

STATE OF MICHIGAN
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE
ASSEMBLY of the STATE BAR OF
MICHIGAN

ORIGINAL

Proceedings had by the Representative Assembly of the
State Bar of Michigan at East Lansing Marriott, University
Ballroom, East Lansing, Michigan, on Saturday February 22,
2003, at the hour of 10:00 a.m.

AT HEADTABLE:

THOMAS C. ROMBACH, Chairperson
DANIEL M. LEVY, Vice-Chairperson
JOHN T. BERRY, Executive Director
HON. ARCHIE C. BROWN, Parliamentarian
GLENN PETERS, Staff Member

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East Lansing, Michigan
Saturday, February 22, 2003
10:11 a.m.

R E C O R D

CHAIRPERSON ROMBACH: Good morning. My name is Tom Rombach. I am chair of the Representative Assembly through the misfortune of your prior misjudgment, and at this point I would like to call the meeting to order.

Our first course of business then is certification of a quorum is present. I believe that --

VICE CHAIRPERSON LEVY: I do certify.

CHAIRPERSON ROMBACH: -- our illustrious second in charge has said just that. We need fifty members due to today's docket. We are in excess of 50 members.

The next item is the adoption of the proposed calendar. Do I have a motion to that effect?

VOICE: So moved.

VOICE: Support.

CHAIRPERSON ROMBACH: We have a motion and support of that motion. Is there any discussion as regards to the proposed calendar for today? Hearing none we will move that to a vote.

1 All in favor say yes.

2 Are there any opposed?

3 The record shall reflect that was approved
4 unanimously.

5 Then we also received no objection to the
6 summary of proceedings of the September 26, 2002
7 meeting that was conducted at Grand Rapids, and since
8 we haven't received any of that, then we will deem
9 that that is approved if there is no objection from
10 the Assembly at this point. That's so done.

11 Next we have filling of vacancies. We have
12 changed that around slightly from the calendar that
13 you received in the mail. We are actually going to
14 have three that are done but just different three than
15 you are aware of. The only one that is still in place
16 is the 14th judicial circuit where Shawn P. Davis in
17 Muskegon is -- we are trying to get him into an
18 immediate vacancy and to continue as an interim
19 appointee until the next State Bar of Michigan annual
20 election.

21 Additionally Michael Zagaroli from Grand
22 Rapids has also been nominated by the 17th circuit to
23 fill a vacancy that is of immediate import and then to
24 continue again until election is held. And, thirdly,
25 we have Lisa Kirsch-Satawa who is now being nominated

1 to fill a vacancy of immediate import in the 6th
2 circuit, and she will fill that vacancy at this point
3 and serve until our next State Bar election.

4 If the three of those folks are here today
5 and if they could turn around and we could all see who
6 those folks are. I know Shawn is here and then Mike
7 Zagaroli and then Lisa in the back. So if I have a
8 motion to that effect, we can move on.

9 VOICE: So moved.

10 CHAIRPERSON ROMBACH: Is there support?

11 VOICE: Support.

12 CHAIRPERSON ROMBACH: Having been moved and
13 supported, is there any discussion on this item?

14 VOICE: We have a question.

15 THE WITNESS: Call the question.

16 CHAIRPERSON ROMBACH: Our eminent
17 parliamentarian, Chief Circuit Court Judge from
18 Washtenaw County, Archie Brown, for those folks that
19 haven't met him. He basically calls the shots, and I
20 am the person with the strings up front. So thank
21 you, Archie.

22 We will call the question. All if favor say
23 yes.

24 Any opposed signify by saying no.

25 Hearing none, that passes unanimously.

1 I guess my next item is remarks. Not being
2 particularly remarkable, I will ask at this point --
3 fortunately we have done real well health-wise within
4 State Bar circles in the interim period since
5 September, but unfortunately we lost one of our great
6 lawyers in the state, former State Bar of Michigan
7 President and one of our leading pro bono advocates in
8 the entire nation and after whom we have named our pro
9 bono award, and that's the person of John Cummiskey
10 from Grand Rapids, and I would like at this point to
11 ask for a moment of silence to reflect upon his
12 passing.

13 (Moment of silence.)

14 Thank you very much. We will next move on to
15 some more light-hearted matters. I would like to
16 thank at this point some of the folks that have gone
17 into -- their volunteer work has helped move us to
18 this point in our consideration in today's Strategic
19 Plan and dues proposal.

20 First off, I would like to thank Dan Levy who
21 helped draft the proposal in front of you for your
22 consideration today, along with our State Bar general
23 counsel, Janet Welch, who is over there with the glasses
24 and not quite falling asleep yet. And Dan and Janet
25 helped design the process, particularly Dan and his

1 effective successor, Elizabeth Jamieson, who is
2 actually overseas today in a prepaid junket.

3 She had initially planned, as all we had, to
4 attend this meeting in January, and then, as we were
5 in discussions with the Supreme Court amongst our
6 State Bar elected leadership -- Mr. Turner,
7 Ms. Brinkmeyer, Ms. Diehl, Mr. Cranmer and
8 Ms. Cahill -- they basically had discussed what might
9 happen with the dues this year, and the Supreme Court
10 at that point had said, well, we are considering
11 disciplinary dues assessment increase, and if you
12 folks want a dues increase, then if you are going to
13 consider it, we need to consider it now. And so at
14 that point we needed to move the meeting back.

15 So it's no real mystery why we were scheduled
16 in January and now scheduled in February, the reason
17 being is that we do have a 42-day time deadline in
18 order to act, and we wouldn't have this proposal in
19 front of you today. If we didn't have it in front of
20 you today, then basically we wouldn't have input into
21 this process. So we felt as the final policy-making
22 body of the State Bar that it was incumbent to bring
23 it to the Assembly at this juncture.

24 So Elizabeth unfortunately, and a number of
25 other people, because of midwinter breaks with

1 children and things, a lot of people have expressed
2 their regrets for not being here today, but I
3 appreciate you all making a special time in your
4 schedule to go the extra mile and brave the pending
5 weather conditions to have your input here today.

6 I would also like to thank Allyn Kantor, who
7 you will hear from later on. Under his leadership,
8 his Special Issues Committee, and those folks actually
9 recognized in your member handbook which is floating
10 around here somewhere, and basically he put that
11 committee together during the month of December where
12 we all have holiday things to do. When he was told
13 that the Supreme Court wanted this input now, he
14 moved, and I know a number of other members of the
15 Assembly are here today and participated in those
16 discussions. In fact that's quite a big committee.

17 If I could have -- does somebody have one of
18 those new member handbooks? We can just go off the
19 proposal I guess.

20 I would also like to recognize Bruce Barton
21 and Michael Blau, Dan Burrell, judge who was
22 unfortunately unable to be here today. Cynthia Lane,
23 Fred Neumark, Barry Powers, Mike Riordan, Marcia Ross,
24 Jason Schnelker and Dennis Taubitz for being involved
25 in that process as well on short notice and devoting a

1 heck of a lot of time and effort in conference calls
2 in order to be making these decisions in all due
3 expediency.

4 I would also like to thank Ed Haroutunian,
5 who you will hear from shortly. He convened for the
6 first time in eight years our Representative Assembly
7 Hearings Committee that had been dormant because we
8 really didn't have an issue of the magnitude before us
9 that necessitated traveling around the state, but he
10 will tell you of his travels through five different
11 locales around the state and see what they came up
12 with, and that was basically to give our membership
13 notice and an opportunity to be heard on a very
14 important matter all here will be called upon to
15 debate later on to today.

16 Lori Buiteweg, she moved with great haste in
17 record fashion, Lori from Ann Arbor as well, in
18 getting today's docket together. That was done in
19 record time, because we needed all these proposals
20 with the ink drying before we were able to docket
21 them, of course, and those made it under the 42-day
22 deadline.

23 I would also like to thank Bill Knight, who
24 leads our Assembly Review Committee now, and he was
25 involved in this process, and basically because of

1 those amendments that we had approved to our rules in
2 September it allowed us to act, and if we hadn't had
3 those amendments, we wouldn't be discussing the issues
4 before us here today.

5 And also Chris Ninomiya from the Upper
6 Peninsula. Chris with his Nominating Committee has
7 helped fill our vacancies and move the entire ship
8 forward.

9 And around the state we were pleased to see
10 a lot of folks from the State Bar give their input and
11 also monitor the proceedings. Probably anecdotally,
12 to mention a few, the State Bar commissioners from
13 Lansing were at our first meeting, Kim Eddie and
14 Charles Toy. They are probably not here today because
15 they are not Assembly members, at least not as of yet.

16 And also in Lansing we had Kim Cahill, our
17 august treasurer, join us and give us our financial
18 insight, and Dan was there, and Mike Blau was there I
19 know doing his job as Representative Assembly member,
20 and Susan Haroutunian was there in Lansing to begin
21 with, and I know that she traveled around the state
22 with a remarkably similarly last named gentleman at
23 all five locations, including Gaylord. So we are very
24 pleased that those folks took such an active
25 participation.

1 In Grand Rapids I know we had a number of
2 people from the 17th. One of our assistant
3 prosecutors new to the Assembly, Kevin was there.
4 Jason Schnelker, who isn't able to be here today, was
5 there. Scott Brinkmeyer, our eminent president-elect
6 was giving us some guidance at that hearing, and
7 Elizabeth Jamieson actually had to be thanked for
8 putting that all together.

9 In Gaylord I would like to give special
10 recognition to Arvid Perrin. He was able to get the
11 Otsego County Courthouse on Saturday open for us
12 February 1st, which is a little out of the ordinary.
13 I know I don't have that type of throw weight in my
14 community that, hey, judge, I need your courtroom and
15 I need it on a Saturday and I would like a staff
16 member there to record it and if you can open the
17 building and make sure it's safe despite recent
18 snowfall. So Arvid is to be commended there.

19 John Jarema, too, had traversed the state
20 from the 33rd circuit to be present, as had Ron Keefe,
21 four-hour driver from the Upper Peninsula, because
22 that unfortunately was our furthest northern entry
23 point to the hearings process.

24 And then in Pontiac Scott Garrison is to be
25 commended. Scott was able to get his judge,

1 Judge Rae Lee Chabot, to leave town so that we could
2 use her courtroom, and fortunately Scott runs that
3 court, so I guess he calls the shots, and he was able
4 to get us safely ensconced there, and he is turning
5 red, but that's okay. I get used to it. That's what
6 I do up front.

7 And Julie Fershtman, my immediate
8 predecessor, showed us some guidance in that hearing.
9 Elias Escobedo, our commissioner from Oakland, was
10 there. Dan, again Marcia Ross from the 6th circuit
11 made time out of her schedule to be there and to have
12 some input. Thank you very much Marcia. And Kim
13 Cahill who made the trek there as well.

14 Then finally, I am not trying to bore you
15 folks, but I really want to recognize these people, so
16 it's not an acceptance speech on my part.

17 Judge Ziolkowski had hosted our final meeting
18 in, again, another video courtroom. So in case
19 anybody wants to see any of the comments or hear any
20 of the comments, we have those all memorialized
21 without going through the time and expense of having
22 our court recorder have to go on the road and do this.
23 I am sure she would have been thrilled, particularly
24 on another Saturday, that we had called her into
25 service.

1 But from Detroit we had at that hearing
2 probably a great turn out from the Assembly members.
3 We had a new member, Deborah Blair, I believe is here
4 today from the 3rd circuit, Bob Neaton from Detroit,
5 Matt Abel from Detroit. Allyn Kantor came up from
6 Ann Arbor. Dan was there, Kim Cahill. Reggie Turner
7 showed his imperial guidance at that meeting as our
8 illustrious head of the State Bar. Greg Ulrich from
9 Grosse Pointe, Dennis Taubitz from Detroit were all
10 present and accounted for.

11 I would also like to just mention that we had
12 some intrepid members of our Assembly Hearings
13 Committee. I know Vince Romano, a new member, was
14 active in that. I saw him all the way up points north
15 to Gaylord. And also Tim Morris was there at most of
16 our hearings. Jim Hogan was there at a number of
17 hearings. I know I am going to leave people out.

18 Terri Stangl was there. Who else? Teresa
19 Bingman is on the committee, and I know she has been
20 pretty tied up with the governor's work. Ex officio
21 members, we have Kim Cahill and Ron Keefe attending,
22 not ex officio. They are associate members.

23 Who else am I leaving out now? I am going to
24 leave out a couple people. I am going to cheat, and I
25 am going to look at a list. We also have Doug Ellmann

1 had participated in those discussions, and I think,
2 actually I got the list, so that's not too bad. Well,
3 thank you very much, and Dave Kortering I know also
4 was involved in those discussions.

5 (Applause.)

6 CHAIRPERSON ROMBACH: I will make a couple
7 substantive remarks and, instead of boring you with my
8 personal journey to State Bar leadership, I think in
9 the Assembly I am going to bore you with the
10 Assembly's personal journey to leadership, and this
11 shouldn't take too long.

12 Basically, as I see it, we have redefined
13 ourselves. We have become more active and we have a
14 set of rules that allow for that, but at this point we
15 really need to step up to the challenge.

16 The rules revisions have enabled us to turn
17 around some very important issues quickly and
18 expeditiously, and the Court Rules have empowered us
19 to act exclusively on certain very important issues,
20 such as today's dues increase. But at this point we
21 need to use those prerogatives now or we will loss
22 them in the future.

23 Today's vote on the State Bar Strategic Plan
24 and dues proposal is about turf basically. Real blunt
25 political terms, if we act and we do so responsibly,

1 and we have done that with the help of all those folks
2 that I have mentioned, then we get to keep our input
3 as far as dues and important issues and important
4 guidance of the Bar moving the ship forward. And if
5 on the other hand we choose to do nothing or we are
6 going to table these issues -- well, we have to really
7 act now or forever hold our peace.

8 The Supreme Court has published these for
9 comment, and they are going to take whatever we have
10 today into consideration in their reflections, but
11 whatever we do, whatever we come up with, we are going
12 to be the final word from the Bar as far as what we
13 want to do with our own self-governance.

14 So they have given, the Supreme Court has
15 given us an important opportunity to speak, and we
16 should do just that.

17 Additionally, the notice has been given to
18 our membership, as you can see, through the public
19 hearing process. I would also like to reflect that we
20 had about 125, 150 e-mail submissions. Those have
21 been also reviewed by the Special Issues Committee and
22 other points in leadership.

23 One reason that we don't have them all here
24 for you today is a lot of these people didn't want
25 their names revealed. At one point we were going to

1 put them all on the website and they said the whole
2 idea on the speakout was for us to share our thoughts
3 with the people making the decision. It wasn't for
4 our name to be used in that conjunction statewide.

5 So just so you know that when we actually,
6 and John Berry and his staff actually tried to get
7 back to these folks and said, well, I know that wasn't
8 part of the deal, but could we really share this
9 information with the rest of the State Bar members,
10 and a lot of these folks basically either through
11 silence or sort of like no way, you asked me for my
12 opinion, I gave it, but if I wanted to publish it I
13 could have done that myself. So just so you know we
14 have taken in a lot of people's insights and
15 consideration.

16 Additionally we have had a two-year process
17 to come up with this State Bar Strategic Plan. I know
18 that John has previewed that for us several times,
19 presented in April and September of last year, but
20 that's really tied the staff and it's been a new
21 course set, rather than have presidential agendas, we
22 defer to being on the same team, so Mr. Turner didn't
23 turn the Titanic in a different direction this year.
24 He kept in the same direction as Bruce Neckers and
25 Tom Ryan.

1 MR. TURNER: Can we use another boat?

2 CHAIRPERSON ROMBACH: Another boat. I only
3 see movies. If I do any reading, Reggie, I would know
4 something different. Our voyage has so far been far
5 more successful. We haven't sunk, at least up until
6 today's hearing, and I hope to keep that afloat
7 through my tenure as well.

8 So we have done the necessary due diligence,
9 and what I would like to do is see us act today. I
10 don't think we can afford to defer action or we
11 essentially run the risk of becoming irrelevant. My
12 nightmare right now is that we shirk our
13 responsibility and we do nothing, that we table this
14 consideration of the Strategic Plan that we have been
15 going over for two years and that our Special Issues
16 Committee helped design, and in deference to the
17 committee I really think that we need to show them due
18 respect and vote today, as well as on the dues
19 proposal. We can approve it, we can amend it, we can
20 reject it. We know as much today as we are going to
21 know at this point.

22 At this point I think we need to act. We
23 need to act now. We can act, we must act, and I am
24 confident that we will act. Thank you.

25 At this point I am going to turn the podium

1 over to our eminent State Bar Executive Director, John
2 Berry, for his comments.

3 (Applause.)

4 MR. BERRY: I didn't really think about it in
5 these terms until we started talking about it, Reggie,
6 but maybe two years ago we were on a Titanic heading
7 for some icebergs and we missed them and now we have
8 switched over, hopefully, to the Love Boat. We will
9 find out at the end of debate whether we reached that
10 level or not.

11 As I came in here today I was reminded of two
12 years ago when I came in, and I was here to interview
13 for the job of executive director, and at the time a
14 gentleman talked to me and said, Do you have a clue
15 what you are getting into with the State Bar? And
16 after two years I think I did.

17 I had the opportunity to get in on the ground
18 floor on the potential of something being really
19 great. Didn't start off that way, but I really
20 believe that after two years of working with people,
21 and luckily Tom did all of the hard work of thanking
22 people, but I do want to say that I think the last two
23 years, between the Representative Assembly leadership,
24 the Board leadership, our Bar leadership, and a
25 tremendous staff, that for the first time in a long

1 time we have come together in trying to plan where we
2 are headed in the future, and I think the result of
3 that plan is the hard work that the Representative
4 Assembly has put into and Special Issues to present to
5 you a plan for our future.

6 I have to thank the staff. They have spent
7 literally thousands of hours the last two years
8 putting together financial plans and to put together
9 plans that have been revised, changed by the
10 Representative Assembly, changed by the Board and
11 everyone else, worked incredibly. I will give you one
12 quick example.

13 We tend to thank the people at the top, but
14 you have materials in front of you today, and a lady
15 by the name of Julie Henderson was up late yesterday
16 working to get those materials to you. Julie was
17 going to get married about two weeks from now, and her
18 husband-to-be found out in less than a week he is
19 going to Kuwait, and she is getting married today.
20 And yesterday at the same time she was trying to
21 prepare for that and to have the emotions, the
22 positive and the negative emotions, she didn't leave
23 until she made sure those materials were taken care
24 of. That's the privilege I have had to work with
25 people like that, and it's been a tremendous privilege

1 for all of us.

2 In a few moments, as Tom pointed out, you are
3 going to have the chance as the final policy-making
4 body of the Bar to have a major impact, not only with
5 what the organized Bar is going to be, but what our
6 profession is going to be, and as your executive
7 director I guess I have been hired to try to keep some
8 continuity from leadership and the Board, the
9 Representative Assembly, our membership, and everyone
10 else concerned. And I stand before you and
11 wholeheartedly support the proposal that is coming to
12 you from the Representative Assembly leadership.

13 On our building are the oft quoted words of
14 Roberts P. Hudson, that no organization of lawyers can
15 long survive which has not for its primary object the
16 protections of the public. And when the Strategic
17 Plan was being worked on, that basic premise was
18 devised into a mission statement, and in that it said
19 the purpose of our Bar, and we should listen closely,
20 the purpose why we exist as a Bar is to first aid in
21 promoting improvements in jurisprudence; secondly, to
22 improve relations between the legal profession and the
23 public; and, finally, to promote the interests of the
24 legal profession in this state.

25 Now, most of you know I have spent most of my

1 career trying to help our profession in their
2 relationship to serving the public, and there is
3 always talk in terms of public service. But if you
4 look at this, and I know most of you have not put to
5 memory the latest Bar Journal article that Reggie and
6 I did together, so for that reason I am going to, if
7 you will indulge me, just read partially from that,
8 because it summarizes in my mind what the Strategic
9 Plan is trying to accomplish.

10 And when you listen to our goal, it says that
11 as a Bar, however, we are in charge. We are in charge
12 of bringing those noble goals to final realization.
13 And to do that we first must focus upon ourselves.
14 The Strategic Plan focuses on lawyers. It focuses on
15 our profession. It is a dramatic change, a
16 programmatic change in what we are doing.

17 And at first flush, if there was a reporter
18 here, they might say that sounds a bit self-serving,
19 and what we would say is, unless we strengthen our
20 profession's ability to withstand increasingly strong
21 and economic and societal changes, we have less and
22 less ability to serve our clients and serve our fellow
23 citizens. We must be able to adapt to changing
24 expectations and create the tools to allow us to deal
25 with dynamic, financial, and market pressures.

1 The goal is the heart of the Bar's Strategic
2 Plan. It was the consistent theme that we heard for
3 two years through every survey and through every bit
4 of information from our lawyers. It says that we
5 should stay out of divisive issues and focus instead
6 on helping lawyers at their desk. Assist members and
7 firms with technology, with law office management,
8 with legal research, e-filing, actively protect the
9 public from unlicensed persons who prey on families
10 and businesses, help make our profession more
11 competent, ethical, professional, and work at law
12 schools to start that effort earlier. Develop ways to
13 enrich the quality of our professional lives so that
14 it is easier to help the public and enhance our
15 justice initiatives so that they are more effective
16 and yet less expensive.

17 Before you consider the components of this
18 plan, I would like to just very briefly give you a
19 concise summary of how it came into being to remind
20 you what's happened the last two years.

21 It was born amidst troubled times for our
22 Bar, times which you know, times of building cost
23 overruns, and lest I, as in a jury trial at voir dire,
24 try to raise an issue before it gets raised later,
25 this Bar increase has nothing to do with the building

1 cost overruns.

2 That does not mean, however, that the Bar has
3 not come to grips that we made mistakes during that
4 time period and that every dollar spent improperly or
5 wrong is a mistake that has to be corrected and we
6 have dealt with it. The amount of money for this dues
7 increase would be far less than \$5 a member as far as
8 dealing with anything concerning the building cost
9 overruns.

10 But we had failed ED leadership. By the way,
11 it's very nice not to follow Paul "Bear" Bryant, but to
12 follow some other folks as the executive director of
13 the Bar. We had some lack of focus, but also there
14 was much good about this Bar or I and my wife would
15 not have decided to move from Florida, and what
16 happened was these difficult times brought about a
17 revolutionary approach forging a new spirit and a new
18 direction.

19 And I will say that the leadership of the
20 Board and the leadership of the Representative
21 Assembly has stayed focused consistently not to have a
22 presidential agenda but to bring together the Board,
23 the Representative Assembly, our members.

24 We had the first section meeting in essence
25 of all of our sections together in the history of this

1 Bar as far as anybody can remember, brought all our
2 committees together. We spent two years trying to
3 look at every issue concerning the Bar with no sacred
4 cows.

5 During this time period we have felt that it
6 was important to demonstrate to you and our members
7 that we were financially responsible and that we could
8 make tough decisions. Extraordinarily tough decisions
9 have been made, and many of those decisions are
10 decisions that none of us would like to see. We
11 didn't just reduce out of fat. We reduced out of
12 important programs, much of which will probably never
13 come back, some of which may come back if you and
14 others believe the priorities exist.

15 We have had staff reductions. Over ten
16 people, hard working people who worked on good
17 programs, no longer work for the Bar. We have reduced
18 in half the lawyers and judges assistance program. We
19 have reduced in half our Access to Justice staffing.
20 We have reduced completely our public outreach. We
21 have not hired a media relations person in a time
22 period that it's vitally important that we go forward
23 and that we meet with the media and others and
24 demonstrate what the Bar is all about.

25 We have cut the administration, and most of

1 you know even in the annual meeting we have gone from
2 a \$300,000 meeting to less than a \$50,000 meeting to
3 pay most of our attention based upon the work of the
4 Bar rather than just the celebration of the Bar.

5 These cuts have not been without serious
6 consequences, but we have turned around the \$600,000
7 deficit to a budget that has been balanced.

8 But this is what I would like to stress. If
9 our goal is only to spend the least amount of money,
10 well, we can go to zero. When I was in Arizona we
11 went through a dues increase, and someone went around
12 to my staff and they said, Well, what's Berry and the
13 people really think we need? And I said, That's the
14 wrong question. What do we want? What is it that we
15 feel the Bar has to be involved in? What's an
16 efficient use of the resources, and then find what
17 resources are needed to go forward.

18 So if our goal is to spend the least amount
19 of money, I guess you can spend no money, and we have
20 used this last two years, however, to show fiscal
21 responsibility, and now we are before you through a
22 Strategic Plan to talk about the programs of the
23 future.

24 Just to remind many of you, I will highlight
25 the programs we are involved in and then the programs

1 that we are going to stress even more or go forward in
2 new ways. Character and fitness, testing to make sure
3 that the people that become lawyers have integrity.
4 It's a major component of our work. Justice
5 initiatives. We have been very proud of the work we
6 have done in that area. We have provided direct help
7 to lawyers and discounts in other areas. We have had
8 public outreach.

9 But here are the areas that are stressed on
10 the Strategic Plan. Unauthorized practice of law,
11 defining what the practice of law is. What is it that
12 lawyers should be able to do to the exclusion of
13 everyone else? How should we react when changes are
14 being proposed for other professions or nonlawyers to
15 practice? Be able to stand up for our profession when
16 it is needed, providing additional technology and help
17 to our lawyers, providing law office management,
18 helping lawyers at their desk, professionalism.

19 Every survey in this state and the country
20 shows that it's not as much fun to practice law, and
21 who is saying that? Not just the public, we are
22 saying that as lawyers.

23 So what is money going to be devoted to to
24 help in that area as well? And we have already
25 started. A great professionalism program has been

1 started at Cooley Law School and will be working with
2 all law schools. A diversion program in our
3 discipline system. Rather than just prosecuting
4 lawyers that have problems with law office management
5 or stress, we have got a program to be able to
6 educate and help them be able to serve lawyers better.

7 These plans all call for sacrifices of
8 lawyers, there is no question about it. These are
9 hard times, but it is a privilege to practice law. It
10 is a right that is given to us by the public that we
11 all serve. I for one am extremely proud to be a
12 lawyer. I am also very proud for the privilege to pay
13 dues. I know that sounds corny. It's a small portion
14 of the amount of money that I have that I can give
15 toward the Bar to make sure that our profession serves
16 others.

17 But for those of you that want specifics, and
18 we will be ready for specifics galore as we get into
19 the debate, we have not had a raise in dues since
20 1993. We have lost \$40 in our spending power through
21 inflation, or near that, since that time period.

22 Right now the amount of dues that we pay in
23 this state are 21st out of 26 unified bars, and we are
24 much, much higher in the population of bars. Even
25 with the increase proposed we will be 14th or 16th.

1 The services we provide are all-encompassing in
2 helping our profession.

3 But as key as the monetary considerations,
4 the most important consideration, and I hope the
5 debate will focus on today, is, again, are these
6 programs the programs you want us to concentrate, are
7 these the programs you want to us put our money into?

8 Now, most of you have seen the changes in our
9 profession. I have been lucky ever since I worked at
10 the Florida Bar to go around the country. I have
11 visited 30 bars and evaluated 20 of them. I have been
12 involved, unfortunately, getting a bad rep, with many
13 dues increases around the country, bad timing, that's
14 what happened, but the purpose of those dues increases
15 have been able and allowed bars to more and more deal
16 with what, in essence, is a revolution going on
17 concerning the legal practice.

18 I am on an ABA task force right now trying to
19 define the practice of law, and you cannot believe how
20 many people are saying that the practice of law should
21 basically just be broken down into bits and pieces and
22 eventually go away. We have to be able to be
23 proactive, not just reactive, to deal with all of
24 those various issues.

25 Finally, I know we have a number of issues

1 that are going to bring to us all angst on trying to
2 figure out what the best thing to do is. Senior
3 Lawyers is the best example, and I want to use an
4 example of the Senior Lawyers. Jon is right over
5 here. I want to tell you personally that we have
6 spent since day one time with them to try to figure
7 out what in the world is the best balance between a
8 respect for those that have served us for so long and
9 continue to serve us but also a recognition of
10 demographics that are changing.

11 We have gotten letters on both sides, how
12 dare you not make them pay the full amount. Other
13 side, how in the world could you take that away, and
14 you can guess that that was done that way. And what
15 has happened during this time period is our profession
16 was at its best, we were able to talk, we were able to
17 discuss, we were able to work through the issues.

18 You have a proposal in front of you that you
19 will debate, and you may have differences on that as
20 well, and I hope that debate goes half as well as the
21 discussions we had with them, and I want to tell you
22 that I appreciate very much the opportunity to work
23 with you on those issues.

24 My staff and I will be here during the
25 discussions. I think I have been clear enough with

1 you over the years that if I have got an answer I am
2 going to give it to you, and I know a lot of stuff. I
3 also don't know a lot of stuff, and my wife will be
4 able to attest to that fact. She is home and wishes
5 she could be here. There is stuff I don't know. If I
6 don't know it, that group of human beings over there,
7 I will call on them to answer the questions.

8 If you can tell, I believe very much in what
9 we are doing and I hope very much at the end of this
10 day we will be closer to the Love Boat than the
11 Titanic. Thank you very much.

12 (Applause.)

13 CHAIRPERSON ROMBACH: At this point we are
14 going to go to a new feature on the agenda. That's
15 the Representative Assembly liaison reports. As a
16 number of you may remember, we had changed this around
17 so that each section and each committee we have a
18 Representative Assembly member that is active.
19 Obviously, on the sections we have a whole host of
20 Assembly members that are active. But as issues come
21 up of interest, I would like to call upon some of
22 these folks, and some of them, in fact, have
23 volunteered for today's first ever birth by fire
24 endeavor, and the two issues that we are going to
25 highlight at this juncture are the Ethics 2000 and

1 report from Kevin Breck with regards to that matter.
2 So, Kevin, you may, from the 6th circuit, give your
3 report either up here or the microphone there.

4 MR. BRECK: It's not long enough to merit
5 walking up there.

6 Good morning. After a number of marathon
7 sessions, the Ethics Committee has completed its
8 review of the rules. We now have to move into our
9 review of the comments to those rules. We are going
10 to do that in April and in May and hopefully be done
11 with it in May so that we can then forward our
12 recommendations with regard to the rules and the
13 comments to the Representative Assembly.

14 The plan at this point is for the Assembly to
15 then put it out for public comment so that those
16 public comments and the rules and the comments can be
17 brought back to the Representative Assembly in its
18 September meeting for action. Any questions?

19 CHAIRPERSON ROMBACH: Does anybody have
20 anything for Kevin? I would also like to acknowledge
21 that Sharon Noll Smith, I believe, is also on that
22 committee representing the Assembly, and if Sharon has
23 got anything to add, we would take her comments as
24 well. Kevin was just picked on a random basis.

25 MR. BRECK: I thought it was my good looks.

1 CHAIRPERSON ROMBACH: Sharon, did you have
2 anything?

3 MS. SMITH: I have nothing to add to Kevin's
4 excellent report.

5 CHAIRPERSON ROMBACH: We are very fortunate
6 Mr. Turner had the insight to actually put two of our
7 Assembly members on that committee, and I am sure we
8 will be angling for a third during Dan's term in
9 office, so we will undertake that challenge with
10 Mr. Brinkmeyer. So obviously we are lobbying for as
11 much representation as we can get.

12 The second matter that unfortunately we
13 have -- actually fortunately we have a number of
14 people on the Judicial Qualifications Committee, and
15 with the advent of a new governor and potentially a
16 new process and in light that the Assembly last year
17 had spoken very forthrightly that we wanted to devote
18 all necessary time and resources from the State Bar
19 and are continuing to evaluate and screen candidates
20 for the governor's appointment to open seats, and that
21 entire discussion we had as far as elective and
22 appointive judges, that in light of that discussion a
23 lot of questions have been asked of me and others
24 about what's going on with the appointment process and
25 our liaison in that capacity is Steve Rabaut.

1 He is, unfortunately, on vacation with his kids
2 over their mid winter break. Kim Cahill is also
3 active, but since she is already on the docket
4 reporting on something else, I have drawn upon our
5 former Representative Assembly liaison and Assembly
6 Chair Emeritus and somebody that may be remembered for
7 his soaring rhetoric, particularly his inspirational
8 speech on, was it Bartamaus, I believe. Reflecting
9 Bartamaus Courtade is here from Grand Rapids, actually
10 Bruce, that's what he is going by now, and he is here
11 to update us on his endeavors at the judicial
12 qualifications. Thank you very much, Bruce.

13 MR. COURTADE: Thanks, Tom. I was a little
14 bit upset, because I thought I was supposed to
15 extrapolate and expand upon my Bartamaus comments. If
16 you don't mind, I have about 40 minutes I can go on.

17 It is a pleasure to be here, and I can tell
18 you I have had a little bit of time to distance myself
19 from the Assembly, and, looking back, I can still say
20 without any doubt that of my service to the Bar the
21 time that I spent with the Assembly is that of which I
22 am most proud, followed closely by the service I have
23 had on the Judicial Qualifications Committee. And I
24 can tell you that as a, I think everybody here knows,
25 a Republican from Kent County who still wears

1 tassal-toed shoes when I go in to try cases, I am very
2 proud to be a lawyer, and I am very proud of the work
3 that this committee in particular does. And the
4 reason is, this is a committee that's made up of 22
5 members and five associate members from throughout the
6 state of Michigan. It is a completely diverse in
7 every way imaginable committee -- republicans,
8 democrats, independents, white, black, Hispanic, you
9 name it, we have got it covered. Large firms, small
10 firm, pro bono, government lawyers, it runs the gamut.

11 For those of you who don't know, there is a
12 little of a misperception within the Bar about what
13 the committee does and what it's responsible for. I
14 wish I could say, you know, purely ego speaking, that
15 we are the ones who choose the judges, but I can tell
16 you that's not what happens.

17 The way that this happens is, historically,
18 this is a committee to which candidates who are
19 seeking appointments to vacancies come and they are
20 screened. They are graded five levels. They are
21 either extremely well qualified, well qualified,
22 qualified, or there are the two that, and nobody wants
23 to get. One is not qualified for lack of experience,
24 you just haven't practiced enough in that field to be
25 a judge, or the flat out not qualified, which you

1 practiced and we don't like what we see.

2 We then make, we take these ratings and pass
3 them on to the governor's office, and the governor
4 makes the decision. That's the historical background
5 for how this happens.

6 I can tell you right now with the new
7 administration in there are -- you know, it's still a
8 feeling-out process to see how this governor is going
9 to treat us versus how the past governor treated us.
10 I can tell you that personally I am thrilled with the
11 fact that Governor Granholm actually served on some
12 judicial selection committees in the past. She knows
13 what we do, and she has made it very clear that she
14 values our input, and that's a nice -- I won't say a
15 nice change. I will just say it's nice.

16 So far we have been very busy this year,
17 because there are some vacancies and, as anyone would
18 expect, there have been some retirements and some
19 resignations, and we have faced already a day,
20 actually it ended up being a two-day meeting to look
21 at vacancies in Kent County Circuit Court and in the
22 54-A District Court here in Lansing. And I am happy
23 to say both meetings went very well. The ratings have
24 been submitted to the governor's office already, and I
25 believe that she will be taking some action fairly

1 quickly on that.

2 We are also, for those of you on the east
3 side of the state, Wayne County is up. We have two
4 vacancies in Wayne County. We have a large number of
5 people who have expressed interest in those positions,
6 and we will be tackling that early in March. I know
7 that there is some concern about an April 1st date.
8 We will meet that, and I believe that the governor
9 will meet that.

10 I don't know if anybody has any particular
11 questions. Unless there are questions, I will tell
12 you that, again, this is a group of individuals -- I
13 will paraphrase one of the members who is so far right
14 that he makes me seem left, but he has consistently
15 said that the purpose of this committee is not to get
16 engaged in politics, and his votes reflect that. I
17 think it speaks well of that individual. He says
18 that, you know, whoever the governor is at the time
19 had several million more votes than anybody on the
20 committee did, so ours is not to make any decision to
21 trump or interfere with the elected officials. Our
22 position is to look, as professionals, to see what
23 members of our group who come before us seeking
24 elevation to a judgeship are most worthy of the public
25 trust, and I think that we have, in my time on the

1 committee, this is my third year, we have served that
2 purpose very well, and I look forward to continuing
3 that throughout this year.

4 Any questions? You know, I can still go back
5 to Bartamaus. Thank you, everybody. It's great to
6 see you again.

7 (Applause.)

8 MR. VILLARRUEL: I don't have a question, but
9 I have an additional comment about the committee, if I
10 may. Francisco Villarruel from the 3rd circuit. I
11 wanted to add one other piece I think is important in
12 the committee work, and that is that we are often
13 given the responsibility to call the members of the
14 Bar for input on these candidates, and I think it's
15 very crucial that when you get the phone call from
16 someone from the committee that you take time out to
17 talk to us and give us input, give us your views on
18 these individuals, because that information is
19 communicated confidentially and is communicated to the
20 committee as a whole. It is an opportunity for all
21 members of the Bar to have a say and to communicate
22 that information to the committee as a whole. Thank
23 you.

24 MR. COURTADE: Thank you, everyone.

25 CHAIRPERSON ROMBACH: I would also like to

1 acknowledge, I did leave out the fact that we have
2 another member of our Assembly. Francisco, do you sit
3 on that committee? Okay. So we have another member,
4 in case somebody wants additional input.

5 I would also like to out one of our other
6 members, Teresa Bingman, because she is the chief
7 deputy legal counsel to the governor. So, as opposed
8 to whether you are qualified or unqualified, it's
9 great to talk to Bruce and Francisco and Kim. On the
10 other hand, if you actually want a leg up in the
11 decision-making process, I would myself talk to
12 Teresa, she has the governor's ear most directly, so
13 we are very proud to have her in our number. And I
14 know Ms. Granholm had also served on our Board of
15 Commissioners as a Supreme Court appointee too.
16 Fortunately for the Bar we appear to be in good stead.

17 Next I would like to acknowledge Kimberly
18 Cahill. Again, this is the all past chairs' meeting.
19 Ms. Cahill is a former chair of the Representative
20 Assembly and also currently the State Bar treasurer,
21 and she is going to update us on our outreach to the
22 sections, a section summit committee that she
23 co-chaired along with Dirk Hoffius from Grand Rapids,
24 and, again, this is in further efforts to edify our
25 membership on what's going on in the Bar. Kim.

1 MS. CAHILL: Good morning, everybody. I am
2 the only one that didn't get the memo about the dark
3 jacket today.

4 You have all got an excellent report in your
5 materials, and if you haven't had an opportunity to
6 read the report from the section summit, I would
7 recommend that to you. I understand there were other
8 parts that needed maybe more careful review for this
9 morning.

10 But the Strategic Plan that we are going to
11 be discussing later on today says that the State Bar
12 of Michigan is going to increase its support to our
13 sections, and the goal to increase that support was
14 given very high priority by the Board of
15 Commissioners.

16 In response to this, we decided the first
17 thing we should do is actually talk to section
18 leaders, a new concept for us I guess, but we had a
19 summit on June 13th, which is a fancy word for an
20 all-day meeting at the State Bar building.

21 The purpose of that was to gather information
22 as to what section leaders needed from the State Bar,
23 what they were actually getting from the State Bar, to
24 find out what they were interested in, what we could
25 do for them, to find out what we weren't doing that

1 they wanted, and to find out what we were doing but
2 needed to do better.

3 After that day-long meeting where we received
4 volumes and volumes and volumes of information, the
5 people that are listed in the materials there in the
6 front page of the report were appointed as an advisory
7 group to reduce the information down to implementable
8 recommendations.

9 We talked about four categories of
10 recommendations being in general areas of
11 communications, services, governance, and public
12 policy. And I am happy to say that in November the
13 recommendations that you see in front of you regarding
14 communications, services, and governance were all
15 submitted to the State Bar Board of Commissioners, and
16 the Board of Commissioners adopted all of those
17 recommendations, and we have the goal of implementing
18 the things that you see there in those three areas in
19 this calendar year.

20 We are still working through the public
21 policy issues, and we are hopeful that those will come
22 to the Board of Commissioners as recommendations
23 sometime this spring.

24 I don't want to go through it in a great
25 amount of detail, but in communications we needed to

1 increase the quality and the quantity of
2 communications between the State Bar and the sections.
3 If you read over the report, you are going to see that
4 there is a great emphasis on alternate means of
5 communication, such as communicating through the
6 internet, making information available to section
7 leaders on the website, and developing opportunities
8 for section leaders to participate in list serves, to
9 be able to share and communicate between themselves so
10 that they can get the best ideas and the worst ideas
11 and hopefully implement those.

12 We are also working to include more of the
13 chair leadership in other Bar events, inviting them to
14 the Bar leadership forum, treating them on a par and
15 disseminating information that's valuable in the same
16 way we have been doing that with local Bar leaders and
17 special interest Bars.

18 We also did an online survey, and Nancy is
19 sitting here. I want everyone to acknowledge Nancy
20 Brown, who was very, very helpful to us in putting
21 together all the information for the online survey to
22 all of the section leaders. Dirk Hoffius and I asked
23 her at least six stupid questions every day, and she
24 never once yelled. So, Nancy, thank you very much,
25 and give her applause.

1 (Applause.)

2 MS. CAHILL: The other thing that we did was
3 we were able to sit down and to actually see what
4 services the Bar was providing to sections, whether
5 they were essential services or nonessential services,
6 and to actually quantify in a rough way the cost of
7 those so that we could go to a section and say, well, if
8 we are doing these four tasks for you, you know, you
9 are getting some value from us and to have them
10 understand that and acknowledge that.

11 The other thing is we had an opportunity to
12 listen to section leaders and hear that they wanted
13 more of a certain type of service, less of a certain
14 type of service, and it helped us a great deal in
15 order to say where do we need to be devoting our staff
16 resources to, what services can we provide.

17 We also went through and developed a list of
18 services that are, I guess we call them a la carte,
19 where we don't offer them routinely but we have the
20 facility and the ability to offer them. If a section
21 wants them, we can make them available. Sometimes we
22 can make them available at no charge, sometimes the
23 section bears the incremental cost of that service,
24 and there is about a two-page list in your materials
25 of those.

1 In closing, I wanted to thank everybody who
2 participated in the section summit and in the advisory
3 group, especially my co-chair Dirk Hoffius, who loves
4 to strategically plan things. Thank God for him.

5 And the last person, besides all the staff
6 who was very, very helpful, Karen Williams of the
7 State Bar was an incredible resource on this, and she
8 is really responsible for pulling together -- I never
9 saw anybody who could take those big rip-off sheets
10 and she distilled these down in a marvelous way. She
11 did a wonderful job. We couldn't have done anything
12 without Karen. So coincidentally we made her our
13 section committee coordinator at the Bar too.

14 So I can answer questions if anybody has got
15 any. That is an ongoing process though. We will be
16 reevaluating all of these recommendations at the end
17 of the year, and we are hoping to continue that
18 process of gathering information, doing evaluations,
19 and implementing recommendations on an annual basis
20 with all of the sections.

21 Oh, good. Thank you.

22 (Applause.)

23 CHAIRPERSON ROMBACH: Our next victim, I mean
24 speaker, is actually going to be Scott Brinkmeyer.
25 Again, he is a former chair of the Representative

1 Assembly, as most of our speakers have been today.
2 They are the only ones willing to step up, I guess.
3 But he is also currently our president-elect to the
4 State Bar, and he is going to address the much rumored
5 annual meeting and try to unveil the plan or plot, as
6 the case may be, that's outlined in your packets for
7 today. Good luck, Scott.

8 MR. BRINKMEYER: Thank you, Tom. I am going
9 to try to catch us up on time by taking very little of
10 yours.

11 I would be remiss if I did not add my
12 personal thanks to all of the Representative Assembly
13 members previously mentioned by Tom and all of the
14 members of our fine staff. I know that I can speak on
15 behalf of our officers and the Board of Commissioners
16 in expressing our sincere appreciation for your time
17 and efforts in dealing with what is at the very least
18 a very thorny issue, and I trust that this body will
19 today deal with that wisely.

20 As you know from having reviewed the
21 Strategic Plan, we looked at virtually every function
22 of the State Bar to analyze it and sought input from
23 all of our members on how we could better serve them.

24 One of the most symbolic sacred cows was, of
25 course, the annual meeting. It has been one of the

1 single largest function budget items for the State Bar
2 historically, and our focus was efficiency and economy
3 in dealing with the annual meeting, but at the same
4 time to assure that it would be a meaningful event,
5 that it would allow us to take care of the business of
6 the Bar, and that it would also allow us to continue
7 to administer those other functions which have become
8 such an integral part of the rich tradition of the
9 Bar. For example, recognition of 50-year members and
10 the various awards that we bestow upon our members
11 each year.

12 Looking back, that budget item was, only
13 about three to four years ago, at a level which is
14 approximately five or six times what the current
15 year's budget for the annual meeting is. The current
16 year's budget is \$60,000, and Jim Horsch has told me
17 this morning he will be surprised if we end up
18 spending that much.

19 Why did we do this? We looked at that annual
20 meeting, and we found that as much money as we were
21 spending on that annual meeting, each year only
22 approximately five percent of our members were
23 attending. Now, most of the members that were
24 attending loved the annual meeting, but we were
25 spending a heck of a lot of our dues money for that

1 five percent.

2 So we looked at it very hard. First we dealt
3 with it in the Strategic Plan, and then about a year
4 ago a vision committee was put together under the
5 leadership of President Reg Turner, and we, again,
6 focused on the annual meeting and our other meetings.

7 If you will turn to your tab in your
8 materials today marked annual meeting, what you have
9 there is a barely readable snapshot of what we
10 envision this year for the annual meeting. It will go
11 from a three-day or three-and-a-half-day meeting,
12 which it was historically, this past year two days,
13 this forthcoming year it will be a day and a half. It
14 will begin at noon on Thursday, the 11th of September.
15 That day the Board of Commissioners will meet and at
16 the same time in appreciation of all the work we have
17 done in connection with the section summit, the
18 various sections will be meeting simultaneously. This
19 will take place here in Lansing.

20 Currently we envision that in the future the
21 annual meeting will always be held here in Lansing.
22 At least as currently planned we will not be moving
23 around from city to city in the future, at least
24 that's what the current plan would entail.

25 That evening there will be a State Bar

1 reception, which will be along the lines of what we
2 have had historically where those section members, Bar
3 members who choose to attend, judges if they choose to
4 attend, commissioners and Representative Assembly
5 people about can mix and talk. We are currently
6 planning, although it's not etched in stone yet, that
7 that would be the time we would honor the 50-year
8 members.

9 The next day we will have the Representative
10 Assembly meeting all day, again with various sections
11 meeting during the day and throughout that entire day.
12 That will probably be taking place exclusively or
13 certainly mostly in the Lansing Center.

14 We have decided to disconnect the President's
15 dinner from the annual meeting. That will now be held
16 at a different time in connection with moving the
17 meetings around. Historically we would typically have
18 that Friday evening. We are no longer going to do
19 that, and that will be planned in the future with the
20 then current president.

21 We would ask you to keep an eye on the Bar
22 Journal. We expect that in April there will be
23 information coming out in the Bar Journal. The full
24 applications, I believe, will be out this summer. We
25 encourage all of you to attend. Naturally, you will

1 have your meeting. We hope you will come on Thursday.
2 We hope you will stay the night and participate
3 through that day and a half.

4 As I stated earlier, we have cut the budget
5 down to approximately something in the neighborhood of
6 a fifth of the size or a sixth of the size of what it
7 was only about three or four years ago, and that was
8 the result of a heck of a lot of hard work on behalf
9 of particularly our staff, Jim Horsch, John Berry and
10 others.

11 Are there any questions? Good. Thank you.
12 (Applause.).

13 CHAIRPERSON ROMBACH: Our final report is on
14 a very important national distinction that we have
15 been able to achieve, that's on the National
16 Consortium on Racial and Ethnic Fairness in the
17 Courts, that we are going to host a conference in
18 April, and we are very fortunate to have our co-chair
19 of the Open Justice Task Force, former Court of
20 Appeals Judge, current Supreme Court Justice, and also
21 former Michigan Board of Education member, along with
22 other distinctions, here to share her thoughts and
23 insights on that endeavor, Justice Kelly.

24 (Applause.)

25 JUSTICE KELLY: Thank you. You know, as I

1 stand before you here I am reminded fondly of my days
2 as a member of the Representative Assembly some years
3 ago, and, as I look back on that experience, I know
4 that it enhanced my career, and it left me with a
5 feeling that I had contributed something to my
6 profession. I know and I certainly hope that you have
7 that same experience as a member of the Assembly, and
8 I, frankly, applaud you for the time and effort you
9 have put into it, because I know how much it takes.

10 I want to tell you just briefly a little
11 about the consortium so that you are informed about
12 it. I want to urge you to take part in it. This is
13 really a feather in the cap, I think, of the State Bar
14 of Michigan.

15 As you know, you have an Open Justice
16 Commission, and it's dedicated to trying to level the
17 playing field, so to speak, in the legal arena with
18 respect to matters involving bias and discrimination
19 at all kinds of levels. We are hosting, you are
20 hosting, a national consortium to be held at the
21 RenCen Marriott in Detroit April 9 through 12. It's
22 called the National Consortium on Racial and Ethnic
23 Fairness In the Courts. It's being held in
24 conjunction with the State Conference on Racial and
25 Ethnic Fairness in the Legal System. You have handout

1 material about it in your stuff, and you have also
2 access to more material about it on the michbar.org
3 website.

4 At that meeting you are going to have various
5 notable people in the legal profession from the state,
6 as well as Supreme Court justices from other states.
7 You are going to have members of the American Bar
8 Association, the National Bar Association, the
9 Hispanic National Bar Association, the Native American
10 Bar Association, the National Asia Pacific Bar
11 Association. Should be an interesting get-together
12 covering things like, for example, workshop on
13 cultural competencies necessary to function well in
14 the workplace and community. There will be a panel by
15 various state Supreme Court justices on what their
16 states are doing to try to address racial and ethnic
17 fairness issues in their states.

18 There will be some more entertaining events,
19 such as a dinner dance at which President-Elect of the
20 ABA, Dennis Archer, will speak, which will also honor
21 my co-chair of the Open Justice Commission, retiring
22 Judge Harold Hood of the Court of Appeals,
23 entertainment by Mike Meyers Orchestra with Marcus
24 Belgrade (sp). There will be a luncheon address by
25 Detroit Mayor Kwame Kilpatrick, and lots of important

1 people will be there. Your Bar president will be
2 there, other members of the Open Justice Commission
3 who are members of the Representative Assembly will be
4 there, such as Teresa Bingman here, and I think that
5 you will find it a useful and important activity.

6 There is a registration form. If you can
7 take part in all of it, we would be delighted. If you
8 can take part in only some of the activities, please
9 sign up for those and come in.

10 And before I leave you I just want to make
11 brief mention of a second activity sponsored by the
12 Open Justice Commission through the State Bar, and
13 that's taking place on May 15, a Thursday. This is a
14 free statewide training for attorneys at all levels to
15 be held at ten different locations across the state
16 for attorneys willing to offer pro bono representation
17 to domestic violence victims that will cover divorce,
18 parenting, custody, post-judgment proceedings, PPOs.
19 You have a flier on that, and you have also a
20 registration form in your material. You can find more
21 about this also at the michbar.org website.

22 It's a one-day free training program, and for
23 it you get a 650-page manual and a CD-ROM and over 400
24 automated forms in return for a commitment to provide
25 pro bono representation to domestic violence victims

1 in civil litigation for 30 hours or for three cases in
2 a one-year period, another, I think, useful activity
3 of your Bar that you can be proud of.

4 Thank you for your time to make these
5 announcements.

6 (Applause.)

7 JUSTICE KELLY: Do you have any easy
8 questions? I am only entertaining easy questions.
9 And I am not speaking, you will notice, on the truly
10 important issues you have before you today that are
11 going to shape the future of the Bar association, but
12 if no easy questions, then I will retire. Thank you.

13 CHAIRPERSON ROMBACH: Thank you very much,
14 Justice Kelly.

15 I would also like to thank at this juncture,
16 because we are actually going to head into some of the
17 substantive action items, that without the help of
18 Glenna Peters we wouldn't have the booklets in front
19 of you here today. I know she did that at the very
20 last moment, as well as a lot of materials assembled.
21 As you can see some of the actions of some of our
22 committees and sections were taking place on Thursday
23 and Friday, making suggestions on all of these and
24 compromised items, and Glenna and her able-bodied
25 assistants, I think that's basically herself, the

1 elves, were all able to put these together on very
2 short notice. So if we could have a round of applause
3 for Glenna.

4 (Applause.)

5 CHAIRPERSON ROMBACH: I wanted to make sure
6 to embarrass her again, because I remember her very
7 first meeting that Bruce Courtade had shared, she had
8 to stumble through all the names of this Assembly
9 instead of me doing it, and I am forever indebted in
10 all our roll call votes that we had at that time. So
11 today we have actually deputized Dan to do that. So
12 in case we get to that point I can shirk my
13 responsibilities yet again.

14 At this juncture we are going to consider the
15 proposed amendments to the Michigan Court Rules
16 regarding challenges to medical malpractice notices of
17 intent to sue, affidavits and expert witness
18 qualifications, as well as the time for filing
19 dispositive motions.

20 This has been brought together by the
21 Michigan Civil Procedure and Courts Committee. To
22 their credit, I know when their long-standing chair,
23 David Lawson, had always brought together the Court
24 Rules for our consideration. What we will do today is
25 consider these. If they are approved in some form

1 then they will be forward the to the Michigan Supreme
2 Court, Justice Kelly and her colleagues, for possible
3 or hopefully probable incorporation into the Court
4 Rules.

5 You list here the chair, Richard Bisio, who had
6 put this committee offering together. Because
7 Mr. Bisio is out of town, he has deputized Ronald
8 Longhofer, a member of that committee who is here
9 today to speak on the committee's behalf to forward
10 this proposal, and he will propose that at this
11 juncture.

12 Mr. Longhofer, if you could step forward and
13 try to edify our Assembly on what's going on with
14 these Court Rule suggestions.

15 MR. LONGHOFER: Thank you, Tom. I will not
16 spend a lot of time going over the background of these
17 proposals. It's laid out in the reason supporting the
18 proposals, which I believe has been distributed.

19 Essentially what the committee has put
20 together is a package of six, each in themselves,
21 rather modest proposals to amend the Court Rules with
22 the goal in mind of encouraging the disposition of
23 litigation on the merits. In part, these proposals
24 are in response to certain recent court decisions
25 which are cited in the explanatory material, and I

1 will simply go through in order the six specific
2 provisions that we are proposing and outline them for
3 you and tell you basically what they respond to.

4 The first is a proposed addition to
5 Rule 2.112, the subparagraph (L) on medical malpractice
6 actions, and it reads, In a medical malpractice
7 action, unless the court allows a later challenge for
8 good cause, (a), all challenges to a notice of intent
9 to sue must be made at the time the defendant files
10 its first response to the complaint, whether by answer
11 or motion, and then the second one is in subparagraph
12 (b), all challenges to an affidavit of merit or
13 affidavit of meritorious defense, including the
14 qualifications of the signer, must be made within 63
15 days of the filing of the affidavit.

16 Subparagraph (2)(a) would change the rule in the
17 recent decision in the Roberts case and would require
18 that the challenge to notice of intent to sue be made
19 early in the litigation.

20 The second, paragraph (2)(b), it does not
21 respond specifically to case law but is along the same
22 lines in requiring challenges to affidavits of merit
23 and affidavits of meritorious defense also to be made
24 early in the litigation.

25 Going to the next proposed change, it's a

1 change to Rule 2.116(D), and it adds really something
2 that many judges and lawyers already think is
3 permitted under the Court Rules, and that is
4 essentially a motion cut-off for dispositive motions.
5 But this is to make clear that unless the court orders
6 otherwise the grounds listed in subrule (C)(8), (9),
7 and (10) may be raised at any time, and that would
8 simply authorize the court to order through a
9 scheduling order a motion cut-off for those
10 dispositive motions.

11 The next proposal goes to Rule 2.118(D), and
12 this adds to the existing rule on relation back of
13 amendments, a rule that reads, In a medical
14 malpractice action, amendment of an affidavit of merit
15 or affidavit of meritorious defense relates back to
16 the date of original filing of the affidavit.

17 This proposal would clarify an issue that was
18 left open in the Scarsella case. This does not
19 overturn any existing case law but simply answers a
20 question left open; namely, if a defective affidavit
21 of merit or affidavit of meritorious defense is filed
22 timely, whether it can be corrected in a fashion that
23 relates back to the date of original filing.

24 The last two proposed changes go to
25 Rule 2.401, and this is really a companion to the

1 changes outlined above. The first one is subrule
2 (2)(a)(vi) and includes in the scheduling order a
3 specific provision for a summary disposition motion
4 deadline, and then subrule (viii) relates back to a
5 recent case, the Greathouse decision, which is
6 described in the materials, and this would permit in
7 the scheduling order a date for challenging the
8 qualifications of an expert witness, and the
9 fundamental and obvious purpose of this rule would be
10 to require, if the court so orders, an earlier
11 challenge to qualifications of an expert so that if an
12 expert were disqualified there would still be time to
13 retain a qualified expert, rather than leaving this
14 issue late in the game for trial when it may be too
15 late.

16 So that's an outline of the proposals that we
17 are making. If anyone has any questions, I would be
18 happy to try to answer them.

19 CHAIRPERSON ROMBACH: I will tell you what,
20 procedurally what we probably need right now is,
21 because Mr. Longhofer representing a section or a
22 committee has floor speaking privileges, he actually
23 can't introduce a question before the Assembly. So
24 I would need a member of the Assembly to move for
25 adoption of these items before we should enter into

1 discussion.

2 MR. GARRISON: So moved.

3 VOICE: Support.

4 CHAIRPERSON ROMBACH: We have a motion.

5 Scott Garrison, we will acknowledge Scott. Is there
6 support for that?

7 VOICE: Support.

8 CHAIRPERSON ROMBACH: Okay. And we have
9 support. At this point it would be most proper to
10 enter into discussion, and for those of you new to the
11 Assembly, you can ask questions of anyone here
12 basically or you can make your comments or insights
13 known to the group.

14 At this point, if you can stay here,
15 Mr. Longhofer, I am going to acknowledge Mr. Breck
16 from the 6th circuit. Go ahead.

17 MR. BRECK: Thank you. Question for
18 Mr. Longhofer. I don't practice in the medical
19 malpractice area, and so it is difficult for me to
20 judge whether the timing that you have put into
21 Rule 112 meets the needs of that practice area. Were
22 you able to consult with people in that area in
23 setting these time limits?

24 MR. LONGHOFER: I also don't practice in that
25 area. There are, however, people in the committee who

1 do, and their input was considered, so that's the best
2 I can do to answer that question.

3 CHAIRPERSON ROMBACH: Who else has some
4 questions to air at this point or some comments? I
5 mean, are there any strong feelings on this? We have
6 to go to a vote at some point. So are there any other
7 sections -- yeah, Mr. Powers, you can go to the
8 microphone. If anybody else also represents any
9 sections or committees, that they are also invited to
10 comment, they would have floor privileges. Barry, go
11 ahead.

12 MR. POWERS: I think I may be out of order
13 then if the invitation is for people to speak on
14 behalf of committees. So I thought that --

15 CHAIRPERSON ROMBACH: You can speak now as a
16 Representative Assembly member. I just need to
17 acknowledge for the record that we have asked.

18 MR. POWERS: My understanding there is a
19 motion to adopt this in total, but I just have one
20 quick comment on this. As a litigator in many of the
21 courts --

22 CHAIRPERSON ROMBACH: Barry, for the record,
23 because we are recording this, if you can put your
24 name and circuit on the record and if you are speaking
25 for or against the proposal.

1 MR. POWERS: Barry Powers from the 6th
2 circuit. The only modification I would propose is
3 that with respect to part (D) of the time for filing
4 dispositive motions.

5 My personal opinion on this is that although
6 I agree in general that it's very important to the
7 legal process and the expeditious prosecution of the
8 case toward trial to bring these substantive matters
9 on before the court when there is no issue of fact as
10 to whether a party is entitled to judgement as a
11 matter of law, there are certain times and certain
12 circumstances where these facts, the stipulation of
13 facts or the nondispute of facts does not arise until
14 the eve of trial or very close to the trial because
15 certain changes in evidence or testimony and so forth.

16 One of the issues that I was personally
17 involved in was when we inherited a case, it had been
18 handled in-house counsel, and there was an issue of a
19 release, and it was a tort case, so the plaintiff sued
20 in tort and it turned out that the plaintiff had sued
21 in the same tort years before, they had been paid
22 money, and there was a release.

23 Unfortunately, the defendant failed to raise
24 the issue of the release as a complete bar to the
25 action, and when we inherited the case we sought to

1 amend the court's standing order so that we could file
2 a late motion for summary disposition. The court said
3 no, we are going to try the release issue as a matter
4 of fact at the trial, and then we are also going to
5 try the tort case.

6 So we spent several weeks on both issues, and
7 then the jury ultimately came back, and they never got
8 to the tort issue, because they decided that we were
9 entitled to judgment as a matter of law on the
10 release.

11 I think it's a little bit overinclusive to
12 completely bar dispositive motions on these grounds
13 prior to trial. So with that amendment, and I don't
14 know if the moving party would accept that friendly
15 amendment, I would vote in support of the proposal,
16 but I think it's a little bit overreaching at this
17 point.

18 CHAIRPERSON ROMBACH: Barry, if you are
19 offering an amendment, somehow we are going to have to
20 have something in writing because, again, this is --
21 if it's more than six words it has to be in writing,
22 or what are you proposing to do right now?

23 Basically we need something word for word. I
24 mean, the Assembly can't act on a general idea.

25 MR. POWERS: If I am permitted to make a

1 motion, the motion would be to move to amend the
2 standing motion.

3 CHAIRPERSON ROMBACH: You would be allowed to
4 do that, but what I would do is first offer to Scott,
5 the maker of the motion, if he is willing to allow the
6 amendment, then we wouldn't need to vote on an
7 amendment, and that would be --

8 MR. POWERS: The amendment would be to
9 approve the proposal absent the changes to the time
10 for filing dispositive motions. It would relate
11 solely to the medical malpractice issues.

12 CHAIRPERSON ROMBACH: Barry, again, I am
13 looking -- so are you proposing to do away with the
14 recommendation to the Assembly Rule 2.112 (2) (b),
15 somehow you want to do away with the 63-day
16 requirement?

17 MR. POWERS: No, no, it would only relate to,
18 with respect to the changes to Rule 2.116 on summary
19 disposition. That is my motion to amend the standing
20 motion.

21 CHAIRPERSON ROMBACH: What portion are you
22 doing away with again, for the record?

23 MR. POWERS: I am looking at the front page
24 of the recommendations, proposed court rule
25 amendments. There is section one, recommendation to

1 the Representative Assembly, then Rule 2.112, then
2 Rule 2.116. I am only speaking to the portion related
3 to 2.116, and I would propose that the motion be
4 modified so as not to pertain to those
5 recommendations.

6 CHAIRPERSON ROMBACH: Okay. So you are
7 trying to delete sub (4)? Again, maybe I am just
8 inherently dense here, but I don't get it.

9 Scott, could you maybe add some insight with
10 Mr. Powers as to what we are trying to accomplish.

11 MR. POWERS: Am I sufficiently clear or
12 sufficiently vague on that?

13 CHAIRPERSON ROMBACH: From what I
14 understand, and, again, correct me if I am wrong, now
15 that we have been able to caucus about this, basically
16 you want to eliminate proposed addition (4) and just,
17 basically just axe that, and then every other change
18 would be allowable in your opinion? Is that accurate?

19 MR. POWERS: That's basically it, but it
20 would also pertain to subparagraph (3), because that
21 contains a deletion, but (3) and (4) go hand in hand under
22 2.116.

23 CHAIRPERSON ROMBACH: (3), how would you want
24 to amend (3)?

25 MR. POWERS: (3) would not be an issue,

1 because the striking of subparagraphs (8), (9), and (10)
2 would not be stricken.

3 CHAIRPERSON ROMBACH: So you want (3) to stand
4 as is.

5 MR. POWERS: Right, and then (4) would not be
6 a part of that. So, in essence, there would be no
7 modification to 2.116.

8 CHAIRPERSON ROMBACH: You are dropping, from
9 what I understand, you are dropping item (4), and
10 since we are not actually adding anything, I guess we
11 could do that orally, and you have then (3), the
12 grounds listed in subrule (C)(4), (8), (9), and (10)
13 may be raised at any time. That's what you want to do
14 and keep that as is?

15 MR. POWERS: That's right.

16 CHAIRPERSON ROMBACH: Now I will turn to
17 Mr. Garrison. Do you consider that a friendly
18 amendment? If so, are you willing to adopt that?

19 MR. GARRISON: Scott Garrison from the 6th
20 circuit. At this time I would not, and the reason why
21 is because my practice has been that the courts
22 already order that in their scheduling orders when
23 summaries can be heard and when they can't, and I know
24 what 2.116 says, but there is another rule, and I just
25 asked Ms. Garin what it is, there is another rule that

1 gives the court authority to do that, and I can't
2 remember what it is, so the courts are already doing
3 that. I think this is just a form over function to
4 recognize what's already occurring.

5 CHAIRPERSON ROMBACH: Since this is not then
6 being accepted as an amendment, Mr. Powers needs a
7 second in order to have that considered by the
8 Assembly. Is there support for his proposed change?

9 MR. BRECK: Second.

10 CHAIRPERSON ROMBACH: We do have support.
11 Okay. So it's been moved and supported, that now we
12 are discussing simply the amendment that Mr. Powers
13 has proposed as to doing away with proposed sub (4) and
14 also doing away with the proposed changes to sub (3)
15 under 2.116, summary disposition, and I would
16 entertain anyone that would want to comment on that
17 particular amendment in light that every Assembly
18 member can speak to any particular topic once. Go
19 ahead, Mr. Miller.

20 MR. MILLER: Thank you, Mr. Chair. Randall
21 Miller on behalf of the 6th circuit.

22 I want to make comments on Mr. Powers'
23 friendly amendment and then ultimately come back and
24 propose my own friendly amendment. I think that the
25 problem we have, at least with regard to torts, is

1 that where you have summary disposition motions argued
2 after mediation you put the plaintiff in a position
3 where sanctions may be, they may be subject to
4 sanctions, where the defendant knew they had a
5 clear-cut case and the summary disposition would have
6 been granted.

7 There is no reason in the world that that
8 motion isn't heard by the court prior to mediation and
9 not subject the plaintiff to sanctions.

10 Therefore, we can either modify now or I can
11 come back later and do it, either way, but I think the
12 point is that with regard to (4) as it specifically
13 relates to tort actions, and this regards medical
14 malpractice included, that the time limit for summary
15 dispositions to be heard by the court should be
16 modified to say prior to mediation unless new evidence
17 arises subsequent to mediation, which I think
18 addresses Mr. Powers' point as well.

19 CHAIRPERSON ROMBACH: At this time, Randy, I
20 can't accept an amendment to the motion in chief. We
21 need -- and I appreciate your suggestion at this
22 juncture. We need to discuss Mr. Powers' motion,
23 which was supported now for discussion.

24 Mr. Garrison.

25 MR. GARRISON: I think I can shorten this up.

1 Can I accept the amendment, because upon second
2 thought and further review, the play doesn't stand as
3 called I guess, to use the instant replay rule. Like
4 I said, I think what the rule says is already being
5 done in practice, and it is allowed for elsewhere in
6 the rules, but I don't have a copy of the rules, so I
7 would be happy to accept the amendment proposed by
8 Mr. Powers.

9 CHAIRPERSON ROMBACH: The only way that I
10 could allow you to accept Mr. Powers' amendment is for
11 him to withdraw the amendment and the discussion and
12 withdraw the second from Mr. Breck, and at that point
13 you could accept it as a friendly amendment.

14 MR. POWERS: Barry Powers from the 6th
15 circuit. I will withdraw my motion.

16 CHAIRPERSON ROMBACH: Okay. And, Mr. Breck,
17 I take it that you will withdraw your support for that
18 amendment?

19 MR. BRECK: I will.

20 CHAIRPERSON ROMBACH: Now, Mr. Garrison, you
21 are accepting Mr. Powers' initiative as a friendly
22 amendment, and now we can speak to this proposed rule
23 by the Civil Procedure and Courts Committee, as
24 amended, and that would delete sub (4) and then go
25 back to the original sub (3), and now anyone can --

1 again, all the time limits are in effect, but we can
2 also have a new set of speakers too.

3 So, Mr. Garrison, you are advocating this. I
4 need to speak to anybody else that may be present here
5 that would want to speak to the issue. And, Mr. Miller,
6 you could do that at this time.

7 MR. MILLER: Thank you, Mr. Chair. Again,
8 Randall Miller on behalf of the 6th circuit -- on
9 behalf of myself, but from the 6th circuit.

10 I would, again, like to propose the friendly
11 amendment with regard to subrule (4) of 2.116. I really
12 wasn't planning on speaking on this issue, but when I
13 read it again this morning and I took a look at it, I
14 said this is grossly unfair. I have far too many
15 situations where I am either sitting as a mediator or
16 I am sitting with my client at mediation and this
17 issue comes up where the defense comes in and says
18 we've got a motion for summary disposition or we are
19 going to file one, we are going to win it, and we
20 want you to consider it at mediation. And if they are
21 so confident that they are going to win, it should be
22 brought prior to mediation and not subject my client
23 to sanctions.

24 Therefore, I would make a friendly amendment
25 with regard to sub (4) 2.116 to state that with regard

1 to tort cases all motions under 2.116 be brought and
2 heard prior to mediation unless new evidence is found
3 subsequent to that point in time.

4 CHAIRPERSON ROMBACH: The one concern I have
5 there is you are actually amending something that has
6 been stricken, and I am not sure if my parliamentarian
7 or I as chair could allow for that, because it's not
8 on the table at the moment. So I take it that at the
9 moment, Mr. Miller, then you would oppose this and vote
10 this down as far as it currently stands.

11 MR. MILLER: For the record, and I was just
12 corrected, I guess I am a little old fashioned still,
13 it's not mediation, it's case evaluation, and maybe in
14 a few years I will finally catch on to the new
15 phraseology. So at least for the record let's refer
16 to the fact we are talking about case evaluation, not
17 mediation.

18 CHAIRPERSON ROMBACH: So right now you are
19 proposing to vote against this based on the fact that
20 you can't amend (4) because it no longer exists?

21 MR. MILLER: Unless I can make a friendly
22 amendment to add.

23 CHAIRPERSON ROMBACH: You could propose to
24 Mr. Garrison to reinstate (4) with your additions, but,
25 again, if it's over six words I need it in writing

1 for the record.

2 MR. MILLER: Mr. Turner stated from the floor
3 that it may be number (3). I think he may be correct,
4 and I can certainly jot some notes down real quick to
5 throw those up and come up to the desk if you like.

6 CHAIRPERSON ROMBACH: What are you proposing?
7 Again, from my degree of density, I need to make this
8 real clear.

9 MR. MILLER: I would propose that with regard
10 to (3) that the rule read that all motions pursuant to
11 the rule with regard to tort cases be heard by the
12 court prior to case evaluation, and, yes, I understand
13 that's more than six words, so if you want me to write
14 it down I would be happy to.

15 CHAIRPERSON ROMBACH: Yes, please do. Is
16 that an additional sentence, Mr. -- Judge Brown wants
17 to know. Is that an additional sentence to (3)?

18 MR. MILLER: I think it would be, yes.

19 CHAIRPERSON ROMBACH: You need to write that
20 down immediately.

21 Mr. Garrison, it's back to you in this chess
22 game here. Do you accept that as a friendly amendment
23 or do you want to proceed on what you have before the
24 Assembly at this point?

25 MR. GARRISON: I would not accept it because

1 I am a big proponent of moving case evaluation early
2 in the proceedings before you invest all the money in
3 discovery and in summary disposition motions and
4 before parties become entrenched in their thinking.
5 So for that reason alone I would reject it.

6 CHAIRPERSON ROMBACH: So at this point we
7 have Mr. Miller making a proposal. For those of us
8 that understand that, is there support for
9 Mr. Miller's soon to be in writing -- I need to wait
10 until it's in writing and it's published for the body.

11 I tell you what, everyone can stand up and
12 stretch for a moment. I need to change the tape, I am
13 told, and I also need Mr. Miller's motion in writing.
14 But please don't go anywhere, because I would like to
15 conclude this, and Mr. Barton, I know, is going to
16 speak to this too, so I would wait in rapt attention
17 for his comments.

18 (Short break taken.)

19 CHAIRPERSON ROMBACH: We have this in writing
20 for Mr. Miller. Thank you very much for your
21 willingness to get back to order so quickly, and I
22 know this is a little bit distracting, but I would
23 rather do this in a friendly manner. If anyone can
24 harken back to a few years ago where every time we put
25 a different piece of punctuation together we had a

1 roll call vote. This will save us some time. Only
2 through experience, I guess.

3 At this point Nancy Brown is adding
4 Mr. Miller's proposed language. That would be one
5 sentence added to sub (3), and I believe once it goes
6 up there I will read it for the Assembly.

7 Here it is. Mr. Miller's proposed amendment
8 is, The grounds listed in subrule (C) (4), (8), (9), (10) m
9 be raised prior to case evaluation, unless good cause
10 is shown.

11 MR. BRECK: Point of clarification.

12 CHAIRPERSON ROMBACH: Certainly.

13 MR. BRECK: I had understood the motion to be
14 limited to tort cases and not all cases.

15 CHAIRPERSON ROMBACH: I guess where we stand
16 right now, Mr. Garrison has turned this down as a
17 friendly amendment. Mr. Miller has an amendment on
18 the floor, and at this point Mr. Breck is seeking that
19 to be amended, but before you can do that, before you
20 can add language, I need support on Mr. Miller's
21 proposal. Is there someone supporting this language
22 here?

23 MR. MCNEILL: I think Mr. Breck had point of
24 clarification with regard to the amendment.

25 CHAIRPERSON ROMBACH: Shane, if you could --

1 Mr. McNeill, could you go to the microphone so I can
2 have that for the record.

3 MR. MCNEILL: I think what he is asking for --

4 CHAIRPERSON ROMBACH: What you need to do
5 is -- I know you are new -- give your name and circuit
6 and then speak as opposed to favoring or in
7 opposition. Go ahead.

8 MR. MCNEILL: I think it's a point of order.
9 Shane McNeill from the 6th circuit -- 5th circuit,
10 sorry. I think what Mr. Breck is actually seeking is
11 not an amendment. He is bringing up a point of
12 clarification with regard to the wording. He is not
13 asking to amend it but point of clarification as to
14 whether or not the wording that's drafted there is
15 actually what was intended by the proponent.

16 CHAIRPERSON ROMBACH: From what I understand,
17 though, I think what he wants to do is limit that to
18 cases in tort.

19 MR. BRECK: Kevin Breck. That's what I heard
20 Mr. Miller say. Mr. Miller said this was limited to
21 tort cases, and what I am trying to understand is was
22 that what Mr. Miller, in fact, proposed or is this what
23 Mr. Miller, in fact, proposed?

24 CHAIRPERSON ROMBACH: Again, right now I
25 don't have -- do I have support for Mr. Miller's

1 proposed amendment before I can acknowledge --

2 MR. GARRISON: I will accept as worded,
3 because it's different than what was proposed from the
4 floor. I will accept that as written.

5 CHAIRPERSON ROMBACH: Since we don't have
6 support for Mr. Miller's amendment, I can go back to
7 the maker. He is willing to accept that,
8 Mr. Garrison, as a friendly amendment. Now, that's
9 going to be before the Assembly, and who seconded
10 Mr. Garrison's original motion?

11 Shiela Garin from the 6th circuit and a
12 colleague of Mr. Garrison, so it's the people running
13 the 6th circuit doing this, I guess.

14 So, Scott, you are accepting that as a
15 friendly amendment as written?

16 MR. GARRISON: We just need commas between
17 the (4), (8), (9) -- yeah, between the (4), the (8),
18 the (9), and the word "and" between (9) and (10).

19 CHAIRPERSON ROMBACH: So for syntax purposes,
20 that would be an excellent idea.

21 Actually we probably don't need the comma
22 after (9), Nancy, if you look through the most recent
23 book of style that we go by.

24 So now I have the motion, I have the second,
25 and that's a friendly amendment. Now we are back to

1 the debate on the initial action, and Mr. Barton
2 finally gets his chance to speak.

3 MR. BARTON: Bruce Barton, 4th circuit. I
4 just want to make the point that the gentleman tried
5 to make a minute ago. If you read what we have before
6 us, Rule 2.112, the amendment applies only to medical
7 malpractice actions.

8 Rule 2.401, the amendment appears to apply or
9 appears to be intended to apply to medical malpractice
10 actions, I am not sure it does, but the item we have
11 been talking about so much in the last few minutes,
12 that is amendment of Rule 2.116 and specifically the
13 addition of subparagraph (4), applies right across the
14 board. We are talking about tort, we are talking
15 about contract, we are talking about the entire
16 practice. It is not limited to medical malpractice,
17 despite the fact that I think most of us have come
18 here thinking we were talking about rules applying to
19 medical malpractice.

20 Whether that's a point of order or a
21 statement or whatever, I happen to favor the main
22 motion, but I think everybody here has got to
23 realize -- I don't favor the proposed language,
24 previously proposed language or this if it goes beyond
25 medical malpractice. I guess as generally a

1 plaintiff's lawyer I should be for it. No, I
2 shouldn't be, I am sorry. I should be the other way.

3 But in any event, the entire Assembly should
4 realize that we are going far beyond medical
5 malpractice if we talk about that particular proposal.

6 CHAIRPERSON ROMBACH: So your concern is
7 that, and I believe Mr. Breck had raised this
8 previously, that this would apply to actions other
9 than those actions in tort because it's under the
10 general rubric of 2.116?

11 MR. BARTON: That's correct, and it's not
12 limited anywhere in the language, at least that I see.

13 CHAIRPERSON ROMBACH: So you are asking that
14 this initiative be limited to tort? Again, you can
15 ask that of Mr Garrison.

16 MR. BARTON: I am making a point of
17 information.

18 CHAIRPERSON ROMBACH: Right now you are not
19 asking anything?

20 MR. BARTON: That's correct. I want everyone
21 to realize what's happening.

22 CHAIRPERSON ROMBACH: Thank you very much,
23 Bruce. Back to Mr. Breck. Since this is brand new,
24 you can speak to it again.

25 MR. BRECK: Thank you. Kevin Breck from the

1 6th circuit. I am strongly in opposition to this
2 amendment as drafted. It is my experience that case
3 evaluation often gets set by individual judges with
4 little rhyme or reason, with all due respect to the
5 judges here, with regard to where in the discovery
6 process we are. And this amendment, for example, with
7 regard to a (C)(10) motion could limit, could prevent me
8 from filing a motion even though discovery has hardly
9 begun if we have a mediation evaluation that's very
10 early on. I think this is a substantive, material,
11 and inadvisable change, and I would oppose this
12 amendment as drafted. Thank you.

13 CHAIRPERSON ROMBACH: Next I am going to go
14 to Mr. Kantor and then to Mr. Gillary.

15 MR KANTOR: Allyn Kantor, 22nd circuit.
16 Mr. Chairman, we have some major issues remaining on
17 the agenda. The weather is not getting any better
18 outside, the storms are coming, and I realize this is
19 a very important issue, this Court Rule change.

20 I suggest -- I move to table the issue, have
21 it referred back to the committee.

22 VOICE: Support.

23 CHAIRPERSON ROMBACH: Okay. That is
24 nondebateable. It has been moved to table this
25 particular action and to refer it back, I believe, as

1 part of that motion, and that has been supported.

2 At this juncture we'll have to call upon a
3 vote of the Assembly, and at this point all in favor
4 of tabling this for future consideration by the
5 Assembly and referring it back to the committee,
6 please signify by saying yes.

7 All those opposed say no.

8 The opinion of the chair, the yeses have it.

9 At this point I would thank Mr. Longhofer and
10 his committee for their very diligent work.

11 (Applause.)

12 CHAIRPERSON ROMBACH: At this point too I
13 would direct them that as the Assembly we would like
14 to consider this issue in April, so that doesn't give
15 you much of a turnaround. If Mr. Miller, Mr.
16 Garrison, even Mr. Barton or Mr. Gillary, Mr. Kantor,
17 whoever else spoke, Mr. Breck, on this particular
18 item, Mr. Powers, could direct their comments to
19 Mr. Longhofer and his committee and Mr. Bisio, as
20 co-chair, then perhaps we can work out the
21 difficulties in this item by April and come back. We
22 look forward to that. Thank you very much,
23 Mr. Longhofer.

24 At this point we will move on to our next
25 agenda item, and that is probably one of the important

1 issues on our docket as well, being consideration of
2 the recommendation in support of funding for
3 implementation of the State Bar of Michigan Strategic
4 Plan, and this is being proposed by the Assembly
5 itself through its Special Issues Committee in the
6 person of Allyn Kantor, chair. Allyn, you may
7 approach and walk us through this. Thank you.

8 MR KANTOR: Thank you, Tom. What I would
9 like to do is give the Assembly an overview of this
10 package of resolutions that is in your material, with
11 the addition of an amendment that was also at your
12 places when you came in, and it looks like this.

13 When the Special Issues Committee was first
14 formed about the beginning of 2001, Peggy Costello and
15 I were co-chairs of that committee, and in preparing
16 for this this morning I looked back in our file and I
17 saw a letter that she and I wrote to John Berry back
18 when I think Bruce was chair, Julie was co-chair, and
19 Tom was the clerk, and the issues that we raised then,
20 this was before the Strategic Plan was even put in --
21 the committee was even put in place, was that we
22 thought that the Representative Assembly ought to
23 focus on the long-term issues, those issues which
24 affect the practice of law and lawyers so that we
25 could be the final policymakers with respect to that.

1 And those issues that we thought were
2 important then were the increased enforcement against
3 the unauthorized practice of law, the increased
4 support of the Bar in the area of ethics and
5 professional responsibility, licensing and
6 credentialing of lawyers, including character and
7 fitness.

8 About the same time that we were writing that
9 letter and that it was received by John, the Strategic
10 Plan Committee went into effect. And it's interesting
11 to note that those same objectives which were focusing
12 on lawyers was included within that Strategic Plan.

13 However, the reason that no action
14 implementation of those objectives could occur was
15 simply the fact that what we were asking for, the
16 things that were important to lawyers in the practice
17 of our profession, required resources, required staff,
18 required staff time, required our expertise and staff
19 expertise. And so the Strategic Plan said, yes, those
20 issues are important, but more important is to assure
21 that the Bar is on a stable, has a stable dues
22 structure and is on a firm financial foundation.

23 And so as a result of the Strategic Plan, the
24 leadership of this Bar, taking into account the things
25 that we think are important for us, worked hard, and I

1 mean hard. You heard John talk about the thousands of
2 hours spent drafting a package of resolutions that
3 will come before you today. And let me give you
4 briefly an overview of those, because if we can
5 accomplish this, then we can then move on to achieve
6 those things which we think are important to us.

7 There are essentially five recommendations.
8 The first is quite simple. It recommends the
9 endorsement and implementation of the Strategic Plan,
10 recognizing that this is effectively a living document
11 and may change from time to time.

12 The second resolution addresses the increased
13 costs in administering the licensing process. The
14 fees are imposed upon those persons who seek effective
15 change in their licensing status. It is not a fee
16 which is imposed on the general membership.

17 The third resolution increases -- now, this
18 is the change, this is the change that's shown in your
19 yellow sheet. This is the change that came about, by
20 the way, as a result of our hearing process, as a
21 result of the work with the Senior Lawyers and Jon
22 Kingsepp and Bar leadership. This third resolution
23 increases to the age of 75 the qualification for the
24 exemption from dues and grandparents those who have
25 reached the age of 75 as of October 1st. I am sorry,

1 reached the age of 70 by October 1st, excuse me.

2 The fourth resolution increases the Client
3 Protection Fund, and the fifth resolution increases
4 the dues charge to the membership from \$160 to \$200
5 and also indexes future increases based upon a
6 Consumer Price Index.

7 Those are the -- and also in the event, I
8 should say the resolutions are interactive. In other
9 words, if resolution two or three or four are not
10 passed then the burden of the financial impact would
11 fall upon and increase correspondingly the dues
12 imposed on the general membership.

13 I will come back and present those
14 resolutions one by one for vote after you hear from
15 Ed Haroutunian, who was the chair of the Hearings
16 Committee, and he will give you that input.

17 But let me say that these resolutions are
18 important to you as members of this Assembly, and we
19 have endeavored to provide you with all of the
20 information, the charts, the graphs that you need, I
21 think, to help you understand what is going on, and if
22 you see what is in there, you will note what impressed
23 me is that of the, in the last ten years almost all of
24 the \$40 is consumed by inflation. Thirty-eight of the
25 40 increase is effectively consumed by inflation.

1 But that's not the only reason to vote for
2 this. What we are trying to do is make this Bar more
3 effective, more fiscally responsible and to address
4 the long-term needs we have as lawyers.

5 It's important to the Bar for the very same
6 reason. The Bar needs to go forward and to continue
7 to do the work with the fine staff that it has, and I
8 think it's important as well to the Representative
9 Assembly. This is the time when we need to stand up
10 as the final policy-making body of the Bar and to show
11 that we don't shirk from tasks, we are not too large.
12 We are and can be an effective organization and a
13 force within the State Bar.

14 So with that I ask you to listen carefully to
15 Ed Haroutunian and his remarks, and then I will come
16 back and move each of these resolutions. Thank you
17 very much.

18 (Applause.)

19 CHAIRPERSON ROMBACH: Just a brief note while
20 Ed is proceeding up here. I was remiss earlier. If
21 you look at the syntax and the cognitive consistency
22 and complexity of this resolution, that has a lot to
23 do with the Drafting Committee, and they are the ones
24 that help put the final dots to the I's and cross the
25 T's, and Francine Cullari and her body are to be

1 commended on that. So thank you very much, Francine.
2 I know a number of your members are here today. Thank
3 you.

4 Ed Haroutunian, on behalf of the traveling
5 road show, the Hearings Committee.

6 MR. HAROUTUNIAN: Thanks, Tom. The Hearings
7 Committee went to about five different locations in
8 the state of Michigan to have hearings on the
9 Strategic Plan, as well as the issue concerning the
10 dues increase and all the ramifications that Allyn has
11 set forth. But I want to do this first. I want to
12 give you the names of the folks who are on the
13 committee, because I think that's important.

14 Kim Cahill was on the committee, Doug
15 Ellmann, Scott Garrison, Jim Hogan, John Jarema, Ron
16 Keefe, David Kortering, Tim Morris, Arvid Perrin,
17 Vince Romano, Terri Stangl. I know that Tom had
18 earlier given those names, and obviously the input
19 from Tom Rombach, Dan Levy, as well as Elizabeth
20 Jamieson, was really invaluable.

21 The Hearings Committee went to five
22 locations -- Lansing on January 28th, Grand Rapids on
23 January 30, Gaylord on February 1, Pontiac on
24 February 13, and Detroit on February 18.

25 The actual number of people attending, other

1 than the Hearings Committee members and other than
2 State Bar staff, was fairly minimal. And, as a matter
3 of fact, some would say that that was a gross
4 understatement on my part. In addition, the State Bar
5 received a little over 100 comments concerning these
6 issues.

7 The object of the hearings process, and this
8 really is something that is not done regularly, it is
9 something that's fairly unusual, was to secure from
10 the Bar membership their thoughts on these proposals
11 and to report back with our findings to you, the
12 Representative Assembly.

13 The format of the hearings was to generally
14 hold them at a courtroom of the circuit court which
15 had video or audio recording capabilities. This was
16 done in Grand Rapids, Gaylord, Pontiac, and Detroit.
17 In Lansing we used the facilities of the State Bar
18 building instead of going to Ingham circuit. As a
19 result, the costs were kept at a minimum, and that was
20 in everybody's mind.

21 Presentations were made at the hearings
22 committees by the Executive Director of the State Bar,
23 John Berry, who then responded to questions from
24 members of the committee and others in attendance.

25 Other State Bar staff members, such as Jim

1 Horsch, Tom Byerley, Janet Welch, counsel, also gave
2 responses when they were called upon.

3 The comments that were received from the
4 State Bar members, either during the hearings
5 themselves or through the e-mail responses that were
6 received from the State Bar, can generally be
7 categorized as follows:

8 With respect to resolution one, and this goes
9 to the issue of the Strategic Plan, there were no real
10 comments either negative or positive. It was sort of,
11 okay, it's accepted.

12 John Berry, the Executive Director, set forth
13 the items in the Strategic Plan which included Access
14 to Justice, a lawyer referral system, insurance
15 liability, character and fitness, unauthorized
16 practice of law, e-mail filing, technology issues, and
17 law office management, while recognizing at the same
18 time that there were deep cuts that had been made in
19 lawyer assistance programs, outreach programs, and
20 public access, to name a few.

21 As to resolution two concerning the
22 administrative reinstatement fees, there are only a
23 few comments that were given, and those were
24 essentially positive in nature.

25 Now let me get to some of the more detailed

1 ones. Resolution three concerning the original
2 proposal which would eliminate the exemption for all
3 lawyers age 70 and over to not have to pay Bar dues
4 resulted in a considerable number of comments. Let me
5 give you the flavor for it.

6 There were many comments that existed that
7 the existing exemption for those over the age 70 that
8 pay Bar dues should be maintained, because those over
9 age 70 who do practice may do so because of financial
10 need or they may be practicing with a family member or
11 performing only a few legal services per year, or they
12 are providing pro bono service. And if a dues
13 requirement were placed upon those folks, then many
14 would simply opt out of the active practice resulting
15 in few people or groups receiving the benefit of those
16 people over the age of 70.

17 Some felt that the age 70 provision had been
18 a part of the Bar rules for so many decades that it
19 should not be eliminated or that they should be
20 reduced rates for dues after the age of 70.

21 Still others felt that the exemption for
22 older lawyers should remain but the age level should
23 be raised to age 75, primarily because of the
24 demographics involved, to be noted that at the present
25 time there are about 2,850 lawyers over the age of 70

1 in Michigan.

2 Others analogized that raising the Bar dues
3 exemption level from age 70 to age 75 was similar to
4 the recent age increases in Social Security before
5 full benefits are given.

6 Some expressed that all lawyers should be
7 treated the same, since younger lawyers might also
8 have financial problems but receive no exemption.

9 The Senior Lawyers Section presented a
10 proposal that those who are exempt, when and if the
11 rule change occurs, should continue to be exempt and
12 thereafter one must be age 75 to be exempt from dues.

13 As a result of the hearings process that
14 provision of the original proposal was modified to
15 reflect the Senior Lawyers Section position, and
16 that's what Allyn Kantor referred to when he mentioned
17 this yellow sheet, and that's as direct result of the
18 Senior Lawyers Section proposal.

19 With respect to proposal, resolution four,
20 concerning the Client Protection Fund, which is
21 available to a limited extent where attorneys
22 wrongfully appropriate funds of their clients, there
23 were a lot of concerns that were expressed.

24 State Bar staff indicated that the number of
25 those claims were growing because of the general

1 economic conditions and casino availability.
2 Questions were raised whether malpractice insurance
3 covered such acts, and the consensus was that because
4 these were intentional acts of wrongdoing typical
5 malpractice insurance would not cover those
6 situations.

7 Others said that if the attorney involved
8 wrongfully took the monies, that attorney should pay
9 for the wrongdoing and not all Bar members.

10 In prior years money attributable to the
11 Client Protection Fund had come from general Bar dues,
12 but the current proposal earmarks a specific sum for
13 the Client Protection Fund. Monies from the general
14 Bar dues, however, could be added to the proposed
15 Client Protection Fund.

16 No particular questions, one way or the
17 other, were raised about the claims limit of the
18 Client Protection Fund, which is presently at \$25,000
19 per claim, to be increased to \$50,000 per claim, and
20 the maximum aggregate per attorney reimbursement,
21 which is presently at \$100,000 to be increased to
22 \$200,000.

23 Regarding resolution five concerning the
24 general dues increase of \$40 and the cost of living
25 increase in dues thereafter, there were also a variety

1 of comments.

2 First was the comment that really to
3 implement the Strategic Plan in a meaningful way that
4 it was necessary for the Bar to increase dues. The
5 second was that based on the inflation rate since the
6 last dues increase of 1993 some members felt that the
7 current increase then was certainly justified because
8 of that, and, in fact, the inflation rate shows that
9 that increase essentially takes up that \$40.

10 Other members felt that in these times of
11 belt tightening the Bar should do the same thing and
12 there should be no increase that's warranted.

13 Still others felt that the Bar wasn't doing
14 enough to justify a dues increase. The Public
15 Corporation Law Section issued its position indicating
16 that it was opposed to any dues increase. By the way,
17 in that regard, I saw in today's packet that the
18 General Practice Section dealt with this issue on
19 February 20 and indicated its support of the
20 recommendations that are now being made by the
21 committee.

22 Some members felt that the cost overruns at
23 the State Bar building in Lansing was really at the
24 heart of the dues increase, although on a per member
25 basis the overruns were said to amount to about \$5 a

1 member. Some members felt that out-of-state lawyers
2 should really not have to pay the same amount as
3 in-state lawyers.

4 Finally, the overall responses to the
5 hearings process, candidly, were few in number, and
6 although the opportunity for expression was in place,
7 only about a hundred persons of the approximate 35,000
8 members of the State Bar of Michigan did so, and about
9 40 percent of those hundred opposed the general Bar
10 dues increase.

11 That's our report, Mr. Chairman, and I want
12 to thank not only the chair, Tom Rombach, but every
13 member of the Hearings Committee for the time, effort,
14 and comments that they made to make this report
15 possible. Thank you, Mr. Chairman.

16 (Applause.)

17 CHAIRPERSON ROMBACH: We are not going to
18 throw Ed overboard quite yet. We may need some
19 hearings in the future, and, as he indicated, we
20 hadn't put that body together in the course of the
21 last eight years, and one of the reasons he was chair
22 is he was actually on that committee the last time we
23 remembered using it. Thank you very much, Ed.

24 We knew that both him and Susan were willing
25 to travel around the state on short notice under

1 inclement conditions. A tribute to him and his wife
2 Susan, representing the third circuit. I am not quite
3 sure why they are in different circuits, but you can
4 take it up with them I guess.

5 At this point I guess it would be -- I just
6 want to give an overview of how we are going to
7 consider this. Typically we would have the sections
8 and committees comment, but I am going to reserve
9 those, because I think the ones that are here today
10 want to simply talk about their particular item, so I
11 am going to entertain a motion to move this issue
12 forward.

13 I believe, Mr. Kantor, are you in a position
14 to do that?

15 MR KANTOR: I am. I would like to move the
16 adoption of resolution number one, if that would be
17 appropriate.

18 CHAIRPERSON ROMBACH: It certainly would be.
19 Is there support in the body for that?

20 VOICE: Support.

21 CHAIRPERSON ROMBACH: Okay. Having been
22 moved and supported, is there discussion with respect
23 to resolution one? I believe that deals with the
24 adoption of the State Bar Strategic Plan.
25 Mr. Gillary.

1 MR. GILLARY: Randy Gillary from the 6th
2 circuit. I speak in support of the motion with one
3 exception, and it has to do with the mission statement
4 for the Bar association and touches on what John Berry
5 addressed earlier in his remarks. That if we look at
6 the mission statement, there is really nothing in
7 there that says that part of the responsibility or
8 part of what we are as a Bar association is to benefit
9 the public in any way.

10 We look at that mission statement, it first
11 says that the State Bar of Michigan shall aid in
12 promoting improvements in the administration of
13 justice and advancements in jurisprudence, which deals
14 with efficiency in the legal system. And the
15 remaining two parts of that basically that say and
16 improving relations between the legal profession and
17 the public and in promoting the interests of the legal
18 profession in the state basically address trying to
19 make lawyers look good in this state, and, frankly, I
20 would like to see us have something in our mission
21 statement recognizing that we as lawyers have a
22 primary responsibility to our clients.

23 We are supposed to place the interest of our
24 clients above our own interests, and I think we need
25 to recognize that in the mission statement of the Bar

1 association, and I would move that we amend the
2 mission statement or send it back with the
3 understanding that there will be some change made in
4 that mission statement to reflect the fact that we
5 have a trust with the public and that our primary
6 responsibility is to our clients and to the public in
7 general.

8 CHAIRPERSON ROMBACH: If I may, Mr. Gillary,
9 I would also want to direct your attention, not only
10 is the mission incorporated in the introduction I
11 believe that you are reading from but in the State Bar
12 annual directory issue that comes out in April there
13 is a more specifically defined mission statement that
14 includes our service to the public as one of the most
15 prominent action items, and I don't know that from
16 memory, perhaps somebody else here, but I don't know
17 that it was an intention of this proposal to outline
18 fully the mission statement of the Bar. It was
19 basically to synopsise that.

20 MR. GILLARY: If that's in there, that's
21 fine. Just the way that it is on page three of the
22 materials where it reflects the mission statement, it
23 doesn't mention that.

24 CHAIRPERSON ROMBACH: Right. I guess what
25 happened is that it was the subject of a retreat by

1 the State Bar leadership several years ago, and there
2 is a full page on that, it deals primarily with the
3 public. I certainly think that your comments, though,
4 about incorporating maybe that in more strong language
5 within the body of this text is certainly appropriate
6 for this body. Do you have actually a suggestion as
7 to what you would like to see in language incorporated
8 into resolution one?

9 MR. GILLARY: I didn't write anything down
10 specifically, but if the mission statement, and I am
11 not sure if this is the entire mission statement
12 that's printed on page three of the Strategic Plan.
13 If it's not and if there is additional provisions in
14 there that address that topic, then there is probably
15 nothing that needs to be done. If this is the mission
16 statement, then I would ask that it be amended to
17 address and maybe sent back for redrafting, because
18 it's almost impossible to draft a mission statement
19 with this number of people, but if it would just be
20 sent back to cover the concern that part of our
21 mission is to represent our clients and the mission of
22 the Bar association should be to recognize that we
23 have a trust with the public.

24 CHAIRPERSON ROMBACH: If we may, could we
25 perhaps put in to further the Bar's purpose to serve

1 the public, comma, individual attorneys, could we
2 perhaps put that in the most pronounced manner? Would
3 that suffice as far as within resolution one?

4 MR. GILLARY: That would be fine.

5 CHAIRPERSON ROMBACH: And that would only be
6 two words, I believe, so that would be able to be
7 suggested right now. So if we may, instead of the
8 Bar's purpose to serve, and then put in the public
9 comma -- we don't have to strike serve, I don't think,
10 Nancy.

11 MR. GILLARY: I would accept that.

12 CHAIRPERSON ROMBACH: Actually we are adding
13 two words then, serve the public, comma, individual
14 attorneys, so we need a comma after public, if we
15 could. Okay. And I will defer to Allyn. Would that
16 be a friendly amendment?

17 MR. KANTOR: It would be a very friendly
18 amendment.

19 MR. GILLARY: Thank you.

20 CHAIRPERSON ROMBACH: Thank you very much,
21 because that certainly is not prominently enough
22 displayed in resolution one.

23 Are there any other suggestions for the
24 drafting or discussion on resolution one? Okay.
25 Hearing none, I will call that to a vote.

1 All in favor of adoption as moved by
2 Mr. Kantor for resolution one, please speak by saying
3 yes.

4 Any opposed, say no.

5 Hearing none, that resolution one is passed
6 unanimously.

7 We will move to Mr. Kantor for his pleasure
8 on resolution two.

9 MR. KANTOR: Mr. Chairman, I move the
10 adoption of resolution two.

11 VOICE: Support.

12 CHAIRPERSON ROMBACH: Mr. Kantor has moved
13 and I have support for adoption of resolution two
14 dealing with the administrative dues increases. Is
15 there any comment from sections or committees in
16 regards to this item?

17 Okay. Hearing none, we will move to
18 discussion from members of the Assembly. Okay. I am
19 glad you folks have all reviewed this in advance and
20 are familiar with the contents. Hearing no
21 discussion, I will call a vote on that matter.

22 All in favor of adoption of resolution two as
23 moved by Mr. Kantor, please signify by saying yes.

24 Any opposed say no.

25 Hearing none, that also is passed

1 unanimously.

2 We will move to a third resolution,
3 Mr. Kantor.

4 MR KANTOR: I move the adoption of substitute
5 resolution three, which is contained on the yellow
6 handouts.

7 CHAIRPERSON ROMBACH: We are, again, directing
8 your attention to the yellow handouts. Mr. Kantor is
9 proposing that to substitute in for the text that was
10 submitted to the Assembly in your docket materials.

11 Is there support for the proposal three?

12 MR. KEEFFE: Support.

13 CHAIRPERSON ROMBACH: By Mr. Keefe is
14 supporting that.

15 At this point I move to any sections or
16 committees that would like to weigh in on this topic,
17 resolution three, dealing with the age exemption. The
18 Senior Lawyers have already been properly represented
19 then, I take it.

20 VOICE: Unless there is some opposition to
21 this.

22 CHAIRPERSON ROMBACH: So the Senior Lawyers
23 are here present to comment, but apparently their
24 comments have been properly identified by Mr. Kantor.

25 Any members of the Assembly that wish to

1 speak then on resolution substitute three? Okay.
2 Hearing no comments, I will now call that to a vote.

3 All in favor signify by saying yes.

4 Any opposed say no.

5 Do I have a no? We have one no, so the
6 record shall so reflect.

7 We will move to item four, Mr. Kantor.

8 MR KANTOR: I move the adoption of resolution
9 number four.

10 CHAIRPERSON ROMBACH: Resolution four is
11 presented in the materials before you. We have a
12 motion to move that forward. Is there support?

13 VOICE: Support.

14 CHAIRPERSON ROMBACH: We have support.

15 At this point we will move to sections or
16 committees. I don't believe there is any here to
17 comment on resolution four on Client Protection Fund.

18 Discussion by Assembly membership? Go ahead,
19 Mr. Breck.

20 MR. BRECK: Kevin Breck from the 6th circuit.
21 I have a question. I am in favor of the resolution.
22 Mr. Haroutunian mentioned that there was going to be
23 an increase in the limit in terms of the amount that
24 any one case could get paid or could receive as
25 compensation. That's not in the resolution. Is that

1 something that's done administratively, doesn't
2 require our approval?

3 CHAIRPERSON ROMBACH: Mr. Breck, I believe
4 that the most appropriately -- I believe that is
5 administrative and actually empowered within our
6 Client Protection Fund Committee, the chair which is
7 not present today, but Tom Byerley, our regulations
8 counsel, and also Victoria Kremski are both here, and
9 I know that they regularly administer that endeavor.
10 Go ahead. You can actually pull the microphone down.

11 MR. BYERLEY: The answer to your question is
12 yes, that is done administratively.

13 MR. BRECK: Thank you.

14 CHAIRPERSON ROMBACH: Are there any other
15 questions or comments with regards to resolution four?
16 Okay.

17 Hearing none, at this point we will move that
18 to a vote. Mr. Kantor having moved and it been
19 seconded, resolution four is before the Assembly.

20 All in favor, please signify by saying yes.

21 Anybody opposed to resolution four signify by
22 saying no.

23 We have several no votes on that issue, and
24 the record shall so reflect, but it is the chair's
25 opinion that that carried.

1 Resolution five is now before the Assembly,
2 Mr. Kantor.

3 MR KANTOR: Mr. Chairman, I move the adoption
4 of the first full paragraph of resolution five
5 beginning with the word recognizing.

6 We, in light of the action taken by this body
7 with respect to resolutions two, three and four, I am
8 deleting those subparagraphs 1, 2 and 3, but paragraph
9 4 would remain. That's the indexing of the future
10 increases to the CPI.

11 So I am moving the adoption of the main
12 commencing paragraph under resolution five and
13 subparagraph 4.

14 VOICE: Support.

15 CHAIRPERSON ROMBACH: Mr. Kantor has moved
16 and it has been supported. As far as anyone with
17 Drafting, Francine, do you want to renumber that for
18 us, or what do you suggest?

19 You are on the spot, Francine. You need to
20 step up and walk to the microphone, if you may.

21 VICE CHAIRPERSON LEVY: I think it would just
22 be two paragraphs.

23 CHAIRPERSON ROMBACH: Could we forego the
24 number perhaps, and then just have a paragraph
25 afterwards?

1 MS. CULLARI: Probably strike the top
2 paragraph, comma, subject to the following
3 adjustments, put a period and have a second paragraph.

4 CHAIRPERSON ROMBACH: And then just go to
5 reduce inefficiencies as the next paragraph.

6 Again, I need to consult with my drafting
7 experts, and I take it, or members of the committee,
8 are in favor of that syntax. Hearing no objection, we
9 will move that. Is that okay with you, Mr. Kantor?

10 MR KANTOR: Yes.

11 CHAIRPERSON ROMBACH: So we have just simply
12 redone that. So we are striking -- Nancy, all we have
13 to do is strike 1, 2, and 3, and 4, the number 4 is
14 struck as well.

15 VOICE: Not the paragraph, just the number.

16 CHAIRPERSON ROMBACH: I am sorry.

17 VOICE: The number, not the paragraph.

18 CHAIRPERSON ROMBACH: So we are going to
19 delete also "subject to the following adjustments,"
20 okay.

21 MS. ROSS: Clarification. Is this the yellow
22 sheet?

23 CHAIRPERSON ROMBACH: Yes, yes. Please,
24 everyone, we need to be on the yellow sheet, because
25 that dealt with resolution three and resolution five.

1 Pursuant to our suggestion, we are striking the last
2 "subject to the following adjustments" in the initial
3 paragraph, we are striking 1, 2, and 3, and we are
4 taking the number off 4, and that would be the second
5 paragraph in the resolution.

6 We need to strike "subject to the following
7 adjustments," Nancy, and just put a period after
8 September 30th. I am sure glad she is doing that. I
9 am technologically challenged here. So if you could
10 leave that up for us then, 1, 2, 3 are struck and 4 is
11 off.

12 MS. CULLARI: The parentheses has to stay in.

13 CHAIRPERSON ROMBACH: I am sorry?

14 MS. CULLARI: The closing parenthesis has to
15 stay in.

16 CHAIRPERSON ROMBACH: The closing
17 parenthetical reference also needs to be there. Yeah,
18 we just make sure that the period is outside the
19 parenthesis. We will take that as a friendly
20 amendment, right, Allyn?

21 MR KANTOR: Right.

22 CHAIRPERSON ROMBACH: Thank you very much. I
23 appreciate the syntax being accurate.

24 At this point the Assembly has before it
25 Mr. Kantor's motion which has been seconded. Is there

1 discussion on this item?

2 Okay. Hearing none, we will move that to a
3 vote on resolution five, as amended, substitute in
4 your yellow sheets.

5 All those in favor, please signify by saying
6 yes.

7 All those opposed signify by saying no.

8 No, we have several no votes. In the opinion
9 of the chair the ayes have it, and that is adopted.

10 Thank you very much for Assembly action.

11 At this point the only other item before the
12 Assembly, I believe, is the adjournment. If there is no
13 other matter of good or welfare, other new business
14 gaining two-thirds majority vote for consideration.
15 Hearing none --

16 MS. ROSS: Move to adjourn.

17 CHAIRPERSON ROMBACH: Move to adjourn by
18 Marcia Ross.

19 VOICE: Support.

20 CHAIRPERSON ROMBACH: We have support. All
21 those in favor signify by saying yes.

22 VOICE: Yes.

23 CHAIRPERSON ROMBACH: Right now we need to
24 make sure you all hand in your attendance slips before
25 you are out the door. I would also note -- there are

