

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 Lansing Community College MTEC
Center, 5708 Cornerstone, Lansing, Michigan, on Saturday,
April 22, 2017, at the hour of 9:30 a.m.

AT HEADTABLE:

FRED K. HERRMANN, Chairperson
JOSEPH P. MCGILL, Vice-Chairperson
RICHARD L. CUNNINGHAM, Clerk
JANET WELCH, Executive Director
HON. JOHN CHMURA, Parliamentarian
CARRIE SHARLOW, Staff Member

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Lansing, Michigan
Saturday, April 22, 2017
9:35 a.m.

R E C O R D

CHAIRPERSON HERRMANN: Members of the Representative Assembly, the final policy-making body of the State Bar of Michigan, and honored guests, good morning. I would like to call our meeting to order.

Mr. Cunningham, do we have a quorum?

CLERK CUNNINGHAM: Mr. Chairman, a quorum is present.

CHAIRPERSON HERRMANN: Thank you. Before we begin, a few reminders on basic protocol. When speaking to the Assembly, please move in an orderly fashion to one of the microphones placed in the room. When it is your turn to speak, first announce your name and the circuit you represent, and we have a special request from our court reporter for the people on this side of the room. We are concerned about the strength of the microphone, so, if you speak from that position, please ensure you speak directly into the microphone and clearly so our court reporter can record your thoughts.

Generally a member is permitted to speak only once on an issue, and today we will be voting on our

1 three formal agenda items later in the day
2 electronically with these clickers that you have all
3 received. If for some reason you have not yet
4 received a clicker, there will be an opportunity later
5 before our three electronic votes. We will take a
6 break, and at that point I would remind you to please
7 see Jeanette in the front reception area, and she will
8 be able to get you a clicker if you don't have one
9 yet. Also, before we vote, our clerk,
10 Rick Cunningham, will give a short tutorial on how to
11 use these for our voting.

12 Please, please turn in your clickers at the
13 conclusion of today's meeting. We have signed our
14 life away to borrow these things. They work great for
15 our meetings, but we have an obligation to return them
16 at the end. Thank you.

17 Final note, also, attendance is taken at the
18 conclusion of the meeting. State Bar staff will
19 distribute forms for that purpose, so please watch for
20 those when we conclude.

21 At this point I would like to call
22 Pamela Enslin, Chair of the Rules and Calendar
23 Committee, to move for adoption of our proposed
24 calendar.

25 MS. ENSLEN: Thank you, Mr. Chair. I move

1 for the adoption of the calendar.

2 CHAIRPERSON HERRMANN: Do we have a second?

3 VOICE: Second.

4 CHAIRPERSON HERRMANN: All in favor say aye.
5 Opposed.

6 The calendar is approved. Thank you,
7 Ms. Enslin.

8 I will next refer your attention to the
9 September 22nd, 2016 summary of proceedings from our
10 last annual meeting contained in your materials and
11 entertain a motion to approve that summary.

12 MR. GOBBO: Stephen Gobbo from the 30th
13 circuit, and I move to adopt and approve the summary
14 of proceedings from the September 22nd, 2016 Assembly
15 meeting.

16 CHAIRPERSON HERRMANN: Thank you, Mr. Gobbo.
17 Do we have a second?

18 VOICE: Second.

19 CHAIRPERSON HERRMANN: All in favor say aye.
20 Any opposed.

21 Summary of proceedings is approved.

22 We have with us today Chief Justice
23 Stephen Markman of the Michigan Supreme Court, and we
24 are very honored to have Justice Markman with us.
25 When asked to be with us today, Justice Markman did

1 not hesitate, and we are grateful for his presence and
2 the thoughts he will share with us shortly.

3 By way of introduction, Chief Justice Markman
4 was chosen by the Michigan Supreme Court to serve as
5 Chief Justice in January of 2017. He was reelected to
6 the Supreme Court in 2000, 2004, and 2012, and before
7 his appointment to the Supreme Court in 1999 he served
8 as Judge on the Michigan Court of Appeals from 1995 to
9 1999.

10 Prior to this, he practiced law with the firm
11 of Miller, Canfield, Paddock & Stone in Detroit. From
12 1989 to '93 Chief Justice Markman served as United
13 States Attorney in Michigan after having been
14 nominated by President George H. W. Bush and confirmed
15 by the United States Senate. From 1985 to 1989 he
16 served as Assistant Attorney General of the
17 United States after having been nominated by
18 President Ronald Reagan and confirmed by the
19 United States Senate, and prior to this he served for
20 seven years as chief counsel of the United States
21 Subcommittee on the Constitution and as Deputy Chief
22 Counsel of the United States Senate Judiciary
23 Committee.

24 Justice Markman has taught constitutional law
25 at Hillsdale College since 1993. He also serves on

1 the Board of Directors of the Western Michigan
2 University Thomas M. Cooley Law School. He is a
3 Fellow of the Michigan Bar Foundation, a Master of the
4 Bench of the Inns of Court, and a member of the
5 One Hundred Club.

6 Please extend a warm Representative Assembly
7 welcome to Chief Justice Stephen Markman.

8 (Applause.)

9 CHIEF JUSTICE MARKMAN: Thank you very much,
10 sir, for the kind introduction, Fred. I was
11 introduced by another master of ceremonies not too
12 long ago as one of the finest judges that money could
13 buy, and I think he was trying to say something nice.
14 I am just not sure it came across exactly the right
15 way. Then my wife, Mary Kathleen, felt the same way.
16 She was introduced by the same master of ceremonies as
17 being one of the finest ladies to walk the streets,
18 and she was puzzled a little bit.

19 You know, Janet Welch a few minutes ago
20 wisely urged me to be very careful walking up here
21 because there is a very sharp fall that one is
22 susceptible, and I told her that if I was to fall I
23 believe that my legal interests would be very, very
24 well represented. And I have also been told that the
25 clickers that you have cannot be used to click out the

1 speaker, so don't even try.

2 You know, there is not much in the way of
3 appellate judicial humor, and I don't think I am going
4 to add to that sum today, but I do want to tell you a
5 story about the great chief justice of the Michigan
6 Supreme Court of a much earlier generation who retired
7 to the Upper Peninsula and in his later days was
8 sitting along the river outside of his home, and he
9 was talking with an old friend of his, and they were
10 reminiscing on the law and reminiscing on other things
11 and a passerby, a tourist, traveler came by and saw
12 the two gentlemen along the river and said, Sir, I
13 need to get to the other side of the river, and I have
14 no way of doing that, but I see that you have a boat.
15 I wonder if I might borrow your boat so that I could
16 cross the river? And the great Chief Justice thought
17 and pondered for a moment and said, That will be fine,
18 that will be fine.

19 And the traveler got in the boat, and he
20 started rowing across the river, and, unfortunately,
21 there was a big hole in the boat, it took on water,
22 and the traveler drowned in that river. And the Great
23 Chief Justice's friend looked to him and said, Why
24 didn't you tell that traveler about the hole in the
25 boat? And the Chief Justice pondered and thought

1 about this and said, Well, that question was not
2 presented to me. If that's judicial humor, that
3 explains why you don't see more of it.

4 Let me tell you another, perhaps a better --
5 and this is a true story. This is a story of when I,
6 you know, come to legal audiences, sometimes I think
7 they might be interested in hearing about this,
8 particularly law school audiences.

9 There was a former dean, longtime dean of the
10 Columbia Law School, who very late in his career was
11 asked by the governor of the state, I think it was
12 Governor Rockefeller at the time, if he would not
13 consent to leaving the law school and assisting in the
14 administration of the prison system in the state at
15 that time that was at that time in great turmoil.
16 There had been some riots in the prisons and some
17 maladministration, and the governor asked the dean
18 whether or not he wouldn't consent for several years
19 upon his departure from Columbia to take over the
20 administration of that system, and he agreed to do
21 that, and he was very successful.

22 And he left after about three or four years
23 when he felt he had completed his mission, but he
24 said, Whenever I return to New York City and just
25 wandering along the streets of that city, a young man

1 or a young woman would come up to me often and say,
2 Well, hello, Dean, how are you? And the dean could
3 never quite remember whether he had met that person at
4 Columbia or in the prison system, so he developed an
5 all-purpose response, And, young man, how is the law
6 treating you these days? That is a more or less true
7 story, I think.

8 Well, it is an honor, of course, it really is
9 an honor to speak before the State Bar Representative
10 Assembly this morning. I mean, what a remarkable
11 group of successful and public-spirited attorneys. I
12 have been proud to be a member of the State Bar for
13 more than four decades, and, incidentally, I have been
14 wondering for several weeks when I would be finally
15 receiving my 43-year recognition from the Bar. If
16 it's been lost in the mail, I hope that someone here
17 will please correct that oversight sooner rather than
18 later. I get a pin and a certificate, don't I? If I
19 do, I am looking forward to it.

20 My recollection is that the last time I spoke
21 before this Assembly was when I did so several years
22 ago on behalf of the Supreme Court's then pending jury
23 reform initiative. That initiative, as you might
24 know, was eventually adopted by the Court and
25 implemented, and in my view appears to be serving its

1 mission well in strengthening the jury's ability to
2 render informed and intelligent decisions in some
3 difficult cases.

4 Our Court has issued one significant,
5 unanimous opinion, more specifically defining the
6 proper limits of judicial questioning of witnesses
7 before the jury, reversing a criminal verdict in that
8 case on the basis of what we viewed as questioning
9 that suggested a judicial point of view to the jury,
10 but we are otherwise of the view that judicial
11 questioning has been carried out by most judges around
12 Michigan in a measured, responsible, and helpful
13 manner and that the sundry other reforms that were
14 enacted as part of that proposal have also generally
15 enhanced the jury's deliberative processes, and this
16 remains the broadest such reform of the jury system
17 that I think has been enacted in many, many years in
18 the United States.

19 Let me also share with you an artifact that I
20 received just two days ago on behalf of the Court at
21 our historical society thanks to the benefaction and
22 the philanthropic efforts of Judge Avern Cohn, federal
23 court judge. That is a silver cup, a silver
24 commemorative cup embossed with strawberries that was
25 given to our 15th Justice on the Court, Samuel

1 Douglas, upon his retirement from the court in 1857 by
2 the Detroit Bar Association. On the one side there is
3 a statement of presentation to the retiring justice,
4 and on the other side it states in a language not
5 unknown to the law a verse from Horace, *vilius*
6 *argentum es auro, virtutibus aurum*, which is, I am
7 certain, you all know from your law school education.
8 It means, as gold is worth more than silver, so is
9 virtue worth more than gold.

10 Prior to his five-year tenure on the Michigan
11 Supreme Court, Justice Douglas in 1846 was the second
12 reporter of the court with his two reports in 1846 and
13 1847 cited as one and two Doug.

14 After his five years on the court and as a
15 democratic candidate for reelection as justice in
16 1856, Justice Douglas was defeated in the first ever
17 republican wave in Michigan, indeed the first ever
18 republican judicial candidacy in Michigan, that year
19 by his wife's brother and his former law partner,
20 James Campbell, who went on to a very distinguished
21 32-year career on the Court as one of its most
22 respected justices.

23 It is something I have wondered about how the
24 Douglas family must have spent their family reunions
25 and their holidays together in the antebellum years

1 that followed his defeat for reelection to the Court.

2 I feel enormously privileged for a fleeting
3 time to serve the Michigan Supreme Court as its Chief
4 Justice. My own overlooked legacy on that court may
5 well be that I have been the longest serving ever
6 junior member of the court, having held that august
7 position for more than nine years. Now, we don't have
8 much in the way of tradition that our junior members
9 must do anything particularly demeaning, although our
10 current junior member, Justice Larsen, does an
11 admirable job of supplying her colleagues with water
12 and soda at our weekly conferences.

13 The principal burden borne by the junior
14 member is that he or she far more often than the other
15 members of the court, the more senior members, is
16 required to cast the initial vote being cast on cases
17 being considered at our weekly conferences. That is,
18 the junior member must have settled, at least
19 tentatively, upon a position in resolving the most
20 difficult cases and controversies within our appellate
21 system and be reasonably able to articulate these
22 positions for the edification of his or her
23 colleagues, and that's not always an easy task, for
24 it's much easier to cast one's vote as the second or
25 third justice or the seventh justice around the table,

1 for example, by an emphatic, I agree with Justice
2 Larsen, or, Justice Larsen makes a good point, or, I
3 have reflected upon this matter at length, and I have
4 reached the same conclusion as Justice Larsen, or
5 perhaps by the ever useful rejoinder, Ditto. So it
6 was a great relief after nine years on the court that
7 I finally gained seniority to be able at our
8 conferences to pause, to furrow my brow, and to opine
9 to my colleagues, Me to.

10 And so just as we will imminently, I believe,
11 celebrate the appointment of a new justice with the
12 departure of Bob Young, let us pause for a moment and
13 celebrate the imminent appointment of a new junior
14 justice. I know that Justice Larsen herself would be
15 in the forefront of that celebration.

16 For the past 18 years on the Michigan
17 Supreme Court, and even now as its Chief Justice, I
18 have always viewed it as my first responsibility to
19 contribute to the responsible development of a body of
20 law in Michigan, one that was faithful to our common
21 law traditions, faithful to the statutes of our
22 represented institutions, and faithful to our state
23 and federal constitutional values and commands.

24 Doubtless, I have been imperfect in these
25 efforts, and I am certainly cognizant that some of you

1 may feel that I have been highly imperfect in these
2 efforts, but there is not a case among the 50,000 or
3 so that have come to the court during my tenure in
4 which these considerations have not weighed upon me.

5 How do I exercise what the first great Chief
6 Justice of the United States, John Marshall, described
7 as the judicial power, the power to say what the law
8 is on behalf of that branch which exercises the
9 legislative power, the authority to say what the law
10 ought to be. How best in a given dispute, therefore,
11 is the "is" power carried out in support of the
12 "ought" power?

13 But there have also been during this time a
14 number of nonjurist credential considerations that I
15 have also sought to bring to bear in each of my cases,
16 not least for the reason that I expressly committed
17 myself to doing that in my public investiture in 1999,
18 and these other considerations have always seemed to
19 me to be necessary to show respect for litigants.

20 Again, I do not suggest that I have
21 invariably carried out these tasks ideally in every
22 case, but just that they have invariably been a part
23 of my thought processes in addressing and attempting
24 responsibly to solve these cases.

25 First, I have always sought to recognize that

1 for the parties involved in litigation, such
2 litigation may well be the most important thing in
3 their lives at the moment. Individuals involved in
4 litigation may lose sleep, they may be preoccupied
5 with their cases during their waking hours, their
6 relationships with their friends and families may
7 suffer, and their performances in their jobs and in
8 their other daily obligations may be affected. Their
9 fortunes, their ambitions, the integrity of their
10 family, and in the case of criminal defendants, even
11 their liberties may, of course, be at stake. I have
12 tried my best not to lose sight of these realities, to
13 avoid the categorization or extraction of cases in
14 ways that obscured the fundamental individuality and
15 personality of what was in dispute.

16 Secondly, approximately 50 percent of all the
17 parties in the cases coming before us -- this is by
18 mathematical conclusion -- are going to be
19 disappointed by the outcome of the appellate process.
20 Many of these parties will have gone to trial, pursued
21 an appeal, and then have pursued a second appeal.
22 They will have done this at considerable expense,
23 time, resources, and psychological toll, and they will
24 have lost, and for that reason I have always sought to
25 write the orders and the opinions for which I have

1 been responsible to the extent reasonably possible
2 with the losing party. That has been the target
3 audience in my mind.

4 The winning party, I often visualized, would
5 skip to the affirmed or reversed language at the end
6 of the opinion and draw their satisfaction from a
7 favorable result. However, it is the losing party
8 that needs to know that the Court has truly
9 comprehended the complexities and the nuances of their
10 arguments and that they lost, not because the Court
11 was predisposed or prejudiced against them or disliked
12 the cut of their jib, but only because the law was
13 simply not viewed as sustaining their position.

14 Now, I have utterly no illusions that my
15 opinions have persuaded or even assuaged many losing
16 parties, but it is nonetheless what I have always
17 borne in my mind in writing my statements and
18 opinions, as well as in particular when I choose to
19 write dissenting opinions setting forth my
20 perspectives.

21 And third, I am inclined to be relatively
22 actively engaged in oral argument because, as a
23 general rule, I believe the parties are entitled to a
24 fair opportunity to respond to what the Court may view
25 as the strongest or the most compelling arguments of

1 the opposing side. They deserve not to be blind-sided
2 in our opinions by issues that have unexpectedly
3 arisen or captured the attention of the Court or of
4 individual justices. Many times such questioning for
5 me will come in the form of devil's advocate
6 inquiries, and other times not.

7 But the responsibilities of the Chief Justice
8 are most focused upon the administrative agenda of the
9 Court, its obligations to superintend the trial courts
10 and the judicial process.

11 Let me share now a few of the matters in this
12 regard that may be of some interest to the Bar and the
13 Assembly, although, in truth, I cannot conceive that
14 the variety of your interests and priorities does not
15 extend to almost the entirety of our administrative
16 responsibilities.

17 Initially let me emphasize and make as clear
18 as possible that the views of this Assembly and this
19 Bar association are always invited by the Court,
20 always welcome by the Court when they are received,
21 and always taken into consideration by the Court.
22 Indeed, the exercise of our administrative and
23 superintending duties as the court of last resort of
24 this state simply cannot be done in a sufficiently
25 well-informed manner absent your comments and

1 perspectives. Your insights and experiences are
2 unfaithfully recognized at our administrative
3 conferences and are invariably the subject of
4 respectful discussion at these same conferences.
5 Indeed, individually or collectively, your views are
6 sought out and welcomed, and each one of you has a
7 standing invitation to share your thoughts in writing
8 or even in person at our regularly scheduled public
9 hearings.

10 Let me then briefly set forth just a few
11 substantive issues that are currently or that will
12 imminently be the subject of the Court's
13 administrative docket that have either been raised by
14 this Assembly or that may otherwise be of some
15 interest. I look at your agenda today, and I can see
16 that there are other matters that in the very near
17 future that may well be placed upon our administrative
18 docket, and we look forward to those, as we do the
19 matters that have already been placed on that docket.

20 Considering, for example, the matter of
21 limited scope representation. A proposal in this
22 regard was recently issued for public comment and is
23 accompanied by an alternative that requires that this
24 process be achieved in writing, except in limited
25 circumstances.

1 Concerning the Rules of Professional Conduct
2 1.5, we recently clarified that enhanced or
3 value-added fees are not allowable in domestic
4 relations cases. I understand that that is unlikely
5 to be a matter, a consensus matter here. We have
6 heard from both sides among the relevant parts of the
7 Bar, but that was the decision we eventually reached.
8 Much, not all, of the concern, focused upon whether or
9 not this class of cases, domestic relations cases,
10 would be made even more contentious and disputative by
11 the introduction of such fees and the additional
12 personal investment that would be introduced on the
13 part of the attorneys in those cases.

14 Concerning e-filing, a statewide system is
15 now under construction that contemplates a single user
16 sign-on process, and pilot courts are now operating
17 within many of the state's largest jurisdictions and
18 are ready to begin working with SCAO's selected vendor
19 once the present contractual discussions that are
20 ongoing are finalized.

21 Concerning the use of videoconferencing, we
22 have been and are continuing to expand the realm of
23 cases and the types of proceedings in which such
24 equipment may properly be employed.

25 Concerning the Attorney Grievance Commission

1 and the Attorney Discipline Board, as to each of which
2 there, unfortunately, remains some Michiganders who
3 wrongly believe that the Court is intent on protecting
4 the misbehavior of members of the Bar. Concerning
5 those matters, we are always engaged in exploring our
6 processes, due process and what constitutes
7 proportionate sanctions, precisely because we wish to
8 clearly distinguish between the very few misbehaving
9 lawyers in our midsts and the overwhelming number who
10 are not. We are similarly in the process of reviewing
11 significant reforms of the Judicial Tenure Commission
12 process as well.

13 Concerning other matters that have been
14 specifically raised by the Assembly, several that
15 remain under consideration pertain to the service of
16 minor guardianship reports, the clarification of
17 procedures for protective order motions, requirements
18 of lawyer disclosures, parts of legal advertising,
19 fees for character and fitness investigations as part
20 of the Bar application process, and specific
21 counseling problems that might sometimes be relevant
22 to the Michigan Medical Marijuana Act. That is a very
23 difficult statute, and to me is kind of the poster
24 child for why the legislative process as a general
25 matter ought to be the default process for enacting

1 the statutes of the state. We have had a number of
2 cases trying to make the best sense that we could,
3 trying to give some rationale understanding to
4 provisions of that act, and it's not always been easy,
5 particularly for a court that's inclined to be
6 deferential and faithful to the law's architects, in
7 those cases the voters of the states going to the poll
8 and voting upon these measures.

9 Concerning other aspects of the Michigan
10 judiciary, we will also continue to focus upon our
11 performance measures of individual judges and courts
12 to see if these can be strengthened to focus upon
13 aspects of judicial conduct that are most genuinely
14 relevant to our branch's work in resolving disputes.
15 We are looking much more closely at questions arising
16 out of courthouse and courtroom security, particularly
17 in light of the tragedy last year in which two court
18 security officers were killed in Berrien County. And
19 we are in the process of preparing, as we do every
20 other year, new chief judge selections on the trial
21 courts around the state of Michigan.

22 Finally, let me express what I think is going
23 to be my court's very strong support in working very
24 closely with this body to consider how we might move
25 forward on the recommendations of your Task Force on

1 21st Century Law Practice. Janet Welch and I have met
2 and discussed this on several occasions, and I believe
3 that we are in agreement that the Bar is genuinely
4 facing a growing challenge in matching legal resources
5 with those who are in need of these resources, what
6 the report describes as an increasingly dysfunctional
7 legal marketplace, one that seems to me to be
8 increasingly impacting a larger and larger swath of
9 the middle class.

10 Seeking to respond to this may require
11 consideration of any number of the remarkably broad
12 array of innovative, creative, and
13 marketplace-oriented initiatives that have been raised
14 by the task force. Almost certainly with your
15 continued commitment to bring our legal culture into
16 accord with contemporary needs, implementation of many
17 of the proposals of the task force will become an
18 increasingly high priority of our court, and I look
19 forward just in the next few days with continuing our
20 discussions with Janet and myself and communicating
21 those discussions to the other members of my court, as
22 well as to the members of the Assembly.

23 As Chief Justice, my mission is then this: I
24 wish to be accessible to Bench and Bar. I wish for my
25 court and the State Bar to be joined in common purpose

1 in strengthening our system on behalf of our citizens.
2 I wish for the Court to provide the wisest and
3 steadiest leadership it can in pursuit of the equal
4 rule of law. I wish to maintain and strengthen where
5 we can in ways large and small a Bench and Bar of
6 which all of us can be proud, and I wish to maintain
7 and strengthen where we can in ways large and small a
8 Bar in which the people we serve can have the optimum
9 trust and confidence in us, one in which in particular
10 in our courtrooms there is not only sound legal
11 judgment demonstrated but also what some people would
12 view as the lesser concerns of punctuality, courtesy,
13 and expedition, and I don't view them as lesser
14 concerns.

15 And, of course, I wish to maintain and
16 continue the Bench and Bar in Michigan as one that I
17 believe is viewed as a leading model around the
18 country, as one that has been innovative and creative
19 in looking to new means by which to enhance judicial
20 federalism. While innovating and experimenting and
21 adopting new technologies where the grounds for doing
22 so yet one that is also confident and sensible in
23 recognizing where institutions and practices must be
24 maintained and preserved because they have served the
25 people in our system well.

1 I represent a court in which I have six
2 dedicated, independent-minded colleagues, and I am no
3 more a free agent than any of you in carrying out my
4 responsibilities of the Court, but the mission I have
5 just described supplies at least the general sense of
6 direction and purpose to which I hope to make at least
7 a small contribution. When I addressed all of our new
8 judges in the state, the ones who have been appointed
9 or elected in the last year, I urged them not ever to
10 forget the sense of pride that they felt and their
11 families felt upon being first appointed or elected to
12 the bench. I urged them not to lose sight of the
13 fundamental relationship between themselves and we the
14 people in whose names they have been allowed to
15 exercise one of the three great governmental powers of
16 Michigan, and I urged them to avoid the hubris and the
17 judicial temptation to which each of us is sometimes
18 so very susceptible.

19 I thank all of you again for the invitation
20 to address you this morning. I am very honored to be
21 here, and, of course, I look forward to working with
22 this Assembly and with the entire leadership of the
23 State Bar in making ours the best system of Bench and
24 Bar it can be, comprised of honorable and hard-working
25 and conscientious and responsible persons, each of us

1 custodians of the law and accountable to those people
2 that we serve.

3 Once again, please don't ever hesitate to
4 communicate to me and share your thoughts and ideas as
5 to how, again, in ways large and small, we can
6 continue to make progress, all of us. Thank you very
7 much.

8 (Applause.)

9 CHAIRPERSON HERRMANN: Thank you, Chief
10 Justice Markman. We are most appreciative of your
11 presence today, particularly on a Saturday.

12 CHIEF JUSTICE MARKMAN: Can I have my cup
13 back, by the way?

14 CHAIRPERSON HERRMANN: Absolutely.

15 I would now like to call Michael Brown on
16 behalf of the Nominating and Awards Committee to
17 address both the filling of vacancies and also
18 approval of our 2017 award recipients.

19 MR. BROWN: The Nomination and Awards
20 Committee has nominated a slate to fill the vacancies.
21 It's in this yellow sheet that was distributed to you
22 this morning. I would move to approve the slate of
23 nominees.

24 CHAIRPERSON HERRMANN: Do we have a second?

25 VOICE: Second.

1 CHAIRPERSON HERRMANN: All in favor of
2 welcoming these new members to the Representative
3 Assembly, say aye.

4 Any opposed.

5 A round of applause please as we welcome our
6 new members.

7 (Applause.)

8 CHAIRPERSON HERRMANN: And our new members,
9 who I believe are seated on the outskirts currently,
10 would you please come forward and join the circuits
11 you represent at this time. Welcome.

12 Mr. Brown, the floor remains yours to address
13 approval of our 2017 award recipients.

14 MR. BROWN: Thank you. The committee has
15 nominated F. Martin Tieber for the Unsung Hero Award
16 and has nominated Mark Teicher for the Michael Franck
17 Award. I would move to approve these nominees.

18 CHAIRPERSON HERRMANN: Do we have a second
19 for these award recipient nominees?

20 VOICE: Support.

21 CHAIRPERSON HERRMANN: Any discussion
22 regarding our nominees for these prestigious awards?
23 Hearing none, all in favor of bestowing these awards
24 as designated say aye.

25 Any opposed or abstained.

1 The motion passes. Thank you, Mr. Brown.

2 I would like to thank you all for attending
3 today, and not just being present on this April
4 Saturday, but also for all of the work you do for this
5 Assembly and for the State Bar on a regular basis.

6 Earlier this week a former classmate of mine
7 shared an article with me written by Jon Rennie, who
8 served as an officer on U.S.S. Tennessee, an
9 Ohio-class ballistic missile submarine. In his
10 article, Jon explained some of the leadership lessons
11 he learned from this experience. I found them
12 remarkably applicable to what we experience as members
13 of the Bar. You may ask how is a lawyer remotely like
14 serving on a submarine. If you think about it, the
15 similarities are uncanny.

16 As lawyers, we simultaneously live both
17 intensely public and intensely private lives. We
18 operate above and below the surface, in and out of the
19 public eye. In our public or surface mode we are
20 comforting to some, perhaps threatening to others, yet
21 we are perpetually in the public eye. And in our
22 private, or submerged mode, we operate at hidden
23 depths of great pressure, often for long periods of
24 time as we honor our clients' confidences and carry
25 their burdens with us, unknown and unseen by the

1 public eye.

2 And most importantly, we are all very much on
3 the same ship together. We may have varying skill
4 sets and different levels of experience, but our
5 individual contributions can make or break our public
6 image and our overall ability to accomplish our
7 mission, service to the public.

8 So now I would like to take a deeper dive, if
9 you will, and consider a few of Jon's leadership
10 points and how they relate to us.

11 First, run to the fire. On a submarine a
12 fire not immediately extinguished puts everyone in
13 peril, hence one of the first things they teach you is
14 to run toward and not away from a fire, and so it is
15 in our service to the public. Attacking problems
16 quickly and decisively is critical, not only in our
17 service to individual clients, but also in our larger
18 collective ability to serve the public.

19 And we face numerous fires. Ensuring
20 adequate funding for legal services to those in need,
21 helping our new lawyers to be practice-ready, ensuring
22 meaningful continuing education to all of our other
23 lawyers, advancing diversity inclusiveness and
24 innovating new methods for the delivery of legal
25 services, and we are going to address some of these

1 fires later today.

2 Here is another point, get qualified. The
3 more skills you know, the more valuable you are on a
4 submarine. The more people who can do a job, the more
5 flexible and the better quality of life enjoyed by
6 everyone. This means it's in everyone's interest to
7 train new crew members, and the same applies to our
8 profession.

9 Whether it's the junior lawyer in your own
10 firm or the solo practitioner just starting out across
11 town, we as a profession will only benefit by
12 educating our next generation of lawyers, as well as
13 ourselves, and, as I mentioned, the next tenet,
14 everyone is in the same boat. You quickly learn on a
15 submarine that no one is better than anyone else.
16 There is no special treatment. Everyone eats the same
17 food, everyone wears the same uniform, everyone sleeps
18 in the same size bed. If something is unavailable to
19 one person, it's unavailable to the entire crew. In
20 this environment, there is no escape from a bad
21 colleague. You must learn to get along with those who
22 differ from you, and you must learn to resolve
23 conflicts. The basic lesson here is to treat everyone
24 with respect.

25 The details of our daily lives may be a bit

1 different than life on a submarine, but as a
2 profession we are in this together. The shortcomings
3 and successes of each of us impact the whole. We must
4 continually strive to find win/win outcomes.

5 Next, the ability to learn quickly is better
6 than being smart. The volume of information you have
7 to learn on a submarine is daunting from reactor plant
8 manuals to hydraulic systems to strategy and tactics,
9 and you have to know it all. And so it is with our
10 profession. But you can't get there without industry.
11 You can't get there without adapting to new trends,
12 changing information, and developing data.

13 Our profession is undergoing significant
14 change, and it's happening fast. It's not good enough
15 to be smart. You have to be willing to get out of
16 your comfort zone and learn. Through the efforts of
17 the 21st Century Practice Task Force and the Strategic
18 Plan we will address later today, we are fostering an
19 environment conducive to quick learning.

20 Final point I will address today, young
21 people are amazing. The average age on a submarine is
22 22 years old. Think about that. You are given
23 significant responsibility at a very young age, and,
24 again, same in our profession really. Yet I hear much
25 these days about the next generation not being

1 sufficiently engaged, unwilling to work hard or
2 distracted by social media. Hogwash. I am
3 continually amazed by the dedication of our younger
4 lawyers who want to learn, who want to excel, and who
5 want to contribute to our profession, and they do
6 that, and many of them are in this room today. And on
7 top of all that, they stand ready to teach old dogs
8 new tricks.

9 If you have your doubts, give Shenique Moss a
10 call and ask her what the Young Lawyers are up to
11 these days. She will tell you about the upcoming 10th
12 annual Young Lawyers Summit, replete with litigation
13 boot camp and professional development events,
14 networking gatherings and camaraderie, or she will
15 tell you about the numerous CLE events they host every
16 year, or their devotion to fundraising for important
17 causes like Access to Justice. The only thing the
18 Young Lawyers can't do is defeat the Board of
19 Commissioners in bowling.

20 For many years now I have been intensely
21 proud to be on the same boat with all of you. Please
22 join me now in running to the fire. Thank you.

23 (Applause.)

24 CHAIRPERSON HERRMANN: At this point I would
25 like to welcome our executive director, Janet Welch,

1 who will address the Assembly.

2 EXECUTIVE DIRECTOR WELCH: Good morning,
3 everyone. Happy Earth Day. I am really sorry that
4 the Chief Justice had to leave. I wanted to tell him
5 how personally disappointed I was in his remarks. One
6 always hopes when one has a place on an agenda as a
7 speaker that the speakers that precede them are not
8 exceptionally thoughtful, witty, charming, and he
9 certainly deflated my hopes in that regard, and that
10 was compounded by Fred.

11 Seriously, I am tremendously grateful by the
12 interest and the engagement of the Chief Justice in
13 the State Bar of Michigan's mission and the way we are
14 going about accomplishing it in the 21st century. I
15 think it portends really great things in the immediate
16 future, and one evidence of that, of course, is the
17 Court acting quickly on publishing the limited scope
18 representation rules for comments that this Assembly
19 sent to them last fall.

20 So my remarks this morning are targeted
21 towards the change that has happened since we last met
22 six months ago, what we have been doing. I want to
23 focus on the work that we are undertaking to build a
24 Bar-based online legal marketplace. We are calling it
25 an online legal marketplace center, and you will see

1 the groundwork for that expressed in great detail in
2 the 21st Century Practice Task Force Plan and ratified
3 in the Strategic Plan.

4 You have heard me speak many times about the
5 role that the online member directory and its enhanced
6 profiles plays in helping you connect with the public
7 better and making it easier for the public to find a
8 qualified lawyer in Michigan. That's sort of the
9 ground floor of what we are trying to build, and the
10 grand vision is what I would call sort of the Amazon
11 of legal services for people, connecting actually all
12 the State Bars and their capacity to create something
13 that's a really compelling, effortless, beautiful
14 place for people to find lawyers on both the website
15 and mobile apps.

16 Let me start by asking how many of you have
17 already filled out your online enhanced profile
18 through the directory? Show of hands. So that's
19 good. That's a start. I want to urge all of you to
20 take that step.

21 How many of you are on LinkedIn. More. So
22 think of the State Bar's directory as sort of a very
23 targeted LinkedIn. It not only, like LinkedIn, will
24 help you connect with your colleagues in Michigan and
25 outside of Michigan, but it also is interfacing to the

1 public, which is a virtue that LinkedIn does not have
2 for you.

3 So if you haven't done it, it is not
4 difficult, and it's free. If you find yourself not
5 being able to negotiate the online help, there is also
6 direct help that you can get in filling out your
7 profile. Let me know, and I will help you. This is
8 not only important to you if you are seeking clients
9 and seeking connections, not only is it a valuable
10 resource, but if you are not, I mean, if you are happy
11 with the state of your business at this point or you
12 don't need clients and that's not the way you practice
13 law, it's still valuable to fill out the profile to
14 help enhance your professional presence, but it also
15 helps the State Bar of Michigan by making us a more
16 attractive search engine magnet. And for those of
17 you, if there are any of you who don't know what it
18 means to be an attractive search engine magnet, I will
19 translate for you, it just means do it.

20 So there are lots of reasons for the
21 State Bar to be building this online legal
22 marketplace, but this one is essential. The public
23 has always turned to the State Bar for help in finding
24 good legal help, and if we don't help them in the way
25 that they are using now, online and through mobile

1 apps, if we don't make that adaptation, we will lose
2 them as a connection. They will stop looking to the
3 State Bar. They will stop looking to local bars for a
4 resource.

5 So this is the moment to do it. This is the
6 moment to run to the fire, and make no mistake about
7 it, dealing with technology, you will get burned.
8 There are lots of pratfalls and difficulties in
9 dealing with technology, making technology work on
10 your behalf.

11 Because we are a Bar association committed to
12 access to justice for all, our online legal
13 marketplace has to have answers and help for everyone
14 looking for legal help, even those who can't afford
15 legal services, and that distinguishes us from the
16 commercial folks who are out trying to create a
17 profit-based find-a-lawyer service.

18 You will hear, after I am done, maybe after
19 our break, about the growing crisis in our system of
20 providing legal services to the poor. We have a very
21 distinguished panel, and they will tell you about your
22 potential role in helping protect and expand access to
23 justice.

24 The commercial find-a-lawyer services that
25 don't need to be thinking about the nonpaying poor

1 have an advantage in that regard. They can be really
2 focused on where the money is, but they don't have our
3 credibility, and they don't have our respectability,
4 and they don't have your interests in mind. So we
5 embrace the burden of creating that marketplace, as
6 our ethic rules insist, and because it's the right
7 thing to do.

8 So I have a slide. It's the one before,
9 Carrie. There we go. The panel that follows me I
10 think will expand on some of the statistics concerning
11 the need, the unmet legal need in Michigan in
12 particular, but this is a statistic from 2014 from the
13 research of Professor Gillian Hadfield, who at the
14 moment is considered the leading academic in legal
15 services delivery and its economics. She is a
16 professor of law and economics at the University of
17 Southern California.

18 So her research showed that there were
19 12.5 million households below the poverty line and
20 that those 12.5 million households had at least one
21 legal problem, and that if you were able to come up
22 with one hour of help, one hour of help for a legal
23 problem for those households, that's the equivalent of
24 \$3.1 million of legal service, and to provide that we
25 would need every active attorney in the U.S. providing

1 70 pro bono hours. Obviously we are not there.

2 Can you go back to the ethics rules for a
3 second, just to show sort of what the magnitude of
4 what we are trying to address is. But our burden is
5 not just the poor. As our ethical rules, the Michigan
6 Rules of Professional Conduct also tell us we need to
7 be concerned about people who are not poor but also
8 can't afford adequate legal representation, and that
9 really is the demographic that we are focusing on with
10 lawyer referral and bundling together resources,
11 including limited scope representation in our effort
12 to create this online legal resource center.

13 So the next slide shows Professor Hadfield's
14 representation of how our delivery of legal services
15 is skewed toward people who have money. So on the
16 left axis is rates, hourly rates, and then the bottom
17 axis shows the people who can afford up to \$600 of
18 billable hours, and everyone else being off in the
19 direction of only probably being able to afford about
20 a \$40 billable hour.

21 This is a bit controversial, and she hasn't
22 totally convinced me, but her estimate in 2014 was
23 that a \$40 billable hour charge really covers the
24 basic services, and the stuff above that typically is
25 not law stuff. It's infrastructure. It's, you know,

1 the building and paying for things that --
2 advertising, marketing, not the actual provision of a
3 legal answer, and then above 200 she says you are just
4 paying for reputation and exceptional ability.

5 So I put this up there just to show that,
6 again, the for-profit commercial find-a-lawyer folks
7 are really trying to serve everyone else who has
8 money, and that's where we are headed as well in our
9 lawyer referral market.

10 So Professor Hadfield has an answer. She is
11 very anti-Bar association, and if you have heard her
12 speak, she thinks that ethical rules are standing in
13 the way of law firms innovating to be able to serve
14 the market that isn't being served under the current
15 structure, and if you can put up the next line,
16 Carrie, this is what she is telling law firms to do,
17 to think about scaling their services to make them
18 cheaper, building their brand and reputation, focusing
19 on that, better customer service, use technology to
20 provide that, deeper market research into when clients
21 want. Process and protocol design, that's sort of the
22 lean law that you are seeing increasingly touted, and
23 innovation.

24 And I put this up here because it seems to me
25 that the entity that is best suited to deliver all of

1 this, particularly starting with SCAO, are State Bar
2 associations.

3 So my next conversation with Professor
4 Hadfield, I am going to say, We are doing this, and
5 this is why you have the right answer. You are just
6 asking for it to be delivered at the wrong place.

7 So we can and we will deliver. Again, the
8 goal is an attractive, credible, state-of-the-art,
9 online legal marketplace automated to make it easy and
10 efficient for both the public and our members to use.
11 You can already begin to be part of the that with your
12 enhanced profile.

13 We started a pilot program to test changes to
14 our lawyer referral program to adapt it to the new
15 conditions at legal service marketing and to expand it
16 to the untapped market that I have been referring to.

17 Please pay attention to our communications
18 about changes in the lawyer referral service and begin
19 to think about how your constituents might take
20 advantage of the changes in the lawyer referral
21 program.

22 So if you are truly a Representative Assembly
23 and I believe you are -- some of you are sitting there
24 thinking, boy, this is dangerous stuff, you know, too
25 soon, too fast maybe, or the State Bar should stick to

1 its committee. Good. We need the people who are
2 expressing that point of view in order to do it right.

3 Some of you are thinking this is too slow,
4 it's too late, we can't be that nimble, and the crisis
5 is here, we are running behind, and I would say good,
6 we need your fist in our back to keep going, and the
7 rest of you are probably somewhere in between those
8 two points of view. I sort of waiver both back and
9 forth between them from time to time.

10 So I agree with Fred. It's time to run to
11 the fire. I don't have a eloquent ending for you, but
12 what I do have to offer is, because this is a
13 non-ending conversation we are going to have about
14 continuing improvement, and it will not have a clear
15 end point and a victory, but I do have a quick
16 two-minute video that I thought I would offer to you
17 sort of to lighten things up after the magnitude of
18 what I have been talking about and to show you that we
19 do appreciate that there are dangers in technology if
20 untethered from reality and from human nature, and
21 this will sort of give you a taste also of what we are
22 experiencing behind the scenes. Hopefully this will
23 send you into the break or the panel with a smile on
24 your face, and if it doesn't work, that will be
25 ironic.

1 (Video played 10:34 a.m. - 10:37 a.m.)

2 (Applause.)

3 CHAIRPERSON HERRMANN: Thank you very much,
4 Janet, although that was perhaps a little too close to
5 home.

6 You will be happy to hear at this point on
7 our schedule we are going to take a short break. We
8 are a bit ahead of schedule, which is good news, so I
9 would please ask you to limit the break to ten
10 minutes, and if we could be back in by ten till, that
11 would be ideal. And just a reminder, for any of you
12 who do not yet have voting clickers, now is your
13 chance to please rush out that door and see Jeanette
14 and sign up for one and bring it back in with you when
15 you come back from the break.

16 (Break taken 10:38 a.m. to 10:55 a.m.)

17 CHAIRPERSON HERRMANN: Everyone, if you would
18 please take your seats now, I would like to call our
19 meeting back to order.

20 At this the point it is my pleasure to
21 introduce our Vice Chair, Joe McGill, who will in turn
22 introduce our special panel that will address the
23 challenges facing legal aid programs. While this
24 presentation is informational only, there won't be a
25 vote, the absence of a vote does not mean that no

1 action is required on our part, and I am sure you will
2 agree after you hear the panel's presentation. Joe.

3 MR. MCGILL: Good morning, everyone, and,
4 again, as Fred mentioned, I am Joe McGill I am
5 Vice Chair of the Assembly. Thank you very much for
6 attending this morning. I know it's a bit of a drag
7 on your time, but we appreciate your being here, and
8 we are looking forward to a very interesting and
9 robust discussion from the panel about legal aid.

10 First and foremost, our panel members
11 immediately to my right are Jennifer Bentley, who is
12 the executive director of the Michigan State Bar
13 Foundation. Jennifer started as the executive this
14 past January. She started working at legal aid in
15 1997, first as a staff attorney, then a managing
16 attorney, and most recently was the development
17 director of the Michigan Advocacy Program.

18 Seated next to Jennifer is immediate past
19 president of the State Bar of Michigan, Lori Buiteweg,
20 whose qualifications and awards are too long to list.
21 Lori has told me that she handles at least one
22 pro bono family law matter at any given time. When
23 she meets with the client who is eligible for legal
24 aid, she helps the client to make the connection with
25 their local legal aid office where the client is

1 qualified to receive pro bono representation. This
2 process is sometimes referred to as a reverse referral
3 and is a great example of how local practitioners can
4 leverage the resources of the legal aid office to help
5 the indigent.

6 Immediately next to Lori is Aaron Burrell.
7 Aaron is a partner with the Dickinson Wright firm and
8 serves as chairman of the Special Issues Committee of
9 the Representative Assembly. He is co-chair of the
10 State Bar of Michigan's Equal Access to Justice
11 Initiative and a member of the State Bar of Michigan's
12 Committee on Justice Initiatives.

13 He is an immediate past president of the
14 Augustus Straker Bar Association, which is a diverse
15 group of lawyers in Oakland County, Michigan. He is
16 the director of the Oakland County Bar Association and
17 sits on the organization's diversity committee. He
18 also is a charter school board president.

19 Myself, I served on the Pro Bono Committee
20 several years ago, and I was also the pro bono partner
21 for a 100-plus member law firm in the City of Detroit,
22 which generally meant that I had the honor of doing
23 pro bono work for a hundred other lawyers, which was
24 a challenge, but it was a great experience. I had the
25 opportunity to try several pro bono cases that

1 involved 1983 issues, and I was also involved in
2 several appeals of veterans benefit claims that ended
3 up before the Veterans Court of Appeals in Washington,
4 D.C.

5 So with that, I will turn it over to
6 Jennifer.

7 MS. BENTLEY: I usually don't need a
8 microphone, so if I am being too loud, you can signal
9 to me.

10 I want to thank the Representative Assembly,
11 thank you Joe, and the Representative Assembly for
12 inviting us to speak today. If you have ever worked
13 at a nonprofit organization, you know that you are
14 usually calling people on the phone, can I come and
15 speak to you about legal aid or about your mission,
16 and so being invited to a group of leaders in their
17 community to talk about legal aid is really a welcomed
18 opportunity for the legal aid community and for the
19 Michigan State Bar Foundation.

20 I appreciated the analogy to being under fire
21 today. A couple weeks after I started as the
22 executive director of the Michigan State Bar
23 Foundation, there was an announcement that the
24 President was proposing a complete elimination of the
25 Legal Services Corporation and the federal funding for

1 legal aid in Michigan, and that adversely affects the
2 legal aid programs in Michigan.

3 I know that the majority of you are familiar
4 with legal aid and the legal aid organizations that
5 serve your community. Some of you work for legal aid,
6 some of you volunteer your time for legal aid, some of
7 you sit on the boards of legal aid organizations, some
8 of you donate to legal aid. So I am going to quickly
9 touch on the legal aid delivery system in Michigan and
10 talk about the need in Michigan.

11 Legal aid provides free civil legal services,
12 so in civil cases. There are income requirements, 125
13 percent of the federal poverty guidelines. For a
14 family of three, that's about \$25,000 a year.

15 There are five regional federally-funded
16 legal aid programs in Michigan, and those are listed
17 on this slide. Lakeshore Legal Aid covers the Metro
18 Detroit area. Legal Aid of Western Michigan where the
19 W. is on the map. Legal Services of Eastern Michigan
20 covers the Flint, Saginaw, Bay area. Legal Services
21 of Northern Michigan covers the 36 counties in the
22 U.P. and in Northern Michigan. The Michigan Advocacy
23 Program covers South Central Michigan, and then
24 Michigan Indian Legal Services is a statewide program
25 that serves Native Americans. There is also federal

1 funding to serve seasonal and migrant farm workers
2 that is administered by the Michigan Advocacy Program.

3 Those are the federally funded legal aid
4 programs in Michigan. There are also several legal
5 aid programs in Michigan providing statewide services,
6 and those are listed on the slide, as well as a ton of
7 regional and specialty programs that partner with the
8 federally-funded legal aid programs.

9 You have probably heard someone say, I went
10 to legal aid and they couldn't help me. Or you have
11 heard someone say, I heard legal aid doesn't do that
12 type of case. There are 190 legal aid lawyers in
13 Michigan, and legal aid offices handled over 55,000
14 cases last year for low income families.

15 There are over 2 million people in Michigan
16 that qualify for free civil legal services. So it is
17 true, the 190 lawyers in Michigan that are providing
18 free civil legal aid cannot help everyone that needs
19 and qualifies for legal assistance.

20 In your handouts there is a sheet of good
21 stories. It looks like this. And these are real
22 people, real stories of meritorious legal cases that
23 legal aid offices and pro bono attorneys throughout
24 Michigan handled last year, and for each of these
25 stories there are approximately three families who had

1 similar critical legal needs who legal aid offices
2 could not help last year.

3 At my office, when I was practicing at a
4 legal aid office, we had weekly case acceptance
5 meetings where we sat down and talked about all the
6 clients that had come in that week and completed an
7 intake and asked for help. We had to decide who we
8 could help, and we knew we couldn't help everyone.
9 And it was hard. It was really hard.

10 We knew that if we couldn't help someone,
11 they had nowhere else to turn. We knew that if we did
12 help someone, it would make a significant, meaningful
13 difference in their lives. We could keep them in
14 their homes possibly. We could help them leave an
15 abusive situation. We could get them needed public
16 benefits. And the work that we did really, really,
17 when we were able to provide representation to low
18 income families, made a significant difference in
19 their lives.

20 To deal with the demand for legal services,
21 legal aid offices have developed priorities. Most
22 legal aid offices prioritize homeless prevention,
23 domestic violence, public benefits for individuals
24 with disabilities, and cases for older adults.

25 And then the next slide talks about how legal

1 aid programs have collaborated together. Legal aid
2 programs work with the State Bar of Michigan, the
3 court, community partners to increase access to
4 justice for all.

5 Legal aid offices talk about a continuum of
6 services and getting individuals the help they need at
7 the level they need it, when they need it. For
8 example, someone might be able to get some of their
9 questions answered on the Michigan Legal Help website,
10 or someone might be able to get something resolved by
11 calling a help line or visiting a self-help center or
12 getting assistance at one of the court-based projects.
13 This is an efficient way legal officers have worked
14 with courts and the State Bar to get people the help
15 they need while freeing up the legal aid attorney's
16 time to deal with full representation cases.

17 The next slide shows the funding for legal
18 aid in Michigan. About 38 percent of the current
19 funding comes from the federal government. This
20 percentage is higher for the communities with less
21 local resources. Legal aid organizations also receive
22 funding from filing fees, IOLTA, and a variety of
23 other funding -- United Ways, city, county, state
24 foundations, the Access to Justice Fund.

25 The next slide shows that the need for legal

1 aid is a lot greater than existing funding for legal
2 aid. In preparing for this presentation we talked a
3 lot about unmet need and how to quantify that, and
4 because legal aid organizations have developed these
5 priorities and sometimes don't do intake for every
6 civil legal need that is out there, it is hard to
7 quantify the exact legal need in our community, but
8 the ABA estimates that only 20 percent of the legal
9 needs of poor people are being met by the current
10 delivery structure.

11 So Michigan legal aid offices are working
12 together with others, as I said before, to increase
13 resources to legal aid and to also increase
14 accessibility. And I am personally very grateful to
15 the State Bar for taking leadership and the critical
16 role you play in assuring access to justice. I know
17 many of you here help in this effort by sitting on
18 committees or providing leadership in your local
19 communities or doing pro bono and giving financial
20 donations.

21 And the next speaker is someone who has done
22 all those things for the State Bar and also in the
23 local community, Lori Buiteweg.

24 MS. BUITEWEG: Thanks, Jennifer. It's so
25 great to be back here in front of all of you. My

1 memories as Chair of this Assembly from back in 2006
2 are some of my favorite, most vivid memories. In
3 fact, when I chaired the Assembly was the last time
4 Justice Markman spoke to the Assembly, so we sort of
5 come full circle here today.

6 And when you have been in Bar leadership as
7 long as I have, you know, you spend a lot of time
8 grappling with this issue of how to successfully
9 engage our members to fill this justice gap, the huge
10 gap that Janet talked about earlier in her
11 presentation and that Jennifer just described. And
12 while I have been asked to get up here and sort of
13 exhort all of you to participate, we all know that I
14 am preaching to the choir here.

15 I know we have at least one State Bar award
16 recipient regarding pro bono work, our Liz
17 Kitchen-Troop, who won the Champion of Justice Award a
18 couple years for her modest means program in Washtenaw
19 County, and so many others of you who have won local
20 awards and have done more than your part. You are all
21 raising the bar for everybody else.

22 So I am not here to ask you to personally do
23 more. What I am here to do is to ask all of you to be
24 messengers and to go back to your constituents in your
25 communities and to ask them to do more, to go back to

1 your firms and ask them to do more.

2 So I want you to take this information I am
3 going to give you and do what you can, use it as you
4 will to try to bolster and inspire others to meet the
5 guidelines that you yourself as a Representative
6 Assembly set for our Bar membership. What are we
7 supposed to be doing, what are our ethical
8 obligations, and, according to the Representative
9 Assembly, it's 30 hours a year, three cases a year, or
10 three to \$500 a year, depending on your income, or a
11 combination of money and time.

12 So this guideline yielded in 2015 about
13 \$38,000 hours of free legal help and more than a
14 million dollars of donations to the Access to Justice
15 Fund, which may sound like a lot, and here is what I
16 want you to write down, or if you are a tweeter, maybe
17 tweet this out, and I tweeted a little bit this
18 morning. But, given that we have 45,000 members in
19 the Bar -- I mean do the math, right -- this means we
20 are averaging less than \$25 a member in donations and
21 less than an hour a year per member in donations of
22 time. Less than \$25 a member, less than an hour a
23 year. So we need to do something to improve that.

24 Even though the goal the Assembly set falls
25 short of the need, if everyone at least met the goal,

1 we would certainly be doing better than we are. And,
2 as Aaron is about to tell you, we certainly can't rely
3 on federal funds to supplement our efforts. That's
4 risky to rely on those funds. We have to work as hard
5 as we can toward self-sustainability when it comes to
6 delivering legal help to our fellow Michigianians.

7 So it can be easy to become complacent when
8 we don't see the faces of those who need our help.
9 You know, out of sight, out of mind. So thank you,
10 Jennifer, for putting together the photographs and the
11 stories of the people that we help.

12 So if you are not looking to your State Bar
13 to join each of you in working tirelessly to fill the
14 unmet need, you should be, because the Bar is doing a
15 lot, and that's part of what we wanted to present to
16 you today.

17 All of you who are on your phones or
18 computers, turn your attention away from the text
19 messages of Facebook and Google, michbar.org/probono.
20 On there you will see that we have a pro bono service
21 counsel, Rob Mathis, who helps coordinate leverage of
22 publicized pro bono opportunities as a full-time staff
23 person for the Bar, and whether you are looking at the
24 website or not, you have got some materials in your
25 packet. The Lawyer Helps is a great program for

1 taking the work that your community is doing and
2 publicizing it to the Bar in general, which some of us
3 don't like to publicize those types of efforts because
4 we are too modest, but please do it, because it does
5 inspire other people to do it and it gives them ideas.

6 So you can contact Rob, his name and number
7 are on here, and ask that stories in your community be
8 publicized by the State Bar. You also have in front
9 of you a menu of opportunities. Take a picture of it,
10 tweet it, you know, scan it, e-mail it out through
11 your Bar association e-mail list, but there are lots
12 of different ways to help in Michigan.

13 And if it's not time your constituents want
14 to donate but rather than money, when they are on the
15 State Bar of Michigan website, they can go to the
16 internal search engine bubble and just type in Access
17 to Justice Campaign, and it will take them right to
18 their member area, and they can make a donation
19 online, and while they are there, they can fill out
20 their member profile, as Janet suggested, which is a
21 great idea for their own marketing.

22 So my idea is, you know, I try to calendar
23 what I am doing. We have an annual retreat at my
24 firm, and one of the topics on that annual retreat
25 always is what are we doing for pro bono? So putting

1 it on your calendar, reminding others to put it on
2 their calendar, or putting it on your calendar to
3 remind others to put it on their calendar annually,
4 whether it's in conjunction with your annual health
5 exam or whether it's in conjunction with your New
6 Year's resolutions, but the years go fast, and
7 sometimes next thing you know, it's been five years
8 since you have had a pro bono case or made a
9 contribution. So those are some ways that we can just
10 remind ourselves every year.

11 So what do you say? Sorry, I can't help
12 because I don't have malpractice insurance. Do you
13 hear that a lot? I hear that a lot. Tell people
14 malpractice insurance is provided free to pro bono
15 attorneys. Get the word out about that.

16 And there are other avenues of help as well.
17 When partnering with local legal aid offices, your
18 pro bono clients can get some help from you and some
19 help from them. Pro bono clients tend to have kind of
20 a whole host of problems, as those of you that work in
21 legal aid and have helped pro bono people know, and we
22 aren't always equipped to handle all of them. We
23 might be able to handle part of them, but not
24 everything, so partnering with your local legal aid
25 office helps you to get them all of the resources that

1 they need and, if legal aid can't help them, they have
2 got referral sources as well.

3 Recognition can make people feel like their
4 efforts are worthwhile, so the Bar makes a concerted
5 effort to recognize pro bono contributors. We have
6 got the Circle of Excellence, the Lawyers Help Page on
7 the State Bar's website, and local legal aid offices
8 have recognition programs as well.

9 Pro bono work is what gives value and meaning
10 to what we do in our careers. We get something out of
11 it far beyond the recognition. We get the
12 satisfaction of knowing that we did what so many of us
13 set out to do when we applied to law school, which is
14 to help those who are unable to help themselves.

15 So be the cheerleader. Beat this drum in
16 your community. Your peers are already looking up to
17 you as leaders in your communities because of your
18 positions on the Assembly, so go back home and lead
19 the way in your communities' pro bono efforts and
20 let's aim to meet, at least meet the guidelines as the
21 Representative Assembly has set for the entire
22 State Bar membership. Thank you.

23 I will pass along to Aaron, who is going to
24 tell you a little bit more about what's going on
25 nationally.

1 MR. BURRELL: Good morning again, everyone.

2 VOICE: God morning.

3 MR. BURRELL: So my task today is to explain
4 to you what's happening from a national perspective,
5 and it is shocking. The Legal Services Corporation
6 has been around since 1974. It's a nonprofit
7 established by Congress to provide financial support
8 to civil legal aid for low-income Americans. This
9 current administration in its proposed budget
10 determined that it wanted to completely eliminate the
11 Legal Services Corporation.

12 Again, Legal Services Corporation provides
13 annual funding for legal aid organizations in every
14 county of every state, the District of Columbia, and
15 the U.S. territories, and nationally the LSC has a
16 significant impact. It is the single largest source
17 of funding to civil legal aid for the poor in the
18 country. Nationally 60.6 million individuals are
19 eligible for legal aid assistance. Last year they
20 closed 755,774 cases. 91,618 of those involved
21 pro bono lawyers. 128,839 of those cases involved
22 individuals over 60 years old. 527,482 of those cases
23 involved women, and 116,074 of those cases involved
24 domestic violence.

25 The American Bar Association recently

1 expressed its outrage and its president said some of
2 the worthy services the LSC provides include secure
3 housing for veterans, protecting seniors from scams,
4 delivering legal services to rural areas, and
5 protecting victims of domestic violence and helping
6 survivors. More than 30 cost benefit studies showed
7 that legal aid delivers far more benefit than it
8 costs.

9 150 U.S. law firm chairs also noted that
10 eliminating the legal services funding would hamper
11 their ability to provide pro bono representation. The
12 president of the LSC himself said that we represent a
13 fundamental American value, equal justice, and that's
14 as old as the republic itself.

15 So what does the LSC do in Michigan? LSC in
16 Michigan provides \$10.8 million to legal aid programs.
17 Thirty-five to 40 percent of the funding for legal aid
18 in Michigan is from LSC, and the percentage is higher
19 in rural areas. LSC funding is an essential building
20 block to our legal aid delivery system in Michigan.
21 And taking back to what Jennifer and Lori say, it's
22 desperately needed in Michigan.

23 Michigan's unemployment rate is higher than
24 the national average. The number of people qualifying
25 for legal assistance in Michigan has increased nearly

1 60 percent since 2000. Its over 2 million residents
2 now eligible. Michigan also has one of the highest
3 foreclose rates in the country. Despite all of that,
4 Michigan lost over \$1.5 million to LSC funding since
5 2010, and the number of cases closed by Michigan legal
6 aid has increased by over 4,500. And, as Jennifer
7 said, the LSC funds account for 40 percent of
8 Michigan's total legal aid funding.

9 So this is so important, the State Bar of
10 Michigan has a delegation from Michigan that's going
11 to ABA Day in D.C. on Tuesday to meet with
12 congressional members about the importance of LSC
13 funding. Among those who are going is our own
14 Jennifer Bentley; Peter Cunningham, the assistant
15 director of government relations for the SBM;
16 Judge John A. Hallacy; Thomas Linn; Robert Mossel,
17 counsel for Ford Motor; and Reggie Turner, who was
18 former State Bar president and a member of Clark Hill.
19 And we also partner with Dykema Gossett and their
20 Office of Government Policy in Washington, D.C.

21 I think our next slide is a picture of last
22 year's delegation, which included our own
23 Lori Buiteweg.

24 Let's get to what we can do to help the
25 cause. First, social media campaign. We talked about

1 social media. I don't know how many Wolverines we
2 have here today, but I like to say, Go Blue. As we
3 see in our slide here, even Coach Jim Harbaugh is a
4 supporter of the Legal Services Corporation. He said
5 in his tweet, I hope reports that the White House
6 trying to defund Legal Services Corporation aren't
7 true. LSC is crucial to making the justice system
8 fair.

9 Many of you know Jim Harbaugh was recently
10 elected to the Leaders Council of the LSC, along with
11 Hank Aaron, John Grisham, Eric Holder, and Microsoft's
12 chief legal officer, Brad Smith. The hashtag, as you
13 can see, is LSCmatters. I yield to your counsel with
14 respect to the hashtag you wish to use, but please go
15 on your Twitter account or Instagram account and make
16 your voice heard.

17 So why is the LSC funding more important than
18 ever? Our delegation is bringing a critical message
19 to Washington. In fact, there remains a significant
20 budget shortfall. An LSC report documenting the
21 justice gap in America, they report that 50 percent of
22 all those who sought legal assistance from LSC
23 grantees were turned away because of the lack of
24 adequate resources. So far -- well, for every
25 individual that LSC serves, another person is,

1 therefore, turned away, and, in fact, studies have
2 shown that over 80 percent of the civil legal need for
3 the eligible population are not being met.

4 So our ADA delegation is bringing a very
5 important message. They are going to inform the
6 congress people that, number one, the LSC provides
7 critical constituent services, that they maximize the
8 limited resources that they have through innovations
9 and collaboration. They continue an effective
10 public/private partnership, and they protect the
11 access to justice, which is a fundamental American
12 value.

13 So the question is what can you all do to
14 help. So here are your marching orders. Every person
15 in this room is a Bar leader, and, as Bar leaders, you
16 have an important role and important voice, so help
17 spread the word about the important work of legal aid.
18 Contact your congressional members and encourage them
19 to support the LSC funding, and I believe in your
20 packet is this sheet titled contacting members of
21 congress. It provides very detailed information about
22 how to contact your congress people.

23 Encourage your local bar association members
24 to contact their congressional members, volunteer with
25 and support your legal aid office, donate to the

1 Access to Justice Campaign, and, of course, encourage
2 other individuals to do the same. It would only take
3 your assistance, your contribution, and your help in
4 order to get this situation resolved and to handle it
5 in the way it should be handled. So we look forward
6 to all of your contributions here at the State Bar of
7 Michigan and look forward to a successful resolution
8 to this very, very pressing issue. Thank you very
9 much.

10 (Applause.)

11 MR. MCGILL: At this point in the program, we
12 are opening it up to comments or questions that you
13 might have for our esteemed panel. If you do so,
14 please step up to the microphone and identify your
15 circuit and identify yourself. Hearing none, I would
16 like to thank the panel -- actually we do have one.

17 MS. SPIEGEL: Good morning, I am Mary
18 Spiegel. I am from the 2nd circuit down in Berrien
19 County in the corner of the state, and I just wanted
20 to express my thanks to this esteemed panel for giving
21 you information, detail, and informing you about the
22 need that exists.

23 This will be my 26th year as an attorney. It
24 will be my second year as a legal aid attorney. I
25 left civil private practice to join Legal Aid of

1 Western Michigan two years ago, and I can say
2 unequivocally that that was the greatest gift I
3 received in my life. Practicing law at Legal Aid and
4 helping people who have nowhere else to turn is
5 phenomenal, and those of you who have done pro bono
6 work will have that same feeling. You may not get the
7 check, you know, at the end of the case, but you get
8 the hugs, you get the thank yous. I recently had a
9 client bring me eggs.

10 But I also know as the daughter of an
11 attorney that there are many attorneys who already do
12 free legal work, but what it consists of is they have
13 a client who comes into the office who is low income,
14 may or may not qualify for legal aid, but their story
15 is compelling, and my dad would always take those
16 cases rather than refer it through the pro bono system
17 of Legal Aid of Western Michigan, and I would just
18 encourage you to consider partnering with a legal aid
19 office in your area to have those people come through,
20 then do the pro bono work on that case.

21 Whenever I try to recruit for pro bono
22 attorneys in my area, I have difficulty because they
23 respond to me -- well, Mary, you know I already do a
24 ton of pro bono work in the form of not charging
25 people.

1 Well, part of what we do requires that we
2 expend funds if we are a legal services corporate
3 entity. We have to spend some of our funds on
4 pro bono programs, so your partnership allows us to do
5 that. Thank you for those of you who affiliate with
6 our pro bono programs.

7 MR. MCGILL: Thank you very much. Any other
8 comments, questions, concerns? Hearing none, thank
9 you Jennifer, Lori, and Aaron. Great job.

10 (Applause.)

11 CHAIRPERSON HERRMANN: Thank you very much,
12 Joe, and our panel members. I continually am humbled
13 and amazed by this service our legal aid and pro bono
14 lawyers provide. Please let's help them put out this
15 fire. Thank you.

16 We are going to take just a second to
17 reconstitute ourselves up here, then we will continue
18 our agenda.

19 At this stage we are going to move to the
20 portion of our program where we place our formal votes
21 for our formal agenda items, which I mentioned earlier
22 will be done electronically using your clickers.
23 Before we begin that process, I would like to invite
24 our clerk, Rick Cunningham, to provide a brief
25 explanation of how the clicker voting system works.

1 Rick.

2 CLERK CUNNINGHAM: At the fear of providing
3 fodder for the next video that Janet does on
4 technology, I will indicate to you each of you should
5 have one of these clickers in front of you. On the
6 numbers and letters on each button, one or A, two or
7 B, three or C. We only have three that we will be
8 using. If you wish to vote yes or aye, on a vote, on
9 a particular vote, press the one button. If you wish
10 to vote no or nay, press the two button. If you wish
11 to abstain, press the three button. So one or A is
12 yes; two or B is no; three or C is abstain.

13 There will be a period of time in which the
14 voting will be open. You may change your vote during
15 that period, but I will announce when the voting is
16 closing and it will be locked, and then we will
17 announce the numbers.

18 CHAIRPERSON HERRMANN: Thank you, Rick. Do
19 we have any questions on any of that? If you are too
20 afraid to ask for fear of ending up in the video, we
21 can take your question in private outside. Thank you.

22 At this point I would invite Karen Safran,
23 chair of the State Bar Civil Procedure and Courts
24 Committee, to address the Assembly regarding
25 reconsideration of Amendments to MCR 2.116 and 2.119.

1 Before Karen begins her presentation, I do just want
2 to call to your attention that at your seats is an
3 additional item of information we received last night
4 from the Appellate Practice Section of the State Bar
5 that provides some additional comments and input.
6 Since that's new, I just wanted to call your attention
7 to it, but you can work with it as you see fit with
8 Karen's sage guidance. Karen.

9 MS SAFRAN: Good morning, everyone. Nothing
10 quite like a rousing discussion of Michigan Court
11 Rules to get everybody's heart rates up.

12 This is a matter that I brought before
13 everybody, I think 2015, and the goal of the Civil
14 Procedure and Courts Committee in proposing this
15 change was to achieve uniformity in practice
16 throughout the state where you have the situation
17 where some courts allow reply briefs, some don't allow
18 reply briefs, even though the courts don't allow reply
19 briefs you can file them anyway. At least this would
20 give us some sort of clarity, especially with respect
21 to dispositive motions, just because of their nature
22 and their importance to the case, better I think to
23 the litigants, better to the court to have all the
24 relevant case law and arguments in front of them and
25 give everybody a week to prepare for the hearing so

1 you are not walking into your SD motion and somebody
2 hands you a case and says, This is what I am going to
3 argue.

4 The proposal as it was originally recommended
5 by the Civil Procedure Courts Committee and was passed
6 on by this Assembly, it kept the same briefing
7 schedule by bumping out the dispositive motions from
8 21 days to 28 days, and what that does is that gives
9 all of the litigants and the court a week to review
10 the materials and be prepared for the hearing so that
11 the court is also prepared.

12 The admin file of the Supreme Court gets us
13 part of the way there. It does provide for the
14 uniformity that we are looking for, but it doesn't
15 bump out the hearing date by a week, so what it does
16 is it actually, I believe, puts the litigants and the
17 court in a worse position than what it is under the
18 current rules because the court has, in some
19 instances, really no time to review the papers. And
20 what I mean by that is if you are dealing with a --
21 first of all, they go from a 7-day to a 3-day, and if
22 you have a court that has -- Oakland County has its
23 motion call on Wednesday, and some other courts, such
24 as Macomb County, a lot of judges have their motion
25 call on a Monday, so you are dealing with a situation

1 that to meet the briefing schedule as proposed by the
2 Supreme Court admin file, the court and the opposing
3 parties are getting the reply brief on a Friday, and
4 that's just not going to allow anyone enough time to
5 prepare for a dispositive hearing.

6 So I do applaud the Supreme Court for
7 accepting the briefing and the reply briefing, but I
8 would ask that the Representative Assembly pass on to
9 the Supreme Court that bumping the hearing schedule
10 back the additional seven days is in the best interest
11 of the litigants and the administration of justice.

12 The other little bit of the practical reality
13 is that in a lot of instances courts are scheduling
14 their own dispositive hearings, so whether the rule
15 changes to 28 days isn't a significant difference in
16 terms of impacting the procedure and the functioning
17 of the courts. You have some courts that they
18 schedule their own or they limit dispositive motions,
19 only a couple dispositive motions per motion call per
20 month. In some of the less populous circuits where
21 the courts only have motion hearings a couple of days
22 a month rather than every week, so a change in the
23 rule to 28 days from 21 days is not going to have a
24 significant impact on the administration of justice,
25 but it does give everybody a fair opportunity to

1 prepare for the dispositive hearing.

2 CHAIRPERSON HERRMANN: Thank you, Karen.
3 It's always a pleasure to have you here, and we
4 appreciate all the hard work your committee does on
5 these issues.

6 At this point I will now entertain a motion
7 to approve this comment as proposed to be submitted in
8 response to the Michigan Supreme Court's comment.

9 VOICE: Support.

10 CHAIRPERSON HERRMANN: I have a motion and I
11 have support. Are there any comments from the floor?

12 Yes, please proceed.

13 MR. BLAU: Michael Blau, 6th circuit. I was
14 just coming to move to support the motion.

15 CHAIRPERSON HERRMANN: Thank you, Mr. Blau.
16 We already have our motion. They beat you to the
17 punch. Appreciate it.

18 MS. KAKISH: Yes, Kathy Kakish, 3rd circuit.
19 I am here to question exactly how we are to vote on
20 this. It seems to me that there are two parts that we
21 are voting on. The first part is whether or not to
22 actually submit a comment to the Supreme Court, and
23 the second thing that we are voting on is to extend by
24 one week the briefing schedule.

25 Now, for the sake of argument, let's assume

1 that the Representative Assembly decided that it does
2 not want to extend by one week the briefing schedule.
3 Does this mean that we remain silent as it relates to
4 number one and that our comments as to why we are
5 giving a negative vote will not reach the
6 Supreme Court? It seems to me that these two items,
7 and this is my proposal, is to split the vote into two
8 votes, first to vote for number one and second to vote
9 for number two.

10 My question relates to the first sentence.
11 It is my understanding that every decision that the
12 Representative Assembly takes is reported to the
13 Supreme Court anyways, so why are we voting for this
14 first part, if somebody can answer that question.

15 CHAIRPERSON HERRMANN: At this stage I would
16 invite commentary analysis from our parliamentarian,
17 Judge Chmura, although I will comment that this, as
18 proposed, is all inclusive that the comment include
19 the recommendation regarding the briefing schedule as
20 well, and that's what's been submitted, and I will
21 defer to Judge Chmura on this, but if we have an
22 amendment to change the language of the proposal, we
23 can proceed accordingly, but as drafted, this is what
24 would be proposed as the comment response.
25 Judge Chmura, if you would.

1 PARLIAMENTARIAN CHMURA: Well, I don't know
2 that this is really a motion to amend as much as a
3 motion to separate the questions. That's different
4 than a motion to amend. You can do that if that is
5 what you are doing. I don't want to put words in your
6 mouth, but that's a valid parliamentary move to make,
7 which is treated as a separate motion to separate the
8 questions, needs to be seconded, and then voted on
9 separately. It's a secondary motion is what it is,
10 and usually you do that, the questions are such that
11 they are not intimately related to each other so that
12 you have to vote on both of them. They are separate
13 enough where they require different issues and
14 different consideration, and whether or not it's
15 different enough is to be decided by the chair, so you
16 get to decide whether or not you think that the
17 questions are separate enough to deserve separate
18 consideration. If that's what you believe to be true,
19 then you can treat that as a motion to separate, and
20 then you second and you proceed, if that's what you
21 want to do.

22 MS. KAKISH: If I may respond.

23 PARLIAMENTARIAN CHMURA: Sure. I am just
24 laying the --

25 MS. KAKISH: Thank you very much,

1 Judge Chmura. I think that's exactly what I want to
2 do, to separate the two questions to make sure that
3 whichever this Assembly decides with respect to the
4 second comment, that it would be reported to the
5 Supreme Court, so I so move.

6 CHAIRPERSON HERRMANN: I will decide this
7 issue with the guidance with the parliamentarian, but
8 I would take a moment of privilege. I would like to
9 consult with Ms. Safran on this issue.

10 I will accept the split into two questions.
11 So the first voting point, correct me if I am wrong,
12 Mr. Parliamentarian, will be whether or not the
13 Assembly will submit a comment?

14 PARLIAMENTARIAN CHMURA: Right.

15 CHAIRPERSON HERRMANN: So do I have a motion
16 on the question of whether the Assembly should submit
17 a comment in response to the Supreme Court?

18 PARLIAMENTARIAN CHMURA: I think we have a
19 motion from Kathy to do that.

20 CHAIRPERSON HERRMANN: Do we have a second on
21 Ms. Kakish's motion?

22 VOICE: Second.

23 CHAIRPERSON HERRMANN: Okay. Is there any
24 discussion on the motion whether the Assembly should
25 comment in response to the Supreme Court's request?

1 PARLIAMENTARIAN CHMURA: The motion to
2 separate, first whether you should separate the
3 question.

4 CHAIRPERSON HERRMANN: I thought that was my
5 call.

6 PARLIAMENTARIAN CHMURA: Well, it is your
7 call to decide whether you want to submit it to the
8 Assembly. You have decided you should submit it to
9 the Assembly, so now we vote on that.

10 CLERK CUNNINGHAM: Will this be a voice vote?

11 CHAIRPERSON HERRMANN: The motion pending is
12 whether to split this comment into two votes, one with
13 respect, first, whether we submit a comment to the
14 Supreme Court, and the second will be whether we
15 comment on extending by one week. So we have a motion
16 to split that's been seconded. Do we have any comment
17 on that motion?

18 Again, the motion pending is whether to split
19 into two questions, the first being whether to comment
20 at all, and the second being whether to comment with
21 respect to the one-week extension.

22 So on the first motion that is pending, we
23 have the motion, we have the second. I hear no
24 comments from the floor, so we will go to the vote.

25 Yes, Mr. Romano.

1 MR. ROMANO: Doesn't it make more sense to
2 vote on the second issue first? Vince Romano,
3 3rd circuit.

4 UNIDENTIFIED SPEAKER: Until this motion
5 passes, there are two issues.

6 CHAIRPERSON HERRMANN: The motion pending is
7 whether to split into two questions, so we don't yet
8 have two questions unless this motion passes. Thank
9 you.

10 I will now call the question on whether this
11 should be split into two questions.

12 Mr. Clerk, is the voting now -- no, we have
13 to do this by voice. Excuse me, this will not be an
14 electronic vote, because this was not pre-prepared.

15 All in favor of splitting this issue into two
16 questions, say aye.

17 All opposed.

18 I think we have to take a stand vote. We
19 have to take a count vote. At this point, all those
20 in favor, the ayes, please stand. And I will
21 designate people in each group to assist with the
22 count. Terry, can you please assist in designating
23 each section to take a roll call count.

24 (Standing count taken.)

25 CHAIRPERSON HERRMANN: Seven, 13, 6 and 19,

1 correct? These are the ayes.

2 Now please take your seats, and if we can
3 have all the nays please stand and repeat that count
4 for us, please.

5 (Standing count taken.)

6 CHAIRPERSON HERRMANN: If you all may be
7 seated. Mr. Clerk, if you can announce our results.

8 CLERK CUNNINGHAM: We have 52 opposed and 45
9 in favor. The motion fails.

10 PARLIAMENTARIAN CHMURA: So you are right
11 back to where you were.

12 CHAIRPERSON HERRMANN: With that vote, thank
13 you. We will now return to the proposal as originally
14 submitted, and I will now entertain a motion that we
15 approve, as originally submitted, this comment to be
16 submitted to the Michigan Supreme Court. Do I have a
17 motion?

18 PARLIAMENTARIAN CHMURA: It's pending.

19 CHAIRPERSON HERRMANN: It's pending. Is
20 there any discussion on the primary motion? Hearing
21 none, we will call the question.

22 Mr. Clerk, is the voting open?

23 CLERK CUNNINGHAM: The voting is now open,
24 one in favor of the motion, two opposed to the motion,
25 and three abstention.

1 CHAIRPERSON HERRMANN: I will give you a
2 quick countdown. Three, two, one, the voting is now
3 closed.

4 CLERK CUNNINGHAM: The motion passes 88 in
5 favor, eight against, and one abstention.

6 CHAIRPERSON HERRMANN: Thank you, Mr. Clerk.
7 Thanks you, Ms. Safran. I appreciate it.

8 MS SAFRAN: Thank you, everyone.

9 CHAIRPERSON HERRMANN: Our next vote relates
10 to consideration of amendment, as originally proposed,
11 to MRPC 8.2. The proponents have since revised this
12 proposal, simply to move the substantive language
13 proposed under MRPC 7.1. You have materials with you
14 that are a little arduous to interpret, so let me give
15 you just a brief explanation.

16 In keeping with the technicalities of our
17 rules, we wanted to ensure you had the full view of
18 what the change from the original proposal under 8.4
19 looked like in moving it under 7.1. We didn't mean to
20 create any additional confusion with all this red
21 lining, but here is what you need to know. What is
22 going to be moved by the proponents today is in the
23 last pages of your handout on this subject matter, and
24 very simply what it is is a proposal to amend MRPC 7.1
25 simply to add language relating to the substance that

1 will be addressed by the proponents. I hope this is
2 clear. I hope it makes sense, but we will do our best
3 to clarify if anyone has any questions.

4 At this point I would invite the proponent,
5 Representative Nick Ohanesian, member of the State Bar
6 Professional Ethics Committee, and he will address the
7 amendment.

8 MR. OHANESIAN: Thank you very much. And I
9 would also like to, before we go any further, I would
10 also like to invite ken Mogill. Ken is the chair of
11 the Professional Ethics Committee, and he is here to
12 help me answer questions that may arise.

13 So here is what this rule is in substance.
14 The change, the addition which comes after, in 7.1
15 after what is Section C, a lawyer who is a retired or
16 former justice, judge, referee or magistrate may use a
17 title such as "justice," "judge," "referee," or
18 "magistrate," when the title is preceded by the word
19 "retired" or "former." A lawyer shall not use the
20 "retired" or "former" title when engaged in the
21 practice of law or in any other manner that violates
22 this rule.

23 A lawyer who is a retired or former justice,
24 judge, referee or magistrate shall not state or imply
25 that the lawyer's former service as a justice, judge,

1 referee or magistrate enables the lawyer to improperly
2 influence any person or entity, including a government
3 agency or official, or to achieve results by means
4 that violate the Michigan Rules of Profession Conduct
5 or other law.

6 Also, a lawyer who is removed from office or
7 left office in connection with a Judicial Tenure
8 Commission investigation or proceeding shall not use
9 the word "retired" or "former" title.

10 So adding to the commentary, which goes into
11 our explanation, but I would like to speak briefly
12 about the need for this rule.

13 In the last couple years a number of judges
14 have left public service on the bench and have
15 returned to private practice to render legal services
16 to clients engaged in law-related legal services, such
17 as mediation/arbitration. A former judge's transition
18 from public service to private practice presents the
19 issue of whether in public communications concerning
20 the lawyer's services a former judge may utilize a
21 judicial title or employ judicial imagery associated
22 with the judicial title, or judicial office, I beg
23 your pardon.

24 Former judges providing mediation/arbitration
25 services are similarly found under Rule 5.7.

1 Law-related services are broadly defined, which is to
2 include arbitration/mediation services. While a
3 former judge may not have communications during lawyer
4 services, use titles or imagery that imply a current
5 judicial status, a former judge may provide
6 information regarding the lawyers prior service in a
7 resume or biography. For these reasons, in public
8 communications concerning lawyer services, including
9 law-related services, a lawyer may not ethically use a
10 judicial title or imply a current judicial status when
11 the lawyer is not currently serving as a judge.

12 While a former lawyer is certainly permitted
13 to make truthful statements in a resume or biography
14 concerning his or her past judicial position and years
15 of position held, a former judge's use of titles or
16 images implying a current judicial status violates
17 7.1.

18 This is, in essence, clarification. You will
19 note, referring back to the original 7.1 language, we
20 already have language in here that does remark about
21 the facts in Section B that we are not allowed to
22 create an unjustified explanation about the results of
23 a lawyer. This is simply adding further clarification
24 to the fact that that also applies to judges. Open it
25 up to questions.

1 CHAIRPERSON HERRMANN: At this point I would
2 entertain a formal motion to approve this amendment to
3 MRPC 7.1.

4 VOICE: So moved.

5 CHAIRPERSON HERRMANN: Do we have a second?

6 VOICE: Second support.

7 CHAIRPERSON HERRMANN: Any discussion?

8 Hearing no discussion, we will call the question, and
9 this will be by electronic vote again.

10 Mr. Clerk, you can advise when the voting is
11 open.

12 Voting is open. I am hearing comments from
13 the floor that we are having difficulty. I now
14 understand it's working, so we will proceed with the
15 vote. Thank you.

16 Janet, can we queue that video again?

17 Again I will provide a countdown. Three,
18 two, one, the voting is now closed.

19 Mr. Clerk, if we could have our results.

20 CLERK CUNNINGHAM: The question passes 83 in
21 favor, 13 against, and zero abstentions.

22 CHAIRPERSON HERRMANN: Thank you, gentlemen.
23 Thank you, all.

24 I am happy to announce we are in the home
25 stretch and, more importantly, let you know that on

1 your way out today there are box lunches waiting for
2 you in the corridor, so hold that thought.

3 I would now like to again invite
4 Lori Buiteweg, immediate past president of the
5 State Bar, to address the Assembly regarding the
6 approval of our new strategic plan. Lori, welcome
7 back again, and thank you.

8 MS. BUITEWEG: My work is never done. Okay.
9 I will make this short. I know I am standing between
10 you and lunch and you and your kids and your soccer
11 games and basketball games and all that other stuff.

12 I have been asked to present to you today the
13 fresh and shiny, brand new Strategic Plan of the
14 State Bar of Michigan, and I am glad that I was asked
15 to do this, and I hope that you will not mind taking a
16 moment to hear about what went into this plan.
17 Because if you are like me, you sit on the Assembly
18 because you want to be in the know about what's going
19 on in your profession. You want to know what
20 leadership is doing and have a say in the policies
21 affecting the way we practice law and the way our
22 clients experience the legal system. So today you
23 will do just that, and I hope you will take part in
24 advancing this brand new strategic plan that your own
25 officers -- Joe McGill, Fred Herrmann, and your past

1 Chair, Dan Quick -- were all so integral in hand
2 crafting over many, many hours of grueling work. They
3 were in the so-called situation room with other
4 commissioners and an ABA advisor who worked for over
5 the course of about a year and a half to develop the
6 Strategic Plan.

7 So you have been mailed the Strategic Plan.
8 It looks like this. If you haven't brought it with
9 you, the State Bar has created a simple link to it.
10 You type into your search engine
11 www.michbar.org/strategicplan17, and it will pop up.

12 So my job is not to go through the plan with
13 you. It's been by our staff very nicely and
14 succinctly compiled, and it's easy to read and well
15 organized, and if any of you have questions about it,
16 we will certainly take those at the end.

17 I just wanted to tell you why we came up with
18 this plan and how we came up with this plan to
19 basically try to give you the faith and confidence in
20 it so that when you are asked to vote to approve it
21 you will do so and so that the State Bar can forever
22 and ever have a legacy of being able to say that the
23 Assembly supported this plan.

24 The plan began in about 2015, back when
25 Tom Rombach was president of the Bar, and he appointed

1 a steering committee that met several times to decide
2 how we would go about working on the Strategic Plan.
3 We decided we needed a new one, because we hadn't had
4 a new since 2003, and it had undergone eight changes,
5 and by the time we decided it was time to look at
6 doing something fresh and new, we kind of reduced the
7 then existing strategic plan to sort of a checklist of
8 things that had really been done, and we really did a
9 great job as a Bar accomplishing everything that we
10 had set out to do in that 2003 Strategic Plan.

11 But we couldn't get ahead of ourself. We
12 wanted to wait for the 21st Century Task Force to
13 finish their work before we dove headlong into the
14 Strategic Plan, because we wanted to use some of the
15 more than 100 recommendations that came out of that
16 21st Century Task Force report to guide us in our
17 planning decisions. Most of you, I think, are well
18 familiar with the 21st Century Task Force report. If
19 you are not, again, that is easy to find on the
20 State Bar's website
21 www.michbar.org/21stcenturytaskforcereport I believe
22 is the tag line for that. So between the appointment
23 by Tom of the Strategic Planning Steering Committee
24 last June, we spent a lot of time planning to plan.
25 It sounds arduous, and it was. In June of 2015, we

1 met on Mackinac Island to discuss the approach we
2 would take. We asked Bar staff to gather and
3 disseminate the status of the then existing plan and
4 its priorities. Then in July of '15 we met in Lansing
5 to hear a report on what was going on with the plan,
6 the priorities, where we stood with our existing plan,
7 and then we decided we wanted to create a planning
8 process that would be very fluid, and we asked staff
9 to research different ways that we could do that.

10 So in the summer we met and learned about our
11 different options, and it was at that point that we
12 decided to contract with an ABA consultant to help us
13 come up with this plan. At that point we also
14 received an update on the 21st Century Task Force
15 work.

16 Then fast forward to 2016 January/February.
17 We did conference calls with staff leadership to map
18 the process, identify information for the committee to
19 have available at the ready during the planning
20 process, and so what we gathered for the committee to
21 use as resources was the 2016 SBM member survey, which
22 was conducted in April and May of 2016; the SBM
23 committee reports, which are about, you know, that
24 thick; the survey of senior staff members of the
25 State Bar regarding Bar priorities. We surveyed all

1 the staff. We looked at the 21st Century Task Force
2 report, as I said, and we also did telephone
3 interviews with Linda Rexer, who was Jennifer
4 Bentley's predecessor as executive director of the Bar
5 Foundation, and also Lynn Chard, who was executive
6 director of ICLE.

7 We then met on June 6, August 30, November
8 and December of 2016, and then we issued a draft plan
9 in January of 2017, and at its January 2017 meeting
10 the Board reviewed the plan and voted to adopt it, and
11 now you, as the final policy-making body of the Bar,
12 are also being asked to do so and to take this final
13 step toward putting the stamp of approval on this
14 pain-staking process.

15 If you are wondering why the Board already
16 voted on the plan, the reasons are pragmatic and
17 consistent with Bar bylaws. It was necessary for the
18 State Bar staff to have direction back in January due
19 to the timing of committee appointments, which your
20 incoming president, Don Rockwell, will be making next
21 month to make plans for the upcoming Bar leadership
22 forum in June on Mackinac Island for budget reasons,
23 budget planning reasons, and to assemble a State Bar
24 reorganization. We have been working that with
25 Jennifer Grieco, who is going to be president after

1 Don Rockwell. She has been running reorganization
2 meetings where we are trying to figure out how to
3 restructure the Bar so that we can implement the new
4 strategic plan efficiently.

5 So that is why there was that timing, but, as
6 I said in the beginning of this presentation, Fred and
7 Don and Dan were all integral in developing this new
8 plan, and you should have trust in them that they
9 helped us to put together a final product that had the
10 Assembly in mind and the purpose of Assembly and what
11 it does.

12 So with that introduction, I guess I will --
13 you know, I was going to sit down, but I just want to
14 call for a quick round of applause for our State Bar
15 staff for pulling this all together, helping us
16 compile it, and for all the people who helped to work
17 on the strategic plan.

18 (Applause.)

19 MS BUI TEWEG: I will turn it back over to
20 Fred.

21 CHAIRPERSON HERRMANN: This plan truly
22 represents a significant collaborative effort by all
23 stakeholders here, including the RA, Bar staff, the
24 Bar leadership, and when you consider this, we welcome
25 any comments or views you may have, but please keep in

1 mind this is not a court rule. It is an aspirational
2 guidepost document, so take that into consideration
3 with your deliberations and comments.

4 At this the point I would entertain a motion
5 for the Assembly to approve the Strategic Plan.

6 MR. BUCHANAN: Mr. Chair, Robert Buchanan
7 from the 17th circuit. I move for the adoption of the
8 new Strategic Plan.

9 CHAIRPERSON HERRMANN: Do I have a second?

10 VOICE: Second.

11 CHAIRPERSON HERRMANN: Thank you. Any
12 discussion? Hearing none, we will proceed to call the
13 question.

14 Mr. Clerk, please advise when the voting is
15 open.

16 CLERK CUNNINGHAM: The voting is now open.

17 CHAIRPERSON HERRMANN: And, once again, your
18 count down. Three, two, one, the voting is now
19 closed.

20 And, Mr. Clerk, if we could have the results.

21 CLERK CUNNINGHAM: The motion passes 95 for,
22 two against, and two abstained.

23 CHAIRPERSON HERRMANN: Thank you, Mr. Clerk.
24 The Strategic Plan is approved.

25 We are nearing the end. Just a few more

1 words. I would like to thank our distinguished
2 guests, including Chief Justice Markman, our Executive
3 Director, Janet Welch, and Jennifer Bentley. A
4 particular note of thanks to Lori Buiteweg, who I am
5 sure was looking forward to relaxing after her year of
6 exemplary leadership of our State Bar, only to be
7 asked to give up a Saturday to spend it with us here
8 in Lansing, but, as usual, Lori did not hesitate, and
9 today she helped us launch important calls to action
10 on both legal aid programs and the future path of our
11 strategic plan. Lori, thank you for running to the
12 fire.

13 (Applause.)

14 CHAIRPERSON HERRMANN: I would also like to
15 thank our RA officers, Joe McGill and Rick Cunningham,
16 for their leadership and commitment to the RA mission
17 and for helping make this session a success.

18 Also, I would like to thank Judge Chmura, our
19 parliamentarian whose services were right on point
20 today. Thank you, Judge. And Connie Coon, our court
21 reporter, whose efforts are largely unnoticed but
22 incredibly important.

23 (Applause.)

24 CHAIRPERSON HERRMANN: And equally hard at
25 work, both between our meetings and during, are all of

1 our committee chairs and their committees. So thank
2 you to Kim Breitmeyer, Marty Hillard, John Clark,
3 Maureen VanHoven, Pam Enslin, Vince Romano, and, in
4 particular, Aaron Burrell for his fine, informative
5 presentation today regarding LSC funding.

6 And nothing you saw here today of course
7 happens without the tireless devotion of State Bar
8 staff, in particular for today's event Carrie Sharlow,
9 Peter Cunningham, Katie Hennessey, Marge Bossenbery,
10 Candace Crowley, and Jeanette Socia. If I could have
11 a round of applause.

12 (Applause.)

13 CHAIRPERSON HERRMANN: Most importantly,
14 thanks to all of you for your commitment to the
15 Representative Assembly and the State Bar and our
16 service to the public. Attorneys throughout the
17 state, and I like to think all of our clients have a
18 voice because of your involvement and presence here
19 today.

20 A couple of housekeeping points. I believe
21 you all have the link to reimbursement forms in the
22 materials you received. That's available on the
23 State Bar website. I believe those are due by
24 June 6th. Correct me if I am wrong, Carrie. So
25 please tend to those.

1 Clerk nominations, we are also in the process
2 of receiving nominations for our next Assembly Clerk
3 to fill Mr. Cunningham's large shoes.

4 Proposals for our next meeting are due by
5 August 17th, and this is published everywhere, but our
6 next meeting will be September 28th at Cobo Hall in
7 Detroit, so we have a new venue. I can say Detroit is
8 alive and well and has many new, exciting things to
9 see and participate in, so I certainly hope everyone
10 will join us for the full annual meeting, in addition
11 to the Representative Assembly meeting.

12 Please remember to turn in your clickers on
13 your way out today. I mentioned the box lunches, so
14 at this point we have finished our agenda. Do I have
15 a motion to adjourn?

16 VOICE: So moved.

17 CHAIRPERSON HERRMANN: Support?

18 VOICE: Second.

19 CHAIRPERSON HERRMANN: All in favor say aye.

20 (Assembly concluded at 12:11 p.m.)
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1 STATE OF MICHIGAN)
)
2 COUNTY OF CLINTON)

3 I certify that this transcript, consisting
4 of 90 pages, is a complete, true, and correct transcript
5 of the proceedings had by the Representative Assembly on
6 Saturday, April 22, 2017.

7
8 May 8, 2017

Connie S. Coon, CSR-2709

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