

STATE OF MICHIGAN  
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE  
ASSEMBLY of the STATE BAR OF  
MICHIGAN

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Proceedings had by the Representative Assembly of  
the State Bar of Michigan at Lansing Community College -  
West Campus, M-TEC Center, 5708 Cornerstone, Lansing,  
Michigan, on Saturday, April 25, 2015, at the hour of  
9:30 a.m.

AT HEADTABLE:

VANESSA PETERSON WILLIAMS, Chairperson

DANIEL D. QUICK, Vice-Chairperson

FRED K. HERRMANN, Clerk

JANET WELCH, Executive Director

HON. JOHN CHMURA, Parliamentarian

ANNE SMITH, Staff Member

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1           that as a special order today? Hearing no objections,  
2           we will then prepare for our motion.

3                       MR. ANTKOVIAK: Good morning, Madam Chair,  
4           Matthew Antkoviak, chair of the Rules and Calendar  
5           Committee. At this time I would move the adoption of  
6           the proposed calendar as amended.

7                       CHAIRPERSON WILLIAMS: Is there a second?

8                       VOICE: Second.

9                       CHAIRPERSON WILLIAMS: It has been moved and  
10          properly seconded that we adopt the revised calendar  
11          that's provided to you at your desk today. All in  
12          favor, please say yes.

13                      All opposed no.

14                      Hearing none, the motion passes.

15                      At this time we'll have our chair of the  
16          Nominating and Awards Committee come to fill our  
17          vacancies.

18                      Prior to us filling our vacancies, we will  
19          address item 1(D), the approval of the September 18,  
20          2014 summary of proceedings. That summary has been  
21          provided to you in the materials that were mailed. Is  
22          there a motion for approval?

23                      VOICE: So moved.

24                      CHAIRPERSON WILLIAMS: Is there a second?

25                      VOICE: Support.

1                   CHAIRPERSON WILLIAMS: Having been moved and  
2 properly seconded to approve the summary of  
3 proceedings of September 18, 2014, are there any  
4 questions or discussion?

5                   Hearing none, all in favor please indicate by  
6 saying yes.

7                   All opposed may say no.

8                   The motion passes.

9                   MS. MOSS: Thank you, Vanessa. Good morning,  
10 I am Shenique Moss. I represent the 30th circuit, and  
11 it is my pleasure today to be the chair of the  
12 Nominating and Awards Committee.

13                   We have a number of vacancies to fill, but  
14 before I do, I would like to thank the members of the  
15 Nominating and Awards Committee. If you are here,  
16 please stand. Elizabeth Johnson, Erica Zimny,  
17 Lee Hornberger, and Daniel Cherrin. Thank you so  
18 much.

19                   I would also like to take this opportunity to  
20 thank the RA leadership for the amazing job that they  
21 do leading the Assembly. And last, but not least, I  
22 would like to thank Anne Smith, who does a phenomenal  
23 job of providing support to us and answering all the  
24 questions that come up through the process.

25                   Each of you should have a memorandum that is

1 from Vanessa to the RA dated April 24, 2015, with the  
2 proposed slate of candidates to the fill the positions  
3 for the following year. Candidates, could you please  
4 stand when you hear your name.

5 In the 3rd circuit, Daniel Ferris, Mwanaisha  
6 Sims, Aghogho Edevbie, Randall Tatem.

7 In the 6th circuit we have Matthew Aneese,  
8 Heather Atnip. James Brennan, Patrick Crandell,  
9 Anthony Kochis, Christian Ohanian, Cesare Sclafani.

10 In the 7th circuit we have Jay Edwards.

11 In the 8th circuit we have Tracy  
12 McCarn-Dinehart.

13 In the 10th circuit we have John Lozano and  
14 Thomas Fancher.

15 In the 19th circuit we have Mark Quinn.

16 In the 20th circuit we have Maureen VanHoven.

17 In the 22nd circuit we have Elizabeth  
18 Kitchen-Troop and also Ashish Joshi.

19 In the 28th circuit we have Melissa Ransom.

20 In the 30th circuit we have Carmen Fahie.

21 In the 31st circuit we have Gerry Mason.

22 In the 45th circuit we have David Marvin.

23 In the 49th circuit we have Nathan Hull.

24 And last but not least, in the 57th circuit  
25 we have Christina DeMoore.

1                   At this time I move for the appointment of  
2                   the slate of 25 candidates.

3                   CHAIRPERSON WILLIAMS: Having been moved for  
4                   the appointment of the slate of 25 candidates just  
5                   announced, is there a second?

6                   VOICE: Support.

7                   CHAIRPERSON WILLIAMS: Are there any  
8                   questions or discussion?

9                   Hearing none, all in favor please indicate by  
10                  saying yes.

11                  If there are any opposed, please indicate by  
12                  saying no.

13                  Let's welcome our new members to the  
14                  Representative Assembly.

15                  (Applause.)

16                  CHAIRPERSON WILLIAMS: While they are moving  
17                  to find their seats, are there any first-time members  
18                  of the Representative Assembly? Would you stand if  
19                  it's your first time.

20                  (Applause.)

21                  CHAIRPERSON WILLIAMS: We will now hear again  
22                  from our chair of the Assembly Awards Committee.

23                  And you will notice as we are moving forward,  
24                  if any chairs are empty beside you, the staff will  
25                  come now to remove the clickers. We will use clickers

1           for electronic voting based on our vote today, and so  
2           we want to make sure that we are capturing the number  
3           of representatives who are in attendance. As you see  
4           there is an empty seat beside you, if you please raise  
5           your hand so they can quickly get to you.

6                     It appears that we have all of the additional  
7           clickers. We will move forward with Chair Moss  
8           regarding the nominations of awards nominees.

9                     MS. MOSS: Thank you again. As Vanessa  
10          indicated, I will now be making two motions for award  
11          recognition on behalf of the Nominating and Awards  
12          Committee. The first is for the Unsung Hero Award,  
13          and the second is for the Michael Franck Award.

14                    As you know, the Unsung Hero Award is  
15          presented each year to an attorney who has exhibited  
16          the highest standards of practice and commitment for  
17          the benefit of others. Our candidate this year for  
18          the award is the Honorable Allie Greenleaf Maldonado.

19                    Judge Maldonado is the chief judge of the  
20          Little Traverse Bay Bands of Odawa Indians. Before  
21          working with the tribe, she was in private practice  
22          and served as a staff attorney for the U.S. Department  
23          of Justice. Judge Maldonado is recognized as an  
24          expert in the Indian Child Welfare Act and has worked  
25          closely with the State Administrative Office to bring

1 Michigan in compliance with the act for the first time  
2 since its passage.

3 Perhaps the most important accomplishment for  
4 the purposes of this award is that Judge Maldonado has  
5 worked tirelessly to improve the lives of the members  
6 of the Native community, which includes overseeing the  
7 implementation of federal grants for tribal substance  
8 abuse courts and specialized domestic violence courts.

9 Judge Maldonado was nominated by  
10 Raymond Mensah. Raymond wrote in his nomination that  
11 Judge Maldonado has shown that she is willing to be  
12 hands-on to ensure the success of the LTBB community  
13 members. She just does not just talk the talk, but  
14 she walks the walk where it matters most.

15 Our committee believes that she is very  
16 deserving of this award, at this time I move for the  
17 Representative Assembly to award the Unsung Hero Award  
18 to Judge Allie Greenleaf Maldonado.

19 CHAIRPERSON WILLIAMS: You have now heard the  
20 motion from the Nominating and Awards Committee to  
21 nominate Judge Allie Greenleaf Maldonado as the  
22 recipient of the Unsung Hero Award.

23 VOICE: Second.

24 CHAIRPERSON WILLIAMS: Motion having been  
25 made and properly seconded, is there any discussion?

1                   Hearing none, all those in favor of accepting  
2                   Honorable Allie Greenleaf Maldonado as the recipient  
3                   of the Unsung Hero Award, please indicate by saying  
4                   yes.

5                   All those opposed may indicate by saying no.  
6                   The motion passes unanimously.

7                   We will now hear from Chair Moss for the next  
8                   nomination.

9                   MS. MOSS: Thank you, all.

10                  As I mentioned, the second award given by the  
11                  Representative Assembly is the Michael Franck Award.  
12                  The Michael Franck Award is given annually to an  
13                  attorney who has made an outstanding contribution to  
14                  the improvement of the legal profession. Our  
15                  committee believes that this award should be presented  
16                  posthumously to Vernon Kortering, who passed away in  
17                  January of this year.

18                  Vernon founded the Kortering Law Firm where  
19                  he focused on Workers' Comp, labor law, and disability  
20                  law. Prior to starting his firm, he clerked for the  
21                  Supreme Court Justice Eugene Black and later worked  
22                  for the largest law firm in Muskegon.

23                  Vernon was nominated by his son, Attorney  
24                  David Kortering, who is also a member of the RA,  
25                  Daniel Bonner, who is the managing attorney of Legal

1 Aid of Western Michigan, Muskegon Office, and the  
2 Muskegon County Bar Association Board of Directors.

3 David wrote in his nomination that his father  
4 was considered a Maverick, as well as an attorney's  
5 attorney. He built an illustrious career and  
6 reputation as a prominent civil rights advocate,  
7 trendsetter, and pioneer who fought for the  
8 underprivileged and downtrodden. Daniel wrote in his  
9 nomination that Vernon lived the spirit of pro bono.  
10 Equally important, Judge Timothy Hicks wrote in a  
11 letter to the Kortering family that Vernon was perhaps  
12 the best person at using the law for its highest  
13 purpose, to help provide justice to those less  
14 fortunate, and to move our society to better places.  
15 He also indicated that while Vernon was a skilled  
16 advocate, he understood one could zealously argue  
17 cases without creating enemies or losing friends.

18 Our committee believes that Vernon  
19 exemplified the highest ideals of law in public  
20 service, so at this time I move for the Representative  
21 Assembly to posthumously award the Michael Franck  
22 Award to Vernon Kortering.

23 VOICE: So moved.

24 CHAIRPERSON WILLIAMS: The motion having been  
25 made and seconded that we accept Vernon Kortering

1 posthumously as the recipient of the Michael Franck  
2 Award, is there any discussion?

3 Hearing none, all those in favor, please  
4 indicate by saying yes.

5 If there is anyone who is opposed, please  
6 indicate by saying no.

7 Hearing no opposition, the motion passes  
8 unanimously. Thank you.

9 (Applause.)

10 CHAIRPERSON WILLIAMS: At this time, I have  
11 an opportunity just to offer some remarks. Again, I  
12 would like to say welcome to both new -- I won't say  
13 old, but I guess seasoned representatives, and welcome  
14 back today and thank you for your attendance and your  
15 diligence in terms of reading the materials. I am  
16 happy to see that everyone arrived, and hopefully that  
17 was without incident.

18 I know that some people have approached us  
19 about the seating. It wasn't to keep certain members  
20 away from the mike. What we thought today is that  
21 instead of our usual seating that we would just try to  
22 mix it up a little so that you can get to conversate  
23 and know some of the members that you may not normally  
24 see because they are sitting so far away from you  
25 during our meeting.

1           Each of you have been elected to represent,  
2           and those who are recently appointed, appointed to  
3           represent your circuit. And so what we do is what we  
4           always do when we come here, we come to live out what  
5           was decided some 43 years ago, that we would come to  
6           represent a more robust voice of the Bar, to bring  
7           diverse ideas and to really stand and stand strong as  
8           a body to represent what should be the final  
9           policy-making ideas and decisions within the Bar for  
10          the State Bar of Michigan. What we do is important.  
11          We provide direction to the Board of Commissioners,  
12          and so, again, thank you for coming.

13           You all have received the materials per our  
14          rules. You received the rules 42 days before.  
15          Because of some of the comments we have received, I  
16          know that folks have read the material, so thank you  
17          for that.

18           As you see, today we have mostly internal  
19          issues, other than our special order, and really a  
20          spring cleaning type day. Last year we spent a lot of  
21          time talking about the task force and various  
22          challenges on the State Bar. Today we will take an  
23          opportunity, after looking back at things that had  
24          been brought to the Assembly Review Committee and then  
25          looking back at the various hearings and comments that

1           faced the Bar last year, we decided that we needed to  
2           make our own adjustments to our rules, and so that's  
3           what we will stand together to do today, to look and  
4           see how we proceed and how we do that in the best way  
5           as the final policy-making body of the Bar and to  
6           protect the First Amendment rights of all of those  
7           other members who send us here to represent their  
8           voices.

9                         Just thinking about it, there is always a  
10           concern about who has the right to decide what we  
11           should consider. Are we equipped with deciding that,  
12           and when thinking about that and thinking about what  
13           we have to do today and what we do whenever we gather  
14           as the Representative Assembly, I just think about a  
15           quote from Lou Holtz, and I think if we look at these  
16           things whenever we are taking action, we will be fine.  
17           There are three things, making sure, one, we do the  
18           right thing; two, we do the best that we can do; and  
19           then we always show that we care. And that's really  
20           our purpose for coming here today, to do the right  
21           thing, to do it the way we should do it, and to show  
22           people that we care.

23                         When we look at Keller and we talk about  
24           those things today, you will see what we are guided to  
25           do, and it's really around making sure the courts are

1           efficient, making sure that we protect the public and,  
2           in an effort of doing that, making sure that we run  
3           our body efficiently.

4                        Today you will hear from the Assembly Review  
5           Committee mostly, because they are internally brought  
6           resolutions, and we will talk about the electronic  
7           voting, and I know we voted before by electronic  
8           tally, but what we would like to do is to make sure  
9           that our rules are consistent with our actions, and so  
10          we would like to formalize some of the things that we  
11          have done before.

12                      We will talk about the minority report in  
13          terms of giving our body an opportunity to represent  
14          all voices fully. So, in addition, if you are new and  
15          you may not know, we provide a majority report to the  
16          Supreme Court regarding our proposals. If this  
17          passes, we will also be able to provide the minority  
18          view as well.

19                      And then lastly, we'll have the Keller review  
20          process as an action item, and, like I said, we really  
21          want to make sure that when we come to take things  
22          into consideration, be it policy, court rules, we want  
23          to make sure that we do it appropriately and that we  
24          protect the people that we have been elected to serve  
25          within the State Bar.

1                   As we look to do this, we have been meeting  
2                   as an executive team, and I know we have traditionally  
3                   two meetings as a body. Our executive team has been  
4                   working very diligently since the Bar year began, and  
5                   so I would like to formally on the record thank our  
6                   Vice-Chair, Dan Quick, and our Clerk, Fred Herrmann,  
7                   for all of the time they spent meeting with me either  
8                   on the phone or breakfast meetings or just making sure  
9                   we could provide the best leadership possible.

10                   What we look to do in that vein is to come up  
11                   with a three-year plan, and so that way, because I  
12                   only serve as chair for one year, after this meeting  
13                   we have one regularly scheduled meeting in October, we  
14                   don't want the initiatives to die, and so we worked as  
15                   a three-person team to try to pass some initiatives  
16                   that we can span over the three-year leadership course  
17                   so there is some continuity and consistency in terms  
18                   of making sure we run the best possible Representative  
19                   Assembly that we can.

20                   Some of the things that we are looking to do  
21                   would be to look at our dues structure. As you know,  
22                   we are the body that determines the dues for the  
23                   State Bar, and so we have empowered our Special Issues  
24                   Committee to take a look at the dues structure,  
25                   especially as it relates to nonresident members of the

1 State Bar and other issues, and so they will work  
2 closely with the State Bar treasurer at looking at  
3 that and coming back to this body with recommendations  
4 if there are any in our October meeting or thereafter.

5 We would also like to look at the structure  
6 of the RA. When you are looking at other governing  
7 bodies, not every state bar has a robust body that  
8 determines policy as we do, but there are other  
9 entities, like the ABA when you look at their House of  
10 Delegates and how they are structured, and so we would  
11 also like to have one of our committees, most likely  
12 our either Assembly Review or Special Issues, take a  
13 look at the structure of our RA. We are not looking  
14 to change that this year, but it could be during the  
15 course of the leadership of our Vice Chair or our  
16 Clerk.

17 And so the big type of things that we are  
18 considering that we look for your opinion would be  
19 whether or not we have sections to designate some type  
20 of representative to our body. It would mean that we  
21 would grow our body, but we would also expand into the  
22 rest of the Bar in terms of adding those different  
23 ideas and that voice to our body. I am sure that many  
24 of you sit in a section, but it would give section  
25 leadership in terms of a section council an

1 opportunity to appoint a member if that's a way that  
2 we decide to go.

3 Another thing that we are looking at is just  
4 strengthening engagement, and so you will see in our  
5 rules, they provide for our Hearings Committee to hear  
6 hearings outside from folks who are not members of the  
7 Representative Assembly. They are allowed to request  
8 a hearing so that their voices can be heard. We are  
9 looking to be more proactive and have our Hearings  
10 Committee actually contact some of the section council  
11 and affinity bars to go out and arrange hearings so  
12 that we can hear not on just a particular issue but to  
13 see if there are issues that we need to address, and  
14 so as an executive team that we have to make sure that  
15 we are bringing in all of the voices of the Bar, and  
16 this is the best way to do that.

17 Another way of increasing engagement, we are  
18 just looking to make sure that we have the best  
19 website presence that we can have. As you know, the  
20 Representative Assembly page has been buried under a  
21 number of layers and tabs within the website, and so  
22 with the Bar revamping the website and its look, we  
23 would like to take advantage of that and make sure our  
24 members can easily get to the materials they need and  
25 members of your circuit can get to the materials they

1           need to contact you.

2                       We are continuing to work with the Board of  
3           Commissioners, so we will continue that relationship.  
4           As long as I have been a member of the RA, it's always  
5           been a very positive and strong one, so we will look  
6           to continue to work with the Board of Commissioners so  
7           that if there are policy issues that need to be  
8           addressed by this body that we can also bring in the  
9           voice of a Board of Commissioner.

10                      Other than that, that's a lot that we have  
11           kind of taken on. We hope that you have felt some  
12           benefit from our monthly announcements just to make  
13           sure that the Representative Assembly stays connected.  
14           If there is any time that you feel that there is  
15           something else, some service that we can provide  
16           better as a leadership team, we are very open to that.  
17           There is never a time that we look at your comments as  
18           criticism. We really look at it as an opportunity to  
19           serve you and to serve the Bar better.

20                      There are a few things that you should be  
21           mindful of today. If you are running for reelection,  
22           those petitions are due on April 30th. Yesterday the  
23           Board of Commissioners voted to change the  
24           reimbursement policy of the Representative Assembly,  
25           so there are two items that I would like to bring to

1           your attention.

2                       First, you only have 45 days now to turn in  
3           your reimbursement form. I know our staff had been  
4           very lax in the past and you would be given until the  
5           end of the Bar year, but that is no longer the case.  
6           Also, for any expenses over \$25, you must submit a  
7           detailed receipt for that. Those new rule changes  
8           will be attached to the reimbursement form, but I  
9           wanted to make sure I bring that to your attention.

10                      Also, I want to take the time to thank our  
11           Assembly committees, and I am not sure what the past  
12           history has been in terms of meetings, but we have  
13           been meeting quite a bit, and they have been meeting  
14           outside. I would like to thank our chair for Assembly  
15           Review. Our Chair, Kim Breitmeyer, and members of her  
16           committee, if you would stand, please.

17                      (Applause.)

18                      CHAIRPERSON WILLIAMS: Our Drafting Committee  
19           is headed by Michael Thomsen. If you could stand and  
20           members of that committee.

21                      (Applause.)

22                      CHAIRPERSON WILLIAMS: We have heard from our  
23           Nominating and Awards Committee headed by Shenique  
24           Moss. Thank you very much for your service on that  
25           committee.

1 Rules and Calendar is headed by Matthew  
2 Antkoviak. Members of that committee, if you would  
3 stand.

4 (Applause.)

5 CHAIRPERSON WILLIAMS: And Aaron Burrell, who  
6 could not be here today. He is our Special Issues  
7 Committee. If members of that committee could stand,  
8 please.

9 (Applause.)

10 CHAIRPERSON WILLIAMS: At the end of the day  
11 we will remind you regarding the clickers that you  
12 have in your possession to make sure that those are  
13 all left on the desk or turned in. If they are  
14 missing, we have a fee that we have to pay, and so we  
15 want to make sure that we collect those.

16 Again, I know that it's always a great  
17 sacrifice for you to be here on a Saturday, and so I  
18 thank you for your service. I hope that you find  
19 spring cleaning that we will do today for our  
20 organization to be worth your time. Again, thank you  
21 for your service, and we will continue our meeting now  
22 with our Assembly Review Committee report.

23 MS. BREITMEYER: Good morning, all of you. I  
24 am Kim Breitmeyer, the chair of the Assembly Review  
25 Committee, and I am here to first present regarding

1 something that the members of our Assembly Review  
2 Committee have been working on since the beginning of  
3 the year. We have met several times by phone with the  
4 members of the committee, who include Robert LaBre  
5 from the 43rd circuit; Ken Morgan from the 6th  
6 circuit; Martin Hillard from the 17th circuit; and  
7 Vince Romano from the 3rd circuit.

8 I would like to thank all of the members of  
9 the Assembly Review Committee here for all of their  
10 thoughts and ideas and the time that went into helping  
11 with dealing with a lot of these standing rules that  
12 we are going to be talking about today and also  
13 helping to come up with the survey questions that we  
14 had circulated to the full membership that I will talk  
15 about first. I would also like to thank the members  
16 of the Executive Committee for participating in that  
17 process, and also Anne, and I have those sentiments as  
18 Shenique for all of her help through this process.

19 First I am going to talk about the survey  
20 that we circulated electronically to the full  
21 membership, and I want to thank the almost 80 people  
22 who responded to the survey and offered your comments  
23 and your votes.

24 The first question we posed was, Are you  
25 generally in favor of electronic voting at in-person

1 meetings of the Representative Assembly? And  
2 overwhelmingly the response was yes, at 90 percent.  
3 We had a few comments here that you can see displayed  
4 on the screen.

5 The second question we asked was have you, If  
6 you answered yes to one, which one of the following do  
7 you prefer? Handheld device that reveals only the  
8 number of votes on the screen seen only by the vote  
9 counter, a handheld device that also displays to the  
10 user that his or her vote was registered, and we got a  
11 fairly strong majority that you liked the handheld  
12 device that displayed to the user that his or her vote  
13 was registered.

14 Question number three was, Are you generally  
15 in favor of the RA allowing remote electronic voting  
16 outside of in-person meetings? And this would be a  
17 situation where we would have some kind of electronic  
18 survey circulated via e-mail or some other social  
19 media, and the responses to this were a little bit  
20 more mixed, with a slim majority of about 54 percent  
21 saying yes.

22 Question number four, What limitations or  
23 conditions would you prefer regarding the use of  
24 remote electronic voting? What we received here was  
25 42 percent of respondents said that remote electronic

1 voting between meetings regarding substantive issues  
2 are necessary to remain relevant as the final  
3 policy-making body of the State Bar of Michigan.

4 Question number five, Are you generally in  
5 favor of using electronic communications between  
6 members about topics relevant to the RA outside of  
7 in-person meetings of the RA? And we definitely  
8 received almost an 80 percent majority said yes to  
9 that question.

10 Finally, question number six, If you answered  
11 yes to the previous statement, do you agree with the  
12 following statement, electronic communications between  
13 RA members using media like Yammer, E-blasts, blogs,  
14 social media, and electronic surveys is useful in  
15 furthering debate and discussion regarding substantive  
16 issues in advance of an in-person meeting but all  
17 voting should occur at in-person meetings? And we  
18 received about a 66 percent yes to that question.

19 Does anyone have any questions or concerns  
20 about the results of the survey or want to offer some  
21 additional comments at this time?

22 CHAIRPERSON WILLIAMS: I'm Elizabeth  
23 Bransdorfer, 17th circuit. I wondered if we had  
24 information on the demographics of who responded and  
25 who didn't respond to the survey?

1 MS. BREITMEYER: I don't believe we did  
2 collect demographics other than the number of  
3 respondents from the Representative Assembly.

4 Any other questions?

5 MR. POULSON: I note briefly from the  
6 reseating, the I, Barry Poulson from the 1st circuit,  
7 am seated to the left of my colleague, Matthew Abel.  
8 I am having a hard time processing that.

9 A couple things that I thought when I  
10 answered that survey were ambiguous for me at the time  
11 I answered, but one was clear, we don't necessarily  
12 trust the gadget yet, but a little light lights up  
13 says your vote was counted, so I think we have to see  
14 that we have almost a consensus on that. I pressed  
15 the button, I have no idea. I know I pressed the  
16 button.

17 And the second question, in terms of remote  
18 voting, when I answered I thought I wasn't clear in my  
19 own mind about what I was voting, if I would be voting  
20 on substantive matters remotely or whether they would  
21 be procedural matters. Because I think when we hash  
22 out -- I know this issue today on family law, I don't  
23 practice family law. I have no opinion on the issue.  
24 I am looking forward to hearing the commentary of my  
25 colleagues together, and so I wouldn't want to vote on

1           that remotely, but if it's a question about approving  
2           this or defeating that or changing this, then I am  
3           comfortable. So maybe the survey could go another  
4           round and say what about these three categories.  
5           Thank you. Appreciate that.

6                       CHAIR BREITMEYER: I am glad you raised those  
7           issues, because those were issues that came up with  
8           the committee and the Executive Board. We talked  
9           about whether we wanted to ask a more general question  
10          or more specific question, and we ended up deciding to  
11          ask the more general question, thinking we could  
12          follow up with more specific questions to clarify.  
13          Thank you.

14                      Any other questions or comments?

15                      CHAIRPERSON WILLIAMS: Before I move, the  
16          clerk will come and address the one question about the  
17          clickers, because we had a lot of discussion about the  
18          committee and the Executive Board regarding the  
19          clickers that we will use today.

20                      MR. HERRMANN: Good morning, everyone.  
21          Before we get into today's voting, the question from  
22          the floor prompted this. We were going to address it  
23          anyway, but now is a good time. The clickers you have  
24          in front of you, the LED light was mentioned. If you  
25          press any of the buttons on your key pad, and please

1 do that right now to verify, you will see the LED  
2 light blink when you press. That's your verification  
3 that your clicker is working and your vote is  
4 registering. With respect to the votes, it's yes, no,  
5 or abstain, as it always is, across the top row. So  
6 one is yes, two is no, and three is abstain. So if  
7 you make a note of that now, you can track it when we  
8 get to the voting.

9 Just so you understand the procedure, each  
10 clicker will only register one vote; however, it's  
11 your last press of a button that is your vote. In  
12 other words, if you mispress, if you say no but meant  
13 to say yes, feel free to press the one as your last  
14 vote. Up here we will ensure that we give you an  
15 indication that the voting is now open to accept your  
16 electronic votes, and we will also ask to ensure that  
17 everyone has registered their vote before we close the  
18 vote, and the computer I have in front of me will show  
19 all the votes coming in when we open, and once we  
20 confirm voting is closed, I will press the button and  
21 close the vote, and that will seal the voting on each  
22 particular issue.

23 Just so you know, these clickers are being  
24 borrowed by the Representative Assembly from ICLE for  
25 free. We will continue to attempt to do that from a

1 fiscal standpoint, but we are also exploring other  
2 options, may or may not come at greater cost, that  
3 provide enhanced reporting features for these  
4 clickers. We are still investigating that. Have I  
5 covered everything? Anyone have any questions? Thank  
6 you, Madam Chair.

7 CHAIRPERSON WILLIAMS: If there are no  
8 further questions on that item, we will move to item  
9 number six, which is an action item regarding the  
10 consideration of proposed amendment to the  
11 Representative Assembly Permanent Rules of Procedure,  
12 5.1 Voting.

13 MS. BREITMEYER: I want to explain a little  
14 background behind this proposed amendment to Rule 5.1.  
15 The Representative Assembly counted votes by  
16 electronic tally, if you remember last year at the  
17 April meeting and then at various other meetings in  
18 the past, and the amendment that we present today  
19 establishes a procedure for the tallying votes by  
20 electronic means.

21 The Representative Assembly Review Committee,  
22 the survey that we discussed earlier, which revealed  
23 the desire of the body as a whole to have the ability  
24 to tally votes on proposals electronically. The  
25 Assembly Review Committee conducted the survey, which

1 revealed the desire to have the ability to tally votes  
2 electronically. Ninety percent of responses indicated  
3 they were generally in favor of electronic voting at  
4 in-person meetings; 75 percent said they preferred a  
5 handheld device that also displays to the user that  
6 his or her vote was registered; and a slim majority of  
7 respondents, about 54 percent, indicated that they  
8 were generally in favor of allowing the remote  
9 electronic voting outside of in-person meetings.

10 Forty-three percent of respondents felt that  
11 remote electronic voting between meetings should be  
12 used regarding substantive issues to remain relevant  
13 as the final policy-making body, while 25 percent felt  
14 that it only should be used for matters concerning  
15 pro forma or housekeeping issues. The remaining 29  
16 percent did not favor the use of remote electronic  
17 voting between meetings under any circumstances.

18 Here today we are talking about whether the  
19 Representative Assembly could support an amendment to  
20 the Permanent Rules of Procedure of the Representative  
21 Assembly Section 5.1 to clarify its ability to vote  
22 using electronic devices and language of the amendment  
23 should be displayed above, that unless a written  
24 ballot is required, voting shall be by a voice vote or  
25 electronic tally at the option of the chair. If by

1 voice vote when the chair is in doubt, a roll call  
2 vote, either by voice or an electronic vote, shall be  
3 taken and a record kept to indicate the individual  
4 vote of each participating Representative Assembly  
5 member. If a division is requested as to the voice  
6 vote and supported by at least 20 members of the RA,  
7 or when a position is to be taken on proposed  
8 legislation and the position of the Assembly is not  
9 unanimous, a roll call vote, either by voice or  
10 electronic vote, shall be taken, and a record kept to  
11 indicate the individual vote of each participating RA  
12 member.

13 So the question is, Should the RA adopt this  
14 resolution to amend the Permanent Rules of Procedure  
15 of the RA Section 5.1 Voting to clarify the ability of  
16 the RA to vote using electronic devices? We move to  
17 accept that motion.

18 CHAIRPERSON WILLIAMS: A motion having been  
19 made to accept the proposal to amend the  
20 Representative Assembly Permanent Rules of Procedure  
21 5.1 Voting, is there a second?

22 VOICE: Support.

23 CHAIRPERSON WILLIAMS: Motion having been  
24 made and properly seconded, is there any discussion?

25 MS. KAKISH: Kathy Kakish, 3rd circuit. I

1           have a question related to the very last sentence for  
2           the addition of 5.1. It says, A roll call vote shall  
3           be taken and a record kept to indicate the individual  
4           vote of each participating Representative Assembly  
5           member. Now, if the chair determined that the vote is  
6           not electronic but voice vote, does this mean that the  
7           Assembly will now take the name individually of each  
8           person saying aye or nay? That's how I read this, and  
9           I am wondering about how difficult that would be in  
10          such meeting.

11                   CHAIRPERSON WILLIAMS: No, it would be a roll  
12          call where we would go through each member and it  
13          would be recorded by our court reporter. If it was  
14          electronically, it would be recorded by your name and  
15          circuit to show evidence of your voting.

16                   MS. KAKISH: May I add? But the normal path  
17          that we do it now is that they would count the people  
18          who stand up for a roll call. This addition means  
19          that not only do we count the names, the numbers, but  
20          now we have to register the names, and I am worried  
21          about how much time that would take.

22                   CHAIRPERSON WILLIAMS: That's always been a  
23          part of rules where a division is called or we are  
24          voting on legislation or some type of policy that  
25          impacts legislation, so the change here is just to add

1 the electronic voting. The actual roll call vote in  
2 terms of legislation, that's always been a part of it.  
3 So if you see the requirement for the roll call vote  
4 when there was some doubt has always been a part of  
5 our rules.

6 Chair recognizes the member at the  
7 microphone.

8 MS. JOHNSON: Thank you, Madam Chair.  
9 Elizabeth Johnson of the 3rd circuit. I also have  
10 similar concerns as Ms. Kakish, but my concern is in  
11 the middle of the paragraph when it talks about on our  
12 regular votes, not roll call votes, it is not  
13 customary to ask for individual names, and the  
14 sentence is that we would indicate the individual vote  
15 of each participating Representative Assembly member.

16 I feel that this body has always maintained a  
17 nonpartisan approach. I feel this sentence, while  
18 well intended, would have absolutely the wrong effect  
19 and would allow people to vote more on partisan lines  
20 than we ever have before, and I would actually make a  
21 friendly amendment to delete the section on the  
22 individual votes, the line where it says, To indicate  
23 the individual vote of each participating  
24 representative member when it's for regular votes and  
25 not for roll call votes.

1 MS. BREITMEYER: We are going to accept the  
2 proposed friendly amendment as part of the original  
3 motion.

4 CHAIRPERSON WILLIAMS: The chair recognizes  
5 the member at the microphone.

6 MR. FLESSLAND: Dennis Flessland from the  
7 6th circuit. As I read this rule, the chairman will  
8 have the opportunity for a regular vote of either  
9 having a voice vote or a vote by electronic device,  
10 and we are striking the division of the house vote  
11 where you stand up. It seems to me that the chairman  
12 ought to have that option of having people stand in  
13 the event that we have a technologically failure or we  
14 have the situation where we can't borrow the ICLE  
15 devices and we haven't purchased our own. It seems to  
16 me that's something that ought to be in the chair's  
17 discretion, and I think it would be a good idea to add  
18 back the option of having a standing vote if the  
19 chairman thinks that's appropriate.

20 CHAIRPERSON WILLIAMS: Chair recognizes the  
21 member at the microphone.

22 MR. FALKENSTEIN: Peter Falkenstein, 22nd  
23 circuit. This amendment that's being accepted now, is  
24 that going to foreclose the need for ever having a  
25 roll call by electronic vote? If it doesn't foreclose

1           that, then I have a comment, but if we are no longer  
2           ever going to need a roll call by electronic vote or  
3           if we are going to ever have to have that, then I see  
4           a potential problem. I will just state the problem  
5           anyway.

6                        MS. BREITMEYER: The answer to the question  
7           is that we would still be able to have a roll call  
8           vote.

9                        MR. FALKENSTEIN: Then the question is how  
10          will that work given these devices are not assigned to  
11          individual members? My circuit has six seats. We  
12          were not assigned seats, so I could take any device,  
13          and you will not then record who each device was  
14          assigned to and not get a roll call by the electronic  
15          device.

16                      MS. BREITMEYER: And the answer I am getting  
17          here, it's a framework for future technology, so when  
18          we are able to implement.

19                      MR. FALKENSTEIN: You agree that it is a  
20          problem right now, but in the future we will try to  
21          rectify it?

22                      CHAIRPERSON WILLIAMS: Correct.

23                      MR. FALKENSTEIN: Thank you.

24                      MR. MASON: Good morning. My name is  
25          Gerry Mason from St. Clair County, which is the 31st

1 circuit, and I support the amendment as presented.  
2 One, I think we have to do everything we can to  
3 integrate new technology, to make voting more accurate  
4 and more efficient with some of the concerns that have  
5 been raised in mind. I also think that as  
6 representatives of the Bar and Assembly members and  
7 representatives of the legal profession, we are held  
8 accountable, and that means that if it's called to a  
9 voice vote, sobeit. We make our living based on  
10 controversy, so the idea that there is some sort of  
11 controversy, I wouldn't want anybody to know how I  
12 vote, defeats the purpose of me being here on  
13 Saturday. I am going to go back to my Bar and give a  
14 report of what I did. If they are not happy with it,  
15 I guess they could remove me or someone could run  
16 against me.

17 I think it's important that we are held  
18 accountable and that when the chair deems a voice vote  
19 or -- we obviously function under Roberts Rules of  
20 Order, which can call for any number of things that  
21 may or may not even be listed in our rules, that we  
22 should be held accountable to each other as well as to  
23 the Bar. Thank you.

24 CHAIRPERSON WILLIAMS: Thank you.

25 MR. ROMANO: Vince Romano, 3rd circuit. I

1           also support the matter. However, I am troubled by  
2           the record of individual voting. I heard Vanessa say  
3           that we have always done that. I voted an awful lot  
4           in this body over the years, and I have never had my  
5           vote identified in any way, roll call or individual  
6           votes. I am not troubled to stand up and identify  
7           myself how I am voting. I am troubled by a record of  
8           votes among the body of individuals. I hope we can  
9           come up with a way to eliminate that position.

10                   CHAIRPERSON WILLIAMS: Thank you.

11                   MS. BREITMEYER: Any further comments or  
12           questions?

13                   CHAIRPERSON WILLIAMS: Any other comments or  
14           questions from the body? The chair recognizes the  
15           member at the mike.

16                   MR. FERGAN: Robert Fergan from the 22nd  
17           circuit. I am looking at the language as amended, and  
18           it talks about when the chair is in doubt a roll call  
19           vote, either by voice or electronic vote, shall be  
20           taken and a record kept when it's for regular votes  
21           and not roll call votes, but that language doesn't  
22           make sense. So, you know, somebody needs to fix that  
23           before we vote. I don't have the particulars in mind.

24                   MS. JOHNSON: As the member who made the  
25           amendment, I have no problem with leaving it, after

1 the word "kept," and taking out the word for regular  
2 votes and not roll call votes, if that would satisfy  
3 the gentleman from the 22nd.

4 MR. FERGAN: I would also suggest getting rid  
5 of the contraction and putting it as -- sorry.

6 CHAIRPERSON WILLIAMS: Would you accept his  
7 amendment?

8 MS. BREITMEYER: And I accept that.

9 CHAIRPERSON WILLIAMS: Chair recognizes the  
10 member at the mike.

11 MR. ROMANO: Vince Romano. Again, I am still  
12 from the 3rd circuit. I would ask that that period we  
13 just inserted, I would move that that same period be  
14 put at the end of the motion after the words "record  
15 kept."

16 MS. BREITMEYER: I accept that friendly  
17 amendment.

18 MR. MOILANEN: That's what it says.

19 CHAIRPERSON WILLIAMS: Chair recognizes the  
20 member at the mike.

21 MS. KAKISH: Kathy Kakish from the  
22 3rd circuit. I did serve as chair of the  
23 Representative Assembly in the past, and my main  
24 concern, and I am sorry to mention it, but I think I  
25 can just only see it logistically what could happen in

1 a meeting. If a roll call vote is asked by the chair  
2 by voice, what normally happens is that those who are  
3 in favor would stand up, correct, and then there would  
4 be appointed people who would start counting the  
5 individuals who are standing up. I am very concerned  
6 with the language here at the end, which says that a  
7 roll call vote, let's say it's by voice, shall be  
8 taken and a record kept to indicate the individual  
9 vote of each participating Representative Assembly  
10 member.

11 Now, for those who are leading the meeting,  
12 they would have to necessarily read this as saying  
13 that as those ayes, the people let's say who are  
14 standing up with their aye vote, somebody is going to  
15 have to now record each members' name. I can only  
16 imagine how long this would take in a meeting. This  
17 is different than an electronic recording. That's my  
18 concern, unless if I am reading this incorrectly.

19 MR. FALKENSTEIN: I would like to add on to  
20 that comment, please.

21 MR. ROMANO: Would the Chair just take a  
22 friendly amendment? It's a question. If the Chair  
23 took a, accepted a friendly amendment with that  
24 period, then this point is not up.

25 CHAIRPERSON WILLIAMS: Just a point of order,

1           when you have a comment, you will have to move to  
2           the --

3                       MR. FALKENSTEIN: I would like to just tag on  
4           to the comment by my esteemed colleague here. I  
5           agree -- well, a roll call vote generally means you  
6           call the roll, every member, 140 members. That's  
7           going to take an inordinate amount of time to go  
8           through the whole roll. What I would offer as an  
9           amendment is that we limit it to electronic voting.  
10          If a roll call is required, that it done by electronic  
11          vote. Hopefully the technology will be available soon  
12          so that everybody will have an assigned clicker, and  
13          then the roll call vote essentially occurs when  
14          everybody clicks in their vote, but to do a roll call  
15          vote by voice is going to keep us here till midnight  
16          if we have several of those. I can see it taking 20  
17          minutes just to do a roll call vote of all 140  
18          members. I would offer an amendment that we take out  
19          the words "either by voice or an electronic vote" and  
20          just say "a roll call vote by electronic vote shall be  
21          taken." And what that means is that we won't be able  
22          to do it until such time as the technology is  
23          acquired, but hopefully that can happen pretty  
24          quickly. Yeah, Roll call vote by electronic vote, and  
25          then you will have your record, and it will only take

1 a few seconds. Thank you.

2 MS. BREITMEYER: We are not accepting the  
3 friendly amendment from the floor. Some of the  
4 reasoning is that we are talking here only when there  
5 is a division what type of a vote would be taken.

6 CHAIRPERSON WILLIAMS: Chair recognizes the  
7 member at the mike.

8 MR. ROMANO: So perhaps I was inarticulate or  
9 misunderstood, but the period that was placed in the  
10 fourth line after "record kept," record kept, period,  
11 and the balance of that is red lined. Then my  
12 reference was to the same language at the end of the  
13 motion, to put that same period after "record kept,"  
14 put it on the second to the last line after the words  
15 "record kept, period."

16 MS. BREITMEYER: You were proposing that at  
17 the last sentence instead of --

18 MR. ROMANO: Correct. Someone else made that  
19 friendly amendment regarding the first sentence. I am  
20 going to the very bottom. There, where the cursor is  
21 now. That's where I was suggesting a period also be  
22 placed.

23 MS. BREITMEYER: I didn't understand.

24 MR. ROMANO: So I was inarticulate.

25 MS. BREITMEYER: That's okay.

1                   MR. ROMANO: Then I would propose that as a  
2 friendly amendment.

3                   MS. BREITMEYER: We will accept that friendly  
4 amendment.

5                   We are accepting the friendly amendment that  
6 we add the period to the first "kept" and the last.

7                   CHAIRPERSON WILLIAMS: The chair recognizes  
8 the member at the mike.

9                   MR. SMITH: Joshua Smith, 30th circuit. To  
10 the extent that you did take a voice roll, I mean, I  
11 think it can be done quickly rather than writing down  
12 each individual member's name. We already have a list  
13 of members by circuit. You can just keep track of it  
14 on this, couldn't you? That would be faster than  
15 writing every name down.

16                   CHAIRPERSON WILLIAMS: That's a result of the  
17 amendment that the chair just accepted, so if you want  
18 to scroll from the beginning down so that you can see  
19 what the amendment would look like now.

20                   MS. BREITMEYER: As amended, the language is,  
21 Unless a written ballot is required, voting shall be  
22 by voice vote or electronic tally at the option of the  
23 chair. If by voice vote when the chair is in doubt, a  
24 roll call vote, either by voice or electronic vote,  
25 shall be taken and a record kept. If a division is

1 requested as to the voice vote and supported by at  
2 least 20 members of the RA or when a position is to be  
3 taken on proposed legislation and the position of the  
4 Assembly is not unanimous, a roll call vote, either by  
5 voice or an electronic vote, shall be taken and a  
6 record kept.

7 MR. FALKENSTEIN: Chairman, I have offered an  
8 amendment, which if you did not accept as friendly, I  
9 will have to offer, I guess, as hostile, unfriendly,  
10 but that was that wherever a roll call vote is  
11 required for that we eliminate voice as one of the  
12 options. So that there are two places which has a  
13 roll call vote, so to say, a roll call by electronic  
14 vote shall be taken and a record kept. And the point  
15 being we don't want to waste that much time on voice  
16 roll call votes, so that was my amendment, and I think  
17 you said you were not accepting it, so I am offering  
18 it as an amendment to be voted on. Thank you.

19 CHAIRPERSON WILLIAMS: There is a motion on  
20 the floor that the proposed amendment be amended to  
21 eliminate a voice vote --

22 MR. FALKENSTEIN: For a roll call.

23 CHAIRPERSON WILLIAMS: -- for a roll call.

24 Is there a second?

25 VOICE: Second.

1                   CHAIRPERSON WILLIAMS: The motion has been  
2                   made and seconded. Is there a discussion on that  
3                   amendment?

4                   MR. CRAMPTON: Jeff Crampton, 17th circuit.  
5                   I just pulled up the rules, because it was hard to  
6                   read them in here. I think this entire discussion is  
7                   really unnecessary. The rule says -- I am reading  
8                   5.1 -- voting shall be by voice vote unless a written  
9                   ballot is required or the members stand and are  
10                  counted when the chair is in doubt or division is  
11                  requested, provided however --

12                  CHAIRPERSON WILLIAMS: At this time we can  
13                  only discuss the proposed amendment.

14                  MR. CRAMPTON: This is the amendment. I am  
15                  addressing the amendment.

16                  CHAIRPERSON WILLIAMS: That the gentlemen  
17                  just made?

18                  MR. CRAMPTON: Yes, because it says,  
19                  Provided, however, that a roll call vote shall be  
20                  taken and a record kept thereof at any time a request  
21                  for such vote is made and supported by at least 20  
22                  members of the Representative Assembly or when a  
23                  position is to be taken on proposed legislation and a  
24                  position of the Assembly is not unanimous.

25                  So we already have to take a roll call vote

1 under certain circumstances. The question is can we  
2 do it electronically if we have the technology. So  
3 this amendment is really not necessary, and, frankly,  
4 most of this discussion is not necessary, because this  
5 entire proposal is just to say can we do things  
6 electronically that we now have to do by voice or  
7 standing up, and we already have to take a roll call  
8 vote under certain circumstances. Frankly, I have  
9 never seen one in my seven years on this Assembly, but  
10 it could happen, so I think I would oppose the  
11 amendment of that, and, frankly, I think we should  
12 vote on the proposal as originally drafted. Thank  
13 you.

14 CHAIRPERSON WILLIAMS: Any other comments as  
15 to the amendment?

16 VICE CHAIR QUICK: Dan Quick, 6th circuit.  
17 So we currently cannot do division with our current  
18 electronic technology for a roll call vote, so if we  
19 accept the amendment, we have now emasculated  
20 ourselves from being able to do it, because that's the  
21 only other way to do it is to have people stand up by  
22 voice, and so I would oppose the amendment.

23 CHAIRPERSON WILLIAMS: Any other discussion?

24 MR. HOLSOMBACK: Mark Holsomback, 9th circuit  
25 court. If we have technology that allows for a vote

1 of this nature and we have a failure or compromise of  
2 that technology, having the ability to do a voice  
3 vote, I think, would be helpful, so we just could do  
4 it the old-fashioned way if the technology fails, and  
5 I am sure the RA would want to do it electronically if  
6 we can to save time, but if there is some failure, we  
7 should have the ability to take the vote.

8 CHAIRPERSON WILLIAMS: Thank you. Any other  
9 comments? Seeing no members standing at the mike, we  
10 will now move to the question. All of those in favor  
11 of the amendment to strike "either by voice or,"  
12 please indicate by sayings yes.

13 All those opposed, please indicate by saying  
14 no.

15 The Chair determines that the motion fails.

16 At this time we will move to back to the  
17 original proposal as amended by the friendly amendment  
18 that has been accepted. Is there any further  
19 discussion?

20 MR. PAVLIK: Is it the intent -- my  
21 apologies, Adam Pavlik, 54th circuit. I just want to  
22 be clear, is it the intent of this proposal to  
23 eliminate rising votes? Okay, it is not.

24 CHAIRPERSON WILLIAMS: No.

25 MR. PAVLIK: That's all I wanted to be clear

1           on. By a rising vote, I mean a circumstance where we  
2           would have everyone who wants to vote aye or nay  
3           stand, you can eyeball it and tell roughly speaking  
4           how many people are in favor and against. I just  
5           wanted to know whether this rule speaks to that.

6                    MS. BREITMEYER: It doesn't change that. It  
7           just gives us the additional option formally that  
8           would include electronic voting.

9                    MR. MOILANEN: So we are going to vote  
10          electronically on this vote?

11                   VOICE: Call the question.

12                   CHAIRPERSON WILLIAMS: Seeing no other  
13          members at the microphone, we will move to the  
14          question.

15                   All of those in favor to accept the proposal  
16          to amend the Representative Assembly Permanent Rules  
17          of Procedure of 5.1 Voting as it appears on the  
18          screen, please indicate by pressing your -- I guess  
19          you would log your vote now. One is for yes, two is  
20          for no, and three would be abstention.

21                   At this time I just would like to confirm  
22          that everyone has voted. We are closing the vote. We  
23          will ask the clerk to indicate what the tally shows.

24                   MR. HERRMANN: Madam Chair, we have 87  
25          percent yes, 13 percent no, zero abstentions.

1                   CHAIRPERSON WILLIAMS: Thank you. The vote  
2 passes.

3                   MS. JOHNSON: Point of order, Madam Chair.  
4 Elizabeth Johnson again from the 3rd circuit. We  
5 usually have calculated our motions on the number of  
6 votes, not a percentage. Do we have a number of votes  
7 on yes or no?

8                   MR. HERRMANN: We have 94 yes, Madam Chair,  
9 14 no, and zero abstain.

10                  CHAIRPERSON WILLIAMS: Did everyone hear  
11 that? It was 94 yes, 14 no, and zero abstentions.

12                  At this time we will move to item number  
13 seven, consideration of proposed amendment to the  
14 Representative Assembly Permanent Rules of Procedure  
15 4.4 Minority Reports. In addition to the special  
16 order that was sent to you at the time of the  
17 announcement, we also sent a substitute motion or  
18 proposal that does not change in substance the ability  
19 to bring a minority report. There were some  
20 additional changes clarifying between section minority  
21 report, the representative minority report, and the  
22 ability that the length of the minority report would  
23 equal that of the majority versus the 500-word limit  
24 that was in the original materials that were mailed to  
25 you.

1                   Following the e-mail of the proposed  
2                   substituted proposal, we received a note that there  
3                   was a clerical error, and we removed duplicate words  
4                   that showed the following in the motion, in the  
5                   proposal twice, and so those things have been moved  
6                   out of the proposed amended language.

7                   Are there any objections to having  
8                   consideration as to the substituted proposal as you  
9                   have at your desk now? Seeing no motion towards the  
10                  mike, we will move forward with the proposal as it is  
11                  presented at your desk today.

12                  MS. BREITMEYER: Thank you. The second issue  
13                  that the Assembly Review Committee had worked through  
14                  this year had to do with drafting a change to the  
15                  Permanent Rules that would respond to the  
16                  recommendations that the RA as a whole provided to the  
17                  Michigan Supreme Court Task Force Committee regarding  
18                  the First Amendment issues that were raised in the  
19                  Keller matter, and this was to add the concept of  
20                  minority reporting.

21                  In furtherance of a desire to promote  
22                  transparency from the deliberations of the RA and  
23                  present to the Michigan Supreme Court a full view of  
24                  the opinions of the body regarding recommendations,  
25                  the RA should allow its members to author minority

1 reports. Currently the RA provides a mechanism for  
2 section members and councils to offer minority reports  
3 to accompany their proposal to the RA. The  
4 completeness of the deliberations contemplated by  
5 Section 4.4 of the Permanent Rules of Procedure of the  
6 RA would be applicable in the context of the Assembly  
7 recommendations to the Michigan Supreme Court.

8 So that's a background into the language  
9 that's presented to you today, amendment to  
10 Section 4.4 Minority Reports.

11 The section minority report is a written  
12 report stating the view of less than half the members  
13 of a section, section council, or a committee on a  
14 recommendation of the majority report of the section.  
15 The content of the minority report must reflect the  
16 minority views presented to the section, section  
17 council, or committee orally or in writing at the time  
18 it acted on the matter unless the section, section  
19 council, or committee did not notify its members in  
20 advance that the matter was considered. The report  
21 must be printed at the request of its proponents over  
22 their signatures and appended to the report to which  
23 it relates.

24 And so that with a few amendments, there is  
25 what's currently in the rules concerning the minority

1 report section. What we are adding is Representative  
2 Assembly minority reports, and the language there is  
3 that members of the RA voting in the minority on a  
4 proposal to be submitted to the Michigan Supreme Court  
5 may collectively submit a minority report to accompany  
6 State Bar recommendations to the Michigan  
7 Supreme Court if the majority proposal has been  
8 adopted by less than 75 percent of the members present  
9 and voting. The content of the minority report must  
10 be limited to the views presented on the floor of the  
11 Assembly meeting during the debate on the merits of  
12 the proposal. A member of the Assembly must invoke  
13 this rule by making a motion for the submission of a  
14 minority report immediately following the vote on the  
15 following proposal from which the minority report  
16 dissents have been adopted, and must identify the  
17 authors of the minority report. The length of the  
18 report may not exceed that of the majority and must be  
19 submitted to the Clerk within 14 days of the  
20 conclusion of the meeting at which the motion passed.  
21 The Clerk must review the report with the Drafting  
22 Committee to ensure compliance with the word  
23 limitations and reasonable consistency with the  
24 minority opinions expressed during the debate on the  
25 recommendations and largely reflected in the

1 transcript of the proceedings. The Clerk and Drafting  
2 Committee shall have the final decision on the draft  
3 of the minority report submitted.

4 At this time I would like to make a motion.  
5 Should the Representative Assembly adopt the above  
6 resolution to amend the Permanent Rules of Procedure  
7 of the RA Section 4.4 Minority Reports to allow  
8 members of the RA to provide a minority report to  
9 accompany recommendations to the Michigan  
10 Supreme Court?

11 CHAIRPERSON WILLIAMS: The motion having been  
12 made that the Representative Assembly adopt the  
13 proposed amendment to the Representative Assembly  
14 Permanent Rules of Procedure of 4.4 Minority Reports  
15 to allow the members of the Representative Assembly to  
16 provide minority reports to accompany recommendations  
17 to the Michigan Supreme Court. Is there a second?

18 VOICE: Support.

19 CHAIRPERSON WILLIAMS: Motion having been  
20 made and there being a second, is there any  
21 discussion? Chair recognizes the Vice Chair.

22 VICE CHAIR QUICK: Dan Quick, 6th circuit.  
23 Under the category of wisdom come late is better than  
24 none at all, in the seventh line of this proposal you  
25 will see the phrase "by making a motion." Having

1 participated in the drafting of this, I do not think  
2 it was the intent that there would have to be a motion  
3 in order to include a minority report. It's simply a  
4 right that has to be invoked. If it's obviously  
5 adopted as a motion, we would then have to vote on it,  
6 so I have a friendly amendment proposal to replace the  
7 word "motion" with "request."

8 MS. BREITMEYER: I will accept that friendly  
9 amendment.

10 CHAIRPERSON WILLIAMS: Chair recognizes the  
11 member at the mike.

12 MR. SMITH: Thank you. Joshua Smith,  
13 30th circuit. The only issue I really have with this,  
14 and I do think it's a very good idea, is that it only  
15 applies if the majority proposal has been adopted by  
16 less than 75 percent of the members present and  
17 voting. I think it makes it more of a minority,  
18 unless there is a super majority in support of the  
19 proposal, and I think that to a large extent defeats  
20 the purpose of having a minority report. That is, you  
21 could have a compelling argument for a minority report  
22 even though it's less than 25 percent of the members  
23 present and voting were in the minority. So I guess I  
24 would ask for a friendly amendment putting a period  
25 after, in line four, a period after Supreme Court, and

1           then -- I am sorry. In mine it's line four. In yours  
2           it would be recommendation to the Michigan Supreme  
3           Court, period, and then striking out the rest of that  
4           sentence that pertains to the 75 percent aspect of the  
5           rule. Thank you.

6                   MS. BREITMEYER: I am going to reject that  
7           friendly amendment. The idea behind having the limit  
8           in the language to the 75 percent was to reduce the  
9           administrative burden on the RA as a whole and only  
10          consider issues where there is a more significant  
11          opposition to the issue.

12                   MR. SMITH: I would like to move to make that  
13          an amendment then, if I may, please.

14                   CHAIRPERSON WILLIAMS: You are making the  
15          motion to strike on the line, if the majority proposal  
16          has been adopted by less than 75 percent of the  
17          members present and voting?

18                   MR. SMITH: Yes.

19                   VOICE: Second.

20                   CHAIRPERSON WILLIAMS: The motion has been  
21          made and properly seconded. Is there any discussion  
22          on the motion to amend the proposal to strike "if the  
23          majority proposal has been adopted by less than 75  
24          percent of the members present and voting."

25                   Chair recognizes the member at the mike.

1                   MR. BUCHANAN: Rob Buchanan from the 6th  
2                   circuit. I think the problem with publishing every  
3                   minority is that it has no meaning, so I think you  
4                   want to have this provision, so if there is a close  
5                   question then it's more persuasive than if you publish  
6                   every minority, because if you publish every minority,  
7                   then it has no meaning to the Supreme Court or anyone  
8                   else who looks at it. So I would vote in opposition  
9                   to this amendment.

10                  CHAIRPERSON WILLIAMS: Chair recognizes the  
11                  member at the mike.

12                  PRESIDENT ROMANO: I think there ought to be  
13                  a mechanism that allows the minority to have input as  
14                  to when the report gets, the minority report gets  
15                  submitted, so I think the number is too low, the 75  
16                  percent. I am speaking to eliminate the language.

17                  CHAIRPERSON WILLIAMS: So you are supporting  
18                  the amendment?

19                  MR. ROMANO: I am supporting the amendment  
20                  that would eliminate the red line there.

21                  MR. FALKENSTEIN: Peter Falkenstein,  
22                  Washtenaw County. In addition to the administrative  
23                  burden, quite frankly, I don't want to see a single  
24                  ideologue who needs to comment on every proposal to  
25                  which he or she may be opposed filing a minority

1 report that's going to be sent to the Supreme Court.  
2 That just makes no sense to me.

3 CHAIRPERSON WILLIAMS: Are there any other  
4 comments on the amendment that has been proposed?  
5 Seeing no motion --

6 PRESIDENT ROMBACH: Tom Rombach, 16th  
7 circuit. I think this is the law of unintended  
8 consequences. When you say section minority reports  
9 at the top, I don't think you really mean to be  
10 messing with that, but you are. We have had a  
11 continuing concern about particularly outside groups  
12 not understanding the difference between sections and  
13 committees, and when you label that section, you are  
14 only furthering the confusion within our own group,  
15 because it says minority reports.

16 A section minority report is a written report  
17 stating the views of less than half the members of a  
18 section, section council, or committee, and  
19 fundamentally a committee is far different than a  
20 section. I appoint the members of the committee, so  
21 it's just one person's viewpoint of who we stack the  
22 committee with, while a section is representative of  
23 the votes of its members. So the difficulty is that I  
24 agree that the Representative Assembly should have a  
25 greater role, and they are not really dealt with in

1 4.4.

2 CHAIRPERSON WILLIAMS: We'll have to take  
3 your comments when we move back to the main motion.

4 PRESIDENT ROMBACH: I am sorry?

5 CHAIRPERSON WILLIAMS: We are debating now  
6 the amendment by the gentlemen regarding striking  
7 the --

8 PRESIDENT ROMBACH: That's fine, but I just  
9 want to make sure that we are cognizant of the  
10 environment in which we find ourselves.

11 CHAIRPERSON WILLIAMS: We will come back to  
12 that, Mr. Rombach.

13 PRESIDENT ROMBACH: No problem. I will share  
14 that next.

15 CHAIRPERSON WILLIAMS: Any other comments  
16 regarding the proposed amendment regarding striking  
17 this language?

18 MR. LITTLETON: Ray Littleton, 6th circuit.  
19 I think striking out the 75 percent requirement just  
20 really takes away the whole purpose of the minority  
21 report. I mean, the purpose of it is to show a close  
22 question and the fact that something is not entirely  
23 decided by the Board, and so when you take out the  
24 percentage requirement, like counsel said, I mean, it  
25 just devalues the whole purpose of that report.

1                   CHAIRPERSON WILLIAMS: Any other comments  
2                   regarding the amendment to the proposal? Seeing no  
3                   motion towards the mike, we will move to the question.

4                   All of those in favor of striking "if the  
5                   majority proposal has been adopted by less than 75  
6                   percent of the members present and voting," please  
7                   indicate by saying yes.

8                   All those opposed, please indicate by saying  
9                   no.

10                  The chair determines that the motion failed.

11                  So now we will move back to the discussion on  
12                  the main motion. I recognize the member at the mike.

13                  MR. LABRE: Rob LaBre, 43rd circuit. I first  
14                  have a question, because I am little ignorant on the  
15                  process. How soon after the transcripts are made do  
16                  we propose our proposed rule to the Supreme Court?  
17                  What's the time limits before we say, okay, we have  
18                  accepted this rule and then it moves up? You follow  
19                  what I am saying?

20                  CHAIRPERSON WILLIAMS: We don't have a set  
21                  time limit. It's just done as a matter of course  
22                  after we get the --

23                  MR. LABRE: Might I suggest a friendly  
24                  amendment initially, that we strike the words 14 days  
25                  and insert after a transcript of the meeting has been

1 posted on -- within a reasonable time after a  
2 transcript of the meeting has been posted on the  
3 State Bar website. Fourteen days just seems like you  
4 better get it done now, and, given our schedules, that  
5 can be difficult. You probably want to double check  
6 what was said at the meeting itself before we start  
7 spouting off.

8 MS. BREITMEYER: I am rejecting the friendly  
9 amendment, and the reason is that the 14 days just  
10 marks the time of the transcript getting delivered to  
11 the Drafting Committee for them to go through that --  
12 regarding the minority report. I am sorry, not the  
13 transcript but the minority report gets sent to the  
14 Drafting Committee for the Drafting Committee to  
15 review it, so that doesn't limit the amount of time  
16 for all that to happen before it goes to the Michigan  
17 Supreme Court.

18 MR. LABRE: That went by me a little fast.  
19 If I follow you, I just want to reflect what you are  
20 telling me so I understand it clearly. Fourteen days  
21 for the Drafting Committee to receive the minority  
22 report, correct?

23 MS. BREITMEYER: Correct.

24 MR. LABRE: And my point is, I want people  
25 to -- if they are going to make a minority report,

1           before we send it even to the Drafting Committee, we  
2           want to make sure what we say is accurate according to  
3           what was posted in the transcript and that we are not  
4           just spouting off in anger within 14 days and you get  
5           a bunch of information that is inaccurate. If someone  
6           is serious about submitting a minority report, they  
7           are going to want to review the transcript and post  
8           their arguments with valid facts and their reasons  
9           well thought out, which you are going to want the  
10          transcript on the one hand, and you are going to want  
11          a reasonable time on the other.

12                        So if the position is that this is not  
13          acceptable as a friendly amendment, I will just move  
14          that that become part of the language. Did I  
15          understand you right? Was I reflecting you accurately  
16          or was I not?

17                       CHAIRPERSON WILLIAMS: So you're making a  
18          motion at this time to strike 14 days and add a  
19          reasonable time after the transcript?

20                       MR. LABRE: That doesn't look right. It  
21          should be submitted to the clerk after the conclusion  
22          of the meeting within a reasonable time after a  
23          transcript.

24                       CHAIRPERSON WILLIAMS: Our rules require that  
25          an amendment be limited to six words. Are you able to

1           limit that? We will just leave it. Do you have it  
2           all in here?

3                     MR. LABRE: I just had a really good  
4           suggestion. Instead of 14 days, strike 14 days.  
5           Within 90 days and insert 90, or actually strike 14  
6           and insert 90.

7                     CHAIRPERSON WILLIAMS: Is there a second to  
8           strike 14 and make it 90 days?

9                     VOICE: Second.

10                    CHAIRPERSON WILLIAMS: Motion having been  
11           made and seconded, is there any discussion in striking  
12           14 days and making it 90 days, or striking 14 days and  
13           adding 90 days? Any discussion on that amendment?

14                    MR. HERRMANN: Madam Chair, Fred Herrmann,  
15           3rd circuit. I think the notion of an opportunity to  
16           review the transcript is, under the best  
17           circumstances, valid. However, when we come before  
18           this body to debate issues, I think the assumption is  
19           that everyone comes prepared with their best  
20           understanding, knowledge, and arguments, and the  
21           majority of positions that are taken would not leave  
22           this floor with the benefit of the transcript, and,  
23           therefore, I think it's equitable for everyone to  
24           present their views. If a minority report is to be  
25           submitted, this presents an opportunity to preserve

1           that right and provides a reasonable timetable to  
2           process that minority report. I don't think the  
3           availability of the transcript should necessarily be  
4           tied to that. Thank you.

5                   CHAIRPERSON WILLIAMS: Chair recognizes the  
6           member at the mike.

7                   MR. CRANDELL: Patrick Crandell, 6th circuit.  
8           My question is would 90 days, at what point does a  
9           minority report and the entire position of the  
10          Representative Assembly then become irrelevant to the  
11          discussion? If we are waiting three months to get a  
12          minority report submitted that then has to be vetted,  
13          that then has to be submitted to the State Bar, does  
14          the question become irrelevant at that point?

15                   CHAIRPERSON WILLIAMS: Any other comment or  
16          discussion? I don't see any other motion toward the  
17          mike, so we will move for the question.

18                   All of those in favor of accepting the  
19          amendment to change 14 to 90 days indicate by saying  
20          yes.

21                   All of those opposed, please indicate by  
22          saying no.

23                   The Chair determines that the motion fails.  
24          At this time we will move to the discussion of the  
25          main proposal. Are there any other comments or

1 discussion? Chair recognize, again,  
2 President Rombach.

3 PRESIDENT ROMBACH: Thank you. Hopefully I  
4 am speaking in order this time, Madam Chair, but my  
5 concern relates back to the initial language. Again  
6 plugging in the word "section," the word "a section,  
7 minority and majority report of the section." Again,  
8 the problem I have in trying to educate people outside  
9 the State Bar is there is a fundamental difference  
10 between sections and committees, and we need to  
11 recognize that within our own rules, and I don't think  
12 by butchering this rule that it does that. I do  
13 believe that if you just take that out, Section 4.4  
14 speaks to minority reports. It may not be the  
15 cleanest, but it still could be plugged in, and I know  
16 the intent of the body is to carve out a specific area  
17 for Representative Assembly minority reports, I still  
18 think that would play, because it's much more specific  
19 language that you are adding here, but if you want to  
20 do this, I would make sure that the committees, the  
21 sections and other entities of the Bar are aware of  
22 this happening. I would like some input from them,  
23 and, again, I think the language is totally  
24 inappropriate.

25 CHAIRPERSON WILLIAMS: Are you making a

1 friendly amendment that we strike "section" in the  
2 title in the first of the section.

3 PRESIDENT ROMBACH: I would like "section"  
4 taken out twice, and I would like "of the section"  
5 taken out, and I think the rest of it is just cleaning  
6 up the language. If you want to say the content of  
7 minority report, I don't think that changes substance.  
8 It's better and cleaner language from the rest of it,  
9 and, again, I don't believe that that's going to  
10 interfere with -- the intent of the motion is to carve  
11 out a special procedure for the Representative  
12 Assembly, as I think is appropriate.

13 MS. BREITMEYER: I accept the friendly  
14 amendment.

15 PRESIDENT ROMBACH: Thank you very much.

16 CHAIRPERSON WILLIAMS: Chair recognizes the  
17 member at the mike.

18 MR. PAVLIK: Adam Pavlik, 54th circuit. As  
19 much as anything, I just have a question about the --  
20 if you want to scroll down a little bit. Is there  
21 any particular reason that we are confining this to  
22 proposals that are submitted to the Michigan  
23 Supreme Court? I mean, I would almost think we could  
24 strike the language, strike all the language, you  
25 know. Any proposal that this body makes I would think

1           you would want to make the opportunity to submit a  
2           minority report to be sensitive to the Keller  
3           concerns, the minority and so on. I just wanted to  
4           ask the question. It could be there is another bylaw  
5           or something like that that's in play, but I wanted to  
6           ask the people who have been involved in drafting this  
7           proposal whether there was a reason. I know most of  
8           our proposals go to the Supreme Court, but we just had  
9           a conversation about proposals that we would make with  
10          respect to legislation and whether we need to have a  
11          roll call vote on that or not, so that would go to the  
12          legislature I would think, rather than the  
13          Supreme Court, so that was my question as much as  
14          anything.

15                   CHAIRPERSON WILLIAMS: Are you making a  
16                   friendly amendment that we strike Michigan  
17                   Supreme Court?

18                   MR. PAVLIK: I don't have a firm position on  
19                   that one way or the other. I wanted to bring my  
20                   question to your attention. If you want to make  
21                   changes, good. If you think that's a valid concern,  
22                   go ahead and do that, but I just wanted to raise the  
23                   question.

24                   CHAIRPERSON WILLIAMS: Recognize the member  
25                   at the mike.

1 MR. MOILANEN: I can wait.

2 CHAIRPERSON WILLIAMS: He just made a  
3 comment. He didn't make a friendly amendment, so we  
4 have no action to take.

5 MR. MOILANEN: My name is Philip Moilanen,  
6 4th circuit, and I have a question. Essentially what  
7 this rule provides is that the Clerk and the Drafting  
8 Committee prepare both the majority and the minority  
9 report, since they have the final say on the content  
10 of it. The motion doesn't address who is the author  
11 of the minority report. When it mentions it in the  
12 language on mine, it's about seventh line up from the  
13 bottom, maybe eighth line up, and the other part of it  
14 has to do with the timing. I think I would offer an  
15 amendment to the motion. Where the word conclusion  
16 appears, when it's referring to "conclusion" of the  
17 meeting, substitute "receipt of the transcript" for  
18 that word, so that whoever is preparing the minority  
19 report has 14 days after the transcript is received,  
20 and obviously the Drafting Committee and Clerk will  
21 have the benefit of the transcript as well. Since  
22 they are going to be vetting the minority report based  
23 on whether it's consistent with what's in the  
24 transcript, you have got to start with the document,  
25 at least in the opinion of the person who writes the

1 minority report, is consistent with the arguments that  
2 were made at the meeting. They may not have been the  
3 only one that thought of something and they might want  
4 to talk to the people who had other ideas to conclude  
5 what should be in the minority report if there is  
6 going to be one. So that's my motion.

7 MS. BREITMEYER: I reject the friendly  
8 amendment.

9 MR. MOILANEN: It wasn't friendly, I don't  
10 think.

11 VOICE: Second.

12 CHAIRPERSON WILLIAMS: There being a motion  
13 made and a second that the word "conclusion" is  
14 stricken and "receipt of the transcript" appears in  
15 the proposal, is there any discussion? Seeing no  
16 movement toward the mike, we will move to the  
17 question.

18 All of those in favor of striking  
19 "conclusion" and adding "receipt of the transcript" as  
20 it appears on the screen, please indicate by saying  
21 yes.

22 All of those opposed, please indicate by  
23 saying no.

24 The chair cannot determine if the motion  
25 passes, so we will need to do a division count. All

1 of those in favor, please stand.

2 MR. FALKENSTEIN: What do we have these  
3 clickers for? Use the clickers.

4 CHAIRPERSON WILLIAMS: The issue is that this  
5 is not programmed, so there is no way for us --

6 MR. MOILANEN: Can't count yes and no?

7 VICE CHAIR QUICK: It's programmed only -- he  
8 set it up for those limited.

9 MR. MOILANEN: Pretend it was one of the  
10 other questions. Has there ever been a motion that  
11 did not pass by 75 percent?

12 CHAIRPERSON WILLIAMS: I don't know.

13 You may be seated. So there were 66 yes, so  
14 that is a simple majority of the members present, so  
15 we don't have to further the vote. It passes.

16 Was there any further discussion on the main  
17 proposal?

18 MR. KOENIG: I am Alan Koenig from the 9th  
19 circuit. Just in response to Mr. Quick's motion to  
20 change the word "motion" to "request," I think the  
21 word "motion" six lines up from the bottom should be  
22 changed to "request" to be consistent to that.

23 CHAIRPERSON WILLIAMS: That's referring to  
24 the primary motion.

25 VOICE: That's wrong.

1 MR. KOENIG: I'm sorry.

2 MS. BREITMEYER: The second use of the word  
3 "motion" would be the primary motion to publish the  
4 minority report.

5 MR. KOENIG: Thank you. I was just corrected  
6 on that.

7 CHAIRPERSON WILLIAMS: Chair recognizes the  
8 member at the mike.

9 MR. MOILANEN: Again Philip Moilanen, 4th  
10 circuit. Just one more change. I would think in the  
11 last -- I am trying to figure out where it goes in,  
12 but include the author of the minority report in the  
13 committee that is having the draft so that at least  
14 changes are discussed, including the minority in the  
15 discussion of the changes. Still leave the clerk and  
16 the committee with the authority to finalize the words  
17 of the minority report, but include at least one  
18 person who was making the request for the minority  
19 report to be on that group. So you could say the  
20 Clerk and the Drafting Committee plus the person who  
21 requested and submitted the minority report. You can  
22 just say "who submitted the minority report." I don't  
23 mean them to have the final authority, but to be  
24 serving on that committee anyway for that particular  
25 report.

1                   CHAIRPERSON WILLIAMS:  Instead of there you  
2                   would move it up?

3                   MR. MOILANEN:  I don't mean to give that  
4                   person veto authority over what the Drafting Committee  
5                   does but to have them included on the committee that  
6                   is preparing the minority report so that those views  
7                   are reflected.

8                   CHAIRPERSON WILLIAMS:  So would you go add  
9                   that, if you go to the line underneath the other  
10                  addition that you made and we would say the Clerk must  
11                  review the report with the Drafting Committee and the  
12                  author of the minority report to ensure, is that where  
13                  you're  --

14                  MR. MOILANEN:  No, I don't mean it there.  
15                  Just in the final conclusion.  Somebody has got to do  
16                  the final draft of what's going to actually be  
17                  included in the document.  And I am okay with the  
18                  Clerk and the Drafting Committee having to approve  
19                  that.  I just want to make sure that one of the  
20                  authors of the minority initial submission are  
21                  included in the people that are looking at that  
22                  document, because if they say you emasculated our  
23                  report, at least you are going to hear that from them.

24                  MS. BREITMEYER:  May I ask a question about  
25                  the friendly amendment that you were discussing?

1 MR. MOILANEN: Sure.

2 MS. BREITMEYER: The concern I have with  
3 adding some language to the last sentence there is  
4 that it looks like it would give the author the final  
5 decision on the draft.

6 MR. MOILANEN: That is not my intent at all.

7 MS. BREITMEYER: If we moved it up to the  
8 sentence before and we he said the clerk must review  
9 the report with the Drafting Committee and the author  
10 of the minority report to ensure compliance.

11 MR. MOILANEN: That doesn't quite do it,  
12 because we are talking about what the final document  
13 is going to look like, running it past the person who  
14 drafted the minority report and have them say, yes,  
15 you have captured it correctly, it's okay, or to say,  
16 no, you didn't, and here is what you missed, so you  
17 have a chance to look at it again and make a change if  
18 you agree that you missed something. You don't have  
19 to put them on the committee necessarily, and I don't  
20 want to give them the veto authority over what you  
21 finally submit.

22 MS. BREITMEYER: Just to point out, that  
23 sentence that I was referring to, it does discuss that  
24 the Clerk must review the report to ensure compliance  
25 and reasonable consistency with the minority opinion

1           expressed during the debate, so that would then allow  
2           that author to be a part of that discussion. They  
3           would, but they would be in the last sentence also.  
4           The suggestion is that have input from the person who  
5           submitted the minority report in that last line.

6                     MR. FALKENSTEIN: Have input.

7                     MS. BREITMEYER: May I make another  
8           suggestion?

9                     MR. MOILANEN: Sure.

10                    MS. BREITMEYER: How about, if you want to  
11           include it in that last sentence, that we say, The  
12           Clerk and the Drafting Committee, comma, in  
13           consultation with the author of the minority report.

14                    MR. MOILANEN: That would be fine. Another  
15           alternative suggested was that for purposes of that  
16           report you include the author of the minority report  
17           in the committee so it's still a committee decision.

18                    MS. BREITMEYER: Which would you like to  
19           propose as a friendly amendment?

20                    MR. MOILANEN: Well, I think having them on  
21           the committee makes more sense, because that makes it  
22           simpler, for that report only, not for everything else  
23           that you do.

24                    MS. BREITMEYER: I am rejecting the friendly  
25           amendment to add the author to the committee.

1                   MR. MOILANEN: Well, then my motion would be  
2                   as you have it worded up there now.

3                   CHAIRPERSON WILLIAMS: I don't know that you  
4                   have to make a motion. Were you willing to accept the  
5                   friendly amendment the way it's written?

6                   MR. MOILANEN: Okay.

7                   MS. BREITMEYER: I am willing to accept the  
8                   friendly amendment.

9                   MR. MOILANEN: That's fine by me if everybody  
10                  else wants it that way.

11                  CHAIRPERSON WILLIAMS: Chair recognizes the  
12                  member at the mike.

13                  MS. KAKISH: I would like to go back to  
14                  Mr. Rombach's comments. Can we go up to section. I  
15                  just needed to make sure. Thank you.

16                  CHAIRPERSON WILLIAMS: Chair recognizes the  
17                  member at the mike

18                  MR. FANCHER: Tom Fancher, 10th circuit. I  
19                  just have some questions for my own clarification.  
20                  The task seems to assume one minority report, and it  
21                  uses singular throughout. I can well imagine a  
22                  situation where there may be a 60/40 vote where the 40  
23                  have more than one opinion in opposition to the  
24                  majority, maybe strongly held. Is it the sense of the  
25                  change that the Clerk in composing, I assume it's the

1 Clerk, in composing this will take more than one  
2 minority report and combine them, or is it just first  
3 come first serve?

4 MS. BREITMEYER: It is the intent that there  
5 could be multiple minority reports that, in the  
6 sentence, the first sentence of the proposal.

7 So the author of this minority report would  
8 be collectively submitting the minority report, in  
9 other words, taking into account all of the minority  
10 opinions and drafting. I am sorry I was a little bit  
11 unclear.

12 CHAIRPERSON WILLIAMS: Are there any other  
13 comments on the proposal? At this time we will get  
14 ready to call the question.

15 MS. BREITMEYER: I am going to reread. Is  
16 there some additional comment?

17 MR. ROMANO: Have you closed?

18 JUDGE CHMURA: Yes.

19 MS. BREITMEYER: I am going to reread the  
20 proposal as amended. Minority reports. A minority  
21 report is a written report stating the views of less  
22 than half the members of a section, section council,  
23 or a committee on a recommendation of the majority  
24 report. The content of the minority report must  
25 reflect the minority views presented to the section,

1 section council, or committee orally or in writing at  
2 the time it acted on the matter, unless the section,  
3 section council, or committee did not notify its  
4 members in advance that the matter would be  
5 considered. The report must be printed at the request  
6 of its proponents over their signatures and appended  
7 to the report to which it relates.

8 Representative Assembly minority reports.  
9 Members of the Representative Assembly voting in the  
10 minority on a proposal to be submitted to the Michigan  
11 Supreme Court may collectively submit a minority  
12 report to accompany State Bar recommendations to the  
13 Michigan Supreme Court, if the majority proposal has  
14 been adopted by less than 75 percent of the members  
15 present and voting. The content of the minority  
16 report must be limited to the views presented on the  
17 floor of the Assembly meeting during the debate on the  
18 merits of the proposal. A member of the Assembly must  
19 invoke this rule by making a request for the  
20 submission of a minority report immediately following  
21 the vote on the proposal from which the minority  
22 report dissents have been adopted, and must identify  
23 the authors of the minority report. The length of the  
24 report may not exceed that of the majority and must be  
25 submitted to the Clerk within 14 days of the receipt

1 of the transcript of the meeting at which the motion  
2 passed. The Clerk must review the report with the  
3 Drafting Committee to ensure compliance with the word  
4 limitations and reasonable consistency with the  
5 minority opinions expressed during the debate on the  
6 recommendations and largely reflected in the  
7 transcript of the proceedings. The Clerk and Drafting  
8 Committee, in consultation with the author of the  
9 minority report, shall have the final decision on the  
10 draft of the minority report submitted.

11 CHAIRPERSON WILLIAMS: Motion having been  
12 made and seconded and discussion having occurred, all  
13 those in favor of the proposal as its presented on the  
14 screen please vote at this -- actually we are going to  
15 vote all at once, so if you are in favor, please vote  
16 one, if you are opposed, please vote using two, and if  
17 you are abstaining, please vote using the number  
18 three. The voting is open.

19 It appears that all votes have been taken.  
20 If not, please indicate so. Seeing no hands raised or  
21 motion toward the mike, we are closing the vote.

22 Mr. Clerk, if you could give us the numbers  
23 for the vote.

24 MR. HERRMANN: Madam Chair, we have 96 yes,  
25 10 no, and one abstention.

1                   CHAIRPERSON WILLIAMS: The motion passes.

2                   Thank you.

3                   At this time we will proceed to take our  
4                   break. We will come back in ten minutes, please.

5                   (Break taken 11:21 a.m. - 11:35 a.m.)

6                   CHAIRPERSON WILLIAMS: We are ready to go  
7                   back into session. At this time I would like to see  
8                   if there is consent to move outside of the order of  
9                   the agenda. Chair Michael Thomsen has to leave to go  
10                  be present at a funeral, so we would like to move him  
11                  now prior to having comment from our executive  
12                  director. Are there any objections to moving that  
13                  agenda item forward? Hearing no objections, we will  
14                  proceed with Chair Michael Thomsen from the Drafting  
15                  Committee.

16                  MR. THOMSEN: Thank you, Vanessa. Good  
17                  morning. In January of this year our chair of the  
18                  Assembly, Vanessa Williams, requested that the  
19                  Drafting Committee prepare a presentation that would  
20                  be ultimately placed upon our State Bar website. This  
21                  presentation was to be more or less a how-to  
22                  instructional type presentation that would make it  
23                  easier for members of our State Bar to become involved  
24                  in the Representative Assembly process by drafting a  
25                  proposal. So the idea here is to encourage

1 participation in the Representative Assembly process  
2 as the final policy-making body of our State Bar, by  
3 our State Bar members. The result is the presentation  
4 that is in your materials, and I am just going to go  
5 through briefly for you. And I would just like to  
6 take the opportunity to thank the members of the  
7 Drafting Committee and also Vanessa and Dan Quick and  
8 Fred Herrmann. Their assistance and input in  
9 preparing this proposal was invaluable, and I  
10 appreciate it, as I do the participation of the  
11 committee members.

12 So what we have is a title to this  
13 presentation, Your Voice in the State Bar of Michigan.  
14 What would you like to change? Drafting and  
15 submitting a proposal to the Representative Assembly.  
16 This is a title that hopefully will be an attention  
17 grabber and be an invitation for members of our  
18 State Bar to participate in the process. We would  
19 like them to know that they can change things.

20 How many times have we all heard someone in  
21 the courtroom or outside the courtroom in the hall  
22 after a hearing saying, You know, they really should  
23 change that rule. Well, we all have the opportunity  
24 to participate in such a change by bringing a proposal  
25 to the Representative Assembly.

1                   We have a brief history of the Representative  
2                   Assembly, because not everyone in our State Bar is  
3                   familiar with the Representative Assembly, and if you  
4                   will see the last bullet point, it says it was created  
5                   in order to increase the proportion of members who  
6                   actively participate in policy-making for the Bar.

7                   Well, once again, that's what this is all  
8                   about. It is what is meant to occur. Drafting a  
9                   proposal is easy, and anyone can do it, as long as you  
10                  are a member of the State Bar, and if you are going to  
11                  submit a proposal through your Representative Assembly  
12                  delegate, there is a link in the last bullet point so  
13                  that you can find who your delegate is from your  
14                  circuit. Once again, trying to make it easy for  
15                  everyone.

16                  Then drafting a proposal. How do you draft a  
17                  proposal? Explanation, every proposal has seven  
18                  parts, and, once again, there is a link that you can  
19                  check on to see sample proposals, and we have cut-outs  
20                  on every page of the presentation to be helpful to  
21                  those that are interested in preparing a proposal.

22                  The next part is the issue and then the  
23                  proposal must be stated in the form of a question and  
24                  in the exact words of the motion that the sponsor will  
25                  make as he or she presents the matter at the

1 Representative Assembly meeting. And, of course,  
2 there is an explanation of the proposed language. If  
3 it's added, it should be underlined. The proposed  
4 deleted language should be struck through, with the  
5 cut-out to illustrate that format.

6 Part two is a synopsis in which we provide a  
7 brief summary, the reason for the proposed change  
8 and/or proposal, noting what entity or entities  
9 support the proposal. And, once again, we have a  
10 cut-out and portion of that relating to the synopsis  
11 is magnified for the ease of the reader.

12 Part two of synopsis, the sponsor of the  
13 proposal is reminded to make a Keller analysis under  
14 the Keller standards, and we have a link that takes  
15 them to the Keller standards, and they are reminded,  
16 once again, that the two permissible subject areas  
17 under Keller are regulation of the legal profession  
18 and improvement in the quality of legal services.

19 Then we move to part three, background, and  
20 this is the part of the proposal where you are  
21 required to provide substantial background regarding  
22 history and the need for the proposed change, and the  
23 background information is not to exceed five pages  
24 basically. And, once again, we have the cut-out  
25 that's highlighted as the background.

1                   And then part four, opposition. Fill in the  
2 reasons and/or arguments against the proposed issue  
3 and, once again, the cut-out illustrates the  
4 opposition section for assistance.

5                   Part five, prior action by the Representative  
6 Assembly. Provide the history of the current issue  
7 within the context of the Representative Assembly, and  
8 we have a link to the archives for the Assembly where  
9 you can find archives of previous meetings and  
10 proposals.

11                   And then moving on to part six, state the  
12 known fiscal and/or staff impact of the proposal on  
13 the State Bar of Michigan or simply state "impact  
14 unknown" if it's not known. Once again, the cut-out  
15 for illustration.

16                   And then part seven, State Bar of Michigan  
17 position, the voting format, and the drafter is  
18 reminded to cite the issues using the exact same  
19 language used in the form of a question, the issue,  
20 and then moving on to when to submit a proposal.  
21 Matters to be considered for the Assembly calendar  
22 must be submitted and postmarked no later than 42 days  
23 before the Assembly's next scheduled meeting, and then  
24 there is a link where the interested person can see  
25 the calendar of meetings and other information.



1                   CHAIRPERSON WILLIAMS: Another thing too for  
2                   our Drafting Committee, the committee generally works  
3                   drafting the proposals for this meeting and really  
4                   took on this extra task with a lot of enthusiasm to  
5                   help us with our engagement throughout the Bar.

6                   Next we will move to item number nine, which  
7                   are the remarks and the Keller update from our  
8                   executive director.

9                   EXECUTIVE DIRECTOR WELCH: Thank you very  
10                  much. Good morning, everyone. I will forego remarks  
11                  and go straight to the Keller report. I am very  
12                  grateful to the officers of the RA for giving me some  
13                  direction about what to speak about, because I know at  
14                  least three people are interested in what I have to  
15                  say.

16                  For those of you who were in the Assembly  
17                  last September when I presented on Keller, some of  
18                  what you are going to see is familiar, but even if you  
19                  have a photographic memory, pay attention, because I  
20                  have new insights and updates to add to the basic  
21                  information about Keller.

22                  I was asked by the National Association of  
23                  Bar Executives to present on this subject in Houston  
24                  in February, and so you will see some of the  
25                  historical background on Keller and some of the

1 churning that's going on right now about the first  
2 amendment and mandatory bar associations.

3 So going back 80 years -- this is our 80th  
4 birthday month, by the way. Going back 80 years, the  
5 charter adopted by the Michigan Supreme Court for the  
6 State Bar of Michigan as a mandatory Bar begins with  
7 our responsibility to aid in promoting improvements in  
8 the administration of justice and advancement in  
9 jurisprudence. We only have three things that we are  
10 told we have to do, and the very first one has to do  
11 with public policy. Next slide.

12 For 80 years we have been responding to that  
13 mandate, and the way in which we have been doing that  
14 is in three ways: Make recommendations on court  
15 rules, mostly state, mostly to the Michigan  
16 Supreme Court, also occasionally to the federal bench,  
17 responding to the Federal Rules of Civil Procedures  
18 typically. We make recommendations on legislation,  
19 aiding in the improvement in jurisprudence. By the  
20 way, that used to say science of jurisprudence. You  
21 will see all across the country the first 20 bar  
22 associations that were made mandatory talked about  
23 advancements in the science of jurisprudence. We are  
24 a little bit more modest and just talk about  
25 jurisprudence.

1                   So we also occasionally advocate at the  
2                   federal level typically for adequate funding for the  
3                   Legal Services Corporation. And, finally, and not  
4                   insignificantly, and this is an area in which the  
5                   Representative Assembly has been particularly  
6                   impactful is that we have been involved in  
7                   comprehensive reform initiatives, often initiating  
8                   them, such as criminal indigent defense reform, for  
9                   example, Custodial Interrogation Task Force, going all  
10                  the way back actually to the codification of the  
11                  Michigan Rules of Civil Procedure, that the bar has  
12                  been a primary player, I would say, in that field.

13                  So what are the limits on our advocacy? The  
14                  main topic today is the First Amendment limits on our  
15                  advocacy through Keller. That is a baseline. We  
16                  cannot overcome what the U.S. Supreme Court says our  
17                  limits are. The Michigan Supreme Court can't overcome  
18                  that, but they can narrow, the Michigan Supreme Court  
19                  could narrow what we can do even beyond what Keller  
20                  says. And in addition, of course, politics restrict  
21                  what we are able to accomplish as to our resources.

22                  And I just want to say a little bit about  
23                  that. I have had members who cave under the idea that  
24                  we have to think about the political environment in  
25                  which we are trying to advance objectives that the

1 Representative Assembly and the Board of Commissioners  
2 adopt, and my response is that our positions are not  
3 symbolic positions. We are taking positions in order  
4 to advance improvements in jurisprudence in the way  
5 that the justice system functions or to prevent  
6 degradation of the environment in which we effectuate  
7 justice, and sometimes that calculation is we may  
8 support A and B, but by putting all our eggs in A's  
9 basket may prevent us from doing B, so we have to  
10 figure out what our priorities are and what we can  
11 accomplish.

12 Similarly, there are things that we are not  
13 equipped to do in terms of our resources. Pre-Keller,  
14 in 1980, for example, the Bar was very much behind a  
15 ballot initiative on merit selection in Michigan, and  
16 the Bar's resources to advance that were limited and  
17 it did not pass, those of us that can remember back  
18 that far. A point of instruction, the Ohio State Bar  
19 Association, which is a voluntary bar, spent over a  
20 million dollars a decade later advancing the same  
21 initiative for the Ohio State Bar Association and lost  
22 by almost 80 percent, 80 percent rejection, despite  
23 having every editorial board in the state of Ohio on  
24 board. So, you know, the resources are an important  
25 consideration about what we can do.

1                   Our strategic plan recognizes that, and this  
2                   is a strategic plan that the Representative Assembly  
3                   and the Board of Commissioners both adopted, and it  
4                   says in our public policy goals we need to  
5                   aggressively advocate for issues that support our  
6                   statement of purpose, minimize divisiveness, so we  
7                   have to think about whether or not what we are doing  
8                   is pretty controversial within the profession and also  
9                   whether or not the position we are taking is  
10                  achievable. So that's always in the back of our minds  
11                  on staff, and you will hear staff making comments  
12                  about the achievability and the potential divisiveness  
13                  of various issues.

14                  Now to the main topic, Keller. The basic  
15                  information that everyone should be aware of, it's a  
16                  1990 decision. It was unanimous. It upheld the right  
17                  of the mandatory bar associations to take ideological  
18                  positions, and that was very much in doubt, but the  
19                  language is pretty ambiguous. It sets limits on what  
20                  mandatory bar associations can do, and there is a wide  
21                  range of interpretation about what those limits means,  
22                  and each state implements them differently, and at the  
23                  end of this presentation, I will give an example of  
24                  where that's going at the moment.

25                  The key Keller holding compels the

1 association and integrated bar are justified by the  
2 states in regulating the legal profession and  
3 improving the quality of legal services. So that's  
4 what we can constitutionally fund activities to carry  
5 out, but we can't do anything outside of whatever that  
6 means.

7 So the decision itself recognized that it was  
8 ambiguous. It says precisely where the line falls  
9 will not always be easy to discern. We can't do gun  
10 control. We can't do nuclear weapons freeze  
11 initiatives, thank you very much. But we are free to  
12 do whatever we want with discipline and ethical code.  
13 We can make all the recommendations we want. But  
14 clearly there is a lot of territory between those two  
15 areas of guidance.

16 The guidance that we look to in Michigan  
17 comes from the Michigan Supreme Court in  
18 Administrative Order 2004-1. So what the Michigan  
19 Supreme Court said in 1993 and again in 2004 was that  
20 we can take public policy positions related to the  
21 regulation and discipline of attorneys, the  
22 improvement of the functioning of the courts, the  
23 availability of legal services to society, the  
24 regulation of attorney trust accounts, and the  
25 regulation of the legal profession, including

1 education, ethics, competency, and the integrity of  
2 the profession. That's perhaps more helpful than  
3 Keller itself, but there is a lot of room to argue  
4 about, for example, what falls within the availability  
5 of legal services to society or improvement in the  
6 functioning of the court.

7 So that brings us up to last year when we had  
8 a challenge to the status of the mandatory bar and the  
9 creation of the Task Force on the Role of the  
10 State Bar, and I just want to remind you of what the  
11 unanimous order of the Michigan Supreme Court creating  
12 the task force said. They said that we are charged  
13 with determining whether our duties and functions can  
14 be accomplished by means less intrusive upon the  
15 First Amendment rights of objecting individual  
16 attorneys, which is a quotation from a Michigan  
17 Supreme Court case, Falk, from 1982, I believe, and  
18 that standard, the less intrusive standard, is not  
19 something that's within Keller. That is only Falk,  
20 and Falk was not majority opinion of the Michigan  
21 Supreme Court, but, nonetheless, this was the  
22 direction of the task force. So that's why I think  
23 you saw some very serious attention to considerations  
24 about what more could be done to accommodate the  
25 views, minority views of members of the State Bar.

1                   So this is just an overview of where the  
2                   various mandatory bars stand, and those of you who  
3                   were here last September, you saw this slide, but not  
4                   animated this way. What you are seeing is  
5                   historically how states went from non-mandatory bars  
6                   to mandatory bars. There are 32 mandatory bars. If  
7                   anyone can make sense of this politically or  
8                   geographically or historically, please talk to me  
9                   after the meeting, because it's fascinating the ways  
10                  in which some states became mandatory and some didn't  
11                  and in what order.

12                  So the white states, which mostly surround us  
13                  actually, are states that do not have mandatory state  
14                  bars. The states that are the same color we are are  
15                  mostly the original mandatory states, and they became  
16                  mandatory through the legislature. The darker states  
17                  are states that became mandatory later, mostly by  
18                  order of their Supreme Court, and the model states are  
19                  the ones that are sort of straddling, they have both a  
20                  mandatory state bar and a voluntary state bar.

21                  So just to highlight the blue states, the  
22                  light blue and the dark blue mandatory states, every  
23                  one of them has a different way of dealing with  
24                  mandatory and dealing with Keller. There are  
25                  similarities, but the differences probably trump the

1 similarities.

2 So this is where things stand right now, and  
3 this is that this has evolved since Keller. Among the  
4 mandatory states and the District of Columbia, four of  
5 them do no lobbying, essentially no public policy  
6 advocacy -- North Carolina, Virginia, West Virginia  
7 and District of Columbia. District of Columbia has  
8 100,000 members. Very little lobbying, according to  
9 the executive directors of the bars at Alabama,  
10 California, Kentucky, Mississippi. California, they  
11 have a very, very regulatory bar that's regulated  
12 directly by the legislature. They run actually the  
13 disciplinary court, so they have a very different  
14 system, and it's evolved -- it was different even  
15 before Keller V. State Bar of California and has  
16 become much more regulatory since then.

17 So in the majority category all over the map  
18 of doing some lobbying, we find Michigan, and I am  
19 highlighting states that currently are being  
20 challenged for the activity. The public policy  
21 activity is under intensive scrutiny, and it does  
22 include, in addition to us, Arizona, which has invoked  
23 a task force to look at the role of the State Bar  
24 created by their Supreme Court given three times as  
25 much time as our task force had. North Dakota, which

1 is subject to a challenge I will go into a bit more  
2 detail about, and the state of Washington.

3 So in terms of anything goes, there are two  
4 states that fall into that category. Wisconsin is a  
5 mandatory bar. Do we have any members of the  
6 Wisconsin bar in the Representative Assembly? All  
7 right. Wisconsin does not have any regulatory  
8 functions at all, but they advocate in the legislature  
9 on anything, regardless of whether it falls within the  
10 two categories that are Keller permissible, and then  
11 they keep track of how much it costs them to advocate,  
12 and then they refund the money to the members, any  
13 members who want refunds. It's another way of  
14 handling it. It's probably something that could be  
15 subject to constitutional challenge. It would be  
16 interesting to see if that happens.

17 The Nebraska bar is an anomaly. As of a year  
18 ago last November, the Nebraska Supreme Court said you  
19 have to be a member of the Nebraska State Bar, but you  
20 don't have to pay dues to the Nebraska State Bar. So  
21 they can do whatever they want in terms of advocating,  
22 because they are not using compelled dues at this  
23 point. But they also are operating on about 30  
24 percent of the income they had before the  
25 Supreme Court did a U-turn on them.

1                   So let's go to the next slide, and I will  
2                   give you a bit more. This is the absolute up-to-date  
3                   information on what's happening.

4                   A year ago last June there was a case decided  
5                   that had to do with the unionization of public health  
6                   care workers in Illinois, Harris V. Quinn, and it was  
7                   largely considered to be a potential threat to the  
8                   Abood case, public unions and their ability to do any  
9                   public policy. There were several dozen amicus briefs  
10                  filed saying, please don't wipe out the Abood  
11                  decision, which is a Michigan decision, and the Abood  
12                  decision is also, it's one of the decisions that  
13                  Keller rests on. So there was a lot of concern that  
14                  the Harris case might pull the plug out from under  
15                  mandatory state bars and their ability to use member  
16                  dues for any kind of public policy.

17                  Justice Alito has been openly hostile to  
18                  Abood, and he wrote the decision, but he went out of  
19                  his way to say, We are not taking on mandatory state  
20                  bars, and I think it's worth taking some time to read  
21                  what he had to say. Licensed attorneys are subject to  
22                  detailed ethics rules, and the bar rule requiring the  
23                  payment of dues was part of this regulatory scheme is  
24                  what he is saying.

25                  We are not going there. All of you who are

1 worried about mandatory state bars, this is not  
2 something that you should be worried about, but you  
3 note he keeps pointing to the mandatory state bars'  
4 rules and ethical practices, which is, you know, one  
5 half of what Keller said. Keller says the regulations  
6 of the legal profession, but the other half says  
7 including the quality of legal services. So it's not  
8 clear if there are other challenges to the mandatory  
9 state bar where he might come down in terms of  
10 defining that broad, undefined category between  
11 nuclear weapons and ethics. So that's just out there  
12 for all of you to go to and read and think about if  
13 you want.

14 So the North Dakota case was filed in  
15 February, and that's a challenge to the North Dakota  
16 State Bar's funding of opposition to a ballot  
17 initiative that dealt with shared parenting, and  
18 that's in federal courts. Obviously keeping an eye on  
19 it. Obviously you can go online. You can Google it  
20 and find both the complaint and the response brief.

21 And, finally, in March the Washington  
22 State Bar Association responded to a mandatory  
23 challenge, also in federal court.

24 So those are significant developments, I  
25 think, since last September, and I hope that's what

1 the officers were asking for in terms of an update on  
2 Keller. I know that I am standing between you and  
3 lunch, but I would be happy to take any questions, as  
4 long as you don't ask me to predict what the  
5 Supreme Court, the Michigan Supreme will do or the  
6 U.S. Supreme Court will do. Thank you very much.

7 (Applause.)

8 CHAIRPERSON WILLIAMS: We thought it would be  
9 important to see what the landscape of Keller is today  
10 prior to us taking on your next item for action, which  
11 is the consideration of proposed amendment to the  
12 Representative Assembly Permanent Rules of Procedure  
13 5.1 Voting to add in a Keller vote process, and I  
14 would ask that our chair of the Assembly Review  
15 Committee join us again for that proposal.

16 MS. BREITMEYER: Thank you, Chair Williams.  
17 I am going to present this last proposed amendment to  
18 the Representative Assembly Permanent Rules of  
19 Procedure 5.1, and I want to emphasize that this  
20 proposal mirrors in majority with the Board of  
21 Commissioners' recent change to their procedure.

22 As you heard from the background of the  
23 Keller discussion, there has been an increased  
24 awareness of our obligations under Keller, and, as a  
25 result, this proposal comes before you.

1                   On April 26, 2014 the RA adopted the  
2                   following proposal: Should the Representative  
3                   Assembly make recommendations and/or provide comments  
4                   to the Task Force created by Administrative  
5                   Order 2014-5 or directly to the Supreme Court on  
6                   whether the role and functions of the Assembly support  
7                   the State Bar's status of a mandatory bar; and on any  
8                   proposed revisions of the administrative orders and  
9                   court rules governing the State Bar as they relate to  
10                  the Assembly to improve the governance and operation  
11                  of the State Bar, through the following steps:

12                   First, commission the special committee,  
13                   recently established by the Assembly Chairperson, with  
14                   the responsibility to summarize the comments and  
15                   recommendations made at the April 26th meeting and  
16                   incorporate them as part of an Assembly report, which  
17                   was done, and submit the report to the Task Force or  
18                   the Supreme Court directly, or after a future review  
19                   by the Assembly, as soon as practicable, and

20                   Secondly, open the floor of the meeting in  
21                   last April for member comment on the two matters.

22                   And that was done. On November 21st of 2014,  
23                   the State Bar Board of Commissioners adopted a Keller  
24                   vote process to occur before any vote taken on a  
25                   position of support or opposition to legislation. The

1 Keller vote process implemented the Board's response  
2 on the issue to the Task Force on the Role of the  
3 State Bar report to the Michigan Supreme Court. The  
4 Board of Commissioners articulated a process that  
5 requires a vote of the Board to be taken before taking  
6 a position on the merits of legislation to determine  
7 Keller permissibility and to articulate the reasoning  
8 behind the Keller determination. The Board of  
9 Commissioners implemented a requirement that  
10 two-thirds of the Board support a determination that  
11 an action is permissible to allow a Board vote on a  
12 position on the merits of the legislation.

13 The Board relied on an independent staff  
14 memo, prepared and disseminated to the Board,  
15 addressing the permissibility of the State Bar of  
16 Michigan in taking a position on specific legislation.

17 This proposal before you recognizes the fact  
18 that we as the Representative Assembly should also  
19 support and adopt a rigorous decision-making process  
20 to determine if proposed State Bar advocacy outside  
21 the judicial branch conforms to Keller and subsequent  
22 prevailing law on the constitutional standard for  
23 mandatory bar advocacy. As articulated by the Board  
24 of Commissioners, this process would further safeguard  
25 State Bar members' First Amendment rights and expand

1 opportunities for dissenting members to communicate  
2 their opposing viewpoints.

3 The proposed language in 5.1 states that,  
4 adds 5.1.1 Keller vote. Any proposal to be submitted  
5 for a vote, where applicable, shall first be submitted  
6 to counsel and/or bar staff, as applicable, who is not  
7 a member of the Representative Assembly, for an  
8 independent opinion as to the permissibility of -- and  
9 I am going to add just an amendment here of "the"  
10 vote. I think it was just a typographical error -- by  
11 the Representative Assembly on the merits of such  
12 proposal under Keller V. State Bar of California and  
13 subsequent governing and/or authoritative law on the  
14 constitutional standard for mandatory bar advocacy.  
15 The opinion of counsel and/or bar staff, as  
16 applicable, should articulate the reasoning behind the  
17 determination and accompany the applicable proposal at  
18 the time of publication pursuant to Section 2.5 of  
19 these Rules. A Keller vote shall be taken prior to  
20 the Representative Assembly taking a position on  
21 proposals, where applicable, to determine the  
22 permissibility of the vote under Keller. A two-thirds  
23 vote of the members of the Representative Assembly  
24 present is required to support a determination that a  
25 vote on the proposal is permissible.

1                   What we are considering today is should the  
2                   Representative Assembly adopt this resolution to amend  
3                   the Permanent Rules of Procedure of the Representative  
4                   Assembly Section 5.1 Voting to require the  
5                   Representative Assembly to implement the voting  
6                   process to ensure that the Assembly's votes conform to  
7                   Keller V. State Bar of California and subsequent  
8                   governing and/or authoritative law on the  
9                   constitutional standard for mandatory bar advocacy? I  
10                  am making this motion.

11                  CHAIRPERSON WILLIAMS: There has been a  
12                  motion that the Representative Assembly adopt proposed  
13                  amendment to the Representative Assembly Permanent  
14                  Rules of Procedure of 5.1 Voting, that's Keller, to  
15                  require that the Representative Assembly implement a  
16                  voting process to ensure the actions conform to  
17                  Keller V. State Bar of California and subsequent  
18                  governing and/or authoritative law on the  
19                  constitutional standard for mandatory bar advocacy.  
20                  Is there a second?

21                  VOICE: Support.

22                  CHAIRPERSON WILLIAMS: Motion having been  
23                  made and seconded, is there any discussion?

24                  Chair recognizes the member at the mike.

25                  MR. FLESSLAND: Dennis Flessland from the 6th

1 circuit. Do I understand correctly that the  
2 Representative Assembly and the Board of Commissioners  
3 have separate Keller votes and that could a proposal  
4 coming come from the Representative Assembly where we  
5 have voted that something is compliant with Keller,  
6 submit, and then that go to the Board of Commissioners  
7 and their Keller analysis says it does the comply with  
8 Keller? Or do I misunderstand the process here?

9 MS. BREITMEYER: There are two separate  
10 processes. The Board of Commissioners would be  
11 considering a different issue with their Keller  
12 determination intact, and then the Representative  
13 Assembly would be considering a different issue with  
14 their own Keller analysis.

15 MR. FLESSLAND: So we are going to oppose  
16 something to do with the process for issuing a medical  
17 marijuana license, we think that the burden of proof  
18 is too high or unfair and our analysis is that we are  
19 dealing with a procedural issue, not a substantive  
20 issue, and we think it complies with Keller. That  
21 gets bumped up to the Board of Commissioners. They  
22 could evaluate the same issue and say it doesn't  
23 comply?

24 CHAIRPERSON WILLIAMS: No, there are two  
25 separate processes. We reference the Board of

1 Commissioners' process. It's based on the Board of  
2 Commissioners taking action within their meeting.  
3 This proposal is based on the action that we would  
4 take in our meeting. Once we make a ruling, we would  
5 proceed to a vote and then our vote would stand. It  
6 would not go to the Board of Commissioners.

7 MR. FLESSLAND: There is no duplication? I  
8 was concerned about duplication of effort or  
9 inconsistent rulings.

10 CHAIRPERSON WILLIAMS: Right, there is no  
11 duplication. The chair recognizes the member at the  
12 mike.

13 MR. PAVLIK: Adam Pavlik, 54th circuit. I am  
14 sympathetic to the sensitivity that we are trying to  
15 add to Keller here, particularly given the heat that  
16 the State Bar is feeling with the Task Force last year  
17 and whatnot. Ultimately, I am of the opinion that an  
18 independent Keller vote is an ultimately misguided  
19 measure. The reality is Keller is a constitutional  
20 rule. We cannot vote our way into compliance with  
21 Keller. If a motion came before this body to be in  
22 favor of a nuclear weapons ban or something like that,  
23 even if all 150 of us voted, we thought it was Keller  
24 compliant, a dissenting member could still file a  
25 constitutional challenge against the State Bar of

1 Michigan and, under Keller, that would likely be  
2 upheld.

3 So, although I am sympathetic to the desire  
4 to be more sensitive to the Keller interests of  
5 dissenting members, ultimately we cannot vote our way  
6 into Keller compliance. I think that, you know, to  
7 the extent that a member of this body thinks that a  
8 given proposal is not Keller compliant, they've got  
9 tools under our general parliamentary law that they  
10 can take advantage of. They could either make a point  
11 of order that it is inconsistent with our charter and  
12 bylaws to consider a particular matter, then the chair  
13 would make a ruling on that. They could appeal the  
14 decision to the chair if they wanted to, or they could  
15 object to the consideration of the question, which  
16 both of those are motions that our parliamentary  
17 authority already recognizes.

18 So to me institutionalizing a separate Keller  
19 vote process is unnecessary, will lead to frustration.  
20 It will have this kind of megadebate, a debate about  
21 the debate, which I don't think will be particularly  
22 fruitful or a pleasant process, frankly, for us to go  
23 through, particularly given the likelihood it's  
24 ineffective in any event, because we can't vote our  
25 way into Keller compliance.

1                   CHAIRPERSON WILLIAMS: I will just ask the  
2 executive director to maybe comment on procedurally  
3 what this will provide the Representative Assembly in  
4 terms of any type of challenges as to our actions.

5                   EXECUTIVE DIRECTOR WELCH: Thank you,  
6 Vanessa, because I invited her to invite me to comment  
7 on that.

8                   One advantage that we are seeing in having a  
9 more formal process at the Board of Commissioners  
10 level is advancing the conversation about what Keller  
11 means in Michigan and how it conforms to the guidance  
12 that we have gotten so far from the Michigan Supreme  
13 Court in terms of the categories, because we were  
14 finding that when you are faced with a proposal that  
15 seems like a really good idea or a really bad idea, we  
16 are lawyers and we are very adept with coming up with  
17 reasons why something fits within a constitutional  
18 construct and articulating those reasons and having  
19 some consensus in the bodies that are making the  
20 decisions on public policy and having some sort of  
21 ongoing record about that would be helpful for staff,  
22 so staff doesn't end making those determinations.  
23 That was sort of the thinking behind advancing it at  
24 the Board of Commissioners level, and it seems to be  
25 helpful for us.

1                   CHAIRPERSON WILLIAMS: Chair recognizes the  
2 member at the mike.

3                   MR. BLAU: Michael Blau of the 6th circuit,  
4 and this would probably be in the form of a question  
5 to Kimberly and to Janet, and it's a question  
6 regarding the submission of a Keller opinion to  
7 counsel and/or bar staff, and I have a real concern  
8 and question as to who would be drafting the Keller  
9 opinion that would come before us where we would make  
10 that initial determination as to permissibility? With  
11 the language as I see it there, it could be  
12 independent, private counsel and bar staff both  
13 submitting opinions, which leads arguably to  
14 potentially differing opinions as to permissibility  
15 under Keller, and then, two, who would actually be, if  
16 it's just a counsel, who that counsel would be  
17 submitting it, because I see a potential problem. It  
18 could come with a Keller opinion before this body,  
19 then there is the discussion, and let's say the  
20 Assembly decides to act opposite to the Keller  
21 recommendation, and I could see that probable  
22 political and practical difficulties, as well as  
23 supposedly an expert opinion as to Keller being  
24 brought before us, and here is the Assembly that's  
25 going contrary to that determination of Keller

1           permissibility. So it's unclear what that language  
2           means in the proposed amendment.

3                       MS. BREITMEYER: Thank you for your question.  
4           You are correct that the language there contemplates  
5           that it could be outside counsel, it could be legal  
6           counsel for the State Bar, and that opinion would  
7           create an attorney-client relationship between  
8           whichever attorney and the Representative Assembly as  
9           a whole that the Representative Assembly could either  
10          accept or reject.

11                      EXECUTIVE DIRECTOR WELCH: I have been  
12          invited to make another comment. One thought that I  
13          hope my presentation left people with is there really  
14          is no expert on Keller, and I think this sort of is  
15          responsive to the representative who made the point  
16          that it doesn't matter, even a unanimous vote by this  
17          body. The experts are the U.S. Supreme Court and at  
18          the lower level the Michigan Supreme Court, but having  
19          someplace to start, having something written that  
20          actually responds to the language I think is a helpful  
21          aid to the conversation. It's important that everyone  
22          who votes on a public policy matter as a  
23          representative of a mandatory bar association  
24          understands what Keller says, whatever it means, and I  
25          think it is important that the Bar provides to both

1 the Representative Assembly and the Board of  
2 Commissioners a fix on any changes in the  
3 jurisprudence. I mean, there really haven't been any.  
4 There are hints of what might come, but there haven't  
5 been any, and so recognizing that's part of our  
6 obligation, I think, is an improvement.

7 CHAIRPERSON WILLIAMS: Chair recognizes the  
8 member at the mike.

9 MR. HILLARD: Martin Hillard, 17th circuit.  
10 I had a couple of questions first that Janet largely  
11 spoke to, so I will just re-echo those. I think there  
12 is value in us receiving those opinions and doing a  
13 thoughtful consideration of the Keller issue rather  
14 than just blindly assuming that it probably is  
15 permissible.

16 And the second, to extend on that, is my  
17 colleague that spoke first is correct, no matter what  
18 vote we take on whether it's Keller permissible or not  
19 doesn't make it permissible or for that matter doesn't  
20 make it impermissible, but I think there is value to  
21 be conceding publicly that we are not ignoring Keller,  
22 that we are not just blindly voting on issues, oh,  
23 yeah, the Supremes said that a couple decades ago,  
24 that's nice, but that we actually give it reflection.  
25 Maybe we will make mistakes on occasion in that

1           determination. As Janet pointed out, ultimately it's  
2           nine people in Washington that can tell us whether we  
3           were right or wrong, but I think there is value to be  
4           seen that at least we took the question seriously.

5                   CHAIRPERSON WILLIAMS: Thank you. Chair  
6           recognizes the member at the mike.

7                   MR. FALKENSTEIN: Peter Falkenstein, 22nd  
8           circuit. Two quick comments. First of all, I think  
9           we all agree there is no real efficacy or legal  
10          significance in what we would do here, as the prior  
11          commenters have said. The question I have is where we  
12          decide to go forward after initiating this process and  
13          we may be facing a challenge to action that we do  
14          take. Do we want to have a public record that 32  
15          percent of our own membership felt that the action we  
16          decided to ultimately take was in actuality  
17          unconstitutional? So we would be creating, assuming  
18          that it's not unanimous here and we get two-thirds  
19          majority, we have one-third of our membership on  
20          record saying that what we are doing is  
21          unconstitutional, is that going to come back to bite  
22          us at some point being on public record?

23                   But the real question I had is if we decide  
24          to adopt this, I have a question with the phrase  
25          "where applicable," because that's the triggering

1 phrase, and it seems to me to be pretty ambiguous as  
2 to what is going to trigger the whole process and what  
3 determines who and how do you determine in the first  
4 instance whether there is going to be a Keller  
5 analysis required, and the term "where applicable"  
6 just doesn't really help. So I don't know what the  
7 suggestion is, but I would hope we can be a little  
8 more specific as to what triggers this whole procedure  
9 if we chose to adopt it.

10 MS. BREITMEYER: To answer your question, I  
11 am going to take the last one first, but the reason  
12 why we put the language in there "as applicable" was  
13 to give us flexibility if we were considering other  
14 matters besides, for example, court rules. If we were  
15 voting on something like that, we wouldn't necessarily  
16 have to do a Keller analysis in that circumstance.

17 And the other issue that you raised had to do  
18 with making a public record of perhaps a minority  
19 viewpoint on whether we should even go forward with a  
20 vote, and as we voted earlier, that would happen,  
21 there would be a record created as a minority  
22 viewpoint. We debated that hotly within the context  
23 of our own committee. I think that was a healthy  
24 debate and a good question to ask about. We came down  
25 on the line we would rather have that careful

1 consideration, that thoughtful consideration of Keller  
2 than not.

3 CHAIRPERSON WILLIAMS: Chair recognizes the  
4 member at the mike.

5 MR. BUCHANAN: Rob Buchanan. I am from the  
6 17th circuit this time.

7 Mine picks up a little bit on the last  
8 comment, which I think you probably want a friendly  
9 amendment to adjust the language so it's any proposal  
10 on public policy or any proposal on legislation,  
11 because certainly if it relates to changing bylaws or  
12 anything from an administrative standpoint, we don't  
13 need to do a Keller on it. So I would adjust the  
14 language so you are focusing on things that are Keller  
15 related, such as legislation.

16 MS. BREITMEYER: I am going to reject the  
17 friendly amendment, and I will give you a reason why.  
18 We wanted to maintain the flexibility with that  
19 language "as applicable," instead of giving a laundry  
20 list of issues that would fall within Keller analysis,  
21 and I think that would give us a little bit more  
22 leeway if we came up with something that didn't touch  
23 upon the Keller principles without giving that laundry  
24 list.

25 CHAIRPERSON WILLIAMS: Chair recognizes the

1 member at the mike.

2 MR. WEINER: James T. Weiner from the 6th  
3 circuit. I would like to reiterate that I think that  
4 it would be better to start, instead of eliminating  
5 that first "where applicable," say, Any proposal that  
6 potentially impacts or has a Keller consideration  
7 shall first be submitted to counsel. I think that  
8 it's just a little too, "where applicable" is a little  
9 too open.

10 I would also like to point out that you did  
11 state on the last page that there is no financial  
12 impact. If we do have outside counsel representing  
13 and bringing or in making these opinions, there will  
14 be financial impact, and I want everybody to  
15 understand that. Thank you.

16 That's a little bit inartful. Maybe we want  
17 to say that has potential Keller impacts. That has  
18 potential Keller impacts or has any potential Keller  
19 impact.

20 MR. FALKENSTEIN: How about actually  
21 implicates Keller concerns?

22 MR. WEINER: Okay. That would be -- just  
23 trying to write it on the fly here, but I want to  
24 limit this consideration to things that have potential  
25 Keller concerns, and especially, you know, I mean,

1 obviously -- I am assuming that the Drafting Committee  
2 would probably take a look at that beforehand and  
3 actually submit it to the Bar beforehand, but I just  
4 wanted to make sure that we are not doing an overkill  
5 here.

6 MR. ROMANO: How about implication, Jim?

7 MR. WEINER: Yeah, potential --

8 MR. FALKENSTEIN: That potentially implicates  
9 Keller --

10 MR. WEINER: Or it has potential Keller --

11 MR. FALKENSTEIN: Keller implications.

12 MR. WEINER: Yeah, change to implications  
13 there instead of impacts. I think that makes it  
14 clear, okay.

15 MR. FALKENSTEIN: That gives you plenty of  
16 flexibility.

17 MS. BREITMEYER: I accept the friendly  
18 amendment.

19 MR. WEINER: I think the end probably needs  
20 to be eliminated there too.

21 MR. FALKENSTEIN: This is a semantics  
22 problem. That new clause should come after to be  
23 submitted for a vote. It should say, Any proposal to  
24 be submitted for a vote, comma, which has potential  
25 Keller implications, comma, shall first be submitted.

1 Any proposal to be submitted for a vote of the body  
2 which has potential Keller implications, comma, shall  
3 first be submitted.

4 MS. BREITMEYER: We are going to the top.

5 CHAIRPERSON WILLIAMS: That will be fine.

6 MS. BREITMEYER: Get rid of the second  
7 "shall."

8 MR. FALKENSTEIN: Take out and. There you  
9 go. "Applicable" should go also, down to the fourth  
10 line.

11 MS. BREITMEYER: I am accepting the friendly  
12 amendment as written

13 MR. FALKENSTEIN: Got one more applicable.

14 CHAIRPERSON WILLIAMS: That's in. That  
15 doesn't implicate the first.

16 MR. FALKENSTEIN: Counsel or bar staff, you  
17 are right. Sorry.

18 CHAIRPERSON WILLIAMS: Any further  
19 discussion? I don't see any members at the mike and  
20 no movement.

21 MR. ROMANO: Before we vote or walk away from  
22 this, we owe Kim a real vote of thanks, because she  
23 busted it, as you can tell by the two proposals before  
24 us.

25 (Applause.)

1 MS. BREITMEYER: Let me read it one more time  
2 before we take a vote. Any proposal to be submitted  
3 for a vote which has potential Keller implications  
4 shall first be submitted to counsel and/or bar staff,  
5 as applicable, who is not a member of the  
6 Representative Assembly, for an independent opinion as  
7 to the permissibility of the vote by the  
8 Representative Assembly on the merits of such proposal  
9 under Keller V. State Bar of California and subsequent  
10 governing and/or authoritative law on the  
11 constitutional standard for mandatory bar advocacy,  
12 collectively Keller. The opinion of counsel and/or  
13 bar staff, as applicable, should articulate the  
14 reasoning behind the determination and accompany the  
15 applicable proposal at the time of publication  
16 pursuant to Section 2.5 of these Rules. A Keller vote  
17 shall be taken prior to the Representative Assembly  
18 taking a position on proposals, where applicable, to  
19 determine the permissibility of the vote under Keller.  
20 A two-thirds vote of the members of the Representative  
21 Assembly present is required to support a  
22 determination that a vote on the proposal is  
23 permissible.

24 CHAIRPERSON WILLIAMS: At this time we are  
25 going forward with a vote on the proposal as presented

1 on the screen. All those in favor will press one on  
2 your clicker, all those opposed press two, and any  
3 abstentions will be recorded by pressing three. The  
4 vote is open.

5 Is there any member who is still attempting  
6 to vote? Please indicate by raising your hand.  
7 Seeing no hands raised, we will close the vote.

8 Mr. Clerk, if you could tell us what the  
9 voting results are.

10 MR. HERRMANN: Madam Chair, we have 77 yes,  
11 25 no, and 2 abstain.

12 CHAIRPERSON WILLIAMS: So the vote passes.  
13 Thank you for your attention to this matter.

14 (Applause.)

15 CHAIRPERSON WILLIAMS: At this will time we  
16 will invite our esteemed president up for remarks.  
17 Mr. Rombach.

18 (Applause.)

19 PRESIDENT ROMBACH: Tom Rombach on behalf of  
20 the 16th circuit. I am very proud to be here,  
21 obviously. I gained my first opportunity to serve  
22 officially the State Bar by being elected to the  
23 Representative Assembly. It certainly is probably my  
24 proudest moment, being in this group. I also  
25 strategically always admire how the Rules and Calendar

1           Committee, of which I used to chair, apportions this  
2           programming, so by putting me at the end they avoid a  
3           stemwinder speech to separate you from your loved ones  
4           and from your communities. But I do admire the fact  
5           that I think we have got a lot better work product  
6           coming out of this process, although it is sausage  
7           making at its core, so I applaud each and every one of  
8           you here in the Assembly for your input and also thank  
9           you for taking your time out of your schedules and  
10          sacrificing a Saturday here to advance the Bar's  
11          mission.

12                    Additionally, I also applaud the Assembly for  
13          its Keller concerns. Certainly we learn from the  
14          attacks on the Bar and also from the concerns  
15          expressed by the Task Force and other entities that we  
16          really need to be most sensitive and, additionally,  
17          careful, as we have seen today, with the Keller  
18          concerns and the First Amendment free speech rights of  
19          our dissenting members, and although we can't cure any  
20          of our constitutional deficiencies by voting, I found,  
21          at least at the Commission level, and I think even our  
22          discussions today, the fact that we are bringing up  
23          these concerns forthrightly rather than say this is a  
24          great proposal, I am against nuclear war, as the  
25          example was given, that perhaps that is a baliwick

1           that is outside the parameters and gamut of the  
2           State Bar of Michigan, so, again, thank you very much  
3           for your consideration of those topics.

4                     Additionally, I would like to recognize at  
5           this point I do have some of our members of leadership  
6           that I would like to recognize that are here with us.  
7           Lori Buiteweg, who is my successor from Washtenaw  
8           County, 17th circuit -- 22nd circuit -- is here.  
9           Thank you, Lori. And I will try not to bungle the  
10          next one. This is 6th circuit, Jennifer Grieco, who  
11          is our treasurer. Thank you, Jennifer. And Rob  
12          Buchanan, I forget the circuit he is from. I remember  
13          the 17th, because that's one in addition to my 16th  
14          circuit, so I do understand where Grand Rapids is  
15          located Rob. Thank you. And he is here on behalf of  
16          our Executive Committee.

17                    And also, the primary purpose that I come in  
18          front of you today is basically my theme for the year  
19          has been addressing the needs of 21st century lawyers  
20          and their clients, and the whole idea here is to try  
21          to map out a future for our profession and for the  
22          people that we care about. That certainly includes  
23          our clients and the public generally, because, quite  
24          frankly, if we don't start planning this, we see  
25          around the globe and around the nation, as Janet

1 pointed out, the fact is that change is coming, and we  
2 can either accommodate and plan for that change, or  
3 that change will be imposed upon us.

4 For instance, in Great Britain, when the  
5 political powers to be with the parliament thought  
6 that the profession was not accommodating change,  
7 impervious to change, instead they opposed a lot of  
8 guidelines that I am not quite sure if the people in  
9 this room could live with. One would be nonlawyer  
10 ownership of law firms, for instance. That's  
11 certainly a topic that could be debated, but I would  
12 want it to be determined by the people in this room as  
13 our final policy-making body, and not necessarily by  
14 the people outside of this room that know better or  
15 think they know better certainly than we do as  
16 lawyers.

17 So, again, if we can accommodate that change,  
18 then we are best served, and I am talking about  
19 thinking about 10, 20, 30, 40 years down the road, not  
20 just within the worm's hole viewpoint of today's date  
21 and time. And one of the ways we are trying to do  
22 this is to kind of bring together a think tank of  
23 sorts, and that's what you may have heard of with this  
24 21st Century Practice Task Force.

25 Now, I will admit that we've appointed 36

1 masters of the universe, that by the fact that they  
2 are appointed for their elected positions, these are  
3 people that uniquely in our state can both accept and  
4 implement change, but the whole idea here is that we  
5 need the great ideas. We need the next big thing for  
6 our profession to be brought in front of this group.  
7 They are only going to meet three times, and the first  
8 meeting, in fact, is Monday at the State Bar building,  
9 and I believe that we have every one of the members  
10 attending, with the exception of one, who is at a  
11 Comerica board meeting who heads their audit  
12 committee, so that the timeliness, he couldn't make  
13 it, and that's Reggie Turner, one of our past  
14 presidents.

15 But what we need to do is we need to inform  
16 this group about what we as lawyers and as  
17 Representative Assembly members think should be the  
18 priorities and, quite frankly, what ideas we can bring  
19 to the floor, and by doing that we can do that through  
20 participation on one of the three committees, and I am  
21 very gratified by the fact that a lot of people in  
22 this room have volunteered, in fact, to serve on one  
23 of those three committees, the first being the  
24 affordability of legal services. And by  
25 affordability, we are talking about access to those

1           that have 125 percent of a poverty line income and  
2           below, but we are also talking about a family of four  
3           making \$94,000 a year that does not perceive or  
4           perhaps, in fact, can't afford hiring a lawyer, which  
5           surveys show that they need a lawyer, they have maybe  
6           two or three times a year that they have a problem  
7           that is uniquely capable of being solved by an  
8           attorney. And the fact is maybe they identify it,  
9           maybe they don't, but if they don't think that they  
10          can hire lawyers, then indeed, in fact, they don't  
11          hire lawyers.

12                   And, quite frankly, when I travel around the  
13          state and I think about \$94,000 in annual income,  
14          well, that's, quite frankly, most of our membership  
15          isn't making \$94,000 a year or more, so the idea that  
16          Henry Ford brought to our state and that we all  
17          celebrate the fact that the people on the assembly  
18          line can actually afford to buy the final work  
19          product, and when we are pricing ourselves out of our  
20          market of serving our own membership, then we are  
21          going to fall on hard times eventually, if not now.

22                   And I know, I understand big firms have  
23          struggles, and I understand as a solo practitioner  
24          that the solo and small practitioners also have  
25          struggles right now, and the idea that we have a

1 greater unmet legal need than ever before and we have  
2 more lawyers than ever before, somehow we have got to  
3 match that up more appropriately. So the idea is to  
4 get folks on this task force to consider these  
5 problems, think about them for a year, and come up  
6 with a final work product.

7 But what does that mean to us in this room?  
8 Well, that final work product isn't happening in a  
9 vacuum. The task force can come up with some great  
10 ideas, but, quite frankly, absent the Representative  
11 Assembly's reviewing these and adopting these, this is  
12 our final policy-making body, and we need your  
13 direction and we need your input and, quite frankly,  
14 we want your approval here. So whatever is happening,  
15 we are going to need to come back to you in order to  
16 get that done. And the gentleman that pointed out,  
17 hey, what's the difference between the Assembly and  
18 the Commission? Well, the Commission is operating  
19 when the Assembly isn't operating, and it's moving  
20 much faster, but primarily this is a management group.  
21 This isn't a policy-making group. So, as you said  
22 today when we looked at what is happening to the  
23 sections. Well, that was done by the Assembly, not by  
24 the sections. You folks were changing their rules,  
25 and it wasn't a major change, but I am sure that a lot

1 of people in this room serve on sections, and I  
2 recognize a lot of people, even the blind school here  
3 recognize your talents and put you on a committee.  
4 Now, again, I appreciate your willingness to step up  
5 and volunteer.

6 So the first committee, the  
7 Affordability/Accessibility Committee, is very  
8 important to this effort. But, I mean, the Namesake  
9 Committee is the second committee, and that's building  
10 a 21st century practice. That's something I aspire to  
11 achieve one day in my legal career, and from what I am  
12 told from the big-timers in the room, not only do I  
13 have to build it and they shall come, but you also  
14 have to maintain it, despite the challenges that are  
15 in front of us, so that's a separate challenge.

16 And, again, we have a lot of bright minds in  
17 that group, many of whom are in this room today, and  
18 we are counting on them to come back to figure out how  
19 do we make the transition from law school and  
20 successful completion there and transition these folks  
21 into a successful integration within our legal  
22 community, because we know a lot of those folks are  
23 unemployed. We know a lot of those folks are  
24 underemployed, and maybe they don't have the same  
25 skill sets.

1                   When I came out, it was pretty much trial by  
2                   fire. You just end up in court, and people take care  
3                   of you and laugh at you, and you get better over time,  
4                   at least that was my experience, and I am still trying  
5                   to achieve the better over time, but the laughing at  
6                   me and trial by fire is still something I seem to  
7                   experience on a daily basis. But we need to  
8                   understand that transition. We need to understand how  
9                   one gets to the apex of one's career, and we also need  
10                  initiatives coming in front of the Assembly before.

11                  Since my involvement here in 1998, I think I  
12                  have attended every Assembly meeting since then. It's  
13                  not always a mind-numbing experience, but, as we come  
14                  into succession planning, I mean, how do we get out of  
15                  this muck and pass the baton on to the next  
16                  generation?

17                  And, thirdly, we have to recognize that we  
18                  have to modernize the regulatory machinery within our  
19                  profession, because none of these changes -- we talk  
20                  about unbundling legal services. We can't do that in  
21                  a vacuum. We can't simply say, hey, I want to make  
22                  sure that my retainer becomes nonrefundable and, you  
23                  know, I am told that we can do that with an engagement  
24                  fee, for instance. The fact is if we are going to  
25                  gravitate away -- and I read some of the materials in

1           your packets today, because I am a voting member.  
2           It's my packet too. The fact is that if there is  
3           going to be a death of the hourly billing and the  
4           consumers want more item pricing, so that's more flat  
5           fee, that's more a la carte type of services, that we  
6           need to make sure that the discipline system can grasp  
7           that and different fee billing strategies so that we  
8           can, indeed, offer our services to a public that wants  
9           certain services.

10                   I mean, we still have to make sure they are  
11           accommodated, because they are the ones paying the  
12           bread. At the same time, first and foremost, we have  
13           to protect the public, because that's the one branding  
14           thing that we have. The accountants and the financial  
15           planners and the realtors and the summation purveyors  
16           over the internet and scoundrels from points unknown,  
17           we don't know that their first and foremost ideas are  
18           to protect the public. In fact, William Hubbard, our  
19           ABA President, has said that there is a hundred  
20           million dollars that was brought to the fore to invest  
21           in legal information purveying about five years ago,  
22           and at this moment there is almost a billion dollars a  
23           year that's being spent, and that is not necessarily  
24           by lawyers. That's by investors, because they see the  
25           financial opportunity and many of the opportunities

1           that we are leaving on the floor.

2                       So we more properly have to tailor our  
3           services to the services that the public is demanding,  
4           and we still need though to first and foremost protect  
5           the public. That's going to be the charge to the  
6           people in this room that are going to take up the  
7           gauntlet far after I am gone.

8                       So right now we have the task force bill. We  
9           probably have most of the committees filled. So the  
10          people that haven't yet volunteered that still want a  
11          role in this process, I am told now what we are  
12          working on is work rows, because each of these  
13          committees are not to be silos. Obviously, there is a  
14          lot of overlap, and in order to deal with specific  
15          problems that we have to have people populating  
16          particular areas of interest for them, and so we are  
17          going to reach out, and if you want to volunteer for  
18          any of these efforts, you can see me and I can  
19          probably lose your interest and lose your application,  
20          or you can see Candace Crowley, who professionally  
21          does this and makes sure that these things don't fall  
22          through the cracks, and apply with her to participate  
23          in one of those posts, and so I encourage you to do  
24          that as well. It's an exciting prospect. It's an  
25          exciting time.

1                   And one thing, as Michael Thomsen, I believe,  
2                   said, is that when you say what do you want to change?  
3                   I mean, it's a very important concept. The Assembly  
4                   is on the cutting edge. At the same time, anything  
5                   that's coming to me for change, everything that's  
6                   coming to any of our leaders here for change, and you  
7                   have three leaders up here that are incredibly  
8                   skilled, that have served on our Board of  
9                   Commissioners in Vanessa, Dan, and Fred, and they  
10                  regularly give input, they regularly participate, and,  
11                  quite frankly, they are the ones that are bringing the  
12                  ideas in that are expressed here and ideas on their  
13                  own initiative.

14                  But what we need to do if we want to change,  
15                  then not only do we need to participate here, but we  
16                  need to feed in these ideas, even if they are  
17                  hairbrained stunts that I have come up with, and put  
18                  them through a process where that we can assign these  
19                  to their appropriate forum, to the appropriate group.  
20                  Some of which I am sure will be assigned here, and  
21                  others might be assigned to a committee, or they might  
22                  be assigned to an outside agency or they could be  
23                  assigned anywhere. A lot of these things are going to  
24                  be working in parallel, so if you have got a great  
25                  idea, the moment is now to share that. If you have

1 got a corner on the market, instead of my lemonade  
2 stand, if you understand how we can start pushing this  
3 stuff out in cartons and by bulk, then I would love to  
4 hear that too, because we are always looking to  
5 improve.

6 I know as lawyers we have a lot of bright  
7 minds, a lot of fearless advocates, and we are always  
8 looking to push the ball further down the field, so I  
9 am counting on your help in the remaining six months  
10 of my term, and I know that Lori is going to count on  
11 your help when the Task Force comes back after its  
12 third meeting with this tremendous work product, and  
13 the timing is in March of next year, because we  
14 understand there is an Assembly meeting in April, so  
15 you will see that. And along the way it's the people  
16 in this room that I am counting on standing up. There  
17 is going to be a process that Vanessa and the  
18 leadership has put in place so that you can  
19 participate. Town hall meetings, whatever. I think  
20 the Hearings Committee is going to be in charge of  
21 some of that that we have discussed, so that we can  
22 get the input of each and every lawyer that wants to  
23 participate, that wants to contribute. So, again,  
24 thank you very much for your interest. Thank you very  
25 much for your attention, and go forth and do good

1           deeds. Thank you, Vanessa.

2                           (Applause.)

3                   CHAIRPERSON WILLIAMS: I am keenly aware of  
4           the time and that we are over by ten minutes. Unless  
5           there is some objection, I am going to resist taking a  
6           break. We do have box lunches. I just think we can  
7           probably get through the last agenda item, unless  
8           there is some strong objection to that, and what this  
9           is, we just wanted to offer an opportunity to have  
10          some open discussion on the Supreme Court's request  
11          for comments as to the proposal on Michigan Rules of  
12          Professional Conduct 1.5. We aren't looking to take  
13          action, but we wanted to know if there were some  
14          voices of the Assembly that had some larger impact so  
15          that we could hear it today. So if there are any  
16          comments, please move to the mike now.

17                   MS. KITCHEN-TROOP: Elizabeth Kitchen-Troop  
18          from the 22nd circuit. I just want to say generally I  
19          haven't completely formed an opinion about this, but  
20          after reading the materials, I practice predominantly  
21          family law in Ann Arbor, and I think that I have some  
22          concerns about this concept of value-added fees in the  
23          context of family law cases. I feel like we are  
24          already bound by the Michigan Rules of Professional  
25          Conduct to being zealous advocates for our clients,

1           and I think this value-added fee sort of incentivizes  
2           behaviors or decisions by attorneys that aren't  
3           necessarily appropriate in a family law context when  
4           you have cases that are very sensitive and stakes that  
5           are very high, including, obviously, custody  
6           terminations. I also have some concerns about whether  
7           or not the client is going to have a clear  
8           understanding of what covered fees are determined.  
9           It's just general thoughts.

10                   CHAIRPERSON WILLIAMS: Thank you. Chair  
11           recognizes the member at the mike.

12                   MR. MASON: Good afternoon. My name is  
13           Gerry Mason. I am from St. Clair County, the 31st  
14           circuit. About 40 percent of my practice is family  
15           law, and I would like to echo what sister counsel  
16           said. Judge Duncan Beagle up in Genesee County has a  
17           great expression. When there is a criminal case,  
18           people are on their best behavior. When there is a  
19           family law case, people are on their worst behavior.  
20           And we need the attorneys to be driven as zealous  
21           advocates by the oath we take as lawyers and not by  
22           profit in a contingency type of situation, because  
23           when you get a divorce case with clients who are upset  
24           or may be behaving badly, if one of the lawyers is,  
25           it's an absolute disaster. And I don't think this

1           would be good for the profession in terms of the  
2           perception of our profession, but I certainly don't  
3           think at the end of the day the clients would benefit.

4                   CHAIRPERSON WILLIAMS: Seeing no other  
5           members at the mike, we are going to close this  
6           portion, and I do thank you for your comments. Again,  
7           it was an opportunity for us to provide information.  
8           Earlier there was a light colored yellow sheet with  
9           the Supreme Court alternatives. We think that we have  
10          collected all of those. If we haven't collected  
11          yours, if you would leave it on your desk, I would  
12          appreciate that.

13                   Just one matter before we adjourn. I did get  
14          a request from a Representative Assembly member to  
15          make a statement. Mr. Kortering, is he still here?

16                   MR. KORTERING: I wanted to thank everybody.  
17          I didn't get hit by a bus or struck down by a friendly  
18          amendment, but I want to thank Ms. Moss and the Awards  
19          Committee for nominating and honoring my father today.  
20          It means a lot to my family and it also means a lot to  
21          the community in Muskegon. We are a small community.  
22          It was very nice, and I will get more say in October.  
23          Thank you. I appreciate it.

24                   (Applause.)

25                   CHAIRPERSON WILLIAMS: As is our custom, the

1 reimbursement forms are being distributed right now.  
2 You can turn those in before you leave. Thanks to the  
3 staff for all of your hard work, especially to  
4 Anne Smith. Thank you for putting everything together  
5 for us today.

6 So if there is no further business of the  
7 Assembly, I will entertain a motion to adjourn.

8 VOICE: So moved.

9 CHAIRPERSON WILLIAMS: Is there a second?

10 VOICE: Support.

11 CHAIRPERSON WILLIAMS: All in favor of  
12 adjourning, please indicate by saying yes.

13 Is there any opposition?

14 We are so adjourned. Thank you very much.

15 (Proceedings concluded at 1:01 p.m.)

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1 STATE OF MICHIGAN )  
 )  
2 COUNTY OF CLINTON )

3 I certify that this transcript, consisting  
4 of 129 pages, is a complete, true, and correct transcript  
5 of the proceedings of the Representative Assembly on  
6 Saturday, April 25, 2015.

7  
8 May 18, 2015

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

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