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 East Lansing Marriott, University Ballroom, East Lansing, Michigan, on Saturday February 22, 2003, at the hour of 10:00 a.m.

AT HEADTABLE:

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

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

RECORD

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

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

VICE CHAIRPERSON LEVY: I do certify.

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

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

VOICE: So moved.

VOICE: Support.

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

Are there any opposed?

The record shall reflect that was approved unanimously.

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

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

Additionally Michael Zagaroli from Grand Rapids has also been nominated by the 17th circuit to fill a vacancy that is of immediate import and then to continue again until election is held. And, thirdly, we have Lisa Kirsch-Satawa who is now being nominated
to fill a vacancy of immediate import in the 6th circuit, and she will fill that vacancy at this point and serve until our next State Bar election.

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

VOICE: So moved.

CHAIRPERSON ROMBACH: Is there support?

VOICE: Support.

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

VOICE: We have a question.

THE WITNESS: Call the question.

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

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

Any opposed signify by saying no.

Hearing none, that passes unanimously.
I guess my next item is remarks. Not being particularly remarkable, I will ask at this point -- fortunately we have done real well health-wise within State Bar circles in the interim period since September, but unfortunately we lost one of our great lawyers in the state, former State Bar of Michigan President and one of our leading pro bono advocates in the entire nation and after whom we have named our pro bono award, and that's the person of John Cummiskey from Grand Rapids, and I would like at this point to ask for a moment of silence to reflect upon his passing.

(Moment of silence.)

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

First off, I would like to thank Dan Levy who helped draft the proposal in front of you for your consideration today, along with our State Bar general counsel, Janet Welch, who is over there with the glasses and not quite falling asleep yet. And Dan and Janet helped design the process, particularly Dan and his
effective successor, Elizabeth Jamieson, who is actually overseas today in a prepaid junket.

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

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

   So Elizabeth unfortunately, and a number of other people, because of midwinter breaks with
children and things, a lot of people have expressed
their regrets for not being here today, but I
appreciate you all making a special time in your
schedule to go the extra mile and brave the pending
weather conditions to have your input here today.

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

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

I would also like to recognize Bruce Barton
and Michael Blau, Dan Burress, judge who was
unfortunately unable to be here today. Cynthia Lane,
Fred Neumark, Barry Powers, Mike Riordan, Marcia Ross,
Jason Schnelker and Dennis Taubitz for being involved
in that process as well on short notice and devoting a
heck of a lot of time and effort in conference calls in order to be making these decisions in all due expediency.

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

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

I would also like to thank Bill Knight, who leads our Assembly Review Committee now, and he was involved in this process, and basically because of
those amendments that we had approved to our rules in September it allowed us to act, and if we hadn't had those amendments, we wouldn't be discussing the issues before us here today.

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

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

And also in Lansing we had Kim Cahill, our august treasurer, join us and give us our financial insight, and Dan was there, and Mike Blau was there I know doing his job as Representative Assembly member, and Susan Haroutunian was there in Lansing to begin with, and I know that she traveled around the state with a remarkably similarly last named gentleman at all five locations, including Gaylord. So we are very pleased that those folks took such an active participation.
In Grand Rapids I know we had a number of people from the 17th. One of our assistant prosecutors new to the Assembly, Kevin was there. Jason Schnelker, who isn't able to be here today, was there. Scott Brinkmeyer, our eminent president-elect was giving us some guidance at that hearing, and Elizabeth Jamieson actually had to be thanked for putting that all together.

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

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

And then in Pontiac Scott Garrison is to be commended. Scott was able to get his judge,
Judge Rae Lee Chabot, to leave town so that we could use her courtroom, and fortunately Scott runs that court, so I guess he calls the shots, and he was able to get us safely ensconced there, and he is turning red, but that’s okay. I get used to it. That’s what I do up front.

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

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

Judge Ziolkowski had hosted our final meeting in, again, another video courtroom. So in case anybody wants to see any of the comments or hear any of the comments, we have those all memorialized without going through the time and expense of having our court recorder have to go on the road and do this. I am sure she would have been thrilled, particularly on another Saturday, that we had called her into service.
But from Detroit we had at that hearing probably a great turn out from the Assembly members. We had a new member, Deborah Blair, I believe is here today from the 3rd circuit, Bob Neaton from Detroit, Matt Abel from Detroit. Allyn Kantor came up from Ann Arbor. Dan was there, Kim Cahill. Reggie Turner showed his imperial guidance at that meeting as our illustrious head of the State Bar. Greg Ulrich from Grosse Pointe, Dennis Taubitz from Detroit were all present and accounted for.

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

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

Who else am I leaving out now? I am going to leave out a couple people. I am going to cheat, and I am going to look at a list. We also have Doug Ellmann
had participated in those discussions, and I think, actually I got the list, so that's not too bad. Well, thank you very much, and Dave Kortering I know also was involved in those discussions.

(Appplause.)

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

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

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

Today's vote on the State Bar Strategic Plan and dues proposal is about turf basically. Real blunt political terms, if we act and we do so responsibly,
and we have done that with the help of all those folks
that I have mentioned, then we get to keep our input
as far as dues and important issues and important
guidance of the Bar moving the ship forward. And if
on the other hand we choose to do nothing or we are
going to table these issues -- well, we have to really
act now or forever hold our peace.

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

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

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

One reason that we don't have them all here
for you today is a lot of these people didn't want
their names revealed. At one point we were going to
put them all on the website and they said the whole idea on the speakout was for us to share our thoughts with the people making the decision. It wasn't for our name to be used in that conjunction statewide.

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

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

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

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

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

At this point I am going to turn the podium.
over to our eminent State Bar Executive Director, John Berry, for his comments.

(Applause.)

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

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

I had the opportunity to get in on the ground floor on the potential of something being really great. Didn't start off that way, but I really believe that after two years of working with people, and luckily Tom did all of the hard work of thanking people, but I do want to say that I think the last two years, between the Representative Assembly leadership, the Board leadership, our Bar leadership, and a tremendous staff, that for the first time in a long
time we have come together in trying to plan where we are headed in the future, and I think the result of that plan is the hard work that the Representative Assembly has put into and Special Issues to present to you a plan for our future.

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

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

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

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

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

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

And at first flush, if there was a reporter here, they might say that sounds a bit self-serving, and what we would say is, unless we strengthen our profession's ability to withstand increasingly strong and economic and societal changes, we have less and less ability to serve our clients and serve our fellow citizens. We must be able to adapt to changing expectations and create the tools to allow us to deal with dynamic, financial, and market pressures.
The goal is the heart of the Bar's Strategic Plan. It was the consistent theme that we heard for two years through every survey and through every bit of information from our lawyers. It says that we should stay out of divisive issues and focus instead on helping lawyers at their desk. Assist members and firms with technology, with law office management, with legal research, e-filing, actively protect the public from unlicensed persons who prey on families and businesses, help make our profession more competent, ethical, professional, and work at law schools to start that effort earlier. Develop ways to enrich the quality of our professional lives so that it is easier to help the public and enhance our justice initiatives so that they are more effective and yet less expensive.

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

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

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

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

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

We had the first section meeting in essence of all of our sections together in the history of this
Bar as far as anybody can remember, brought all our committees together. We spent two years trying to look at every issue concerning the Bar with no sacred cows.

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

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

We have cut the administration, and most of
you know even in the annual meeting we have gone from
a $300,000 meeting to less than a $50,000 meeting to
pay most of our attention based upon the work of the
Bar rather than just the celebration of the Bar.

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

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

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

Just to remind many of you, I will highlight
the programs we are involved in and then the programs
that we are going to stress even more or go forward in
new ways. Character and fitness, testing to make sure
that the people that become lawyers have integrity.
It's a major component of our work. Justice
initiatives. We have been very proud of the work we
have done in that area. We have provided direct help
to lawyers and discounts in other areas. We have had
public outreach.

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

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

So what is money going to be devoted to to
help in that area as well? And we have already
started. A great professionalism program has been
started at Cooley Law School and will be working with all law schools. A diversion program in our discipline system. Rather than just prosecuting lawyers that have problems with law office management or stress, we have got a program to be able to educate and help them be able to serve lawyers better.

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

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

Right now the amount of dues that we pay in this state are 21st out of 26 unified bars, and we are much, much higher in the population of bars. Even with the increase proposed we will be 14th or 16th.
The services we provide are all-encompassing in helping our profession.

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

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

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

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

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

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

My staff and I will be here during the discussions. I think I have been clear enough with
you over the years that if I have got an answer I am going to give it to you, and I know a lot of stuff. I also don't know a lot of stuff, and my wife will be able to attest to that fact. She is home and wishes she could be here. There is stuff I don't know. If I don't know it, that group of human beings over there, I will call on them to answer the questions.

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

(Appause.)

CHAIRPERSON ROMBACH: At this point we are going to go to a new feature on the agenda. That's the Representative Assembly liaison reports. As a number of you may remember, we had changed this around so that each section and each committee we have a Representative Assembly member that is active. Obviously, on the sections we have a whole host of Assembly members that are active. But as issues come up of interest, I would like to call upon some of these folks, and some of them, in fact, have volunteered for today's first ever birth by fire endeavor, and the two issues that we are going to highlight at this juncture are the Ethics 2000 and
report from Kevin Breck with regards to that matter. So, Kevin, you may, from the 6th circuit, give your report either up here or the microphone there.

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

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

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

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

MR. BRECK: I thought it was my good looks.
CHAIRPERSON ROMBACH: Sharon, did you have anything?

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

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

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

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

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

It is a pleasure to be here, and I can tell you I have had a little bit of time to distance myself from the Assembly, and, looking back, I can still say without any doubt that of my service to the Bar the time that I spent with the Assembly is that of which I am most proud, followed closely by the service I have had on the Judicial Qualifications Committee. And I can tell you that as a, I think everybody here knows, a Republican from Kent County who still wears
tassel-toed shoes when I go in to try cases, I am very proud to be a lawyer, and I am very proud of the work that this committee in particular does. And the reason is, this is a committee that's made up of 22 members and five associate members from throughout the state of Michigan. It is a completely diverse in every way imaginable committee -- republicans, democrats, independents, white, black, Hispanic, you name it, we have got it covered. Large firms, small firm, pro bono, government lawyers, it runs the gamut.

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

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

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

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

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

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

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

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

(Applause.)

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

MR. COURTADE: Thank you, everyone.

CHAIRPERSON ROMBACH: I would also like to
acknowledge, I did leave out the fact that we have another member of our Assembly. Francisco, do you sit on that committee? Okay. So we have another member, in case somebody wants additional input.

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

Fortunately for the Bar we appear to be in good stead.

Next I would like to acknowledge Kimberly Cahill. Again, this is the all past chairs' meeting. Ms. Cahill is a former chair of the Representative Assembly and also currently the State Bar treasurer, and she is going to update us on our outreach to the sections, a section summit committee that she co-chaired along with Dirk Hoffius from Grand Rapids, and, again, this is in further efforts to edify our membership on what's going on in the Bar. Kim.
MS. CAHILL: Good morning, everybody. I am the only one that didn't get the memo about the dark jacket today.

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

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

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

The purpose of that was to gather information as to what section leaders needed from the State Bar, what they were actually getting from the State Bar, to find out what they were interested in, what we could do for them, to find out what we weren't doing that
they wanted, and to find out what we were doing but
needed to do better.

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

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

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

I don't want to go through it in a great
amount of detail, but in communications we needed to
increase the quality and the quantity of communications between the State Bar and the sections. If you read over the report, you are going to see that there is a great emphasis on alternate means of communication, such as communicating through the internet, making information available to section leaders on the website, and developing opportunities for section leaders to participate in list serves, to be able to share and communicate between themselves so that they can get the best ideas and the worst ideas and hopefully implement those.

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

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

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

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

We also went through and developed a list of services that are, I guess we call them a la carte, where we don't offer them routinely but we have the facility and the ability to offer them. If a section wants them, we can make them available. Sometimes we can make them available at no charge, sometimes the section bears the incremental cost of that service, and there is about a two-page list in your materials of those.
In closing, I wanted to thank everybody who participated in the section summit and in the advisory group, especially my co-chair Dirk Hoffius, who loves to strategically plan things. Thank God for him.

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

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

Oh, good. Thank you.

(Applause.)

CHAIRPERSON ROMBACH: Our next victim, I mean speaker, is actually going to be Scott Brinkmeyer. Again, he is a former chair of the Representative
Assembly, as most of our speakers have been today. They are the only ones willing to step up, I guess. But he is also currently our president-elect to the State Bar, and he is going to address the much rumored annual meeting and try to unveil the plan or plot, as the case may be, that's outlined in your packets for today. Good luck, Scott.

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

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

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

One of the most symbolic sacred cows was, of course, the annual meeting. It has been one of the
single largest function budget items for the State Bar historically, and our focus was efficiency and economy in dealing with the annual meeting, but at the same time to assure that it would be a meaningful event, that it would allow us to take care of the business of the Bar, and that it would also allow us to continue to administer those other functions which have become such an integral part of the rich tradition of the Bar. For example, recognition of 50-year members and the various awards that we bestow upon our members each year.

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

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

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

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

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

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

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

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

We would ask you to keep an eye on the Bar Journal. We expect that in April there will be information coming out in the Bar Journal. The full applications, I believe, will be out this summer. We encourage all of you to attend. Naturally, you will
have your meeting. We hope you will come on Thursday. We hope you will stay the night and participate through that day and a half.

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

Are there any questions? Good. Thank you.

(Appause.)

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

(Appause.)

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

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

As you know, you have an Open Justice Commission, and it's dedicated to trying to level the playing field, so to speak, in the legal arena with respect to matters involving bias and discrimination at all kinds of levels. We are hosting, you are hosting, a national consortium to be held at the RenCen Marriott in Detroit April 9 through 12. It's called the National Consortium on Racial and Ethnic Fairness In the Courts. It's being held in conjunction with the State Conference on Racial and Ethnic Fairness in the Legal System. You have handout
material about it in your stuff, and you have also access to more material about it on the michbar.org website.

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

There will be some more entertaining events, such as a dinner dance at which President-Elect of the ABA, Dennis Archer, will speak, which will also honor my co-chair of the Open Justice Commission, retiring Judge Harold Hood of the Court of Appeals, entertainment by Mike Meyers Orchestra with Marcus Belgrade (sp). There will be a luncheon address by Detroit Mayor Kwame Kilpatrick, and lots of important
people will be there. Your Bar president will be there, other members of the Open Justice Commission who are members of the Representative Assembly will be there, such as Teresa Bingman here, and I think that you will find it a useful and important activity.

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

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

It's a one-day free training program, and for it you get a 650-page manual and a CD-ROM and over 400 automated forms in return for a commitment to provide pro bono representation to domestic violence victims.
in civil litigation for 30 hours or for three cases in a one-year period, another, I think, useful activity of your Bar that you can be proud of. Thank you for your time to make these announcements.

(Applause.)

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

CHAIRPERSON ROMBACH: Thank you very much, Justice Kelly.

I would also like to thank at this juncture, because we are actually going to head into some of the substantive action items, that without the help of Glenna Peters we wouldn't have the booklets in front of you here today. I know she did that at the very last moment, as well as a lot of materials assembled. As you can see some of the actions of some of our committees and sections were taking place on Thursday and Friday, making suggestions on all of these and compromised items, and Glenna and her able-bodied assistants, I think that's basically herself, the
elves, were all able to put these together on very short notice. So if we could have a round of applause for Glenna.

(Appause.)

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

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

This has been brought together by the Michigan Civil Procedure and Courts Committee. To their credit, I know when their long-standing chair, David Lawson, had always brought together the Court Rules for our consideration. What we will do today is consider these. If they are approved in some form
then they will be forward the to the Michigan Supreme Court, Justice Kelly and her colleagues, for possible or hopefully probable incorporation into the Court Rules.

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

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

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

Essentially what the committee has put together is a package of six, each in themselves, rather modest proposals to amend the Court Rules with the goal in mind of encouraging the disposition of litigation on the merits. In part, these proposals are in response to certain recent court decisions which are cited in the explanatory material, and I
will simply go through in order the six specific
provisions that we are proposing and outline them for
you and tell you basically what they respond to.

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

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

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

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

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

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

The last two proposed changes go to Rule 2.401, and this is really a companion to the
changes outlined above. The first one is subrule (2)(a)(vi) and includes in the scheduling order a specific provision for a summary disposition motion deadline, and then subrule (viii) relates back to a recent case, the Greathouse decision, which is described in the materials, and this would permit in the scheduling order a date for challenging the qualifications of an expert witness, and the fundamental and obvious purpose of this rule would be to require, if the court so orders, an earlier challenge to qualifications of an expert so that if an expert were disqualified there would still be time to retain a qualified expert, rather than leaving this issue late in the game for trial when it may be too late.

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

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

MR. GARRISON: So moved.

VOICE: Support.

CHAIRPERSON ROMBACH: We have a motion.

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

VOICE: Support.

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

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

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

MR. LONGHOFER: I also don't practice in that area. There are, however, people in the committee who
do, and their input was considered, so that's the best I can do to answer that question.

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

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

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

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

CHAIRPERSON ROMBACH: Barry, for the record, because we are recording this, if you can put your name and circuit on the record and if you are speaking for or against the proposal.
MR. POWERS: Barry Powers from the 6th circuit. The only modification I would propose is that with respect to part (D) of the time for filing dispositive motions.

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

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

Unfortunately, the defendant failed to raise the issue of the release as a complete bar to the action, and when we inherited the case we sought to
amend the court's standing order so that we could file a late motion for summary disposition. The court said no, we are going to try the release issue as a matter of fact at the trial, and then we are also going to try the tort case.

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

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

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

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

MR. POWERS: If I am permitted to make a
motion, the motion would be to move to amend the standing motion.

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

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

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

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

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

MR. POWERS: I am looking at the front page of the recommendations, proposed court rule amendments. There is section one, recommendation to
the Representative Assembly, then Rule 2.112, then
Rule 2.116. I am only speaking to the portion related
to 2.116, and I would propose that the motion be
modified so as not to pertain to those
recommendations.

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

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

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

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

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

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

MR. POWERS: (3) would not be an issue,
because the striking of subparagraphs (8), (9), and (10) would not be stricken.

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

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

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

MR. POWERS: That's right.

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

MR. GARRISON: Scott Garrison from the 6th circuit. At this time I would not, and the reason why is because my practice has been that the courts already order that in their scheduling orders when summaries can be heard and when they can't, and I know what 2.116 says, but there is another rule, and I just asked Ms. Garin what it is, there is another rule that
gives the court authority to do that, and I can't remember what it is, so the courts are already doing that. I think this is just a form over function to recognize what's already occurring.

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

MR. BRECK: Second.

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

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

I want to make comments on Mr. Powers' friendly amendment and then ultimately come back and propose my own friendly amendment. I think that the problem we have, at least with regard to torts, is
that where you have summary disposition motions argued after mediation you put the plaintiff in a position where sanctions may be, they may be subject to sanctions, where the defendant knew they had a clear-cut case and the summary disposition would have been granted.

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

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

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

Mr. Garrison.

MR. GARRISON: I think I can shorten this up.
Can I accept the amendment, because upon second thought and further review, the play doesn't stand as called I guess, to use the instant replay rule. Like I said, I think what the rule says is already being done in practice, and it is allowed for elsewhere in the rules, but I don't have a copy of the rules, so I would be happy to accept the amendment proposed by Mr. Powers.

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

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

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

MR. BRECK: I will.

CHAIRPERSON ROMBACH: Now, Mr. Garrison, you are accepting Mr. Powers' initiative as a friendly amendment, and now we can speak to this proposed rule by the Civil Procedure and Courts Committee, as amended, and that would delete sub (4) and then go back to the original sub (3), and now anyone can --
again, all the time limits are in effect, but we can also have a new set of speakers too.

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

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

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

Therefore, I would make a friendly amendment with regard to sub (4) 2.116 to state that with regard
to tort cases all motions under 2.116 be brought and heard prior to mediation unless new evidence is found subsequent to that point in time.

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON ROMBACH: You need to write that down immediately.

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

MR. GARRISON: I would not accept it because
I am a big proponent of moving case evaluation early in the proceedings before you invest all the money in discovery and in summary disposition motions and before parties become entrenched in their thinking. So for that reason alone I would reject it.

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

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

(Short break taken.)

CHAIRPERSON ROMBACH: We have this in writing for Mr. Miller. Thank you very much for your willingness to get back to order so quickly, and I know this is a little bit distracting, but I would rather do this in a friendly manner. If anyone can harken back to a few years ago where every time we put a different piece of punctuation together we had a
roll call vote. This will save us some time. Only through experience, I guess.

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

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

MR. BRECK: Point of clarification.

CHAIRPERSON ROMBACH: Certainly.

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

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

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

CHAIRPERSON ROMBACH: Shane, if you could --
Mr. McNeill, could you go to the microphone so I can have that for the record.

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

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

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

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

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

CHAIRPERSON ROMBACH: Again, right now I don't have -- do I have support for Mr. Miller's
proposed amendment before I can acknowledge --

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

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

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

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

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

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

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

So now I have the motion, I have the second,
and that's a friendly amendment. Now we are back to
the debate on the initial action, and Mr. Barton finally gets his chance to speak.

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

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

Whether that's a point of order or a statement or whatever, I happen to favor the main motion, but I think everybody here has got to realize -- I don't favor the proposed language, previously proposed language or this if it goes beyond medical malpractice. I guess as generally a
plaintiff's lawyer I should be for it. No, I shouldn't be, I am sorry. I should be the other way.

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

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

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

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

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

CHAIRPERSON ROMBACH: Right now you are not asking anything?

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

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

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

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

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

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

VOICE: Support.

CHAIRPERSON ROMBACH: Okay. That is nondebateable. It has been moved to table this particular action and to refer it back, I believe, as
part of that motion, and that has been supported.

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

All those opposed say no.

The opinion of the chair, the yeses have it.

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

(Applause.)

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

At this point we will move on to our next agenda item, and that is probably one of the important
issues on our docket as well, being consideration of the recommendation in support of funding for implementation of the State Bar of Michigan Strategic Plan, and this is being proposed by the Assembly itself through its Special Issues Committee in the person of Allyn Kantor, chair. Allyn, you may approach and walk us through this. Thank you.

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

When the Special Issues Committee was first formed about the beginning of 2001, Peggy Costello and I were co-chairs of that committee, and in preparing for this this morning I looked back in our file and I saw a letter that she and I wrote to John Berry back when I think Bruce was chair, Julie was co-chair, and Tom was the clerk, and the issues that we raised then, this was before the Strategic Plan was even put in -- the committee was even put in place, was that we thought that the Representative Assembly ought to focus on the long-term issues, those issues which affect the practice of law and lawyers so that we could be the final policymakers with respect to that.
And those issues that we thought were important then were the increased enforcement against the unauthorized practice of law, the increased support of the Bar in the area of ethics and professional responsibility, licensing and credentialing of lawyers, including character and fitness.

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

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

And so as a result of the Strategic Plan, the leadership of this Bar, taking into account the things that we think are important for us, worked hard, and I
mean hard. You heard John talk about the thousands of hours spent drafting a package of resolutions that will come before you today. And let me give you briefly an overview of those, because if we can accomplish this, then we can then move on to achieve those things which we think are important to us.

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

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

The third resolution increases -- now, this is the change, this is the change that's shown in your yellow sheet. This is the change that came about, by the way, as a result of our hearing process, as a result of the work with the Senior Lawyers and Jon Kingsepp and Bar leadership. This third resolution increases to the age of 75 the qualification for the exemption from dues and grandparents those who have reached the age of 75 as of October 1st. I am sorry,
reached the age of 70 by October 1st, excuse me.

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

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

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

But let me say that these resolutions are important to you as members of this Assembly, and we have endeavored to provide you with all of the information, the charts, the graphs that you need, I think, to help you understand what is going on, and if you see what is in there, you will note what impressed me is that of the, in the last ten years almost all of the $40 is consumed by inflation. Thirty-eight of the 40 increase is effectively consumed by inflation.
But that's not the only reason to vote for this. What we are trying to do is make this Bar more effective, more fiscally responsible and to address the long-term needs we have as lawyers.

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

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

(Appplause.)

CHAIRPERSON ROMBACH: Just a brief note while Ed is proceeding up here. I was remiss earlier. If you look at the syntax and the cognitive consistency and complexity of this resolution, that has a lot to do with the Drafting Committee, and they are the ones that help put the final dots to the I's and cross the T's, and Francine Cullari and her body are to be
commended on that. So thank you very much, Francine. I know a number of your members are here today. Thank you.

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

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

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

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

The actual number of people attending, other
than the Hearings Committee members and other than State Bar staff, was fairly minimal. And, as a matter of fact, some would say that that was a gross understatement on my part. In addition, the State Bar received a little over 100 comments concerning these issues.

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

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

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

Other State Bar staff members, such as Jim
Horsch, Tom Byerley, Janet Welch, counsel, also gave responses when they were called upon.

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

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

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

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

Now let me get to some of the more detailed
ones. Resolution three concerning the original proposal which would eliminate the exemption for all lawyers age 70 and over to not have to pay Bar dues resulted in a considerable number of comments. Let me give you the flavor for it.

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

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

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

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

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

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

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

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

State Bar staff indicated that the number of those claims were growing because of the general
economic conditions and casino availability.

Questions were raised whether malpractice insurance covered such acts, and the consensus was that because these were intentional acts of wrongdoing typical malpractice insurance would not cover those situations.

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

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

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

Regarding resolution five concerning the general dues increase of $40 and the cost of living increase in dues thereafter, there were also a variety
of comments.

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

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

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

Some members felt that the cost overruns at the State Bar building in Lansing was really at the heart of the dues increase, although on a per member basis the overruns were said to amount to about $5 a
Some members felt that out-of-state lawyers should really not have to pay the same amount as in-state lawyers.

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

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

(Applause.)

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

We knew that both him and Susan were willing to travel around the state on short notice under
inclement conditions. A tribute to him and his wife Susan, representing the third circuit. I am not quite sure why they are in different circuits, but you can take it up with them I guess.

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

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

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

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

VOICE: Support.

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

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

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

We are supposed to place the interest of our clients above our own interests, and I think we need to recognize that in the mission statement of the Bar
association, and I would move that we amend the
mission statement or send it back with the
understanding that there will be some change made in
that mission statement to reflect the fact that we
have a trust with the public and that our primary
responsibility is to our clients and to the public in
general.

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

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

CHAIRPERSON ROMBACH: Right. I guess what
happened is that it was the subject of a retreat by
the State Bar leadership several years ago, and there
is a full page on that, it deals primarily with the
public. I certainly think that your comments, though,
about incorporating maybe that in more strong language
within the body of this text is certainly appropriate
for this body. Do you have actually a suggestion as
to what you would like to see in language incorporated
into resolution one?

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

CHAIRPERSON ROMBACH: If we may, could we
perhaps put in to further the Bar's purpose to serve
the public, comma, individual attorneys, could we perhaps put that in the most pronounced manner? Would that suffice as far as within resolution one?

MR. GILLARY: That would be fine.

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

MR. GILLARY: I would accept that.

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

MR KANTOR: It would be a very friendly amendment.

MR. GILLARY: Thank you.

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

Are there any other suggestions for the drafting or discussion on resolution one? Okay. Hearing none, I will call that to a vote.
All in favor of adoption as moved by Mr. Kantor for resolution one, please speak by saying yes.

Any opposed, say no.

Hearing none, that resolution one is passed unanimously.

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

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

VOICE: Support.

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

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

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

Any opposed say no.

Hearing none, that also is passed
unanimously.

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

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

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

Is there support for the proposal three?

MR. KEEFE: Support.

CHAIRPERSON ROMBACH: By Mr. Keefe is supporting that.

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

VOICE: Unless there is some opposition to this.

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

Any members of the Assembly that wish to
speak then on resolution substitute three? Okay.

Hearing no comments, I will now call that to a vote.

    All in favor signify by saying yes.

    Any opposed say no.

    Do I have a no? We have one no, so the

    record shall so reflect.

    We will move to item four, Mr. Kantor.

    MR KANTOR: I move the adoption of resolution

Number four.

    CHAIRPERSON ROMBACH: Resolution four is

presented in the materials before you. We have a

motion to move that forward. Is there support?

    VOICE: Support.

    CHAIRPERSON ROMBACH: We have support.

    At this point we will move to sections or

committees. I don't believe there is any here to

comment on resolution four on Client Protection Fund.

Discussion by Assembly membership? Go ahead,

Mr. Breck.

    MR. BRECK: Kevin Breck from the 6th circuit.

I have a question. I am in favor of the resolution.

Mr. Haroutunian mentioned that there was going to be

an increase in the limit in terms of the amount that

any one case could get paid or could receive as

compensation. That's not in the resolution. Is that
something that's done administratively, doesn't
require our approval?

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

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

MR. BRECK: Thank you.

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

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

All in favor, please signify by saying yes.

Anybody opposed to resolution four signify by
saying no.

We have several no votes on that issue, and
the record shall so reflect, but it is the chair's
opinion that that carried.
Resolution five is now before the Assembly, Mr. Kantor.

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

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

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

VOICE: Support.

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

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

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

CHAIRPERSON ROMBACH: Could we forego the number perhaps, and then just have a paragraph afterwards?
MS. CULLARI: Probably strike the top paragraph, comma, subject to the following adjustments, put a period and have a second paragraph.

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

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

MR KANTOR: Yes.

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

VOICE: Not the paragraph, just the number.

CHAIRPERSON ROMBACH: I am sorry.

VOICE: The number, not the paragraph.

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

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

CHAIRPERSON ROMBACH: Yes, yes. Please, everyone, we need to be on the yellow sheet, because that dealt with resolution three and resolution five.
Pursuant to our suggestion, we are striking the last "subject to the following adjustments" in the initial paragraph, we are striking 1, 2, and 3, and we are taking the number off 4, and that would be the second paragraph in the resolution.

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

MS. CULLARI: The parentheses has to stay in.

CHAIRPERSON ROMBACH: I am sorry?

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

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

MR KANTOR: Right.

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

At this point the Assembly has before it Mr. Kantor's motion which has been seconded. Is there
discussion on this item?

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

All those in favor, please signify by saying yes.

All those opposed signify by saying no.

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

Thank you very much for Assembly action.

At this point the only other item before the Assembly, I believe, is the adjournment. If there is no other matter of good or welfare, other new business gaining two-thirds majority vote for consideration.

Hearing none --

MS. ROSS: Move to adjourn.

CHAIRPERSON ROMBACH: Move to adjourn by Marcia Ross.

VOICE: Support.

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

VOICE: Yes.

CHAIRPERSON ROMBACH: Right now we need to make sure you all hand in your attendance slips before you are out the door. I would also note -- there are
no slips? I guess Roberta has them right outside the door, so you need to fill those out.

Additionally, lunch is available. Thank you very much for your time, patience, and attention.

(Proceedings concluded at 12:35 p.m.)

STATE OF MICHIGAN )
COUNTY OF CLINTON )

I certify that this transcript, consisting of 105 pages, is a complete, true, and correct transcript of the proceedings had by the Representative Assembly on Saturday, February 26, 2003.

March 7, 2003

Connie S. Coon, CSR-2709
5021 West St. Joseph, Suite 3
Lansing, Michigan 48917