I think this is going to  
12 come into play, where we get asked to weigh in on  
13 something -- let's say on November 1st the Michigan  
14 Supreme Court asks for our input on something, as it  
15 currently stands, we wouldn't actually be able to  
16 weigh in and cast a formal vote until the next meeting  
17 in April. This would allow us a way to get around  
18 that problem. This allows us to carry out, continuing  
19 what we talked about in terms of you have already  
20 heard from making us more agile. It allows us to  
21 actually have a vote and have a say in policy matters  
22 in between meetings as it currently stands right now.  
23 If we don't do that, somebody else is going to have to  
24 do that. Some other body in this organization is  
25 going to have to do that or else, you know, we don't



1 matter. If we are not weighing in, we are not giving  
2 appropriate guidance.

3 And so with that, if anyone has any  
4 questions. Also, concurrent with the recommending  
5 changes to the proposal, there is also a  
6 recommendation from the Board of Commissioners to  
7 alter, to add a section which would allow us to  
8 actually conduct our business in a virtual fashion,  
9 subject to our own rules. The reason for that  
10 proposal, that recommendation to the Board of  
11 Commissioners, is that, as it stands right now, the  
12 bylaws are silent on the Representative Assembly's  
13 ability to do that, and since the Board of  
14 Commissioners already has a specific provision  
15 allowing them to conduct the votes in between  
16 meetings, we thought it would be most appropriate,  
17 having conferred with the appropriate people, that it  
18 would probably be the best way to actually get this  
19 done would be to actually have an amendment to the  
20 bylaws to make sure everything is squared away.

21 With that, I can get off the stage as quick  
22 as possible. If anyone has questions.

23 CHAIRPERSON MCGILL: Having heard  
24 Mr. Ohanesian's proposal, is there a motion to approve  
25 the first action item under tab number 7?

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VOICE: Support.

CHAIRPERSON MCGILL: There is support. Is there a motion?

VOICE: So moved.

CHAIRPERSON MCGILL: Is there support?

VOICE: Support.

CHAIRPERSON MCGILL: Having had a motion and hearing support, is there any discussion with respect to the first action item, which is the proposed changes to the Rules of Permanent Procedure?

MS. JOHNSON: Mr. Chairman, Elizabeth Johnson of the 3rd circuit. I would like to thank the committee for its hard work, but I am very much against this proposal to change our bylaws on virtual meetings.

This is a very important body. We are the final policy-making body of the State Bar of Michigan. We are a representative body. We have the ability to meet, not just twice, but multiple times. I do not believe that there is a need to fill a gap. In past times when there have been important things that needed to be addressed, we have met as a body in a special meeting.

As shown by the recent survey, 86 percent of you feel that a face-to-face meeting is important. I

1 have seen many, many years as a member of the 3rd  
2 circuit and as chairperson of this group where  
3 face-to-face discussions have influenced my decisions  
4 and decisions of other members. It is important that  
5 we have the opportunity to meet face to face, to hear  
6 discussions from other people, to actually see  
7 expressions on people's faces to trust the validity of  
8 their discussions.

9 We are the final policy-making body of this  
10 very important State Bar of Michigan. We should not  
11 rely just on virtual meetings, and I urge this group  
12 to vote no on this proposal, especially in light of  
13 the work the Task Force is going to be doing in the  
14 future. I think our work is too important to delegate  
15 it to something that we are not sure of. We have the  
16 ability within our bylaws to meet more often if we  
17 need to, and I think we should not change it. Thank  
18 you.

19 MR. OHANESIAN: The principal issue here is  
20 cost, because if we are going to convene -- every time  
21 we convene a meeting, there is a built-in cost for us  
22 in terms of bringing people here, in terms of  
23 reimbursement rates, and I understand for many of us  
24 this is a short hop. For other people, it's a longer  
25 drive. This does -- and while I agree that this does

1 not provide the same face-to-face quality that we have  
2 in this meeting we have here, this does provide a  
3 forum to allow for debate, response, and to allow  
4 participation in a conversation about what needs to be  
5 done. So that's what I can say. Go ahead.

6 CHAIRPERSON MCGILL: I would just add, with  
7 all due respect to Member Johnson, and thank you very  
8 much for your comments, our rules only provide for the  
9 allowance of one special meeting, and the proposal, as  
10 it's drafted, is an enhancement of our ability to  
11 meet. So that means then you will be meeting,  
12 generally speaking, twice a year, we will have those  
13 face-to-face meetings, but undergirding that,  
14 supplementing that, will be really the constant,  
15 hopefully constant debate and back and forth that  
16 takes place on the internet every day that we are, by  
17 our rules, denied access to.

18 Member Mason.

19 MR. MASON: Good morning. Gerry Mason from  
20 the 31st circuit, and I am rise in support of the  
21 motion. This makes the Representative Assembly more  
22 relevant, more efficient, faster. It will increase  
23 and improve communication and relevant communication  
24 among its members.

25 Secondly, this is just -- in reality, we just

1 made a sort of a technology update to how the  
2 State Bar of Michigan is going to do business in a  
3 previous motion, and this really almost dovetails on  
4 that.

5 We are still going to have our two meetings a  
6 year, I am assuming, and that can even make those  
7 meetings more relevant, because with the meaningful  
8 dialogue throughout the year as needed, the  
9 face-to-face meetings will become important, and be  
10 even more important perhaps.

11 I would also note, just as a matter of  
12 logistics, I drove three hours one way from  
13 Port Huron, and the lady sitting next to me from 32nd  
14 came down from Gogebic in the Upper Peninsula, so this  
15 is a pretty good idea as far as we are concerned, and  
16 it's also environmentally friendly. Thank you.

17 MR. ROTENBERG: Steven Rotenberg from the 6th  
18 circuit, and I have objections to the proposal. Used  
19 to have three meetings a year. I have been a member  
20 off and on for about 20 years with the Representative  
21 Assembly, and we have gotten rid of one of them, and  
22 everybody was afraid it would cause problems with our  
23 ability to function, and, surprisingly enough, we  
24 actually functioned reasonably well, because we have  
25 had meetings in these 20 years that I have been here

1           that we had very little on the agenda, and some of  
2           it -- I remember a couple cases it was total  
3           day-gazing where we just did awards, which weren't the  
4           greatest because we're really here to legislate after  
5           a fashion.

6                         Again, in my 20 years of experience, I don't  
7           think we have ever had a need for anything that I can  
8           recall coming up where there was a special meeting.  
9           Perhaps there has, but I can't articulate a single  
10          example of any time that I am aware of that one was  
11          needed, and that just might be because I am unaware,  
12          but I just can't recall it coming up, and there have  
13          been times when we have been asked, and again I  
14          forget, because it was years ago -- once I remember we  
15          were asked to do something and we were a very dynamic  
16          organization and we pushed back where we were asked  
17          basically to rubber stamp something, and we were told  
18          that the Board of Commissioners would like our vote on  
19          this, because they are going to enact that way anyhow.  
20          So we are an effective body.

21                         One of the problems we have with these  
22          virtual meetings, and I have attended quite a few of  
23          them, is there is no esprit de corps, there is no face  
24          time. I know people, or at least am acquainted with  
25          people from across the state because of this body, and

1 professionally it's helped me. Personally it's great,  
2 because it's nice to have other opinions, because  
3 otherwise all I do is I would know people from the two  
4 circuits that I practice in, the 6th, where I have my  
5 main office, the 38th where I live and have a  
6 secondary office.

7 The other question I have is, although we are  
8 here to legislate, I don't like this moving super  
9 fast. I like us to be -- would prefer that we be  
10 cautious, so why do we ever need to act so fast,  
11 generally?

12 And the other question I have is do we have a  
13 slippery slope where we wind up doing skype meetings  
14 or Citrix meetings as opposed to doing this, because  
15 this narrows what -- you're going to say costs now.  
16 Sure, this costs tens of thousands of dollars to have  
17 these meetings. We have them twice a year. They are  
18 important, but if we start doing them electronically,  
19 I think the interest will go away.

20 Just like our votes before we had the  
21 push-button voting, it used to be more raucous. They  
22 were inefficient, but they had some passion to them  
23 that would be missing in an otherwise somewhat  
24 dispassionate body, because we rarely get riled up  
25 about anything.

1                   So I would object to it, because I don't see  
2                   the need to do this, because it just hasn't come up,  
3                   as far as I know. Thank you.

4                   CHAIRPERSON MCGILL: Thank you very much for  
5                   your comments.

6                   Mr. Ohanesian just reminded me in the  
7                   individual role that the officers serve, and we're  
8                   serving on the Board of Commissioners and serving on  
9                   the Representative Assembly, we have had sort of the  
10                  experience of both sides of the coin where the Board  
11                  of Commissioners is much more active in dealing with  
12                  issues, particularly the committee work that takes  
13                  place, between their face-to-face meetings, and I can  
14                  indicate that much of that work is done through  
15                  internet-based tools, and I would also indicate that  
16                  perhaps it is a rhetorical question, why do we need to  
17                  meet again? Is there a need for a special meeting?

18                  I can tell that when we considered the  
19                  discovery rule proposal at our last meeting, just  
20                  receiving that 70- or 80-page plus proposal before it  
21                  was circulated to the members of the Representative  
22                  Assembly, the first reaction I had was special  
23                  meeting. We need a special meeting, because this body  
24                  is going to tear that proposal apart, it's going to go  
25                  through it line by line, and I can tell you, with all



1 due respect to the State Bar and State Bar staff, I  
2 encountered significant headwind in trying to get that  
3 special meeting to take place, primarily due to costs,  
4 but due to other issues with respect to travel and  
5 other issues that the Representative Assembly might be  
6 dealing with at the April meeting.

7 So cost is certainly an issue, travel is an  
8 issue. Allowing this body to do things that every one  
9 of us does in our own practice in communicating  
10 electronically and deciding issues, certainly it seems  
11 like a no brainer to me.

12 Vince.

13 MR. ROMANO: Thank you. Vince Romano,  
14 3rd circuit. I rise, I believe, in favor of the  
15 matter. I think Joe has mentioned very relevant  
16 points. I have seen too many circumstances in my  
17 years with this group that by the time we get to an  
18 issue, it's aged, you know, and we are not being very  
19 current in dealing with it. Or I have seen the  
20 reverse where we have come to the conclusion that some  
21 kind of a special meeting is necessary, so it's  
22 referred to a committee or whatever. By the time it  
23 gets back to us, it's further delayed. So I think  
24 that this gets us over that shortcoming. And I don't  
25 think anybody is trying to replace our live meetings

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with, you know, a series of vertical meetings. I think we will use them wisely, as necessary.

I do have one question though. I note the comment that there is no staffing or fiscal impact, none known. It strikes me that there probably is some staffing and fiscal impact. I don't know that it's overwhelming, but certainly something is there. What are the mechanics involved in trying to put this together? Thank you.

CHAIRPERSON MCGILL: That's a great question, Vince, and I can also tell you that in working with Nick and his committee and putting this proposal together, we did have many discussions with Peter Cunningham, Katie Hennessey, and Janet. Quite frankly, the back and forth of the State Bar staff with respect to what is this going to cost us, and we actually modified the proposal so that we could make sure that the cost impact was negligible or nonexistent. So as it stands right now, as the proposal is written and supported, we don't see any major cost with respect to software, hardware, setting up satellite locations for video conferencing, all the different things that may go along with having these virtual meetings. Those issues were considered, and that was the conclusion that we came to.

1 MR. LARKY: Sheldon Larky, 6th circuit.  
2 Before I preface my remarks, I am going to ask the  
3 floor to help me. Would all of you who are on an  
4 i-Phone, an i-Pad, a computer, raise your hand right  
5 now. My God. So we are so all electronic here, and  
6 we are communicating with our offices. We are playing  
7 games -- sorry, nobody is playing games. So what did  
8 you just tell me? You just told me that we are in an  
9 electronic age.

10 As much -- I am one of these old guys, by the  
11 way. I think I am one of the longest-serving members  
12 here. I see a few of my brothers and sisters that  
13 have been here. I think I have been on the Assembly  
14 close to 40 years on or off, and I love being here. I  
15 loved physically the four meetings a year that we  
16 first had. I loved the three meetings a year. I love  
17 the two meetings a year. It gives me the opportunity  
18 to look at each of you and to network with all of you  
19 and to see my brothers and sisters from around the  
20 state. But we are in a different world now. I am an  
21 old-timer. I am an old fart now.

22 CHAIRPERSON MCGILL: No, you're not.

23 MR. LARKY: I am at that point in my life  
24 where -- you know, it took me a few years to learn how  
25 to turn on and off a computer, but now our whole world

1 is computerized, and as much as I like networking in  
2 person, I realize that this is the thing to come.  
3 This is efficient, and I am going to vote yes for  
4 this. Thank you.

5 CHAIRPERSON MCGILL: Thank you for your  
6 comments.

7 MS. REBECK: Chelsea Rebeck, 6th circuit. I  
8 think that the concept of this is great. I think that  
9 it may be a little premature, given that we just voted  
10 on implementing the task force, and I would like to  
11 see this done after we know the mechanics and maybe  
12 have this as something that the task force works on.  
13 It's a pretty big change, and I have seen these things  
14 go really well and really bad, and I am one of the  
15 younger ones here that is pretty proficient with  
16 technology, and this still gives me a little bit of  
17 pause before we know exactly how it's going to work.

18 CHAIRPERSON MCGILL: If I could just address  
19 that. Thank you very much for your comments. It's  
20 anticipated that the task force and it's work will  
21 take some time, probably in the range of 18 months or  
22 so before actual material recommendations are put  
23 forth, both to this body and to the Board of  
24 Commissioners, so it's not as though a delay to the  
25 next meeting in April is realistic if we go down that

1 path. My belief is that the issue is tee'd up. It's  
2 long overdue, and it should be considered now.

3 MR. GREELEY: Patrick Greeley from the 25th  
4 circuit in the Upper Peninsula. It took us about six  
5 to seven hours to get down here, stay the night. We  
6 then have to come here for the day, drive back end of  
7 the day, and that's two full days out of our schedule,  
8 which we can do when we have months to prepare for it,  
9 but as attorneys, we are all very busy, and here, if  
10 we have a special meeting that's scheduled for 21  
11 days, I am not going to be able to come. Twenty-one  
12 days from now, my schedule is booked. I can't make  
13 time to come down here and vote for our district, our  
14 circuit, and that's going to be a problem with the  
15 entire U.P. For me, six hours. Gogebic is probably  
16 nine hours, 600 miles. Cost-wise, that's almost a  
17 thousand dollars with mileage, hotel, food. And I  
18 think it's better to be prepared.

19 One comment was we haven't had a need for a  
20 special meeting in the past, but it's a bit of a red  
21 herring. Just because we haven't had a need for it  
22 doesn't mean we won't have a need for it in the  
23 future. I would much rather be prepared and be able  
24 to address needs that come up very promptly and in a  
25 prompt manner so that we can be at the forefront of

1 the legislative body, we can respond to the needs that  
2 are very time sensitive. So I am in support of it.

3 MR. KOROI: Mark Koroi from the 3rd circuit.  
4 Just want to put my two cents. One thing I notice  
5 from looking over the people that run every year for  
6 the Representative Assembly, and one thing I notice is  
7 that there are so many vacancies in the Upper  
8 Peninsula, and the areas of the typical meetings are  
9 in the Detroit area, Lansing, and Grand Rapids. Might  
10 be convenient for people like us to be there, those  
11 from metro Detroit. What about the people from up  
12 north, the Upper Peninsula. They are shut out of  
13 these proceedings because of the distance. Like the  
14 preceding member who spoke has indicated, if there is  
15 a special meeting and there is really no way he can,  
16 as a practical matter, get down here in 21 days  
17 because it's like a two-day effort for him just to  
18 come down for this meeting, and I think if it's  
19 implemented under strict conditions, I think it can be  
20 fair, but I think there needs to be more discussion  
21 while we are looking into this so we have to balance.

22 I think it's a good idea. On the other hand,  
23 it's got to be done in a way in which it will  
24 recognize some of the comments, and I would use those  
25 comments. We are basically a public body, and to meet

1 face to face and discuss these face to face with each  
2 other, you can't take that away by using this virtual  
3 method without losing something in translation. So I  
4 think there is pros and cons with both of them. We  
5 should look at those further before we implement.  
6 Thank you.

7 MR. OHANESIAN: I would like to comment about  
8 the issue of procedural protection. One of the things  
9 that we did in the subtle change of how the voting  
10 changes, the notice to vote has to be by a majority of  
11 the members of the Assembly as opposed to by a  
12 majority of the people present. That's a difference  
13 from how we normally conduct business. That's  
14 something that was discussed. We batted back and  
15 forth in how to deal with this, because this deals  
16 with -- this makes sure that we are going to have to  
17 have a -- this means there is going to have to be a  
18 majority, an absolute majority of the membership to  
19 pass anything, and that was done to specifically make  
20 sure that we had a wide -- because this is a rep --  
21 this will be a virtual meeting as opposed to a  
22 face-to-face meeting. It does create a higher burden  
23 for us to move anything, and I think that's well, I  
24 think that's a good idea, based on considering the  
25 issues. So these are very -- in fact, this was not

1 in the first. We put a higher burden, a higher  
2 threshold to pass it. You can get anything done. I  
3 think that it helps to balance that concern out.

4 CHAIRPERSON MCGILL: I would also add, to  
5 address Member Koroi's comments, I guess the  
6 application and the enforcement of our Permanent Rules  
7 of Procedure with respect to many different issues,  
8 the meetings, and even right down to absences and  
9 whether they are excused/nonexcused are things that  
10 are carefully considered by the officers of the  
11 Representative Assembly. So in my view, I don't see  
12 virtual meetings being called willy-nilly without any  
13 deliberation, so I appreciate the comment from  
14 Member Koroi. I don't believe it's a huge concern,  
15 but it's certainly a valid comment.

16 MS. PAYNE: I am Erica Payne. I am also from  
17 the 25th circuit in Marquette. I would echo the  
18 comments that Pat Greeley made, but I also wanted to  
19 make a few additional points. I have been on the  
20 Representative Assembly for about two years, and I see  
21 our leadership dying to get us involved more, and this  
22 seems to be the tool to promote that.

23 Also, I think that this is also something  
24 that promotes diversity within the Representative  
25 Assembly. Geographic diversity is very important to



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get different ideas, and so we should be furthering that.

In addition to representing the 25th circuit, I am on the Executive Council for Young Lawyers, and from that perspective this is also important, and I think going to the cost of it. In the Upper Peninsula what we are seeing is lot of our older attorneys retiring, which means a lot of young attorneys are taking over those rural areas, and it is extremely costly to them to have to take two to three days when they are hanging a shingle to try to come down to a meeting.

So I think that meeting in person is important, but if we have more tools in our tool box to make us come together virtually, that's great. Thank you.

CHAIRPERSON MCGILL: Thank you. Ms. Warnez.

MS. WARNEZ: Dana Warnez, 16th circuit. I stand before you as a member of the R.A., past chair of the R.A., elected member of the Board of Commissioners, and the current Treasurer of the State Bar of Michigan. I have been on, just like Joe has said, I have been for a long time on both sides of the R.A. issues and commissioner issues, and there shouldn't be that division between R.A. issues and

1 commissioner issues, and that's primarily the  
2 dysfunction that happens based on how our current  
3 governance works. And that's like our Vice Chair,  
4 Rick Cunningham, just said, it's so urgent, the most  
5 important -- the Task Force was our most and is our  
6 most important issue here today, and we also heard  
7 from Rick Cunningham that this body wants clear  
8 delineation of what its purpose is supposed to do. My  
9 sister, Kim Cahill, told me all the time, if there is  
10 not a meeting agenda and you don't know why you are  
11 going there, why are you having a meeting?

12 So I am really concerned, at least partially  
13 here, to know that we are going to move, not just to  
14 meet for the virtue of meeting but for a meeting to be  
15 effective, the meeting to be efficient, effective. I  
16 want the R.A. -- in my dreams I would want the R.A.  
17 to be as effective as it possibly could be, as  
18 efficient as it possibly could be, and this makes it  
19 easier to me, but I don't know the delineation. I  
20 know this rule and all the rules don't allow the  
21 Task Force input. Tell us which way we are going to  
22 go.

23 So I echo Ms. Rebeck's comments about this  
24 being premature. I think it would be important to let  
25 consultants and all the stakeholders, like Jennifer

1 Grieco told us today, that need to come to the table  
2 come to the table and have a larger discussion to know  
3 what's really going to be the very best and the most  
4 efficient. So I would, rather than say no, I do not  
5 want to say that I am opposed to this rule at all, but  
6 if we need to table it for some reason, that may be a  
7 really efficient way for the body and the whole -- the  
8 whole, unified State Bar, not the R.A., not just the  
9 commissioners, but the whole State Bar to have a  
10 chance to figure this out.

11 So I would make a motion to table this for  
12 the purpose of letting the Task Force do its work.

13 VOICE: Support.

14 CHAIRPERSON MCGILL: Is there a second to the  
15 motion?

16 VOICE: Second.

17 CHAIRPERSON MCGILL: The debate is open to  
18 table the motion on this proposal.

19 Hearing none, Mr. Clerk, can you open the  
20 voting.

21 CLERK BURRELL: The voting is open. A for  
22 yes, B for no, C for abstention.

23 VOICE: Call the question, please.

24 CHAIRPERSON MCGILL: The question is, and the  
25 motion is, to table the vote with respect to the first

1 resolution in tab number 7 concerning the creation of  
2 a change to the Rules of Permanent Procedure with  
3 respect to virtual meetings and an internet-based  
4 debate forum. And just a clarification on the motion,  
5 is the motion to table it to the next meeting?

6 MS. WARNEZ: Yes.

7 CHAIRPERSON MCGILL: So the motion is to  
8 table to the next meeting, which would be in April.

9 So voting is open. A for yes, B for no, C  
10 for abstention.

11 Last call.

12 The voting is closed.

13 CLERK BURRELL: The result of the vote,  
14 Mr. Chair, 40 yes, 61 no, 3 abstentions.

15 CHAIRPERSON MCGILL: The motion to table the  
16 proposal has failed. Is there any further discussion  
17 or debate with respect to the proposal which is  
18 reflected in tab number 7?

19 MR. BULSON: Dave Bulson, from the Upper  
20 Peninsula, 50th circuit. I just have really a  
21 question about this. If this proposal is adopted, in  
22 theory could we have every meeting by virtual  
23 attendance, in theory?

24 MR. OHANESIAN: I didn't see -- I mean --

25 MR. BULSON: Seems like that's a yes or a no

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question.

CHAIRPERSON MCGILL: My answer would be no. This rule doesn't touch the, I don't believe, it doesn't touch the portion of the rule that deals with when our two regularly scheduled meetings are supposed to take place. I could be corrected though, certainly.

MR. BULSON: If you are not sure, you probably should say you are not sure instead of saying you could be corrected.

CHAIRPERSON MCGILL: I will say I am not sure, and I will turn it back to you. What do you got?

MR. BULSON: Well, it does seem that in theory any business of the Representative Assembly can be conducted according to its calendar or by special order. The special order of Section 2.7 says virtual meetings. So that would be my concern. If, in fact, that is what this does, in theory, conduct all meetings by virtual attendance, then I wouldn't be in favor of it, but I do think that all the points have been made about people traveling long distances and how inconvenient that is for the law practice. Instead of just a workday, like a Thursday instead of on a Saturday are well taken, and the idea of being

1 nimble -- virtual attendance allows us to be nimble.  
2 So that's why there is good things on both sides of  
3 this, but if this will eliminate, in theory,  
4 attendance at the -- I see you guys are checking the  
5 rules, and that's great. But maybe you will have some  
6 other comment on that.

7 So anyway, if it in theory would eliminate  
8 the two regularly scheduled meetings, then I wouldn't  
9 be in favor of it, but if it was changed to make sure  
10 those were preserved, then that seems like a good  
11 idea, to be nimble and help people like me to come  
12 from a long way away.

13 MR. OHANESIAN: I think we can clarify that  
14 we are not sure to no, because Michigan Supreme Court  
15 requires us to meet twice a year, first. Secondly --

16 MR. BULSON: Is that rules --

17 MR. OHANESIAN: At least that's the Rules of  
18 the Michigan Supreme Court, which governs us.

19 Second, I make the observation in --

20 MR. BULSON: Excuse me. I'm sorry to  
21 interrupt you, but whan you say it requires us to  
22 meet. Isn't a virtual meeting a meeting?

23 MR. OHANESIAN: Not the way I understand it.  
24 Let me raise one other point then, the qualifying  
25 language. If you look at 2.7(a), the rule, the

1 Committee on Rules, in order to decide an issue is  
2 appropriate for a virtual meeting, has to determine --  
3 has to be decided before the next meeting. That acts  
4 to exclude a lot of things. We don't have to decide  
5 before that. I don't see how -- you know, my  
6 implication, my intent was, the intent was when we  
7 wrote this that it was not to supplant our general  
8 meetings, and second, I think that implies you are  
9 going to have to have regular meetings, because, by  
10 virtue, there are going to be issues that you cannot,  
11 that the Rules Committee cannot say have to decided  
12 before the next meeting. I mean, that's my answer.

13 MR. BULSON: Would there be a way to tweak  
14 this, to preserve the face-to-face meetings twice a  
15 year? I think that would allay a lot of the concerns  
16 that people have expressed on both sides of the  
17 equation.

18 I will add one more thing while you guys are  
19 looking that up. If we add that, I can vote in favor  
20 of it, but if we can't add, this could have the effect  
21 of having all meeting attendance be virtual, then I  
22 would have to vote against it as it's currently  
23 stated, because I would want that other assurance.

24 MR. OHANESIAN: Another assurance for you  
25 then. Limitation, except for as specifically arises

1 under Section 2.7, the Permanent Rules of Procedure,  
2 shall be applicable virtually in the same manner as  
3 rules of the Representative Assembly. It's a  
4 limitation clause. I don't think that that -- I think  
5 that also covers that issue.

6 CHAIRPERSON MCGILL: At this point we are  
7 going to suspend debate.

8 MR. BULSON: Thank you.

9 CHAIRPERSON MCGILL: We are going to be going  
10 to lunch, but Janet Welch has an announcement for us.

11 EXECUTIVE DIRECTOR WELCH: My remarks are in  
12 the nature of correcting the record for what I told  
13 you this morning. This is what happens when you amend  
14 on the fly, because you are checking your e-mail and  
15 what's on the internet about granting cert.

16 So Fleck was not on the deny list, it was not  
17 on the relist list, but apparently there is going to  
18 be another tranche of decisions about the 600 cases  
19 that were considered on Monday. Fleck is still on  
20 that list, so stay tuned. There is a possibility that  
21 may be relisted or sent back to the 8th circuit.  
22 Everything else I said stands. It's a correction.

23 CHAIRPERSON MCGILL: Thank you very much,  
24 Janet. We do have to suspend debate. We need to go  
25 over to the Inaugural Luncheon, which is in



1 Ballroom B. Please leave your clickers at the table.

2 We are recessing, not suspending. Thank you  
3 very much, Judge.

4 Please leave your clickers at your seat. We  
5 will begin promptly at 2 p.m.

6 I have been instructed to remind you that you  
7 need to turn in your reimbursement form for your  
8 travel expenses by October 3rd, and there will be no  
9 exceptions. Have a great lunch.

10 (Proceedings adjourned 12:02 p.m.-2:30 p.m.)

11 CHAIRPERSON MCGILL: I'd like to reconvene  
12 the meeting and continuation of the discussion or  
13 debate with respect to the items contained in the  
14 proposal that's under tab seven of your materials.

15 There were a couple of members that I believe  
16 wanted to speak on this just before we broke for  
17 lunch. Yes.

18 MS. GREEN: Cassandra Green from the 29th  
19 circuit, and just before lunch I had the opportunity,  
20 obviously, with the rest of you to listen to kind of  
21 the pros and the cons. I am actually in support of  
22 it. At lunchtime I had an opportunity to sit next to  
23 someone who might as well live in Wisconsin for all I  
24 know, but I don't know where she is at. It's, you  
25 know, a nine-hour drive, but more so -- you know, when

1 I initially joined to be a part of the Representative  
2 Assembly, it wasn't about me and what my thoughts  
3 were. We are a small Bar in Clinton County there. We  
4 actually have two of us on the 29th, and we share with  
5 Clinton and Gratiot County, but it was more about for  
6 me to be able to have the opportunity to do what my  
7 constituents wanted.

8 Sometimes it's not necessarily -- I may agree  
9 with one thing, but I do give my constituents those  
10 opportunities. When we get these packets, we send an  
11 e-mail out to people and say, What are your thoughts?  
12 Because, really, I am just representing that  
13 community, my other fellow brothers and sisters in the  
14 Bar in my area. To have the opportunity -- I heard  
15 some people say, you know, it's a 21-day and, you  
16 know, to do stuff. I am already booking. I'm six or  
17 eight court dates in November already, two or three in  
18 December, so I pick out really far in advance as well,  
19 but to have that opportunity to make those special  
20 meetings and to do them by, you know, e-mail or any  
21 type of virtual meetings, I would be absolutely in  
22 support of, because not only that, it does still give  
23 me that opportunity to reach out to my constituents.

24 What I am doing when I do that, I am doing it  
25 virtually anyway, because we don't have many Bar

1 meetings. Because we are so small, we have four a  
2 year. I know other counties have them monthly, maybe  
3 even more that. But that is the way that we are  
4 going, in fact, and, again, I don't think anybody up  
5 here, and I don't think it's the intention of the  
6 commission to take away the two in-person meetings  
7 that we are doing a year. So I would ask people to  
8 consider that and definitely fall in line in support  
9 of this to allow us to do it by virtual meeting.

10 MR. ROMANO: Vince Romano, 3rd circuit. I  
11 rise to propose an amendment to this proposal that I  
12 think might help us along by way of ensuring -- I  
13 think part of the issue here has to do with us not  
14 wanting to lose these regular in-person meetings that  
15 we have, so I propose this amendment.

16 I add the following language to  
17 Section 2.7(f). This would be an addition. Would  
18 read as follows: Nothing in this section shall modify  
19 the requirement of the Representative Assembly to  
20 conduct a minimum of two in-person meetings per year  
21 as specified in Michigan Supreme Court Rule 6.7.

22 Would you like that read again?

23 CHAIRPERSON MCGILL: Member Romano, could you  
24 certify to the membership that your proposed amendment  
25 has previously been submitted to the clerk of the

1 Representative Assembly in writing.

2 MR. ROMANO: Yes.

3 CHAIRPERSON MCGILL: Yes, it has?

4 MR. ROMANO: Yes, I certify that.

5 CHAIRPERSON MCGILL: Is there a second to the  
6 motion?

7 VOICE: Support.

8 CHAIRPERSON MCGILL: Any debate? Any  
9 discussion with respect to Member Romano's proposed  
10 change to this proposal?

11 Hearing none, I will ask the clerk to open  
12 voting on this proposed amendment.

13 VICE CHAIR CUNNINGHAM: Let's wait just a  
14 moment to get it typed. There she is.

15 CHAIRPERSON MCGILL: My apologies.

16 MR. ROMANO: That conforms with the language  
17 that I have proposed.

18 CHAIRPERSON MCGILL: Thank you very much.

19 MR. ABEL: Good afternoon. Matt Abel, 3rd  
20 circuit.

21 Mr. Romano, I am wondering if you would  
22 accept a friendly amendment to just put a period after  
23 the word "year," a minimum of two in-person meetings  
24 per year. That way, if the court changes the rule, we  
25 still have two meetings per year.

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MR. ROMANO: I'll accept that amendment.

CHAIRPERSON MCGILL: Any further discussion, debate before we open voting on this proposed amendment?

Hearing none, ask the clerk to open voting, please. Remember A for yes, B for no, C for abstain.

CLERK BURRELL: The voting is open.

CHAIRPERSON MCGILL: Last call.

Please close the voting.

CLERK BURRELL: The result of the vote, Mr. Chair, 79 yes, 14 no, zero abstentions.

CHAIRPERSON MCGILL: Thank you very much. So as modified by the amendment just approved by the Assembly, is there any further discussion or debate with respect to the first resolution of this material in tab seven of your booklet?

Hearing none, I will ask the clerk to open voting.

CLERK BURRELL: On the first question?

CHAIRPERSON MCGILL: On the first resolution.

CLERK BURRELL: The voting on the first resolution is open.

CHAIRPERSON MCGILL: Last call.

Please close the voting.

CLERK BURRELL: The result of the vote,

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Mr. Chair, 80 yes, 13 no, zero abstentions.

CHAIRPERSON MCGILL: Thank you very much.

Moving on to the second resolution contained under this tab.

MR. OHANESIAN: Just as a reminder, the second matter that we are voting on is to recommend to the Board of Commissioners that the language of the bylaws be modified, essentially conforming language to allow us to engage in the procedure that we just approved on the vote, the 80 to 13 vote.

CHAIRPERSON MCGILL: Is there a motion to approve this resolution?

VOICE: So moved.

CHAIRPERSON MCGILL: Is there a second?

VOICE: Support.

CHAIRPERSON MCGILL: Having a motion and support, is there any discussion or debate with respect to the second resolution?

Hearing none, I ask the clerk to open voting on the second resolution, please.

CLERK BURRELL: Voting is open.

CHAIRPERSON MCGILL: Last call.

Please close the voting.

CLERK BURRELL: The result of the vote, Mr. Chair, 88 yes, 7 no, zero abstentions.

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CHAIRPERSON MCGILL: Thank you very much.  
Thank you very much, Mr. Ohanesian, and  
congratulations.

Moving on now to the 8th item on our  
calendar, the Drafting Committee proposal, which will  
be presented by Member Daniel Ferris.

MR. FERRIS: Good afternoon. I am Dan Ferris  
with Kerr Russell in Detroit representing the  
3rd circuit, and I have for you today a proposal  
addressing the jurisdiction of the Drafting Committee.  
I think this may be the shortest of the proposals  
today. It involves six words total, but with that  
said, we welcome any comments.

The idea here is to change the rules to  
better reflect what the Drafting Committee actually  
does. As it's currently stated, our task is to review  
as to phraseology, and during a discussion among the  
Drafting Committee members, we were all scratching our  
heads to try to understand what "phraseology" means  
exactly, and so we thought it was better to be more  
precise and try to describe our task in terms of  
structural organization, grammar, and punctuation,  
because we really do engage in all those things when  
we review, and the word "phraseology" didn't seem to  
encompass all of those things.

1 CHAIRPERSON MCGILL: Thank you very much. Is  
2 there a motion to approve?

3 VOICE: So moved.

4 VOICE: Support.

5 CHAIRPERSON MCGILL: Any debate or discussion  
6 with respect to this resolution?

7 MR. ROTENBERG: Steven Rotenberg,  
8 6th circuit, and I was looking at this the other day.  
9 Unfortunately, I didn't write down the dictionaries I  
10 referred to with this, but "phraseology" isn't as  
11 vague as you might think. Phraseology was, the  
12 definition that I found, is a noun meaning mode of  
13 expression, expression, especially a characteristic of  
14 a particular speaker or writer. And I got to thinking  
15 about words such as "usage" or "idiom," and I would  
16 suggest that the word "phraseology," we might want to  
17 replace it with the word "diction," which has the  
18 definition of the choice and use of words in a speech  
19 or writing, because it would seem that without that  
20 you would have difficulty if we were using, let's say,  
21 "phraseology" versus "diction," you would have  
22 difficulty under that rule substituting that word if  
23 that better reflected the meaning, at least with my  
24 understanding of your use of structure, organization,  
25 and grammar.



1 I wouldn't want -- I know we don't want the  
2 Drafting Committee to have too much leeway with  
3 changing documents that are presented to them, but  
4 that might be a useful tool for them, because you  
5 don't want to have silly fights over can you change  
6 the word, you know, the word "fructose" to "sugar" or  
7 whatever, if that's what you really mean. I am just  
8 concerned about hamstringing.

9 So I would, and I hope I am doing this right,  
10 because I rarely make motions. I would move to add --  
11 to replace the word "phraseology" with the word  
12 "diction" and add it to the list of words that are in  
13 there, if you wish to make this amendment.

14 CHAIRPERSON MCGILL: Is there a second to  
15 that motion?

16 VOICE: Second.

17 CHAIRPERSON MCGILL: The motion has been made  
18 and it's been seconded. And, as soon as Ms. Sharlow  
19 puts it in, we will open the debate.

20 Now that it's in, is there any discussion or  
21 debate with respect to the member's proposed change?  
22 Hearing none, I will ask the clerk to open voting on  
23 the amendment only.

24 CLERK BURRELL: Voting is open.

25 CHAIRPERSON MCGILL: Last call.

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Please close the vote.

CLERK BURRELL: The result of the vote, Mr. Chair, 66 yes, 23 no, three abstentions.

CHAIRPERSON MCGILL: Is there any further discussion or debate with respect to the primary proposal, which is the modification of the 7.4 Drafting Rule, as amended?

Hearing none, I will ask the clerk to open the voting on that amendment.

CLERK BURRELL: Voting is open.

CHAIRPERSON MCGILL: Last call.

Please close the voting.

CLERK BURRELL: The result of the vote, Mr. Chair, 94 yes, one no, one abstention.

CHAIRPERSON MCGILL: Thank you very much.

MR. FERRIS: We do have another item of business today from the Drafting Committee, and you may see in front of you, if Carrie could put it up on the screen too, we have a flow chart that shows the proposal submission process. This was Joe's idea and, although making flow charts, you will see, is not specifically within our jurisdiction, I think that Joe proposed the Drafting Committee for this task because, well, I think we are the nerdiest people on the Representative Assembly, and it took a certain amount

1 of geekiness to get this done. It was a very  
2 detail-oriented project, and the person who really  
3 deserves all the credit for putting it together is our  
4 own Vicki King, and she will be coming up here  
5 momentarily to join me.

6 Vicki is with the 6th circuit and works with  
7 the judicial staff attorney for Judge Leo Bowman  
8 there. And I have been working with Vicki on the  
9 committee for a while, but I had no idea that prior to  
10 becoming a lawyer she actually worked in quality  
11 assurance testing computer applications, and that made  
12 her something of a flow chart extraordinaire, and I  
13 think her good work is on display here, and I think  
14 that fact may also make her the nerdiest member of the  
15 Drafting Committee, which is really saying something.

16 So what we are going to do here is just  
17 quickly walk you through the chart, and I feel like I  
18 should be doing a number from School House Rock about  
19 how a bill becomes a law, but I promise not to sing  
20 for you.

21 Each box represents the different steps in  
22 the process. It's probably easier to look at your  
23 paper copy in front of you, because I know the font is  
24 pretty small from back there.

25 First, the proposal has to be submitted, and

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this didn't fit on the chart so well, but the specific people who can submit a proposal, that's set forth in our rules, and they are a local Bar association, the Board of Commissioners, Section counsel or committee of the State Bar, Congress, or any of us here on the R.A. can submit a proposal.

Moving along. It has to be submitted 42 days before the meeting, and the reason it must be filed a good ways in advance is because, as you will see, a lot has to happen to the proposal before it can be considered by the R.A., and these things take some time.

It has to meet certain requirements, and those are listed next on the chart. It has to contain written text of the proposed resolution. It has to be five pages or less, unless permission is granted to exceed the five pages. And that brings us along.

It has to have a written explanation and a reason for the resolution as well. I think I missed that one.

And so that brings us along to our second page. And there is an option there for the Committee on Rules and Calendar to potentially dispose of an item before the R.A. meeting and the proponent agrees with that, and then the committee reviews the material

1 to ensure that it complies with all the applicable  
2 rules and provides a clear understanding of the issues  
3 raised and the basis for the recommendation. And if  
4 it does, then the committee refers the material to all  
5 the State Bar committees and sections that have  
6 jurisdiction over the subject matter.

7 So, Vicki, if you care to join me, sneaking  
8 up behind, and take it from here.

9 MS. VICKI KING: From that point, which kind  
10 of started this process over on the next page, and I  
11 put waiting, when you are waiting for any of the  
12 responses to come in, and just kind of monitor for  
13 responses and see when they come in.

14 Once it comes in, they have the same  
15 requirements. It has to be five pages or less, unless  
16 they have permission. If they have permission, then  
17 it moves on. If they didn't, then it's rejected.  
18 They are notified they have to change it.

19 The Committee on Rules and Calendar will  
20 meet, and they will finalize for the next R.A.  
21 meeting. Must be between 30 to 45 days, and then you  
22 look and make sure the material sets forth the  
23 adequate, relevant information and is either placed on  
24 a calendar for the next meeting and it's brought up to  
25 the Committee on Rules and Calendar, and then we get

1           our beautiful packets in the mail, or they notify the  
2           proponent that it's not going to be on it, and there  
3           is an appeal process where they can appeal the  
4           decision of the Rules and Calendar Committee, and that  
5           finishes it.

6                   MR. FERRIS: We hope you find this as a  
7           helpful resource. I know that before we embarked on  
8           this, I didn't fully understand the process, so it's  
9           been educational for me, and I hope it's educational  
10          for you. I hope we can put this on the website so  
11          people can see it for future reference too. Thank  
12          you.

13                   CHAIRPERSON MCGILL: So the next item on your  
14          agenda, or our calendar for today, is the  
15          consideration of the resolution on the marijuana  
16          legalization. This matter requires a Keller vote, and  
17          we will open the floor for any discussion with respect  
18          to whether or not the proposal itself is Keller  
19          permissible for this body to consider.

20                   With that clarification from Judge Chmura, I  
21          will turn the meeting over to Matt.

22                   MR. ABEL: Good afternoon. My name is  
23          Matthew Abel. I am from the 3rd circuit, and I am the  
24          proponent behind this item, which is for the Assembly  
25          to endorse the proposal for the legalization of

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marijuana.

It's going to be on the ballot November 6, and for any of those of you who are interested in the actual language, our associate, Sean Myers, down here in the front row, has a stack of these petitions, which he would be happy to provide to anyone who would like it. I suggest you all get a copy, because there is some chance that it will become the law -- I certainly hope so -- to be familiar with it from the get-go.

And so, as I understand it, the procedure here is -- well, first of all, if you have read the materials, you will see that Executive Director Janet Welch and other people from the Bar have opined that this proposal violates Keller in that it's ideological in nature and that it does not fit into any of the categories that are Keller permissible, but before we get to that, I move that we pass this resolution, and I think I am going to need a second or else I am done.

VOICE: Support.

VICE CHAIR CUNNINGHAM: Point of order. Don't we have to have a vote on Keller before we consider the proposal?

JUDGE CHMURA: That is correct. What should happen at this point is there should be a debate on

1           whether this is permissible under Keller.  There are  
2           laws -- the rules require that two-thirds majority of  
3           the members here approve that this is permissible  
4           under Keller.  If two-thirds believe this is  
5           permissible under Keller, then there would be a vote  
6           on the actual proposal.

7                         You now know what the proposal is.  It's been  
8           motioned and seconded, so at this point there should  
9           be a debate on whether or not it's Keller permissible.  
10          So, Joe, you can take it from there.

11                        CHAIRPERSON MCGILL:  Thank you very much,  
12          Judge.

13                        With that being stated, I will open the floor  
14          for discussion and/or debate of whether or not the  
15          proposal as presented is Keller permissible for this  
16          body to even consider.  Mr. Jocuns.

17                        MR. JOCUNS:  Bernard Jocuns of the  
18          40th circuit -- that's in Lapeer County -- and I would  
19          like to address some issues as to why this proposal  
20          should be Keller permissible, and there is also a  
21          couple of open-ended questions I would like to throw  
22          out at the same time.

23                        You know, if you go to ideological type  
24          things, and you get stuff like, I don't know, right to  
25          vote regarding someone's gender or ethnicity, and this



1 kind of goes into some of those things as well. But  
2 as far as permissible under Keller, I am thinking of  
3 improvement in functioning of the courts and  
4 availability of legal services to society.

5 So I was actually talking with an attorney  
6 that I know last night about some of these issues, and  
7 one of them had North Dakota that had come up about a  
8 half dozen times from various rooms in this building  
9 today, and as an example, they actually have a  
10 legalization matter that's on their ballot, and the  
11 interesting thing is that state, they rank 47 out of  
12 all 50 states of people that actually use marijuana  
13 and cannabis, but it ranked second in per capita  
14 prosecutions. Some of the same things that we have  
15 here in the County of Lapeer is that -- or in the  
16 state of Michigan, this also goes to improvement of  
17 the courts.

18 Another example of that, in my own county, up  
19 until 2010, before there was a Michigan Medical  
20 Marijuana Act that had cases that really went through  
21 the ringer and were tested, there were approximately  
22 120 to 150 marijuana cases that were prosecuted for  
23 90,000 people, and those cases would be from simple  
24 possession to OUID to the maybe one or two  
25 manufactured/delivery felony cases, and in 2010 that

1 actually jacked things up to right around 300 to 340  
2 cases every year. So that's something that kind of  
3 misuses the system to, so to speak.

4 I know medical marijuana is a completely  
5 different issue, but when we have law enforcement  
6 within the last two weeks going around the state in  
7 their law enforcement uniforms trying to debunk what  
8 the proposal is all about, there is no reason that  
9 something shouldn't be done in the legal profession  
10 right now, and this does have to do with the  
11 administration of justice, and, arguably, it has to do  
12 with advancing jurisprudence as well. I think this  
13 would obviously clear up the courts, because there  
14 wouldn't be these little -- maybe I should use my  
15 words carefully. There wouldn't be any small-end  
16 offenses that may be considered petty that would be  
17 clogging up the courts and costing people unnecessary  
18 fines.

19 As you know, there are places in the state,  
20 unfortunately, that, instead of having a \$200 fine for  
21 an infraction being out the door, it's somewhere in  
22 the area of \$2,500, and it doesn't matter if it's a  
23 smaller county or if it's somewhere that's more  
24 populated. I believe that this also hits the  
25 interests of the legal profession as well and the

1 public as a whole.

2 We have to look at moving with the times  
3 here. Is this perfect as far as Keller is concerned?  
4 No. But I do believe that there is some valid  
5 reasons. This clears up the court. And also, in  
6 regards to some of the availability of legal services,  
7 which actually some of this was talked about at the  
8 Inaugural Luncheon there, which is very, very  
9 insightful, that we wouldn't have to worry about  
10 people that were clogging up the court-appointed fees  
11 for really low-end, petty offenses, and, quite  
12 frankly, a 21-year old that makes an adult decision  
13 shouldn't necessarily have something on their record  
14 that doesn't involve operating a motor vehicle, and  
15 these are things that would all clear up the court.  
16 So I take my comments off right now.

17 CHAIRPERSON MCGILL: Thank you.

18 MR. LAVIGNE: Hello, Attorney Thomas Lavigne  
19 from the 3rd circuit.

20 Yes, I would just like to go through some of  
21 the Keller permissible factors. The integrity of the  
22 legal profession is one matter here. I mean, this is,  
23 after all, a victimless crime, and the integrity of  
24 the legal profession is a matter that we need to  
25 protect. And the public is fed up with these

1 prosecutions over a plant and a natural resource, and  
2 it really has harmed the integrity of the courts, the  
3 integrity of our profession to propagate this lie, and  
4 so that's one.

5 The improvement in the functioning of the  
6 courts and the adaptability of legal services as well.  
7 We need to prioritize our resources. We only have so  
8 many resources. Meanwhile, we have crises to solve  
9 between the opioid epidemic and violent crime that is  
10 not being solved rapidly enough. Something like 90  
11 percent of the marijuana cases get prosecuted, but  
12 murder and rape and these things, not many successes,  
13 not a lot of follow-up on those. There is rape kits  
14 still piling up in the back room.

15 So a matter of prioritization, and then the  
16 relationship between the legal system and the  
17 community. These, you know, violent raids on people  
18 consuming marijuana has not been good for the  
19 relationship between the community and the legal  
20 profession. Let's face it. This is a victimless  
21 crime. It's an ethical matter that we need to address  
22 as a legal profession.

23 So I suppose back in the day it used to be  
24 argued slavery was a matter of political opinion.  
25 Well, the racial disparity in the prosecution of

1 marijuana cases is despicable. Between three times  
2 and ten times more likely to be prosecuted if you are  
3 a person of color.

4 So there you have it, and I would promote  
5 this not being deemed Keller impermissible.

6 MR. REISER: John Reiser, 22nd circuit,  
7 Ann Arbor. I am urging that we vote no on whether or  
8 not this passes the Keller California case. I am  
9 asking that we defer to our executive director,  
10 Janet Welch, along with the director of governmental  
11 relations, Peter Cunningham, and our public policy  
12 counsel, Kathryn Hennessey, who I submit know more  
13 about these things than we do. As much as everybody  
14 else, I love Michigan's natural resources too, maybe  
15 not as much as some, and I would point out that on  
16 page two at the bottom, regulation and discipline of  
17 attorneys, ethics, lawyer competency, integrity of the  
18 legal profession.

19 We have got an adversary system that works  
20 well to slugging these out in court, and what we will  
21 be slugging out we will probably change in November.  
22 I am urging a vote on this, but I am urging that vote  
23 be on November 6 at the ballot, which is where it  
24 should be.

25 This isn't the right forum for that.

1 Clearing up the courts and clogging up the courts,  
2 that's different than improving in the functioning of  
3 the courts. So when there is something that's put  
4 forward that improves the functioning of the courts,  
5 without regard to the politics of this, you know,  
6 ending marijuana prohibition, pushing a false  
7 narrative built on misinformation, I just don't think  
8 that this is an appropriate subject for this body to  
9 be taking up today. Thank you.

10 CHAIRPERSON MCGILL: Thank you.

11 Mr. Cunningham.

12 VICE CHAIR CUNNINGHAM: Richard Cunningham,  
13 3rd circuit. The issue before us now is not whether  
14 marijuana, recreational marijuana, should be  
15 legalized. That's not the issue. The issue is is  
16 this Keller permissible.

17 Now, I really welcome this proposal from  
18 Matt Abel, because it starts the discussion and the  
19 appreciation of what it is really all about, what the  
20 Keller decision is all about.

21 We are not talking here about anything other  
22 than what was really discussed in Keller. And the  
23 whole concept of this is should an attorney be used  
24 to, be forced to use his or her dues to support an  
25 issue, a political issue, that she or he doesn't

1 support. That's what this is all about. Can you  
2 imagine the outcry we would hear from a number of  
3 people here if it went and found Keller permissible  
4 and then the vote was no, and then it came out  
5 State Bar opposes medical marijuana -- or opposes the  
6 legalization of marijuana? No, there would be a hue  
7 and cry, because the mandatory Bar should not be  
8 involved in these type of questions.

9 That's why we have sections. That's why we  
10 have sections that have, not mandatory dues, but you  
11 can join a section. There is no restriction on Keller  
12 on that section. If the Marijuana Section wants to  
13 come out and say Marijuana Section supports legalized  
14 recreational use, fine. If the Animal Law Section  
15 wants to come out and say the Animal Law Section  
16 supports recreational marijuana, fine. But to have  
17 the mandatory Bar dues used to say that the State Bar  
18 of Michigan Representative Assembly supports it is  
19 totally wrong and just asking for a lawsuit.

20 Now, we talk about Keller all the time, but I  
21 would like to read to you a provision in Keller.  
22 Precisely where the line falls between those State Bar  
23 activities in which the officials and members of the  
24 Bar are acting essentially as professional advisers to  
25 those ultimately charged with regulation of the legal

1 profession, on the one hand, and those activities  
2 having political or illogical coloration which are not  
3 reasonably related to the advancement of such goals,  
4 on the other hand, will not always be easy to discern.  
5 But the extreme ends of the spectrum are clear,  
6 compulsory dues may not be expended to endorse or  
7 advance a gun control or nuclear weapons freeze  
8 initiative. On the other end of the spectrum,  
9 petitioners have no valid constitutional objection to  
10 their compulsory dues being spent for activities  
11 connected with disciplining members of the Bar or  
12 proposing.

13 So on the one hand we have clearly admissible  
14 evidence allowable upon them, and on the other hand we  
15 have you can't use Bar dues to go out and regulate how  
16 people spew on nuclear energy or gun control. How is  
17 this different than making a gun proposal?

18 Can you imagine if we had a resolution here  
19 that says we support gun control and we had another  
20 resolution that says everyone should have guns? This  
21 is not the type of thing that should be used under  
22 Keller or could be used under Keller, and it also  
23 comes from the guy who pays his Bar dues and says,  
24 Wait a second, how is it different, this permission  
25 for recreational marijuana, how is that different from



1 gun control or nuclear. It's on that far end, far end  
2 of the spectrum. It's not even a close call. This is  
3 not Keller permissible. Thank you.

4 CHAIRPERSON MCGILL: Thank you very much.  
5 (Applause.)

6 MR. ROTENBERG: I would like to thank  
7 Mr. Cunningham for his good words. I would like to  
8 say that I don't believe that this is the place for us  
9 to support or object or pose any opinion as a body.  
10 We all have our individual opinions. Individually, I  
11 support what the provisions of this, but I don't think  
12 that this body should be doing -- should be taking an  
13 opinion one way or the other with it.

14 But one of the things I was thinking about is  
15 compelled speech is not truly free speech, and if you  
16 go back even before Keller to the 1940s and to  
17 West Virginia Board of Education versus Barnett, which  
18 is a case involving children of Jehovah's Witnesses in  
19 public school objecting to participating in saluting  
20 the flag and of the pledge of allegiance. There is an  
21 awful lot of dicta in there about compelled speech.  
22 Free speech can't really be compelled, because if it's  
23 free, you have to have the ability to opt out.

24 I freely say in my individual capacity as  
25 Steve Rotenberg, marijuana should probably be

1           decriminalized. As Representative Assembly Member  
2           Rotenberg, I say we shouldn't be really discussing  
3           this and having a public statement about it, because  
4           the reverse of what Mr. Cunningham said, well, what if  
5           we all came out and we said no, then it would just  
6           look like we are protecting our business, which also  
7           doesn't look like we are protecting the public. So we  
8           should just stay out of this regardless of what our  
9           feelings are. And thank you.

10                   MR. GILBERT: Dave Gilbert, 37th circuit. I  
11           have to agree with Mr. Cunningham. When we want to  
12           talk about politics, this is clearly political, and to  
13           say that somehow that we are promoting the integrity  
14           of the legal profession, you got to remember, it's  
15           against the law. It doesn't matter what you do in the  
16           state, it's still going to be against the law under  
17           federal law. Actually, we are not voting the  
18           integrity of our profession. We are actually saying  
19           we agree with criminal enterprises on the federal law,  
20           so I would have to object.

21                   CHAIRPERSON MCGILL: Thank you.

22                   MR. KOROI: Mark Koroi, 6th circuit. I just  
23           want to comment about some of the good comments I have  
24           been hearing. The only thing I could possibly see  
25           which involves one of the Keller permissible issues is

1 improved function in courts. I would agree with the  
2 proponent of this that the court system is heavily  
3 burdened with marijuana cases, and that's the only  
4 arguable element I see in this entire resolution is  
5 that particular section. That said, I do not believe  
6 that it's Keller permissible, because it's couched in,  
7 to me, a political issue.

8 For one, the resolution, for instance, has a  
9 clause, Whereas, it is estimated that Michigan could  
10 generate between \$100 and \$200 million in new tax  
11 revenue each year from retail marijuana sales. That  
12 really doesn't affect the court system. If they want  
13 to craft this more carefully and simply limit this  
14 particular resolution to how marijuana affects the  
15 court system, I don't -- it's a very great issue in  
16 the court system with police, with defense lawyers,  
17 with prosecutors, given the fact that it costs too  
18 much to process these. It's not even worth  
19 prosecuting because of the very limited families  
20 involved in marijuana possession.

21 But this resolution goes far beyond that.  
22 Actually, I don't think it's going to stand the close  
23 test (inaudible) to some of those issues about how  
24 marijuana affects the courts. I can say it's  
25 possible, the way it's been couched as more of a legal

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issue.

I can tell you, my background with drug law goes back to 1991 when we had the Michigan Act being declared constitutional. They would change the law because it discriminated against poor people. I acknowledge that was a legal issue right there. I served over four years on the county substance abuse board, and we had various issues relating to marijuana and other drugs, and it is primarily a political issue, and I think this particular issue, though I agree with Matt Abel, a lot of stuff he says, I believe that the way it's down here, it's not Keller permissible. Thank you.

CHAIRPERSON MCGILL: Thank you very much.

Is there any further discussion, any further comments, any further debate?

MR. ABEL: I don't want to cut anybody off. Matt Abel again from the 3rd circuit. If I can, I believe that there are grounds for this to be Keller permissible, that this will improve the quality of legal services available to the people of the state. Mr. Cunningham used the examples of gun control and nuclear disarmament. Those are not racially biased policies. They are not racially biased in implementation. They are not racially biased in

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effect.

What we are dealing with with the marijuana policies is something that is racially biased. It denies people of color equal protection under the law. People of color are 3.3 times more likely to be prosecuted for marijuana offenses than people of the same age who are white. If that's not racially discriminatory, I don't know what is.

Furthermore, this law will bring our legislation into conformity with societal mores; that the policy that we have now turns good people against the police. It is an inefficient and ineffective use of police that has taxed resources. Forty percent of drug arrests in 2017 were for marijuana.

While court congestion itself is not an adequate basis, I believe that promoting equal protection, which is a constitutional right, is an adequate basis.

Finally, last week police and prosecutors in at least five counties around Michigan, some people in this room, participated in a dog-and-pony show, if you will, to educate the public why to vote no on the legalization of marijuana. They were not educating the public about the proposal pros and cons; they were educating the people about why to vote no.

1                   Now, if it's acceptable for the police to do  
2 this in uniform with tax resources, then certainly  
3 they would argue that it's not ideological, and what's  
4 good for the goose is good for the gander. If it's  
5 not ideological for the police, then we can decide  
6 this. If it is ideological on the part of the police,  
7 then they have committed crimes and the prosecutors  
8 and everybody else who has been involved in this  
9 dog-and-pony show that was held throughout Michigan.

10                   So I understand that this isn't favorable  
11 with some of the members of the body. I understand  
12 that some people here don't like marijuana, period. I  
13 understand that others understand that this policy  
14 needs to change and they don't feel that this is the  
15 appropriate forum. But regardless, I hope you have  
16 become a little more educated about this issue and why  
17 this policy is unjust, and I would urge that you vote  
18 that this is Keller permissible, and then it would be  
19 very strange to make it Keller permissible and then to  
20 vote it down. If you believe it's Keller permissible  
21 because it denies equal protection, then you must vote  
22 to support ending this racist policy. Thank you very  
23 much.

24                   CHAIRPERSON MCGILL: Thanks, Matt.

25                   Any further discussion, debate before we call

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the question?

Hearing none, I will ask the clerk to open voting on whether or not the legalization of the marijuana proposal espoused by Mr. Abel is Keller permissible only.

CLERK BURRELL: Voting is open.

VICE CHAIR CUNNINGHAM: To clarify, a yes vote means it is Keller permissible, a no vote means it is not Keller permissible and we don't go any further. We don't consider the underlying.

CHAIRPERSON MCGILL: So for clarification purposes, the vote that we are having now is whether or not the proposal itself is Keller permissible. Voting yes indicates that you believe that the proposal is Keller permissible and that we can consider it as a body. Voting no, you believe that it is not Keller permissible and not something that the Representative Assembly should consider as a body and vote on in total.

So A for yes, you believe it's Keller permissible; B for no, you do not believe that it as Keller permissible; or C to abstain.

Voting is open?

CLERK BURRELL: The voting is open.

CHAIRPERSON MCGILL: A for yes, B for no, C

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for abstain.

Last call.

Please close the vote.

CLERK BURRELL: The result of the vote, Mr. Chair, 16 yes, 85 no, zero abstentions.

CHAIRPERSON MCGILL: Thank you very much. The proposal is not Keller permissible, and, as a result, we move on to the next item on the calendar, which is a proposed change to our Rules of Procedure with respect to the Hearings Committee, which will be presented by Dawn King.

MS. DAWN KING: Good afternoon. My name is Dawn King. I am from the 6th circuit.

What we have here is the proposed amendment to the Hearing Committee. The interesting history about the Hearing Committee is when they presented with updating the Rules of Procedure, to better carve out a role for the Hearing Committee, it's infrequently used, and they had to actually go back to 2003 to find a transcript as to what was the role of the Hearing Committee.

So what we have today is just to further define how we will be handling the hearings. They are pretty infrequent, but, however, hopefully by looking at the language that's on the screen it will have us



1           furthermore involved in the future in terms of the  
2           members.  Initially, there were seven committee  
3           members of the Hearing Committee, and now it has been  
4           expanded to 12.  Basically, if we should be called  
5           upon to have hearing for any type of issues, of course  
6           we will come back and, you know, report it to the  
7           Representative Assembly.

8                         At this point it's just pretty  
9           straightforward.  Just in terms of meetings, if we  
10          need one, there is a regular meeting that will be  
11          held, and then also if there is not a need for one, we  
12          won't have one.  If there is a special meeting and  
13          that issue comes from a nonmember also for either type  
14          of meeting, we actually will be able at some point to  
15          have three members for a regular meeting.  If we have  
16          a hearing, there are two people from circuits that are  
17          close geographically to where we could have that  
18          hearing, but at some point, as you will see in the  
19          second paragraph, special meetings and hearings, we  
20          will have three committee members.

21                        With that, I hope you are able to see that  
22          and read it, and if you have any questions, I will see  
23          if I can answer it.

24                        CHAIRPERSON MCGILL:  Is there a motion to  
25          approve the proposal?

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VOICE: So moved.

CHAIRPERSON MCGILL: Is there a second?

VOICE: Support.

CHAIRPERSON MCGILL: I will open the floor to discussion and debate with respect to the proposal and any questions that you might have for Ms. King.

Hearing none, I will ask the clerk to open voting on the proposal.

CLERK BURRELL: Voting is open.

CHAIRPERSON MCGILL: One or A for yes, 2 or B for no, C or 3 for abstention.

Last call.

Please close the vote.

CLERK BURRELL: The result of the vote, Mr. Chair, 88 yes, two no, zero abstentions.

CHAIRPERSON MCGILL: Thank you very much.

The next item on the agenda is item number 12, which is a proposed amendment to the Rules and Calendar Committee, which will be presented by Mr. Philip Moilanen.

MR. MOILANEN: Good afternoon. The Rules Committee recommends that we make a slight addition, actually it's a deletion, to the current Rule 4.6 to delete some words at the end requiring that the written motion or amendment be submitted before it is

1           seconded. The current problem, as we almost  
2           encountered earlier today was when you have an  
3           amendment that's going to be more than six words long  
4           it has to be submitted in writing. We don't have a  
5           problem with that, but we never would have gotten to  
6           it if somehow we hadn't gotten past the words that  
7           changed earlier in the amendment to the earlier  
8           proposal.

9                        So the thought is that as an amendment is  
10           made, often we are figuring out exactly what it should  
11           say as we are talking about it. The Clerk and the  
12           Chair can control the length of that thing, but it  
13           might be written on the screen while we are talking  
14           about it before it is seconded, and this would permit  
15           that to happen, so we are recommending that rule  
16           change.

17                      CHAIRPERSON MCGILL: Is there a motion to  
18           accept the proposed rule change?

19                      VOICE: Support.

20                      CHAIRPERSON MCGILL: Is there a second?

21                      VOICE: Yes.

22                      CHAIRPERSON MCGILL: The motion is made and  
23           seconded. Is there any discussion or debate?

24                      Hearing none, I will ask the clerk to open  
25           voting on the issue.

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CLERK BURRELL: Voting is open.

CHAIRPERSON MCGILL: Last call.

Please close the voting.

CLERK BURRELL: The result of the vote, Mr. Chair, 93 yes, one no, one abstention.

CHAIRPERSON MCGILL: Thank you very much.

The next item on the agenda is item number 13, and I would like to indicate to the body that through the course of the past year, and more particularly with respect to the last five months worth of work, the leadership and myself have worked very closely with the various committees that are established by the Representative Assembly, and in particular the chairs of those various committees, Hearings, Standing, Rules and Calendar, et cetera.

We worked diligently with respect to these proposed changes that you just all voted on. That involved multiple teleconferences and multiple individual discussions with the chairs, and then the chairs reaching out to their committee members and having discussions with them and working through these issues, working through the rules and how they can be streamlined. And you can see, for example, just in the flow chart that Dan Ferris and his group put together, how complicated and complex some of these

1 issues are.

2 So given the effort and work that all of the  
3 committees did, I want to provide the chairs of each  
4 of those committees the opportunity to address the  
5 Assembly, and by and large all the chairs have.

6 Item 13 is Dave Gilbert's opportunity to  
7 address the Assembly with respect to the work that he  
8 has done with the Special Issues Committee over the  
9 past year and, most importantly, last five months.

10 MR. GILBERT: Dave Gilbert, 37th circuit.  
11 The Special Issues Committee includes myself,  
12 John Chau from the 6th circuit. Shauna Dunnings from  
13 the 30th circuit; Peter Falkenstein from the 22nd  
14 circuit; Diane Hutcherson from the 3rd circuit;  
15 R. Timothy Kohler the 16th circuit; and E. Thomas  
16 McCarthy, Jr. from the 17th circuit.

17 They gave me five minutes to talk to you, but  
18 most everything I was going to talk to you about has  
19 already been taken care of in item number 6, the Task  
20 Force. One issue that came up with us when we were  
21 tasked to get feedback from the members of this  
22 Assembly regarding pending rule changes was the lack  
23 of the number of people actually responding.

24 One thing we had to do was get feedback from  
25 our members regarding the proposed civil discovery

1 Court Rule changes that we dealt with earlier this  
2 year. Out of the 120-some odd people of our Assembly  
3 we got responses from people that were interested in  
4 helping us, 43 people were willing to help, and we  
5 ended up only getting responses from 10 people, 12  
6 people, and the reason for not actually filing a  
7 response was that they didn't think they were  
8 qualified or they were confused as to whether or not  
9 they should be giving their opinion because it wasn't  
10 an area of the law that they followed.

11 I am hoping that the Task Force  
12 recommendation that we adopted in item 6 will actually  
13 help with that confusion in the future. Other than  
14 that, we had good feedback on all the other issues we  
15 dealt with. Thank you.

16 CHAIRPERSON MCGILL: Thank you very much,  
17 Dave.

18 Moving along to item number 14. At this  
19 point in time I would like to call the tellers to the  
20 front of the room. This is the point at which we will  
21 hear nominations for the office of clerk for the next  
22 Bar year, and we will accept nominations from the  
23 floor, if there are any. The two nominees are  
24 David Gilbert and Bernie Jocuns.

25 MR. JORDAN: My name is James Jordan from the

1 37th circuit. It's my honor and privilege to nominate  
2 David Gilbert of the 37th circuit for the position of  
3 Assembly clerk.

4 MR. MYERS: Sean Myers from the 3rd circuit.  
5 I would like to nominate Bernard Jocuns from the 48th  
6 circuit to the clerk's position.

7 CHAIRPERSON MCGILL: Do we have a nomination  
8 from the floor?

9 VOICE: Yes.

10 MR. BRENNAN: My name is James Brennan from  
11 the 6th circuit. It is my honor and privilege to  
12 nominate Chelsea Rebeck for the position of clerk.  
13 Chelsea has been on the Board of Commissioners and  
14 Finance Committee and Audit Committee for the last  
15 four years. She has been on the Diversity and  
16 Inclusion Committee for the last two years. She is a  
17 member of the Representative Assembly. In addition to  
18 being a CPA, MBA, she has an LLM in taxation. She is  
19 a professor of Walsh College, sole practitioner in  
20 Southfield, besides being a wife and mother. She  
21 manages it all. It's my privilege to nominate her for  
22 the position of clerk.

23 VOICE: Second.

24 CHAIRPERSON MCGILL: Thanks very much.

25 At this point in time, I will open the mike

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to the nominees to come and speak and address the  
Assembly.

MS. REBECK: Judge Brennan, thank you so much  
for your nomination. I am very honored to be  
nominated. I have worked on the Finance Committee and  
the Audit Committee for the Board of Commissioners for  
the past four years. I am the only non-Board of  
Commissioners member that has served on those  
committees, and the Bar is very important to me. The  
work that we do here is very important to me, and I am  
very honored also to be on the Representative  
Assembly, and I have been encouraged by quite a few of  
the Board of Commissioners members to start taking a  
leadership role, and here I am.

CHAIRPERSON MCGILL: Thank you very much.  
Mr. Jocuns or Mr. Gilbert.

MR. GILBERT: I am David Gilbert, 37th  
circuit. I have been practicing law since 1988. In  
that period of time I have been assistant prosecutor.  
I have been elected prosecutor, I have been a defense  
attorney, I have been a corporate attorney, I have  
been a business attorney, and I have done divorce. I  
think I have done everything except medical  
malpractice, administrative law things.

In the Bar association, I have been a



1 Representative Assembly member for the 37th circuit  
2 court. I have also been for the 5th circuit court  
3 when I lived in Barry County and worked in Barry  
4 County, but in that time I have been on the  
5 Representative Assembly, I have been the chair of the  
6 Special Issues Committee two different times for two  
7 different circuits, and I would like to do more for  
8 the Bar and the Representative Assembly.

9 My resume is in the back of the program. I  
10 am not going to go through everything I have done, but  
11 I have been chair of the Criminal Law Section. I have  
12 been on different boards, and I have chaired different  
13 things, including the Boy Scouts. I have been around  
14 for quite a long time, and I would ask for your  
15 support.

16 CHAIRPERSON MCGILL: Thank you very much.

17 MR. JOCUNS: I am Bernard Jocuns. I am from  
18 Lapeer, and, in case you all don't know, that's right  
19 here. Actually borders six counties, really the hub  
20 of the state. Anyway, for my relevance, I saw a  
21 couple younger members and a couple older members  
22 within the last couple years do some things that I  
23 thought were really important that made the State Bar  
24 look like they are not on top of the food chain, and  
25 that's something that really has kind of motivated me

1 to do some things, like the Marijuana Law Section,  
2 which a couple of my peers helped start. Now I think  
3 we are up over 800 members.

4 But the things that I really found important  
5 were like the equal access to justice. I mean, that's  
6 something that should be a no-brainer and just giving  
7 back a little bit to a profession that seems to be a  
8 little bit crazy sometimes, and from what's going on  
9 in the world, this is something that people should  
10 have a little bit of faith in.

11 And, you know, again we were at the Inaugural  
12 Luncheon next door. I think Jennifer Grieco said it  
13 was 80 percent of people that are considered middle  
14 class cannot afford representation, and, regardless if  
15 it's a family law matter, criminal matter or business  
16 matter, that has an adverse impact.

17 And, anyway, at the end of the day I would  
18 like to take this energy and bring it into the  
19 Representative Assembly. I am also president of the  
20 Lapeer County Bar Association. I was recently  
21 appointed to represent my brother and sister Veterans  
22 at the Veterans Board at Lapeer County, so thank you  
23 all, and please support me.

24 CHAIRPERSON MCGILL: Thank you very much.

25 So at this point in time you have the ballots

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in front of you.

VOICE: They don't have ballots.

CHAIRPERSON MCGILL: You are being distributed ballots. I stand corrected. You will need to write in Chelsea's name as the 3rd candidate.

VOICE: What's Chelsea's last name?

CHAIRPERSON MCGILL: So Chelsea's last name is spelled R-e-b-e-c-k.

VOICE: Can you put that on the screen?

CHAIRPERSON MCGILL: Can we get that on the screen? Carrie is running around right now.

So when you vote, please indicate, and the tellers will come by and collect your votes. For those that have completed, make sure you fold your ballot over so it's a secret, and ballots are still being distributed.

So the tellers will be tabulating the votes in the back. Our parliamentarian, Judge Chmura, indicated to me if there is a candidate that has not received the majority of the votes that the lowest vote-getter will be removed from the ballot, removed from our consideration, and we will go through the process again until we have a vote by majority of the vote, or if no candidate has received at least 50 percent of the votes.

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Has everyone had an opportunity to turn their card in to the tellers? Looks like they have.

Marge Bossenbery suggested we turn in our clickers right now so we don't walk out of the building, which I have done on multiple occasions.

I have got good news and bad news. The good news is the democratic process in the Representative Assembly is alive and well. The bad news is we do not have a majority winner. I would like to thank and commend Member Jocuns for his willingness to be nominated and speak to us about being the clerk, but the two members that are the highest vote-getters are Chelsea Rebeck and David Gilbert. What that means is, we are going to do the same thing all over again. So they will be distributing ballots out to you shortly, and we will go through the process again.

(Voting for Clerk.)

CHAIRPERSON MCGILL: The next item that we have on our agenda is item number 15, which is the recognition of the retiring members of the Assembly and the committee chairs. So you can see the list of the names of the folks that are leaving service of the Representative Assembly, and I have been told not to read the names, but I would like to ask everyone that's leaving the Assembly if you could just rise for

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a second so we can give you a round of applause.

(Applause.)

CHAIRPERSON MCGILL: Thank you very much for your service. I can tell you from personal experience that it is hard work.

The next item under the same heading is the recognition of our committee chairs, and I have already spoken and told you about all the work that these folks have done, but I too would like to ask them to rise and be recognized.

(Applause.)

CHAIRPERSON MCGILL: And I am proud to say Committee Chair Michael C. Brown has gone from regular attorney to where he gets to wear that magic black robe now, so congratulations Judge Brown.

(Applause.)

CHAIRPERSON MCGILL: The next item on the agenda is item number 16, and it is my great pleasure and honor to introduce Judge Melissa L. Pope. Now, Judge Pope is the Chief Judge of the Nottawaseppi Huron Band of the Potawatomi Tribal Court. She has also served as Chief Justice of the Little River Band of the Ottawa Indians Court of Appeals. She is an adjunct faculty member of the University of Detroit Mercy School of Law teaching American Indian law.

1 She has served on various committees in the  
2 tribal courts, one of which was the Intertribal  
3 Technical Work Group on Special Domestic Violence and  
4 Criminal Justice. That work led to the issuance of  
5 the granting of a grant to establish a victims  
6 services department and a domestic violence victims  
7 advocate position.

8 Her State Bar of Michigan involvement  
9 includes leadership on the Access to Justice Policy  
10 Committee and the American Indian Law Committee, and  
11 most importantly she is the daughter of our incoming  
12 Chair, Rick Cunningham, and please welcome Judge Pope.

13 MS. POPE: I am very honored to be here  
14 today, not only as a very proud daughter, but also as  
15 a very proud tribal judge. I am grateful to my father  
16 for the tremendous advocacy he has done over the years  
17 in changing hearts, actually within the legal  
18 profession, and then the advocacy for many of you and  
19 our State Bar of Michigan staff to recognize tribal  
20 courts and the contributions that we make, not only to  
21 the sovereign nations that they represent, but also to  
22 the states in which they reside.

23 There has been phenomenal work done across  
24 the different jurisdictions, including our Tribal  
25 State Biracial Judicial Forum, in which we are

1 learning how to support each other, respect each  
2 other, advocate for each other, and really celebrate  
3 each other's sovereignty, all with the focus,  
4 especially on Michigan's children, but all Michigan  
5 residents.

6 So I say mIgw'e'c, which means thank you, for  
7 allowing me to be the one that swears in my dad, and I  
8 say mIgw'e'c to him for always being a beacon of what  
9 we should aspire to as attorneys, as judges, and as  
10 people. MIgw'e'c.

11 (Applause.)

12 JUDGE POPE: Raise your right hand and repeat  
13 after me. I, say your name.

14 VICE CHAIR CUNNINGHAM: I, Richard  
15 Cunningham --

16 JUDGE POPE: Do solemnly swear --

17 VICE CHAIR CUNNINGHAM: -- do solemnly  
18 swear --

19 JUDGE POPE: -- that I will support the  
20 Constitution of the United States --

21 VICE CHAIR CUNNINGHAM: -- that I will  
22 support the Constitution of the United States --

23 JUDGE POPE: -- and the Constitution of the  
24 State of Michigan --

25 VICE CHAIR CUNNINGHAM: -- and the

1 Constitution of the State of Michigan --  
2 JUDGE POPE: -- and the Supreme Court  
3 Rules --  
4 VICE CHAIR CUNNINGHAM: -- and the  
5 Supreme Court Rules --  
6 JUDGE POPE: -- concerning the State Bar of  
7 Michigan --  
8 VICE CHAIR CUNNINGHAM: -- concerning the  
9 State Bar of Michigan --  
10 JUDGE POPE: -- and that I will faithfully  
11 discharge --  
12 VICE CHAIR CUNNINGHAM: -- and that I will  
13 faithfully discharge --  
14 JUDGE POPE: -- the duties of Chair of the  
15 Representative Assembly --  
16 VICE CHAIR CUNNINGHAM: -- the duties of  
17 Chair of the Representative Assembly --  
18 JUDGE POPE: -- of the State Bar of  
19 Michigan --  
20 VICE CHAIR CUNNINGHAM: -- of the State Bar  
21 of Michigan --  
22 JUDGE POPE: -- according to the best of my  
23 ability --  
24 VICE CHAIR CUNNINGHAM: -- according to the  
25 best of my ability --



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JUDGE POPE: -- and by all that I hold  
sacred.

VICE CHAIR CUNNINGHAM: -- and by all that I  
hold sacred.

(Applause.)

CHAIRPERSON MCGILL: The results are in. I  
would like to thank Prosecutor David Gilbert for his  
willingness to serve and congratulate Member Chelsea  
Rebeck as our new clerk of the Representative  
Assembly.

(Applause.)

CHAIRPERSON MCGILL: Second to the last item  
on the agenda is presentation of the recognition to  
the immediate past Assembly chair.

VICE CHAIR CUNNINGHAM: We are all aware and  
we have all heard many, many times how nice guys  
finish last. Joe McGill belies that adage. Joe's  
leadership is equal only by his humanity and his  
decency. So to a very, very decent man for a very,  
very good year of leadership, I present this plaque on  
behalf of the Representative Assembly.

(Applause.)

CHAIRPERSON MCGILL: Thank you very much, and  
I want to respect your time, and I will be brief. I  
want to thank the officers, Rick Cunningham and Aaron

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Burrell, for all their hard work this past year. I also want to thank our Committee chairs, which we have already recognized.

In particular, I want to thank all of you members of the Representative Assembly who the have given me the opportunity to lead and grow professionally from your expertise. None of this would have been possible without the efforts of all of the members of the State Bar staff, but in particular our liaisons, Carrie Sharlow, Peter Cunningham, and Katie Hennessey. Also Janet Welch and Marge Bossenbery. The State Bar of Michigan would come to a screeching halt if we didn't have their services.

This past year I can tell you has been the most challenging for me professionally and personally, and I do, again, appreciate the opportunity to have led you. I am confident that the changes that we have enacted just this afternoon will give you, the members of the Representative Assembly, the tools that you need to bring this organization into the 21st Century and to create a nimble and responsive group of professionals that are committed to the improvement of the practice of law in the state of Michigan. Thank you all very much.

(Applause.)



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