

STATE OF MICHIGAN

STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE
ASSEMBLY of the STATE BAR OF
MICHIGAN

Proceedings had by the Representative Assembly of the
State Bar of Michigan at Kellogg Hotel & Conference Center,
Big 10A Room, 555 South Harrison Road East Lansing,
Michigan, on Thursday, September 22, 2005, at the hour of
10:00 a.m.

AT HEADTABLE:

ELIZABETH A. JAMIESON, Chairperson

LORI A. BUIREWEG, Vice-Chairperson

EDWARD L. HAROUTUNIAN, Clerk

JOHN T. BERRY, Executive Director

HON. ARCHIE C. BROWN, Parliamentarian

ANNE SMITH, Staff Member

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REPRESENTATIVE ASSEMBLY

9-22-05

1 East Lansing, Michigan

2 Thursday, September 22, 2005

3 10:18 a.m.

4 R E C O R D

5 CHAIRPERSON JAMIESON: For the last time, I

6 call this meeting to order.

7 Mr. Clerk, do we have a quorum present today?

8 CLERK HAROUTUNIAN: Madam Chair, we have a

9 quorum which is in excess of 50.

10 CHAIRPERSON JAMIESON: Thank you very much.

11 Do I have a motion to adopt the proposed

12 calendar?

13 VOICE: So moved.

14 VOICE: Second.

15 CHAIRPERSON JAMIESON: Any discussion?

16 Hearing none, all those in favor say aye.

17 Any opposed.

18 Thank you. Next on the agenda is just a

19 notation that, having received no objection to the
20 summary of proceedings for the April 16th meeting,
21 that summary is deemed approved.

22 I would now ask Bob Gardella, Chair of the
23 Nominating and Awards Committee, up to the podium.

24 MR GARDELLA: Good morning. There is a lot
25 of new faces here today, and thank you for all coming.

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1 We have a lot of vacancies that we filled, and this is,
2 I think, the first time that we have had a hundred
3 percent occupancy, if you want to call it that.

4 We have vacancies that we have to fill for
5 this first, for the meeting today. We also have
6 vacancies that we have to fill for the next year
7 period. There are a lot of people who are going to be
8 filling vacancies for spots that will last till
9 2007 or 2008, but I want to reiterate to you that,
10 just because we are appointing you and filling the
11 vacancy for the next year, you still have to fill out
12 a petition, a nominating petition, and have that
13 signed by six or seven of your closest friends in your
14 county, attorneys that is, and submit that petition to
15 the State Bar next April.

16 We are going to be giving you the petition
17 today to take with you to keep on your bookshelf or
18 wherever, in your calendar book, so that you remember

19 to do that, because if you want to fill the remainder
20 of the term beyond this next year, you have to be
21 elected through the process. If there is nobody who
22 runs or fills out another petition, you will fill out
23 the remainder of that term. So it's easy to do. You
24 just have to remember to do it, or otherwise we have
25 to go through the reappointment process for you.

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1 We had a little glitch earlier this year
2 where we had our January meeting adjourned to April,
3 so things sort of fell by the way side. By the time
4 of our April meeting, people had not been able to get
5 those petitions done. So we are sort of working ahead
6 of the game now, and we hope that you will remember to
7 do that.

8 If there are any questions on that or you
9 can't remember when the term would end that you are
10 filling, just find me. I am in the 44th circuit over
11 on this side of the room, and I can tell you when that
12 term would end.

13 So to fill the meeting vacancies for today, I
14 am going to go through a list of names, and when I
15 call your name, if you could stand up, give a wave so
16 we know where you are, and I would be moving that the
17 following people fill the vacancies for the following
18 circuits.

- 19 First of all, in the 15th circuit, Richard
20 Colbeck of Coldwater. He is in the back there.
21 21st judicial circuit, Becky Bolles of
22 Mt. Pleasant, over on this side.
23 The 17th circuit, Kathleen Allen of Grand
24 Rapids in the back there. Hi, Kathleen.
25 The 24th circuit, Elaine Sawyer of Sandusky.

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1 I saw Elaine over here earlier.

2 33rd circuit, John Jarema of Charlevoix.

3 There he is in the back there. Hi, Jim.

4 The 34th circuit, Dawn LaCasse of

5 Prudenville, over on this side. Hi, Dawn.

6 The 45th circuit, Christine Everson Yancey of

7 Mendon. Okay, over that way.

8 48th circuit, Amanda Haverdink of Allegan.

9 Hi.

10 And the 56th circuit, Michael Eagen of

11 Charlotte. Michael is here? I don't see him.

12 And then also the 57th circuit, Daniel Harris

13 of Petoskey, and I know that he was not able to make

14 it today, but he does want to fill that vacancy.

15 So I would move, and if I hear a second.

16 VOICE: Second.

17 CHAIRPERSON JAMIESON: So Bob having made the

18 motion, and did I hear a second?

19 VOICE: Yes.

20 CHAIRPERSON JAMIESON: Any discussion? All

21 in favor, please say aye.

22 Any opposed.

23 Welcome to the new Assembly members. Please

24 take your seats.

25 MR GARDELLA: The next list is going to have

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1 a lot of repeat names. These will be the vacancies
2 that will be filled for all the circuits for the
3 remaining terms, and I would move that the following
4 persons be nominated and approved to fill the
5 vacancies.

6 In the 1st judicial circuit, Valerie White of
7 Hillsdale.

8 In the 6th judicial circuit, Joan Vestrand of
9 Rochester. If I call your name, if you could stand
10 up.

11 In the 6th circuit, Krista Licata
12 Haroutunian of Bingham Farms.

13 6th judicial circuit, Paul Raine of
14 Rochester Hills.

15 13th judicial circuit, John Blakeslee of
16 Traverse City.

17 15th judicial circuit, Richard Colbeck of
18 Coldwater.

- 19 17th judicial circuit, Kathleen Allen of
- 20 Grand Rapids.
- 21 20th judicial circuit, Nelson Miller of Grand
- 22 Haven.
- 23 21st judicial circuit, Becky Bolles of
- 24 Mt. Pleasant.
- 25 23rd judicial circuit, Duane Hadley of

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1 Standish.
2 24th judicial circuit, Elaine Sawyer of
3 Sandusky.
4 28th judicial circuit, Julie Benson Valice of
5 Cadillac.
6 33rd judicial circuit, John Jarema of
7 Charlevoix.
8 34th judicial circuit, Dawn LaCasse of
9 Prudenville.
10 36th judicial circuit, Linda Pioch of PawPaw.
11 39th judicial circuit, there is two
12 positions, two vacancies. Anna Marie Anzalone of
13 Adrian and also Adrienne Iddings of Adrian.
14 And 44th -- I am sorry, 41st judicial
15 circuit, Christopher Ninomiya of Iron Mountain.
16 42nd judicial circuit, two vacancies, Wendy
17 Davis Kanar of Midland and also Tina S. VanDam of
18 Midland.

19 45th judicial circuit, Christine Everson

20 Yancey of Mendon.

21 48th judicial circuit, Amanda Haverdink of

22 Allegan.

23 51st judicial circuit, Jeffrey Nellis of

24 Ludington.

25 53rd judicial circuit, David Barton of

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1 Cheboygan.

2 56th judicial circuit, Michael Eagen of

3 Charlotte.

4 And finally, 57th judicial circuit, Daniel

5 Harris of Petoskey.

6 If I could hear a second.

7 VOICE: Second.

8 CHAIRPERSON JAMIESON: Bob having made the

9 motion, I have heard a second, is there any discussion

10 with regard to those appointments?

11 Hearing none, all those in favor, please say

12 aye.

13 Any opposed.

14 All of those people are now on the Assembly.

15 For clarification, these people are filling vacancies

16 that will be effective for the new Bar year. We

17 invited them to attend as informational today. They

18 really aren't on the Assembly until the next Bar

19 meeting, or the next Assembly meeting, but we wanted
20 to get all of those people in place so that Lori had a
21 full Representative Assembly starting fresh at the
22 close of this meeting. Thank you very much.

23 (Applause.)

24 CHAIRPERSON JAMIESON: So welcome to the 70th
25 annual meeting of the State Bar of Michigan. I have a

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1 few housekeeping issues that I would like to address
2 with everybody. First of all, everybody should have
3 an expense voucher for this meeting. As you will
4 recall, we now are reimbursed for mileage to the
5 meetings, and if you are going to be submitting
6 mileage, please do so no later than September 30th,
7 which is next Friday. We are dealing with end of the
8 Bar year deadline. So if you intend to submit a
9 voucher for your mileage, please do so within the next
10 seven days.

11 Attendance slips and parking passes, as you
12 know, we are also covering parking for you all now,
13 and we have parking passes for everyone, so you don't
14 have to submit reimbursement for that. You will get
15 those at the end when you get the attendance slips.
16 Also, when you get the attendance slip at the end of
17 the day, there is a list where you can indicate your
18 preference with regard to the Assembly committees and

19 liaison opportunities, and I would ask everybody to
20 take a few minutes and review that list to see whether
21 or not you are interested in any of those positions,
22 especially with regard to liaison. I encourage any of
23 you who are active in other sections or committees,
24 councils, it's a great opportunity for you to double
25 task and to be able to bring a unique perspective to

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1 the Assembly and back to that council on behalf of the
2 Representative Assembly. So please take time to fill
3 that out.

4 You have three handouts before you today,
5 which is very different than our last meeting in
6 April, so the three handouts that you have are, the
7 first two are white, and those are the summary of the
8 people who were just appointed to the Assembly. And
9 the third is an orange piece of paper, which is a
10 revised resolution with regard to the reporting of
11 custodial interrogation. People have been working
12 very hard behind the scenes trying to find out where
13 everybody stands from both the prosecution and defense
14 standpoint, and this is an improved resolution for
15 everyone as a result of that.

16 I would like to acknowledge the members of
17 the Executive Committee of the Board of Commissioners,
18 which I said earlier before the meeting began are

19 actually members of the Representative Assembly. If
20 those officers could please stand so that you can be
21 seen. These are leaders within the Bar association
22 within the Board of Commissioners but also members of
23 this Representative Assembly. If you can stand so the
24 people can see you, and stay standing for a minute,
25 because I would also like you to note there are many

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1 Board of Commissioner members who are here who are not
2 on the Assembly but are here because they are
3 interested in knowing what the Assembly does, because
4 it does very important work, and so all of those
5 people who are on the Board who aren't on the
6 Representative Assembly, if you would please stand so
7 they can see you as well. Thank you very much for
8 coming.

9 (Applause.)

10 CHAIRPERSON JAMIESON: Another housekeeping
11 item. I have been requested that I encourage you, and
12 despite the request, personally I encourage you to go
13 to the exhibit hall and check out the exhibits.
14 Whether you have an opportunity to do that before
15 lunch or at the close of our meeting, please go over
16 and check out the exhibitors at the exhibit hall. For
17 years now I have always referred to that as the adult
18 trick or treating opportunity for everyone. It's

19 quite appropriate as Halloween is coming up.

20 We have had a lot of firsts this year. Kind

21 of a Guinness book of records type year, and I wanted

22 to highlight those for you, because it has been a

23 rather unique year.

24 We had an RA meeting with quorum despite

25 hazardous, blizzardous conditions in January. That

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1 meeting resulted in what may be one of the shortest RA
2 meetings ever. I think it was about five minutes, and
3 yet still accomplishing work.

4 We have addressed almost 30 proposals in one
5 meeting and still ending the meeting early. We have a
6 real breakfast for you today and at the April meeting,
7 and I think even today we have some sweet snacks for
8 you to keep you energized throughout the meeting.

9 We have an Assembly with absolutely no
10 vacancies, not just for this Bar year but also for the
11 upcoming Bar year. I think in the history of the
12 Assembly we have never had such interest, and some of
13 these vacancies were filled requiring elections among
14 the other members of the circuit. We have had
15 tremendous interest in the Assembly.

16 I think there has been some confusion with
17 regard to the election process. We need to work on
18 that this upcoming year, because we certainly have

19 interest on being on the Assembly, and I think that's
20 to be commended, and that is truly an exhibit of what
21 a great job all of you are doing here on the Assembly
22 with the work that we do. So I think you all deserve
23 a round of applause, and I would like you to do that
24 right now.

25 (Applause.)

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1 CHAIRPERSON JAMIESON: I want to give you an
2 update on the rules and the standards that has taken
3 up my life for the past year. We actually have a
4 hearing scheduled before the Supreme Court. I assume
5 many of you already know that, but next Thursday,
6 September 29th, there is an administrative hearing in
7 front of the Supreme Court with regard to the rules
8 and the standards. It's a very long agenda and only
9 two hours. I have no idea how they are going to get
10 through everything on that agenda.

11 But the Assembly has already requested time
12 to speak before the courts, and I know there are other
13 people who have expressed interest to the court to
14 speak on the rules and the standards, and I encourage
15 any of you, if you feel that you would be interested
16 in speaking before the court, which you only have 120
17 seconds, I mean that's it, maybe 180 seconds, three
18 minutes, so it's not like you can say a whole lot, but

19 I think that we have a very important message to send
20 to the Supreme Court, and if anybody is interested in
21 being there next Thursday or speaking in support of
22 any of the Assembly positions, I encourage you to come
23 up and talk to Ed and Gloria and me at the close of
24 our meeting today.

25 I also wanted to let you know that throughout

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1 this year we have been working diligently behind the
2 scenes. We actually had a special governance
3 committee that was created with the Assembly leaders,
4 the officers, and also officers of the Board and staff
5 to talk about not only the strategic plan and where
6 the Assembly fits within that, but talking about
7 improved coordination and communication between the
8 Board and the Assembly to make the Assembly a more
9 effective policy making body, and we -- I believe, I
10 hope I speak for everybody who was on that committee,
11 because we spent many, many hours working through all
12 of this, that we have one of the best relationships we
13 have ever had with the Board from a respect standpoint
14 and what we are accomplishing and where we are going
15 in the future as far as trying to coordinate efforts.

16 We talked about budget concerns and our
17 meetings, and if you look at our rules, our rules say
18 that really we are only supposed to have two meetings

19 plus a special meeting. We decided for the upcoming
20 year we will only have two meetings, unless there is a
21 need to have a third. So the next meeting of the
22 Assembly will be April 29th. For those of you who
23 will still be on the Assembly, please mark your
24 calendars.

25 We also talked about the parliamentary

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1 position, and the fact that nowhere in our rules does
2 it say anything about the term of the parliamentarian,
3 yet we have had every year a lot of interest in
4 participating on the Assembly in a different way, and
5 so it was decided -- we talked to Archie about
6 possibly making this position a rotating position so
7 that we can give people more of an opportunity to
8 participate on the Assembly, those people who have
9 parliamentarian skills and those people who have
10 history with the Assembly, and we have decided to make
11 the parliamentarian position a rotating position each
12 year, and so, as a result, this is Archie's last year
13 with the Assembly, and we will get into that a little
14 bit later as well.

15 I think it's very important to acknowledge
16 Nancy Diehl, President of the Bar association, with
17 regard to these efforts, because Nancy has been a
18 strong supporter of the Assembly and all that it does,

19 and I don't think that we would be able to make the
20 progress that we do if it hadn't been for Nancy being
21 behind us.

22 (Applause.)

23 CHAIRPERSON JAMIESON: We have improved
24 communication with the legal community over the past
25 year and within the Representative Assembly. As you

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1 all know, we have used that RA list serve. I think in
2 the past couple of weeks you received numerous. In
3 fact, I thought at the beginning of the year I would
4 number these list serve messages. I think we got up
5 to about 18, which, when you think about it, out of
6 365 days of the year, that's not bad, but it was our
7 effort to continually try to keep you updated as to
8 what was going on and prepare you for these meetings.

9 We created that RA discussion board, which
10 really was effective for us before the April meeting
11 and the January meeting with regard to the rules and
12 the standards, and we put it out there again before
13 this meeting so that people had an opportunity to
14 exchange ideas or concerns, and, quite frankly, some
15 people are still a little concerned about posting
16 something on the internet on a board like that where
17 it's open for the world to see. However, we did get
18 calls, and people have made comments to us which

19 helped us to bring the resolutions that are before you
20 today, which hopefully are a terrific product for
21 everybody to vote upon.

22 We have been communicating with the local and
23 special Bar association leadership, the presidents and
24 the executive directors. We have been communicating
25 regularly with the sections and the committees. We

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1 have spoken with the leadership. In fact, Elizabeth
2 Moehle Johnson will be talking to you in a few minutes
3 about what we did at the Bar Leadership Forum and the
4 tremendous response we got back with regard to how the
5 Assembly is communicating with the rest of the Bar
6 association.

7 I saw something rather profound at
8 Cedar Point last weekend. You are thinking Cedar
9 Point, hmmm. It wasn't as I was going on that
10 60-mile-an-hour roller coaster ride. It was actually
11 in one of the gift shops, and there was a little
12 trophy that had a statement on it that said Department
13 of Great Expectations and Minimal Allocations, and I
14 thought, hmmm that reminds me of something.

15 In all honesty, it describes the Bar
16 association and what we are, what is expected of all
17 of us and what is expected of us as leaders within the
18 profession. Members of our organization want more.

19 We as Representative Assembly members want to do more
20 significant work. We have rising costs, inflation.
21 We didn't get our entire dues increase, and it's
22 difficult to accomplish all that we need and want to
23 accomplish, and yet we have a terrific staff, we have
24 terrific leadership on the Board, we have enthusiastic
25 members of the Representative Assembly, and we have

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1 accomplished terrific things, not just this year, but
2 in the many recent years.
3 And I think that it is so noteworthy that the
4 Assembly continues to do such great work, and I want
5 you all to know that there is no way that we could
6 have accomplished what we have accomplished this year,
7 especially with regard to the rules and the standards,
8 if it weren't for all of you out there attending those
9 panel discussions and talking to us about everything
10 and working with us with regard to the proposals. Our
11 committees, just everybody worked so hard, and I feel
12 like I really am surrounded by greatness, and I
13 appreciate everything that everybody has done this
14 year, because you are a terrific group of people.

15 So the Assembly continues to do great work.
16 We have great work to do today. I would remind
17 everybody to speak clearly and slowly for our court
18 reporter, including myself. I shall try very hard. I

19 am trying to fit a lot in in a small amount of time.

20 We will proceed now with -- I believe next up on the

21 agenda is our fearless leader, Nancy Diehl.

22 (Applause.)

23 PRESIDENT DIEHL: Good morning, everyone.

24 Thank you, Elizabeth, for those kind words. Thank you

25 to all of you out there who clapped, and I suppose

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1 that means I am going to need to stick to my
2 five-minute time limit. That was sneaky. You know,
3 last year you gave the president 15 minutes. Now at
4 the end of last year you got together and you said, you
5 know, what did you want, and you gave a lot of great
6 suggestions, and one was cut down on the amount of
7 time the president has to speak.

8 Now, was that personal to me? Hmmm? I don't
9 know about you, but I love you anyways. You are a
10 fantastic group.

11 And I have been with the Representative
12 Assembly since the early 1990s, had to leave for a few
13 years when I joined the Board of Commissioners, but
14 came back as a member of the Executive Committee, and
15 you are a part of me. You are my family. And when
16 Elizabeth was saying those kind things about my
17 leadership, I thought, well, it's easy to be
18 supportive of the Representative Assembly when, first,

19 you have been there, you know the hard work, you know
20 what the group does, as well as having such an
21 outstanding leadership in Elizabeth Jamieson, and she
22 has been fantastic.

23 (Applause.)

24 PRESIDENT DIEHL: People think that I can do
25 a lot and have a lot of energy, and I like to think I

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1 can, but oh, I look like, what's the slowest moving
2 thing you can think standing next to Elizabeth? A
3 tortoise. At least slow and steady. As we get older,
4 we hopefully still get to where we want to go.

5 But truly Elizabeth has dedicated her heart
6 and soul and her time, huge amounts of time this year,
7 to accomplish things that you all now get to take
8 credit for.

9 What you did with the rules and standards is
10 remarkable, and you couldn't have done it without some
11 good leadership, so that helps. So thank you very
12 much, Elizabeth, and good things to come.

13 It's amazing on the years, you look at the
14 fantastic leadership that comes from the
15 Representative Assembly, and it doesn't quit, and next
16 year with Lori Buiteweg and following with Ed
17 Haroutunian, you are in absolutely good hands. You
18 are going to continue to do the outstanding work.

19 And, of course, in the past, Kim Cahill is
20 going to be sworn in today as our President-Elect, and
21 certainly Kim has been here on the Assembly for years,
22 and I said to her this morning, Can you believe it, I
23 don't know what happened. We'll have to come back to
24 the Kellogg. It's the first time in all the years we
25 have been on the Assembly together we can sit next to

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1 each other. I don't know how the 16th circuit got
2 next to the 3rd circuit, but it's fun. Kim and I are
3 going to end, or I am going to end, because this is my
4 last year here.

5 I need though to say a few things about the
6 kindness that all of you have shown me throughout my
7 year, and particularly as I traveled around the state
8 of Michigan. It was so wonderful to see so many of my
9 Assembly friends, and I can't say it to all you, but I
10 am going to try to look around. Marquette. Susan,
11 and where is Laurin' when I went to Lansing, and there
12 you are. You were there supportive of me.

13 Genesee, where is my Genesee friends. There
14 we go. The Rep Assembly members. Can't forget Battle
15 Creek, Calhoun County. There is the local Bar
16 president.

17 What I am trying to say is you are not only
18 active here, but you are active in your community, and

19 Victoria, of course, I saw you at the Bar Leadership
20 Forum on Mackinaw. I am looking about. We could not
21 leave this without discussing the -- oh, Washtenaw,
22 where is my Washtenaw County? Washtenaw County even
23 called me afterwards and said they appreciated me
24 coming there and enjoyed my comments. That was really
25 above and beyond, John. Thank you. Appreciate that.

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1 And the at Macomb County, when I went there
2 and spent an evening with Macomb County Bar at
3 Skinny's Bar, Carl Chioini escorting me out. I guess
4 he was worried about me, but leading me out of
5 Skinny's Bar to make sure that I got home all right.

6 But that is just -- and I am sorry about --
7 and the Referees Association. I see Art is back
8 there. There is so many of you. I can't look about
9 and see all of you, but everywhere I went you treated
10 me with graciousness and kindness, and it is most
11 appreciated.

12 You have helped make this a fantastic year
13 for me. I will never forget it. So thank you all.

14 (Applause.)

15 CHAIRPERSON JAMIESON: I would like to
16 welcome up next Tom Cranmer, our next fearless leader,
17 the President-Elect of the State Bar of Michigan.

18 PRESIDENT-ELECT CRANMER: Elizabeth, thank

19 you very much. Although Nancy has said it, it
20 certainly bears repeating. The Representative
21 Assembly this past year has done an outstanding job,
22 and it is certainly due to your hard work, but it's
23 also due to the fact that you have had one of the most
24 enthusiastic, energetic, and effective leaders that I
25 have ever met, and you just had a wonderful standing

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1 ovation for Nancy Diehl that is so much deserved, and
2 it seems to me another one is in order for this person
3 right here.

4 (Applause.)

5 PRESIDENT-ELECT CRANMER: Unfortunately with
6 the good kind of goes the bad. I have had this
7 discussion with Lori Buiteweg. Lori and I have a
8 very, very tough act to follow, and it's going to be a
9 challenge, but both Nancy and Elizabeth have set the
10 bar very high, and that's exactly where it should be.

11 Like Nancy, I have had the opportunity to
12 serve on the Representative Assembly in the past, and
13 it's been a great experience, and I know many of you
14 out there, but I don't know all of you, and let me
15 just share a little bit about my background and what I
16 see for the coming year.

17 I have been practicing about 30 years, and
18 when I got out of law school I was lucky enough to get

19 a position in the Oakland County Prosecutor's Office,
20 where I was there for about three years, and then from
21 there moved on, became a Federal prosecutor in the
22 U.S. Attorney's Office for about four years, and then
23 in 1982 joined what was, at the time was a small firm,
24 going into private practice, that grew to a larger
25 firm, a mid-sized firm, and now I have the privilege

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1 of being at a very large firm, Miller, Canfield,
2 Paddock & Stone.

3 And I say that in part to introduce myself
4 but in part to hopefully share with you the fact that
5 I think I have been in a law setting that pretty much
6 spans the spectrum from public service to, in essence,
7 being a small or solo practitioner to being in a
8 medium-sized firm and being in a large firm.

9 And one of the interesting things that's
10 happened to me as I have been getting closer to the
11 day of becoming the President of the State Bar is I
12 have had a number of people in a very kind way, I think,
13 come up to me and introduce themselves to me, other
14 lawyers, and say, Tom, jeez, it's great that you are
15 going to be the president. What do you hope to
16 accomplish in the coming year? And I think it's a
17 very fitting question, and it's an appropriate
18 question, and at times, although I never have quite

19 had the nerve to do this, what I have wanted to do,
20 what I have wanted to say to people is, What do you
21 think the State Bar has accomplished?

22 And the reason I haven't said that, the
23 reason I haven't asked that question is I am a little
24 bit afraid of the answer, because I am afraid that the
25 answer I would get back is either a blank stare or an

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1 embarrassed, Gosh, I don't know.

2 What I hope to accomplish in the coming year

3 is to be not only a spokesperson but an appropriate

4 cheerleader for this organization, because this

5 organization, under John Berry's direction and the

6 staff at the State Bar, your work, the work of the

7 Board of Commissioners has done an awful lot. There

8 is an awful lot to brag about and I am going to be the

9 one who gets that opportunity.

10 We have had award winning programs, like the

11 e-journal. We have had a wonderful relationship now

12 that we have forged with ICLE Michigan Law Online. We

13 have had terrific success with our Access to Justice

14 program, and our father of Access to Justice,

15 Al Butzbaugh is here. That is a program that is a

16 leader in this country.

17 We have things like the Public Policy

18 Resource Center and the soon to be Practice Management

19 Resource Center, and I think as an organization we
20 have done a wonderful job of inventing and not a very
21 good job of marketing. There is an awful lot of good
22 news that we can deliver to our members, and I am
23 going to have the privilege of doing that in the
24 coming year.

25 But it's not a job that I can do by myself,

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1 nor should I. We all are the leaders of this
2 organization, and I would hope that all of us are
3 going to carry that message back to the membership.

4 There is an awful, awful lot to be proud of
5 in terms of what we are doing, because, in essence,
6 what we are doing is helping make our members, our
7 lawyers, better lawyers. That's the message I am
8 going to be delivering, and I hope you share that with
9 me in the coming year. Thank you.

10 (Applause.)

11 CHAIRPERSON JAMIESON: Thank you, Tom.

12 Next up is our Executive Director, John

13 Berry.

14 MR. BERRY: Thank you very much for putting
15 me on after those three incredible speakers. We could
16 just have a dog act and some children up here first
17 before I came aboard. But I want to share very
18 briefly with you where the Bar is, but before I do

19 that I can't pass on the opportunity again to talk

20 about people.

21 I can't believe it's been five years since I

22 came to this Bar, and I remember five years ago Kim

23 was up here, and I looked at the emotion of her

24 leaving after she served this body so well, and I

25 remember going to the Board during the first meeting

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1 and seeing the resolutions being passed out and handed
2 out, and not one person was even far from choking up
3 over it.

4 Yesterday the resolutions and Tom's wonderful
5 words about Nancy, the words we have heard already
6 about the people speaking here, it is about people. I
7 will spend about three minutes on the programs, but it
8 really is about the sincere dedication, and, Tom, I
9 think that the way you can approach it next year is so
10 wonderful, because this Bar does need to do more, even
11 amongst some of us in this room, even amongst our
12 staff sometimes we don't keep up with everything that
13 everybody is doing, and it is time that we pump the
14 folks up. In the last five years we have come light
15 years, and we need to go light years more in the
16 upcoming years as well.

17 Little bit about people. I have got to pass
18 along my comments about Elizabeth as well. The one

19 thing as an executive director you are sort of
20 representing to continuity of the Bar and you give
21 suggestions in a very diplomatic way of how to improve
22 and how to connect the strengths of the various
23 leaders. Now, if we can just get more energy out of
24 Elizabeth and Nancy in their future careers, that
25 would be wonderful. I don't know how you can have two

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1 leaders with more energy and dedication.

2 Elizabeth, I have said this before. During
3 that practice of reviewing all those ethics rules, and
4 that's an area of my expertise, I have never seen a
5 Bar even come close, not only to the dedication of
6 looking at the rules, but bringing in our membership.
7 She would not let go of making sure that we had focus
8 groups and we knew what was going on in this important
9 area. So I have been proud to serve with you, and I
10 have appreciated that very much.

11 Lori, you have a tough job to follow, but you
12 really have a tough job, because we are going on a
13 U.P. tour in a couple weeks, and a tradition has been
14 started of goodies, candies, other trinkets for the
15 rest of us, and we are expecting that tradition to
16 continue. So good luck to you, and I will look
17 forward to working with you as well.

18 I want to say right now, as well, I want to

19 thank Anne. We lost Glenna, moved back home down
20 south, and she served me and this Bar well, and in the
21 interim during this time period much has fallen upon
22 Anne to make sure that this place was put together
23 well, and I think we have had a great effort in that
24 regard, and I want to personally thank you as well.

25 (Applause.)

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1 MR. BERRY: We have added a few new staff
2 members, and if you get a chance as you go around,
3 it's in the areas that are very important to us. Dawn
4 Miller is here that we have hired from Texas. Dawn,
5 why don't you stand up just real quickly. She heads
6 up our professional standards division and carries
7 with her a wealth of experience, not only in the
8 professional standards area but in management and
9 working with people, and she has been a tremendous
10 help to us already.

11 Carrie Brandell is the lady you need to meet
12 today. She is our new events planner. I think she
13 has gotten about one hour less sleep than Elizabeth
14 for the last couple of weeks, and she is out amongst
15 trying to help and work this out as well.

16 With that in mind, I agree we have great
17 people, but I just want to remind you of some things
18 that are going on that answered some directives by you

19 and by the Board on what we need to do in the upcoming
20 year or two.

21 First thing I want to tell you is that the
22 Board, thank you very much from the Board, has
23 approved the additional resources that go into the
24 areas that you have described as very important and
25 the Board has described as very important. One is

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1 outreach. We will have an outreach director. That
2 person's sole job will be to contact every one of you
3 in your local bars, in your sections, to talk to the
4 judges, to work with the organizations that we work
5 with, to listen, gather in information, see what's
6 working, see what's not working, spread the word,
7 along with Tom's leadership, to get out there and let
8 people know what we are doing and how we are doing.
9 We want to both listen. We both want to hear what's
10 good and we want to hear about the things that need to
11 be improved.

12 We also are going to go into some research
13 and development. One of the things that I think many
14 Bars in this country have neglected to do is to be
15 proactive in dealing with the things that are
16 affecting our profession. You all but shouted out
17 that you wanted more done in the area of UPL,
18 multi-disciplinary practices, multi-jurisdictional

19 practices, the economic forces that are affecting your
20 practice, and instead of waiting for the ABA or
21 waiting for other states, we want to become actively
22 involved here of gathering all that information and
23 continuing to bring back to this body the kind of
24 changes we need to make our professional work better.

25 We are adding resources into our lawyers and

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1 judges assistance program. It is amazing how helpful
2 that is for lawyers that have alcohol problems, drug
3 problems or with casinos and other areas. The
4 addictive behavior to gambling is becoming more
5 serious and trying to deal with that proactively
6 before it leads into greater problems.

7 You are going to see, if you haven't seen
8 already, that we are in the forefront in the country
9 now with technology. You can vote, and many of you
10 voted in the last election, by computer rather than by
11 paper, and our first year we had a better percentage
12 of people using that, even with the limited amount of
13 time, than any other state that started with elections.

14 We also have rolled out after a year's work
15 an E-commerce ability, and you are going to be able to
16 pay your dues online, you are going to be able to shop
17 online, and we are going to be able to give you more
18 information about what's going on with the Bar.

19 So I think, Elizabeth, your point is well
20 taken, we are trying to do more with less, and I think
21 we have had a great year with Nancy. I think we have
22 had a great couple of years.
23 I want to make a comment about finances. Let
24 you know that we have been very scrumpy with money.
25 We did only get a \$20 dues increase, and that was

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1 after ten years of no dues increase. We desperately
2 needed it, but what have we done with that money? We
3 have not only been able to add some of these programs
4 and also get rid of some programs to save money, but
5 this last year we paid off the debt on our building.
6 We have no debt, and with this economy that we have
7 going as it is, I think that is one of the best
8 testaments about what this Rep Assembly, the Board,
9 staff has done.

10 Are we flush? No. We did that with a lot of
11 scrimping, but we can look ourselves proud to know
12 that we have new, improved programs, we are listening
13 to our membership, and we are doing it in a
14 financially responsible manner with great people.

15 Thank you very much for the opportunity to
16 serve you.

17 (Applause.)

18 CHAIRPERSON JAMIESON: Thank you, John. Next

19 on the agenda is Elizabeth Moehle Johnson, who is the
20 chairperson of our Assembly Review Committee.

21 MS. JOHNSON: Thank you very much, Elizabeth.

22 I would like to also echo my sentiments for the work
23 of Elizabeth Jamieson. She made the work of our
24 committee so much easier. She was supportive, she
25 encouraged us, and, Elizabeth, I will be forever

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1 grateful for your very hard work. Thank you very
2 much.

3 Before I get started, I would like to the
4 thank the committee, and if the committee members
5 would please stand. They worked very hard. They went
6 through blizzards. They got together in phone calls,
7 face-to-face meetings. Carl, Victoria, everybody, if
8 you would please stand and be recognized for your hard
9 work. Appreciate it.

10 (Applause.)

11 MS. JOHNSON: In your package you will see
12 the results of the 2004 and the 2005 survey. We were
13 charged with surveying the attorneys and judges at the
14 Bar Leadership Forum regarding the Representative
15 Assembly. I am very encouraged by the results of the
16 survey. We had an incredible percentage of people
17 responding. Eighty-eight percent of the people
18 responded, which was up 23 percent from last year. An

19 incredible 86 percent were aware of the Assembly and
20 its purpose. We are clearly doing something to get
21 the word out. We would like to make that 100 percent
22 for next year.

23 Sixty-three percent would like to work with
24 the Assembly, and I think it's very important from
25 what we have heard from John Berry, the discussions

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1 with our liaison workers, anything we can do to make
2 our work more accessible to the members of the Bar, we
3 will be doing a great service, not only to this body
4 but to the attorneys that we serve.

5 Clearly we have people that would like to
6 work with the Representative Assembly. An amazing 39
7 percent wanted a Representative Assembly member to
8 make a presentation to their group. Now, the Bar
9 Leadership Forum consisted of Bar leaders in special
10 and local purpose, special purpose and local Bar
11 associations, as well as sections. There is a huge
12 opportunity for us to make our presence known to the
13 attorneys and judges within the area.

14 Furthermore, we also found that many of the
15 Assembly members first came to us through local and
16 special purpose Bar associations. So it is also a
17 wonderful opportunity for us to be able to have
18 contact with the people that may come to work here in

19 this Assembly.

20 I would also like to thank Lori Buiteweg, who
21 has always lit a fire under our committee's work. She
22 worked very hard, and a great thanks to Anne Smith. I
23 know John thanked Anne already, but Anne and the staff
24 worked so hard in assembling our survey and making
25 sure that it got to the people, and you were

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1 incredible, and we could not have done it without you.

2 Thank you very much.

3 We look forward with our committee to
4 reassessing again next year the needs of the attorneys
5 and judges. We also are not going to just leave the
6 survey. We already have started a follow-up. My
7 understanding is our clerk, Ed Haroutunian, is
8 following up with the Bar associations that were
9 interested in meeting with the Representative Assembly
10 liaison. I hope that all of you will fill out the
11 back of the attendance form. It indicates if you
12 would like to be a liaison for one of the committees
13 or sections. We could really use that, and that would
14 help tremendously in furthering the work of our
15 committee.

16 If you have any questions, I would be happy
17 to try and answer them. Thank you very much.

18 (Applause.)

19 CHAIRPERSON JAMIESON: I would like to add
20 one comment with regard to what Elizabeth just told
21 you. You may be wondering, you know, what can we do
22 here on the Assembly. We meet a couple times a year,
23 we have these resolutions. I think what you should
24 take from that report, the most significant thing is
25 that the people within your circuit want to hear from

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1 you, and if there is something that you all could do
2 better, it would be to communicate with your local Bar
3 associations, the specialty Bar associations, and the
4 people within your circuit.

5 There are people here who have done a
6 remarkable job of that. John Reiser, I think, is a
7 great example of someone who after every meeting has
8 taken that back to his local Bar association in
9 Washtenaw County and shared information got articles
10 in there and passed this information on, and I would
11 really encourage all of you to think about doing that
12 over this next year, communicate with your
13 constituents. They want to hear you and you are here
14 representing them.

15 Next on our agenda is consideration of a
16 proposed amendment to the Michigan Court Rules,
17 specifically 2.107(C), regarding E-service between
18 lawyers and I would ask Joseph Firestone and Matthew

19 Halpin to come up to the podium, please.

20 MR. FIRESTONE: I am Joe Firestone. I am the
21 chair of the E-Filing Task Force of the State Bar.

22 Some of you heard this rap yesterday, but
23 bear with me. We are going to do it again.

24 I first want to thank Lori Buiteweg for all
25 of her assistance with the task force. She is the one

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1 who prods us on and makes sure that we stay on task
2 and has been very helpful in coordinating our
3 activities.

4 I also want to thank Jim Horsch for his
5 assistance. He certainly helps me get everything done
6 that needs to be done.

7 The task force has done a great deal of work
8 in a very short period of time. We began in February
9 of this year after Justice Young asked that the State
10 Bar survey members regarding their use of technology
11 and their interest in further use of technology.

12 The Board of Commissioners has established
13 one of its goals in the strategic plan to participate
14 in the establishment of efficient and user friendly
15 state court E-filing and educate members to use it
16 effectively. That is the goal of the task force, to
17 support that particular strategic goal.

18 In January this year Justice Young asked for

19 the survey. Justice Young is the chair of the Supreme
20 Court's Technology Advisory Group. And the Supreme
21 Court is looking at projects and opportunities to
22 bring our District, Circuit, and Appellate Courts
23 online. By June the survey was completed, and in July
24 we had the results and were prepared to make some
25 recommendations. At the same time we began to

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1 consider rule changes that would facilitate the use of
2 E-filing.

3 Now, let me stop right there and clarify what
4 we mean by E-filing. E-filing is the ability to file
5 documents, pleadings and other documents, with a court
6 electronically, remotely, not having to appear with
7 your disk or other medium at the court but rather be
8 able to do it remotely. At the same time the goal
9 would be to be able to electronically serve the
10 opposing parties. So it is both the filing of the
11 document with the court and the service on opposing
12 counsel.

13 So we became aware that the judiciary had a
14 committee that was considering E-filing rules, and
15 instead of making the wheel twice, we asked Judge Kirk
16 Tabbey of Washtenaw County if he would come join us in
17 consideration of our rule changes.

18 Judge Tabbey is the chair of the E-filing

19 rules subcommittee of that technology advisory group

20 that the Supreme Court has.

21 In July, through Matt's efforts, and he will

22 speak to the specifics shortly, we prepared a rule

23 change proposal with respect to MCR 2.107 so that

24 attorneys could, by stipulation, provide for service

25 electronically between each other. Our goal was to

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1 facilitate the filing or the service electronically
2 between counsel.

3 The rule was drafted in part because of the
4 responses that we received to the E-filing survey. I
5 won't bore you with the statistics right now, but I
6 will tell you that overwhelmingly attorneys support
7 the concept of E-filing, if three things occur.

8 First, if it's seamless. In other words, if
9 it's a matter of being able to take a document
10 prepared in the office and through a system like the
11 federal PACER system and the electronic filing system
12 that is attached to PACER, be able to file documents
13 right from a desktop.

14 Now, let me ask, how many of you are familiar
15 with or have ever used PACER? Excellent, excellent.
16 PACER, for those who don't know, is a nationwide
17 uniform system for filing and examining court records
18 online through the Federal District Courts, the Court

19 of Appeals, Courts of Appeal, and the Bankruptcy
20 Courts. And once registered with the PACER system,
21 you can pull any docket, examine what has been filed
22 in that docket, and download any document that has
23 been filed within that document, all with simple mouse
24 clicks.

25 The second aspect is essentially what I just

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1 spoke about. The second aspect that attorneys want is
2 full access to the dockets. No sense having it there
3 if you can't access it and have knowledge of what's
4 been filed.

5 And the third thing is trustworthiness,
6 knowing that the transmission is secure and reliable.
7 So that, while we never work to deadline, if you
8 happen to have to, you can actually push the submit
9 button and you get the document sent to the court at
10 that moment.

11 In Michigan -- so those are the three aspects
12 that attorneys want.

13 In Michigan we have some impediments to the
14 E-filing, the seamless E-filing. The first impediment
15 is that we have 41 different case management systems
16 in this state. The circuit courts each select their
17 own case management system and pay for their own case
18 management system. Same is true with the district

19 court. The appellate courts are on one single system,
20 but we have 41 different management systems. Some are
21 the system that is recommended by or that is, yeah,
22 that is recommended by the SCAO office. Some are
23 systems that have been adopted over time through
24 outside third-party vendors.

25 The second impediment is that we have to

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1 figure out a way to integrate service on opposing
2 counsel into the E-filing system. What we have
3 presently are some courts having the ability to accept
4 E-filings, but we do not have, like the PACER system,
5 a notification aspect contained in the E-filing system
6 for service on opposing counsel.

7 A third impediment is, and this is my own
8 terminology, inputting hard copies. When the pros say
9 litigant or the attorney who doesn't or doesn't want
10 to use electronic means to file shows up at the court
11 clerk's desk, how do those hard copies become part of
12 the electronic docket?

13 And the final impediment is the overarching
14 one, which is how do we take care of costs? How do we
15 keep costs reasonable in order to overcome these
16 impediments?

17 Those are the issues that we are going to be
18 working on. We have -- okay. We have had third-party

19 vendors in to deal with the integration of service,
20 and we have prepared the Court Rule change, which Matt
21 is going to speak to, and so for the specifics of the
22 proposed Court Rule change, I will turn it over to
23 Matt.

24 MR. HALPIN: Thank you, Joe. With all of the
25 items that Joe just outlined, there are huge, huge

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1 problems. There are monetary problems, there are
2 logistic problems, a lot of things that need to be
3 solved. So where do you start? Well, you start with
4 baby steps. You take it one piece at a time.

5 The easiest piece that we have kind of come
6 up with is simply proposing a change in the Court Rule
7 that will allow a stipulation between attorneys. Now,
8 this is not, this rule would not affect your ability
9 to file with any court. That's a whole different
10 issue. This actually takes the in pro pers out of
11 this loop. It would not apply to them. This would
12 simply be between attorneys.

13 Best example I can give you is, let's say a
14 witness list. I have a witness list. I need to get
15 it to the other side. I want to send it to them
16 electronically. I send them an e-mail. I attach the
17 witness list. They can print it, they can save it,
18 they can delete it, they can do whatever they want

19 with it, but it's sent to them. That's it. There is
20 no fax, there is no hard copy sent, there is no
21 follow-up, that's it. That comes with this
22 stipulation.

23 So ideally what would happen is early on in
24 the case the attorneys would get together and they
25 would agree to various aspects of this, meaning here

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1 is my e-mail address, what kind of document can I send
2 you, a PDF, a Microsoft Word, a Word Perfect,
3 hypertext, whatever it might be. We agree on that, we
4 agree on the e-mails, we agree on the timing, and from
5 that moment forward any documents you want to send to
6 the other side could be sent via e-mail.

7 There is, you know, in our discussions this
8 always comes up. This does not include, you know,
9 sending someone the initial Complaint. This would
10 probably not include sending the Answer, unless you
11 knew who the attorney was and they accepted it. But
12 this is kind of as the case progresses, once everyone
13 is in, the attorneys all decide together, yes, let's
14 do this and avoid the paper and avoid the 65-page
15 interrogatories that come that I have got to scan in
16 or my secretary has to retype or whatever. Let's
17 avoid that and let's agree to do it.

18 The reason the Court Rule needs to be changed

19 or we are proposing that it be changed is that right
20 now, technically you can't fax someone a document.
21 That's not proper service. The only proper service
22 that is actually condoned under the Court Rule is
23 personally or by U.S. Mail or Fed Ex or something like
24 that. That's it.

25 So it would be nice for those who wanted to

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1 do this to know that when they arrive in court some
2 day that the other, you know, the other side or there
3 isn't going to be a problem where some judge is going
4 to say, hey, you sent it to him electronically.
5 Technically under the rule that doesn't count, so
6 service was never made and then you have a problem.

7 This is basically saying, yes, you can do
8 this. If the attorneys agree and the court condones
9 it and you have the court's blessing, for lack of a
10 better term, that you can do it this way and move
11 forward.

12 So simply, again, this is simply between the
13 attorneys. It's a stipulation. We are not coming in
14 here with a baseball bat forcing anybody to do this if
15 they don't want to, but we are allowing them to do it
16 if they choose.

17 So with that being said, we would, the
18 E-filing Subcommittee would very much appreciate the

19 Assembly's endorsement of this recommendation of the
20 Court Rule change. Thank you.

21 CHAIRPERSON JAMIESON: Thank you, Matt. I
22 will entertain a motion to adopt the position that
23 MCR 2.107(C) should be amended to allow attorneys to
24 stipulate to serve documents upon each other via
25 electronic mail.

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1 VOICE: So moved.

2 CHAIRPERSON JAMIESON: Do I hear a second?

3 VOICE: Second.

4 CHAIRPERSON JAMIESON: Any discussion at all?

5 Hearing none, all in favor please say aye.

6 Any opposed.

7 Thank you. I want you to know that State Bar

8 staff will proceed to communicate this to the

9 appropriate entities, and when E-service between

10 attorney becomes effective I encourage you to do that

11 and encourage others to do that as well as leaders in

12 the Bar association. Thank you very much, Joe and

13 Matt.

14 Next up on the agenda is Valerie Newman from

15 whom you will hear three different proposals today.

16 Valerie Newman is with the Service -- sorry, with the

17 State Appellate Defender Office and is speaking with

18 regard to docketing receipt by mail.

19 MS. NEWMAN: Hi, I am Valerie Newman. I do
20 work with the State Appellate Defender Office, but I
21 am actually here on behalf of the Criminal
22 Jurisprudence and Practice Committee. We are the ones
23 who are asking the Assembly to also, coincidentally,
24 amend 2.107 with a real simple suggestion at the end
25 of 2.107(G), which is just adding a sentence that says

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1 the date the pleadings are filed, which includes
2 receipt by mail, shall be noted on the docketing
3 statement if different than the date docketed.

4 The reason for this, I don't know how many
5 people have experienced this, but especially in the
6 appellate context, everybody is rule bound and
7 everything runs by the date that something is
8 docketed. In some circuit courts they will receive
9 something, and they will receive it timely, within the
10 56 days or whatever the date timeline is that we have
11 to file something by, but they won't docket it, and
12 they will docket it one day later, two days later,
13 whatever it is. If it's past the date that it was
14 received, often it becomes then untimely and it
15 creates a nightmare from the appellate perspective of
16 trying to prove to the court that something was
17 actually filed in a timely matter, because the Court
18 of Appeals works off the docketing statements that the

19 circuit court provides to the Court of Appeals.

20 So this is just a real simple way, we think, of

21 rectifying that issue to show that something was

22 indeed timely filed, even if it was not docketed, so

23 just have both dates on the docketing statement. So I

24 don't really have anything more to add to it.

25 VOICE: So moved.

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1 VOICE: Second.

2 CHAIRPERSON JAMIESON: Having heard a motion

3 which specifically would be to amend Rule 2.107(G) to

4 add additional sentence at the end of the rule as

5 described by Valerie, do I hear a second?

6 VOICE: Second.

7 CHAIRPERSON JAMIESON: Any discussion at all?

8 Hearing none, all in favor please say aye.

9 Any opposed.

10 Unanimously passed.

11 Next up on the agenda, again, Valerie talking

12 about notification of appellate rights in district

13 court after misdemeanor convictions.

14 MS. NEWMAN: Back again. Also here on behalf

15 of the Criminal Jurisprudence and Practice Committee

16 on this one as well. It has become a huge issue, a

17 topic of a lot of discussion after the United States

18 Supreme Court recently handed down their decision in

19 the Halbert case, which said that the Michigan courts
20 have been denying counsel to people have who pled
21 guilty in an unconstitutional manner. So the time is
22 sort of ripe for this rule as well in terms of
23 notification of rights in misdemeanor cases.

24 Again, I think it's a fairly simple
25 suggestion that we have is adding to an existing Court

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1 Rule 6.610, we are going to add an (I) to 6.610. It's
2 up there, so I am not going to read it. I guess the
3 easiest thing to say is the Michigan Constitution,
4 Article I, Section 17, says you have the right to an
5 appeal. Section 20 says you have the right to the
6 assistance of an attorney to help you with that
7 appeal.

8 What's happening in the misdemeanor courts,
9 it's been brought to our committee's attention, is
10 that very often judges don't tell people after they
11 have either been found guilty of a misdemeanor or pled
12 guilty, somehow been convicted of a misdemeanor
13 offense, that they have a right to appeal or that they
14 have a right to counsel. So this is just, again, to
15 rectify a problem that's going on around the states
16 that people, this is a right that people have that
17 they are not being told about, and we are just asking
18 that people be told about this right.

19 I did receive one e-mail about this with
20 seven very specific questions that I answered, so I
21 don't know if that gentleman has any further
22 questions, but I am happy -- that was you? Did I do a
23 good job responding?

24 MR. REISER: You responded timely and I
25 appreciated it. I have some additional questions, and

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1 I wanted to talk when it's time.

2 MS. NEWMAN: I don't have anything else to
3 add, so I rather just answer questions.

4 CHAIRPERSON JAMIESON: In response to the
5 resolution brought before us by the Criminal
6 Jurisprudence and Practice Committee, I will entertain
7 a motion to support a new Court Rule, specifically
8 MCR 6.610(I), with regard to notification of appellate
9 rights in the district court after misdemeanor
10 conviction. Do I hear a motion?

11 VOICE: So moved.

12 VOICE: Second.

13 CHAIRPERSON JAMIESON: Open for discussion.

14 If you have any comments or questions, now would be
15 the time. Please identify yourself and circuit up at
16 the mike.

17 MR. REISER: Good morning. John Reiser,
18 22nd Circuit Court, and I am also an assistant

19 prosecuting attorney and do a lot of stuff in district
20 court, and I was the person who sent you the e-mail.

21 One of the concerns that I have is the
22 finality of a plea. A lot of the crimes that I
23 prosecute, whether it's domestic violence or drunk
24 driving or MIP or retail fraud, they have second
25 offense provisions. I am concerned that if a plea was

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1 made without the district court judge having given the
2 appellate rights, then the attorney will now be able
3 to go back and attack that plea as one made without
4 the proper advice of rights, so now I have to
5 relitigate a drunk driving from a number of years ago
6 or domestic violence or disorderly conduct, because a
7 disorderly conduct obscene three times can lead to sex
8 offender registration, so there are consequences of
9 subsequent pleas. So I am hopeful that this isn't a
10 foot in the door to try to attack something that I
11 have already litigated.

12 MS. NEWMAN: I understand, and that's the one
13 question I know that I didn't fully answer for you,
14 because I don't know that I have a full answer. We
15 are going through that now with the Halbert case. We
16 have tens of thousands of people in the state who have
17 been misadvised of their appellate rights, purposely
18 misadvised by the courts at the direction of our

19 Supreme Court, and we are trying to figure out -- I
20 mean, a lot of people are trying to figure out now how
21 that figures into the convictions and what's going to
22 happen and does that mean that the conviction is -- I
23 mean, there is arguments all over the page on this,
24 from the conviction is in firm somehow, which I don't
25 subscribe, but there are people who are saying that

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1 you could possibly attack the conviction itself
2 because you haven't given any advice of rights or you
3 have given actually improper advice of rights and
4 purposely denied people counsel.

5 All the way to, you know, look, it's no
6 different than anything else. It would just be a
7 collateral attack. I didn't answer that question
8 because I don't know the answer to that question. I
9 think it will shake -- but my response to that is,
10 while -- I don't think it matters, because the point
11 is you have a right to counsel, no one is being told
12 of their right to counsel, so if someone wanted to
13 come back ten years from now, I don't think it would
14 be based on the fact that -- it might create an
15 awareness that they were denied a right earlier on,
16 but I don't think it creates a right. Does that make
17 sense?

18 You have the right. You have always had the

19 right. It's always existed. It's just the fact that
20 nobody, the judges are not telling -- I mean, I am not
21 saying all judges, but many judges are not informing
22 people in the district courts of their rights, so I
23 don't think this rule changes your question at all. I
24 think the answer will be the answer. I don't think it
25 has anything to do with this rule.

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1 MR. REISER: I am concerned that it will be
2 deemed not to have been a knowing and voluntary plea
3 if you don't know that you could have attacked it
4 later after you got an attorney or something. That's
5 what I am worried about.

6 MS. NEWMAN: I think that's a far-fetched
7 argument, and I am -- you know, I do appellate work
8 for indigent criminal defendants, so don't quote me on
9 that. It's on the record. I take it back. My boss
10 is here somewhere. I didn't say that, Norris. Marty
11 said it. He was speaking through me. Good, Norris
12 walked out. I am safe.

13 Truly, I think, though, that you are going to
14 be in a collateral attack position like you would with
15 anything else. I think it's going to have to shake
16 out, and I think that it will shake out with the
17 Halbert shakeout. It's going to have to shake out in
18 this state because of Halbert on the felony side of

19 it, and I think whatever resolves on the felony side,
20 which will be resolved in the next few years, because
21 I think there are going to be a lot of challenges
22 brought, it will be exactly the same on the
23 misdemeanor side.

24 MR. REISER: Another concern that I have, on
25 felonies, I know that I am present when the sentence

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1 is done, when the judge gives the advice of rights and
2 asks both parties whether or not he has complied or
3 she has complied with the Court Rules. We are usually
4 not there at district court sentences, so I have an
5 interest in seeing that the advice of rights is done
6 correctly, so I am wondering if this advice of rights
7 can be done, included on the advice of rights written
8 plea form that defendants sign or can be done at the
9 time of the plea or at time of conviction when I am
10 there to help ensure that it's done correctly.

11 MS. NEWMAN: Yeah, I think there is no
12 problem with any of those things. We put it at the
13 time of sentencing in the Court Rule, because that's
14 the way they do it in felony cases. Really until you
15 are sentenced --

16 MR. REISER: No, I am not --

17 MS. NEWMAN: I understand what you are
18 saying. I am explaining why we submitted the rule the

19 way we submitted it. We just patterned it on what
20 happens now in felony cases. I don't think there is
21 anything wrong with recognizing that in misdemeanor
22 cases things work differently and then if you wanted
23 to put it on the written form, if you wanted to do it
24 at the time of the plea, I don't think there is
25 anything wrong with any of that, and I would, I think

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1 we would be amenable if you had specific suggestions
2 to the language -- do you think the language that we
3 submitted precludes that?

4 MR. REISER: Yeah, because it
5 says after the judge imposes sentence.

6 MS. NEWMAN: After the judge imposes
7 sentence. I mean, I don't think the committee would
8 have any problem with changing it to immediately after
9 the judge, immediately after the plea, if it's a plea.

10 MR. REISER: Immediately at the time of plea
11 or sentence.

12 MS. NEWMAN: Okay, good. That works, because
13 sentence will be if someone goes to trial, and plea,
14 you know it's coming down the pike.

15 MR. REISER: Have you contacted anyone in the
16 Michigan District Court Judges Association for their
17 input on this?

18 MS. NEWMAN: Is that a friendly amendment?

19 We are not doing proper procedure.

20 CHAIRPERSON JAMIESON: Our parliamentarian

21 advised us we need to have a friendly amendment with

22 regard to the amendment, John. Can you please make

23 that motion with regard to that.

24 MR. REISER: I would so move that where it

25 says sentence that it be replaced with plea or

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1 sentence, because I think -- I would ask that it say,
2 At the time of plea or sentence, and I don't think you
3 need "immediately," or not that long.

4 MS. NEWMAN: That's fine.

5 CHAIRPERSON JAMIESON: So motion has been
6 made with regard to an amendment removing the language
7 "immediately after the judge imposes" and replacing that
8 with "at the time of plea or." May I have a second,
9 please.

10 VOICE: Support.

11 CHAIRPERSON JAMIESON: Now, discussion on
12 that motion to amend the language for that.

13 MR. REISER: Val, if this is a friendly
14 amendment, then I don't think we need Assembly
15 concurrence.

16 CHAIRPERSON JAMIESON: So evidently this is a
17 friendly amendment. We don't need a motion, so, got
18 you. Thank you very much. John, you don't have to

19 stop there if you have any other questions.

20 MR. REISER: Then I guess my only other

21 concern is the statement that this rule is not

22 intended to give -- I don't know how I want to say

23 this, but I guess Halbert is going to shake that all

24 out anyway, so I don't have anything further. Thanks

25 for your time.

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1 (Applause.)

2 JUDGE KENT: Wally Kent, 54th circuit.

3 CHAIRPERSON JAMIESON: Are you speaking in

4 favor of or --

5 JUDGE KENT: I am speaking in favor of the

6 motion.

7 CHAIRPERSON JAMIESON: Thank you.

8 JUDGE KENT: And kind of in response to the

9 previous commentator's remarks. This doesn't create

10 any new rights. It actually would enhance the

11 finality of any conviction by letting people know that

12 they have the right. If they sit on their rights,

13 then when the time expires we have the finality.

14 Otherwise, if the rights have not been, if the

15 defendants have not been advised of their rights, we

16 don't know what the appellate courts are going to do

17 in response to the fact that they have been kept

18 ignorant of their right of appeal. And when they

19 finally two, three, four years later decide, oh, I
20 should have appealed that but nobody told me, perhaps
21 they are going to succeed. We might better tell them
22 upfront and let them deal with it.

23 Secondly -- I forgot.

24 CHAIRPERSON JAMIESON: Just identify you name

25 and circuit, please, and whether you are in favor or

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1 in opposition to the motion on the floor right now.

2 MS. KIRSCH-SATAWA: Lisa Kirsch-Satawa, 6th

3 circuit, and I am in favor of the motion. I would not

4 have been in favor of the friendly amendment, but I

5 will respect its friendly acceptance.

6 First and foremost, with all due respect to

7 my friend on the other side of the V, I am a criminal

8 defense attorney, and I think that it is imperative

9 that this be included and that every defendant in

10 every criminal case is advised of this right and

11 advised at the time of when they might actually need

12 to exercise it, which is actually at the time of

13 sentence, not at the time of the plea. That's when

14 their time to appeal begins to tick away. That's when

15 they should be handed the same form that they sign in

16 a felony case and acknowledge that they have been

17 advised of that appellate right.

18 To sign that appellate rights form at the

19 time of a plea frustrates the notice, and since we all
20 do consider ourselves warriors of the Constitution,
21 that notice is imperative, and that it be given at the
22 appropriate time, it is just as important. So I would
23 ask everyone to support the adoption of this
24 requirement, criminal defendants in misdemeanor cases
25 be treated similar to those in felony cases and that

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1 they be advised of it at the time of sentencing for
2 the reasons I stated.

3 CHAIRPERSON JAMIESON: I don't know who was
4 first. I am so sorry. Go ahead and identify your
5 name and circuit and whether you are in favor or
6 opposition to the motion on the floor right now.

7 MR. EVANS: Tom Evans from the 5th circuit,
8 and I am basically in favor of the motion. My
9 question is that this is obviously designed to ensure
10 that pleas are knowing and voluntary, but to some
11 extent there are issues of illegal or improper
12 sentencing that may be handled, especially with some
13 misdemeanors that require mandatory minimums, like
14 drunk driving second and DW less second, and so forth,
15 and I am wondering if there is any implications if
16 this is a given at the time of plea, whether or not
17 you see any problems with a person taking a plea,
18 coming back a few weeks later for sentencing and

19 receiving a sentence that turns out to have issues and
20 they are not advised of their right to appeal or their
21 right to request appointed counsel at that time. And
22 maybe should they just throw it all in at the end,
23 because there may be issues to the sentence that are
24 invalid.

25 MR. KROHNER: Martin Krohner, co-chair of the

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1 Criminal Jurisprudence Practice Committee. Very
2 succinctly, a lot of misdemeanor pleas are going to be
3 taken and sentenced on the say day. You are right
4 about certain ones where you have to do the
5 pre-sentence reports in order to comply with the
6 statutory requirements. So, in essence, if it's
7 included on the plea form, the document that the court
8 clerk hands to the defendant, that's going to be
9 noticed and, you know, if you want the judge, if you
10 want to instruct the judge to say, you know, bring
11 that paper back with you at sentencing. I think the
12 object is to give them notice of what their appellate
13 rights are, because in some courts you also at the
14 time of plea they tell you what the appellate rights
15 are. And if the plea, if it's all done that way, then
16 they are notified.

17 So I don't know how we are going to structure
18 a perfect rule to cover every circumstance, but once

19 the notification is given, I mean, the judge is going
20 to have to comply at the end, most probably at the
21 time of sentencing to reiterate this on the record in
22 order for the plea to stand, so I think that's
23 probably the simplest sole solution to the problem,
24 because I don't know what percentage off the top of my
25 head where we are going to have that issue versus the

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1 ones that are actually sentenced on the same day the
2 plea is entered.

3 MR. EVANS: Sure, and I don't know the exact
4 percentages myself, but if the hope is to make sure
5 that all the sentences and all the pleas are valid, I
6 am wondering if there is a fashion that this can be
7 drafted so that let's come back, and that was just my
8 thoughts on doing it at the time of sentencing rather
9 than at the time of plea. Given the fact that there
10 could be issues that develop between the time of
11 sentence and plea, including space, although maybe
12 only one percent of the time, thank you.

13 MR. KROHNER: Thank you.

14 MR. CROSS: Cecil Cross from the 6th
15 district, and I am speaking in favor of the proposed
16 amendment with concerns about the friendly amendment
17 and the conflicts it sets up within the rule itself.
18 As previously noted, the actual appeal rights begin at

19 the time of sentencing. As the friendly amendment
20 states, the rights are given at the time of plea or
21 sentencing, and then you read back down and it says,
22 if you wish to file your claim of appeal within 21
23 days of today's date.

24 Often sentencing is later than today's date
25 when there is a plea. There may be referral to

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1 probation department for a pre-sentencing
2 investigation but there are often delays between a
3 plea and a sentencing.

4 MS. NEWMAN: May I just real quick. But
5 number one where you are referring to does say after
6 trial, so it only -- our intent is that it refers,
7 number one specifically refers to trial cases, number
8 two specifically refers to guilty plea cases.

9 I agree with you, it should still say the
10 sentencing date to make it consistent with the
11 friendly amendment, but I don't think -- I think it
12 will only apply in trial cases at sentencing is
13 that -- you disagree?.

14 MR. CROSS: No.

15 MS. NEWMAN: If you wish to do so, you must
16 file your claim of appeal within 21 days of the
17 sentencing date instead of today's date, to make it
18 consistent with the friendly amendment. Does that

19 address the concern?.

20 MR. CROSS: Yes, that is what I am pointing

21 out.

22 MS. NEWMAN: I agree, or I mean we agree.

23 MR. CROSS: And number two.

24 CHAIRPERSON JAMIESON: So we have a friendly

25 amendment, and that would apply to actually one and

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1 two, so we will already have under one replacing the
2 word "today's" and inserting "the sentencing." The same
3 thing would happen under subparagraph two. Thank you
4 very much.

5 MS. NEWMAN: That's correct. I mean, that
6 needs to be done to make it consistent. Thank you.
7 Is there anything?

8 CHAIRPERSON JAMIESON: Thank you very much.
9 Having heard a motion and a second, discussion being
10 over, all those in favor of this amended resolution
11 please say aye.

12 Any opposed.

13 Another unanimous action.

14 We move on to the next item on the agenda,
15 which is consideration of a revised resolution, that
16 is the resolution in orange at your seat, with regard
17 to electronic recording of custodial interrogations.

18 MS. NEWMAN: Can I talk about what --

19 CHAIRPERSON JAMIESON: Yes.

20 MS. NEWMAN: The revised -- Valerie Newman,

21 again on behalf of the Criminal Jurisprudence and

22 Practice Committee, along with Marty, who you saw join

23 me through the last one.

24 This is something that our committee has

25 worked on for a long time, and I didn't realize that I

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1 could bring it to the Assembly until I did a
2 presentation before the Board of Commissioners like
3 three days before the deadline for getting stuff to go
4 to Elizabeth, so I did my best to put some materials
5 together that were coherent and get them to Elizabeth
6 so we could get on the agenda.

7 After some discussion with different people
8 we came up with this revised suggestion in terms of
9 creating a task force to study this and maybe, the
10 thought was, get input from law enforcement,
11 prosecutors. I mean, our committee has a lot of
12 prosecutors on it, so we have defense attorneys, we
13 have prosecutors, and we have people from other
14 disciplines as well, but it's a big problem.

15 I am sure people are aware of the incidences
16 in the news all the time of people who have been
17 wrongly convicted, often on false confessions. It's
18 the number two reason why. Eye witness --

19 misidentification is number one, and false confessions
20 are number two, and for people on either side of the
21 aisle, you know as a prosecutor you love to take a
22 case to trial that had a confession. It's really hard
23 to get over that, and as a defense attorney you know
24 that when your client comes and tells you that, you
25 know, hey, I didn't say this or I said something

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1 similar but not exactly this, or whatever the case may
2 be. It's almost impossible.

3 You can bring in ten experts to explain to a
4 jury why people falsely confess, about the pressures
5 that are brought to bear and why they would say they
6 did something that they didn't do, but the bottom line
7 is nobody believes that people confess if they didn't
8 do something wrong, and it's an impossible hurdle to
9 get over in a trial, and it's something that we know
10 in this room, maybe we don't know, but we are trying
11 to get the word out to people that people do falsely
12 confess, and there has been a lot of very high profile
13 cases.

14 There was the Justin Mellow case out of
15 Macomb County a few years ago where the State Police
16 got 12 false confessions out of several young men who
17 had nothing to do, nothing at all to do with the
18 robbery and the shooting death. There was, you know,

19 of course, the New York jogger cases where they got
20 false confessions out of five or six, I don't --
21 several young men. All of them were false
22 confessions. They didn't have anything to do with the
23 brutal beating and rape of that jogger in New York.
24 There is a lot of high profile cases where there is a
25 lot of pressure brought to bear and a confession is a

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1 great way to do it.

2 So all this proposal is meant to do is make
3 things fair. Once again, going back to the whole
4 fairness aspect. When the police do things properly
5 and they follow the proper procedures and there is no
6 undue influence or coercion or anything going on in
7 order to get someone to confess, there should be no
8 problem with having a video camera or a tape recorder
9 around to record what's going on.

10 It can be done very inexpensively these days
11 it can be done without people even knowing it's being
12 done with the kind of equipment that's available these
13 days, and the anecdotal evidence is phenomenal. In
14 the jurisdictions where this has been done the police
15 absolutely love it. It always starts out with strong
16 opposition, but it ends up with this is the greatest
17 thing that ever happened. Why haven't we been doing
18 this for years?

19 Because what does it do, and it ties in with
20 some of the other things that are going on in this
21 state anyway in terms of not having police in court
22 all the time and not having them wait to testify. You
23 are not going to hardly have a Walker Hearing in this
24 state if you have this, because if everything went by
25 the rules, you know, a criminal defendant is going to

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1 look at it and know that there is no challenges left
2 there. Things didn't go by the rule, you are going to
3 be able to go to the prosecutor, and the prosecutor is
4 going to say, gee, yeah, it's obvious, something here
5 was done wrong, and this was not a good procedure.

6 So it just helps the fairness for everyone,
7 especially those accused of crimes and especially
8 those who are innocent who accused of crimes in terms
9 of bringing some fairness back into the system.

10 Proposal is just for a task force to do some
11 investigation, maybe get some pilot programs going,
12 see how we can work out some funding issues in terms
13 of getting equipment out into precincts and things
14 like that, so I don't know that there is much more to
15 say. I am happy to answer questions. I think it's a
16 really, really important topic, and I would like to
17 see people support it. Thanks.

18 VOICE: So moved.

19 VOICE: Second.

20 CHAIRPERSON JAMIESON: Because this is a

21 revised resolution, we would like to put this on the

22 record, so actually I am asking for a motion in favor

23 of the Representative Assembly supporting in principle

24 the use of video and audio recording of custodial

25 interrogations as the best method of securing a

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1 precise and accurate record of custodial
2 interrogations and calling for the appointment of a
3 State Bar custodial interrogation recording task force
4 consisting of State Bar members in the criminal
5 defense, prosecution, judicial, and law enforcement
6 communities to develop and promote legislative Court
7 Rule and funding changes that advance the use
8 statewide of audio and video electronic recording of
9 custodial interrogations.

10 VOICE: So moved.

11 CHAIRPERSON JAMIESON: Thank you. Do I have
12 a second?

13 VOICE: Second.

14 CHAIRPERSON JAMIESON: Any discussion at all?

15 Hearing none, all in favor please say aye.

16 Any opposed.

17 Once again, unanimous support.

18 (Applause.)

19 MS. NEWMAN: Do I get treats for doing

20 everything in like 20 minutes?

21 CHAIRPERSON JAMIESON: Thank you very much.

22 I think that's an awesome example of how when you

23 coordinate efforts with sections and committees you

24 can bring very important matters before the Assembly.

25 At this point we are scheduled to break for

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1 lunch, but I have two issues that I need to address.
2 We have two departing -- we have two members of the
3 Assembly who will not be able to be here later on
4 because of competing State Bar requirements, and I
5 would like to present a plaque to them.

6 Vince Romano was the chair of our Hearings
7 Committee, and he might have even left already, so I
8 just wanted to acknowledge, and we will try to get
9 that to him during lunch, his involvement as chair of
10 the Hearings Committee this year. Again, with regard
11 to the rules and the standards and everything that we
12 did, he really did an outstanding job in helping us
13 prepare for all of those RA discussion panels around
14 the state, and we really utilized the Hearings
15 Committee this year. So a special thanks to Vince
16 Romano.

17 And also Elizabeth Moehle Johnson was the
18 chair of the Assembly Review Committee, and she has to

19 leave early. Is she still here? Good, Elizabeth, if
20 you would come up, we have a plaque to present to you
21 and thank you for everything you did. Elizabeth, in
22 addition to being here at the Assembly meetings and
23 working as chair of this committee, actually
24 participated in the Bar Leadership Forum and helped
25 make sure that the Assembly was represented to all of

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1 these leaders, and I very much appreciate everything
2 that you have done this year. Thank you.

3 (Applause.)

4 CHAIRPERSON JAMIESON: We have about seven
5 minutes or so before the luncheon begins. We had
6 tremendous space restrictions for the lunch.
7 Everybody wanted to attend the luncheon today. Record
8 number attendance, and as a result they really needed
9 more room, hence the partition here. They are
10 starting to set up already, and we need to move the
11 partition out and make sure there is enough space for
12 the additional tables that are here.

13 So I want you all to know that this divider
14 that's beyond the partition is actually going to be
15 opened up during lunch so that those tables over here
16 on the other side of the petition will be a part of
17 that luncheon. That means that people could access
18 this room during the luncheon if they were to walk on

19 either side of the partition. Typically we are in a
20 room that's more secure. I just want to make sure
21 that if you typically would leave something in the
22 room that you know that there is a possibility that
23 other people could be walking in and out.

24 So in the few minutes before lunch I
25 encourage you to go across the hall to the exhibit

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1 room, meet with the exhibitors, have a wonderful
2 lunch, and we will see you back at 2:00.

3 (Lunch break taken.)

4 CHAIRPERSON JAMIESON: If everybody could
5 please be seated, we will resume the meeting. The
6 Assembly is back in session.

7 Next up is item number 14, consideration of
8 the Multi Jurisdictional Practice or MJP report, and
9 consideration of the proposed Pro Hac Vice Rule, which
10 is Rule 18. I would ask Chris Hastings from the UPL
11 Committee and Victoria Kremski from the State Bar to
12 come up.

13 MR. HASTINGS: Hi, folks. It's nice to be
14 here. Hopefully this is kind of review, because we
15 were here, not me personally, but the chair of our
16 committee, John Anding, was here in April with a draft
17 of the rule looking for some policy guidance from you
18 folks and some input, and we got quite a bit of both,

19 and since that time we have worked closely with some
20 of the members of this group and forged some really
21 good ties with Dennis Taubitz, who serves on the UPL
22 Committee, as well as this body, and Elizabeth
23 Jamieson, we have to extend our thanks to those two,
24 and we are also excited to be welcoming Robert
25 Gardella, who is a member of your group, who will be

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1 joining the UPL Committee and working closely
2 together. Sometimes on the UPL Committee we feel a
3 little bit like a voice in the wilderness, so building
4 these ties is very good and rewarding for us.

5 In April this body approved the two rules
6 that I am going to be talking about, the Pro Hac Vice
7 Rule and Confidentiality Rule, in concept, and it also
8 gave us guidance on four specific policy questions
9 relating to the jurisdiction of interdisciplinary --
10 of disciplinary agencies and affiliation with
11 instate attorneys, defining temporary practice and
12 whether and how much we were going to charge as a fee
13 for pro hac vice. So we have incorporated those
14 policy decisions, and you also gave a lot of guidance
15 for changing the rule, and we have done that.

16 I understand that I am probably the only
17 thing standing between you folks and your freedom, so
18 my goal here is, my goal here is to show you that the

19 UPL Committee has done what you asked us to do, and if
20 I can make you comfortable, what we want to do at the
21 end of that is get your permission not to enact these
22 rules, because you don't have the power to do that,
23 but to send them up to the next level where they can
24 be reviewed on, subject to further review and comment
25 at the Supreme Court level.

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1 So if you see something in these rules you
2 don't like, you are not necessarily endorsing it by
3 saying, okay, it can go on to the next step, because
4 you will still have an opportunity to change it,
5 comment on it, make your thoughts known.

6 So let's look at the specific changes we
7 made, if we can get the first slide. You asked us to
8 clarify an inconsistency in between this Section
9 I(E)(5) and Section III(B) relating to whether a
10 Michigan resident can appear pro hac vice, and you can
11 be a Michigan resident and still be an outstate
12 attorney, somebody who just moved to Michigan or
13 retires to Michigan. So we changed the Michigan
14 resident requirement at your suggestion to someone who
15 is a member of the State Bar but ineligible to
16 practice as someone that's not authorized to use the
17 Pro Hac Vice Rule, and that makes it consistent with
18 the next slide, if we can get the next slide up, which

19 is the definition of an outstate lawyer, and what we
20 have also done is we have added to the definition, or
21 we have added a definition of temporary practice
22 that's the flip side of the definition of regular
23 practice, which we will see in a minute.

24 Next change that we made is on the next
25 slide. We have taken the application criteria, which

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1 were something other than the rule, and we have just
2 dumped it into the rule, so the criteria are the same,
3 but now they are there for anyone who wants it apply
4 for pro hac vice admission to review so they know
5 exactly what they are. I think that's a great change,
6 and you can see it in Section I(E)(3) in the materials.

7 The next slide we added a couple of
8 definitions, and there is a typo in the materials that
9 you have in your books that's corrected here. We had
10 the definition of regular practice so that it was
11 identical to the definition of temporary practice. We
12 changed that on the slide, and we will change it in
13 the rule that goes to the Supreme Court, but we
14 essentially defined regular practice to be the
15 opposite of temporary practice, and we have expanded
16 the definition of court to include state agencies or
17 tribunals.

18 Now, in defining court, we dodged the next

19 issue, which you will see on the next slide, which is
20 a really thorny one, and the UPL Committee would love
21 to take on the question of when nonattorneys can
22 represent people in agency proceedings in the State
23 and at the Federal level, and that's a real hot issue
24 I think for our membership, and that's a place where
25 we are on the slippery slope, but that's going a

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1 process that's going to take years, and this is a rule
2 we need now.

3 So all we have done in this new Subsection
4 I(C) is made it clear that we are not dipping our toe
5 into those waters yet and that the other law will
6 apply to the question of whether you can, a
7 nonattorney can appear in agency proceedings.

8 We have got a couple more slides here. Next
9 slide we have clarified that you have to have an
10 association with a Michigan lawyer, and then we have
11 added comments in the language that kind of touches on
12 another thorny issue, which isn't really a rule based
13 issue at all but simply that's more of an educational
14 issue, and that's simply when we get asked to be local
15 counsel for an out-of-state lawyer we often just kind
16 of walk over to court and are not necessarily
17 thinking, you know, is this guy doing what's right for
18 the client. So we put some language in the comment

19 that says, you know, there is going to be a question
20 of fact whether you have got a duty as an instate
21 lawyer to consult directly with the client and how
22 much you need to know about the representation that
23 this client is getting from the out-of-state lawyer
24 who you are supervising as an instate lawyer.

25 Next slide, please.

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1 We have added the fee language. The fee is
2 the same as the fee is for an instate lawyer, and we
3 have -- I think the next slide has some language that
4 will talk about the procedure we have set up. You
5 still have to file a motion with the court. We have a
6 fee that comes in that will be segregated for now, and
7 the thought is we are going to share that fee between
8 the two disciplinary agencies. We have the Grievance
9 Commission and the Disciplinary Committee, but,
10 frankly, we don't know exactly what the administrative
11 costs are going to be, and we don't know what the
12 profit, if any, is going to be, so what we have agreed
13 to in the short-term is simply to segregate those
14 monies, learn more, and then figure out if this is a
15 revenue source for us, and it's about time that
16 lawyers that come into our state practice help share
17 the burden that we all share for the privilege of
18 practicing in this state, so it's a very good thing I

19 think.

20 And those are the only changes that we have

21 made to the rule. They are all changes you asked us

22 to make. I think the committee has done a good job.

23 If you don't have any questions on this one, I will

24 move on to the next rule. Then we will deal with this

25 one.

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1 There is another typo in the rule that's just
2 been pointed out to me on page nine under the proposed
3 comment in the fourth line. It says that it's a
4 question of fact in each given cased. The D is a
5 typo. It should be each given case. We had it right
6 on the slide, but it's wrong in the materials.

7 Questions for me?

8 CHAIRPERSON JAMIESON: Hold on one second.
9 First of all, do we have a motion to recommend Rule 18
10 to the Supreme Court for adoption?

11 VOICE: So moved.

12 CHAIRPERSON JAMIESON: Second?

13 VOICE: Support.

14 CHAIRPERSON JAMIESON: Now we are open for
15 discussion. If you could identify yourself and
16 circuit, please.

17 MR. GILLARY: Randy Gillary, the 6th circuit.

18 The problem I have with this, and I think we raised it

19 last time, is about three fold here. First of all, in
20 proposed comments it says it's a question of fact in
21 each given case whether the Michigan lawyer's
22 association with an out-of-state lawyer pursuant to
23 Rule 18 establishes an attorney-client relationship
24 with the out-of-state lawyer's client with all duties
25 and responsibilities that relationship entails.

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1 In the rule under D(2) it says, Michigan
2 lawyer remains responsible to the client and
3 responsible for the conduct of the proceeding before
4 the court or agency. So if the attorney is
5 responsible to the client, it would seem to me that
6 there is an attorney-client relationship there.

7 The problem I have is if we have a Michigan
8 lawyer is obligated to comply with D(2) and also D(1),
9 then it's walking malpractice, because what you have
10 in (1), it says the out-of-state lawyer shall
11 associate with a Michigan lawyer and timely inform the
12 Michigan lawyer of all proposed actions in the
13 proceeding.

14 So does that mean that the out-of-state
15 lawyer has to contact the Michigan lawyer any time he
16 wants to have a deposition done, file a motion, make
17 sure the Michigan lawyer agrees? If that is the case,
18 it's going to increase substantially the cost to the

19 client really without any benefit, and if the Michigan
20 lawyer is responsible for the proceeding, and I am not
21 exactly sure what that means, I don't know if that
22 means just a motion or -- I would understand that to
23 be the case. If there is a case pending in court and
24 I am responsible for the proceeding, then I have
25 responsibility for what that out-of-state lawyer does

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1 regardless of whether he knows what he is doing or
2 not.

3 And I really don't see how that particular
4 part is workable. I have no problem with the other
5 aspects of the rule if you want them to get accepted
6 by the Bar association and apply, but when you require
7 the Michigan lawyer to have responsibility over what
8 the other lawyer is doing, the out-of-state lawyer, to
9 me that gives him malpractice responsibility. You
10 have to know what that other lawyer is doing at all
11 times and agree with it, and you also have an
12 affirmative duty if you disagree to let the client
13 know. In order to do that you have to be informed of
14 what's happening at each stage of the proceeding, and
15 I just -- anybody who does any pro hac vice work, and
16 I do some of that in other states. I have never done
17 it here as an instate lawyer for an out-of-state
18 attorney, mainly because I have never wanted to

19 because of this problem, but it's -- I don't see how
20 that really can work.
21 It increases the cost. You have two lawyers
22 now that have to be involved in everything, and the
23 division of responsibility and authority I think
24 creates a real problem. I would rather see the rule
25 changed where it is up to the out-of-state lawyer, the

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1 Michigan lawyer, and the client to agree upon the
2 respective rights or duties and responsibilities of
3 the two lawyers. Let them agree in a contract, leave
4 it up to them who does what. That can establish your
5 responsibility, malpractice responsibility, rather
6 than having a rule that says Michigan lawyer's
7 responsible for everything.

8 So that's my problem with that, and I would
9 oppose it for that reason without having that portion
10 amended.

11 MR. HASTINGS: I think that your comment on
12 the rule describes the way the rule is intended to
13 work. The rule is intended to make the Michigan
14 lawyer responsible and to warn the Michigan lawyer
15 that he or she is responsible for the conduct. There
16 is another method for an out-of-state lawyer to avoid
17 having to associate with a Michigan lawyer, and that's
18 to become a regular member of the Bar.

19 I am a little handicapped, because I wasn't
20 at the last meeting of this body. It's my
21 understanding that the changes that we have made are
22 the changes or at least a plurality of people that
23 spoke in this group asked for. Your summary is
24 exactly the way the people who wrote the rule intended
25 it to work, and I had been under the impression that

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1 that was the way you folks wanted it to work.

2 I guess the only other comment I can make is
3 that by endorsing this rule we are not endorsing the
4 rule to be enacted the way it's written. What we are
5 doing is we are saying this rule is ready to take to
6 the next step and go to the Supreme Court where folks
7 who want to make changes still have the ability to be
8 heard and propose changes and get those made.

9 CHAIRPERSON JAMIESON: Hold on one moment.

10 Victoria Kremski would also like to also respond to
11 that question.

12 MS. KREMSKI: I would just like to make a
13 brief point to Mr. Gillary is that I think is key in
14 terms of a practical resolution to this is that what
15 this proposed commentary is intended to do is to put
16 the Michigan attorney on notice that it's an area in
17 which they have to proceed with caution, and the way
18 to address it is to sit down with out-of-state

19 counsel, sit down with the client, have a very
20 thorough retainer agreement in which all of the
21 obligations and duties are spelled out, and very good
22 point.

23 MR. GILLARY: If I could just respond to
24 that. My question is whose benefit is that really
25 for? It doesn't seem to benefit the client to require

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1 duplicate work, to require the Michigan attorney to
2 remain responsible for everything that happens in the
3 case. It seems to double the cost, and it doesn't
4 look as though this really benefits clients in any
5 way.

6 MS. KREMSKI: Mr. Gillary, I should state
7 that that was the policy question that was before this
8 body at the last Assembly, and so we are instituting
9 the policy that this body told us to do.

10 MR. GILLARY: I may be in the minority.

11 CHAIRPERSON JAMIESON: Ed.

12 CLERK HAROUTUNIAN: Madam Chair, Ed
13 Haroutunian from the 6th judicial circuit. I am in
14 favor of the rule, but I think the concerns that are
15 being expressed are certainly legitimate concerns, and
16 I think the response in part to the question of why
17 have two lawyers, why have a Michigan lawyer and a
18 nonMichigan lawyer, in part is the fact of procedure.

19 That is, it just might be that the Michigan lawyer on
20 a local basis knows the Court Rules, knows the folks,
21 and knows how to be able to get something accomplished
22 better than and more efficiently than the out-of-state
23 lawyer, and for that reason I think that's a positive.

24 Now, the other side of it is with regard to
25 the substantive side. With regard to being able to

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1 determine who has ultimate responsibility, I think
2 really, and I think Victoria mentioned it and I think
3 others, the retainer agreement between client and
4 out-of-state lawyer, instate lawyer, or one document
5 that all three sign should very specifically set forth
6 exactly what the responsibilities are, and I think
7 that by doing that -- tell me if I am wrong, by the
8 way -- by doing that that retainer agreement would
9 supersede a portion of what is said here in terms of
10 the Michigan lawyer having responsibility to the
11 client on the substantive side.

12 So that, for example, if there was a retainer
13 agreement that said, look, local Michigan lawyer, you
14 are responsible for the procedural side in detail and,
15 out-of-state lawyer, you are responsible for the
16 substantive side, in detail, then the question is does
17 this rule nullify the retainer agreement or does it in
18 effect say, look, the retainer agreement will be

19 controlling in this specific transaction?

20 MS. KREMSKI: It would, the question of

21 whether the retainer agreement specifically supersedes

22 the Court Rule, I don't think any retainer agreement

23 can specifically supersede anything, because all of

24 these questions are questions, mixed questions of law

25 and fact, and so if you have a retainer agreement that

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1 clearly spells out the expectations and the
2 obligations, that's going to be a very important and
3 very weighty fact that gets factored into the
4 analysis, but there is a whole body of both federal
5 and case law out there that governs when an
6 attorney-client relationship is established, what
7 criteria is looked at in analyzing that question that
8 we as a body can't supersede through Court Rule. If
9 that answers your question.

10 CLERK HAROUTUNIAN: Unfortunately it does.

11 MS. LIEM: Veronique Liem, 22nd circuit. I
12 wasn't sure it was my turn yet. I guess what we need
13 to incorporate into the rule is some way for the
14 client to waive or to limit the responsibilities of
15 the instate attorney, and it seemed like you could
16 address the concern. Perhaps not totally but
17 certainly help, so I would suggest a friendly
18 amendment which would include a waiver, the right of

19 the client to waive or to limit the responsibility of

20 the instate attorney as part of the rule.

21 MS. KREMSKI: After discussion with those of

22 us in the ethics and UPL arena, we are not sure that

23 that would ethically and legally be permissible, so I

24 am afraid we can't accept that as a proposed friendly

25 amendment.

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1 CHAIRPERSON JAMIESON: Any further discussion
2 or questions?

3 Hearing none, all those in favor of the
4 motion to approve Rule 18 please say aye.

5 Any opposed.

6 I think the ayes have it. The ayes have it.

7 We will move on to the next item, which is
8 consideration of the Practice Management Resource
9 Center report and the proposed confidentiality rule,
10 which would be Rule 20.

11 MR. HASTINGS: This is another one that the
12 UPL Committee has been working on, and we are ready
13 for the next slide. This is a lot easier than the one
14 we just did, folks.

15 What the confidentiality rule does is it
16 codifies what the Bar has been doing for a long time,
17 which is taking complaints by consumers about lawyers
18 and questions from lawyers about their ethical

19 obligations and treating them confidentially so that
20 they are not there for other people to see and learn
21 about.

22 You endorsed the rule in concept last time.

23 We have come back to you with some very specific, a
24 very specific proposal. We have expanded the
25 definition of records to make sure that it is a very

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1 broad definition, but then we have contracted the
2 definition of what's protected to make it clear that
3 if you have got a criminal subpoena, that's going to
4 trump the confidentiality that's provided by this
5 rule. Again, it's consistent with what we are already
6 doing, but it gives us a place to stand while we are
7 doing it.

8 We have also tweaked the language, deleted
9 the waiver provision in the Rules of Professional
10 Conduct that really isn't right. We have changed the
11 definition of what requires reporting under Rule 8.3,
12 which requires an attorney that's aware of significant
13 ethical misbehavior to report it to the Bar, both
14 to -- primarily to make it clear that that's an
15 exception in the Confidentiality Rule, and it could
16 well be that if someone is involved in significant
17 ethical violations, the act of reporting it to the Bar
18 could result in a grievance at some level. Those are

19 the changes to the rule, and other than that it's the

20 same rule you saw back in April.

21 CHAIRPERSON JAMIESON: I would entertain a

22 motion to recommend Rule 20 to the Supreme Court for

23 adoption.

24 VOICE: So moved.

25 CHAIRPERSON JAMIESON: Second?

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1 VOICE: Support.

2 CHAIRPERSON JAMIESON: Thank you. Any
3 discussion, questions?

4 Hearing none, all in favor please say aye.

5 Any opposed?

6 Terrific.

7 I would just also like to ask Victoria to
8 speak for a moment. Part of this report was to talk
9 to you about the Practice Management Resource Center
10 very briefly. Very exciting news.

11 MS. KREMSKI: Very briefly, I am privileged
12 to stand before you and talk to you about a new
13 project at the State Bar of Michigan called the
14 Practice Management Resource Center. We are in the
15 midst of creating a law office management program
16 which is designed and will help Michigan lawyers help
17 their clients. We intend to have the center be a
18 broad-based information clearinghouse and referral

19 source regarding all aspects of what an attorney needs
20 to effectively manage their practice.

21 We have been working in conjunction with the
22 Law Practice Management Section, who has graciously
23 agreed to provide forms, checklists, how to brochures
24 and lots of other good stuff for our members. We have
25 hired two cracker jack people, Sally Vandenberg, who

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1 is a lawyer in private practice here in the area. She
2 also teaches law office management at Cooley Law
3 School as an adjunct professor, and Joann Hathaway,
4 who has quite an extensive background and experience
5 in risk management. They will be joining the State
6 Bar staff the week after next, and we are going to
7 build this law office management program and have it
8 operational.

9 Our target date is by the first of the year.

10 We'll have a hotline where members can call with their
11 law office management questions. We will also have
12 what we call a software demonstration room or a tech
13 training room where attorneys and their staff can come
14 and try out different software applications, billing
15 packages, time management packages free of charge, and
16 we are hoping to be able to take that actually on the
17 road with laptops to get to those parts of our state
18 where attorneys may have a hard time getting to

19 Lansing.

20 So we just wanted to give you a brief update
21 and let you know that that's coming. Please keep your
22 eyes open for it, because you will be hearing more
23 about it, and we are really excited about being able
24 to offer this to our members and help them help their
25 practice. Thank you.

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1 (Applause.)

2 CHAIRPERSON JAMIESON: Next on the agenda is
3 item number 16, nominations and election of Assembly
4 Clerk. At this time we have received one nomination,
5 that being for Robert Gardella as clerk. Are there
6 any other nominations from the floor?

7 MR. PIERSON: Good afternoon. Bill Pierson
8 from the 6th circuit. I just rise to speak in favor
9 of Bob Gardella. I have known Bob as sole
10 practitioner and general practitioner in Livingston
11 County, the 44th circuit, for some time. He also
12 serves the Bar and the Representative Assembly as
13 chair of the Nominating and Awards Committee currently
14 and has previously served as the Nominating Committee
15 and the Assembly Review Committee. So I believe that
16 he would be a strong leader for this Bar in the
17 future. Thank you.

18 CHAIRPERSON JAMIESON: Thank you. Seeing no

19 other nominations, I will close the floor at this
20 point and entertain a motion to nominate Bob Gardella
21 as the next Assembly Clerk.

22 VOICE: So moved.

23 CHAIRPERSON JAMIESON: Second?

24 VOICE: Support.

25 CHAIRPERSON JAMIESON: Any discussion at all?

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1 All in favor please say aye.

2 Any opposed.

3 Congratulations, Bob.

4 (Applause.)

5 CHAIRPERSON JAMIESON: I remember a couple

6 years ago when I was elected clerk and wondering,

7 jeez, I wonder what really is involved with everything

8 that is about to happen. Thinking over the past

9 couple of years about everything that is involved and

10 how much responsibility is associated, not just with

11 the clerk position but the automatic stepup, I thought

12 it might be helpful if our leaders had some type of a

13 handbook that would kind of walk them through and

14 institutionalize this, the responsibilities that these

15 people are agreeing to take on.

16 So, Bob, I want to assure you and Lori and

17 Ed, I hope that this comes as assistance to you. I

18 created a leadership handbook that talks about a lot

19 of the things that go on throughout the year, a
20 month-by-month diary of what you need to do throughout
21 the year, and includes also the rules and some other
22 resources, letters and forms and everything.

23 So I hope, like what Julie Fershtman did for
24 actually the Assembly with regard to that member
25 handbook that you all have that is so wonderful, that

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1 this is just as helpful for all of you in leadership.

2 CLERK HAROUTUNIAN: Thank you.

3 VICE CHAIRPERSON BUIREWEG: Thank you.

4 (Applause.)

5 CHAIRPERSON JAMIESON: At this point we are

6 going to move on to the swearing in of Lori Buiteweg

7 as our next fearless leader of the Assembly, and the

8 Honorable Archie Brown is going to be doing the

9 swearing in.

10 Tom, Lori's husband, has driven all the way

11 from Detroit to be here today, and, Tom, if you could

12 please come up to the podium, we would appreciate

13 that.

14 MR. BUIREWEG: I wouldn't have come if I had

15 known that was going to happen.

16 JUDGE BROWN: Well, it's obviously my great

17 pleasure that I am able to stand here as a former

18 member of this Assembly and having served as its

19 parliamentarian to be able to swear in one of my

20 colleagues from Washtenaw County.

21 Lori, please raise your right hand. I do

22 solemnly swear.

23 VICE CHAIRPERSON BUI TEWEG: I do solemnly

24 swear.

25 JUDGE BROWN: That I will support the

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1 Constitution of the United States.

2 VICE CHAIRPERSON BUIREWEG: That I will
3 support the Constitution of the United States.

4 JUDGE BROWN: And the Constitution of this
5 state.

6 VICE CHAIRPERSON BUIREWEG: And the
7 Constitution of this state.

8 JUDGE BROWN: And the Supreme Court Rules
9 concerning the State Bar of Michigan.

10 VICE CHAIRPERSON BUIREWEG: And the Supreme
11 Court Rules concerning the State Bar of Michigan.

12 JUDGE BROWN: And that I will faithfully
13 discharge the duties.

14 VICE CHAIRPERSON BUIREWEG: And that I will
15 faithfully discharge the duties.

16 JUDGE BROWN: As Chairperson of the
17 Representative Assembly of the State Bar of Michigan.

18 VICE CHAIRPERSON BUIREWEG: As Chairperson of

19 the Representative Assembly of the State Bar of

20 Michigan.

21 JUDGE BROWN: To the best of my ability.

22 VICE CHAIRPERSON BUI TEWEG: To the best of my

23 ability.

24 JUDGE BROWN: So help me God.

25 VICE CHAIRPERSON BUI TEWEG: So help me God.

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1 JUDGE BROWN: Congratulations.

2 CHAIRPERSON BUIREWEG: Thank you.

3 (Applause.)

4 CHAIRPERSON BUIREWEG: You are done. Thank
5 you, Judge Brown for swearing me in. Judge Brown has
6 always been an inspiration in career development To
7 me. I remember when he was treasurer of the Washtenaw
8 County Bar Association many years ago, and I sat on
9 that Board as a Young Lawyers representative, and then
10 we watched him -- we were sad when he was plucked away
11 from us to become a District Court Judge, then ascend
12 to be a Circuit Court Judge, and then ascend to being
13 a chief judge of the Circuit Court for Washtenaw
14 County.

15 His style as parliamentarian has been much
16 like his style on the bench, respectful, thoughtful,
17 and decisive. So thank you for your many years of
18 service to the Representative Assembly, Judge Brown.

19 (Applause.)

20 CHAIR BUIREWEG: So I guess I just made my
21 first mistake as chairperson. I was supposed to wait
22 to do that. It won't be the last.

23 My first official task as Rep Assembly
24 Chairperson is probably going to be my most difficult,
25 and it's adequately recognizing Elizabeth Jamieson for

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1 the work she has done this Bar year, and I would have
2 to say people have already tried to stomp on my parade
3 here by saying all sorts of great things about
4 Elizabeth today, but I don't begrudge them that,
5 because she deserves all of that recognition and more.

6 And you all know how much work Elizabeth has
7 done on the proposed changes to the Michigan Rules of
8 Professional Conduct and the Standards for Imposing
9 Lawyer Sanctions. So I am not going to, you know, get
10 too involved in that, although I will tell you that it
11 was during one of our many, many lengthy cell phone
12 conversations while we were driving our kids around
13 after hours about the State Bar and its activities
14 that I said, you know, maybe we ought to have
15 something like the hearings, you know, that we did on
16 the Bar dues where we go around to the state,
17 different places in the state and we talk about the
18 proposed changes so that we can really get to the

19 membership and see what they have to say about those
20 changes.

21 And I will tell you that was kind of like
22 throwing a football or kicking off a football to --
23 and I don't know much about sports, so sorry if I
24 don't have my analogy right -- but kicking off a
25 football to Elizabeth and having her do a 99-yard

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1 touchdown pass. In her usual way, she took the idea,
2 she embellished upon it, she tweaked it, she tweaked
3 it some more, and then some more until the idea was
4 just as perfect as it could possibly be from content
5 to execution.

6 The end result were the panel discussions in
7 which Elizabeth brought experts and fudge striped
8 cookies to over a thousand lawyers all over the state
9 of Michigan. By the time it was said and done, I
10 think she logged so many miles on her car that she
11 probably could have driven to Florida and back again.

12 Then Elizabeth does not know this, but I got
13 a very nice letter after our April meeting from John
14 Allen, who was one of the experts on our panel
15 discussions at the April meeting and who also attended
16 the panel discussions around the state saying that the
17 Representative Assembly should be extremely proud of
18 its work in the ethics area, that he has never seen

19 anything like that effort in his entire term of
20 practice, and he wanted somehow for the Rep Assembly
21 to be recognized for that, and I would like for
22 Elizabeth to be recognized for that. We don't have an
23 official award for her today for that, but probably
24 sometime in the future there will be.

25 We have other things for her today in the

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1 award sort of prize category, but I am going to keep
2 you in suspense on those, and maybe you won't leave
3 the room so that you can wait and find out what kind
4 of goodies we got for Elizabeth to thank her for all
5 of her hard work.

6 But you know there are a lot of things that
7 you probably don't know that Elizabeth has done this
8 year, and the reason I am going to tell you about them
9 is because I think they are important in terms of your
10 education as an Assembly member for you to know what's
11 been going on behind the scenes that maybe you haven't
12 seen because you are busy reading and reviewing and
13 voting on our proposals.

14 Elizabeth formed a blue ribbon committee to
15 establish protocol for directing matters of public
16 policy to the Assembly in a way that does not
17 compromise the jurisdiction of the Assembly or impinge
18 upon the strong, yet sometimes delicate relationship

19 between the Representative Assembly and the Board of
20 Commissioners. She did an absolutely top notch,
21 fantastic job of navigating that, and we have to thank
22 her for that.

23 She has also been taking very good care of
24 all of you. It's because of her efforts in the
25 Finance Committee that all of you will get reimbursed

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1 for your mileage here today, regardless of how many
2 miles away you live from the meeting. It used to be
3 that you had to be 150 miles or more away to get your
4 mileage, and now you will get your mileage no matter
5 how far away you live. So thank you, Elizabeth, for
6 that.

7 She has taken care of feeding us to no end.
8 We always had plenty of food, and that's not, you know,
9 that's something that you have to think about, you know,
10 like my members are going to be hungry at 3:00 in the
11 afternoon so make sure they have snacks. She just
12 thinks of every little thing, including writing a book
13 for how to do what I need to do next year.

14 She performed a significant amount of work on
15 the strategic plan for the State Bar of Michigan. You
16 all don't know this probably, maybe you do, some of
17 you were on the Board of Commissioners, so you were
18 there, but we had a retreat, I think it was back in

19 March in Dearborn, and we were there for several days
20 on end. It seemed like an eternity, quite frankly.
21 It was really hard work. But we worked on the
22 strategic plan, and it was a group drafting project,
23 and it was tough, and Elizabeth's input was really
24 invaluable, insightful, and she had prepared very hard
25 for that meeting.

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1 She prepared very hard for this meeting, for
2 the annual meeting. She has been on the Annual
3 Meeting Committee for quite some time, and her input
4 is helping to improve this for all of us. It's under
5 her leadership that we have for the first time I think
6 in the history of the Rep Assembly had a full
7 membership, every single seat is full. We even have
8 people who aren't even yet on the Board here with us
9 today, so we are kind of over capacity in a sense.

10 And, you know, there was another one of these
11 cell phone conversations where we are driving around
12 taking our kids here and there, and we talked about
13 the need for the Supreme Court to understand anecdotal
14 information about our proposals. We have had meetings
15 with staff from the Supreme Court before where they
16 have told us that, yes, it matters to us what your
17 ultimate decision is on your proposals, but we also
18 want to hear your anecdotal factual information, why

19 it is that you think a proposed court rule change is
20 going to help the practice and the profession of law.

21 So Elizabeth came up with the idea to do the
22 RA discussion board, and it is a great forum for
23 posting comments and concerns that can then be
24 compiled and taken to the Supreme Court, along with
25 the proposal to give them the information that they

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1 need to decide whether to enact our proposals.

2 I am going to do something a little bit

3 different than that. I am going to use a list serve,

4 or at least try it out, and I am going to ask you all

5 to participate in that, and I know list serves cause

6 some people to groan, but I would like to have instant

7 communication back and forth with you about things.

8 If I have questions for you or you have ideas for me,

9 I want to be able to communicate those instantly

10 through a list serve by e-mail.

11 I have, thanks to my techy husband, I have

12 got one of these Blackberry devices, so you will catch

13 me checking e-mail pretty much anywhere anytime. So

14 you can get ahold of me kind of 24/7 by sending me

15 e-mail.

16 So sort of in conclusion, Elizabeth has

17 raised the caliber of the substantive policy issues

18 upon which our membership and our leaders now know

19 that the Representative Assembly is qualified to
20 handle, and I think it's safe that we want to continue
21 in that same upper direction, and we will. But I will
22 rely upon each and every one of you, as well as the
23 State Bar staff, to help me carry that football,
24 because I don't see myself as the kind of person who
25 is going to run a 99-yard touchdown pass. I am going

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1 to need all of your help. It's going to be a team
2 effort.

3 I would like you to come talk to me after the
4 meeting. If you are going to the Fellows Reception, I
5 will be there. Catch me there, send me an e-mail,
6 call me on the phone. I am looking for my key team
7 players for this year to help me groom the future of
8 Representative Assembly leadership and possibly from
9 there State Bar leadership.

10 The education that you will get if you are
11 involved at the officer level of the Representative
12 Assembly is unparalleled. You will understand more
13 about the practice of law, the profession and the way
14 that the State Bar operates than you could ever
15 imagine. In the past year, having served on the Board
16 of Commissioners and the Executive Committee, I have
17 grown in ways that I never imagined I could.

18 So I encourage all of you to put some elbow

19 grease into your position and let me know that you
20 want to be part of the leadership team. There are 150
21 of you. I don't know all of your individual skills,
22 experiences that would make you helpful to the
23 Assembly, so I have to rely on you to satisfy your
24 responsibility of making those skills known to me.
25 Tell me what it is you can bring to the leadership.

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1 I am very proud, very humble, very excited to
2 be your leader. I will tell you you all intimidate
3 me. You are smart, you are eloquent, you are
4 important in your own communities, you are the voice
5 of your constituents, and you all take your jobs very
6 seriously. I can see that as I walked around before
7 the meeting. I saw people with notes in their
8 booklets. Let's everybody has read their proposals.
9 I am very proud of the dedication that everybody has
10 to our objectives.

11 I respect that, and I respect all of you, and
12 I respect this body. I can't think of a more
13 important or relevant organization than one which
14 speaks for over 37,000 attorneys. I am not quite sure
15 how I got into this position, but I think it's because
16 of a lot of other people to whom I owe a lot of
17 thanks, and a lot of them are here in the room today.

18 Kim Cahill, you don't know it, but you

19 inspire me. You are the first chairperson when I was
20 a brand new member six years ago and you ran those
21 meetings like clockwork. Glenna Peters, who has moved
22 back to Tennessee, for putting the bug in my ear to
23 run for clerk. To John Berry, who motivates me in
24 ways he doesn't even know. To my business partners,
25 Monica Sacks, Margo Nichols, Eileen Slank, and Karen

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1 Sendelbach, all of whom are extremely dedicated to Bar
2 work.

3 Margo Nichols is the president of the Bar
4 Foundation. Karen Sendelbach is on the Family Law
5 Council and has spent countless hours writing amicus
6 briefs on grandfather's rights, grandparents' rights
7 issues. Eileen Slank built a brand new church in
8 Dexter, Michigan, this year. Monica Sacks teaches for
9 ICLE. Monica and Margo are both past presidents of
10 the WCBA, the Washtenaw County Bar Association. I
11 think without the kind of support that you get from a
12 firm like that you can't get here. Their support is
13 just incredible and amazing.

14 And the support of Ed, and I am looking
15 forward to working with Bob next year, and of course
16 the support of my family. My husband, Tom, who is an
17 attorney for GMAC legal staff and is the general
18 counsel of a company that is a subsidiary to GMAC

19 called Centurion. He is also a commissioner for the
20 National Committee of Uniform State Laws and spends
21 quite a bit of time working on uniform laws for the
22 entire nation, which hopefully we will adopt more of
23 in the state of Michigan as the years go by.

24 Most of all, thanks to Elizabeth, who has
25 been a great leader and a great teacher and is a real

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1 pearl, and because we think she is a pearl we have

2 this very special gift for you from me and Ed.

3 CHAIRPERSON JAMIESON: It's beautiful.

4 CHAIRPERSON BUIREWEG: It's a set of pearls.

5 (Applause.)

6 CHAIRPERSON BUIREWEG: And the matching

7 earrings, of course.

8 We are not done yet.

9 And also because Elizabeth took so much time

10 away from her family this year working on State Bar

11 activities, we thought that she needed some time away

12 with her two little boys, Jamie and Cameron, and her

13 husband, Scott, so we got her a gift certificate.

14 This is from the State Bar and the Rep Assembly for

15 two nights at the Grand Hotel.

16 (Applause.)

17 CHAIRPERSON BUIREWEG: We know that place

18 holds a special spot in your heart. So we want you to

19 go and enjoy yourself. So thank you, Elizabeth.

20 And I am looking forward to working with all

21 of you next year. Again, send thOse e-mails, keep

22 them coming. And we have a plaque. It says the State

23 Bar of Michigan honors Elizabeth A. Jamieson,

24 Representative Assembly Chairperson 2004/2005, Vice

25 Chairperson 2003/2004, Clerk 2002/2003, and in

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1 appreciation for distinguished service to the
2 Assembly, the State Bar, and all Michigan lawyers, and
3 that's a lot of them, September 22nd, 2005.

4 (Applause.)

5 CHAIRPERSON JAMIESON: I know you all say you
6 didn't want any speeches, but I just have to say a
7 couple of things before we give out these awards and
8 recognize some other people.

9 I have been very, very fortunate. I feel
10 like I stand in a room of greatness, and it's true
11 what they say about great people are surrounded by
12 and supported by great people, and the only reason why
13 we accomplished all that we did this year was because
14 all of you pitched in and helped.

15 So some people talk about my energy, and
16 having just recently gone to Cedar Point, I made that
17 reference earlier, I went on a few very fast roller
18 coasters, and I have to say that I could make a

19 connection this year with roller coasters and the fact
20 that it has really been an exciting, thrilling,
21 sometimes breath taking, meaning take your breath
22 away, experience, but I think that this next year is
23 just a continuation of that roller coaster ride. We
24 went down that first hill, which was a really big,
25 exciting hill, but the ride is not done yet, and you

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1 are in the hands of just a tremendous leadership.
2 It's so amazing to be walking away from, which is sad,
3 but walking away from an organization knowing that the
4 leadership that is still in place is just as capable,
5 absolutely just as capable as doing everything that we
6 accomplished today, and I believe that Lori and Ed and
7 Bob are just going to do an outstanding job for you
8 all.

9 And I want you to know how much I appreciate
10 the fact that you traveled through blizzard conditions
11 to come to these meetings, and that all of the
12 committee chairs, regardless of whether or not you
13 thought you were going to be an active committee this
14 year, really stepped up to the plate and did
15 everything that I asked of you, and then all of the
16 members, all of you really stepped up to the plate and
17 participated in very long debates and discussions and
18 educational opportunities with regard to these rules

19 and the standards, and some people would listen to
20 this and think it was just absolutely a snoozer, but
21 you all knew that it was so important that we take a
22 stand and be involved with the rules and the
23 standards, and I appreciate the fact that you all hung
24 in there with me and that we were able to put together
25 a report and make recommendations to the Supreme

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1 Court, which they tell me they really have paid
2 attention to.

3 So I want to thank you all for everything,
4 and I know you have heard this before, but I really
5 wouldn't be here today if it weren't for the terrific
6 role models that I have in my life. My dad, who is a
7 lawyer, has just forever been a role model for me, and
8 my husband, who has questioned whether or not I am
9 really married to him or the Bar association, has
10 supported me throughout the year and all the time that
11 it's taken.

12 And this is such a bittersweet thing, because
13 I look at all of you, and any of you know me, family
14 is probably the most important thing to me, and I
15 truly look out here and I see some of the very best
16 friends I ever made in my life. I look at Julie
17 Fershtman, who I met through Young Lawyers Section
18 about 15 years ago, and I can say standing here that,

19 I mean, become my best friend, and that Lori over the
20 past couple of years, working with her and Ed, and I
21 look at Bruce and all of these people, you have really
22 become my family, and you are making me so proud to be
23 a lawyer.

24 And I hope that what you take away from what

25 I am saying right now isn't just my conviction to what

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1 we are doing but the fact that you are all convicted
2 and should be convicted to our profession and its
3 nobleness and everything that you can accomplish here
4 today, and I am so proud to be a member of this Bar
5 association and to have had the opportunity to
6 represent you, and I will miss you terribly, and I
7 hope that you all remember that I have given you my
8 cell phone number and my home number and my e-mail so
9 many times that you should have it embedded.

10 But I hope you really will stay in contact
11 with me, but I appreciate all of your support. You
12 really have been family to me, and I will miss you
13 terribly, but I will see you next year at the annual
14 meeting for sure.

15 Thank you so much for everything that you
16 have done. I appreciate that, and I would like to now
17 recognize a few of the people who have helped us
18 accomplish so much, and we have some plaques to give.

19 As I read your name I would really like you
20 to come up, and we will give you the plaque. Lori can
21 hand it to you.
22 Our outgoing chairs and Assembly committees,
23 we have Sheila Garin, who was chair of the Drafting
24 Committee this year. Sheila, are you still here?
25 Come on up and get a plaque. Thank you so much for

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1 everything you have done.

2 (Applause.)

3 CHAIRPERSON JAMIESON: Bob Gardella, chair of

4 the Nominating and Awards Committee. There is a

5 reason why this man is becoming clerk of the Assembly.

6 When I put together the leadership team, I really

7 hoped that people would step up to the plate, and you

8 have seen what Bob has done with regard to 100 percent

9 capacity here on the Assembly, and, Bob, thank you so

10 much for everything. What sums it up is any time

11 there is a vacancy, Anne would call Bob and say we

12 have a vacancy in blah, blah, blah circuits, and this

13 is Bob's response, I think I might know somebody. Let

14 me call you right back. And then he would call Anne

15 back, and he would have it filled. It was

16 unbelievable. Thank you very much, Bob, and

17 congratulations.

18 (Applause.)

19 CHAIRPERSON JAMIESON: John Reiser was chair
20 of the Rules and Calendar Committee. I think John
21 wondered the first time that we actually had the Rules
22 and Calendar Committee meeting whether or not he was
23 going to have to do anything, because as chair I kind
24 of prepared the calendar, but what he didn't realize
25 was under his leadership it was the committee that

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1 really shapes and forms that agenda to make sure that
2 what we bring to you is done in the right order and in
3 the best fashion, in the most economically time-wise
4 fashion, and, John, you really did a wonderful job,
5 and I appreciate everything that you did for the
6 Assembly.

7 (Applause.)

8 CHAIRPERSON JAMIESON: And then there is Rob
9 Buchanan, whom I have known for many years because we
10 date back to Young Lawyers Section, Grand Rapids Bar
11 Association. I was so happy when he expressed
12 interest in getting on to the Assembly, was quite
13 eager to get him involved in a leadership role,
14 because I know his past experience in leadership
15 roles, and true to form, when we had to deal with all
16 of those proposals, nearly 25, 30 proposals regarding
17 the rules and standards, I called up Rob and said,
18 Special Issues, I am sure you are thinking you got to

19 be kidding me, I said, I need you to help me draft
20 some of these proposals. And there he was just doing
21 it, getting his group together. I so appreciate the
22 fact you were there for me again and enjoyed working
23 with you. Thank you, Rob.

24 (Applause.)

25 CHAIRPERSON JAMIESON: We have eight retiring

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1 Assembly members. These names shouldn't come as a
2 surprise to you. We have seen them speaking at the
3 mikes over the years. They have been actively
4 involved in the Assembly. We will miss you. We
5 appreciate everything that you have done on the
6 Assembly and would like to acknowledge. Here, we will
7 read all the names off, and if you could stand when I
8 read your name, and then everybody can applause
9 afterwards.

10 Matt Abel, Dennis Taubitz, Randy Gillary,
11 Bill Pierson, Art Spears, Jim Hogan, John Daugherty,
12 and Laurin' Thomas, who, by the way, is moving on to
13 the Board of Commissioners, which is just such a
14 wonderful thing.

15 (Applause.)

16 CHAIRPERSON JAMIESON: The last plaque that I
17 have to award is to our outgoing parliamentarian. You
18 can imagine in my situation it's very difficult as we

19 are going through governance issues trying to figure
20 out what's best for the Assembly and people coming and
21 saying they are interested in being parliamentarian
22 and what to do and everything else, Archie, you have
23 been with us for so long and done such a wonderful
24 job. I so appreciate your calm and reassuring manner.
25 I am the emotional one, so it's so nice to have

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1 somebody calmly say, this is the situation. Okay,
2 great.

3 It's nice to have that parliamentary backup
4 and expertise, and I so appreciate the fact that you
5 have served on the Assembly for so long, and it's been
6 an honor having you here with us, and we will truly
7 miss you, and we appreciate everything you have done,
8 both as a member the Assembly and as our
9 parliamentarian, so thank you so much.

10 (Applause.)

11 CHAIRPERSON JAMIESON: All right. Here is
12 the deal. I have had three meetings. My first one
13 lasted about five minutes, but I had to wait a long
14 time to get a quorum. My second one was an entire
15 day, and you all were probably wondering whether or
16 not we were going to have to carry over to the next
17 day or whether or not we were even going to be here,
18 but we got done early. I think it was like two

19 minutes early.

20 Check out the agenda. It says we are

21 supposed to be done at 3:45, and it's 3:25. I

22 appreciate so much that you all hung in there with me

23 through this afternoon. For the third time we are

24 going to end the meeting early.

25 And I just want to remind you, please visit

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1 the exhibitors across the hall and anyone interested
2 in speaking or attending the administrative hearing in
3 front of the Supreme Court next Thursday, I really
4 would like you to come up and talk to us so that we
5 can potentially coordinate some efforts.

6 So thank you so much for a wonderful year.

7 Thank you for everything, and there is a question?

8 VOICE: Are you going to pass out attendance
9 slips?

10 MS. JAMIESON: That's a very good question.

11 Let me think about it. No, I am just kidding. I have
12 to entertain a motion to adjourn the meeting. Is
13 there a motion?

14 VOICE: So moved.

15 CHAIRPERSON JAMIESON: Seconded.

16 Not even putting it up for discussion.

17 All in favor say aye.

18 Meeting ended.

19 (Proceedings concluded at 3:25 p.m.)

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1 STATE OF MICHIGAN)

) ss

2 COUNTY OF CLINTON)

3 I certify that this transcript, consisting of
4 112 pages, is a complete, true, and correct record of the
5 Proceedings held of the Representative Assembly on Thursday,
6 September 22, 2005.

7

8 October 6, 2005

9

 Connie S. Coon, CSR-2709
10 5021 West St. Joseph, Suite 3
Lansing, Michigan 48917

11 Notary Public
12 Clinton County, Michigan
My commission expires: 5-28-10.

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