STATE OF MICHIGAN
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE
ASSEMBLY of the STATE BAR OF
MICHIGAN

Proceedings had by the Representative Assembly of
the State Bar of Michigan at Suburban Collection Showplace,
Onyx Room, Novi, Michigan, on Thursday, October 8, 2015, at
the hour of 9:00 a.m.

AT HEADTABLE:

VANESSA PETERSON WILLIAMS, Chairperson
DANIEL D. QUICK, Vice-Chairperson
FRED K. HERRMANN, Clerk
JANET WELCH, Executive Director
HON. JOHN CHMURA, Parliamentarian
CARRIE SHARLOW, Staff Member
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Novi, Michigan
Thursday, October 8, 2015
9:02 a.m.

RECORD

CHAIRPERSON WILLIAMS: Good morning. I am going to call the meeting to order. This morning presiding with us, we do have the Honorable John Chmura serving as our parliamentarian.

Mr. Clerk, do we have a quorum present?

CLERK HERRMANN: Madam Chair, we have a quorum.

CHAIRPERSON WILLIAMS: Having a quorum present, we will now prepare to adopt our agenda for today.

MR. ANTKOVIAK: Good morning, Madam Chair, Matt Antkoviak, 48th Circuit, chair of the Rules and Calendar Committee. At this time I would move the adoption of the calendar for today's meeting.

CHAIRPERSON WILLIAMS: Is there a second?

VOICE: Second.

CHAIRPERSON WILLIAMS: Motion being made for the adoption of the calendar for today and a proper second, all those in favor please indicate by saying yes.

Any opposed? Hearing none, the calendar is
adopted.

At this time I would entertain a motion for the approval of the summary of proceedings from April 25th, 2015.

VOICE: So moved.

CHAIRPERSON WILLIAMS: There being a motion, is there a second?

VOICE: Second.

CHAIRPERSON WILLIAMS: There being a motion and a second for the approval of the summary of proceedings from April 25th, 2015, is there any discussion?

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

Is there any opposition? Having no opposition, the motion passes, and the summary of proceedings of April 25, '15 stands approved.

At this time I would invite a member from the Nominating and Awards Committee. Shenique Moss, the chair, has become ill, so Daniel Cherrin, a member of the committee, will fill in this morning.

MR. CHERIN: Thank you, Madam Chair. Again, I'm Dan Cherrin, the 6th circuit. I am a member of the Nominating and Awards Committee. Unfortunately Shenique will not be here this morning, but she will
be here later today. We only have one vacancy to
fill, one appointment today. Before that, I just want
to thank on behalf of the chair, Shenique, members of
our committee. If you are here, please rise and be
recognized. Elizabeth Johnson, Erica Zimny, and
Lee Hornberger. Thank you very much for your service.
(Applause.)

MR. CHERRIN: Shenique has been a great
chair. And on behalf of Shenique, I would also like
to thank the staff, Anne Smith and Carrie Sharlow, for
all their hard work. We are very lucky to have them
and other members of the State Bar.

As I said, we have one vacancy to fill in the
12th judicial circuit, which includes Keweenaw, Baraga
and Houghton, all the way up in the U.P. Today we are
nominating Diana Langdon. At this point I move to
appoint Diana Langdon to fill the vacancy in the 12th
circuit.

VOICE: Second.

CHAIRPERSON WILLIAMS: Motion having been
made and a proper second to appoint Diana Langdon to
fill the vacancy, is there any discussion? Hearing
none, you are so appointed. Please take your seat.

MR. CHERRIN: Thank you.

(Applause.)
CHAIRPERSON WILLIAMS: Members, as we start today, we really look to move efficiently through the agenda, so I thank you in advance. We are looking to have an expedient but robust discussion regarding our issues.

The next item up this morning is a presentation from the Special Issues Committee on the subject of dues. In addition to our Special Issues Committee, we'll have our executive director and our treasurer, Jim Horsch, or financial officer, who will come in and speak to this.

Just to give you some background as they make their way to the front, when we were doing the task force issues on last year, in addition to members offering comments around whether or not we should be a mandatory bar, there were a number of comments around dues, and so we felt as an executive board it was only prudent to take those comments, since there were quite a few, and try to summarize the issues that were presented for our consideration to look at the impact on the Bar and the impact on the dues structure as it stands today, so we tasked the Special Issues Committee to go out to review all of those comments that were submitted and then to also meet with the Bar staff to make sure that any action that we would take
in the future or any inaction would be prudent based on the facts as presented.

You will find that a number of the comments came from members who reside out of state or those who are close to retirement or in retirement who often seek licensure just for sort of periods of time, either looking to remain active members of the Bar because they have been so for so long, or they are looking to handle one or two matters, and so they seek to continue their membership.

A number of issues were raised in terms of should those members have to pay the same or be treated the same in terms of dues and whether or not they have a period of inactive status, what it takes to be reinstated, and so we thought it best for the Special Issues Committee to really go out, examine those issues, and bring them back to the body.

In terms of dues for the State Bar, we are the body who makes that decision, but we always want to make sure that when we make a determination, whether or not we raise dues or change the structure, that we do it in a very informed manner, and so that's what we seek here today. We don't look to take any action on the dues issue, but we would like to bring it to you for informational purposes.
MR. BURRELL: Good morning, everybody. My name is Aaron Burrell, representative from the 3rd circuit and the chair of the Special Issues Committee this year.

As you may recall, as Vanessa just said, in 2014 the Supreme Court entered an administrative order establishing a task force on the role of the State Bar of Michigan. The task force ultimately issued five recommendations, one of which recommended that membership dues for inactive State Bar members should be reduced and inactive member reinstatement should be more accessible and rationale.

Pursuant to that recommendation, at the beginning of the year Representative Assembly Chair Vanessa Williams and the Assembly officers asked the Special Issues Committee to examine issues relative to the current dues structure of the State Bar of Michigan. In doing so, the committee examined public comments relative to Senate Bill 783, which sought to make the State Bar of Michigan a voluntary bar, and had a robust discussion regarding ways to modify and potentially enhance the dues structure of the State Bar of Michigan.

Ultimately, the committee discussed a number of potential options for modifying the current dues...
structure, including graduated skills, lowering the disciplinary fee for inactive and retired members, removing the disciplinary fee for retired members altogether, and removing a three-year limitation on inactive status.

The committee brought these alternatives to Executive Director Janet Welch and Chief Financial Officer Jim Horsch, who have researched and considered these options and have graciously agreed today, I believe, to present information relative to the proposed modifications. The information would provide essentially a background and framework for future recommendations to this body relative to the dues structure.

CHAIRPERSON WILLIAMS: Apparently Executive Director Welch got double booked. We will move to the next item and then come back to this just so we don't lose any time, because we have quite a bit to get through today. So if I could have the Assembly Review Committee to come very quickly to present, and we will come back to the dues.

MS. BREITMEYER: Hi, everyone. I am Kim Breitmeyer, chair of the Assembly Review Committee, and our committee was charged with the task of coming up with a communication strategy that we
could share with all of you for informational purposes right now and explain what you can expect to see in the coming months.

First, I would like to thank the members of our leadership for providing their input in this process -- Vanessa, Dan, and Fred -- and also I would like to recognize at this point, and please stand when I call your name, the members of the Assembly Review Committee. Ken Morgan, Marty Hillard, Vince Romano, and Rob LaBre. Thank you all for your input in this process.

You should have before you a green sheet that looks like this. It was also e-mailed to you before the meeting, and it sets forth a very simple process and timeline for two major goals. The overall purpose of this communication strategy is to increase the frequency and quality of engagement communication between RA members and constituents and within the RA between RA meeting dates.

The first goal of this process is to increase communication and outreach between the RA and Bar membership. As you can see, there are several bullet points underneath that goal, starting with immediately following this meeting the RA Chair will appoint what's called an Outreach Publishing Special Committee.
that will work consistent with the rules of procedure
and with RA leadership to implement this communication
strategy.

At least two weeks before the submission date
for our next RA meeting and all meetings thereafter,
this outreach and publishing committee will work with
RA leadership and facilitate communication between RA
members by each circuit and their constituents by
using an e-mail list compiled for the Board of
Commissioners to communicate with each district. And
the communication would be similar to the
communication with Bar leaders, summarizing the
substantive issues and the next RA agenda and then a
follow-up e-mail sent within 30 days of the meeting
that would summarize the actions taken at the prior
meeting. Those outreach committees would take turns
drafting the content of e-blasts for each circuit to
circulate to its constituents and personalize the
communication.

The RA Chair after this meeting will also
appoint section liaisons who will work towards
improving communication between the State Bar sections
and the RA by initiating interaction with the section
chairs and/or committees. While we have always had
these liaisons, I think we need to come, we thought we
needed to come up with a process to facilitate that outreach and set some firm deadlines for doing so and seeing who might bring substantive issues to the RA in that manner.

By no later than December 1st of this year State Bar staff will add a link on the main made for members page on the State Bar of Michigan website accessible directly from its front page to the RA membership contact list so it will be easier for State Bar members to see who their RA members are to reach out and contact them.

By no later than November 6th of this year our committee, the Assembly Review Committee, and leadership will work with the State Bar staff to create an RA logo consistent with State Bar standards for use in all RA communications. They will help distinguish those e-blasts from other e-blasts that are received from other organizations within the State Bar.

At this point I want to give a hat tip to Dan Cherrin of the 6th circuit for assisting us with some of his great PR expertise, and that was one of the ideas that came from his recommendations.

At least two weeks before the next RA meeting the outreach publishing committee will solicit and
gather written testimonials about the importance and
the goal of the RA from both past and present RA
members and leaders, and then we will use these
testimonials in a variety of the above communications
that I just discussed.

The second main goal of this communications
process is to increase communication within this body.
As I understand, the work of the Hearings Committee
has already begun. For circuits with more than two
members, the Hearings Committee is going to organize
smaller meetings within circuits and also with
neighboring circuits to discuss regional and other
substantive issues to bring before this full body in
between our meetings, and these committee meetings
will also include State Bar section and committee
members, local and affinity bar association leaders
who may be interested in the issues being discussed.

By no later than January 4th of 2016, RA
membership will designate one method of communication
so that we are not clogging up e-mails, we are not
using some other method of communicating but just one
way of communicating with members, whether it's an
e-blast, a social media page, a blog, or the
SBM Connect. This will avoid the possibility of
inconsistent content and access to content from RA
leadership and Bar leadership.

By no later than November 6th of this year our committee, the Assembly Review Committee, will take a poll of all of you to determine whether you would like to be using the interactive platform with SBM Connect, and this will be a tool. It is our hope this will be a tool to increase the between and before meeting communication of the RA.

At this point I would like to invite questions, comments, concerns. Thank you, all, for your attention, and thank you, committees members and Bar leadership, for this opportunity.

(Appause.)

CHAIRPERSON WILLIAMS: Special thanks to the Assembly Review Committee. We have tasked them quite a bit this bar year with advancing our strategy, and, as we discussed in April, we really, as an executive team, look to develop a three-year strategy, if not more, to advance the goals and gains of the RA, and increasing communication and our visibility is one way that we thought would be the best way to accomplish that.

At this time, if members of the Hearings Committee would stand, I would like to thank you for your work that you have begun as well. Maybe they are
out working.

(Applause.)

CHAIRPERSON WILLIAMS: Because of the time, we are going to proceed to our next agenda item, which is actually an action item, so I would ask the proponent, Karen Safran, to make her way to the stage. I will ask our clerk if he would come and give us a reminder of how the electronic voting system works.

CLERK HERRMANN: Good morning, everyone. You should all have these clickers on your table. If anyone does not have one of these clickers, please raise your hand and we will get you one. We have one gentleman in the back. Mark, if we could fetch one. Thank you very much.

It's very simple. We are going to be using the top row of this clicker, number 1, 2 and 3 and A, B, and C, and you will see the items we will be voting on today, with corresponding A's and B's. C would be reserved for abstaining, if that is your vote.

It will only register your vote once, so once you press the button, whatever you choose for your vote indication will be registered up here on the computer, and we will tally it up. If for some reason you make a mistake or have an error, please let us know, but that's how this will work. Any questions?
Thank you.

MS. SAFRAN: Good morning, I am Karen Safran. I am the chair of the Civil -- starting off to a great morning since I just blanked as to why I am here -- the Civil Procedures and Courts Committee, and it's my first time presenting to the Representative Assembly, so please excuse me for any stumbling.

I am here on behalf of the committee to seek your support to a couple of Court Rule amendments. The general purpose is to allow for the filing of reply briefs on summary disposition motions and then clarify that, absent the report, no other reply briefs are allowed in any other motions.

Mechanically the way that this would be achieved is to change the hearing schedule from filing your dispositive motion in 2.116 to 28 days as opposed to 21 days. The responding party has the same amount of time to respond to the dispositive motion. The moving party would then have the option of filing a five-page reply brief. The rule tracks the appellate rules in terms of what the reply brief -- it truly has to be a reply brief, not a sabotage the moving party -- with the nonmoving party being stuffed brief. That would be filed seven days before the hearing, which would allow the nonmoving party in the court the
opportunity to refute the reply brief. And then for clarity, the rule would then clarify in 2.119 that no other reply briefs are allowed, absent leave of the court.

The reason for requesting this rule is that there is some inconsistency that's been noted throughout the state in terms of reply briefs, both in general seven-day motions and on dispositive motions, because the Court Rules currently don't say you can file reply briefs, but they also really don't say you can't. They are silent. Some courts are interpreting that to mean that unless the rules say you can file them, you can't file them. Other courts interpret them to mean, the rules to mean, well, they don't stay you can't file one, so you can file one, and there are instances, I am sure we have all found them in our practice, where it's the day before, the night before a hearing and your opponent files a reply brief or hand delivers a reply brief and you are now faced with having to walk into court and deal with new issues for the first time.

Often in those instances the judge would delay his or her ruling because of the matters, you may have briefing, so this would try to eliminate some of that problem in litigation and just create some
clarity and uniformity across the state in how these briefs are going to be handled.

We focused, the committee focused principally on dispositive motions. Typically those motions, since they are whether or not the case is going to survive or an issue in the case is going to be decided prior to trial, they often lead to appeals, so we think it's in the party's best interest to have the briefing at the trial court level be as complete as possible so the record is complete as possible before the matter goes up to the Court of Appeals.

Reply briefs on seven-day motions weren't considered at the present time because there is just such a wide variety of those. It's not yet clear whether there is a need in all instances to allow for a reply brief on your standard seven-day motion. However, the rule doesn't impact the judge's discretion to allow for reply briefs, so there is really no change on the authority of the judge to say that on the seven-day motion day that he or she will allow such briefing to occur or to issue his or her own briefing schedule. In certain circuits where the courts issue their own briefing schedule for dispositive motions, the rule change wouldn't have any effect on courts practice that way. So with that, I
don't know what the procedure is to ask for a motion
or ask for questions.

CHAIRPERSON WILLIAMS: Ms. Safran is not a
member of our Assembly, but it is my understanding
that Vice Chair will bring a motion for this.

VICE CHAIR QUICK: Thank you. Daniel Quick,
6th circuit. I will move to support the proposed
amendment as set forth in the material.

VOICE: Second.

CHAIRPERSON WILLIAMS: Motion having been
made and properly second to support the amendments to
MCR 2.116 and 2.119 as presented in the materials. Is
there any discussion? The Chair recognizes the member
at the mike.

MR. FALKENSTEIN: Good morning.

Peter Falkenstein, 22nd circuit, Ann Arbor.

I understand the intent behind this proposed
change, and I do agree we need some uniformity in
motion practice. However, there is one component of
this rule that would compel me to vote against it, and
that is the default position that reply briefs will
not be permitted except on dispositive or summary
disposition motions.

In my practice over 30 years I have found
that reply briefs have been an essential and one of
the most important tools of pleading practice, mainly because every argument that every respondent has ever made to a motion I have filed has been completely meritless, and there has to be a way for me to bring that to the judge's attention, because sometimes they rule on motions without hearings, and because of the incredible meritlessness of most of the response arguments, there is never enough time on oral argument to fully analyze the issues.

Of course I am being facetious, but it seems to me that the same thing can be accomplished but with putting the default position that reply briefs are permitted and that a judge still would have discretion in his or her practice guidelines or chambers rules to either limit the circumstances under which replies be permitted, the page limits, or do it on an ad hoc basis.

Another problem is where you have a default against reply briefs, there is no mechanism here for actually seeking leave to apply. In other words, do I have to seek leave to reply at the same time that I file my motion anticipating that the arguments that are going to be made in response will require a reply? If not, when would I seek that if the judge has not, in fact, included in practice guidelines permission to
file reply briefs?

I understand the problem which we have all been faced with of getting a reply brief the night before. That should be prohibited and dealt with in a different manner, and perhaps ultimately the one-week rule for scheduling hearings is the problem, that there should be adequate time to file a response and then to file a reply so that there is a clear and consistent time limit, but, just to summarize, because of the importance to effective advocacy of reply briefs, I think limiting them solely to summary disposition motions is not the way to go. Thank you.

MS. SAFRAN: I think you raised some very valid points. The issue, and I think it's a little bit of a baby steps approach we are taking, because, as I mentioned, there is such a wide variety of potential seven-day motions. You are correct, and perhaps the committee can take back to the Civil Procedures and Courts Committee that maybe seven days isn't enough for general motions absent some sort of emergency situation and there should be a change to the trial court rule to make it 14 days or 10 days, because under the current seven-day rule the concern that I would have is that there just isn't time for filing, for getting the issue before the court, for
giving your opponent sufficient time to address a reply brief. That's why we were focusing on dispositive motions at this point, but your point is very well taken.

MR. FALKENSTEIN: Prohibiting reply briefs on other motions.

CHAIRPERSON WILLIAMS: Chair recognizes the member at the mike.

MR. MOILANEN: Philip Moilanen, 4th circuit, Jackson. I would support the comments that were made. In addition, the last response brief that I received was 20-some pages with a binder full of exhibits, and five pages to reply to it was probably inappropriate as well. So, while the judge certainly can impose his own limitations if he wants about how long you can reply, between the cover and the signature page you only have four pages left to actually write anything, so I would suggest that that limitation also be removed. Probably the answer is to have all motions given more than 90-day notice so that there is time to do things the right way instead of getting them done quickly.

CHAIRPERSON WILLIAMS: The Chair recognizes the member at the mike.

MR. PAVLIK: Adam Pavlik, 54th circuit. I
don't necessarily mean to disagree with the remarks made by the prior speakers, but their concerns just aren't my concerns. I think, you know, in principle this is a good idea. My concern is with respect to sort of the drafting and wording of it. We are not voting on the principle of whether we should standardize reply briefs and add seven days. We are voting on a specific proposal to ask the Supreme Court to amend the Court Rule in a specific fashion, and I think that what we send to the Supreme Court should be ready for the Supreme Court, you know, thumbs up, adopt it. And yet I look at this and it would say under (G)(1)(a) unless a different period is set by the court, (iv) no additional or supplemental briefs may be filed without leave of the court. Of course this has nothing to do with periodization.

Similarly, unless a different period is set by the court, you know, the moving party or parties may file a reply brief in support of the motion. That again doesn't get to a periodization timeline schedule. It gets to the substantive ability to file a reply brief in the first instance.

Now, is this, you know, is the sky falling because of this concern? No, I wouldn't necessarily say that, but if this were sent to the Supreme Court,
they would have to clean it up before it would be integrated into the Court Rule, I think, and I don't think we should be sending a proposal to the Supreme Court that they have to clean up. So I guess that would be sort of my concern is that I think that there is poor parallel structure in (G)(1)(a). (i) and (ii) are certainly parallel to (a), but I don't know that (iii) and (iv) are, notwithstanding the fact that I think (iii) and (iv) are fine ideas.

CHAIRPERSON WILLIAMS: Chair recognizes the member at the mike.

VICE CHAIR QUICK: Thank you. Daniel Quick, 6th circuit. I speak in support of the proposal, and, in the interest of full disclosure, I am a member of the Civil Procedure and Courts Committee as well, so I saw how the sausage was being made on this.

The issue, as Ms. Safran states, is to take the low-hanging fruit, an issue upon which everyone can agree, and I think that justice is best served by having a reply brief on a dispositive motion. The difference in practice across the state is rather startling. I will tell you that we know that a number of judges, both trial court judges and the Supreme Court, would oppose movement of the seven-day motion deadline or timing. That's a whole different
discussion that we are not going to have today. And I
would further suggest to you that the intent here at
least is to not modify existing practice such that in
those circuits or even in those chambers where it's
regularly accepted that reply briefs are appropriate
on nondispositive motions, I ensure that that will
continue to be the case.

And, lastly, I would say I think this is,
advancement of this proposal, an excellent way to
advance the discussion because, of course, as you all
know, what happens if we vote in support of this is it
simply is a recommendation to the Supreme Court,
which, even if they take it up, will be put open for
public comment and consideration, and, as the Court
has often done in the past, perhaps even multiple
variations will be put up for discussion, and I think
this is an excellent way to advance the discussion on
a topic that reasonable minds could disagree on how to
fix it but it needs to be fixed. Thank you.

CHAIRPERSON WILLIAMS: Chair recognizes the
member at the mike.

MR. FALKENSTEIN: Peter Falkenstein, 22nd
circuit. Based on comments that I made and which have
been commented upon, I would propose a couple of
amendments. First, what I would propose would be to
change the five-page limit on summary disposition_replys to ten pages, so that's one amendment. Do you seek a second for that now, or do you want me to give you the second one as well?

CHAIRPERSON WILLIAMS: We will do them separately. There is a motion to amend the language of the proposal that's pending to change the limit from five pages to ten pages. Is there a second?

VOICE: Second.

CHAIRPERSON WILLIAMS: Motion has been made and properly seconded. Is there any discussion? All of those in favor of amending the proposal to change the limit from five pages to ten pages, please indicate by saying yes.

Any opposed?

We need to do a -- chair can't distinguish by the voice count. We will need to do a visible hand count. Let me ask the clerk.

We don't have the questions prepared within the system, so you can't use the electronic clickers. Can I get three tellers? If I could get Kathy Kakish, this gentleman here, the center, yes, please, and the young lady over by the door, if you would help count and serve as a teller today. Thank you.

All of those in favor of the amendment to
change the limit from five pages to ten pages, please stand.

You may sit. All of those opposed, if you would now stand.

The yeses have it.

You may be seated. We will get to test the mathematical skills of our clerk.

CLERK HERRMANN: Madam Chair, we have 54 for yes and 42 for no.

CHAIRPERSON WILLIAMS: The motion passes. The amendment to the proposal passes.

MR. FALKENSTEIN: Thank you. And I have one other amendment to propose, which is simply to delete from proposed Rule 2.119(A)(2)(b), reading: Except as permitted by the court or as otherwise provided in these rules, no reply briefs, additional briefs, or supplemental briefs may be filed. As I said before, I believe the default position should be in favor of reply briefs and may be limited as each particular judge determines; therefore, I propose deletion of that subsection.

CHAIRPERSON WILLIAMS: Amendments that have not been provided to the body in writing are limited to six words, so the deletion would be more than six words and violate the rules.
MR. FALKENSTEIN: In that case what I would do is simply delete the words "no reply briefs." Or just delete "reply briefs." In other words, no additional briefs, supplemental briefs may be filed, which is fine. I would just say delete "reply briefs." Thank you very much.

CHAIRPERSON WILLIAMS: Is there a second to amend the proposal so that 2.119(A), I think it's (A)(2)(b), would now read that except as permitted by the court or as otherwise provided in these rules, no additional briefs or supplemental briefs may be filed, effectively deleting reply briefs. Is there a second?

MR. FALKENSTEIN: I think there is a clarification there in that additional briefs might be read to include reply briefs, so I would say, Except as otherwise provided in these rules, other than reply briefs, no additional briefs or supplemental briefs may be filed.

UNIDENTIFIED SPEAKER: If I could make a suggestion, delete B.

COURT REPORTER: Your name?

MR. FALKENSTEIN: No, you can't delete more, change more than six words.

UNIDENTIFIED SPEAKER: We are only adding one word, delete B. Two words, excuse me.
CHAIRPERSON WILLIAMS: The motion currently stands that 2.119(A)(2)(b) would read, Except as permitted by the court or as otherwise provided in these rules, other than reply briefs, no additional briefs or supplemental briefs may be filed. The effect is to add "other than reply briefs." Is there a second?

VOICE: Second.

CHAIRPERSON WILLIAMS: Motion being made and a proper second, is there any discussion? All those in favor, please stand. If I could have the tellers please come and count. I guess I could have just done a voice vote. Actually, instead I will take a voice vote.

All those in favor, please indicate by saying yes.

All those opposed?

The motion fails.

At this time, is there any further discussion on the proposal as presented? We will move to the question of the main proposal that is pending. You are able to use your clickers at this time.

And so the question is, should the Representative Assembly adopt the above resolution, and it would be now as amended, to support amendments
to Rules 2.116 and 2.119 of the Michigan Court Rules to adjust the timing of dispositive motions to allow for reply briefs, and to clarify that reply briefs are not allowed for any other motions unless leave is given by the court? And this question actually changes a bit with our amendment.

All those in favor of the motion as presented, the proposal as amended, please indicate by pressing A. Are there any more votes in support of the proposal, as amended?

All those opposed, you can vote B. Sorry. Are there any other votes? The voting is now closed.

Mr. Clerk, if you could, give us the results.

CLERK HERRMANN: Madam Chair, we have 77 for yes and 20 for no.

CHAIRPERSON WILLIAMS: The motion passes. Thank you, Ms. Safran, and to the committee for its submissions.

(Appause.)

CHAIRPERSON WILLIAMS: At this time we are going to go back to our dues presentation. Financial Officer Jim -- actually we will defer to see if Executive Director Welch can join us. We will go to our next action item.

As they are making their way up,

MR. GILLETT: Good morning, everyone. I am Bob Gillett from the Michigan Advocacy Program, which is a civil legal ed. program, and with me is Val Newman, who is from the State Appellate Defenders Office, which is criminal representation for indigents, and we are both here to speak to the materials that include a recommendation from the Committee on Justice Initiatives for a series of Court Rule changes that make it clear that a court must consider a respondent's ability to pay a fee, fine, or cost before sentencing that respondent to jail or prison for failure to pay.

This type of sentencing, which is known as pay-or-stay sentencing, is very common throughout the country and in many courts in Michigan. This practice creates a very significant hardship for low income families. Obviously, if someone is incarcerated because of their poverty, that's a hardship, but, in addition, this is really a way to squeeze money out of other family members or friends who don't have an obligation to pay, and so in a civil legal aid side,
we see this in eviction cases and foreclosure cases, missed child support payments, and so it ripples out through the low income community.

This is also, this practice also creates a burden on the system. The cost of incarcerating these respondents is often usually greater than their fines, and so it's a net total expense to the system, not a revenue gain to the system. This practice is pretty clearly unconstitutional. The lead case is Bearden versus Georgia, which is a 1983 U.S. Supreme Court case.

This is an issue that was recognized kind of simultaneously on the civil legal aid and the criminal side several years ago. I would also note that most of these incarcerations take place without defense counsel for the person who is in prison. The typical cases are traffic cases, civil infractions, and other minor misdemeanors where there is not appointed counsel.

This practice has existed for years. It has risen to the public consciousness in the last year or two. I am sure members of the Assembly are familiar with the Department of Justice investigation of the Ferguson, Missouri situation. There is federal litigation in many areas of the country, and the
Department of Justice has expressed an interest in that litigation. There has been about ten cases primarily litigated by the ACLU in Michigan. So this is a practice that is happening in Michigan every day.

I am assuming at least some of you in southeastern Michigan are aware of the David Stojcevski case, which has really been in the news the last three or for weeks. Mr. Stojcevski was sentenced to $772 fines or 30 days in jail. There was no hearing on the ability to pay. This arose as a traffic violation. He was indigent. He died in jail on day 17. There has been editorials about this in the news.

About in June of 2014 the State Court Administrative Office created a task force on this. That task force was all court staff, except for Valerie and myself, who were the citizen representatives. That group issued a report in April of 2015, and the language that we are proposing comes from the SCAO report, so its language that's been extensively vetted by SCAO staff, as well as judges and court staff from across the state.

Starting about two years ago Val and I have been part of a fairly small group that included some judges and who believed that no judges would
intentionally violate the constitution like this, and so we began an education effort to the judges associations. No one in those outreach discussions argued that this was a good practice or a constitutional practice, and based on our feeling that if judges knew about the constitutional issues they would stop the practice. We have talked to a lot of judges associations, and I am happy to report that the Michigan District Judges Association has endorsed this proposal, the Michigan Association of Treatment Court Professionals has endorsed this, and we are on the Michigan Judges Association agenda and believe they will endorse this later this month.

This is an unanimous recommendation from the Committee on Justice Initiatives, and so I will turn it to Val to see if she wants to add anything. Again, we are asking for you to support the recommendation that's in the material. Thank you.

CHAIRPERSON WILLIAMS: Thank you to the members of Justice Initiatives. Not being a member of the Representative Assembly, I will now ask for a motion from our vice chair.

VICE CHAIR QUICK: Move and support.

VOICE: Support.

CHAIRPERSON WILLIAMS: There has been a
motion and support for the proposal. Is there
discussion? The Chair recognizes the member at the
mike.

MR. POULSON: Barry Poulson, 1st circuit.

This practice, I think, permeates the state. I see it
continuously. We have FOC day where people are locked
up for owing money as a civil matter and then also
later charged with a felony to get more money out of
them by putting them in prison. It happens all over
the place. It's so unfortunate that David, and I hope
I don't say his name wrong, Stojcevski had to give his
life to bring this tragedy to the attention of the
system. Sometimes it's not a tragedy. Sometimes you
just take someone and lock them up because they owe
money. I've heard judges say, You look like a healthy
young man. You can work. We are locking you up
because you haven't paid.

In our county, because we are fixed-price
public defenders, although we are paid less per capita
than the state of Mississippi, there is no cost to the
system, so people are represented. We are simply
appointed to handle these collection systems. 1:15 on
Wednesday, whoever is on call, go in and you handle
these, and you lose every time.

On a monthly basis we get called in for
probation violations, FOC day, and anything else that happens to be around. All failure to pay your juvenile fee, they get representation, and I have yet to win one, and I am not someone who backs away at the microphone.

So I asked them, me, the representative of the system -- maybe that's not the polite way to say it here today, certainly as a representative of the State Bar today -- to not only educate but to seek some way of mandating that there be a finding. The findings are perfunctory, if at all. People are locked up, and the right term is debtor's prison. We are here part of a debtor's prison process. Sure, the counties need the money, but we get from those least able to pay or those who can't pay it off, then we lock them up.

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

MR. KOCHIS: Anthony Kochis, 6th circuit. I have two friendly amendments that I believe are typos. In Rule 3.606(F) there is a reference to MCL 6.425. I think that should be MCR, and then there is a similar item in Rule 6.610(F)(2), there is a reference to MCL. I just believe it should be MCR.

CHAIRPERSON WILLIAMS: Is there any objection
to the request to take this on as a friendly amendment?

VICE CHAIR QUICK: I accept the friendly amendment, and it has the support of our speakers.

MR. KOCHIS: Thank you.

CHAIRPERSON WILLIAMS: Chair recognizes the member at the mike.

MR. MASON: Thank you, and good morning, Madam Chairman. My name is Jerry Mason from 31st circuit. The practice that we see in St. Clair County is that at sentencing, especially if a person is sentenced from the bench, the matter is typically scheduled for a review date, and that gives that person the opportunity to gather monies together or show the court that he is making a good faith effort, or that he or she is, in terms of paying, so at least our judges aren't sua sponte just locking people up, and even at sentencing, if the person shows good faith and they come to the table with some money, more than likely they are going to be afforded a review date or a hearing date.

When the gentleman from the 1st circuit alluded to the ability to work, I have always felt and always urged the courts when my clients were indigent to give them the opportunity to do some sort of a
county work program. All of us can look around our counties and see garbage that needs to be picked up, things that need to be done, and if a person is able-bodied, and by able-bodied I mean physical and mental health, because sometimes we are dealing with mental health issues more so than physical health or even a criminal issue, that those people can work off, if you will, through the county.

Now, it's work, and judges have busy dockets with court administrators monitoring their dockets, so you need to bear that in mind, but that's the practice in St. Clair County.

The gentlemen from the 1st circuit also alluded to incarcerating people on Friend of the Court day and making felons out of them. That is a serious problem that needs to be addressed, because, frankly, the way they calculate child support and the way they compute it is still based on the notion people get married once and divorced once. It doesn't contemplate blended families or people having children with multiple relationships, so at the end of the day you actually have decent people with child support they simply cannot pay, and they do end up being unnecessarily incarcerated or made a felon for some sort of a political aggrandizement, I guess, to show
that you are tough on deadbeat dads where they just simply don't have the money. Thank you.

CHAIRPERSON WILLIAMS: Chair recognizes the member at the mike.

MR. RENNER: William Renner, 15th circuit. I did have one, perhaps it's just one question. Does the court make a determination as to whether or not a particular defendant can make payment in full or can make payments on? And the only reason I raise that as a question is that I, as others have seen, well, you didn't pay anything; you could have paid $5 a month or that you could have paid something and you didn't. So does the court make a determination that, well, you cannot pay the whole thousand dollars in fines and costs. I am just a little bit unsure what the court does, if the court makes a determination you may not be able to pay in full but make payments, some payments on it. That's kind of what my question is.

MR. GILLETT: So the Court Rule is only one part of the overall recommendations from the SCAO Ability to Pay Task Force, and the general approach that that task force took, and you can look at like a 180-page kind of set of worksheets, was to provide as many tool kits and options to courts as possible, and so community service is an option, time payments is an
option, forgiveness of part of a fee, fine, or cost is an option. And so there is really -- the group tried to look at the practices all across the state and to at least identify courts that they have the options of what seem to be effective practices in some communities. Is that responsive?

CHAIRPERSON WILLIAMS: Chair recognizes the member at the mike.

MR. PAVLIK: Adam Pavlik, 54th circuit. Kind of just in the same vein as my earlier remarks, and I would say we are not here to vote to sort of symbolically support the work of the ability-to-pay work group, we are here to endorse a particular proposal to be sent to the Supreme Court, and in this language right here, I think a lot of this is great, 3.928 forward, but I am a little fuzzy on the effect of 3.605 and 3.606, and in particular, and maybe it's because I don't work in my county's FOC and so that I am not intimately familiar with the law that governs this, but I am not clear what it means when it says, The court shall not sentence a person to a term of incarceration, et cetera, et cetera, notwithstanding proceedings pursuant to the Child Support and Parenting Time Enforcement Act.

I guess I don't understand what the
relationship then would be between the Court Rule and
the statute here when that says notwithstanding
proceedings pursuant to the Child Support and
Parenting Time Enforcement Act. I almost would love
to sever the consideration of the amendment to that
Court Rule or those two Court Rules from all the rest
as opposed to having to vote on it with one big
package.

MR. GILLETT: I can respond to that. It's my
belief -- so there is a draft Court Rule that came out
of a subgroup of some of the Committee on Justice
Initiatives, and then as it went through the SCAO
process it was essentially accepted with some minor
language changes, and I think this was a language
change that was made by SCAO staff as opposed to the
original proposal, but the intent is that the
pay-or-stay sentencing and incarceration that is not
governed by Court Rule and where there is not any, you
know, effective court structure is all on the
misdemeanor cases, the civil cases that Mr. Poulson
spoke about. In contrast, the Friend of the Court
process is a very kind of complicated and regulated
process where we may disagree with the results in many
of the ability-to-pay determinations, but it's baked
into that process, and so the intent of this was to
not accidentally rewrite the Friend of the Court process. It was to pull it out of the ability-to-pay Court Rule.

CHAIRPERSON WILLIAMS: Seeing no other members at the mike, we will move to the -- Chair recognizes the member at the mike.

MR. WEINER: The first section there, 3.605 --

COURT REPORTER: Your name?

MR. WEINER: James T. Weiner from the 6th circuit. The last sentence there, it says, The application may not be granted without payment of the costs and expenses incurred in the proceedings for the collection of the penalty, unless waived by the court.

I have been sitting here reading that and thinking that's almost an oxymoron. You are trying to apply for remission of a penalty and then you are going to have to pay the costs and expenses upfront, and apparently you are applying for remission of a penalty because you can't pay anything. I would like to see that section reworded so that it would be the granting of the application may be conditioned upon payment of the costs and expenses. May be conditioned upon the payment of costs. I think that that would give more to the intent of what we are looking for.
here, which is waiving of costs and expenses and waiving of the collection of penalties and fines and not putting people in jail based on their ability to pay. If you want to call that a friendly amendment, but that's what I would -- it just doesn't seem to be right.

CHAIRPERSON WILLIAMS: We are over the six words --

MR. WEINER: I apologize.

CHAIRPERSON WILLIAMS: -- so it violates the rules. Do you have another means of proposing?

MR. WEINER: The granting of the application may be conditioned upon payment of the costs. It's just one of those things. I am sitting here looking at that, and it just makes -- the way it was written made me cringe.

CHAIRPERSON WILLIAMS: The issue is because it's not written, it still violates the rules.

MR. WEINER: I understand, but that's up to the proponents.

CHAIRPERSON WILLIAMS: Because it violates the rules, we can't accept it as a friendly amendment.

MR. WEINER: Well, then I make a formal amendment.

UNIDENTIFIED SPEAKER: I am looking at six
CHAIRPERSON WILLIAMS: The amendment can't go forward as presented, because it violates the rules. It's an unwritten proposed amendment that exceeds six words.

MR. WEINER: Then maybe I will submit it later in writing.

UNIDENTIFIED SPEAKER: If there are six words, how does that violate?

CHAIRPERSON WILLIAMS: Because that's what the rules, the permanent rules of procedure for our body is that unless written the amendment cannot exceed six words, so it would have had to be submitted in advance after receiving the booklet with the proposals.

MR. WEINER: If you would switch and capitalize the G and say "granting the application". Thank you. I just think that would be more of an intent of what we are trying to do here, if you agreed to that as a friendly amendment.

CHAIRPERSON WILLIAMS: It still exceeds the six word changes to the rules because of the striking of "may not be granted without."

UNIDENTIFIED SPEAKER: It's a stupid rule.

MR. WEINER: Like I say, to me it just
seems -- I don't know if somebody wants to make an amendment. Then how do I do that? Do I have to submit it in writing, or how do I do that, because this somehow doesn't seem right.

UNIDENTIFIED SPEAKER: Can I clarify an amendment?

COURT REPORTER: Who is talking? I need you to identify yourself, please.

MR. WEINER: Can I make a move to suspend that portion of the rule or move to suspend that portion of the rule for the purposes here?

VOICE: Support.

CHAIRPERSON WILLIAMS: Just a minute while I consult with the parliamentarian. Thank you.

What we cannot do is to suspend the rules, but my suggestion would be, if there is support for this, that perhaps more than one person could participate in the amendment. So if you wanted to partially amend by striking, and we could vote on that, and if someone else wanted to -- that's the only way we can do it. We can't just suspend the permanent rules of procedure.

VOICE: I will support it.

MR. WEINER: Then if you will take all of those things away and then say, The application,
strike "not", and change "waive" to "unless ordered by
the court." So change "waive" to "unless ordered by
the court," and that will say the same thing. And
then it's a two-word change. Okay. Seems to make
more sense.

CHAIRPERSON WILLIAMS: There has been a
motion that we amend the rules as presented. All
those in favor of this amendment to the proposal,
please indicate by saying yes.

All opposed indicate by saying no.

The amendment passes.

Are you opposing? Chair recognizes the
member at the mike.

MR. KOROI: Mark Koroi from the 3rd circuit.
I would just like to make some points I think are
maybe relevant to this argument. Previous to this in
the misdemeanor district court system there had been
some due process that had been placed in the system
that the district court recognizes. Fellow support
officer once told me that this was a revenue-enhancing
mechanism, at least how they arrest people essentially
through just a guilty process. The judge would have
the clerks issue show cause orders for all people that
had open balance of the court, like hundreds of
people. They sent notice by ordinary mail, order to
show cause why they have not paid their fines, and
usually don't respond to these things, and when that
happened, they issue arrest warrants, hundreds at one
time. They take people off the streets, and they got
the money that way.

It seems to me there is a better way of doing
that, because when people get things in the mail, they
typically ignore them, especially when they are debts,
so I think this situation that we have here kind of
ameliorates a problem, because people who owe the
court money aren't going to say in court, well, it
seems to me I don't have the money. They're just
going to ignore, because if they show up in court,
they're afraid they are going to jail anyway.

So I think that this is a situation where
it's going to better the situation as far as not
necessarily due process, because the authorities, some
guilty process system, but it's going to be a better
manner. It's going to protect people's rights, such
as stopping people who are indigent going to jail or
be in jail.

In my practice this is quite common, and it's
an issue that happens not because people are
recalcitrant, not because they are lazy, they don't
want to pay the court. Usually people that owe the
court money, first thing they want to do is they want
to pay that court off, and the people that can't are
just very often people that are in a very bad way and
can't make payments. It's unfair to put these people
in jail. It's not cost effective. It's simply
ridiculous to do it, and I believe this is going to
help prevent the situation from the court saying let's
have a hearing and so forth, and if the person can't
pay, they can't pay.

On the other hand, on the flip side of that
is that where is the burden of proof on this going to
be at? What extent are we going to have hearings on
this? I mean, will an affidavit be enough to submit
to the court, I am indigent, or is it going to be a we
are going to have hearings on whether somebody is
going to have to prove I am indigent. I think it's an
issue we have to look at, who is going to have the
burden in these situations when this comes up. And I
think it's something that the courts, it's not
something built in the system, it's something that is
going to have to be decided on a court-by-court basis.

Second point I want to make deals with Friend
of the Court issues. I think one of the most serious
abuses are Friend of the Court type issues, because we
had a case recently in the City of Detroit, Wayne
County Circuit Court, Friend of the Court, where the Friend of the Court actually had discontinued life support based on a presigned order. It wasn't a collections issue, but it was based on the practice that that particular Friend of the Court had served for having presigned orders and (inaudible) life support, and somebody died as a result of that.

So there are these horror stories out there, and I think what they do is the Friend of the Court, the courts sometimes take procedure shortcuts to get what they want, which is cash, and I think it's more protection to have a system for the people that are indigent. I think this would be the better. I think it should be implemented in a way that is reasonably detailed where the court tries to have guidance, say, here, this is how we are going to implement it, and this is what's going to be proven, whether by affidavit or by hearing. I think it just has to be a very detailed procedural system to protect the rights of everybody, a three-month system, so these hearings don't go -- everybody wants to have a hearing on this. This affects the courts to a great extent. If we could do it by affidavit or -- I'd just find the best way of doing it so it improves the court, paycheck stubs. I think that the process being streamlined yet
protects the interest of the debtor (inaudible) the
interests are balanced, so those are my points.

CHAIRPERSON WILLIAMS: Thank you. I will ask
the proponent if they would like to respond to the
issue about the burden of proof very briefly, please.

MR. GILLETT: So the SCAO work group
discussed in pretty great detail the issue of whether
to prescribe one process in order to determine ability
to pay or whether at least for some period of time to
let that develop on a court-by-court basis, and, as I
mentioned before, there is a tool kit, which is really
an extensive tool kit that collects practices from a
number of courts, and I have to say that the practices
really range from very detailed financial reviews of
the individuals to courts that just say informally,
Here is your fine, can you pay today? And if the
respondent says, No, I can't, they say, When can you
pay? It's really worked out very informally on a
case-by-case basis, and I think both of those can be
effective, and so the intent of the task force was
really to move from no process in many courts to an
obligation to have a process with the thought that
through MJI trainings and maybe some SCAO
clarifications we would move to a process where we had
more information.
CHAIRPERSON WILLIAMS: Thank you. At this time, Chair recognizes the member at mike.

MR. BURRELL: Thank you. Aaron Vaughn Burrell, 53rd circuit. In the interest of my colleague from the 54th circuit indicating that we should send something up that is in final, detailed form, these are two very, very detailed points I presume may be friendly amendments. Under Rule 6.001(B), where it says, the second line from the bottom, subchapters 6.600 to 6, it should be point 800 rather than a comma.

CHAIRPERSON WILLIAMS: Accepted.

MR. BURRELL: Under Rule 6.425(3)(a), which is the substantive provision that all the others refer to, every other time in these amendments the phrase "good-faith effort" is referred to it's stated properly good, hyphen, faith effort, and in the last sentence of subrule (a), there is no hyphen there.

CHAIRPERSON WILLIAMS: It's been accepted. Thank you.

At this time we will move to the question. All those in favor should the Representative Assembly adopt the above resolution, as amended, to support the proposed amendments to Rules 3.605, 3.606, 3.928, 3.944, 3.956, 6.100 -- I'm sorry, 6.001 -- 6.425,
6.445, 6.610 and 6.933 of the Michigan Court Rules?

At this time if you would vote either yes or no,
please do so.

MR. POULSON: Which button to we press?

CHAIRPERSON WILLIAMS: A is for yes and B is
for no.

Has everyone voted? Voting is now closed.

If the clerk will give us the results.

CLERK HERRMANN: Madam Chair, we have 92 yes,
10 no, and one abstention.

CHAIRPERSON WILLIAMS: The proposal passes.

(Appause.)

CHAIRPERSON WILLIAMS: At this time we are
going to invite John Mayer up to cover our next action
item regarding HJR S and SJR J regarding the age
limitation on judicial terms.

MR. MAYER: Good morning. We have the
materials for this item under tab 7 in your booklet
and also should be at each of your places, a light
gray or slightly off white paper, a table entitled
judges who left office the last year of their final
term. We have the State Court Administrative Office
to thank for this considerable research data.

I am John Mayer, member from the 3rd circuit.

Madam Chair, my opening remarks are going to be
relatively brief, and I ask that the balance of my time, except for five minutes or something, be allocated by yourself for the people to speak, because I am confident there will be a number who will want to speak.

Presently pending in the legislature are Senate Joint Resolution J, which would delete entirely any age limit on beginning judicial term, and House Joint Resolution S, which would raise the age limit from 70 to 75.

If both resolutions are passed by both of the houses, if either or both of the resolutions are passed by both houses of the legislature, it or they would be submitted to a vote of the people in November 2016. The constitutional amendment contained in SJR J would implement the recommendation of the Judicial Selection Task Force made in April 2013 by deleting the age 70 limit altogether.

The age 70 limit in Section 19 of Article VI, is, I believe, the only age restriction in the Michigan constitution. In this day and age of reducing and eliminating discrimination wherever we find it, especially in law and government, this limitation should be deleted from Section 19 of Article VI. The Assembly voted 59 to 41 back in April
of 2013 when the task force report came out in favor of deleting the age limit altogether.

So what is new about this proposal before you today? There are two things. First, it recommends supporting specific joint resolutions pending in the house. Back in 2013 we were really endorsing the recommendation as it appeared in the judicial selection task force report.

For those of you who oppose deleting the age limit altogether, as provided in SJR J, the age limit, age 75 alternative, is presented in HJR S.

Madam Chair, I will yield the balance of my time, except for five minutes, to the speakers as you recognize them.

CHAIRPERSON WILLIAMS: Prior to -- we will need you to make a motion. So Prior to a motion on the proposal, the body has to decide if this is a permissible issue for us to consider under Keller, so that will be our first vote. So, as you prepare, I would ask all of those who are in favor of us taking action on this, meaning that you will decide that this proposal is permissible for a vote on the merit by the Representative Assembly under Keller versus State Bar of Michigan. Right now if you would cast your vote, it would be A for yes and B for no, and that's as to
the permissibility of us to look at the substance of
the motion. The voting is now open.

If there are any other votes, please cast
them now.

Voting is closed.

Mr. Clerk, if you could give us the result.

CLERK HERRMANN: Madam Chair, we have 82 yes,
12 no, and four abstentions.

CHAIRPERSON WILLIAMS: So the vote passes.
We will move to the substance of the matter, and I
will now ask the speaker to make a motion.

MR. MAYER: Madam Chair, I move that the
proposal that's before the Assembly at this time be
approved, both parts, A, the removing the entire age
limitation, and also the second one to increase it
from 70 to 75, and if this seems contradictory, think
in terms of the representatives of the State Bar,
whether it be private members or staff appearing
before the legislature talking informally with
legislators. It's entirely possible that when the
time comes there will be a ground swell or opinion in
favor of increasing the limit and against deleting it
altogether, and we want whoever is speaking for the
Bar at that point to be equipped to do so.

CHAIRPERSON WILLIAMS: We will handle the
voting separately, but there is a motion to vote on both parts. Is there a second?

VOICE: Support.

CHAIRPERSON WILLIAMS: The motion having been made and been seconded, is there any discussion?

The Chair recognizes the member at the mike.

MR. MASON: Good morning again, Madam Chair. Well, we are the only country in the world that glorifies youth and inexperience and trivializes age and wisdom. My wonderful Chinese wife reminds me of that from time to time. Just when you get to a point in your practice where you have got the wisdom, the gravitas, and the experience, we want to force people to retire, and it's just wrong, and so this, we should support this vigorously, but the implications go beyond the 70-year or 75-year mark, because then what happens is if, let's say you are 55 or you are 60, you are not going to get appointed to anything if you apply for that, because you are going to say, well, he or she couldn't run again in two years or three years. So to the extent that it's discriminatory, it goes well beyond that age realm, because they do start looking around, well, you know. Your age affects you before you hit that 70-year mark if you go based on the potential for years of service, for lack of a
better of way of putting it.

The other thing is you see senior citizens become healthier and healthier and active and exercise and the reality is that people are working longer and medical technology, 70 is really not that old, and I really think that the Bar should support this. There are a lot of very good judges out there, men and women that shouldn't be forced to retire because of an arbitrary age.

To the extent that it's considered political under Keller, I don't know how it is, because this is how we administer our courts, and these are the people who appear in front of and practice in front of on a daily basis. To my mind it's not a function of any kind of political agenda. It's really how we run our courts and the kind of justice system that we have and, frankly, the experience of the people in front of whom we appear.

COURT REPORTER: Your name, sir.

CHAIRPERSON WILLIAMS: Could you repeat your name for the court reporter.

MR. MASON: My name is Jerry Mason. I am from the 31st circuit, which is St. Clair County. Thank you.

CHAIRPERSON WILLIAMS: I will just remind our
speakers, we have made a determination as to the Keller permissibility. If you would just speak on the merits of the proposals pending.

MR. FLORIP: Good morning, Madam Chair, Daniel Florip. I am from the 26th circuit, Alpena and Montmorency, for anyone who is doesn't know.

I am rising to oppose support of these two legislative bills. I will paint of picture of what happens in the rural circuits up north. Judges are essentially elected for life, and I don't know exactly how things work down here in the big cities, in the bigger circuits, but we have very, very few contested judicial elections up in Alpena. I know something of the history of our elections up there. Since the early 1960s there have been a total of four contested circuit court elections in Alpena, and this was a two-judge circuit until about 11 years ago. So that's about 18 or 19 circuit court elections, four of them were contested. Only one of those was a situation of someone challenging a sitting incumbent. The other three were contested elections triggered by a mandatory retirement.

In a small, rural circuit like Alpena, we have got maybe 25 practicing attorneys. The public doesn't know generally whether these judges are good,
bad, capable, incapable. The people who really know
and can see the sausage being made are the attorneys.
Well, the attorneys in a small town like our circuit
can't come out and actively oppose an incumbent judge
running for reelection. It doesn't work that way. If
the judge ends up winning, well, then you have got a
problem.

Does this 70-year age limit cause some good
judges to have to retire prematurely? Yes. We just
lost a very good district court judge in Alpena to the
mandatory retirement age, but the last three circuit
judges forced to retire because of their age were well
past their prime and needed to go. It's a matter of
fact. You know, the attorneys in our circuit would
have told you that, but no one can come out and
challenge them. We have got the incumbency
designation. They are elected for life.

I think it's good to have this in our
collection. You know, complain if you want about
turnover for the sake of turnover. Maybe that's good,
maybe that's bad, but, you know, without the 70-year
age limit, we would have had judges in our circuit
continue well past their prime when they shouldn't
have been there anymore.

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

MR. KOROI: Yes, Mark Koroi, 3rd circuit.

Just a couple of points I want to make. Firstly, there was a lawsuit filed by judge to test the constitutionality of the U.S. Constitution of our Michigan stricture of 70 years. He was then 71, wanted to run again, and the constitutionality of the state constitutional provision was upheld by the courts, the federal courts. So I believe it is constitutional.

That said, age discrimination in our state has been barred by state law. This is really the only area in the state where we are for barring people from sitting in public office. It doesn't exist anywhere else. A person who is 80 years old can run for county commissioner, they can run for congress. There are quite a few in their eighties are sitting right now from Michigan. The federal court system, I know of at least one judge who is 90 still hearing cases. I have several in their eighties, one bankruptcy case hearing cases.

I think in this situation, I think the age limitations contained in the constitution may be constitutional, but it's not a good idea. I think, in essence, what it's doing to the state is saying that,
well, if you are 70, you are no good anymore, and I don't think it's a correct way of looking at things. I stand with what the last speaker indicated, that in certain areas of the state that once you are elected you are in for life. That's probably true in metro Detroit also.

Judges, the fact of the matter is, the public doesn't know what judges do on the bench usually, unless there is some scandal erupts. If they are doing a good job or bad job, they look at a name and vote for any kind of reason. It may be an Irish name, whatever. They vote on reasons that we may see as frivolous, but that's how people vote in these elections throughout the country. But I think in this particular case here, I don't think age is the issue that's driving that type of argument. I think basically the issue is a good judge or bad judge. Yeah, this is a good judge in their seventies, so arguing in essence against the limitation here.

I know judges out there that are in their seventies, can't run again because of the age limitation, but they are very good judges, would be glad to have them. I mean, the Federal court system in Detroit is the best example of that. The judges are past 70, many of them are, most of them are doing
a great job, but I think the age of 70 is very, very arbitrary. I think many people that reach 70 are still at the prime of their careers and many still in other fields, such as medicine, such as being in academia are at the peak of their careers in their seventies and even in their eighties. They practice medicine. I don't think we should be different and bar people because of age. It should be looked at on a case-by-case basis by the public, and they should have the right to vote people in who may be past seventy. That's my statement.

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

MR. POULSON: Barry Poulson, 1st circuit. I was going to attempt to be silent on this issue, but my colleague spoke, and my other colleague, Mr. Abel, kindly let me go first so I wouldn't keel over from age before I got to the mike. But I think we should change the Bar card and put on the birthday of the person turning 70, and your Bar card should be revoked at 70, and then maybe next year we can drop it back to 68 and give even more young people a chance for work.

I just think it's ludicrous to have to pick a number and decide that the person has somehow become -- what is the new term used? They passed
their prime. Passed their peak. I don't know what that means. I am reading a book now, History of Evolution. Author is 96. I studied under Professor Bork (sp). He was older than I am and certainly he was wiser, far wiser. I went to his birthday party. I think he was 88. I think it's horrifying that we have a big stamp that says we endorse age discrimination of any kind. We shouldn't do that.

CHAIRPERSON WILLIAMS: Thank you. Member at the mike, you are recognized.

MR. ABEL: Good morning. Matthew Abel, 3rd circuit. I rise to oppose this proposal. I think Michigan has a poor system for making people judges and what we would do is perpetuate that poor system. We ought to look to a merit-based appointment system. As the gentleman from Alpena said, especially in smaller circuits, it is nearly impossible to remove a judge, and so some of us, while there are some great judges who are 70 or so and we hate to lose them, there are other judges who we celebrate their leaving the bench. And so I think this is more about the judicial selection process and that just changing the age requirement is really not going to solve the problem that we have. The voters I think are unlikely
to approve this, as they generally are opposed to constitutional changes, and we really ought to look at a different system for appointment and maintenance of judges.

    CHAIRPERSON WILLIAMS: Thank you.

    MR. ABEL: Thank you.

    CHAIRPERSON WILLIAMS: The Chair recognizes the member at the mike.

    MR. HILLARD: Martin Hillard from the 17th circuit. I rise in support of the motion. Quickly, the resolution completely eliminates the age rule restriction. Merely raising it to 75, while an improvement, still has the inherent defect that it's discriminatory based upon age.

    With respect to my earlier colleagues in opposition, I found the list that the proponents passed out of the judges that retired because of the age limit interesting, and I think we can all look at the list, and perhaps many of us did while waiting, and we saw some names on there that we were glad retired, also some names on there that we say, wow, it's too bad they had to leave. But the issue isn't about whether the rules get rid of good judges or help us pass, what was the phrase, those past their prime into retirement, the issue is it's ultimately
discriminatory.

This was written into the constitution 50 years ago when mandatory retirement was the norm across, not just elected judges, but all industries. And we as a society have become more enlightened in the meantime and said, no, we won't put up with age discrimination. This is a message of a bygone era.

Now, as to my friend, Mr. Abel, from the 3rd circuit talking about the defects and how we select judges, I may agree with him on that, but the point is this doesn't address that problem. It's just, at best, a patchwork on it. If we need to change how we select judges, then we need to come forth with a proposal to change how we select judges, but as long as we as a society has determined we want an elected judiciary, not an appointed judiciary, maybe an appointment for life like the feds do is a better system. I don't know. We can debate that, but that's not the issue here. We have chosen to have an elected judiciary. When you have elections in a democracy, the answer to a bad office holder is to vote him out. That is the ultimate term limit or age limit. If the public fails in that, well, that's the cost of democracy in whatever office we look at, whether it's the judiciary, whether it's the state legislature,
whether it's executive officials. We can look at any
given election and look at the people who run and the
people who lost, and we may disagree with the outcome.
We may disagree over which ones we disagree on, but
that's democracy. We elect some good people, we elect
some not so good people, but that's what democracy is
about, and it's not about age discrimination, so I
rise in support of the proposal to get rid of the age
limit on judicial office. Thank you.

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

MR. LARKY: Sheldon Larky, 6th circuit. When
I was 30, I thought 50 was old. When I was 50, I
thought 70 was old. Now that I am 70 plus, I think 90
is old.

I rise in favor of this resolution for two
reasons. One, because I think we lose quality
jurists. Yes, we may lose bad jurists. We lose
quality jurists too. And the second reason is
Sam Bernstein, 1-800-CALLSAM, said, Shel, if this
passes, I will vote for you if you run for office, so
I am in favor of it.

CHAIRPERSON WILLIAMS: Chair recognizes the
member at the mike.

MR. HORNBERGER: My name is Lee Hornberger,
13th circuit from Traverse City. I rise to oppose this. There has been an elusion to democracy, and the complicating factor of the situation is the incumbency designation. If it was not for the incumbency designation, I might be in favor of this, but the incumbency designation removes this from the arena of a true democracy.

(Applause.)

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

MR. FALKENSTEIN: Peter Falkenstein. I'm from the 22nd circuit. I have to support the comments of the previous speaker, which is along the lines of what I wanted to say, but just to level it a little bit, I think when you talk about democracy as our previous speaker did, it does ignore the fact that it is almost impossible to remove an incumbent judge and that there is an element of the black robe syndrome. We have seen this in federal court, where I do most of my practice, where we have, I believe, more senior judges now than we have regular district judges. Many of them are still very good, but many of them stay on long after they are capable of doing a good job, and the fact of the matter is, if we have no age limitations, a judge likes to be a judge, and I think
that there would be the same proclivity in the state courts as there is in the federal courts just to simply stay on as long as you can because of the position, the prestige, et cetera, et cetera.

So I oppose part A of this resolution, of this proposal. However, I also agree that because of medical advances and increasing longevity of our population in general that 70 no longer is old, and I think a good compromise would be to approve the second part, expanding the limitation for appointment or eligibility to 75 years, which means when you run when you are 74 you are still going to be a judge till you turn 80, and I believe that sort of compromises the issues of allowing people who still are competent at a fairly advanced age to do the job but also considers the fact that it's almost impossible to remove the incompetent judge, and I have to say there are probably one or two in the state.

So that's where I fall. I support the second half of this proposal.

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

MR. OHANESIAN: Nicholas Ohanesian, 17th judicial circuit. I rise in support of this proposal. And in full disclosure, I am an administrative law
judge for the Social Security Administration, and I think the age 70 rule or even the age 75 rule is a blunt instrument to deal with a larger problem, and, frankly, I dealt with a fair number of judges in my prior practice who were under the age of 70 who I wished would retire also. I don't think age is the right measure here. If the issue is bad judges, then, you know, either it's democracy or change the system in which we select judges, but I think the age system is or age rule is overinclusive and underinclusive of the problems that need addressing. Thank you.

CHAIRPERSON WILLIAMS: Thank you.

MR. FOSTER: Ron Foster. The speaker commented someone that's over the age of 60, this is almost a discouragement for people in that age bracket to run, because I think in the public image is old. If we elect him now, he can't serve again, because he will be past the age of 70, which to me is a negative thing. When you consider running when you get closer to that number, the public image is, well, you are not going to be able to serve anyway, et cetera, et cetera. To me that really makes it even more open for people in their fifties and sixties to run for office and add those years of service after all the years of serving as attorneys, so I would support
removing the age limit entirely. Thank you.

CHAIRPERSON WILLIAMS: Thank you. Seeing no one at the mike, I am going to invite Mr. Mayer for a very, very, very brief closing.

MR. MAYER: There have been just three or four comments made which tend to want to broaden the scope of this discussion. Really very narrow. It has to do with Section 19 of Article VI, 70 or 75 or zero. It's not about the selection of judges. There is a wonderful task force report on that that came out in 2013. Hasn't received the attention it deserves. Whether or not we think voters will approve a constitutional amendment is irrelevant. Voters should, as two or three have said, be responsible for voting at public officers, and I would also add here, there is a role for the local bar associations. They aren't playing very many places, but there are some hopeful signs. There have been a few incumbent judges defeated in the last six, eight, ten years, and I would like to regard that as a trend.

Last comment. I put to you that there are many more good and excellent judges on this list that you have got than there are mediocre or bad judges. Let your conscience be your guide.

CHAIRPERSON WILLIAMS: Thank you. At this
time we will move to the question. We will vote for them separately. The first question is should the State Bar of Michigan adopt the resolution to Section 19 of Article VI of the Michigan Constitution of 1963 that it be amended to remove the age limitation from eligibility criteria for judicial office. Please press A for yes and B for no. Voting is open.

If there is anyone who needs to cast a vote, please do so. Everyone appearing ready, the voting is now closed.

Mr. Clerk, if you could give me the results.

CLERK HERRMANN: Madam Chair, we have 71 yes, 37 no, and two abstain.

CHAIRPERSON WILLIAMS: The proposal passes. We will move to the second, and this is whether or not the State Bar of Michigan should adopt the following resolution calling for amendment to Section 19 of Article VI of the Michigan Constitution so that it be amended to increase the age limitation of eligibility for judicial office terms from 70 to 75 years. You may now cast your vote, pressing A for yes and B for no. The voting is open.

Anyone wishing to vote, please vote. There appears to be readiness of the body. The voting is
closed.

Mr. Clerk, if you could please provide us with the result.

CLERK HERRMANN: Madam Chair, we have 57 yes, 49 no, and three abstain.

CHAIRPERSON WILLIAMS: We only needed a simple majority, so the proposal passes. Thank you very much for your attention to this matter.

(Appause.)

CHAIRPERSON WILLIAMS: We are running far behind schedule, so we still will take a break, but it will be five minutes, and five minutes exactly, because we have guests here for our awards ceremony. So we will take a five-minute break.

(Break taken 10:49 a.m. - 10:55 a.m.)

CHAIRPERSON WILLIAMS: We are going to get started, and I will ask Angela Sherigan to come to the front for the Unsung Hero Award presentation, as well as the Honorable Allie Greenleaf Maldonado. The meeting is back in session. If everyone will move to your seat. If we could have the presenters for the Unsung Hero Award and the Honorable Allie Greenleaf Maldonado, please come to the stage.

As you are in your seats, if you could pass your clickers to the right of the row, that would be
great. We will now turn the podium over to the Honorable Angela K. Sherigan with the presentation of the Unsung Hero Award.

HON. SHERIGAN: Good morning, everyone. I am very honored to be here to introduce this year's recipient of the Unsung Hero Award. She is a good friend of mine and a great advocate and I know we are running short on time, so I will try to keep it as brief as possible if that is possible to talk about this woman.

Judge Maldonado was nominated by someone other than me who has now taken a position with the Army, and he could not be here. I very happy to stand in his place.

One of the things he said in his nomination is that Judge Maldonado has the highest standards of practice and commitment for the benefit of others, and he could not be more correct in that. One of the ways that she has exhibited this is her work through the Waabshki Miigwan Drug Court, which is the Little Traverse Bay Bands of Odawa Indians Drug Court.

Before Judge Maldonado had taken the bench as chief judge at Little Traverse, they had a drug court. However, once Judge Maldonado had taken the bench, she looked and saw that the female participants were not
graduating from the program, so she commissioned a
study to find out why the female drug court clients
were dropping out. She talked with all of them and
found out that one of the biggest obstacles that they
had is that they were single mothers and did not have
a lot of time to commit to the drug court program,
which, as many of you know, is very intense.

One of the requirements for the Drug Court is
that they perform 30 hours of work, school, or
community service, in addition to fulfilling all of
the other programs, or all of the other requirements.
As a result of the findings, she had changed part of
the requirements that allowed for credits for caring
for their children. She also assisted them in
obtaining child care. While this doesn't seem like a
big deal, it really is when you have a community that
is affected by substance abuse and alcohol abuse, and
it's the women that are not getting the services that
they need. Through this, she has been able to
specifically address women's needs, and has been
successful in that endeavor.

In addition to one of the other problems that
the Drug Court was having is that the tribal court was
unable to restore driver's licenses. As many of you
know, state court drug courts are able to provide
driver's licenses to their participants, so Judge Maldonado looked into this, contacted Secretary of State. They came out to the Drug Court, observed the Drug Court, observed the court personnel, observed the laws and the policies and were satisfied. After that, there was going to be a contract entered into between the State Court Administrator's Office and the Tribe. Big problem there. Tribes have tribal immunity and are very reluctant to waive that immunity. Through the advocacy from Judge Maldonado, the tribe agreed to enter into that contract. Next month they will be finalizing everything that they need, the training and the contract, in order to have their participants have the ability to have a driver's license restored.

On a personal level what I think is more important from that is her advocacy for Indian people and the Indian Child Welfare Act. While Judge Maldonado is general counsel for the Little Traverse Bay Band, she was required to make sure that there was compliance with ICWA and the state courts. The ICWA is the Indian Child Welfare Act, which is federal regulations regarding abuse and neglect cases of Indian children.

There has been significant problems and
misunderstanding about ICWA in the state courts, which leads to devastating results. As all of you are very well aware, it has been significant for the last several years throughout the country. One of the problems we see is that there is just ignorance and misunderstanding about why and how the law is applicable. Judge Maldonado started training with the assistance of the State Court Administrator's Office, state court/tribal court judges, prosecutors, Department of Human Services, and other people that were involved in the Indian Child Welfare Act about compliance and about why we have the law.

In addition to that, she worked on various work groups and helped to draft the Michigan Indian Family Preservation Act. That was the culmination of three years of a work group, and it was finally introduced into the legislature. The work group, as well the Michigan Judges Association, the American Indian Law Committee, and the American Indian Law Section, and the work groups themselves decided that our best spokesperson is Judge Maldonado, not only because of her knowledge of the issue but because of her personal experiences and her dedication to Indian children.

Eventually the law was passed, and
Governor Snyder signed it. To this day Judge Maldonado continues to train state court judges, family services, Department of Health and Family Services, and we are hoping that eventually she will start training prosecutors.

Her work and her professional demeanor are the highest standards that I have ever observed in anyone. Prior to coming back to her tribe she worked for the U.S. Department of Justice, Environment and Natural Resources Division where she represented tribes on issues dealing with endangered species, Clean Air Act, and worked on various other zoning issues, Indian arts and crafts, and she defended the Bureau of Indian Affairs Environmental Assessment in several cases.

I have also observed and heard throughout my practice that Judge Maldonado, wherever she is within the United States, traveling, doing her trainings and her advocacy, that she is a great representative of the Indian Nation and a great representative of tribal courts.

Her work under ICWA and MICWA alone are worthy of this award. Her work under the Drug Court alone are worthy of this award. I think that it is very telling of the people that came here to support
her today. Basically it says that, yes, we agree, she
is our unsung hero. I know that she is our unsung
hero in Indian country, but I know that Judge Connors
of Washtenaw County is here to see her.
Justice Cavanagh is here to see here. Justice Bridget
McCormack is here to see her. I am so proud to
introduce Judge Maldonado. Thank you.

(Applause.)

CHAIRPERSON WILLIAMS: On behalf of the
Representative Assembly, we are very honored to
present the Unsung Hero Award to Judge Maldonado.

(Applause.)

JUDGE MALDONADO: Thank you. Thank you so
much. I want to thank the State Bar of Michigan
Representative Assembly for this incredible honor. I
am humbled because much of the work I have done that I
am being honored for isn't my work alone. The
extraordinary achievements that have occurred in the
last eight years in the area of Indian Child Welfare
in Michigan were borne out of the foundation
painstakingly laid by Supreme Court Justice Cavanagh
and Tribal Court Judge Michael Petoskey more than 20
years ago. Their partnership, leadership, friendship
and innovation made the Tribal State Partnership, the
Tribal State Federal Judicial Forum, and the Michigan
Indian Family Preservation Act possible. This isn't
the work of one person. It's the work of many.
Justice McCormack, Justice Corrigan, Judge Connors,
Judge Sherigian, Judge Butts, Kate Fort,
Stacey Tadgerson, Annette Nickel, Cami Fraser,
Jim Keedy, Maribeth Preston, Angel Sorrells,
Bill Brooks, and Chairman Mandoka are just a few of
the unsung heros deserving recognition.

As for my work transforming the tribe's
court, even that isn't mine alone. The generous
mentorship I received in my education and career have
shaped every step I have taken. For example,
Justice McCormack was my professor at the University
of Michigan Law School. She taught me there is a
place for compassion in our legal system, and I hope I
have made her proud. Judge Petoskey was the first
chief judge from my tribe, and he gave me my first
legal job as a law clerk, drafting my own tribe's
Child Welfare Code. It never occurred to me that
summer that one day I'd have to fill his immense
shoes, which was made exceedingly easier for me
because I had the foundation that he built to walk on.

I never would have even applied for the
position of chief judge for my tribe but for, not just
the encouragement, but the insistence of
Judge Connors. He pushes me forward, he believes in me, and he cultivates my success even when I am not looking. Once on the bench, Judge Sherigan, she became my go-to for even the stupidest questions, because she is a true friend who doesn't judge or criticize, and she shares my passion for making people's lives better.

And of course I couldn't have accomplished anything in this short life without my wonderful husband. Over 23 years you have supported me, taking public interest jobs over law firm offers, taking pay cuts to serve on the bench, and you have sacrificed again and again, so that I could serve my community. Without you, I am nothing, but together we are one amazing person.

I am extremely honored to accept this award, but I must accept it on behalf of the extraordinary group of unsung heros that I have the honor of working with and who have all devoted their careers to improving the lives of American Indian children.

Chi miigwech.

(Applause.)

CHAIRPERSON WILLIAMS: If we could have the presenter, Mr. Bonner. Mr. Bonner will present the Michael J. Franck Award to Vernon Kortering
posthumously. Thank you.

MR. BONNER: Vern's family, we have a request that you join us at the front. While they are coming up here, I have a favor to ask of this distinguished Assembly, and that is could all those who were members of the Representative Assembly six years ago in 2009, could you please raise your hands. Wonderful. Because in 2009 I stood before you as a recipient of this prestigious award, and I would be remiss and I would feel guilty driving all the way back to Muskegon if I didn't take this opportunity to thank you again for creating one of the most memorable days of my life. So thank you for that.

(Applause.)

MR. BONNER: By the way, you will share my joy about two things. One, I have not yet been disbarred, and, two, I did not receive the award posthumously. But today I am honored and grateful to be the presenter of the 2015 Michael Franck Award. Sadly, however, the presentation of this award is being made posthumously. This year's recipient is Vernon Dale Kortering.

Vern was 80 years old when he died earlier this year in January, and it's fitting that our Chief Justice Robert Young, Jr., I understand there are some
other justices present in the room, that they are here today, because Vern's first job when he graduated from the University of Michigan Law School in 1962 was to serve as a clerk to Justice Eugene Black of our Michigan Supreme Court. Then Vern came to Muskegon to practice law for over 50 years and then to build a legend.

When I graduated from Wayne State's law school in 1983, I had a dream and hope of becoming a lawyer for the poor. At the same time I graduated, my dream job opened up at Legal Aid of Western Michigan in Muskegon, and I moved there to begin that calling. But when I came to Muskegon I quickly learned some things. One, I learned that there was already a lawyer for the poor working there who had been working there for over 20 years when I arrived. Another thing I learned was he was not a Legal Aid lawyer. He was a man who would remind me of Clarence Darrow. He was a man who was the mirror image of Atticus Finch. Vern seemed not to care whether people ever paid him for the legal work he did for them. To borrow words that are inscribed on the Michael Franck Award itself, Vern's life was an outstanding contribution to the improvement of the legal profession, that noble profession which we all share. And most important to
me, Vernon Kortering became my role model, my mentor, and my good friend.

Today your selection of Vern Kortering to receive this prestigious award honors Vern's life of service. I want to close with a sentence from each of two tributes which poured over Vern's memory after his death. The first is from a two-page resolution from the Muskegon branch of the NAACP. Our local branch was formed in 1919, only ten years after the national organization was founded. It was a two-page resolution, but I just want to share with you one line. You are all grateful for that.

It says, Therefore Be It Resolved: That we, the Executive Committee, Officers, and Members of the Muskegon Branch of the NAACP will remember Vern's zest for the rights of those underprivileged and the downtrodden and his commitment to the cause of law and civil rights.

The second tribute comes from a letter penned by one of our wonderful circuit judges in the 14th circuit in Muskegon, the Honorable Timothy Hicks, and Judge Hicks wrote in a letter to Vern's wife, Lois, and to his three children the following words. This was near the close of his letter. Vern was the best person at using the law for perhaps its highest
purposes -- to help provide justice to those less fortunate and to move our society to better places.

With us here today are Lois Kortering, Vern's wife of 55-and-a-half years; his son, David, who is also a member of the Representative Assembly; and David's wife, Kathy, and Vern's granddaughter, Kyla. It is my high honor and my great pleasure to present the 2015 Michael Franck Award to Lois, David, Kathy, and Kyla to honor an exemplary man, your husband, your father, your grandfather, and my friend --

MRS. KORTERING: Are you sure he is not here today?

MR. BONNOR: -- Vern Kortering.

(Applause.)

MR. KORTERING: I finally remember presenting that same Michael Franck Award to Dan Bonner six years ago, and it seems that it has come full circle, and it is very fitting to receive this award, this very prestigious award, from Dan, who was a, as indicated earlier, a colleague and dear friend of my father and a close family friend of my family, so I would like to thank him for making the trip all the way from Muskegon this morning to be here on behalf of my family, my mother Lois, my wife Kathy, and my niece Kyla who are here today.
We would like to thank the Representative Assembly, the Awards Committee for all their hard work, as well as the entire State Bar. This award not only mean a whole lot to my family, but it means a lot to our tight-knit, small, legal community in Muskegon, as well as Muskegon County in general. This is the third time I have been able to speak on behalf of my father this year -- at his funeral, at the Law Day presentation we had in Muskegon earlier this year in May, and now today -- and, as indicated in the materials that show the award, he was truly a maverick, and without his passion and selfless dedication, I probably wouldn't have gone into law, and there are thousands and thousands of clients that have benefited from his hard work and his dedication.

So, again, I would like to thank you on behalf of my family in Muskegon and Muskegon County.

(Applause.)

CHAIRPERSON WILLIAMS: At this time we are very happy and honored to receive comments from our Chief Justice, Robert P. Young. While he doesn't need an introduction, I will say a few words about him.

CHIEF JUSTICE YOUNG: Please don't.

CHAIRPERSON WILLIAMS: Just a few. The one thing that should be noted is that Justice Young pays
great attention to the fact that we need to have more
efficient and customer-focused courts, and so he has
worked very hard to implement best practices in
technology to accomplish that, to expand public
access, and to increase the efficiency of our courts,
and also to save taxpayer dollars.

As you may know, he is a Harvard grad and a
past member of Dickinson Wright, and just a member of
various charitable groups. He has two sons, and I
can't let him speak without indicating he has been
married to his wife, Dr. Linda Hotchkiss, for 40
years. Please join me in welcoming our Chief Justice,
Robert P. Young.

(Applause.)

CHIEF JUSTICE YOUNG: I asked her not to say
anything. She has given my speech. So I will try and
make it as short, therefore, as possible.

I do want to thank you for the opportunity to
talk to the Representative Assembly this morning, and
one of the things that we do on your annual meeting is
that we move our conference off campus and have the
conference, weekly conference, wherever you are, and I
am delighted to say that we had our conference here
this morning and with our newest colleague,
Joan Larsen. Would you stand up, Joan, so you can be
seen.

(Applause.)

CHIEF JUSTICE YOUNG: Joan is every bit as scary bright as her resume might lead you to believe. It was a thoughtful conference, which she made many contributions, and, unfortunately, she is tied to her evil twin, Justice McCormack, and I am very concerned about that relationship, the corruption that would occur there, but there is only so much I can do as chief.

I think this is going to be an extraordinarily productive term. The Court is collegial. We like each other, and that's a good thing, but today I want to talk about something different.

I think we all know in an abstract way how Byzantine and fractured our Michigan judiciary is. We have a 19th century model with a lot of structural decentralization. The constitution instructs us that we are one court of justice, but the reality is that we are very centralized, and that doesn't really hit home until you come into position like mine and you want to make the trains run on time, you want to make changes that affect the entire judiciary, and you realize that one court of justice is more theoretical
than real.

And just to help illustrate the point, you had should have in front of you this little pamphlet, and if you open it up and then flip to the back page here, this is kind of an illustration, a pictorial illustration, of just how many structural barriers there are to our branch operating as a unit.

We have 560 local judges, 243 trial courts tied to 163 different funding units, which that alone is a structural barrier. Imagine trying to operate a unified branch of government where you have 165 different units of government to which our local trial courts are tied for financial support. That complicates everything. Imagine trying to put in -- all of them are tried to not only their local funding units for funding, they are also tied to them technologically. So we have 20 different case management systems, 150 different computer systems across the state. Not only that, but in the circuit courts, we own our court records, but they are managed by 83 elected officials who don't report to us and who don't necessarily have to abide what we want done with those records.

So that's kind of the big picture. I knew all these things before I became chief, but they
1 didn't resonate until we decided what we wanted to do
to make a significant reform, and our vision is very
simple. A lot of it is very much drawn from an
endeavor that this organization championed and
participated in, the Crossroads Report, and many of
the reforms that we have been able to accomplish in
the last four years are drawn from the recommendations
of that document.

   Anybody in government telling you that we are
too big for the workload, that is exactly what we did
in the third branch. I believe that we should not
cost a penny more than is necessary to discharge our
mission of providing justice to the citizens of this
state, and, as a result of that simple commitment, we
proposed, and the legislature agreed, to reduce 40
judgeships. That's a significant undertaking, and
it's resulting in cost savings to the public. So far
we are doing this by attrition. We didn't sort of
take everybody out of their seats, but we are, by
right-sizing, we are saving $175 million over time.

   The more significant reform that we have
undertaken is our desire to measure how well we are
doing. People talk about measuring in government all
the time. You can't go to your local coffee shop
without them handing you or e-mailing you a customer
satisfaction survey about how quickly the service was done, how satisfied you were with their product. That's what's been going on in the private sector for years, but in the government sector, we hope we are doing a good job, but we have got no idea, except in the third branch for four years we have been deciding, you know, what our performance measures were, and we are measuring, and not only that, we are telling you how well we are doing. Every trial court now has a dashboard. You can look it up. You can come to the state Supreme Court's dashboard, and we have a statewide iteration of our performance measures. Let me just touch on a couple.

You might imagine that in a business where you are likely to disappoint at least 50 percent of the people who come before you, in my court the percentage is higher, that surveying your customers is kind of a perilous thing. It was not wildly embraced by the trial judges, but we did it anyway, and guess what we found. Ninety-three percent -- we have done this two years running now. The last one we polled surveyed 26,000 people across the state who came into our trial courts. Ninety-three percent said they were treated with courtesy and respect, 86 percent said that they were able to get their business done in a
reasonable amount of time, and 82 percent thought they had their cases handled fairly.

Now, that's a very good measure for us, and we are going to keep doing this, and each court has its own measures. Those are the rolled-up statewide averages but allows us to start keeping track of whether we are maintaining that level of satisfaction.

We have also embarked on a series of other reforms to add accessibility for the courts. The most notable, we just celebrated the, I think the second anniversary of our language access rule, which is designed to provide translators for those for whom English is not their native tongue.

We have a wide array of specialty courts. I was not an initial fan of specialty courts. I was at least agnostic on whether these things were effective. I didn't go to law school to become a therapist. My wife is a therapist. She went to medical school and did a lot of other things to become a psychiatrist, none of which I did, so I was not sure that this was an effective utilization of the judiciary. But I like to be -- I like to hope that I am persuaded by data, and the data are in, and our specialty courts -- drug, sobriety, and veteran and mental health courts -- are having a demonstrable impact on people's lives. We
have very much reduced recidivism rates in these courts, and we are keeping them out of jail, which are expensive, and, frankly, not terribly productive in transforming lives, and we are treating the underlying issues that cause people to come into contact with the criminal justice system. So these are really wonderful things. There is a specialty court available now to 96 percent of our population in Michigan.

So these are some of the tremendous reforms that I think are transforming our judiciary and making it a leading cutting edge judiciary. We are using a lot of technology, mostly with spit and bailing wire, because we don't have a lot of resources, but we have now in every county virtual courtrooms. Those are things that help others save money. We are saving the Department of Corrections about $3 million in the last two years because they can telecommunicate rather than physically bring prisoners. That's the same issue happens with the local sheriffs so they don't have to go from jails to the courtrooms. It promotes more security in the courtrooms. We are putting these things in place, but they help others.

Yesterday or day before we got the first step ahead on our e-filing system. Again, imagine trying
to create an e-filing system where there are 150
different computer platforms, but we are getting
there. It's hard. There is a lot of working around.
My favorite saying is in Michigan's judiciary it's
always a workaround, but two days ago the Senate
Judiciary Committee passed our legislative proposal to
fund our e-filing.

So we have wonderful initiatives and
innovations, online ticket paying. Good Lord, it's
hard enough to get the ticket, but being able to avoid
going down to court in person is a good thing. So we
are testing everything. We are trying new things, and
most of it's working, and so I guess I am here to say
to you thank you for the insights and recommendations
that you provided in the Crossroads reports. There
have been such reports for decades, and what we needed
was the will and the perseverance to do something, and
we are doing it, and apparently well from the data.

So thank you very much, and now it is my duty
to swear in -- no? Oh. Well, I stand corrected.
Thank you very much. I will do that.

(Applause.)

CHAIRPERSON WILLIAMS: Justice Young was
going to remove me right before I was ready.

CHIEF JUSTICE YOUNG: I am so sorry.
CHAIRPERSON WILLIAMS: At this time we will take -- we received one written nomination. If we could get that nomination from the floor for clerk. The Chair recognizes the member at the mike.

MR. CLARK: John Clark from the 3rd circuit. I am here to nominate Joseph P. McGill for the role as clerk, the next clerk of the Assembly. Joe is a partner at Foley, Baron, Metzger & Juip. He is a partner in their litigation group specializing in all types of complex litigation -- environmental, products, construction, and business torts. Joe is a graduate from both U of D School of Law, as well as Wayne State. He has his J.D. from the U of D and two LLMs from Wayne State. In addition to Joe's practice, he is involved in many aspects of service in the legal community, as well as the broader community, particularly he is currently the president of the Irish American Lawyers. He is also past president of the Catholic Lawyers, and he is also the immediate past chairman of the Foundation for Madonna University. I know Joe personally, and it's my pleasure to nominate him as the next clerk, Joseph P. McGill.

CHAIRPERSON WILLIAMS: Thank you for that nomination. Are there any more nominations? Are
there any more nominations? Are there any more nominations? Nominations are closed.

At this time we will move to the election of clerk per the rules. Since there is only one nomination, it does not require a written ballot. So at this time, all of those in favor of electing Joseph McGill as our next clerk, please indicate by voice vote of saying yes.

All those opposed. Hearing none, you are elected unanimously. (Applause.)

CHAIRPERSON WILLIAMS: I would like to quickly recognize members who are retiring from the Representative Assembly. I would ask that you would stand and our members hold the applause until the end. You may also come at the end and collect your certificates from this side of the room.

John A. Jarema, Susan L. Thorman, Dennis L. Brewer, Anne B. McNamara, Tami W. Salens, Michael J. Ekdahl, the Honorable Roy G. Mienk. We would like to thank you for your service to the Representative Assembly, to the Bar, and to justice for the public. Thank you.

(Applause.)

CHAIRPERSON WILLIAMS: Now, at this time we'll have the swearing in of our new chair. You will be in very capable hands, as you know, from electing him as clerk, and I will turn it over now to Justice Young.

CHIEF JUSTICE YOUNG: At long last. Would you raise your right hand. Do you solemnly swear that you will support the constitution of the United States and the constitution of this state and the Supreme Court Rules concerning the State Bar of Michigan and that you will faithfully discharge the duties as Chair of the Representative Assembly of the State Bar of Michigan according to the best of your ability?

MR. QUICK: I do.

CHIEF JUSTICE YOUNG: Congratulations.

CHAIRPERSON QUICK: Thank you.

Thank you very much. Thank you, Chief Justice, other members of the judiciary present. I
should also take a moment to honor the members of the Board of Commissioners who are present and incoming president, Lori Buiteweg, also a veteran of our fine Representative Assembly. I also believe we have several of our past presidents present in the room.

As I think you saw in today's agenda, the Representative Assembly as the ultimate public policy-making body of this Bar is focused on handling substantive issues and respecting your time and moving efficiently through our agenda. There is much to be done, whether the state of the law, the state of the Bar or protection of the public, our agenda ought always be full, and I will work hard to make sure that it is.

We will, for example, take up at our next meeting and continue our discussion on the dues item that we started on today. I apologize for not being able to treat that with the robustness of which we intended, but you have the powerpoint, and we will continue that discussion as it does lie within our unique province to handle that issue.

And, finally, while I stand between us and adjournment, I need to take a moment to respect the fine work of Vanessa Peterson Williams as chair of the Representative Assembly. Yesterday the Board of
Commissioners passed unanimously a resolution commemorating her retirement from that body. I will take just a moment to read you a portion of that so you get a sense, as you all saw, but get a sense of what the Board of Commissioners honored in her service.

Vanessa has been a member of the Representative Assembly since 2008. In 2014, Vanessa faced perhaps her greatest challenge, service simultaneously on the Board of Commissioners and on the task force convened by the Michigan Supreme Court to Bar operations and Keller issues. Vanessa, of course, took her membership on the task force very seriously and devoted long hours to the process. That turned out to be the easy part. When the report was issued, sometimes withering criticism and ad hominem attacks upon its members, Vanessa stayed the course, stayed true to her professionalism and her values. She supported the Assembly then through a lengthy deliberative process to first defend and then improve itself in the weight of the task force report and then worked deciduously in her year as chair to move forward with improvements, many of which you saw today, structurally, operationally, and logistically, from which the Assembly will benefit for years to
Vanessa's professional career is marked through incredible accomplishment as an attorney, but also through a dedicated sense of justice. In addition to her service to this body and numerous other law-related organizations and entities from the ABA on down, Vanessa is committed in her community and works with the past president of the Ypsilanti Chapter of Jack and Jill of America, Inc., where she works in the leadership, juvenile justice, healthcare and education initiatives for youth in her community.

Vanessa has been a great friend these past years to me personally on the Assembly and I would submit has been a friend to all of you and to our entity as well. Please rise and join me in thanking Vanessa.

(Applause.)

PAST CHAIRPERSON WILLIAMS: Just briefly. I would say three years ago when I was elected as clerk, I had no idea that we would ever have a task force and what my term of leadership would entail, but I will tell you with every tough day and every good day that I have grown as a person and I have grown as a leader, and I am so appreciative of your confidence that you placed in me on that day and your confidence every
time that we have met where I called you and asked you
to dedicate some time, and you have given that time.
We got a lot done today, we got a lot done this year,
and I am so appreciative of your patience and
cooperation.

We started, after a tumultuous year,
wondering where would we take the Representative
Assembly, and I think we have made it very clear that
we are the final policy-making body of the State Bar
and that we look to provide access to justice and to
protect the public.

Today we saw our new Keller rule go into
effect, and we'll have an opportunity for people to
write minority reports and do a lot of different
things that we weren't doing before. I want to thank
our executive team, who these two gentlemen have been
very supportive. We have been able to work
collectively to set forth a vision that will go beyond
my term here, so I am very appreciative of Dan and for
Fred, and thank you for all of your support, for all
of the meetings that we have had, the early morning
breakfasts, the calls in the afternoon to make sure
that this body was able to assemble for a good purpose
and that we made very good use of your time.

At this time I would also like to thank our
committee chairs of Drafting. Michael Thomsen, if you
would stand. Special Issues, Aaron Burrell; Assembly
Review, Kim Breitmeyer; Nominations and Awards,
Shenique Moss; Hearings, Michael Marutiak; and Rules
and Calendar, Matthew Antkoviak. They have been great
in making sure that we were able to follow the rules
and present what we had to do and to do it efficiently
and effectively.

Lastly, I would like to thank the staff who, without the Bar staff, we would not be able to do
this. We are all volunteer members here, so we all
have day jobs that we have to accomplish so that we
can keep performing, but the State Bar staff, starting
with our Executive Director, Janet Welch, through
Carrie Sharlow, who has been helping us today work
through our revisions, Marge Bossenbery and Anne Smith
and Peter Cunningham, who gives us lots of direction.
It has really been a great year for us.

Also, thank you to Judge Chmura who, when you
are a presiding officer, you never really realize how
you come to depend on your parliamentarian. You saw
it today in action when I had to consult with him, but
that's not -- I mean, he consults prior to the meeting
always so that we are ready to move efficiently and
effectively and respect your time.
Although they aren't here, I also have to thank my family. Most often when I am doing Bar duties -- I have two children, a son, Reuben, 15, and a daughter, McKenzie, 12, so my husband has to do a lot of mommy and daddy duties in terms of running them places, but they are all very supportive of me, and I could not do what I do without a great life partner, without the support of my kids.

Thank you to all of your past leaders in the back. I had great mentors in the State Bar. Reggie Turner and our past Bar President have really pushed me to go far beyond what I ever thought that I could accomplish in terms of Bar service. I am very committed, and I always want to thank you for your time and for your service and your trust and guidance in what I can accomplish. So thank you very much for this opportunity.

(Applause.)

CHAIRPERSON QUICK: Two announcements.

November 22, 2015 is the deadline for your submission of reimbursement forms. April 30, 2016 is our next Representative Assembly meeting, to be held in Lansing.

With that, I will entertain a motion to adjourn.
VOICE: So moved.

CHAIRPERSON QUICK: All in favor?

VOICES: Aye.

CHAIRPERSON QUICK: Thank you very much.

Have a wonderful day.

(Proceedings concluded at 11:48 a.m.)
| Constituents | Courtrooms | Course | Consult | Commented | Certificate | Closed | Clicker | Coffee | Bracket | Bracketlet | Blog | Black | Bit | Bullet | Calendar | Buiteweg | Build | Broaden | 10-8-15
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