

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 Radisson Hotel, Second Floor,
Lansing, Michigan, on Friday, September 12, 2003, at the
hour of 10:00 a.m.

AT HEADTABLE:

THOMAS C. ROMBACH, Chairperson

DANIEL M. LEVY, Vice-Chairperson

ELIZABETH A. JAMIESON, Clerk

JOHN T. BERRY, Executive Director

JOHN M. BARR, Parliamentarian

GLENNA PETERS, Staff Member

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1 remarks by Scott Brinkmeyer, President-Elect of the
2 State Bar, up a notch to precede and eclipse my
3 remarks as well.

4 I would entertain a motion to that effect.

5 VOICE: So moved.

6 CHAIRPERSON ROMBACH: Do I have have a second
7 on that?

8 VOICE: Support.

9 CHAIRPERSON ROMBACH: Moved and seconded. Is
10 there any discussion on this item? Hearing none, I
11 would like to bring that to a vote.

12 All in favor, please signify by saying yes.

13 Any opposed, say nay.

14 Hearing nothing, I am going to turn now to
15 Mr. Larky.

16 MR. LARKY: Mr. Chairman, I move that items
17 number 13 and 15 be placed at the end of the morning
18 session and that motion that I have for number 12 be
19 reduced from 15 minutes to five minutes.

20 CHAIRPERSON ROMBACH: If I understand that --
21 and for the record, this is Sheldon Larky from the 6th
22 circuit, right? You have been out of action for a
23 year, Shel.

24 MR. LARKY: Sorry, forgot protocol.

25 CHAIRPERSON ROMBACH: If the new members can

1 remember to identify yourself. We are recording this.
2 Connie Coon is our capable recorder, and so she needs
3 to know who all you folks are when you speak.

4 So you would like to, again, Mr. Larky, move
5 items, is it 13 and 15?

6 MR. LARKY: To the end of the morning session
7 following number 12 by reducing my time to five
8 minutes. In light of number 15 being basically a
9 motion to table until November, that should take one
10 minute, and consideration of the Assembly report
11 probably will take less than three minutes.

12 CHAIRPERSON ROMBACH: So 13. And is it 15
13 and 14? I am having trouble hearing you, Shel.

14 MR. LARKY: Thirteen and 15.

15 CHAIRPERSON ROMBACH: Thirteen and 15, so 14
16 can stay where it's at. That's the appellate
17 reduction task force report?

18 MR. LARKY: That would be immediately after
19 lunch.

20 CHAIRPERSON ROMBACH: That would be
21 immediately after lunch. So 13 is consideration of
22 the report and recommendations of the Assembly Review
23 and 15 is the Michigan Rules of Professional Conduct.

24 Is there a second for that?

25 VOICE: I second.

1 CHAIRPERSON ROMBACH: That's been moved and
2 seconded. Is there any discussion on that?

3 If somebody is going to discuss that, I
4 believe we have Elizabeth Jamieson, our clerk, is
5 going to want to talk on that item. Go ahead,
6 Elizabeth.

7 CLERK JAMIESON: Elizabeth Jamieson, 17th
8 circuit. It isn't just a motion to table. Quite
9 frankly, it's a rather extensive proposal as to how we
10 are going to proceed with addressing the proposed
11 Michigan Rules of Professional Conduct, what rules we
12 feel need further debate, what rules we want to have
13 published and may need further debate in the future,
14 and what rules may not require any debate, and we have
15 the potential of going through each of these rules,
16 and we think it has such significant importance to the
17 Assembly with regard to input to the Supreme Court
18 that that's not something that's going to take five or
19 ten minutes, and that's why we left it for the
20 afternoon.

21 I think we would be doing a disjustice to the
22 Assembly and the significance of the Assembly and to
23 our 30-some thousand members by just saying we are
24 deferring everything to November. We are not going to
25 have enough time in November to debate all of the

1 rules. We need to deal with that procedurally today
2 so that we can set ourselves up to be very efficient
3 in November.

4 CHAIRPERSON ROMBACH: Is there anybody else
5 that would like to speak on the topic?

6 I would note, just as a housekeeping matter,
7 I know that we have a team of ethics gurus from the
8 committee that are scheduled to come in here this
9 afternoon and are anticipating addressing that and
10 answering any Assembly questions that may arise, and
11 they have been notified pursuant to the agenda to be
12 here. I know I did that myself. So I would prefer
13 not to be made out to be a complete liar at least at
14 this juncture in the meeting.

15 Anybody else who would like to speak on this
16 item?

17 Mr. Larky, do you have any final remarks to
18 wrap up?

19 MR. LARKY: No. I might have another motion.

20 CHAIRPERSON ROMBACH: Right, you have the
21 motion.

22 MR. LARKY: No, I said I might have another
23 motion.

24 CHAIRPERSON ROMBACH: The motion having been
25 made and seconded to move items 13 and 15 to the end

1 of the morning agenda, all those in favor please
2 indicate by saying yes.

3 All those opposed, please indicate by saying
4 no.

5 In the opinion of the chair the noes have it.

6 MR. LARKY: Mr. Chairman, I have another
7 motion. I move that item number 13 be immediately
8 following number 12 in the morning session and that
9 number 12 be reduced from 15 minutes to five minutes.

10 VOICE: Second.

11 CHAIRPERSON ROMBACH: Now we are moving for
12 item 13 to be made immediately following item 12 and
13 move that to the morning session.

14 MR. LARKY: And to reduce my time on number
15 12 to five minutes.

16 CHAIRPERSON ROMBACH: Again, my hearing is
17 not so sharp, Shel.

18 So you want to reduce the amount of time
19 apportioned to your --

20 MR. LARKY: To number 12.

21 CHAIRPERSON ROMBACH: -- 12, and then move
22 item --

23 MR. LARKY: 13 up to the morning session.

24 CHAIRPERSON ROMBACH: Is there a second on
25 that?

1 VOICE: Second.

2 CHAIRPERSON ROMBACH: All right. Would you
3 like to speak to that, Shel?

4 MR. LARKY: I just want to save time. We are
5 already running late, and this will probably speed up
6 the morning session and help us with the afternoon and
7 maybe we will get out earlier.

8 VICE CHAIRPERSON LEVY: Just as a matter of
9 order, the time limits on the agenda are just advisory
10 estimations. If we can get it done, we will get it
11 done, but we can't shorten the time in a way that will
12 just make it impossible for anybody to object to your
13 proposal. If they object, it takes 10 minutes or 15
14 minutes, but as soon as we can start it we will do it
15 as quickly as we can.

16 CHAIRPERSON ROMBACH: I tell you what, if we
17 could reach maybe consensus on this, Shel, I would
18 certainly entertain that as a favorable amendment if
19 we have the time in the morning. All I know is I am
20 committed to get a number of people in this Assembly
21 meeting to that lunch on time, and so if I can add
22 that provision on there, then --

23 MR. LARKY: If we can fill it in the morning,
24 I have no problem with that friendly amendment.

25 CHAIRPERSON ROMBACH: Certainly. Any further

1 discussion on this topic?

2 As amended, Mr. Larky's motion is to move
3 item 13 up to the morning, time permitting.

4 All those in favor, please indicate by saying
5 yes.

6 Any opposed say no. That passes. Thank you
7 very much, Mr. Larky.

8 Any other pre-trial motions to come before
9 the body? Hearing none, we will move on to the item
10 about the objections not having been filed to summary
11 proceedings that you have in front of you, April 26.
12 I know there are a few clerical amendments that have
13 been made to that. Does anybody else have anything to
14 say about that, otherwise we will move to a vote.

15 Hearing nothing, all in favor of that
16 passage, please indicate by saying yes.

17 Any opposed say no.

18 Thank you very much.

19 Under the next tab, filling vacancies, we
20 have a number of people that have stepped forward to
21 move into Assembly positions. Those are identified in
22 your docket for today's proceedings, and a number of
23 those people are present here today. If I may, from
24 the 5th judicial circuit, Thomas Evans. I know he has
25 been on and off before. Tom could you stand up,

1 please.

2 And then moving on to the 16th circuit, we
3 have Charles Trickey, III. Chuck, would you like to
4 stand and be recognized. Some of us don't recognize
5 you, Chuck.

6 Moving on, from the 17th, Rob Buchanan. Rob,
7 thank you.

8 26, we have Dennis Grenkowicz, late of the
9 Board of Commissioners. Dennis. He is in the back.

10 From the 42nd circuit we have J. D. Brooks,
11 and is J. D. here, please?

12 And from the 46th circuit we have Andrew
13 Rogness of Sturgis. Andrew. Thanks.

14 We also have from the 35th circuit Daniel
15 Loomis Is Dan here? He is in the back. Thanks, Dan.

16 Having seen this number of suspects, at this
17 time I would entertain a motion to allow them into the
18 Assembly.

19 VOICE: So moved.

20 CHAIRPERSON ROMBACH: Is there a second to
21 that.

22 VOICE: Support.

23 CHAIRPERSON ROMBACH: Is there any discussion
24 of that item? Hearing none, we will proceed to a
25 vote.

1 All in favor, please indicate by saying yes
2 Any opposed?

3 That passes unanimously.

4 To the degree that you are all able to act
5 immediately, you can have your seats in the auspicious
6 Assembly, and those that need to wait till January
7 will do that. Actually you will probably come back in
8 November, but we will visit that point in a moment.

9 Next we have remarks by our eminent leader
10 Reginald M. Turner, Jr., President of the State Bar of
11 Michigan. Reggie, and I would like to know --

12 (Applause.)

13 CHAIRPERSON ROMBACH: I would like to know
14 two things. First, not to take the thunder out of
15 Reggie's presentation, but, in thinking of lunch, if
16 you didn't register for lunch tickets as you were
17 supposed to, in the good graces of our incoming
18 leadership, they are willing to give you an hour to go
19 out front to the table and get a free luncheon ticket.
20 So please do that perhaps during my remarks. Rather
21 than fall asleep, you can go out there.

22 And, secondly, I just want to make a personal
23 note that Reggie has done a spectacular job and
24 without his leadership the Assembly wouldn't be
25 dealing with the issues of the magnitude that we have

1 been able to consider this year. Reggie.

2 PRESIDENT TURNER: Good morning.

3 Tom, thank you for that kind introduction. I
4 really think that the Representative Assembly owes
5 Tom Rombach, Dan Levy, and Elizabeth Jamieson true
6 gratitude for the hard work that they have done this
7 year.

8 Tom said that it is because of me that you
9 have been dealing with these really important issues
10 over the course of the last couple of years, but, in
11 fact, that is really because of the leadership of the
12 Assembly and the aggressive way in which they have
13 sought important issues facing our profession to bring
14 those issues before you to give you the opportunity to
15 deliberate as the final policy-making body of the
16 State Bar of Michigan. And that is really the basis
17 for the meaty agendas that you have enjoyed over the
18 course of this Bar year.

19 And I am very proud to have served with Tom
20 and Dan. They have been on my executive committee as
21 president of the Bar this year and have served with
22 Elizabeth as well on the Board of Commissioners. You
23 have got great leadership in the Assembly, and I know
24 that that leadership will continue over the course of
25 the next several years as others move up through the

1 track.

2 I also want to acknowledge the really
3 important work of the Bar's staff, and I will say a
4 little bit more about that later. They have helped to
5 make the issues that have come before this Assembly
6 clear and concise, giving you very detailed background
7 information so that as you deliberate regarding the
8 important issues of the Bar you have the best
9 information possible.

10 Because of all of the hard work that has been
11 accomplished this year, we have managed to do a great
12 deal as a Bar association, and I have been very
13 privileged to serve as your president during the
14 course of these very exciting times. Our Board of
15 Commissioners, this Representative Assembly, and all
16 of the volunteers of staff have advanced the mission
17 and goals of the Bar in many important ways. I am
18 going to talk about just a few of them, and I am going
19 to try to do it as quickly as I can in keeping with
20 your calendar. In fact, I am reminded of what I heard
21 Elizabeth Taylor said to each of her husbands. I
22 won't keep you long.

23 The strategic plan we adopted in 2001 was
24 designed to maintain our core values and focus our
25 resources in the areas most relevant to our members,

1 the courts, and the public. The plan calls for the
2 Bar to employ sound fiscal management of the Bar's
3 resources, to address public policy issues that are
4 central to the administration of justice, not unduly
5 divisive, and on which the Bar can achieve significant
6 impact, to produce cost efficient services to help
7 members be more effective and efficient in serving the
8 public, and to support justice initiatives, including
9 Access to Justice and Open Justice.

10 We have made tremendous progress this year in
11 all of these areas. First, fiscal management. We
12 have balanced our budget for three straight years,
13 including the year going forward with the budget the
14 Board of Commissioners just adopted, for a remarkable
15 total of ten years without a dues increase. Moreover,
16 we have carefully prioritized the additional services
17 we are going to offer to members with the modest rate
18 increase for the Bar year beginning October 1st.

19 This improved stewardship of your resources
20 arises from faithful adherence of our entire team to
21 the strategic plan. It is attributable to the end of
22 the old presidential agenda which previously caused
23 the Bar to add new programs each year, often without
24 due regard for fiscal impact, and the new internal
25 discipline that we have imposed with our new

1 executive director. He is not new anymore. I think
2 he has actually come to the end of his three-year
3 contract. It's unbelievable that he has been here for
4 three years it's been such a privilege to work with
5 him. And we also owe a debt of gratitude for our
6 fiscal discipline to our finance director, James
7 Horsch, and our human resources director, Kathleen
8 Fox, both of whom are back in the back.

9 Second, on public policy. Our strategic plan
10 calls for the State Bar to increase opportunities for
11 member input when new policy areas are being
12 considered and to expand publication and dissemination
13 of information about issues being closely followed and
14 legislative and regulatory achievements.

15 This year we have created a Public Policy
16 Resource Center on the State Bar's website which
17 offers members direct access to the bills and court
18 rules the Bar is following to legislators and to
19 public officials and to the positions of the Bar and
20 its sections. The PPRC also encourages and
21 facilitates direct member input through the web.

22 The e-journal now updates members daily by
23 practice area about new legislation and court rule
24 proposals of interest. Members can now subscribe to a
25 weekly newsletter on current public policy events. At

1 the same time the bylaws governing public policy
2 activity have been rewritten to provide better service
3 to sections, more accountability and greater clarity
4 about public policy positions taken by the State Bar,
5 its sections and committees.

6 These improvements result from our
7 leadership's commitment to the strategic plan and from
8 the hard work and creativity of Janet Welch, our
9 counsel, Nancy Brown, our director of communications,
10 and all of the staff members who work with them.

11 Third, on member services. Our strategic
12 plan mandates more attention to lawyers' needs in
13 their offices, at court, and wherever they practice
14 law so that we can serve the public more efficiently
15 and effectively. One important aspect is our
16 accelerated prosecution of the unauthorized practice
17 of law which benefits members and, more importantly,
18 which protects the public.

19 The Public Policy Resource Center I mentioned
20 a few minutes ago is also a great advance in member
21 services. One new Bar service that every member will
22 receive is our upgraded Bar membership card. I
23 remember going to one of the local Bar associations
24 earlier this year and having a lawyer pull out the old
25 Bar membership card and saying it was one of the

1 flimsiest cards in his wallet and that as a member of
2 a learned profession he thought that we should have a
3 more substantial membership card, something that he
4 could be proud to display when entering court or going
5 to other places.

6 Well, the staff of the Bar was already in the
7 process of working to upgrade that membership card,
8 and I think you will all appreciate the change in the
9 membership cards you will receive for the upcoming Bar
10 year. The card will be more durable, and it will
11 allow for electronic transactions, like secure
12 entrance to courts, for registration at CLE seminars,
13 and many other uses down the road. So by creating a
14 card that will function similar to a credit card,
15 ultimately you will be able to engage in a lot of
16 transactions using just your Bar membership card.

17 We are actively meeting with court personnel
18 over the course of the next weeks and months to
19 introduce them to the new card, explain its future
20 applications, and so it will be a very, very
21 convenient item for you to have.

22 Also new this year is the State Bar
23 partnership with OfficeMax that will provide
24 substantial discounts to members on office equipment
25 and supplies. It sounds mundane, but with the

1 increasing economic pressures on our practices,
2 whether you are a small firm or a sole practitioner or
3 whether you practice in a firm with over a hundred
4 lawyers, you know that there is increasing economic
5 pressure from health care costs, from rising wages,
6 from all kinds of sources, and every dime that you can
7 save on every aspect of the operations of your office
8 will be critically important. I know it will in my
9 office, and so I encourage you to take advantage of
10 this OfficeMax discount and to let your friends and
11 colleagues know about it so that your offices can take
12 advantage of these savings.

13 The experienced leadership of Lisa
14 Allen-Kost, who runs our member services department,
15 and the hard work of her staff can be counted on to
16 implement these new member services programs with
17 great efficiency but also to discover new ways over
18 the course of the coming year to increase tangible
19 practical benefits of State Bar membership.

20 Fourth, on professional standards.
21 Maintaining the high standards of our profession is at
22 the core of the State Bar's mission, and we do so
23 vigorously through programs such as our ethics
24 hotline, the prosecution of the unauthorized practice
25 of law, and character and fitness reviews for

1 membership applicants.

2 This past year the Professional Standards
3 Division under the leadership of division director Tom
4 Byerley has been responsible for the complex and
5 important task of guiding the State Bar's
6 consideration of the ABA's comprehensive rewrite of
7 the Model Rules of Professional Conduct through the
8 Bar's Ethics Committee.

9 This proposal, as you very well know, will be
10 considered today by this Representative Assembly and
11 again in November, and this is very important work of
12 the Bar, and Tom I think has indicated to many of you,
13 and I know that the Supreme Court has indicated to me
14 personally, that they are anxiously awaiting your
15 input on these important issues.

16 Fifth, on justice initiatives. The strategic
17 plan calls for the State Bar to strengthen its Access
18 to Justice and Open Justice programs. Access to
19 Justice is, as you all know, the Bar's award winning
20 program to enhance the network of civil legal services
21 providers for poor people and to promote lawyers'
22 fulfillment of the voluntary standards of pro bono
23 contributions.

24 Our award winning Open Justice program rising
25 from the work of two Supreme Court task forces has

1 sought to foster a justice system that is free of bias
2 in the administration of justice and which enhances or
3 embraces the tremendous diversity in our great state.
4 To date we have pursued these efforts through
5 committees that have operated outside of the Board of
6 Commissioners and this Representative Assembly, often
7 with inadequate communication and inadequate support.

8 After careful consideration of the needs of
9 these programs, we decided to add them to the
10 responsibilities of the Board of Commissioners,
11 working with additional volunteers on relevant
12 subcommittees in order to ensure that we are more
13 effective in achieving our goals of an open and
14 unbiased justice system which provides access to the
15 neediest citizens in the state of Michigan.

16 I have gone through a lot of new programs,
17 and I haven't exhausted the list of all of the
18 innovations in the State Bar this year, but I wanted
19 to highlight those that are critically important to
20 the advancement of the strategic plan.

21 Again, I want to thank all of the lawyers who
22 volunteered this year to help the State Bar pursue its
23 mission and especially those of you here in the
24 Representative Assembly. You are the epitomy of
25 professionalism. Thanks to all of you, those who are

1 participating in affinity bars, sections, and
2 committees. As I traveled around the state, these
3 groups received me very warmly, they challenged me to
4 think about many important issues facing our justice
5 system and our society. I will always appreciate
6 having these experiences, touching these lawyers,
7 talking to them, and for all of that I am eternally
8 grateful.

9 I am deeply indebted to the members of the
10 Executive Committee of the Bar. We have much to
11 celebrate with regard to our accomplishments this
12 year, but we who endured many, many very long
13 discussions of difficult issues know, as someone once
14 said, that the perfect can be the enemy of the good.
15 We also know that even excellent is rarely pleasing to
16 all.

17 Throughout the year we were all grateful for
18 the strategic plan because when we were in doubt it
19 provided a beacon of light to guide us as we sought to
20 make wise decisions.

21 I want to thank you again for your service
22 and for giving me this time, and I will be back later
23 to answer any questions that you have about the
24 functions of the Bar this year or matters going
25 forward. Thank you very much.

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1 (Applause.)

2 CHAIRPERSON ROMBACH: Thank you very much,
3 Reggie.

4 Our next victim is going to be the
5 President-Elect, who will be sworn in over lunch, I
6 believe, and we will all be in attendance at that
7 ceremony, I think. That's the eminent Scott
8 Brinkmeyer from the 17th circuit.

9 PRESIDENT-ELECT BRINKMEYER: You know, I
10 thought I kept Reg out late enough last night that he
11 wouldn't have time to write a speech that covered
12 every single point that I had to make. So I am going
13 to be very brief, and I figure if I get out of here
14 quick I won't be a victim.

15 Let me just make a couple of points. First
16 of all, I want to echo what Tom and Reg said to one
17 another, and this is not just a good old buddies back
18 slapping club here, but both of them have done truly
19 exemplary jobs for you, for us, for the lawyers of
20 this state in the work that they have done over the
21 past year. Reg is as fine a leader of the Bar as I
22 have known, and I have known quite a few, and Tom is
23 as fine a chair of the Assembly as I have known, and I
24 have known a few and had the pleasure myself of
25 serving in that position. It's always a great

1 pleasure to be back here with this body.

2 I also want to extend to you my
3 congratulations for the fine work that you have done
4 over the past year. See Ed Haroutunian here. He and
5 many others of you worked so hard on the dues
6 proposal. I really, really admire the effort, the
7 hours, the time that you put into it, and I will talk
8 a little bit more about that in a couple of minutes.

9 One thing that I would like to talk just a
10 little bit more about, and Reg didn't go into detail,
11 thank goodness, but I wanted to kick this year off
12 with a bang, and we are going to do it. You are going
13 to see a little bit more about it today, this morning
14 I believe, but we have a new member benefit called the
15 Public Policy Resource Center, and this is a really
16 cool tool. If you haven't seen it yet, stick around.

17 It is an interactive site that you can access
18 at your desk, and you will have immediate access to
19 current and proposed legislation, court rules, and
20 other administrative proposals that will be organized
21 by practice area. It will allow you to access this
22 information in easy fashion. It will give you
23 background information on all of the legislators in
24 the state. It will give you biographical information.
25 It will give you the people who are supporting these

1 bills, and, interestingly, it's also going to give you
2 the ability to actually communicate with them online.

3 If you have commentary, if your sections,
4 your committees, your groups want to know more about
5 it, you are going to be able to communicate and
6 express your thoughts and ask questions online. I
7 think it's going to be a fascinating and a fabulous
8 benefit for you, and we are going to unfold it today.
9 It's pretty much already up, it's being refined, but
10 you will be able to go back home, and I will give you
11 the site, and tonight or tomorrow you can get right in
12 and start having fun.

13 In the past year I have chaired the Public
14 Policy Committee. As you may know, that committee
15 reviews legislation and court rules for you. We try
16 to sift through the thousands of bills, the many court
17 proposals and other matters that may be of interest to
18 lawyers. We meet a number of times a year at the same
19 time as the board meetings, and we try to have those
20 analyzed by committee members and to make proposals
21 that we feel are appropriate for lawyers and are
22 within the goals and objectives of our strategic plan
23 and which may be permitted by the Keller decision and
24 also by Supreme Court order 8093-5.

25 We have made certain amendments in our bylaws

1 and in our internal operating procedures this year
2 that I expect and hope, because we worked very hard on
3 this, will provide greater flexibility to our lawyers,
4 particularly through sections, to deal with
5 legislation on their own, so we will hopefully
6 minimize, if not eliminate, conflicts that have arisen
7 in the past between positions taken by the Bar and
8 positions taken by sections.

9 One requirement that I expect will pass is a
10 proposal to change those bylaws, and that will be that
11 from this point forward there is not going to be much
12 question that sections and other entities of the State
13 Bar can make presentations on proposals to legislators
14 or courts will have to further identify appropriately
15 who it is they represent and how those proposals were
16 reached.

17 But what we are going to do is further refine
18 our process to make certain that what we work on in
19 the Bar is within the confines of the plan and it's
20 something that we can speak to and that that hopefully
21 will then free it up that the sections will be able to
22 go after a lot more material and will be able to take
23 positions as they can and are not encumbered by Keller
24 and 8093-5.

25 You will be paying more this year in dues,

1 but that, of course, was to be expected, because this
2 body approved, almost unanimously, not quite, but
3 almost unanimously, a dues increase and other
4 proposals that went to the Supreme Court.

5 As you by now should know, the Supreme Court
6 granted most but not all of what you asked for. And
7 you recall we went around the state and we sought
8 input from lawyers all over the state, and there was
9 nary a whimper from any region of this state about the
10 dues increase that you have proposed for \$40 and the
11 CPI factor. I think of the four hearings we had less
12 than ten people who were not members of this body or
13 officers of the Bar show up at those hearings, and to
14 me what that meant was people understood that, just
15 like anything else that you pay for today or are a
16 member of today, you can't find almost anything that
17 hasn't gone up in ten years, and the number that you
18 came up with, if you had applied a CPI factor to the
19 dues in 1993, the time of the last increase, you would
20 have ended up about where that proposal was.

21 Now, I don't want to pull any punches with
22 you. We are not done in my estimation. We are duty
23 bound, because this body and the Board of
24 Commissioners unanimously approved the strategic plan,
25 and, as you all should know, when our staff formulated

1 the cost estimates that are necessary to fully
2 implement that plan that \$40 that they came up with
3 was the number. There was no fat in that number. We
4 didn't ask for 40 looking for 20 or looking for 30 or
5 35. We knew, we talked about it, admittedly, we
6 talked about how we should go through, but your
7 executive director, a man of high integrity said, We
8 are going straight up, we are going to tell it like it
9 is, we are going to give them what we need.

10 We did not get that and, therefore, we have
11 only a couple of options. Because we, as your
12 officers, are duty bound to see to the implementation
13 of that strategic plan as you have approved it, we
14 must go back to the Supreme Court and ask them for the
15 rest of the money. They didn't give us that \$40, they
16 only gave us 20, and they didn't give us that CPI.

17 The CPI factor is very critical for a couple
18 of reasons. Number one, that will level things out in
19 the future so that hopefully we would never have to go
20 back to the Supreme Court. If inflation stays low,
21 there would be no increase. If inflation goes up,
22 then there would be an increase.

23 The second factor is that every time we do
24 this, the enormous amounts of time that are involved
25 on the part of your staff, countless hours in

1 formulating figures and cost estimates in trying to
2 project what it's going to take, could be devoted to
3 other better things, in my estimation, than going back
4 every couple of years or three or four and trying to
5 say, well, okay, here we want to come back again, we
6 go through the Assembly again and ask for another
7 increase.

8 So we hope to go back to them this year, and
9 we hope that they will listen to what we ask for,
10 because if they don't, we'll have to go back in years
11 to come, and another problem with that is this, if the
12 further out we go, that number will no longer remain
13 \$20. You know, you go out a couple years, it's going
14 to be 25. Go out three or four years, it may be 35 or
15 40.

16 If you can get those two elements, if they
17 will listen to us, and we appreciate that the reason
18 they gave, the economic marketplace of today warranted
19 caution, I understand that, but fortunately it looks
20 like the economic marketplace is at least resurging
21 somewhat, and I expect it to continue, I certainly
22 hope it will continue, and you approved it. The
23 lawyers of this state approved it, and we know we need
24 it, so we will be going back.

25 I am not going to go over all the programs

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1 that Reg just mentioned. You are hearing some of the
2 things on your agenda today that we have been dealing
3 with. You have a very important issue for our
4 appellate lawyers to deal with today.

5 All I can say is I am excited about this next
6 year. There are going to be a lot of challenges. I
7 expect the Assembly to be a big part of that. I want
8 to thank you, I want to thank all of your officers --
9 Tom, Dan, and Elizabeth -- for all the fine work that
10 they and you have done. I look forward to working
11 with all of you in the forthcoming year. Thank you.

12 (Applause.)

13 CHAIRPERSON ROMBACH: I guess I have a few
14 words to say about today's undertaking. Over the last
15 year we have taken on some of the central issues of
16 our profession. We have been focusing on the essence
17 of self government and how do we pay for it, what are
18 our ethical standards, and how do we enforce them?

19 As far as the first question about how do we
20 pay for self governance, we passed a resolution
21 requesting a \$40 increase in dues, amongst other
22 items, and we have also said that we wanted to move
23 the dues exemption to the age of 75. Obviously I was
24 very proud of the Assembly. I think it was one of our
25 best moments, and we took a lot of time and effort in

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1 reaching those conclusions, and I was very proud to
2 forward and advocate our position in front of the
3 Michigan Supreme Court in one of their administrative
4 hearings in June, as did Mr. Turner on our behalf, as
5 well did Mr. Berry.

6 Fortunately, I skated through with few
7 questions or none at all, and so did Reggie. However,
8 Mr. Berry took the brunt of the criticism for this
9 dues proposal. Perhaps they thought he was the
10 brighter component of the crew and more likely to be
11 able to answer the questions.

12 As you know, the Michigan Supreme Court, as
13 Scott highlighted, had come back with a \$20 increase
14 in the dues and had moved our dues exemption actually
15 to the age of 50 years of service, so that was
16 configured a little bit differently than we had
17 anticipated. Although they very patiently listened to
18 our position, they have always determined to be the
19 keepers of the moral compass and the ethical flame,
20 and they took into consideration our feelings and they
21 came forward with that conclusion.

22 Obviously I think that the advocacy that we
23 waged is not over. I think that issue will continue
24 to be in front of the Assembly and our leadership, and
25 I am quite confident that we will continue to make the

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1 Supreme Court apprised of our feelings.

2 Secondly, we try to encounter what are
3 ethical standards, and, as we all know, we are bound by
4 the Michigan Rules of Professional Conduct. Those
5 were last passed in 1988 after an exhaustive five-year
6 process, that the State Bar and the Representative
7 Assembly were involved in each and every detail.

8 However, this time around we are facing our
9 moral compass on the ABA 2000 report. Obviously by
10 the year 2003 we figured we would get around to it,
11 and based on their conclusions we are trying to move
12 toward a more unified Bar presentation throughout the
13 country, and that signal has been sent to us that
14 that's the nomenclature that the Supreme Court is
15 going to use in its drafting of these rules.

16 So I think it's every bit as consistent that
17 we move forward in the program that they have
18 outlined, and to that effect Mr. Levy and Ms. Jamieson
19 have drafted a proposal that's before you today that
20 would allow that approach and would move forward on
21 that topic. Additionally, and I believe there is an
22 amended copy of that in front of you, that will be
23 discussed later on this evening, and hopefully it
24 doesn't go quite that late.

25 But the Supreme Court now has sent a very

1 clear signal to us, and we should be listening, that
2 they want our input essentially in September. We
3 looked at the sheer volume of the materials in front
4 of us and felt that there was no way that we were
5 going to properly handle those issues here today, and,
6 therefore, instead of looking to the debate,
7 deliberation, decision making at this meeting, we said
8 we are going to focus our discussion today and then
9 have a highly unusual special meeting that we have
10 been able to come up with a bare bones budget for
11 which will be held at the Thomas M. Cooley Law School
12 on November 14th.

13 Now, that's a Friday, so please calendar that
14 appropriately. We found that when we call special
15 meetings actually Fridays are as good as Saturday for
16 people planning on short notice and that Cooley has
17 offered their facilities for free, so that was an
18 excellent price, and we were allowed to move into
19 perhaps even a better lunch than what we have
20 encountered in the past at our meetings in the
21 Marriott. So we are going to see how that goes. It's
22 a new and exciting adventure for us.

23 But when we went back to the court, actually
24 John and Reggie and Scott, and said, look, the Assembly,
25 I can't turn on a dime here, we would like more time,

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1 they graciously extended our deadline until November.
2 Actually I think they were talking about November 1st,
3 and as you can see we are talking about November 14th.
4 So I hope that doesn't make a huge difference in their
5 minds.

6 What we need to do is make a decision here,
7 focus our debate today and make that decision in
8 November. I am convinced that further adjournments
9 are going to be impossible to this. To that effect,
10 in the interim period I have convened some of our
11 leadership and decision making committees, namely the
12 Special Issues Committee and its chair, Allyn Kantor,
13 who we had so ably relied on for the dues proposal.
14 Allyn is graduating today and moving on to the Board
15 of Commissioners representing his circuit, and also
16 Ed Haroutunian's Hearing Committee, we brought them
17 in. We didn't require them to go around the state
18 sampling opinions. It was to focus the debate this
19 time.

20 So they had a share of this decision-making
21 process, as well as all the committee chairs, and they
22 have come up with a decision making model that's
23 before you today. It's the best we could do under the
24 circumstances in order to meet the drop dead date that
25 is quickly approaching. And this is going to not only

1 necessitate a special meeting for us, but it's also
2 going to cause us to have an immediate amount and
3 commensurate amount of committee work between now and
4 November.

5 We are fulfilling our obligation in doing
6 this to represent our colleagues as the final
7 policy-making body of the State Bar of Michigan, and
8 if we fail to act, then we are not upholding our
9 obligation there. We should focus our attention on
10 the big picture items that we can have some input,
11 that the court will listen to us, and rather than have
12 the minutia debated here, we should focus on trying to
13 capture their attention with our best arguments, and I
14 think only through that approach that we have been
15 able to capture and elicit the court's decision making
16 in our favor.

17 If the RA members today have a disagreement
18 on what the Ethics Committee is going to propose this
19 afternoon in our discussion, then I would ask please
20 that you propose some type of alternatives so that we
21 can have our committees and our leadership and the
22 bright lights amongst us and those people who are
23 willing to contribute their time without compensation,
24 that they can look at these alternatives and consider
25 them and then bring them back to us in November.

1 Also please, if you could, be judicious in
2 selecting the type of topics that we are going to
3 bring on for discussion. As you can see in the
4 proposal, a number of those have been outlined in
5 which we have already received written comments from
6 various sections and committees, and we basically
7 said, rather than belabor the point today and have
8 them all wage their battles for our hearts and our
9 attention, that we pass those through to November.

10 Then there is a list in the middle that is
11 essentially what we considered on the bubble. If the
12 Representative Assembly members thought that these
13 were particularly vital to speak to, then we would do
14 that in November.

15 And then we have a third list of items that
16 so far no one has voiced an objection to, and we felt
17 that, although these topics are vitally important to
18 the profession, at this point we don't have the time
19 nor the resources to deal forcefully and prudently
20 with those topics and that we are asking that those be
21 passed forward.

22 I think if we are judicious in our efforts
23 that we can, indeed, have a direct impact on the
24 Michigan Supreme Court. They are going to be drafting
25 these rules, and unless we are at the table with our

1 decision, then they are not going to be able to take
2 that into consideration and perhaps we are facing a
3 fait accompli promoted to the public, and we might
4 have some input to be able to change that, but if you
5 look at the history of the dues proposal, the history
6 of the court's internal decision making, the history
7 of their acting on the grievance matters which we have
8 referred to special issues and instead got distracted
9 with the dues proposal and did nothing, the court
10 said, well, look, we gave you a deadline and you
11 didn't meet it, and we are going to act anyway.

12 In order to have our brief properly prepared,
13 we need to make sure we act today judiciously to
14 narrow the debate, to focus our issues in November and
15 make a final decision in November. I was very proud
16 of this body being able to do that with regards to the
17 dues. Otherwise, if we decide to debate everything,
18 then we will end up deciding nothing.

19 Thirdly, we need to focus on how we enforce
20 our ethical standards. This wasn't really on our
21 radar screen, as you can tell, but before you will
22 have some discussion today, and I know Tom Cranmer
23 from the Professional Standards Committee of the Board
24 of Commissioners is going to be here to outline this
25 further and to have us consider the merits in

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1 November, but that's a very important document that's
2 going to come forward. Those are the proposed
3 standards for lawyers sanctions, and, as you will
4 probably hear more about those, basically that's the
5 teeth of the ethical enforcement. And, if we say we
6 do the Michigan Rules of Professional Conduct and then
7 we don't look at how those are enforced, whether they
8 be by some type of private censor or public reprimand
9 or suspension or revocation of a license, those are
10 all vitally important topics to us and we need to not
11 lose sight that we have to apportion some of our
12 attention to those as well.

13 So I hate to lump that all into the November
14 docket; however, the Supreme Court has also made it
15 very clear that they are seriously considering these
16 standards at this juncture, and at the same time they
17 are going to be deciding the Michigan Rules of
18 Professional Conduct and their draft to go forward too
19 for public comment. They are also going to be
20 considering these.

21 So I know it's a heavy charge, but I am sure
22 with the hours of time and attention we give it in
23 November that this body would do an exemplary job of
24 that consideration, and I will look forward to going
25 back to my place as a back bencher in the 16th circuit

1 to help in that decision-making process.

2 So at this juncture I would like to turn to
3 our next item and thank you very much for your
4 attention. I see only half of the body falling asleep
5 actually during that.

6 And the next item that I would like to
7 consider is the professional standards report and the
8 eminent Thomas Cranmer is here today. I would like to
9 note, he is not going to mention this, but he has been
10 in a prolonged jury trial in the Eastern District of
11 Federal Court, and the judge had very kindly allowed
12 him to be released. He couldn't come to any of the
13 meetings yesterday, but in order just to do his
14 presentation, so he has had several moments to prepare
15 this, but fortunately he is a very knowledgeable guy
16 and somebody that can make a great public
17 presentation, as people on Channel 7 viewers in
18 Detroit see at noon on Fridays, so with no further
19 ado, it's Mr. Cranmer's time at the podium. Tom.

20 MR. CRANMER: Well, despite that flowery
21 introduction, my remarks are going to be very brief,
22 but I do want to say, as I am sure you all know, that
23 in the issue and in the area of professional standards
24 it's been not only a very interesting year for us on
25 the Board of Commissioners as far as the Professional

1 Standards Committee is concerned, but certainly it's
2 been a very interesting issue for all lawyers, I think
3 particularly for all of us here in the Representative
4 Assembly.

5 I don't think it's an overstatement to say
6 that the issues that you are going to be wrestling
7 with today and in the meeting in November that Tom
8 alluded to are certainly some of the most important
9 issues that lawyers are facing and I think perhaps
10 some of the most significant issues that we in our
11 professional lifetime will wrestle with from the area
12 of professional standards.

13 I have had the pleasure in the past of
14 serving as a member of this body of the Representative
15 Assembly, and those of you who have been around long
16 enough I think know, and it's not an overstatement to
17 say that in years gone by one of the issues that we
18 wrestled with at the Representative Assembly was
19 tackling issues that were meaty enough and weighty
20 enough really to warrant our time.

21 I don't think that there is anything more
22 significant or weighty that we can wrestle with now
23 than the issue of professional standards, and what we
24 have coming up, interestingly enough, is a very
25 interesting intersection, probably more by coincidence

1 than design.

2 As a result of the ABA's prolonged effort in
3 its Ethics 2000 analysis, we are now in the process of
4 reviewing the Michigan Rules of Professional Conduct.
5 At the same time, as many if not all of you know, the
6 Michigan Supreme Court has published for comment rules
7 concerning attorney discipline and the imposition of
8 sanctions with regard to a violation of the Rules of
9 Professional Conduct.

10 One of the things that we have worked on
11 very, very hard over the past couple of years, both at
12 this level and at the Board of Commissioner's level
13 and particularly at the staff level, is to improve our
14 relationship with the Michigan Supreme Court, the
15 lawyers and the members of the Supreme Court.

16 Again, I don't think it comes as any surprise
17 to anyone here that in years gone by we did not have a
18 very good relationship with the Supreme Court, and
19 that relationship was in part, I think, characterized
20 by the fact that they didn't listen very much to what
21 we had to say, in part I think because they didn't
22 really respect what we had to say.

23 I think through a lot of hard work and effort
24 through the lawyers here and through the staff that
25 attitude has started to change, but I think in this

1 particular area, the area of professional standards,
2 the court, as we have gotten the signals, is very
3 interested in what we have to say as lawyers.

4 So the one message that I have for you and
5 for us today is that as you debate these issues today
6 and as you debate the issues in November, I hope we
7 all keep in mind the very important opportunity we
8 have to communicate to the court and to a court I
9 think that's receptive to listening, and in the final
10 analysis what I hope we do is I hope we give them a
11 very careful and very thoughtful and very analytical
12 response to the issues of professional standards, both
13 as they relate to professional conduct and the
14 potential sanctions that are imposed on lawyers who
15 violate those rules.

16 We have an opportunity, I think we'll have
17 some input, and I hope we just take full advantage of
18 that time. Thank you.

19 (Applause.)

20 CHAIRPERSON ROMBACH: Thank you very much,
21 Tom.

22 Next we have our public statements policy and
23 Public Policy Resource Center report, and this is an
24 interactive effort. I know that Janet and Nancy had
25 put a lot of time into this, and this is the program

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1 that Scott had highlighted earlier so that you can
2 find out how to use your web resources to communicate
3 directly and perhaps even respectfully to those
4 members that represent us from Lansing. Janet.

5 This is our general counsel and also the
6 former general counsel of the Michigan Supreme Court,
7 Janet Welch.

8 MS. WELCH: Good morning. I am very pleased
9 to be able to present this to you. The only thing
10 that would make me happier would be if I could be
11 sitting down there with Nancy making the presentation,
12 because Nancy Brown has been a wonderful working
13 partner in the creation of this new resource, and the
14 symbolism would be perfect if I could be shoulder to
15 shoulder with her down there.

16 What you are about to see is two very short
17 presentations. The first one is a presentation that
18 we put together for sections and committees explaining
19 to them the changes that we are making, that we made
20 this year in the bylaws and in the procedures for
21 sections and committees to be making recommendations
22 to the State Bar on positions. And then the second
23 one unveils graphically the Public Policy Resource
24 Center.

25 This was designed to answer the timeless

1 question whether 35,000 lawyers can speak with one
2 voice. That's certainly a question that you grapple
3 with all the time.

4 We have over the course of the last decade
5 really been dealing with a number of old problems.
6 Confusion about who speaks for the Bar, dissent within
7 the organization about how to voice public policy
8 positions, resentment when the Bar goes in one
9 direction and sections want to go in a different
10 direction or a section wants to go in a different
11 direction.

12 Entropy I guess refers to the fact that we
13 had provisions in our bylaws that, frankly, were being
14 ignored and as a result we have had some missed
15 opportunities in terms of our public policy advocacy.

16 Let me say that the State Bar as a whole, I
17 think, has had a wonderful reputation for public
18 advocacy and wonderful effectiveness. The environment
19 in which we have been working has changed, and I think
20 the changes that you are going to be seeing on the
21 screen today is directly responsive to those changes,
22 and the major changes in the last ten years, of course,
23 have been Keller, technology, different way in which
24 we can disseminate information and in which the
25 decision makers receive information and, finally, term

1 limits.

2 Some specific problems that we have been
3 dealing with are the old problem of having to comply
4 with the Supreme Court rule that requires us to
5 publish in the Bar Journal our intent to take a
6 position before we can take a position, and, as you
7 well know, many public policy issues move much too
8 quickly for us to be responsive if we have to comply
9 with that requirement.

10 Another old problem that we have been dealing
11 with that we will always deal with as long as we have
12 Keller is that we have sections that actually have
13 more power than the Bar as a whole has to deal with
14 public policy issues.

15 This is the administrative order that
16 restricts the State Bar to these categories, these
17 Keller defined categories, whereas our sections, of
18 course, are free to advocate, because they collect
19 voluntary member dues, on anything within their own
20 jurisdiction.

21 This is the citation to Keller which defines
22 what our restrictions are, and I just wanted to point
23 out one of the ambiguities that we have to face every
24 day and decide what it is that the Bar can deal with,
25 and that is, as the Supreme Court has acknowledged,

1 the U.S. Supreme Court has acknowledged, that the line
2 between permissible and impermissible dues financed
3 activities is not always easy to discern. So our
4 bylaws have to help us manage that ambiguity, and we
5 have to have a process that allows that to happen.

6 Finally, a recurring problem that we have is
7 that we have sections that, frankly, have different
8 opinions about how public policy should be handled and
9 which direction we should go on certain issues.

10 And, finally, we have State Bar committees
11 that come to conclusions after a lot of hard work and
12 would like to just go out and advocate those positions
13 and bypass having to convince the Bar first that their
14 ideas are the way we should go.

15 This is how we have -- one more problem.
16 Finally, we have had in our bylaws, until this year,
17 no requirement that the State Bar affirmatively look
18 at what sections and committees come up with in terms
19 of their recommendations. The way we have -- and
20 the result, of course, is that there has been a great
21 deal of confusion outside of the Bar about who speaks
22 for the Bar.

23 That slide actually is right before the
24 French revolution. I think the steps we are taking
25 right now will prevent the fate of the aristocracy.

1 The old ways that we dealt with these
2 problems are the following: Our bylaws just flat out
3 said to sections and committees, you will do what we
4 say, there will be no dissent. We prohibited sections
5 from adopting any positions adverse to State Bar
6 positions. And there is the old bylaw article that
7 did that, and, frankly, in a lot of cases sections
8 pretended that that provision didn't exist.

9 The new solutions which are now in place are
10 the following: We are using technology to inform
11 members and sections and the Bar about public policy
12 issues and to exchange information about
13 recommendations and position statements.

14 We have asked the Supreme Court to amend the
15 order to, their administrative order on Keller to
16 allow us to use the web to provide notice rather than
17 publishing in the Bar Journal, and they have printed,
18 published for comment our proposed modifications, and
19 we have reason to believe that they are looking on
20 those changes favorably.

21 We have made these changes in the bylaws. We
22 have placed more responsibility on the Bar itself to
23 communicate and act promptly in response to sections'
24 and committees' recommendations. We have made clear
25 the authority that sections have, including the

1 possibility that they can get permission from the Bar
2 to take opposing positions. We are coordinating all
3 the activity, public policy activity, of the Bar
4 through the use of technology, and, finally, the bylaws
5 now make clear distinctions between what sections can
6 do and what committees can do, because committees are
7 Keller restricted and sections are not, and that was
8 not, that distinction was not made clear in the bylaws
9 before.

10 This is a sample of how the bylaws have been
11 changed. Those are the new responsibilities that have
12 been added to the Bar. These are the changes that
13 reflect the clearer authority for sections, including
14 the ability of the Bar as a whole to expressly
15 authorize the sections to continue to advocate
16 positions contrary to the position of the Bar as a
17 whole.

18 And, finally, we have in our bylaws provided
19 for electronic notice and for hyperlinked text to make
20 the dissemination of information throughout the
21 organization and the membership more expeditious.

22 Finally, beyond the bylaws themselves is
23 making all of this work, and what we are hoping, what
24 we are looking for right now as our primary tool to
25 make it work is the new Public Policy Resource Center,

1 and now we have to switch to another presentation to
2 take you to the actual Public Policy Resource Center.

3 What you are about to see, if you find it so
4 much fun that you want to do it over and over again,
5 is on the website. This is our Public Policy Resource
6 Center. This is what it looks like when you click on
7 the website. This is the new page. It contains links
8 to legislation and court rules, a state legislative
9 directory, links of interest, local government
10 directory, State Bar positions, and a sign-up form for
11 receiving our new weekly newsletter on public policy.
12 We will continue to add new features to this over the
13 coming months, and some of those features will be
14 things that maybe you have recommended to us. We are
15 already getting feedback about things people would
16 like to see added to it.

17 If you want to view legislation for sort of
18 by practice area, you click on the practice area that
19 you are interested in. We have now more than 1600
20 bills characterized by practice area. It took us
21 about four months to do that.

22 One reason is that there is basically no bill
23 introduced in the Legislature that some lawyer is not
24 apt to be interested in because of his or her practice
25 area.

1 This is the end of our listings. If you want
2 to view a description of a bill, you click on that
3 bill, and it takes you to the description of the bill,
4 and if a section or the State Bar takes a position, it
5 will tell you what that has been. That's the official
6 Michigan Legislature description. And, in addition to
7 this, the e-journal will summarize new bills and court
8 rules daily under specific practice area headings.

9 We will also be sending out our weekly
10 newsletter, and this is the first edition, which came
11 out on Monday. There is a summary of all the bills
12 and court rules that have been posted that week. The
13 first issue went out to 438 subscribers, and that was
14 off a one-week sign-up period. If you would like to
15 subscribe to it, you can be added to the mailing list
16 either by signing up on the site or through a link in
17 the e-journal.

18 In addition, for action items for public
19 policy issues that are extremely important to the Bar
20 that we have identified of high interest within our
21 strategic plan, we have the ability to do action
22 alerts. They will be posted in the e-journal. They
23 will go out in the weekly e-mail newsletter and then
24 will be posted on the website.

25 Another new feature is a legislative

1 directory that allows searches by committee,
2 leadership, house and senate member name. To search,
3 for example on the Judiciary Committee, you click on
4 the committee. It takes you to a list of the
5 committee members. You can click on a committee
6 member and get additional information about the
7 committee member. And if you want to send a message
8 to the committee member, you can click on send
9 message. You can send the message directly from the
10 website or you can type your message and print it off
11 and mail it. The message will not indicate that it
12 comes from the State Bar. It will indicate that it
13 comes from the member.

14 And we also have local government directory
15 resources right on the site. You can browse for local
16 officials by city. In this case we have selected
17 Grand Rapids as a search. It lists all local
18 government officials with e-mail links, and we also
19 have the possibility of election information. Once
20 every two years this becomes a very interesting
21 feature. You can search by state and get the results,
22 winners and the parties of all the state races.

23 Finally, we have added on this site internet
24 forms so that State Bar sections and committees can
25 submit their recommendations in compliance with the

1 bylaws directly online, and their public policy
2 positions will be available to all of the members
3 online and for passing on to the Board of
4 Commissioners and to the Representative Assembly.

5 Finally, you can take this tour yourself on
6 the website, as can all members, and we have had
7 several hundred members already click on and take the
8 tour.

9 This is some of the feedback we have gotten,
10 and I have to tell you in the last few weeks when we
11 have been getting rather negative feedback on a
12 regular basis about the dues increases for inactive
13 members and senior members, this has been a real joy
14 to be getting these spontaneous positive feedback on
15 this site, and it really, it's very encouraging
16 because it's a lot easier to complain than to go out
17 of your way to say that you like something.

18 So we are very encouraged that this is a
19 resource that members as a whole will appreciate and
20 that will also be a wonderful tool for the
21 Representative Assembly to help you understand what it
22 is that members are thinking about public policy
23 issues and to help them be more informed about them.

24 MR. BERRY: If you don't mind, I would just
25 like to make two brief comments about this. The first

1 one is, your executive director, having the privilege
2 to work these two folks, Nancy Brown and Janet Welch,
3 one day they came into my office after they left their
4 offices piled up with papers and work and assignments
5 and projects and said, We've got an idea and we've got
6 an idea how we can add more work to ourselves during a
7 time period when we did not know whether we were going
8 to get a dues increase or not but something we really
9 felt was going to be an incredible project, and I
10 cannot tell you how proud I am of them. It would have
11 been most easy for them to say I have got enough to do
12 already and I am swimming with paperwork now. But I
13 personally in front of everyone here want to thank
14 them and their staff for doing this. This is an
15 incredible resource.

16 The second point I want to make is I hope it
17 didn't pass over you, this is a true sign of your new
18 State Bar in this sense. This is a major change from
19 the good old days when the Bar was from the top down.
20 You have here the Bar saying that when it's important
21 and within Keller and fundamental to our core
22 functions the Bar is going to remain strong and
23 vigilant in legislation and areas of public policy,
24 but, number two, we recognize that our sections and our
25 members have differing opinions, and they are going to

1 have the opportunities to be engaged in those
2 opinions, and, third, as individual lawyers, we are
3 going to give you and empower you through the Bar to
4 be able to deal with these issues.

5 So those two points I think are a tremendous
6 reflection of where we are coming, and, again, I want
7 to thank the staff members that had a part in that.
8 Thank you.

9 (Applause.)

10 CHAIRPERSON ROMBACH: In light of the time, I
11 am going to have to make some executive decisions, and
12 I hope that somebody would move. I am going to
13 actually defer the Representative Assembly liaison
14 reports from Tom Evans, David Perkins, and Nancy Diehl
15 to perhaps after lunch, because I have to keep on
16 track here. So if Nancy, David, or Tom are here right
17 now, and I think you all are, would one of you make a
18 motion just to come back after lunch.

19 MS. DIEHL: So moved.

20 MR. PERKINS: Support.

21 CHAIRPERSON ROMBACH: Okay, Nancy, seconded
22 by David, and, again, I appreciate your patience here.
23 That's been moved and seconded. Is there any
24 discussion?

25 Hearing none, we will move that for a vote.

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1 All in favor of deferring that item until after lunch,
2 please indicate by saying yes.

3 Any opposed say no.

4 Thank you.

5 We will move next to the Nominating Committee
6 report and the confirmation of the recipients of the
7 2003 Michael Franck award.

8 I am actually going to give the presentation
9 instead of Chris Ninomiya. There was an unforeseen
10 circumstance that did not allow him to be present here
11 today. However, it's vitally important not only to
12 acknowledge Chris' efforts, as well as those other
13 members, the Nominating Committee that filled a number
14 of the seats here today and have other people now in
15 reserve that weren't able to be present that should
16 fill the Assembly by our November 14th meeting. We
17 just didn't want to hold those absences against them
18 on short notice, so there will be some additional
19 people to fill in the empty seats by then. So I would
20 really like to congratulate Chris. He is graduating
21 as well due to term limits, so he served his time
22 here.

23 But I would indicate to the Assembly that in
24 his absence I would acknowledge that the committee has
25 chosen two very illustrious members of the Bar to be

1 award recipients of the Michael Franck award for their
2 distinguished service.

3 First would be Justice Marilyn Kelly. I
4 think everyone knows her support to the Bar, her
5 service to the profession in the community dating all
6 the way to the 1970s where she was a state school
7 Board of Education member, her support now through
8 different Bar activities speaking on behalf of
9 sections. I know the Real Property Section. She also
10 gives a regular update for the Family Law Section, and
11 you could if you could have no better friend than
12 Justice Kelly. Also her leadership within the Open
13 Justice Committee, along with Judge Harold Hood.

14 And, secondly, Wallace Riley, and again it's
15 not in particular order except alphabetical.
16 Mr. Riley, of course, was our State Bar president, was
17 also an eminent leader of the American Bar
18 Association, one of Dennis Archer's predecessors, and
19 has acquitted himself both nationally, statewide, and
20 locally exceptionally well. He is currently president
21 of the Michigan Supreme Court Historical Society, has
22 been very active, a former leader of our foundation.

23 So on those bases the committee has chosen
24 those two leaders to gain our Michael Franck honor. I
25 would entertain a motion at this point to so award

1 those at lunch.

2 VOICE: So moved.

3 VOICE: Second.

4 CHAIRPERSON ROMBACH: Gardella and I hear a
5 second as well.

6 Is there any other discussion of these topics
7 to accept the Nominating Committee's recommendation?

8 Hearing none, we will propose that for a
9 vote. All in favor say yes.

10 Are there any detractors say no.

11 Hearing none, that passed unanimously.

12 I will next turn to John E. Berry, our
13 executive director, and James Horsch, our director of
14 finance and administration, and they will clue us into
15 what they have been able to do with our budget in
16 light of the Supreme Court actions. John.

17 MR. BERRY: I am listed at 15 minutes, but I
18 will try to be briefer than that knowing you have a
19 lot of very important decisions to make today. But
20 thanks to the action of this Representative Assembly
21 to help us get our dues increase as well as some
22 incredible work by the Board of Commissioners and
23 their leadership, the Finance Committee work through
24 Kim Cahill, who is here, and the leadership, we were
25 able to put together a budget which -- I would like to

1 reiterate what Scott Brinkmeyer said, which is we did
2 not get the full dues increase. That was a
3 significant difference in our ability to implement our
4 strategic plan.

5 We will not and cannot be able to completely
6 implement the strategic plan until we get full
7 implementation of both the additional \$20 and our cost
8 of living increases or inflationary increases. But
9 through the leadership of the Board of Commissioners
10 we are going to be able to provide new services to our
11 members and be able to go forth with our strategic
12 plan and balance out the ability to be able to do
13 these new services while at the same time being able
14 to provide, at least several years down the road
15 before we would have to have an additional dues
16 increase.

17 If we are able to get into the next slide, if
18 not -- there we go. Tremendous. I feel so much
19 better.

20 This is one of the, probably one of two key
21 slides. What are we going to do with the additional
22 money? Number one, research tools for attorneys. We
23 are working -- and you will hear briefly from Nancy
24 Diehl in a moment about a new and exciting possibility
25 of working with ICLE concerning a new research tool

1 for all of our attorneys, and we do have \$200,000 in
2 the budget for that.

3 Interestingly enough, I would like to let you
4 know that we have saved approximately \$300,000 on the
5 annual meeting. Some people may not like the fact
6 that it doesn't have quite as much pizzazz, but we are
7 getting work done, we are having an opportunity to
8 gather, and now we are able to take \$300,000 and
9 instead of servicing maybe 600 people at a meeting our
10 entire membership on a research tool.

11 We are also adding areas of staffing in the
12 area that you told us you were interested in, which is
13 professional standards and our membership services,
14 adding to our UPL and ethics effort, our lawyers and
15 judges assistance program and our membership services.

16 We are reinstating the UMLI program. For
17 those of you in the U.P. and those of you in Northern
18 Michigan, thank goodness, thank goodness, Scott and I
19 and Dan are getting ready to go to the U. P. in about
20 two weeks, and this is probably the best news any of
21 us have prior to that, and I look forward to Scott
22 being able to unveil this. And I will say that our
23 new president pushed very hard for this, and I agree
24 completely with that. And then the legal milestone
25 program will be continued. You see the total amount

1 of additions.

2 Budgeted revenues. If you are just
3 coming in, this just gives you a brief
4 understanding of where our money comes from.
5 Obviously, most of it is from our base dues and from
6 our increase, our dues increase, but we do bring in
7 money from other sources, programs and services, Bar
8 Journal, professional standards fees. Next up.

9 The actual spending of our money from our
10 dues increase. This, again, very concisely points it
11 out, where is it going? The two places you told us
12 you wanted it to go when you approved the strategic
13 plan, member services and our professional standards,
14 particularly in the definition of the practice of law
15 and UPL, we will be doing much more work, as well as
16 our ethics area so we can continue to do better in
17 that area. Next slide.

18 This is just an overall of the budget
19 expenses totally. We do have an \$8.7 million budget,
20 and you again see a division between our professional
21 standards side, which is our responsibility to the
22 public and our profession as a whole, and also our
23 responsibility to membership services, to our members.

24 You are seeing both the additional money
25 going to that, but you are also seeing things as you

1 saw from Nancy and Janet that even without additional
2 money resources real efforts to use vision and to try
3 to use the resources we have to increase our help to
4 our profession and to our members. Two more slides or
5 three more slides and we are done.

6 Surplus and deficit. You heard earlier in
7 the presentations by our leadership about the surplus
8 situation. If you were to recall back in '00 and '01,
9 in two years we were in the deficit of a million
10 dollars. Now, that is not unusual, frankly, in a time
11 period when you are at the end of a dues cycle, dues
12 increase. Inflation has caught up to you, additional
13 services have caught up to you, it's about time you
14 get a dues increase, but we weren't able to get a
15 dues increase when that occurred.

16 So we started to cut expenses, we started to
17 be able to work better with the resources we had, turn
18 it around in '01-'02 with an surplus, '02-'03 with a
19 surplus, and continuing to have a surplus in next
20 year's budget despite the fact that we did not get our
21 full increase in our dues and despite the fact that,
22 again, we weren't completely able to implement our
23 strategic plan, but we were able to go forward. I
24 think this is a great trend for us, and we are going
25 to continue to try to do that.

1 Fund balance. Just to give you an idea, we
2 are not only trying to keep a balanced budget like all
3 of us are within our own area, but we are trying to
4 keep our savings intact to make sure that on rainy
5 days, and this will indicate as well that we have what
6 is considered by most outside experts as a healthy
7 fund balance, and that fund balance we intend to keep
8 healthy to make absolutely sure in case all of a
9 sudden our investments start going the wrong direction
10 again.

11 I think we have one last slide. This is the
12 last slide in reference to dues increase for the
13 future. We will go forward, because it is our strong
14 belief that the strategic plan that you implemented,
15 our members worked with the implementing, and even
16 representatives from the Supreme Court during the
17 process of putting together what direction we should
18 go, we are going to be arguing very strongly that we
19 get the additional dues increase.

20 I want to point out in the Supreme Court
21 order the Supreme Court actually gave an endorsement
22 of our strategic plan, the direction we were going, as
23 well as our fiscal management. But if, let us say, we
24 don't get anything else and if we do just have the
25 additions that we have for this year that I described

1 in the first slide, then within about three years we
2 will start dipping deeply into our fund balance and
3 ultimately within about five years we would be at the
4 point where a fund balance that was up in the 50
5 percent rate would be down in the 20 percent rate,
6 which would be drastically too low.

7 So what we will do is be fiscally
8 responsible. As we go forward the next year or two we
9 will consistently look at how other factors are
10 affecting the fund balance, how far we can go forward.
11 Hopefully we won't have to be back in two or three
12 years, as Scott indicated, and have to go through the
13 whole process we wanted to go through before, and I
14 think we have a strong argument to be made.

15 I intend to be one of the realistic
16 optimists, and I believe we have much to be proud of.
17 We are much better off than we were before thanks to
18 this body, and we will continue to try to serve you.
19 So thank you very much for the presentation. I think
20 I was a little under the 15 minutes. Thank you.

21 (Applause.)

22 CHAIRPERSON ROMBACH: We all owe a tremendous
23 debt of gratitude to John for his stewardship, so I
24 would just like you to keep that in mind to be gentle
25 with the questions. At this point we have Mr. Turner,

1 Mr. Berry, and if we have a particularly easy question
2 I might chime in.

3 Traditionally we have always had the Assembly
4 be able to speak its mind at this juncture, and we are
5 going to try to continue that tradition.

6 Does anybody have any ideas they want to
7 share or accusations they would like to make at this
8 point.

9 PRESIDENT TURNER: Just keep in mind we are
10 standing between you and lunch.

11 CHAIRPERSON ROMBACH: Does anybody have any
12 comment? Okay. So far the information has fallen on
13 receptive ears. Thank you very much.

14 In fact, I know everybody will be available
15 the rest of the day.

16 PRESIDENT TURNER: Gets them every time.

17 CHAIRPERSON ROMBACH: And I didn't want you
18 to miss that rare opportunity to grill Mr. Turner or
19 Mr. Berry, and, of course, it's always open season on
20 the Representative Assembly chair, so I appreciate
21 that.

22 I would like to next turn to the
23 consideration of the proposal to amend Article IV
24 Section 4 of the bylaws. This is Mr. Larky's
25 initiative, and I know that Sheldon would like to

1 speak in that regards. Mr. Larky.

2 MR. LARKY: Mr. Chairman, Sheldon Larky,
3 6th circuit. I have under item number 12 a proposed
4 motion, and the motion is as printed, and I move for
5 the adoption by the Assembly, and I will provide the
6 reasons.

7 CHAIRPERSON ROMBACH: Is there a second to
8 Mr. Larky's initiative? Mr. Gillooly.

9 MR. GILLOOLY: So moved.

10 CHAIRPERSON ROMBACH: I made a tremendous tag
11 team with Mr. Larky so far this morning.

12 Now that it's been moved and seconded, is
13 there discussion on this topic?

14 MR. LARKY: May I indicate the reason I
15 brought this motion forward. Assume that in your
16 district that your district has three people that
17 could be elected as members of the Representative
18 Assembly and four or more people choose to run. If
19 those three members want -- if we have to elect three
20 people and there are four people or more that run, the
21 bylaws mandate that there must be one half, one plus
22 one half of the votes must be cast for people. In
23 other words, if there are three people running, pardon
24 me, three spots open, you must vote for two, you have
25 to vote for two, no ands, ifs or buts.

1 Assume for a moment that you know one of the
2 four candidates or more than one and you only want
3 that person to be voted upon. You don't want to vote
4 for any of the other people, you don't care for any of
5 the other people, you don't know any of the other
6 people, and you choose to vote what is commonly known
7 as plunking.

8 It is inherent in any form of election within
9 our state that we have the ability to plunk. We can
10 vote for those people and only those people we either
11 know, appreciate, back, whatever it is.

12 The State Bar rules as they currently exist
13 mandates that plunking is not permitted.

14 I am suggesting that we should have the
15 ability on behalf of our members, that they have the
16 ability to vote for whomever they choose and that
17 their ballot shall not be discarded because they
18 didn't vote for the minimum number of people. Thank
19 you.

20 CHAIRPERSON ROMBACH: Thank you, Mr. Larky.
21 Is there discussion on this topic?

22 We are going to go to Mr. Barton now.

23 MR. BARTON: Bruce Barton, 4th circuit. I
24 have been active in politics a great deal during my
25 lifetime, and Mr. Larky's scenario calls to mind what

1 can happen in the political arena. It happens often
2 that there are slates. In a situation where there are
3 four candidates, two will get together and three
4 candidates, or an election for two with three
5 candidates would be a better example.

6 Two of the three candidates get together, and
7 together they share their resources. They get, in our
8 situation, the list from the State Bar. They mail to
9 the Bar association, and two out of three gather their
10 resources and get themselves elected, and the one
11 person not on that slate may be the better candidate,
12 but he lacks the problem that the combination is going
13 to defeat him.

14 That's why in the political arena you can
15 plunk, and I don't see any reason why we can't here.

16 CHAIRPERSON ROMBACH: Thank you, Mr. Barton.
17 Is there other comments to be had on this topic? If
18 so, I need somebody to approach the microphone so I
19 know that they are interested. This is going to be
20 Matt Abel from the 3rd circuit.

21 MR. ABEL: Thank you, Mr. Chair, it saves me
22 the responsibility of identifying myself.

23 Considering that we are talking about voting,
24 I was wondering if Mr. Larky or any of the other
25 members had considered the concept of instant runoff

1 voting where you can vote your choices in a numerical
2 order. Your first choice, your second choice, your
3 third choice, et cetera, as far down as there are
4 actually candidates, and while you are not required to
5 vote all of the people, you could vote just your first
6 choice or your first, your second, your third, and the
7 way that it works in the counting is that the
8 candidate who receives the least number of votes is
9 eliminated, and those votes are then redistributed
10 according to the voter's second choice, and it
11 continues on until only the certain number that you
12 are seeking to elect are elected. That would solve
13 the same problem, I believe, that Mr. Larky is
14 addressing. Thank you.

15 CHAIRPERSON ROMBACH: Thank you, Mr. Abel.
16 Mr. Haroutunian.

17 MR. HAROUTUNIAN: Mr. Chairman, Ed
18 Haroutunian from the 6th judicial district.

19 I think Shel Larky's proposal is an extremely
20 good one. I think that it is long overdue here in the
21 Representative Assembly, and I would certainly
22 encourage our members to approve this amendment.

23 CHAIRPERSON ROMBACH: Thank you,
24 Mr. Haroutunian.

25 Is there anybody else that would like to

1 speak to this topic? Hearing none, seeing none, and,
2 Mr. Larky, did you want a final word?

3 MR. LARKY: No.

4 CHAIRPERSON ROMBACH: You are going to waive
5 closing, and we will move directly to a decision. At
6 this point we will move this for a vote.

7 All in favor, please indicate by saying yes.

8 Any opposed say no.

9 I believe the noes are hopelessly
10 overwhelmed, and that passes almost unanimously.

11 I am going to move back on course. I am
12 going to ask that Tom Evans, and I am sure these folks
13 can make these presentations yet this morning.

14 Is Tom Evans still here to speak toward the
15 Young Lawyer's Section update? Okay. I don't see him
16 here at this junction. I will move to our next
17 suspect, and that will be -- well, Mr. Perkins, is he
18 here?

19 CLERK JAMIESON: He is.

20 CHAIRPERSON ROMBACH: He is outside. I will
21 give him a moment. Ms. Diehl, the high octane, high
22 voltage leader from our Executive Committee will be
23 the next to energize our group.

24 MS. DIEHL: Thank you very much. It's really
25 been great being the chair of the Program and Services

1 Committee, because I get to bring you good news. You
2 see all the other folks always want to bring you bad
3 news, but I bring you good news.

4 You have heard about some of the great
5 services that are being offered, and I am really
6 impressed, and I am not one who understands much about
7 technology, but I sure love its results, and you have
8 told us that you want a research tool. Lawyers need
9 more help at their desk, and you want a research tool,
10 and over the last couple years we have been looking at
11 a number of opportunities from companies in terms of
12 what they can provide and at what cost.

13 Well, you are probably wondering why it took
14 us so long, but we have one of the best partners
15 around in our state, and that's ICLE. And ICLE has
16 been doing a lot, and they were moving towards the
17 same situation of giving more to their members.

18 So what we have been working on is a
19 partnership with ICLE to bring you a research tool.
20 And we are not quite there with the final details, but
21 I am going to tell you -- of course, I tend to be an
22 optimistic person anyways -- but we are going to be
23 there soon, and what we are going to bring to you is a
24 tool that you can go on and have at your fingertips --
25 let's see now, let me get this straight -- all

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1 published Michigan Court of Appeals cases, Michigan
2 Supreme Court cases back since 1942, orders from the
3 Supreme Court back to '83, unpublished cases from now
4 forward, Court Rules, Rules of Evidence, Rules of
5 Professional Conduct.

6 So for many of you who are just interested in
7 Michigan cases and law, you are going to have at your
8 fingertips the ability to get that information, and
9 it's going to be user friendly, and we are going to go
10 forward with that partnership and bring to you as part
11 of your dues -- right? We can't do it all, since the
12 Supreme Court didn't give us what we needed, but we
13 wanted to bring you something, and this is really
14 exciting.

15 I think it's amazing in terms of what we have
16 already with the e-journal, what you have with the new
17 Public Resource Center, and with the research tool
18 with your dues I think we can be real proud about what
19 the Bar has accomplished and look forward -- now, you
20 know I came last time about OfficeMax, right. How
21 many of you have called OfficeMax? Okay. Good, good,
22 good. I have heard a lot of reports, a lot of
23 reports, that in fact you are buying more supplies,
24 throwing out half used legal pads because you are
25 saving so much money. See, this is good.

1 That new Bar card you are going to get, some
2 of you got real excited, you thought you were going to
3 have a line of credit on it. There is no line of
4 credit on the Bar card, but the other good news about
5 that new Bar card is you probably don't know how much
6 we are paying for that. You know what, are you using
7 my new dues now to give me a better Bar card? I'll
8 live with the flimsy one. We are saving money on the
9 new Bar card. Better card, less money. Now we are
10 going to bring you a research tool you can use at your
11 desk.

12 All right. Got to get to lunch.

13 (Applause.)

14 CHAIRPERSON ROMBACH: As the result of an all
15 points bulletin we have located Mr. Perkins. I would
16 just tell you that he is actually one of our delegates
17 to the American Bar Association, so he is going to
18 give us a report on what all transpired in
19 San Francisco, and as former chair of the Young
20 Lawyers Section I know that he has been looking
21 forward to getting this promotion to the
22 Representative Assembly. Mr. Perkins.

23 MR. PERKINS: Good afternoon, everybody. I
24 am going to be very brief, because we do have to go to
25 lunch and keep this program moving.

1 Two things. First, I would like to say
2 Justice Kennedy gave the keynote opening at the
3 opening assembly for the annual meeting that was held
4 in San Francisco this past August. And the keynote
5 address was very moving. He reminded lawyers of their
6 importance in society and even encouraged lawyers to
7 look at things such as the mandatory sentencing
8 requirements that are in federal court and the
9 injustice and unfairness of the mandatory sentencing
10 requirements.

11 Also, he talked about keeping freedom alive
12 and the price that -- or the importance that the Bar
13 association plays. We as lawyers play an important
14 part in this.

15 One of the most historical events to have
16 occurred was Dennis Archer becoming the first
17 African-American president of an association where
18 previously people of color could not even belong.
19 Robert Grey will be the second person of color to be
20 president of this association.

21 I wish all of you could have been there.
22 Michigan was very well represented. It was a very
23 moving experience personally and professionally from
24 the standpoint that you had almost everyone going to
25 walk down into the well of the house with President

1 Archer, and it was a very moving experience, again
2 highlighting the importance, and we have talked about
3 it in other places, the importance of diversity.

4 And through President Archer's leadership,
5 diversity will continue to be discussed. I know
6 Robert Grey is also going to take up that issue.
7 President Archer is having a diversity summit in
8 Washington D.C. October 22nd to 23rd, and he is
9 inviting educators, corporate counsel, leaders of all
10 national minority bar associations, government lawyers
11 to come in and so everyone can talk about keeping the
12 pipeline filled, because the only way that we can have
13 a diverse profession is to make sure there is an
14 abundance of young talent that comes in and everyone
15 has an equal opportunity to advance in this profession
16 which most of us truly care about, and it's through a
17 diverse profession that the better good of society is
18 reached.

19 All right. The other thing I want to say is
20 that John Berry, he was in here somewhere, you need to
21 know and understand that we in Michigan have a jewel
22 in John Berry from the standpoint that he is
23 nationally respected. People throughout the country
24 recognize John Berry as a resource, a wealth of
25 information and just somebody that is going to do an

1 excellent job. There has been -- at no time did he
2 have a resolution that he was supporting that did not
3 get passed. The numerous resolutions that were passed
4 in the House of Delegates at this meeting, if you want
5 a specific list of each and every individual one, you
6 can contact me later.

7 Going back to the conference that's going to
8 be in October, space is limited, but please try to at
9 least send somebody if you can't go. You can contact
10 Rachel Patrick or Yolanda Simmons at the American Bar
11 Association, phone number is 312-988-5409, and the
12 next meeting is the mid-year meeting to be held in
13 San Antonio, Texas, February 4th through the 10th.
14 Remember Michigan February, might be snow, so
15 San Antonio might not be a bad place to be, and the
16 annual meeting will be in Atlanta, Georgia, and that
17 is, I believe, the 5th through the 10th of August. Be
18 nice and warm then. Thank you. Just enjoy.

19 (Applause.)

20 CHAIRPERSON ROMBACH: I have just a couple
21 announcements that we need to make, and then we will
22 release you for lunch, and if you could be back here
23 at 2:00. One of the reasons Mr. Knight's matter is up
24 is that's kind of to warm up our discussion this
25 afternoon.

1 First of all, the State Bar is preparing a
2 photo directory of Bar leadership, which includes each
3 and every member of the Representative Assembly. Last
4 time we put this together we had several blank spaces,
5 our State Bar logos that replaced your visages in the
6 manual, and what we are trying to do this time,
7 instead of having you all look so remarkably similar,
8 is that we are trying to get individual photos and
9 have those submitted to the Bar. And I know Nancy
10 Brown, who is here today running our audiovisual
11 department, has requested the photos from all of you.
12 Many of you have forwarded photos, but other folks
13 have not, and you can either do that by handing the
14 publicity shots that you carry around with you here
15 today either out of your purses or wallets, you can
16 hand them in. That's why I thought it would be a good
17 time to remind you of this, or you could perhaps
18 forward them through regular mail or even e-mail
19 attachment. So please do that.

20 Secondly, I would like to also acknowledge
21 Dan and Elizabeth for a moment. They need to show you
22 the amended proposal for the Michigan Rules of
23 Professional Conduct that there is going to be debated
24 yet this afternoon. Dan.

25 VICE CHAIRPERSON LEVY: Real simply, what you

1 have before you is the proposed rules as of last
2 night. We are trying to adopt some suggestions and
3 changes that have been coming in so that we make
4 clearer what it is that we are trying to do. The red
5 strike will be what is, in fact, introduced this
6 afternoon.

7 So just so that people know what we are
8 talking about, the big substantive change is that we
9 are not recommending the court adopt final positions.
10 We are clarifying that we are asking them to publish
11 these, that we are not closing the door on further
12 discussion at the end of the November meeting.

13 But if you want to copy it down now or when
14 you first come in, just so you have those changes when
15 we do debate it.

16 CHAIRPERSON ROMBACH: And right now Glenna
17 Peters has these. Our staff has been very active
18 throughout the course of the morning. These will be
19 on each and everyone's desktop when you return. If
20 you are anxious to see the text over lunch, they will
21 be upfront. I know Glenna will distribute them.

22 CLERK JAMIESON: Actually what we are asking
23 you to do is to take out that proposal right now, look
24 at the red line right now, and make the changes to
25 your copy, because after lunch the red line is not

1 going to be there anymore. It's going to be what we
2 are actually proposing. So this is your opportunity
3 to easily see the changes that we have made.

4 CHAIRPERSON ROMBACH: Thank you, Elizabeth.

5 So at this point, hearing no -- and, again, she
6 is talking about the one that is in, I believe the
7 packet, right, of materials, or the one that's in the
8 amendment version.

9 CLERK JAMIESON: Nancy, didn't it get
10 distributed to everybody?

11 MS. BROWN: No.

12 CHAIRPERSON ROMBACH: No, they are upfront.

13 CLERK JAMIESON: Well, then we will have to
14 do it first thing after lunch. Never mind.

15 CHAIRPERSON ROMBACH: Okay, never mind.

16 If there is nothing further to come in front
17 of the Assembly this morning, we will release everyone
18 to lunch. Have a good time. Listen carefully to the
19 presentations, and I know the Chief Justice is going
20 to give her state of the judiciary speech. Go forward
21 and do good deeds. I will see everyone back here at
22 2.

23 (At 11:59 a.m., lunch break taken.)

24 CHAIRPERSON ROMBACH: We will resume our
25 Assembly session. At this juncture I would like to

1 call Bill Knight. He is going to outline for us
2 consideration and report and recommendations of the
3 Assembly Review Committee. Bill is the chair, and he
4 will make his remarks.

5 MR. KNIGHT: Thanks, Tom. I want to try and
6 make this fairly quick today, and in your materials
7 there are three motions that I am going to present at
8 the end of this, but first I wanted to do the, kind of
9 the year-end update of what your committee has done
10 for the year.

11 And, again, the Representative Assembly
12 Review Committee has kind of an odd role at times, so
13 I am going to read the definition of what our duties
14 are, which is that it shall periodically review the
15 functions of the Assembly and shall from time to time
16 make recommendations for amendments or other matters
17 or procedures to improve the Assembly effectiveness
18 and activity.

19 And during the past year what our committee
20 has done is, instead of the large initiatives that we
21 have done in the past with our surveys and things that
22 the Assembly has done, is the committee has worked
23 closely with your Assembly leadership on several
24 issues which the leadership either had identified
25 themselves or which was brought to the leadership by

1 other members of the Bar.

2 And these key issues in the past year, the
3 first was, as the final policy-making body of the Bar,
4 how can the Representative Assembly timely identify
5 and address the important policy issues that are
6 facing our Bar? And with our meetings being fairly
7 infrequent, this has always been a problem.

8 In 2003 the two most obvious issues that we
9 addressed were the membership dues increase and then
10 the proposed ethic rules that we are facing today and
11 we are going to address in November. And, clearly,
12 what we have had to do on these, we have had to
13 scramble at times to make sure that we were able to
14 focus on the issues, identify the problems, and have
15 some meaningful input into them, and that's what is
16 happening here with these ethic rules today and in
17 November.

18 That is something that the leadership has
19 been struggling with with how can we see these issues
20 coming towards us early enough that we can get it to
21 the Assembly so that the Assembly and committees can
22 actually do something about it. And the Assembly
23 Review Committee has been working with them on that,
24 and they have been utilizing our committee to do those
25 kinds of things and to come up with some protocols for

1 that.

2 Second, it's been brought kind of to the
3 surface the large number of vacancies which the
4 Assembly has had over the past several years, and this
5 has gone on quite some time.

6 In our survey with our membership which we
7 did several years ago the Assembly members themselves
8 identified the lack of relevance of the Assembly, and
9 that was a great concern for a lot of our membership.
10 Over the past couple of years the Assembly has, I
11 think, quickly regained some of its stature and power
12 within the Bar, and I think a lot of that has to do
13 with the leadership that we have had over the past
14 several years.

15 The result has been that our Assembly has
16 been able to retain a lot of its members, and so our
17 vacancies haven't occurred so much from members
18 coming, being elected, and then drifting away and not
19 attending the membership meetings but rather it's been
20 some seats haven't been filled because no one has run
21 for those seats.

22 So we have actually greatly improved the fact
23 that our members are coming to the Assembly and
24 staying once they get here, and also that's resulted
25 in a much greater diversity within our Assembly, and

1 the Leadership and Review Committee has noted that,
2 and we are pretty pleased with that.

3 However, these large number of seats that are
4 vacant at times, our leadership has worked really hard
5 to fill those seats. The Nominating Committee has put
6 a lot of time into that, and I am pretty sure at our
7 next meeting the number of vacancies will be even
8 less.

9 The problem that we are having is this has
10 been a very intensive effort right now to address the
11 problem that's in front of us. We want to make sure
12 it doesn't happen again in the future.

13 So, the Representative Review Committee has
14 two things that it has asked me to do today, and the
15 first is to advise you of some of this unfinished
16 business which is pending before the committee so that
17 we are going to kind of throw that in the lap of the
18 committee for next year, and the first of that was to
19 work next year with the Nominating Committee to help
20 develop a procedure to ensure that worthy candidates
21 are available and vacancies are filled. And, again,
22 as I mentioned, a lot of this is that there are no
23 candidates for some of the seats when the election
24 time comes around, and if there are no candidates,
25 obviously no one is going to fill those seats.

1 Whether we have our plunking or not, there is going to
2 be no one elected.

3 Next was the development of criterion
4 standards for the recipient of the awards, and I was
5 real pleased today at our lunch meeting to see that
6 Tom was the person who presented the Michael Franck
7 Awards today and that it came from the Assembly was
8 made very clear to the Assembly, and I think, with Tom
9 I think it's been pretty obvious during his tenure as
10 chair that any opportunity he gets he makes sure the
11 membership hears that we are the final policy-making
12 body and that we do have a role that we are playing
13 within the Bar, and, again, with him handing out that
14 award today at the meeting, I think that, again, kept
15 that in front of Bar membership so they see who we are
16 and what we are doing and that we get some stature
17 coming out of this.

18 And then the last was the process for the
19 presentation of awards. The Michael Franck award
20 which was awarded today, we voted on about that long
21 before we went over there and had Tom hand it out.
22 Luckily it was approved, but it could have been a
23 problem if it wasn't.

24 But that is one of those things where how
25 much meaning does the process have in coming up with

1 these awards if it's kind of sprung on us when we read
2 the literature and it's all been published that these
3 are the people who are getting the awards when it is
4 the Assembly who is handing out the awards. So we are
5 kind of going to the Nominating Committee next year and
6 saying what is the process that we can develop for
7 coming up with these, some of these awards.

8 Then the second thing which I was asked to do
9 today is bring forward these three resolutions which
10 are in your materials, and these came to us by some
11 individuals to speed this along. I was asked to make
12 the motion on each of these resolutions, and what I
13 would ask to do is I am going to make a little comment
14 first on following through with what we have tried to
15 do here before making the motions, and we will see how
16 much debate we have with our time running quickly.

17 We have 30,000 members in the Bar
18 association, and we have what is a fairly relatively
19 small handful of people who are deeply involved in the
20 Bar function and who devote their time to helping with
21 Bar governance, helping with the practice of law, and
22 the Michael Franck Award which this Assembly does give
23 out each year is something that addresses those
24 members of our Bar that are involved in that.

25 It was suggested to the committee that we

1 come up with an award for those members who aren't the
2 Bar geeks, as they were referred to at times, who are
3 so deeply involved with what's going on with the Bar,
4 but they are out there in the trenches every day
5 practicing law, really helping to keep the standard of
6 practice of law high, where there was so much talk
7 today at lunch about the lack of civility within the
8 practice of law, and these are attorneys who aren't
9 there necessarily trying to do something about that.
10 They are just holding up themselves as a great
11 example, working really hard, both in the practice of
12 law, in their communities, doing things out there that
13 they don't necessarily get recognition for.

14 And we thought it would be an excellent idea
15 that we have an award for those type of people. The
16 term unsung hero was presented to us, and we said we
17 would bring that forward.

18 The other two resolutions kind of follow
19 along on that, and they are kind of obvious if you
20 review them, to address some of those issues that I
21 was just talking about that were brought forward.

22 So if Mr. Rombach would allow me I would make
23 the first motion, which is in your materials, that the
24 Representative Assembly shall issue an annual unsung
25 hero award in acknowledgement of a lawyer who has

1 exhibited the highest standards of practice and
2 commitment for the benefit of others.

3 VOICE: Second.

4 CHAIRPERSON ROMBACH: It's been moved and I
5 heard support on behalf of the Assembly Review
6 Committee to consider the motion in your packets as
7 read into the record by Mr. Knight. Is there any
8 discussion on that item? Okay.

9 Hearing or seeing none, we will move that to
10 a vote, unless Mr. Knight has any further comments.

11 MR. KNIGHT: No.

12 CHAIRPERSON ROMBACH: All those in favor of
13 adoption of this initiative, please indicate by saying
14 yes.

15 Any opposed say no.

16 In the opinion of the Chair, that passed
17 unanimously, Mr. Knight.

18 MR. KNIGHT: Thank you.

19 The second resolution is that Rule 7.5 of the
20 permanent Rules of Procedure of the Representative
21 Assembly shall be amended as follows: 7.5, nominating
22 and awards, the Nominating and Awards Committee shall
23 consist of five members, each of whom shall be from a
24 different judicial circuit. The committees shall
25 perform the functions provided for in Rule 8.

1 VOICE: Second.

2 CHAIRPERSON ROMBACH: It's been moved and
3 supported, again the second item in your packet under
4 the Assembly Review Committee report. Is there any
5 discussion on this item? Okay. I don't think that --
6 either people are alive or they are in concurrence, so
7 I move that to a vote at this juncture.

8 All those in favor indicate by saying yes and
9 indicating you are alive.

10 And anyone that isn't alive, please indicate
11 by saying no.

12 Okay. Hearing nothing, that passed
13 unanimously as well. We will move to yet another
14 recommendation.

15 MR. KNIGHT: Basing this on my persuasive
16 presentation, so going for three for three, I move
17 that Rule 8.8 shall be added to the Permanent Rules of
18 Procedure of the Representative Assembly as follows:
19 8.8, awards, the Nominating and Awards Committee shall
20 meet and recommend qualified members of the State Bar
21 as recipients of the Michael Franck and Unsung Hero
22 Awards for vote by the Assembly.

23 VOICE: Second.

24 CHAIRPERSON ROMBACH: Having been moved and
25 seconded, again subject to Assembly debate, is there

1 any debate? Hearing none, we will move that for a
2 vote.

3 All in favor, please indicate by saying yes.
4 Are there any opposed?

5 Hearing none, that passed unanimously.

6 MR. KNIGHT: Thank you.

7 CHAIRPERSON ROMBACH: Thank you very much,
8 Bill. I am sure it is due to your persuasive
9 advocacy.

10 Now, consistent with the amendment that we
11 had made previously to the agenda, we are now going to
12 move to, I believe, item 19. That is then going to
13 yield to the consideration of the report and
14 recommendation of the State Bar Appellate Delay
15 Reduction Task Force. I see all those folks here as
16 well, but at this juncture it's indeed a great honor
17 and perhaps my final and most important responsibility
18 of leadership in finding someone who will do a better
19 job than me and lead the Assembly and succeed me.
20 Fortunately the Assembly did that in its vote several
21 years ago by ratifying Mr. Levy, Daniel Levy's
22 retention within the leadership and currently is
23 Vice Chair.

24 Because of the availability of Judge Kurt
25 Wilder at this juncture, we are going to swear

1 Mr. Levy in now. I would ask that you take that and
2 hold that in abeyance until the end of the meeting.
3 At that point Dan can pry the gavel out of my cold,
4 dead hand.

5 So I would like to introduce -- Judge Wilder
6 has just left. He was in the room a moment ago. He
7 was. I will tell you what, in the interim period I
8 will do this. Dan, would you -- I can introduce your
9 wife.

10 VICE CHAIRPERSON LEVY: Please.

11 CHAIRPERSON ROMBACH: That's Deborah Levy.
12 She can come forward. I think she is going to be part
13 of the ceremony, unbeknownst to her. I would also
14 like to acknowledge Dan's parents are here as well,
15 Bernard and Judith Levy. If they can stand up, and
16 here is Judge Wilder, and he is going to perform our
17 oath of office.

18 JUDGE WILDER: Good afternoon, everybody.
19 It's a privilege to be here to administer the oath of
20 office to Dan, and I congratulate all of you for
21 giving up of your time and energy. There are no easy
22 issues remaining. All the easy issues have been
23 solved. I know there is a lot of talent in this room,
24 and Dan, I think, has the perfect level of integrity,
25 demeanor, and talent to lead you all this year.

1 With that, I would ask you to raise your
2 right hand and repeat after me. I Daniel M. Levy, do
3 solemnly swear, that I will support the Constitution
4 of the United States, and the Constitution of this
5 state, and the Supreme Court Rules concerning the
6 State Bar of Michigan, and that I will faithfully
7 discharge the duties, as chair of the Representative
8 Assembly of the State Bar of Michigan, according to
9 the best of my ability. Congratulations.

10 (Applause.)

11 CHAIRPERSON ROMBACH: Since I am only
12 interim and almost a spent shell here before Dan
13 seizes power, I would just like to acknowledge that
14 for those of you that don't know our Court of Appeals
15 Judge Wilder, he is from the first appellate district
16 and had previously served as a Washtenaw Circuit Court
17 judge before receiving that appointment from Governor
18 Engler, so we would like to thank him for his
19 participation today.

20 Our next item is consideration of the report
21 and recommendations of the State Bar Appellate Delay
22 Reduction Task Force. Previously when we set up this
23 agenda the Rules and Calendar Committee had envisioned
24 Bruce Neckers being available. Although he has been
25 in attendance each and every moment of the State Bar

1 convention, other commitments are going to require him
2 to be elsewhere at this juncture in the meeting
3 schedule, and, therefore, we would like to introduce a
4 pinch hitter, and in his own right he is extremely
5 distinguished. He has served on the Neckers
6 committee, so to speak, initially discussing and
7 making a recommendation that had been adopted by our
8 Board of Commissioners, and he also now serves
9 pursuant to the appointment of President Turner --
10 well, President Brinkmeyer and immediate Past
11 President Turner. They had appointed Tim McMorrow as
12 one of the small group of opinion leaders and
13 negotiators, so to speak, with Judge Whitbeck in
14 consideration of this appellate delay reduction plan.
15 And Mr. McMorrow is going to very capably fill
16 Mr. Neckers' shoes. He is the chief appellate
17 attorney from the Kent County Prosecutor's office.

18 Mr. McMorrow, if you want to come forward. I
19 would also like to acknowledge, as outlined by our
20 agenda, that Chief Judge Whitbeck has been kind enough
21 to rearrange his schedule on extremely short notice in
22 order to be here today as well, and I know he is going
23 to advocate, of course, for the adoption of the plan.
24 I believe that there would be perhaps a disagreement
25 on some of those details that will be outlined later.

1 And I would also like to acknowledge as well
2 Don Fulkerson, who does have a motion for Assembly
3 consideration that is a little different than the one
4 in your packets, and he is, in fact, probably soon to
5 be immediate past chair. I know his appellate section
6 is meeting as we speak, and he is taking his time away
7 from that section meeting to be here to advocate on
8 behalf of this proposal, and, being the chair, he
9 would have Assembly floor privileges.

10 So those three are going to take center stage
11 at this juncture. I believe that Mr. McMorrow can
12 perhaps apprise us as to where the State Bar committee
13 stands on these items. Tim.

14 MR. MCMORROW: Thank you very much, and you
15 have in your materials, of course, the report of the
16 Appellate Delay Reduction Task Force Committee,
17 task force which I sat on, was appointed to by Bruce
18 Neckers. I won't go over that in any great detail. I
19 would summarize, I think, summarize this as follows,
20 our general feeling with regard to the proposals.

21 If there is one overwhelming thing that has
22 come across to me it is that if you have the sort of
23 drastic reduction in briefing time that is proposed
24 and if you have the complete elimination of
25 stipulations to extend time, which presently, of course,

1 is only a single stipulation to extend time which
2 parties are able to use in the appellate process, this
3 will greatly and adversely affect the quality of
4 briefing. That is coming from the attorneys of this
5 state on behalf of our clients.

6 I don't know if there is any question that
7 that will happen. There is no way that you can take
8 the number of cases that are involved, narrow the
9 funnel, try to push them through the funnel and not
10 expect that there is going to be a great and drastic
11 decrease in the quality of the briefing.

12 In addition to which one of the things that
13 has really come across to me and I feel I have been
14 very well educated on is something that I really
15 didn't understand this really, I didn't understand
16 from my own experience, because my experience is
17 different than most appellate attorneys. I am a
18 prosecutor, which means, of course, that I am
19 salaried, I work for the government, and I am usually
20 the appellee.

21 It is really very interesting to me and been
22 very educational to me to get a much better
23 appreciation for what it is like for an attorney in
24 private practice who is trying to juggle several
25 different things, who does appellate work and is

1 either a solo practitioner or in a small firm trying
2 to put all of those things together and manage that
3 kind of a caseload in a way in which the attorney can,
4 number one, do an excellent job on behalf of his
5 client, the kind of quality job that his client
6 expects and deserves, and, number two, also to be able
7 to maintain a practice and maintain, frankly, a good
8 quality of life in the practice.

9 The proposals as they are adopted, as they
10 are proposed by the Court of Appeals, if they are
11 adopted I have no question will greatly, greatly
12 affect the ability of an appellate practitioner to,
13 number one, do an excellent job for his client and,
14 number two, to be able to actually practice the
15 practice of law in a sensible and economical way.

16 Again, as I said, I won't go over the details
17 that were in the report. You have that. I would
18 suggest that there are two particular problems that we
19 see with the Court of Appeals proposal.

20 Number one is that the primary problem with
21 the delay is in the warehouse of the Court of Appeals,
22 and if the warehouse is not addressed, then there will
23 be very little point in hurrying up briefing so cases
24 can stick in the warehouse.

25 It should be noted with regard to this,

1 although we are obviously on opposite sides with Judge
2 Whitbeck in support, in our opposition to the Court of
3 Appeals plan, the Court of Appeals does deserve a
4 great deal of credit for what they have done to attack
5 the delay that does occur in judicial chambers, and
6 they are trying to address the delay that will happen
7 in the warehouse. But if you eliminate the warehouse,
8 you eliminate most of the problem.

9 And we also believe that a huge part of the
10 delay is a delay in record production, and there is
11 currently a record production task force of the State
12 Bar which is working to address those issues.

13 So for those reasons, the reasons that were
14 set forth in the report, we would request that the
15 Representative Assembly adopt the recommendation that
16 is in your packet and that the proposal to reduce the
17 briefing time and to eliminate the stipulations to
18 extend time, that you adopt the proposal which would
19 oppose those particular recommendations.

20 CHAIRPERSON ROMBACH: Thank you very much,
21 Tim.

22 Before we get into the debate, we also
23 probably should have a motion on the floor, and I know
24 the Appellate Practice Section has expressed some very
25 strong concerns about these initiatives, and if I may,

1 Don Fulkerson, their chair, is here to speak and
2 advocate on behalf of a proposal for Assembly
3 consideration.

4 Don, if you want to step forward, and that
5 microphone would be fine too. You are a taller guy
6 and everybody will see you.

7 MR. FULKERSON: I am Don Fulkerson. For
8 probably about another 75 minutes I am chair of the
9 Appellate Practice Section, and then I get to go to
10 someplace called ex officio land, which I am looking
11 forward to. I hear they have got little umbrellas in
12 the drinks and palm trees. I hear it's a wonderful
13 place.

14 Before I propose this motion, let me just
15 supplement Tim's remarks.

16 Last spring Chief Judge Whitbeck came to a
17 meeting of our section counsel and proposed the Court
18 of Appeals delay reduction plan. The proposal is that
19 the court was going to spearhead some efforts to
20 reduce the warehouse, which at the time was
21 approximately 271 days, I believe. And that meant
22 from the time cases were, the record was completed and
23 cases were briefed and ready for consideration by the
24 court, they would sit in a room unaddressed by the
25 court for 271 days, and we are talking nine months,

1 and then go to prehearing, and then go to a judge, go
2 to a panel of the court for consideration.

3 Aside from internal efforts from the court,
4 there was also a series of Court Rule amendments, many
5 of which I want the Assembly to understand neither the
6 State Bar nor the Appellate Practice Section oppose.
7 There is a proposal to reduce the time for filing
8 docketing statements, which is a time that comes out
9 of lawyer times. We supported that amendment.

10 There is a proposal to reduce the time for
11 producing transcripts in summary disposition cases. I
12 mean, currently there is a 91-day rule that applies in
13 all civil cases, whether it's just one hearing or a
14 two-week trial, and the proposal would bifurcate
15 consideration and reduce the time for filing
16 transcripts in summary disposition appeals. We think
17 that's reasonable. We have supported that.

18 There is also a proposal to -- there is also
19 a proposal -- let me check my notes. There is also a
20 proposal to reduce the time for filing the circuit
21 court record. We have considered that reasonable. We
22 have supported that.

23 What we are here today to contend with with
24 Chief Judge Whitbeck is a proposal to reduce the time
25 for filing briefs in civil cases from 56 to 42 days

1 for the Appellant. Now, the Chief Judge has modified
2 the original proposal and has taken criminal cases out
3 of the proposal, but it still relates to civil cases.

4 The proposal also would cut the time for
5 filing reply briefs from 21 to 14 days, would
6 eliminate the current 21-28 day possible
7 stipulated extensions in both civil and criminal
8 cases, and we also understand that the proposal would
9 substantially tighten up the standard for showing good
10 cause for extensions.

11 The Section, Past President Neckers' report,
12 and the Board of Commissioners have all opposed the
13 proposed amendments to MCR 7.212, and let me just
14 briefly state why we not only believe the proposals
15 are unwise and contrary to quality briefly and
16 decision making, but I believe perhaps even most
17 importantly that they are premature.

18 The Court of Appeals still has over 230 days
19 of an average warehouse time, even though it's made
20 significant and laudable efforts to reduce the time in
21 the warehouse. There is still a 232 day wait on
22 average in the warehouse. The court does not project
23 eliminating the warehouse until September of 2004,
24 even with additional funding, which the section
25 supported, to hire a new prehearing staff.

1 Over the summer the Delayed Intake Management
2 Committee, which Tim McMorrow and I both served on,
3 along with Chief Judge Whitbeck and Scott Brinkmeyer,
4 we have looked at this issue and we determined that
5 record production and transcript production issues
6 make up a substantial portion of intake problems.

7 Give you a couple examples. In one third,
8 approximately, of cases records are transmitted late
9 from circuit courts. In 50 percent of cases where
10 there is a lengthy time for getting a decision out,
11 half the cases there is a delay in transcript, and we
12 are talking some substantial delays, and so, because
13 of that, the Chief Judge and the Chief Justice formed
14 a new record production work group, which I serve on
15 and which Judge Mike Smolenski, the Court of Appeals,
16 currently chairs.

17 That committee has just started its work this
18 month. We have not yet issued any findings or
19 recommendations yet, and my position is why are we
20 putting the cart before the horse. What is the rush
21 to take time out of briefing when we haven't even yet
22 evaluated all of the issues of intake. I mean, we may
23 learn that it isn't necessary to cut briefing time any
24 further to reach the court's goal, and the goal is to
25 dispose of 95 percent of its cases within 18 months.

1 We have already determined that if the court
2 eliminates its warehouse, it's going to be within six
3 percent of reaching its goal, so all of this hullabalu
4 is over six percent of its cases, and that's not
5 considering issues of record and transcript
6 production. So to me I don't understand why we are
7 rushing to cut briefing time before we have at least
8 evaluated all the issues of delay reduction, and
9 that's why the section has asked the Supreme Court not
10 to take this matter up. The Supreme Court is still
11 going to do something at its September 25th open
12 meeting, although the Chief Justice indicated to me
13 the court is at least respectful to an argument that
14 further study is necessary before a cut in briefing is
15 implemented. That's why I think everybody who has
16 looked at this from the Bar side believes it's just
17 premature and why is there a rush to cut briefing when
18 it may either be unnecessary or substantially
19 unnecessary.

20 I would also just agree with the comments of
21 Tim and the findings of the Neckers' report that there
22 is a serious consideration here and a serious issue
23 that if you substantially cut briefing time and cut
24 the flexibility of lawyers to agree to stipulate
25 extensions you are going to be dramatically limiting

1 their practices, affecting their quality of life,
2 cutting into their briefing time, reducing the quality
3 of briefs, and, therefore, reducing the quality of
4 appellate decision making. This is especially
5 critical at a time when the Court of Appeals is
6 deciding more and more cases by summary panel in order
7 to reduce their delay.

8 Now, for all of these reasons we would ask
9 this Assembly to oppose the proposed amendments of
10 MCR 7.212, and I will read now for consideration the
11 motion. I am sorry, Tom, do I need to read this into
12 the record or just refer?

13 CHAIRPERSON ROMBACH: If you can, I
14 believe -- Nancy, is this, the proposal that you have,
15 is that consistent with the one Don is going to
16 make?

17 MR. FULKERSON: I know there were a couple of
18 modifications.

19 CHAIRPERSON ROMBACH: Go ahead.

20 MR. FULKERSON: Hopefully I can read this
21 quickly without too many verbal errors here.

22 It is recommended that the following be
23 adopted. Be it resolved that the State Bar of
24 Michigan commends the Court of Appeals for attacking
25 delay and supports such efforts to the extent that

1 they are in the interest of litigants and the public.

2 Be it further resolved that the State Bar of
3 Michigan believes that time necessarily spent
4 preparing a case, drafting a pleading, or otherwise
5 devoted to the interest of a client is not,
6 quote-unquote, delay, and that the time for activities
7 essential to the preparation of the case should not be
8 curtailed in an effort to achieve an arbitrarily set
9 time goal.

10 It is recommended that the following be
11 adopted. Be it resolved that the State Bar of
12 Michigan opposes amendments to MCR 7.212 that would
13 shorten the time allowed for the preparation of briefs
14 and eliminate extensions by stipulation at the intake
15 phase of the appellate process, for the following
16 reasons: The proposed changes would impose additional
17 costs on clients and taxpayers; the proposed changes
18 would increase the likelihood of delays later in the
19 appellate process; the proposed changes would threaten
20 the ability of practitioners to specialize in
21 appellate law, and of solo and small firm practices to
22 handle appellate matters, thereby diminishing client
23 choice and the quality of professional service; and
24 the true causes of appellate delay are those phases of
25 the process in which no productive activity occurs,

1 i.e., backlogs in the research division of the Court
2 of Appeals and in case file and transcript preparation
3 at the trial level. Arbitrary time constraints in the
4 intake phase will not appreciably advance the goal of
5 reducing appellate delay.

6 Be it further resolved that the State Bar of
7 Michigan continues to support efforts to obtain
8 adequate funding for the Court of Appeals to eliminate
9 delays in case processing within the court caused by
10 inadequate staff or technological resources.

11 The State Bar supports the efforts of the
12 Supreme Court work group on record production to
13 investigate the causes of transcript production delay
14 and propose solutions, and the Bar supports the
15 continuation of cooperation with the Court of Appeals
16 to develop alternatives that will reduce delay without
17 impairing the quality of appellate work.

18 VOICE: Second.

19 MR. FULKERSON: Thank you for your
20 consideration.

21 CHAIRPERSON ROMBACH: It's been moved and
22 seconded. Now that the issue is before the Assembly,
23 what I would ask I guess -- we could have portioned
24 this off, but because this seems to be a package deal,
25 I would like to now acknowledge entering the colosseum

1 is Chief Judge Whitbeck. He has been gracious enough
2 to come forward yet again. We had gotten his time
3 before in April to preview this debate, and I know
4 that he has some very strong feelings on this
5 regarding, in his endeavor to get forward so he can
6 address this issue personally.

7 I would like to also direct your attention to
8 a packet of materials that is in front of each and
9 everyone of you at your desk, which includes a letter
10 from Scott Brinkmeyer acting on behalf of the Board of
11 Commissioners to Corbin Davis, the Michigan Supreme
12 Court clerk, letter from Mr. Brinkmeyer to the Chief
13 Judge Whitbeck outlining, again, part of that
14 position. Also a letter from Don Fulkerson to Corbin
15 Davis outlining position officially taken by the
16 Appellate Practice Section.

17 It also includes, I believe, an editorial in
18 support, from the Detroit News recently, in support of
19 Judge Whitbeck's proposal, which for any of you who
20 don't remember the specific details has been in front
21 of the Assembly since the mailing of the packets, is
22 under the tab appropriately so labeled, and at this
23 juncture I see Judge Whitbeck has some comments that
24 he would like to make to the Assembly.
25 Judge Whitbeck.

1 And through this process he has been every
2 bit a gentleman. He has engaged this debate. He has
3 initiated the debate, and he has allowed us a seat at
4 the table each and every step of the way, so if you
5 can acknowledge his presence here today.

6 (Applause.)

7 JUDGE WHITBECK: Thank you Tom and Tim and
8 Don.

9 First let me say that there is some
10 disagreement here, obviously, between some sections of
11 the State Bar, the Board of Commissioners, and our
12 Court. I will say, however, and I will emphasize at
13 the outset that disagreement has been cordial
14 throughout. We have approached this, I think, in a
15 spirit of cooperation and a spirit of goodwill and, in
16 particular, both Don, and I think Tim McMorrow,
17 mentioned the State Bar's point, and something I will
18 come back to. The Appellate Practice Section
19 specifically wrote a letter supporting our request for
20 increased funding for our research division, and I
21 think that was critical and what transpired after
22 that. So with that disclaimer ahead of time.

23 I think it well to start with the proposition
24 that you are not all appellate lawyers, and so when we
25 are throwing around these terms that I deal with

1 every day and appellate practitioners deal with
2 every day, maybe I should take two minutes to define
3 what those terms mean.

4 We talk about four phases in processing the
5 Court of Appeals. At the beginning is the intake
6 phase. That's when we're getting the lower court
7 record, the briefs are being filed.

8 The next phase is the phase that we will
9 eliminate or substantially, dramatically reduce. That
10 is a phase that, for lack of a better term, and I
11 don't like it particularly, it's sort of cutesy, we
12 call the warehouse.

13 The warehouse is literally that, and I am
14 tempted to take a picture at the new hall of justice
15 of this big room with all these files sitting in
16 these rooms, because that's exactly what they are
17 doing, they are sitting and gathering dust because we
18 can't move them out of that holding pattern into our
19 research division because we didn't have enough
20 lawyers in our research division to handle them as
21 they came in. So they sit, and as Don pointed out,
22 when we first began looking at this they sat for 271
23 days. That's an awfully long time.

24 After that, it goes to our research division.
25 As you all know, we have a centralized staff of

1 research attorneys. For that we can thank a genius.
2 T. John Lisinski (sp) and Olistat Willard (sp) came up
3 with the concept of the centralized research division,
4 which has been widely copied in other appellate courts
5 in the country, although not all of them use it.

6 And then we have the time when the case is
7 submitted to the judges. It enters our chambers, it's
8 submitted and the case called for oral argument or for
9 decision if it's a summary panel case and goes out the
10 door. So those are the four phases.

11 When we began looking at this, and we began
12 looking at this after the Supreme Court had announced
13 that they were going to appoint me as chief judge, but
14 before I became chief judge, then Chief Judge Bandstra
15 and I began looking at the question of how long it
16 takes to get a case through our process.

17 What's a case you may ask. Good question
18 because we have several kinds. We have opinion cases,
19 and I think that's what everyone generally thinks of.
20 Cases that result in an opinion, sort of a circular
21 definition. We also have older cases, cases that come
22 up to us on motions or order. Those are decided by
23 order. Interestingly enough, of about 7,500 cases,
24 it's roughly split between opinions and orders.

25 We do fine on orders. We get orders out

1 reasonably promptly. It's in the opinion cases where
2 we have problems, and when we began looking at this,
3 and there is a little handout that's at the head of
4 each table, I didn't make enough unfortunately, it
5 shows what the situation was in our base year, which
6 was 2001. 653 days to get an opinion case out of our
7 court.

8 Now, I defy anybody to say that's timely.
9 That is not timely. I just think that's inarguable.
10 So the judges of our court set about trying to do
11 something about that, and we envisioned a whole gamut
12 of activities.

13 So far I think we have done pretty well, and
14 the right-hand side of this shows you where we stand
15 in the first six months of 2003. We have cut the
16 total time to 559 cases, 559 days, so 94-day
17 reduction, almost 15 percent. We did that without one
18 more staff person, without one more judge. We did
19 that by a whole variety of things, including moving
20 cases around the warehouse and around the research
21 division right to the judicial chambers, essentially
22 making our judges work harder, and we are reasonably
23 proud of that.

24 Let me emphasis point one, however. Point
25 one was in March and April and May of 2001 when I

1 began to discuss this, among other places, with the
2 Appellate Practice Section. I said then, and I hope
3 clearly, that it made no sense to cut the time at
4 intake, and we would not propose to do so, until we
5 had dealt with the problem in the warehouse, until we
6 had dealt with that holding pattern. And how do we
7 propose to do it? We propose to do it in the toughest
8 budget year in 50 years by increasing the funding for
9 the court.

10 Now, that wasn't an easy sell, and members of
11 our court, and particularly our professional staff,
12 spent a lot of time on that, and, fortunately -- maybe
13 the luck is with us on this. I am not Irish, thank
14 God. If Chief Justice Corrigan were here, did you
15 hear that? We got very lucky in the sense that the
16 Chief Justice recognized our problem.

17 She also recognized a larger problem with
18 respect to funding for the whole judicial system,
19 trial courts as well as courts of appeal, and came
20 forward with a unified fee proposal package that the
21 Department of Management and Budget, both the old
22 governor and the new governor, bought, as did the
23 Legislature, and that fee increase package passed. It
24 passed virtually unanimously.

25 Our piece of that, and in a \$28 billion

1 budget this doesn't sound like much, but our piece of
2 that increase was about \$525,000 that we will recover,
3 that we will obtain, that we do not currently obtain,
4 commencing October 1. We are expecting sort of a
5 spike in filings, by the way, because these are motion
6 fees and entry fees, in September. You all should be
7 aware the fees are going up on October 1. That gets
8 us most, not all, but most of what we asked for in
9 terms of increased resources.

10 So I guess point one is, I think we have
11 delivered what we said we were going to do. The
12 governor, the Legislature, the Supreme Court has
13 delivered on the funding side. We have hired those
14 attorneys. They are currently on board, we are
15 wrapping them up. The paychecks will now occur in
16 October, and we believe that we can, with these
17 additional resources -- again I am hedging this a bit
18 because we didn't get all we asked for. Maybe I
19 should have asked for more than I thought we needed,
20 but I just don't see playing the game that way. It
21 doesn't work in the long run -- we believe we can
22 substantially reduce, if not reduce, the warehouse.

23 So the argument, the primary argument that I
24 have heard now for 17 months is that you shouldn't do
25 this until you get rid of the warehouse. I think that

1 argument falls. I think it falls because we now have
2 the resources to do just that, or 90 percent of that.
3 Therefore, those cases, if they go through the intake
4 faster will not sit in the warehouse gathering dust,
5 they will go to our research division, then they will
6 go to the judicial chambers. I guess that's point
7 one.

8 Point two gets into the more subjective side
9 of the equation. I like this quote so much I am going
10 to use it. There is nothing like getting in your
11 opponent's brief and citing it back to him.

12 The task force that worked for the President
13 Neckers appointment in its report recommends, and I
14 quote, that we change the culture of delay that
15 afflicts every aspect of the appellate system. Until
16 now, judges haven't really recognized the effect delay
17 has on litigants.

18 I submit to you that that statement is
19 absolutely right, that there is culture of delay and
20 that it afflicts literally -- it sounds like the
21 bubonic plague, and to some extent it is -- that it
22 afflicts the appellate system. I submit to you that
23 it may have been so in previous years that perhaps the
24 judges on our court did not recognize the effect, but
25 we certainly have now.

1 On March 18, 2001 every judge on my court
2 voted to implement this delay reduction program. We
3 have in the interim between then and now cut the time
4 a case takes in our judicial chambers in half, from 61
5 days to 30 days.

6 I don't think it's tenable to suggest that
7 the judges haven't realized this problem. We
8 certainly have. I think the time now comes to ask
9 whether you all are willing to recognize it. In that
10 regard, what is it that we are asking for?

11 On the second page of this little handout I
12 tried graphically -- I am not good with numbers, even
13 though I spot them all the time. I have to see things
14 graphically to express what we were proposing.

15 It really falls into two categories. We
16 propose not, with all due respect, a drastic reduction
17 in briefing time for the appellants. We propose a
18 reduction from 56 days to 42 days. That's 14 days.

19 Fifty-six days in my opinion is not what you
20 would call an accelerated schedule to prepare a brief,
21 particularly when one recognizes that you have in
22 front of that -- a point that I will come back to --
23 this process in which the record is being developed or
24 gathered below and the transcripts have been prepared.
25 Particularly if you tried the case, it strikes me,

1 although you don't yet have the transcript references,
2 you are pretty darn familiar with what went on at the
3 trial, and the prospect of roughing out a brief,
4 getting started on it before your clock is even
5 ticking strikes me as a prospect that's fairly
6 attractive.

7 I know when I was in practice I used to do
8 that. I didn't wait until I got the transcripts in
9 order to start working on my brief. That just was not
10 our culture and that was not the way we practiced.

11 So we propose for civil cases, as we have
12 amended our proposal, to reduce the time for filing
13 the appellant's brief by 14 days.

14 I don't really think that's the issue. I
15 really think the issue comes with stipulated
16 extensions. That's where the Appellate Practice
17 Section and the State Bar and our Court are butting
18 heads.

19 What we are talking about here is a provision
20 of the Court Rules that allows the appellant and the
21 appellee, by stipulation, without the court order, to
22 extend -- that they both agree they both want
23 additional time -- to extend on each side of the
24 process by 28 days. That's a total of 56 days total.
25 I underline without approval of the court, because we

1 have no say in this. If the stipulation is filed, the
2 extension is automatic.

3 I know of no court in the state of Michigan,
4 other than the Court of Appeals, where that's the
5 case. Now, it certainly doesn't happen in the
6 Supreme Court, and to my knowledge, unless there are
7 local rules of which I am not familiar, it doesn't
8 happen in trial courts. You have got to have an order
9 before you extend time.

10 Now, often the trial judge will sign it if
11 you get a stipulation, and often we will sign it. We
12 do now matters for additional time. Motions come
13 before us, and we rather routinely grant them.

14 As a matter of fact, I called the National
15 Center for State Courts to ask them whether any other
16 courts in the country have had such a practice. To my
17 knowledge there are none. Now, there may be one out
18 there, or two or three, but there aren't any that
19 I know of, and, frankly, were I not before you arguing
20 about delay reduction, I would probably still be
21 arguing on this one, because I think it's
22 fundamentally a bad court administration.

23 Every book you read on court administration,
24 every treatise, every article that you ever read says
25 to the courts do not lose control of your docket, do

1 not abdicate the control of your docket. And by this
2 court rule, that's exactly what happens. We have no
3 control over 56 days of that intake process. It's
4 automatic.

5 The argument is, well, it may be automatic,
6 but it's needed. Is it? If it's needed, then why
7 isn't it used more frequently, because it is certainly
8 not a universal practice. It is used frequently in
9 civil cases -- I am sorry, criminal cases -- very much
10 less frequently in civil cases, and in total about 55
11 percent of the time.

12 So there are 45 percent of the cases that are
13 coming to us that we see stipulations are not used at
14 all. Does that mean that the ones, that the 55
15 percent where they were used they were needed? I
16 think that's an open question.

17 I know of some firms and some practitioners
18 who automatically request the automatic extension,
19 whether they need it or not. Others may well -- I
20 don't know how we get far enough into the data to
21 ascertain the motivation, and, frankly, I just say I
22 think that's an open question as to what the
23 motivations are for using these automatic
24 stipulations. I can tell you that data show that they
25 are only used about 55 percent of the time.

1 So that's where we are. I think the issue is
2 joint on the automatic stipulations. I think that's
3 where the rubber meets the rubber.

4 The question then is is there other -- are
5 there other reasons for delay in implementing delay
6 reduction? Pardon the slight sarcasm there. One
7 should never attempt to be humorous when arguing a
8 serious subject.

9 One that Don Fulkerson pointed to is the
10 recently appointed task force or work group that Chief
11 Justice Corrigan and I appointed to look at the delay
12 that occurs in record production. There is a work
13 group that's meeting under the chairmanship of the
14 Chief Judge Pro Tem of our court, Mike Smolenski.
15 They have had their first meeting or is scheduled.

16 The guts of what's going on here though, when
17 you get down to it, is the following: The page rate
18 for court stenographers is set by statute. In return
19 for an increase in the page rate some time ago the
20 time for filing transcripts was lengthened out to, I
21 believe, 90 days.

22 To cut that time back down is going to, I
23 think, involve an economic trade-off. The court
24 reporters are going to insist, and perhaps rightly so,
25 that the page rate be revisited. In cases where

1 indigents are involved, then it has an impact on the
2 county, so the county is going to be worried about
3 that.

4 So the question is if we cut back the time
5 for filing transcripts, if we make real progress here,
6 we are going to have to do something about the page
7 rate, and we are going to have to do something about
8 how we fund a deficiency on the county side.

9 What you are talking about there, quite
10 obviously, is legislation. You are talking about
11 going to the State Legislature this fall or winter and
12 attempting to persuade them to act on this.

13 Legislation is a chance again. I hope we are
14 successful, but there are certainly no guarantees in
15 that process. There aren't a lot of advocates on our
16 side on this one. This is good government, and good
17 government usually doesn't get the peasants with pitch
18 forks storming the capitol, to misquote that again.

19 So I do not think that's a sure thing. Not
20 being a sure thing, should we, therefore, further delay
21 what has been a 17-month process already? I submit to
22 you that you shouldn't.

23 Those are the specifics. I would leave you
24 with this thought, I don't have a vote on this
25 resolution. Obviously one can see where the wind is

1 blowing, but I ask you to think about the following
2 two ideas.

3 First, I got a C+ in undergraduate school at
4 logic, which some of my critics might say was well
5 deserved, but I still remember it. I remember the
6 dilemma of the commons. A dilemma of the commons
7 dealt with the common areas in English law before the
8 enclosure acts were passed in late 1700s, early 1800s,
9 that allowed or permitted farmers and cattle raisers,
10 sheep raisers, to graze a common yard. They didn't
11 own it, but they had the use of it.

12 Now, the dilemma of the commons is that for
13 each individual farmer -- let's say he is a cattle
14 farmer -- it is to his or her, then it was his,
15 maximum benefit to graze his cattle as much as
16 possible in the commons. That would maximize that
17 farmer's economic situation. He would have fatter,
18 more salable cows, more poundage to sell, more milk
19 perhaps provided.

20 But, in general, if every farmer did that the
21 commons would become overgrazed and all cattle will
22 die. That is the dilemma of the commons. It's the
23 individual good versus the collective good.

24 To some extent the State Bar in this one is
25 faced with a dilemma of the commons. It is to each

1 lawyer in this room's advantage individually that you
2 have as much time as possible to do your work. That's
3 to your individual advantage, but if all of you use
4 all that time and if this process goes on for two, two
5 and a half years, then no one benefits, because the
6 entire boat sinks under the weight of accumulated
7 delay.

8 And so I suggest to you that the Bar is in a
9 difficult situation on this. They are faced with a
10 dilemma of the commons, but where do you want to end
11 up on it? Is it, when all is said and done, can you
12 go before the public and your clients and say, We are
13 in favor of delay, that we propose not to sacrifice
14 one day in this whole process of our time.

15 Is that a defensible position for the State
16 Bar? Candidly, I don't think so. I told Scott, You
17 all are doing a good job on this of arguing for delay,
18 but that's a very difficult proposition to argue
19 publicly, and I just suggest to you that as a matter
20 of public policy, as a matter of representing the
21 lawyers in the state, and, more importantly,
22 representing the clients that those lawyers represent,
23 goes after all the litigants who are suffering under
24 this system. That is not the best posture for the
25 State Bar.

1 So I would ask you to vote no on this, and I
2 don't know if you are going to have a question or not.
3 If there are any questions you have got, I am sure Don
4 and Tim McMorrow and others will.

5 CHAIRPERSON ROMBACH: Very eloquent
6 presentation. I tell you how I would like to proceed.
7 I know that Judge Whitbeck is more than willing to
8 take questions. I know that Don Fulkerson is more
9 than willing to take questions. I know that Tim
10 McMorrow is more than willing to take questions, and I
11 know we have some questions. So what I ask is that
12 you can advocate, you can question, you can do
13 whatever you want. I may even give everyone another
14 go-around on the people that have spoken to summarize
15 their positions, but whatever Assembly member wants to
16 speak needs to go to the microphone and be heard at
17 this time. So if anybody has anything on their mind.

18 I guess the race goes to the fleetest, and
19 that's Mr. Abel. Go ahead.

20 MR. ABEL: Good afternoon, Mr. Chairman,
21 thank you. I am Matthew Abel from the 3rd circuit.

22 I don't do appellate work, or I seriously try
23 to avoid it, so I don't have a particular
24 self-interest in this issue, but I am concerned in
25 regards to the issue of the automatic stipulation.

1 I was looking for some information. I was
2 wondering if a lot of those were criminal cases, and
3 isn't it true that many of the criminal appeals in
4 this state are done by the State Appellate
5 Defenders Office or have court-appointed counsel, and
6 my concern is that shortening this time is going to
7 put additional pressure on these other public
8 resources, which is the State Appellate Defenders
9 Office and the money that's paid for court-appointed
10 counsel, on people who are already underpaid and
11 squeezed quite a bit. That's my concern. Thanks.

12 CHAIRPERSON ROMBACH: That sounded more like
13 a viewpoint, so I won't have anyone particularly
14 respond to that. If you have a specific question, go
15 ahead, Matt.

16 MR. ABEL: My question, is that going to
17 cause a need for increased funding of the criminal
18 defense portion of the appellate system?

19 CHAIRPERSON ROMBACH: Who would you like to
20 address that?

21 MR. ABEL: Probably Judge Whitbeck.

22 CHAIRPERSON ROMBACH: Okay. That would
23 be great. Again, as long as we are specific, then I
24 am not guessing. Judge Whitbeck.

25 MR. ABEL: And if so, would you support

1 additional funds for that purpose?

2 JUDGE WHITBECK: It's the latter one that's
3 the good one. I can give you the data. Over the
4 years, over 2001, 2002, 2003, on the criminal side we
5 had in 2001 1432 opinion cases, 2002 1540, and so far
6 in 2003 445. And in those years there were motions, I
7 am sorry, there were stips to extend in 2001 in 63
8 percent, in 2002 63 percent and so far in 2003 63
9 percent. So whereas overall the percentages were
10 respectively 52, 52, and 52. So, as I said, the stips
11 to extend are used more frequently in criminal cases.

12 Will this place additional pressure on the
13 criminal defense Bar, whether it's publicly appointed
14 through SADO or privately through MAACS. The answer
15 is yes. What do you do about that? There are two
16 things.

17 The first thing you do on the private side
18 is, I have said this publicly, I have said this to
19 Chief Justice Corrigan, I said it even after she wrote
20 her concurrence on a recent case, I think the system
21 that we have for compensating private lawyers who take
22 on appellate criminal defense is abysmal. It varies
23 all over the map from county to county. There is no
24 uniformity, except one thing, one thing is that those
25 lawyers aren't paid enough.

1 I mean, I don't know how someone can defend a
2 criminal case on appeal for \$300. I just don't know
3 how that can be done. I mean, that's just ridiculous.
4 There is no other way to describe it. Something has
5 got to be done about this.

6 On the public side, of course these folks are
7 salaried. Do they have enough resources? No, I don't
8 think they do. Can they manage their operation
9 better, smarter? We all can. We can all make,
10 including me, we can all make improvements in
11 operations.

12 Over the longer term are there enough
13 resources there to adequately represent the body of
14 cases that they have? No. And, yes, I would support
15 increasing both of those and have.

16 MR. ABEL: Thank you.

17 CHAIRPERSON ROMBACH: I know that
18 Mr. McMorrow wants to make a point on that same issue.
19 Tim.

20 MR. MCMORROW: I would concur with what Chief
21 Judge Whitbeck said. This may seem funny coming from
22 a prosecutor, but it has struck me as bizarre and
23 reprehensible how poorly criminal defense attorneys
24 are compensated for representing indigent defendants.

25 I would say one thing that will happen

1 eliminating stipulations to extend time from the
2 prosecution standpoint, that will affect the cost to
3 government entities. We don't get the fees waived for
4 motions even if the defendant is indigent. If the
5 defendant is indigent, the fees for the defendant are
6 waived, but they are not waived for us even if the
7 defendant is indigent. That's a fairly recent change
8 of policy.

9 So that means is effective -- is October 1st
10 when the motion fees go up to a hundred dollars
11 apiece? Every motion that we file requires us to
12 pay a fee of a hundred dollars. The net result will
13 be we will stop filing motions.

14 MR. FULKERSON: I just wanted to briefly add
15 that I know from my affiliation with several
16 prosecutors as chair of the sections that some
17 prosecutors offices, Oakland County for one example,
18 have instructed their prosecutors that they may no
19 longer file motions for extension because the
20 prosecutors office will not allocate the funds, and I
21 know that it has substantially jammed up a lot of
22 prosecutors who have been scrambling unable to get
23 motions, to file motions for extension, and this is
24 only going to exacerbate that problem.

25 CHAIRPERSON ROMBACH: I am sure that Mr. Abel

1 would add the lawyer's fees on criminal defense are
2 capped no matter how much work you are doing, so the
3 more work that's being done, the more uncompensated
4 time.

5 MR. ABEL: Some of us can't even afford a
6 suit.

7 CHAIRPERSON ROMBACH: I guess we will go next
8 over to Ms. Radke from Escanaba.

9 MS. RADKE: Thank you. Victoria Radke from
10 the 47th judicial circuit.

11 I guess I have a question on behalf of some
12 people who are at the very beginning of this process,
13 and that's the court reporters who don't get to set
14 their court dockets. That's done by their circuit
15 court judge.

16 When do -- first of all, was there a survey
17 done in the Michigan Association of Court Reporters of
18 their membership to see how they felt about shortening
19 the time for record production for transcripts? And,
20 if so, what was the result, and, if not, why hasn't it
21 been done?

22 Because from personal experience and working
23 for the county, I have a close relationship with the
24 court reporter, and I asked her specifically about how
25 she felt about that, and our court reporter is in

1 court approximately 45 hours a week right now because
2 of the docket strain in our county. So that leaves
3 the rest of that time for her to prepare transcript on
4 appeals, sleep, see her family, whatever.

5 So was a survey done? What was the result,
6 and, if not, why not?

7 JUDGE WHITBECK: The work group that the
8 Chief Justice and I appointed contains two
9 representatives from the two court reporters
10 associations, so they are represented on that work
11 group.

12 I presume that they would not be terribly
13 happy with us surveying their members. If there is
14 going to be a survey of their members it should come
15 from their organization, and so to my knowledge
16 certainly we have not done a survey, and, frankly, I
17 think it probably would be inappropriate for us to do
18 so since we are looking to them.

19 To my knowledge -- well, I don't have any
20 knowledge. I don't know whether they have done it or
21 not, and I wasn't at the first meeting --
22 unfortunately I was on the bench -- of that work
23 group, but I think we can presume that the two court
24 reporter associations are going to represent the
25 interests of their members. I hope we can.

1 MR. FULKERSON: Can I just briefly add a
2 point?

3 CHAIRPERSON ROMBACH: Go ahead, Mr. Fulkerson.

4 MR. FULKERSON: I have been working in the
5 area of record production for about a decade, and let
6 me say this: There is going to be legislation. It's
7 already pending in the Legislature. It's being
8 supported by Senator Switalski and Mr. Cropsey, among
9 others.

10 The sole opposition, it's my understanding,
11 to this legislation -- court reporters haven't had a
12 rate increase since 1986. Federal court reporters
13 make double now what Michigan official court reporters
14 make. It's a crisis. It's a horrible problem. MAPCR
15 and Official Court Reporters support implementation of
16 reasonable fine schedules to improve efficiency and
17 time for transcript production provided they get the
18 rate increase they deserve.

19 It's my understanding the sole opposition to
20 this legislation is the Michigan Association of
21 Counties who respond we don't want this legislation,
22 not because we don't believe that court reporters do a
23 good job, not because we don't believe that the
24 legislation is necessary and long overdue, but we
25 don't want to pay for it, because in indigent

1 defendant cases we have to pay for the transcripts,
2 and we are not going to do it, and that's the answer.

3 I mean, the sole opposition to this
4 legislation, in my opinion, is the Michigan Association
5 of Counties. And it's got to get passed, and if we
6 have new legislation changing the fee schedule or the
7 page rates, we are going to get better quality court
8 reporters, we are going to have a reform of the
9 outdated show cause system, which is supported by the
10 Chief Justice, supported, I believe, by the Chief Judge
11 supported by the Appellate Practice Section, supported
12 by everybody who has really looked at this issue
13 seriously, and so I would recommend that if anybody
14 who has an opportunity to lobby on this issue and to
15 lobby reasonably and to try to find alternatives to
16 the arguments of the Association of Counties to do so,
17 because this is a huge issue that we need to have
18 done.

19 CHAIRPERSON ROMBACH: Thank you. I would
20 just note that that issue is before the Public Policy
21 and Identity Committee of the State Bar Board of
22 Commissioners, so it's on the radar screen. Our Bar
23 is going to respond to that issue, and if individuals
24 want to do the same, they do have our new public
25 policy accessible website to do just that. Thank you

1 very much.

2 I am going to try to go in the order of the
3 people that stepped up, so I am not going to
4 alternate. Mr. Haroutunian.

5 MR. HAROUTUNIAN: Ed Haroutunian,
6 Mr. Chairman, from the 6th district.

7 Judge Whitbeck, you mentioned the fact that
8 in touching base with some other organizations that
9 deal with nationwide appellate groups that no other
10 appellate courts allow for stips by attorneys
11 to extend without orders of the court, just on
12 stipulation of the attorneys. Can you tell us or let
13 me know or any of the other folks know what do other
14 courts do with respect to the time for the appellant
15 to file; that is, from the 56, as an example, today
16 and the approach of bringing it down to 42, are there
17 any stats with regard to other states in terms of what
18 their time limitations are?

19 MR. WHITBECK: I think, Mr. Haroutunian, that
20 there are through the National Center for State
21 Courts.

22 I have to tell you that 17 months ago in
23 starting to look at this problem that's the first
24 question I asked, not necessarily with respect to
25 brief times, but what is the situation out there in

1 other states, and the answers are all over the map.
2 What obtains in California does not obtain in Texas
3 and certainly doesn't obtain in Pennsylvania.

4 We selected, for purposes of just looking at
5 the overall picture, not finetuning with respect to
6 extensions, for example, we selected as comparable
7 states sort of Great Lakes basin states, Illinois,
8 Indiana, Ohio, and Wisconsin. Pennsylvania is not a
9 good one. Their system is so different that it just
10 doesn't line up.

11 So in the overall those are the data we
12 looked at in other states. We found a remarkable
13 thing, by the way, something that was not terribly
14 related to this, but it's fascinating. As you all
15 know, we had a fall-off in filings with our court,
16 significant fall-off, from the early '90s through
17 about 2002, from something like 7,500 -- or 13,000
18 cases in the early '90s to 7,500. That fall-off has
19 not occurred in other states. You don't see that
20 slope.

21 Now, the other side of that, interestingly
22 enough, is that even with our decline we are still
23 higher than most of our comparable states. We still
24 have more cases per capita per judge than any of the
25 Great Lakes basin states.

1 CHAIRPERSON ROMBACH: Tim, did you want to
2 comment?

3 MR. MCMORROW: Well, very quickly. It's also
4 one of the first things we did was to take a look and
5 survey what other states did, and you find this is
6 comparing apples and oranges. In fact, it's comparing
7 incredibly exotic fruits to things that just don't
8 make any sense at all.

9 I can tell you this, in some states it will
10 be 30 days to file the brief, but in those states you
11 find that the motions to extend time would be
12 liberally granted, then usually two or three would be
13 granted without question before the court would say no
14 more. Other states have longer periods of time, tend
15 not to be so liberal in granting extensions.

16 No state that I know of allows stipulations
17 to extend time, but I think it's also fair to say
18 that, maybe I am wrong and correct me on this, but I
19 don't think any other state charges a hundred dollars
20 to file a motion fee for an extension time either.

21 CHAIRPERSON ROMBACH: Again the order we are
22 still going to proceed at. Mr. Gillary, then
23 Mr. Levy, then Mr. Hogan.

24 MR. GILLARY: Randy Gillary from the 6th
25 circuit.

1 I speak in support of the State Bar's
2 position on this, and I will say that in my practice
3 primarily we operate on contingent fee. We don't get
4 paid by the hour, so typically it's to my incentive to
5 get a case over with early. But the 28 days on the
6 automatic extension I think is important.

7 In our office we try the case, generally I
8 try it. I have an associate who does the appellate
9 briefs. We do all of our own briefs, argue all of our
10 own cases in the Court of Appeals and the Supreme
11 Court, and that is important in order to do a good
12 job. I am more focused in putting out a quality work
13 product than in trying to get something done quickly,
14 and I think that time is important with the writing,
15 the rewriting, trying to make sure that the job is
16 done right. I think that is important for us as
17 practicing attorneys.

18 The delay in the system I don't believe is in
19 the work time. It's in the down time. And we have
20 had cases in the Court of Appeals over the years
21 sometimes three or four years, and I think the delay
22 that we have talked about is not because people are
23 spending too much time working on the case, but it's
24 just been sitting there, and that's the reason why I
25 think it's important that we have the ability that if

1 we need that extra 28 days to use it.

2 Most attorneys who will be filing briefs,
3 it's not the only case they are working on, and in
4 order to effectively and economically operate a law
5 practice you have to be doing a lot of things at the
6 same time, and that time I think is important for
7 practicing attorneys, and I definitely support the
8 State Bar's position.

9 CHAIRPERSON ROMBACH: That was a comment, so
10 I will not have anyone comment back. Mr. Levy.

11 VICE CHAIRPERSON LEVY: I do support the
12 proposals before the Assembly today.

13 CHAIRPERSON ROMBACH: Where are you from,
14 sir?

15 VICE CHAIRPERSON LEVY: I am sorry, Dan Levy,
16 3rd circuit. But I rise more to object to the terms
17 and the framework that the argument is being set in.
18 We are talking about meeting two, not one but two,
19 arbitrarily set numbers, 95 percent of cases and 180
20 days, like there is some magic to them, and when we
21 are talking about time, every day adds delay, 180 days
22 delay. Somehow or other the Bar is in favor of delay
23 because it says it needs time to work on the case.

24 Every day of delay is a bad thing, but time
25 spent in the interests of a litigant of a case is not

1 delay, and the question should be whether or not this
2 is in the interest of clients and not whether or not
3 we can get to an arbitrary delay.

4 So I am equally bothered by the portion of
5 the Bar's response that says it's not our turn to be
6 concerned about delay, because the court hasn't taken
7 all its responsibilities. It's always our turn, and
8 as individual attorneys if there is a brief that's
9 sitting on our desk unresponded to and the only reason
10 is because it's not, the response is not due, then we
11 are not representing our clients. Our client's
12 interest is to get that brief done in their name as
13 quickly as possible.

14 But if the adjournment, if the stipulation is
15 in those clients' interests, we shouldn't cut the time
16 if it's going to cut the quality of advocacy, and for
17 that reason I favor not trying to reach this goal
18 because it interferes with that quality of advocacy.

19 CHAIRPERSON ROMBACH: Thank you, Dan. Jim.

20 MR. HOGAN: James Hogan, 16th circuit. I
21 rise in support of the motion that's currently before
22 the Assembly. I do, I have a small firm in Macomb
23 County. I handle a number of appeals and not appeals
24 primarily from my own cases but for other attorneys as
25 well. A substantial portion of my practice is

1 dedicated to that.

2 In my case most of my appeals, 90 percent I
3 would say to be civil, and most of those cases it's
4 very rare that the parties actually stipulate to need
5 the extension in my personal experience. And the time
6 that I spend on a particular matter is time, quality
7 time that I have got to spend with the intricacies of
8 the appellate system, and understanding that, unlike
9 at the trial court level, you are supposed to give
10 more time and more careful consideration. This matter
11 is potentially for publication. It's something that
12 can be read and followed by other courts. So there is
13 a more careful process, a more cautious process, and
14 by its own terms a slower process.

15 Also, it was mentioned here before that, you
16 know, you really don't need to get the transcripts in
17 order to get rolling on the brief. Well, when I pick
18 up appeals from other attorneys, a lot of times I
19 don't know exactly what it was that they said until I
20 get those transcripts, and then I have actually got to
21 sit down and go through those transcripts and make
22 sure that they haven't said anything that I have to be
23 aware of before filing the appeal.

24 Sure, I can do a little preliminary research
25 on the issue involved, but I have got to check with my

1 facts and make sure that those facts are correct.

2 So I do commend the Court of Appeals for a
3 number of the recommendations. I was at the court, I
4 won't say which branch, and filing a docket statement
5 not that long ago and I asked, well, why do we need to
6 file two docket statements, and the clerk, I think she
7 was joking, said, well, it's in case we lose one. But
8 she smiled after that, so I think she was joking.

9 But I just rise in support. We should not be
10 delaying justice unnecessarily, but I don't see this
11 as any sort of unnecessary delay. The time I spend is
12 quality time.

13 CHAIRPERSON ROMBACH: Thank you, Jim. Jerry.

14 MR. ANDREE: Thank you. Gerard Andree from
15 the 6th circuit.

16 I don't do appellate work. I do mainly trial
17 work, but I think what we are talking about this
18 afternoon is really a discussion that crosses over and
19 is applicable to both trial and appellate work.

20 I would like you to consider for a moment
21 that we are in an adversarial system and the court
22 rules that we have are intended to govern adversaries.
23 You know, whether it's how many days you get for
24 interrogatories, you put a time limit on it, because
25 if you don't you would never get the answers type of

1 thing.

2 That being the case, I find it interesting
3 that, Judge Whitbeck, you would indicate that the
4 biggest problem you have is in a situation, in this
5 adversarial situation, the biggest problem you have is
6 when the parties agree on something and that they are
7 not adversaries any longer. I mean, this is the same
8 thing that I encounter in trial work. I mean,
9 frankly, you can't have it both ways. You can't say
10 that I have got so much work to do that we are taking
11 in so much work we can't even get to it, we are
12 storing it in the warehouse, but you can't agree among
13 yourselves to delay filing a brief.

14 That's the same thing I run into with trial
15 courts. You know, they say we have got so many trials
16 we can't try them all, but when you come up and both
17 parties agree, well, we are not ready to go to trial.
18 Oh, no, you got to go to trial, and really it gets
19 down to the philosophy of who do the courts exist for,
20 and that's really the basic problem that we have here.

21 And the question is, that's what really is
22 masking all this, what do the courts exist for? Do
23 they exist for a goal to have something done in a
24 certain amount of time, or do they exist for the
25 parties? And it just seems to me that, you know, that

1 if the parties agree that they don't want to file
2 something within a certain period of time and they
3 want to step back and say, listen, you have got so
4 many appeals you can handle, I will step out of line
5 here, somebody else can take my place, somebody can go
6 ahead of me. I mean, to quote my mother, who was not
7 a legal scholar, who was pretty smart, her favorite
8 saying was, What skin is it off of your nose? And
9 that's what I think the real debate is there.

10 CHAIRPERSON ROMBACH: I tell you what I am
11 going to continue to do -- again, I am going take that
12 as a comment. I know everyone is anxious to state an
13 opinion on these matters, but I do want to get to
14 every Assembly member that has a question. And I
15 recognize the next gentleman, since Mr. Brinkmeyer
16 yielded his place in line, go ahead.

17 MR. BIRD: Joe Bird, 6th circuit. I will
18 yield my opinion, which is in support of the proposal,
19 but ask the question, if we don't find ourselves
20 having 53 percent of the cases requiring the
21 stipulations that we are now accustomed to, then we
22 abandon stipulations, what will the court do now with
23 50 percent of the appellate cases all requiring
24 disposition by motions being requested by people? How
25 will you process those cases, how will you deal with

1 the volume of those cases, how will access be granted
2 for quick decision making so that on day 40 if someone
3 recognizes they need one and they find out, when, a
4 week later, that they are not going to be granted it,
5 so how will you deal with that practical situation?

6 JUDGE WHITBECK: First examine the predicate
7 that in 54 percent of the cases the automatic
8 stipulations are needed. As I say, I think that's an
9 open question. I don't know whether they are needed
10 or not. It may be that some are automatically
11 requested. Now, again, I can't get into the
12 motivation of why parties stipulate, I am not a mind
13 reader, but I don't know that the predicate is
14 established.

15 To answer your question, we will deal with
16 them, as we have suggested in our rule changes, as
17 motions for extensions, as we currently do, and we
18 will deal with them on the basis of good cause, which
19 is defined in our internal operating procedures, which
20 I think you are all familiar. We will deal with them
21 on the admodo, a lingo of our court, the
22 administrative motion docket. That administrative
23 motion docket is now decentralized to our four
24 districts, so we have one judge in each district, and
25 when I was doing them all for all the districts they

1 would land on my desk on a Monday morning and I would
2 have them out on Monday afternoon. So in terms of
3 action in the chambers.

4 Now, getting to the chambers takes longer
5 than that obviously, but this is not, to be honest with
6 you, rocket science. I mean, either the litigant, the
7 lawyer has stated good cause or he or she hasn't. We
8 don't need a lot of research on that point. That's
9 something that an experienced judge or even a novice
10 judge, I think, and all four of them are not novices,
11 they are experienced judges, can determine rather
12 quickly.

13 I have got to answer the question who do the
14 courts exist for. They exist for the litigants and
15 for the benefit of the larger society. They do not
16 exist for the lawyers nor do they exist for the
17 judges. They are there to decide matters that come in
18 front of them promptly and correctly based on the
19 record fairly for the litigants, and in the process
20 they serve the larger society through a civil dispute
21 resolution process. Strikes me that's 101. We are
22 not there for the lawyers. We are there for the
23 parties and for the society.

24 You have entered into a system, your clients
25 have, in which you said, yep, we are going to submit

1 this to a tribunal, and that tribunal is going to
2 proceed according to rules. These are the rules. I
3 suggest that this particular rule does not make a lot
4 of sense, and we should change it.

5 CHAIRPERSON ROMBACH: Again, what I will do
6 is I will let us move on with the debate. I will go
7 to this microphone next.

8 MR. LOOMIS: Daniel Loomis, 35th judicial
9 circuit. I am new here, but I am wondering would you
10 entertain a motion to amend the --

11 CHAIRPERSON ROMBACH: That would certainly be
12 in order. If you have something that can be amended,
13 that would be great.

14 MR. LOOMIS: It seems to me that we criticize
15 the Court of Appeals for delay, and now they are
16 dealing with that situation, and then to not allow
17 them to control their own docket does not seem right
18 at all, and so what I would propose is that we amend
19 the third paragraph that says be it resolved that the
20 State Bar of Michigan opposes, and in that second line
21 eliminate the following words: And eliminate
22 extensions by stipulation at the intake phase of the
23 appellate process.

24 My proposal is that we let the Court of
25 Appeals determine whether there should be delays for

1 good cause, but at the same time keep the time at the
2 greater, at the greater level of 56 so that we make
3 sure that we have time to do the briefing that is
4 needed, and that would be my proposal.

5 CHAIRPERSON ROMBACH: Is there a second for
6 the amendment? I tell you what, first I am going to
7 offer it to Mr. Fulkerson. Of course intuitively I
8 believe that defeats the purpose of why you are
9 stepping forward here, but, again, if you would take
10 that on as a friendly amendment we could do it that
11 way.

12 MR. FULKERSON: Well, I would not.

13 CHAIRPERSON ROMBACH: I didn't mean to
14 presume your position on that. So I would need a
15 second for us to consider that as amended.

16 VOICE: Second.

17 CHAIRPERSON ROMBACH: So we have a motion and
18 a second here, so right now we are basically on to the
19 debate as far as the amendment. Go ahead. I do
20 recognize our State Bar President, Scott Brinkmeyer,
21 from the 17th circuit.

22 PRESIDENT BRINKMEYER: I might add that after
23 today's lunch I may be the immediate past president
24 pretty soon. Be that as it may, while I do still hold
25 that office, I feel compelled to speak, and I will

1 speak with regard to the proposed amendment, but I
2 think this also goes to the entire discussion.

3 There was a key word that was used by Don
4 early in his presentation that comes home to me about
5 any of this consideration at this point, and that word
6 was premature. I speak against the amendment for the
7 reason that I don't think that the Supreme Court
8 should be doing anything at this point to reduce the
9 time for briefing or to remove the stipulations until
10 we have, indeed, heard from all the corners, from all
11 of the vested parties, and we have all the information
12 we need to properly analyze this.

13 One of the biggest problems we have found in
14 this committee that Don and Tim and I and
15 Judge Whitbeck, to his credit, have worked on is that we
16 are kind of learning backwards, and the more that we
17 have learned -- we have got two statisticians. The
18 court shared with us a lot of data on their cases over
19 the past couple of years. We finally got two
20 statisticians to look at this, and we began to learn
21 some of the things that are outlined in your booklet.

22 We still don't feel we have our hands really
23 on the pulse of it, but part of the problem is, of
24 course, that it did identify that there are these
25 problematic delays with the record and the transcripts

1 that are the key element of this.

2 I have got kind of a rhetorical question that
3 applies to the whole thing. If the Supreme Court were
4 to grant this request and then we find out at the end
5 of the day, after all of the sifting has been done and
6 a recommendation is made on transcript delay and
7 record delay and some of the recommendations of the
8 task force are implemented and we find out that
9 nothing had to be done with the intake briefing time
10 or the stipulations or that much less had to be done,
11 how do we get that changed? And when you consider
12 that, and I agree with Judge Whitbeck about what he
13 just said, that the system is for the litigants and
14 the public at large, but let's face it, I mean, we are
15 the ones representing them, and we are the ones that
16 have to do the job to make sure the best result
17 accrues.

18 And so I focus on that word premature. I
19 think it's premature that we would have this
20 amendment, so I speak against it, and I would think
21 it's premature that the Supreme Court would consider
22 this at this time.

23 The final question rhetorically would be,
24 What harm? What harm in waiting? No one is hurt. If
25 the warehouse is eliminated and proposals are made

1 through this new work force group and the task force
2 recommendation, some of them, all of them are
3 implemented, and our committee keeps on doing its work
4 and finds out other ways to propose, for example, what
5 we were trying to look at initially, some sort of
6 differentiated case management system that might be
7 employed, we might find at the end of the day there is
8 really not a controversy at all and that nothing
9 whatsoever has to be done, but we would be in a better
10 position perhaps to find out where we should
11 compromise if we should compromise.

12 CHAIRPERSON ROMBACH: And I take it,
13 Mr. Brinkmeyer, that's a personal opinion and also to
14 the degree it supports the Neckers report, it speaks
15 on behalf of the Board of Commissioners as well?

16 PRESIDENT BRINKMEYER: It does. That's our
17 position.

18 CHAIRPERSON ROMBACH: Thank you.

19 Mr. Hogan, you are speaking towards the
20 amendment, so you have another shot.

21 MR. HOGAN: That's correct. James Hogan,
22 16th circuit. I rise in opposition to the proposed
23 amendment. In my experience on working on appeals
24 briefs, requests for extension between the parties are
25 usually far and few between, and I cannot remember

1 anyone that I felt was unjustified that the parties
2 couldn't agree on in order to -- additional time to
3 work on it.

4 I am working, for example, on one appeal now
5 that also is tied in to another appeal that's before
6 the Court of Appeals and that may end up going to the
7 Supreme Court. We may be doing an extension by
8 stipulation of the parties, but the reason why that is
9 is because the one case may be moving up to the
10 Supreme Court shortly, and it's that particular type
11 of instance that arises, and it also, quite frankly,
12 just the complications with the case sometimes going
13 on proceeding forward down below that you need that
14 opportunity to have by stipulation, and it's something
15 that the court itself can, as I think Judge Whitbeck
16 indicated, is something that, you know, if there was a
17 very good reason, the extension would be granted.
18 Well, I don't stipulate to extensions unless there is
19 a good reason.

20 I would also say this: At some point or
21 another when they first designed MCR 7.212 they had in
22 those provisions for the 56 days for the filing of the
23 appellant's brief, the 35 days for filing of
24 appellee's brief, and the 21 days for the opportunity
25 to file a reply brief, plus with these extensions in

1 it. At that point I am certain that there was a lot
2 of discussion and thought that went into those time
3 tables.

4 As far as I am aware nothing in the law has
5 changed substantially since MCR 7.212 was adopted, and
6 I believe it was in the late '70s, if I am not
7 mistaken, that would make our job as appellate
8 attorneys any easier or quicker. Certainly we have
9 internet, but we have still got to read everything,
10 and there ain't no way to quicken that up.

11 So these were good time tables set forth back
12 then. There was a lot of thought and consideration
13 given to that, and I speak in opposition to the
14 proposed amendment. I am not going to stipulate
15 unless there is a good reason. You have to trust my
16 word on that one.

17 CHAIRPERSON ROMBACH: Thank you very much,
18 Jim.

19 VOICE: Call the question.

20 CHAIRPERSON ROMBACH: Okay. I have a request
21 to call the question. Unless there is somebody else
22 that's going to oppose this, I am calling the
23 question. I will acknowledge that we should move, and
24 it is without objection, I will move this to a vote.
25 This is only on the proposed amendment about striking

1 the language and eliminate extensions by stipulation
2 of the intake phase of the appellate process, to take
3 out language as made by the gentleman in the back.

4 And at this juncture, all those in favor of
5 the proposed amendment being added to the main bill,
6 please indicate by saying yes.

7 All those opposed indicate by saying no.

8 That's a, distinctly in the opinion of the
9 chair, the noes have that. We return to the main
10 motion. Are there any other comments?

11 VOICE: Call the question.

12 CHAIRPERSON ROMBACH: I am sorry?

13 VOICE: Call the question.

14 CHAIRPERSON ROMBACH: That's Mr. Perkins,
15 and, again, Ms. Johnson seconds that, although we
16 don't need a second. It's nondebateable.

17 At this juncture, again, without objection,
18 we could take a vote on calling the question, but I
19 don't see any objection. The Chair believes we can
20 move to a vote on the main motion. I would by rule,
21 by Representative Assembly rule, I have to acknowledge
22 that Mr. Fulkerson, as proponent, could make a final
23 comment before I conduct a vote.

24 MR. FULKERSON: The only final comment I have
25 is just a correction of the way I read. Actually it's

1 not -- in the first sentence it would just be be it
2 resolved that the State Bar of Michigan commends
3 courts, not just specifically the Court of Appeals.

4 CHAIRPERSON ROMBACH: I believe that
5 Ms. Brown had made that as an amendment, and we can
6 consider that clerical in nature in the opinion of the
7 Chair. I believe my parliamentarian is going to
8 support that. Tremendous. Thank you very much,
9 Mr. Barr.

10 We will move this for a vote now, and I
11 believe that's your final comment then.

12 MR. FULKERSON: It is. Thank you very much
13 to everyone.

14 CHAIRPERSON ROMBACH: As I believe it may --
15 there is no amendments to this thing, right?

16 MR. FULKERSON: No.

17 CHAIRPERSON ROMBACH: Nancy, were any
18 amendments made as far as the reading of this?

19 As presented to the Representative Assembly
20 on the entire package as proposed by Mr. Fulkerson on
21 behalf of the Appellate Law Section and seconded by an
22 Assembly member, I would now entertain a vote.

23 All those in favor please indicate by saying
24 yes.

25 All those opposed indicate by saying no.

1 In the opinion of the Chair the yeses have
2 it. This will become official State Bar policy and we
3 will advocate in front of the Supreme Court on behalf
4 of the Assembly's position and on behalf of the State
5 Bar. Thank you very much to all of the very learned
6 advocates that came today to wage this fight,
7 Mr. McMorrow, Mr. Fulkerson on behalf of the section
8 of the State Bar, and of course Judge Whitbeck on
9 behalf of the Court of Appeals.

10 (Applause.)

11 CHAIRPERSON ROMBACH: Next we have
12 consideration of a proposal to amend the Michigan
13 Rules of Professional Conduct referred to previously
14 as the main event. We have Elaine Fieldman I have
15 seen on behalf of the State Bar of Michigan Ethics
16 Committee, the proponent for this proposal, co-chair,
17 as well as co-chair Elwood Brown from the St. Clair
18 County Circuit Court bench. Actually I think it's
19 probate family division. Those co-chairs, if they can
20 step forward and address this to the Assembly.

21 I believe that Mr. Kantor, who is on the
22 docket, as well as Mr. Haroutunian, are both in
23 support as our the committees of the proposal as
24 amended before the Assembly today, so not to give them
25 short shrift, but I do believe. Is that right,

1 Mr. Haroutunian?

2 MR. HAROUTUNIAN: That's correct,
3 Mr. Chairman. Short of any member wanting to change
4 any of the places where any of the rules should be
5 slotted.

6 CHAIRPERSON ROMBACH: Okay. So right now the
7 committee, Hearings Committee, supports how this has
8 been delineated for debate. The adoption of the
9 resolution regarding the proposed Michigan Rules and
10 the procedural rule, I believe the committee had
11 addressed as well and had helped apportion which items
12 were to flow through for debate, which items were on
13 the bubble, so to speak, in that middle category, and,
14 thirdly, which items that we felt that there was
15 significant concurrence that we could pass them
16 through, and, again, not to speak on behalf of
17 Mr. Kantor and his Special Issues Committee that had
18 also helped in this determination, is that accurate as
19 well, Allyn?

20 MR KANTOR: That's correct.

21 CHAIRPERSON ROMBACH: I would want to make
22 mention before we get into the discussion on this
23 topic that we have confirmed, I believe informally, a
24 time line just so that the speakers here in the
25 Assembly know what is the Michigan Supreme Court

1 contemplating on doing in this matter. I think that
2 they were pleased that we took this issue up today and
3 that we have scheduled a special hearing on this on
4 November 14th at Thomas M. Cooley Law School.

5 So they have informally informed us that the
6 publication of their draft of the Michigan Rules of
7 Professional Conduct should come out and be published
8 in December, and the comment period would then be
9 allowed until February 1st, or approximately there, of
10 2004, and there would be a public hearing conducted in
11 April 2004.

12 I would note that that, again, is consistent
13 with the time line that I had advocated earlier.
14 Basically they want to see a work product before they
15 publish, and that work product then would have to be
16 arrived at at our November meeting, and if we can get
17 that to them in advance then would very well perhaps
18 influence what they publish for public comment, but it
19 wouldn't have to be set in stone. In fact, because
20 they are publishing and that, for instance, we haven't
21 perhaps concluded our final deliberation, that we
22 could revisit this issue. If harmful initiatives have
23 been taken in haste, we could revisit this in January
24 and, again, get back to the court within the comment
25 period, and then our impression is that as advocates

1 either Mr. Levy or Ms. Jamieson or any other of
2 interested parties could come forward with the
3 Assembly's position.

4 Actually I said in April. Their hearing is
5 going to be in May, I believe.

6 VOICE: That's what they think.

7 CHAIRPERSON ROMBACH: Right, I misspoke. I
8 was thinking ahead that our next then meeting would be
9 in April, and we could again perhaps amend our
10 position.

11 It's a great necessity that we consider very
12 seriously the issues before us. I will try to limit
13 those for debate and come up with a final product in
14 November, and then we can forwarded that to the court
15 before they have an opportunity to publish, and that
16 way our opinion perhaps could have a maximum impact in
17 the process. But, again, we are not having to
18 finalize anything. If we reconsider or we want to
19 revisit this issue, it is not set in stone.

20 With those final words, I will now
21 recognize -- Elaine and Judge Brown, would you like to
22 come forward.

23 We will entertain a moment of silence. Our
24 court reporter is changing her paper.

25 This is, I believe, probate judge, Family

1 Division of the 31st Circuit Court, Judge Elwood
2 Brown, co-chair of the committee.

3 JUDGE BROWN: Ladies and gentlemen, myself,
4 along with my colleague, Elaine Fieldman, are
5 co-chairs of the Committee on Judicial Professional
6 Ethics, and the Chair, Tom here, has asked me
7 basically to give you just an overview of the process
8 that we had.

9 Now, I know that Elaine was present at your
10 April meeting, and you had members of the American Bar
11 Association there as well that did do that, but for
12 those of you who may not have been there, this is a
13 project that we began about two years ago. The
14 process involved, and I want you to know, in case you
15 don't, the committee that we chair is made up of a
16 very diverse practice group. Many of those, some of
17 those members are on the Assembly, I see them in the
18 audience. So we have had input from persons, from
19 sole practitioners to huge law firms, from the
20 government lawyers and so forth on these matters.

21 Our first assignment was to give, was to
22 assign each rule, proposed rule, from the ABA along with
23 the Michigan Rule to an individual member of the
24 committee to evaluate as to what the distinctions
25 were, what the differences were between the current

1 Michigan rule and the proposed rule from the ABA.
2 After that was accomplished we developed a
3 subcommittee of our committee to get into the meat of
4 it.

5 That subcommittee met for about nine months,
6 periodically for about nine months, and developed a
7 working format to bring back to the full committee.
8 That was about last November.

9 So since about last November the full
10 committee has taken that work, taken that work
11 product, and on an individual rule-by-rule basis
12 debated it, discussed it, and the ultimate end product
13 that we have is that which is before you. So, with
14 that, that is the, that's the basic process that we
15 went through.

16 CHAIRPERSON ROMBACH: Thank you very much,
17 Judge Brown. Elaine, did you have any comments that
18 you would like to make? I know you previously graced
19 us with your presence in April.

20 MS. FIELDMAN: I went through that process
21 last April explaining to you. Members of the ABA were
22 also present. They reviewed our rules. The ABA spent
23 an enormous amount of time going through the rules.

24 We started the process with a view to try to
25 come as close as we thought was feasible to adopting

1 the ABA rules so there would be consistency among the
2 various jurisdictions, and we think we did a good job,
3 and the ABA thought we did a good job.

4 I just want to comment on the resolution, I
5 believe that's in front of you, and I commend whoever
6 put this together, because I think it is important to
7 try to narrow down our discussion, your discussion, to
8 the real issues of concern in November.

9 The court is anxious to get the product in
10 front of it so that it can go out to the profession
11 and have hearings, et cetera, and I think that that's
12 doable if you limit the real issues of concern, and I
13 think whoever put this together did a great job of
14 coming up with the dozen or so rules that deserve and
15 require some discussion.

16 And so I would urge you to adopt this
17 resolution so that we can move forward, focus our
18 attention. There is a process in place under this
19 resolution to get written commentary. Hopefully our
20 committee will then have some time to look at, and we
21 are scheduling our meeting, to look at the written
22 commentary so we can respond, so we can have a
23 meaningful answer to the concerns at your November
24 meeting, but if you are going to debate all
25 60-something rules, I just think it's, at that time, a

1 very undoable task. Thank you very much.

2 CHAIRPERSON ROMBACH: Thank you, Elaine. The
3 compliment for the drafting of the proposed rule would
4 have to fall upon Elizabeth Jamieson and Dan Levy as
5 well as with the help of Janet Welch who helped put
6 that together.

7 I would note too, in anticipation of this
8 meeting there is a number of committees that have
9 stepped forward and submitted written recommendations
10 as we have solicited. In fact, the first four in the
11 door were actually the Pro Bono Involvement Committee,
12 the Open Justice Task Force, actually the Open Justice
13 Commission, I would call them, the Legal Aid
14 Committee, as well as the Access to Justice Task
15 Force, and they put together a consolidated opinion on
16 the pro bono involvement that is required, MRPC 6.1,
17 so that is going to be obviously docketed for
18 discussion, and that would be disseminated to the
19 Assembly in advance of the next meeting.

20 The ACES Section had previously come to the
21 Assembly, if people remember last fall, and asked for
22 an increase in the amount of voluntary pro bono
23 service, an increase from 30 to 40 hours, and various
24 other and sundry changes based on the ABA's Ethics
25 2000 report, and, again, that would be docketed as

1 well. So they are going to be called upon to speak to
2 that.

3 John Allen, who I believe today is here as
4 well, in his chairmanship role at the Grievance
5 Committee had supported written comments regarding 1.5
6 of the Michigan Rules of Professional Conduct as
7 proposed by the Ethics Committee. Again, that's going
8 to move forward.

9 The Legal Aid Committee had submitted a
10 written proposal with regards to Michigan Rules of
11 Professional Conduct. For those of you that are of a
12 salacious nature, the 1.8, sex with clients, and, again,
13 I know the Family Law Section had a distinct viewpoint
14 on that.

15 Additionally, I think in front of you today
16 Jeff Collins, the Eastern District of Michigan Federal
17 District Attorney, speaking on behalf of his federal
18 prosecutors has a letter in front of you contending, I
19 believe both Michigan Rules of Professional Conduct,
20 as proposed, 4.2 and 3.8. So, again, afforded those
21 comments as well, and I believe the Prosecuting
22 Association of Michigan has spoken quite forcefully
23 that they are going to enter the fray with regards to
24 4.2 as well.

25 And there are various other individuals that

1 had submitted written comments that will be taken into
2 consideration. So, again, if I have left out anybody,
3 I apologize, but that's what we received in writing
4 for today's debate.

5 At this juncture I would turn to Elizabeth
6 Jamieson, who is going to explain a bit of the
7 underpinning of the proposal for the procedural steps
8 that we are going to take in November, and then I know
9 that Dan Levy is interested in making a motion to that
10 effect.

11 Elizabeth.

12 CLERK JAMIESON: Good afternoon. In
13 deference to Connie Coon, I am going to try to speak
14 really slowly.

15 This is definitely a work in progress. It's
16 changed from last night to this morning, and it's
17 changed again from this morning to now. And I think
18 the intent is, rather than move for approval of the
19 entire proposal as has been distributed to everybody,
20 that we are really only today going to deal with part
21 A having to do with the procedural rules for the
22 November 14th special meeting, and the reasoning
23 behind that is that we continue to make great strides
24 in trying to pare down what it is that we need to
25 discuss and debate at the November meeting, and we

1 have extremely wide open doors now between the Ethics
2 Committee and the Grievance Committee trying to work
3 together.

4 And it's my understanding that our plan is
5 now to take what we have submitted to you with regard
6 to part B, C, and D having to do with the
7 categorization of the proposed rules, and rather than
8 have you make a definitive decision now as to how we
9 are going to progress that you let us continue working
10 on that so that we can further hone it in for the
11 November meeting.

12 So with regard to part A alone, which is the
13 procedural rules, basically we are providing the
14 opportunity at our special meeting to focus on two
15 things, the proposed Michigan Rules of Professional
16 Conduct and the proposed Attorney Sanction Rules.

17 And with regard to the Attorney Sanctions,
18 the Supreme Court commentary period ends in November,
19 and they have given us opportunity to discuss this at
20 our special meeting, and we need to do that so that we
21 can have a say in the Supreme Court. And so we are
22 going to devote a portion of our time at the November
23 14th meeting to that issue.

24 With regard to the Michigan Rules of
25 Professional Conduct, even today we learned that we

1 are now going to have a commentary period. This
2 morning we didn't even know that.

3 So with regard to our November meeting, what
4 we would like to do procedurally is follow what we
5 have set forth in part A, 1 through 7, and with regard
6 to number 7, we are pretty much saying that we have a
7 lot of different ways that we can handle these rules.
8 We can have alternative proposals submitted in
9 writing, we can have majority reports, no majority
10 reports, minority reports. We are setting forth time
11 limits and how we are going to handle that. Rather
12 than going into detail, you have all seen it and had
13 an opportunity to review it, and at this point our
14 intent is to not deal with parts B, C, and D, and just
15 deal with part A.

16 And we do have one amendment with regard to
17 number 7 under part A for no majority, and this was a
18 friendly amendment that we are going to adopt,
19 something that was submitted from the 6th circuit
20 under 7 (B), no majority, the language would be changed to
21 read: The Assembly shall be deemed to have rejected a
22 proposed rule which received support from more, sorry,
23 from less than 50 percent of the Assembly members
24 present, and then minority report shall be attached as
25 noted in 6 (B) above. That's the only adjustment that

1 we have made to part A.

2 CHAIRPERSON ROMBACH: I would just mention
3 that the amendment is actually, for the record, coming
4 from Gerard Andree, member of the 6th circuit. He
5 proposed that action over lunch, and I believe that
6 the powers that be are accepting that as a friendly
7 amendment.

8 CLERK JAMIESON: Correct.

9 CHAIRPERSON ROMBACH: Mr. Levy.

10 VICE CHAIRPERSON LEVY: I just want to stress
11 that this will work, but it will only work if people
12 really start thinking about this and start thinking
13 about November tomorrow. We got a lot of last minute
14 calls for lunch in the last three days. We got people
15 who got here today and didn't know that they were
16 supposed to have called for lunch. That was printed
17 in pretty no uncertain terms at the point of the
18 calendar. I won't accuse, but I suspect that many of
19 those people had not looked at the agenda until
20 yesterday or the day before or this morning, and
21 that's a scary thought if we are going to debate these
22 61 rules with any type of information.

23 People need to look at them between now and
24 November if we are going to have an intelligent
25 debate, an informed debate, but with that I would move

1 the procedural rules be adopted so that we can, in fact,
2 conduct that debate effectively and so that minority
3 positions are reflected to the court when all is said
4 and down.

5 VOICE: Support.

6 CHAIRPERSON ROMBACH: It's been moved and
7 supported that the procedural rules in front of the
8 Assembly in part A, 1 through 7, that would be A
9 through D inclusive, as far as under 7, stopping
10 before point part B is now before the Assembly. Is
11 there any discussion on that? Mr. Haroutunian.

12 MR. HAROUTUNIAN: Ed Haroutunian, the 6th
13 district. I just want to be real clear for myself and
14 for the members that if, in fact, at least as I read
15 this from under the alternative proposals under 7, if
16 someone wants to discuss a specific rule at the
17 November meeting, then they apparently must present in
18 writing and in sufficient quantity to be circulated to
19 all other Assembly members and present a brief summary
20 of the reasons why some alternative should be used
21 instead of the proposed rule, is that correct?

22 CHAIRPERSON ROMBACH: I tell you what,
23 actually it's not quite that broad. I believe that if
24 you have or are advocating an alternative to the
25 position that is outlined in the package of materials

1 as submitted by the Ethics Committee, then you need to
2 submit that alternative in writing. However, if you
3 want to be a member of the Assembly, as we all are,
4 and want to come forward and discuss any of the items
5 and say I am against this or I am for this or I have
6 heard Mr. Haroutunian's suggestion as an alternative
7 or amendment and I think Mr. Haroutunian is out to
8 lunch or he is the greatest thing since sliced bread,
9 anyone can discuss it. All I believe the proposal
10 goes to is we don't want to be drafting onsite as far
11 as the alternatives.

12 Now, if the discussion leads to some other
13 result, then I think that the Chair-Elect and the soon
14 to be elected Clerk would have to take that into
15 consideration, and I am sure that, again, as
16 Ms. Jamieson has stated for the record, this is a work
17 in progress, it's been evolving, as everything in the
18 packet, as you notice we have substituted in for
19 almost everything. That would be the intent, I
20 believe.

21 MR. HAROUTUNIAN: So that any rule, any rule
22 in November will conceivably, could conceivably be
23 discussed?

24 CHAIRPERSON ROMBACH: Absolutely. And I
25 guess that's what the intent is of this, but I would

1 make special mention that the items that have already
2 been submitted to comply with this proposal, the ones
3 that I outlined previously where we have received
4 written comment, alternative suggestions and support,
5 as outlined, the ones I have already outlined for you
6 here today are clearly going to be docketed and
7 apportioned time because these sections and committees
8 have already complied with the rule, and I just want
9 to make sure, because the ACES section has been
10 waiting for a year for us to get back to them. So
11 their proposal already complies with Representative
12 Assembly nomenclature for consideration. So that will
13 be a live issue. That is, again, the ones that I
14 outlined previously. Again, I believe we are in
15 discussion. Go ahead.

16 MR. HERRINGTON: David Herrington, 52nd
17 Circuit. So I am clear, if we want to submit a letter
18 or a memo regarding any particular proposed rule, can
19 you tell us if there is a deadline or is it too late
20 to do that? For instance, to respond to Mr. Collins'
21 letter, the U.S. Attorney for the Eastern District, if
22 I or another group or someone else would want to
23 discuss a particular rule and have it disseminated in
24 writing, this is not an alternative.

25 CHAIRPERSON ROMBACH: Right, the alternative

1 is the key word here. If you want an alternative,
2 then you should do this in advance, and I will let the
3 maker of the motion explain what the procedure would
4 be.

5 VICE CHAIRPERSON LEVY: If it's an
6 alternative, we are going to have to have it in
7 writing so it can be passed out, even at the meeting.
8 Anything else that you would like to have people have
9 in their hands before the meeting starts so that they
10 can consider it we will circulate. Sooner is better
11 than later. I will get together with Bar staff,
12 determine what that means in terms of an actual
13 deadline, and we will e-mail that out. And if you
14 haven't heard from us by the end of next week, call,
15 because if you didn't get on the e-mail list, we'll
16 have sent it by then as to what we will include in the
17 mailed out packet.

18 CHAIRPERSON ROMBACH: You may give him more
19 than one week. I think he is being pretty optimistic.
20 At the same time, again, we have gotten a lot of these
21 written submissions, and we are going to have to have
22 all those in front of you, and the ones we have
23 already received, I think the week deadline would be
24 good, but, again, he is full of ambition.

25 VICE CHAIRPERSON LEVY: I am not suggesting

1 the deadline is going to be a week. I am saying what
2 the deadline is.

3 CHAIRPERSON ROMBACH: We may have the
4 deadline, but that's probably subject to change and
5 subject to input from the various committees. Go
6 ahead.

7 MS. ASSENDELFT: Barbara Assendelft, 13th
8 circuit. I just have a question for Elizabeth and
9 maybe Dan too, but part A(7)(C) where it says
10 speakers, they shall identify one of the following
11 positions on a proposed rule. Should you add
12 rejection of a proposed rule? Should that be an
13 option or -- because in B, no majority, we added the
14 Assembly shall be deemed to have rejected a proposed
15 rule. So should rejection be under speakers as well?

16 VICE CHAIRPERSON LEVY: I think maybe we
17 should change the shall to a should, because we don't
18 mean that to be exclusive, but at the same time we
19 would rather not be presenting to the Supreme Court
20 that the position of the Assembly is that we don't
21 like anything and we have no proposed alternative, so
22 that we would prefer where possible that speakers
23 should be supporting something. But, yeah, if it's a
24 friendly amendment, I would certainly agree to change
25 the shall to a should, because it's not meant to be

1 exclusive.

2 MS. ASSENDELFT: Thank you.

3 CHAIRPERSON ROMBACH: Again, Barb, I think
4 that's going to be accepted as a friendly amendment to
5 the proposal, and I am sure that Nancy will do that on
6 her overhead.

7 Any other comments? Go ahead, our
8 distinguished member from Lansing.

9 MS. THOMAS: Laurin' Roberts Thomas, 30th
10 circuit. I think this is another friendly amendment.
11 Under B, no majority, last line be attached as noted
12 in 6 (B) above. I think that's supposed to be 7 (A).

13 CHAIRPERSON ROMBACH: I will let Mr. Levy and
14 Ms. Jamieson speak to that.

15 VICE CHAIRPERSON LEVY: I think that's what
16 happens when you make changes late at night. Thank
17 you.

18 CHAIRPERSON ROMBACH: Thank you very much for
19 your proofreading abilities here.

20 Again, that's going to be accepted and
21 corrected as a friendly amendment.

22 Anybody else have any input or discussion on
23 this procedural rule for the special meeting on
24 November 14.

25 VOICE: Call the question.

1 MR. PERKINS: Good afternoon, David Perkins
2 from the 3rd circuit.

3 It's not really to the amendment but just
4 maybe to help, and I don't know if we have the
5 mechanism to put it up on the website, and maybe you
6 can put the comments that come in on the website so
7 other people can see what, you know, some other folks
8 are writing in terms of their comments, and that might
9 help facilitate this meeting on the 14th, because then
10 people won't be coming in blind, and for people who
11 are truly interested they can go to the website, maybe
12 designate a specific area of the website. I don't
13 know how to do all that stuff, but do it that way.

14 VICE CHAIRPERSON LEVY: The lady who does
15 know how to do all of that stuff is nodding her head
16 that she can. So we will get it done.

17 CHAIRPERSON ROMBACH: That's an excellent
18 idea, David, and, again, I think that presupposes that
19 we will put it on the website probably first and then
20 try to get it to you in an e-mail fashion and then
21 make sure it's published with the official calendar
22 once the Rules and Calendar Committee have devised
23 that for the special meeting.

24 Anybody else have any insights to share with
25 the entire group here?

1 VOICE: Call the question.

2 CHAIRPERSON ROMBACH: We are calling the
3 question, and is there any objection then at this
4 moment? Hearing none, we won't conduct a separate
5 vote on calling the question. We will move to a vote.

6 As amended, as far as the proposal that you
7 have in front of you with regards to the special rule
8 of procedure in effect for the November 14th meeting,
9 part A, 1 through 7, all those in favor please signify
10 by saying yes.

11 Are there any opposed, indicate by saying no.

12 Hearing none, that passes unanimously. I
13 appreciate your time and attention to detail on that
14 particular matter.

15 Next we will consider the election of the
16 2003-2004 clerk of the Assembly. I would like to
17 thank Judge Brown and Ms. Fieldman for coming forward,
18 and I anticipate we will see you yet again
19 November 14th.

20 (Applause.)

21 CHAIRPERSON ROMBACH: In your package you
22 have been able to review the credentials of the one
23 nominee who had submitted her name to the Nominating
24 Committee. The committee is forwarding her
25 application. I guess I will have Ms. Lori Buiteweg

1 stand, and she can turn around for everyone to review
2 a potential leader in the waiting.

3 Lori, I am not going to go to your nominating
4 speeches. I am sure they would be quite eloquent,
5 unless there is a challenger amongst the Assembly
6 today, because we can take nominations from the floor.
7 Is there anyone that would like to nominate
8 themselves, a loved one, or perhaps a fellow in the
9 Assembly for identification as clerk? Going once, I
10 probably have to do this three times, secondly and
11 third.

12 Hearing none, I would entertain a motion with
13 regards to Ms. Buiteweg's candidacy.

14 VOICE: So moved.

15 CHAIRPERSON ROMBACH: We are supporting,
16 perhaps Mr. Garrison, and seconded that we support
17 unanimously Ms. Buiteweg's candidacy for the
18 opportunity of being the next clerk of the
19 Representative Assembly. If there is no objection, we
20 will move to a vote on the unanimous acceptance of her
21 elevation to that position.

22 All those in favor please indicate by saying
23 yes.

24 Any opposed say no.

25 Hearing none, congratulations, Lori.

1 (Applause.)

2 CHAIRPERSON ROMBACH: We would like to
3 present the plaques for the participation of the
4 chairs during this year. Dan, do you want to go over
5 and grab those, and, not having a list in front of me
6 but in no particular order, what I would do at this
7 moment, I would probably acknowledge first Christopher
8 Ninomiya, who is term limited and unable, as I said,
9 to be here today. On behalf of Mr. Ninomiya, I would
10 like to thank the academy for the recognition, and I
11 will make sure that the plaque gets forwarded to him.

12 Next I will probably go with another
13 graduate. Mr. Kantor, if you would step forward and
14 see our able bodied Vice Chair. Again, Allyn spent
15 countless hours of time with regards to special
16 issues. We had a lot of special issues this year, and
17 I know on short notice he convened a very distinguished
18 committee to help him. He is now moving on to the
19 Board of Commissioners.

20 (Applause.)

21 CHAIRPERSON ROMBACH: Our next honoree I
22 guess will be Edward Haroutunian. Ed is still going
23 to be with us, but I know he, for the first time in
24 recent memory, having served on the Hearings Committee
25 and probably been our only member still yet alive that

1 had done so, chaired the committee now this time and
2 had resuscitated its role to the Assembly contributing
3 mildly and meeting around the state in pursuit of our
4 proposal for a dues increase. Ed, thank you very
5 much.

6 (Applause.)

7 CHAIRPERSON ROMBACH: Next we will recognize
8 William Knight from Lake Shore Legal Services in
9 Macomb County's 16th circuit for his leadership on the
10 Assembly Review Committee. He is following in the
11 footsteps of Elizabeth Jamieson, a very difficult act
12 to follow. Thank you, Bill.

13 (Applause.)

14 CHAIRPERSON ROMBACH: I will go to Lori
15 Buiteweg. She graduated from the Rules and Calendar
16 Committee, but you are still entitled to recognition
17 in that capacity. If you would step forward as well
18 and see our Vice Chair for your plaque. I know she
19 has gone done a great job in setting the agenda in
20 some very difficult times.

21 (Applause.)

22 CHAIRPERSON ROMBACH: And finally our final
23 graduate, somebody that spent more years here than
24 number of us combined in the Drafting Committee, and I
25 am not quite sure how we could replace her, but we

1 have an entire committee to take that opportunity we
2 have from Genesee County the distinguished Francine
3 Cullari.

4 (Applause.)

5 CHAIRPERSON ROMBACH: Normally we would
6 recognize people individually, but in light of the
7 hour and that we had promised to get people out of
8 here by a time far past, I would just recognize as a
9 group those outgoing Assembly members whose terms of
10 service expire at the end of this meeting. Again, I
11 hope that you forgive me for not mentioning you
12 individually. It's not that our thoughts and prayers
13 aren't with you in your future endeavors; however, I
14 know that I don't want to cast you in disrepute by
15 mentioning your names for further delaying the
16 meeting. So thank you very much for your
17 participation.

18 (Applause.)

19 CHAIRPERSON ROMBACH: And, finally, I had
20 told you that I would allow Dan to seize power. This
21 is the gavel that has been inscribed to commemorate
22 his rise to Chair of the Representative Assembly, and
23 I would like to, on behalf of each on every member
24 here, commiserate with him for his upcoming year of
25 service and congratulate him on his achievement. Dan.

1 (Applause.)

2 CHAIRPERSON ROMBACH: The man will do an
3 outstanding job for you in the upcoming year.

4 VICE CHAIRPERSON LEVY: You are out of order.

5 Is Glenna nearby or somebody else with the
6 attendance slips? We will find the attendance slips
7 and get them out.

8 VOICE: I think she walked out with them.

9 VICE CHAIRPERSON LEVY: We will get them to
10 you. Please find them.

11 Not only is it important that we get the
12 attendance slip, as it always is, so that we can mark
13 you present, but equally important on the attendance
14 slips for this meeting is a list of all of the
15 committees of the Assembly, as well as all of the
16 sections and committees of the State Bar to which we
17 have liaisons. We would like you to go through that
18 and indicate if you have any and wherever you do have
19 interest in a particular area of law, because we do
20 want to have people who are appointed to those
21 committees who are interested in the subject matter.
22 They are the green sheets that are just now coming out
23 and being passed out, so please take that.

24 In addition to that, my only official
25 responsibility, and it is more a pleasure than a

1 responsibility as the new Chair, is to say thank you
2 and job well done to the old Chair. I am not going to
3 make that a lengthy process. I gave him the more
4 lengthy version yesterday before the Board of
5 Commissioners.

6 But the thought that's going through my mind
7 at the moment is I work for the Attorney Generals
8 office, for people who don't know that. I worked
9 under Frank Kelly, the eternal general, and when Frank
10 Kelly stepped down and Jennifer Granholm took over she
11 showed up at the first meeting of the entire staff of
12 the Attorney Generals office as this newly elected,
13 newly appointed by the people Attorney General, and
14 what she did is she brought in this really huge pair
15 of shoes, she dropped them on stage, and she stood in
16 them and says, This is what it feels like. I thought
17 it was funny then. I understand it now, and it's much
18 less funny.

19 I really thank Tom for the work he has done
20 for the Assembly. I am not quite so sure I thank him
21 for the height at which he set the bar for us for the
22 next year, but I do have from the Bar a plaque
23 acknowledging his service as Assembly Chairperson
24 2002-2003, Vice Chairperson for the 2001-2002 year,
25 and Clerk for the 2000-2001 year, and it really is

1 with pleasure that I present it to him.

2 (Applause.)

3 VICE CHAIRPERSON LEVY: And do I hear a
4 motion to adjourn?

5 VOICE: So moved.

6 VICE CHAIRPERSON LEVY: I hear motion to
7 support. Any objection? Hearing none, we are
8 adjourned.

9 (Proceedings concluded at 4:32 p.m.)

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1 STATE OF MICHIGAN)
 2 COUNTY OF CLINTON)

3 I certify that this transcript, consisting
 4 of 175 pages, is a complete, true, and correct transcript
 5 of the proceedings had in this case on Friday, September 12,
 6 2003.

7
 8 October 10, 2003

Connie S. Coon

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