Proceedings had by the Representative Assembly of the State Bar of Michigan at Lansing Community College, West Campus, 5708 Cornerstone, Lansing, Michigan, on Saturday, March 27, 2010, at the hour of 9:30 a.m.

AT HEADTABLE:

ELIZABETH M. JOHNSON, Chairperson
VICTORIA A. RADKE, Vice-Chairperson
STEPHEN J. GOBBO, Clerk
JANET WELCH, Executive Director
HON. JOHN M. CHMURA, Parliamentarian
ANNE SMITH, Staff Member
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Lansing, Michigan
Saturday, March 27, 2010
9:30 a.m.

RECORD

CHAIRPERSON JOHNSON: Will you please take
your seats so we may begin.

Good morning, members of the Representative
Assembly. My name is Elizabeth Johnson, and I am
chairperson of the Representative Assembly of the
State Bar of Michigan, the final policy-making body of
the State Bar of Michigan. At this time I would like
to call this meeting to order.

At this time I will call and recognize our
clerk, Stephen Gobbo, to indicate whether or not we
have a quorum. Mr. Gobbo.

CLERK GOBBO: Madam chair, we have a quorum.

CHAIRPERSON JOHNSON: Thank you very much,
Mr. Gobbo. Next I would like to call and recognize
Mr. Michael Blau, chairman of the Rules and Calendar
Committee. Mr. Blau.

MR. BLAU: Good morning, Madam Chair,
Michael Blau, 6th judicial circuit. I move that the
proposed calendar be adopted.

VOICE: Support.

CHAIRPERSON JOHNSON: Thank you, Mr. Blau,
and I hear support.

VOICE: Support.

CHAIRPERSON JOHNSON: Support, thank you.

There has been a motion and support for approval of the calendar. Any discussion?

Hearing none, all those in favor of approving the calendar as presented, please signify by saying aye.

All those opposed say no.

Any abstentions.

Thank you. The calendar for the meeting as presented stands. Thank you, Mr. Blau.

Next I would entertain a motion for approval of the summary of proceedings from the September 17th, 2009 meeting.

VOICE: So moved.

CHAIRPERSON JOHNSON: Thank you. Is there a support?

VOICE: Support.

CHAIRPERSON JOHNSON: Thank you. There has been a motion and a second to approve the summary of proceedings of our September 17th, 2009 meeting. All those in favor please signify by saying aye.

All those opposed say no.

Any abstentions.
The motion to approve the summary of proceedings of September 17th, 2009 is approved.

At this time it gives me great pleasure to introduce to you our keynote speaker today, Chief Justice Marilyn J. Kelly, Chief Justice of the Michigan Supreme Court.

Justice Kelly has a long and distinguished career serving the public and the legal community in the state of Michigan. Justice Kelly attended Wayne State University and graduated there with honors. Before taking the bench, Justice Kelly was a practicing attorney for 17 years. In 1988 she was elected to the Michigan Court of Appeals and reelected in 1994. She was elected to the Michigan Supreme Court in 1996 and again reelected in 2004.

She is a member of the Oakland County Bar Association, and she has been active on the Family Law Committee and co-chair of the President's Council and Tax Force on Approved Dispute Resolution.

Chief Justice Kelly is a fellow of the Michigan State Bar Foundation. She has served as president of the Women's Bar and as president of the Women Lawyer's Association of the State of Michigan. Justice Kelly, we are so very proud to be able to call you one of our own. Chief Justice Kelly
served on this Representative Assembly, and in 2003 this Assembly awarded her the Michael Franck Award for her distinguished work in the legal profession. It gives me great honor at this time, and I ask that you join me in welcoming Chief Justice of the Michigan Supreme Court, Marilyn J. Kelly.

(Applause.)

CHIEF JUSTICE KELLY: Thank you. Thank you. Thank you, Ms. Johnson.

Good morning. I appreciate your inviting me today. It's a pleasure to see you all. Some of my fondest memories are of my membership on the Representative Assembly. And in some ways I feel as if I never left it. Some of the most committed and principled and thoughtful members of our profession have been and are part of this body, and I am very proud to have served on it.

Because I have been involved in state and local Bar activities for many years, I continue to believe that the organized Bar, particularly the mandatory Bar, is essential to maintaining the integrity and the strength of our profession.

When the headlines and broadcasts are full of one disaster after another, you take your good news where you can find it. This past week I was reading
the Detroit News business section when this headline caught my eye, Michigan's jobless rate decline reflects stabilization. This is, I thought, cause for a modest celebration, until I read the rest of the article. It turned out that our state's unemployment rate in February decreased by a whopping two-tenths of one percent since January for an unemployment rate of 14.1 percent, according to the Michigan Department of Energy, Labor, and Economic Growth. Moreover, according to the article, payroll jobs had been relatively flat since January. So much for the good news.

A few days earlier I saw this headline, Michigan pays big for underfunded indigent defense. The gist of the article was that Michigan has, and I quote, one of the nation's stingiest and most fragmented systems for representing the 80 percent of defendants in criminal cases who can't afford a lawyer.

Those two headlines, it seems to me, point out the problem that we have in Michigan with regard to legal services. In a cruel but logical irony, the economy has created an ever widening pool of people who can't afford a lawyer while constricting resources for adding to the workload of already overburdened and
the underfunded legal aid system. This is because, as
most people lose their jobs and incomes, there is a
sharp increase in demand for low cost and free legal
services.

Consider this sobering statistic. According
to the Department of Energy, Labor and Economic
Growth, as of the end of the third quarter of 2009 ten
percent of the mortgages in Michigan were either
seriously delinquent, defined as 90 days or more
without payment, or within the process of foreclosure.
One in ten mortgages in Michigan are currently poised
for foreclosure, to say nothing of the homes and
businesses that have already been foreclosed.

In metro Detroit alone the faltering economy
has increased the number of income eligible clients
for civil legal services from 400,000 to 500,000.
About one in three people in Michigan qualifies for
free legal aid. 3.1 million, 31.8 percent of
Michigan's 10 million residents, have annual income
below 200 percent of the federal poverty level.
That's $29,140 for a family of two. More than 40
percent of Michigan's children, more than 40 percent,
under the age of 18 live in households with an income
below 200 percent of the federal poverty limit. Many
of their parents have limited education and poor
English proficiency, making it even more difficult for them to navigate the court system on their own. They face foreclosures, job losses, homelessness, utility shut-offs, unpaid medical bills. Others need help obtaining public benefits defending against insurance fraud allegations or finding services for their families. For example, treatment for addiction or mental health issues.

The trial courts are reporting that they are seeing more cases and more severe cases of mental illness and addiction with a corresponding increase in family problems such as domestic violence. One judge who handles juvenile matters recently told me that she has seen more cases of young girls cutting themselves with knives than she has ever seen in her years in practice.

Judges also report a rise in vulnerable low income families and seniors attempting to handle their own serious legal matters. Some courts now have self help centers, and they are a great resource, but these centers provide limited services. There are many individuals who need a lawyer who can help provide them in debt assistance.

What about legal aid? Well, the legal aid agencies do a valiant job, but they are being
inundated. In Michigan there are approximately 180 legal aid attorneys out of a total of more than 32,545 attorneys. That makes a ratio of 17,666 eligible low income clients per legal aid attorney. In contrast there is one private lawyer for every 305 persons in Michigan.

Legal aid agencies must turn away about half of all eligible prospective clients who request assistance each year due to inadequate resources to serve them. The half who do get assistance do not necessarily receive the level of assistance that they want and need, and many who need more get only brief advice and counsel.

National and state statistics have estimated that no more than 20 percent of the civil legal needs of the poor are being met. At the same time the economy has had a dire impact on IOLTA funding, long a stable source of income for legal aid. According to an article in the December 7, 2009 Washington Post, on the national level IOLTA interest plummeted from $371 million in 2007 to about $93 million in 2009.

Well, what, if any, good news is there in all of this. Well, that's up to you and me and all the members of the profession. If there is to be any good news, you and I must make it, and we do that by
encouraging, supporting, and doing pro bono work.

I am very proud to see the Representative Assembly is leading by example. From today's food drive to the proposed revision of MRPC 6.1 on your agenda today, you have clearly committed to helping those in need. Obviously I can't comment on the proposed version of MRPC 6.1 other than to say I appreciate your work on this very much, showing as it does your commitment to service.

We are members of a generous profession, and now, probably more than any other time since the great depression, there is a terrible need for that generosity, and there is also an opportunity here for which we should be grateful to do some real good in ways that go beyond the individual we help. By helping the domestic violence victim, we may not only prevent serious injuries to that victim and save lives, but also to prevent costly county medical expenses and reduce the burden on courts and law enforcement agencies. By making it possible for family members to stay in their homes, we reduce homelessness and demand on shelters and other charitable and governmental services.

When we help keep a child in school, we are also fighting truancy and juvenile crime. When we
prevent workers from wrongfully losing their jobs, we are putting food on family tables and roofs over children's heads. When we help seniors remain in their homes with supportive care, we are saving the much higher cost associated with nursing home care. By helping a grandparent become the guardian of his or her grandchild in foster care, we keep one more child from growing up in the foster care system.

Here are some real life examples of differences that a Michigan lawyer can make in someone else's life. A low income grandmother died before she was able to pay taxes on her long-time home where her daughter and grandchild lived. The daughter and her child were in danger of becoming homeless after the home was sold for back taxes, but a legal aid program referred this case to a pro bono lawyer who secured title in the daughter's name so she could secure financing, and, as a result, she was able to pay the property taxes and remain in the family home with her child.

An 87-year-old woman hired a contractor to enclose her porch. The contractor disappeared along with her money without completing the project, and she lacked the funds to hire someone else to do the job. After trying to locate and sue the elusive contractor,
two pro bono lawyers who took the elderly woman's case literally took the matter into their own hands. They rolled up their sleeves and finished the project themselves. Now, these lawyers went above and beyond their legal roles, but they were very gratified to see the elderly client happy and enjoying her porch.

A 70-year-old indigent veteran suffered from colon cancer. He applied for government help, but the Veterans Administration sought repayment after the man had been incorrectly sent both VA and Social Security benefits. A pro bono lawyer helped him get a waiver of the debt. Because the veteran's medical debt had been nearly equal to his overpayment, he would not have had enough money to live on if he had had to repay the VA. The pro bono lawyer also helped the veteran arrange a manageable payment plan for his ongoing medical expenses, and now this older veteran is able to survive and obtain medical care that he needs.

Obviously pro bono services is a lawyer's duty. As MRPC 6.1 makes clear, each of us has a responsibility for supporting public interest legal service, but it is also a privilege, the very great privilege of having an impact for good, and it's a tremendous satisfaction to know that you have made
someone else's life better.

It's also good business. Not only does pro bono work raise the profile of the legal profession in a positive way, it also helps the attorney hone skills and network with fellow lawyers and others in the community and catch the eye of potential clients.

And there are so many ways to participate. The State Bar's voluntary pro bono standard recommends that each year each lawyer accept three cases or provide 30 hours of free legal help for low income persons or make a $300 donation for a nonprofit legal aid program.

In addition, the State Bar's pro bono initiative has developed a pro bono menu of ways to contribute to an open, accessible justice system. There are literally opportunities for everyone, from the brand new lawyer to the experienced counsel. Do you lack experience? Pro bono providers often offer training for volunteers at little or no cost, as well as mentoring and malpractice coverage.

Not enough time in the day? How about staffing a legal aid hotline for a few hours each month or making a financial donation to the Access to Justice campaign. What's important is not the choice
of how to participate, it's the participation that counts.

The core principles of our legal system -- due process, equal protection of the laws, assessability, fairness -- have little meaning if those who can't afford a lawyer are shut out of the justice system. As Chief Justice Taft wrote in 1926, the real practical blessing of our bill of rights is its provision for fixed procedure securing a hearing by independent courts to each individual, but if the individual in seeking to protect himself is without money to avail himself of such procedure, the constitution and the procedure made viable by it do not practically work for the equal benefit of all. As members of the Bar, we must see to it that the constitution does, indeed, work for the equal benefit of all.

Tip O'Neil, the long-time speaker of the House, once famously declared that all politics is local. Well, we might also say that all legal aid is local. Michigan has people worried about being thrown out by a landlord or losing their homes to foreclosure. They are defendants in debt collection cases. They are victims of domestic violence. They are once secure families who now depend on their local
food bank for their next meal. They are our family, friends, neighbors, co-workers. For them justice for all may be only a pipe dream until you step in.

I thank you for all you have done and will do to make the ideal of equality under the law a reality, and I am so very proud of this Assembly and the Michigan Bar it represents for its services to those in need. Thank you.

(Applause.)

CHAIRPERSON JOHNSON: Chief Justice Kelly, thank you so much. On behalf of the Representative Assembly of the State Bar of Michigan, we would like to extend our sincere thanks for you being here today. We look forward to your return many, many times in the future. Thank you so much.

At this time I would like to take a moment to thank the MGTV, the Michigan Government Television, for recording this program. In order to facilitate their camera crew, I would like to take a five-minute recess. Without objection, I would ask that this body take a five-minute recess, and we will reconvene at 10:00. Thank you all very much.

(Break taken from 9:54 - 10:00 a.m.)

CHAIRPERSON JOHNSON: Will you please take your seats. Thank you very much. We are now back in
session. The next item is number four, filling
vacancies. I would like to call Mr. Jeffrey Nellis,
the chairperson of the Nominations and Awards
Committee, to the podium to make his presentation.
Mr. Nellis.

MR. NELLIS: Good morning again. That's a
tough act to follow. I am Jeff Nellis from the 51st
circuit up in Ludington, and our goal every year is to
try and obtain 100 percent participation in this body.
It's very important. It gives us some added
legitimacy. It also allows us to ensure that we get
input and voices from all over the state of Michigan.

Obtaining that 100 percent participation is
not always an easy feat, trust me. We spent the
better part of this winter getting to the point of
where we are today. I am very proud to announce
though that, once again, I don't know how many years
running now, but once again we do have 100 percent
participation, and before I list the names of the
proposed new members, I want to recognize the members
on my committee, because, like I said, we not only
dealt with this but some other issues. We put in a
lot of time, and these folks were unbelievable in
helping us reach this goal.

So if I could have my committee members stand
when I read your name. Rick Paul from the 6th circuit. Eilisia Schwarz from the 28th circuit. Bruce Barton from the 4th circuit. Anne McNamara from 47th circuit, and John Mills from the 6th circuit. If you could give them a round of applause.

(Applause.)

MR. NELLIS: I also want to thank -- we got some additional help as well. Obviously Elizabeth Johnson was a huge benefit to us, Steve Gobbo, Victoria Radke, and also I got some special outside help from Rob Buchanan and Bruce Courtade in Kent County. They were a big help as well, so if you could recognize them as well.

(Applause.)

MR. NELLIS: So now I would like to read off the names of the proposed individuals who will be filling vacancies, and if you could, again I think most of you are in the back, if you could stand when I read your name, I would appreciate it.

For the 1st judicial circuit, Barry Poulson, he is from Hillsdale; 2nd judicial circuit, Donna Howard from St. Joseph; 3rd judicial circuit, Vincent Romano from Grosse Pointe Park; 5th judicial circuit, Tom Evans from Hastings; 6th judicial circuit, Scott Wolfson from Troy; 6th judicial circuit, Kenneth
Morgan from Birmingham. We have a lot.

From the 9th circuit, Pamela Enslen, she is from Kalamazoo; the 16th circuit, Carl Chioini from Mt. Clemens; 17th judicial circuit, Tom TerMaat; 17th judicial circuit, Victoria Vuletich, she is from Grand Rapids, as is Tom; 19 judicial circuit, Mark Quinn from Manistee. I don't believe he is here today.

24th judicial circuit, Ryan Edberg from Sandusky; 30th judicial circuit, Monique Field from Lansing; 30th judicial circuit, Christopher Smith from Lansing; 34th judicial circuit, Dawn LaCasse from Houghton Lake; 43rd judicial circuit, Heidi Behnke from Dowagiac; 46th judicial circuit, Toan Chung from Grayling; 50th judicial circuit, James Riggle from Sault Sainte Marie; and 53rd judicial circuit, Mike Ekdahl from Cheboygan.

Now, at this time I would make the formal motion that these individuals be approved and seated as members of the Representative Assembly for their respective circuits based upon the recommendations of our committee. Do I have a second?

VOICE: Support.

CHAIRPERSON JOHNSON: Thank you very much. There is a motion and support to fill the vacancies as presented. Is there any discussion? Hearing none,
all those in favor of the motion to approve the
vacancies as presented, please signify by saying aye.

All those opposed say no.

Any abstentions.

Hearing none, the motion to fill the
vacancies as presented is approved. Welcome to the
Assembly, and congratulations to our new members.

(Appause.)

CHAIRPERSON JOHNSON: The new members may now
be seated in their circuit. At this time please go to
your assigned circuits.

And I would also like to extend my thanks to
Jeff and his committee. They have done a tremendous
job this time filling all these vacancies, and I am so
pleased that we are at 100 percent again.

The next item on the calendar is number five,
and that is remarks from the chair.

As I look out over this room and this
Assembly, I see so many incredibly talented and
dedicated lawyers and judges, people who are willing
to give up their time and talents to enhance the
profession, says so much about who we are as an
Assembly and as a State Bar. It makes me so proud to
be part of this great legal profession and this
Representative Assembly.
I would like now to recognize the individuals seated in front of you who give so much of their time to this Assembly. First to my left, your right, is our vice chairperson, from the 47th circuit, Victoria Radke.

(Applause.)

CHAIRPERSON JOHNSON: The clerk of the Assembly from the 30th circuit, Stephen Gobbo.

(Applause.)

CHAIRPERSON JOHNSON: I know that this Assembly is in good hands with their very capable leadership. Thank you, both.

Next to my right, your left, is this Assembly's parliamentarian, Chief Judge of the 37th District Court, John Chmura.

(Applause.)

CHAIRPERSON JOHNSON: Judge, we are so very, very grateful for your dedicated service to this Assembly. Thank you.

Next to Judge Chmura is our executive director, Janet Welch. Most of you know Janet. She is an incredible woman, and you will hear from her later, but please let's give a round of applause for Janet.

(Applause.)
CHAIRPERSON JOHNSON: Next to Janet is
Anne Smith. She probably doesn't even need an
introduction, because most of you know her already.
She is an administrative assistant at the State Bar
and does so much for our Representative Assembly. She
is hard working and dedicated, and we couldn't do this
without you, Anne, so thank you very much.

(Applause.)

CHAIRPERSON JOHNSON: Seated at the table to
the far right is Nancy Brown, and she is director of
communications at the State Bar, and she is the one
that keeps us organized with our computer and our
Power Point, so thank you very much, Nancy.

(Applause.)

CHAIRPERSON JOHNSON: To my left, your right,
is our court reporter, Connie Coon, and Connie has
been our court reporter for many years, and we really
are very grateful for her very proficient, excellent
service to the Assembly. Thank you, Connie.

(Applause.)

CHAIRPERSON JOHNSON: Two other people who
are not up here but I want to give some special
recognition to, Marge Bossenbery, who probably many of
you met as you came in to this Assembly. Marge has
worked very closely with Anne on so many things, and
she also is our go-to person for the Board of Commissioners. So thank you to Marge Bossenbery. (Applause.)

CHAIRPERSON JOHNSON: And then there is another person that's in this room that I would like to give some special recognition to. Dawn Evans last fall stepped in and did some incredible work doing much more than her job title, and she assisted the Assembly in so many ways, and I would like to give a very special recognition to Dawn Evans, who is seated in the back. Thank you, Dawn.

A special thank you to our past Representative Assembly chairpersons. They have made themselves available to me in so many ways, with ideas, suggestions, encouragement. Their institutional knowledge and memory have been invaluable. At this time I would like to ask all the former chairpersons who are present to stand and be recognized for their service to the Bar and to this Assembly. I know that you are here. Julie Fershtman, Tom Rombach, Ed Haroutunian, Carl Chioini. Thank you very much. (Applause.)

CHAIRPERSON JOHNSON: Today we also have with us many members from the Board of Commissioners who
many serve here with us on the Representative
Assembly, but I would like them to stand and be
recognized for their hard work that they do for our
State Bar, and I believe our officers are here, and if
all the Board of Commissioners members would please
stand and be recognized.

(Applause.)

CHAIRPERSON JOHNSON: And I see in the
audience there are many of our very talented and hard
working State Bar staff present, and I would ask that
each one of you, and I know how much you have helped
me and the Assembly this year, I would ask that you
stand. I know I see a lot of you. Candace Crowley,
who was a tremendous help on the Upper Peninsula tour.
If you would all please stand.

(Applause.)

CHAIRPERSON JOHNSON: Thank you very much.
Those are hard working, dedicated people that are
doing so many great things for the Bar and for our
profession.

You will hear today about many matters of a
policy nature that affect our Bar and that will be of
importance in this coming year. The sales tax on
legal services, the Judicial Crossroads Task Force,
the Justice Initiatives report, reapportionment,
budget matters relating to the economy, Access to Justice.

I urge all of you to take the ideas and concepts that you hear today back to your constituents, back to your local Bar associations. It is you as members of the Assembly that are truly the leaders of our Bar. You are that vital link, and I thank you so much for your service.

One of the areas of the State Bar that has been continuing to be worked on this year is civic legal education. As I speak, the Michigan high school mock trial competition finals are taking place in Lansing in the Hall of Justice. The State Bar is a proud co-sponsor of that event.

Many lawyers and judges give of their time to make sure that high school students in our state learn about the law in a meaningful way. With cutbacks in state school budgets, the need for such programs is even greater. I thank the State Bar and all of the lawyers and judges that assist in civic legal education programs, such as the mock trial program, programs for Constitution Day, programs for Law Day. I urge you and you are fellow attorneys to continue to support these programs even more now than ever.

Professionalism and civility are very
important matters to the State Bar and the legal profession as a whole. Programs on professionalism and civility that were instituted by former State Bar President Ed Pappas and that have been continued by State Bar President Charles Toy are bringing the concept of professionalism to the state's law schools early in a law student's career. We as lawyers must set the tone for professionalism and civility in the practice of law. We no longer can just give lip service to these important fundamentals of the legal profession. Professionalism and civility must start now. An attorney can still represent his or her client with vigor and be civil. We can do this together, and we must do this together for the sake of our profession.

The issues facing the citizens of Michigan in these tough economic times are many. Lack of food, housing, employment, health care, and legal services are just some of the issues for many people in our state. As Edmund Burke, the great British statesman once wrote, the only way for evil to triumph is for good men to do nothing.

Well, today the good men and women of the Representative Assembly have shown that lack of food and lack of legal services are not evils that they
will stand for without taking action. Today you have
stepped up individually and as an Assembly to provide
food for the Greater Lansing Food Bank and financial
contributions for the Access to Justice endowment
fund, to provide long-term access to legal services
for the citizens of this great state. I am humbled by
your generosity and by your service to our profession.
I thank you for making a difference. Together we can
make a difference. Thank you very much.

(Applause.)

CHAIRPERSON JOHNSON: Moving on, the next
item on the calendar, remarks from the president,
Charles Toy. As you know, Charles is the 75th
president of the State Bar of Michigan. Quite a feat.
Charles Toy graduated from Cooley Law School
in 1981. He began his career as clerk to
Judge Holbrook in the Michigan Court of Appeals. He
then took a position with Ingham County Prosecutor's
Office, where he remained until he began his career at
Farhat and Story, the law firm in Lansing.

Charles practiced law for 24 years at Farhat
and Story where he practiced in environmental,
property, and oil and gas law areas.

During that time he also served as a contract
administrative law judge with the Michigan Department
of Natural Resources and with the Michigan Department of Environmental Quality. He now serves as an associate dean at Career and Professional Development at Cooley Law School in Lansing.

Charles has served the State Bar in many capacities, including having served on the Representative Assembly and again now as a commissioner Assembly member.

During the Upper Peninsula tour I had the opportunity to get to know Charles and his wife, Mary Ellen. Charles works extremely hard for the profession, promoting professionalism and civility. He cares very deeply about his work and his responsibilities as president of this Bar association, and Charles has been a great supporter of this Representative Assembly.

Please join me in welcoming the 75th president of the State Bar of Michigan, Mr. Charles R. Toy.

(Appause.)

PRESIDENT TOY: Thank you very much, Elizabeth, and good morning.

You are all esteemed, dedicated, and cherished colleagues. I mean that sincerely. I count it a privilege to have been a member of the
Representative Assembly. In fact, my circuit is right there, and many times it seemed like we were right up here for some reason. You know, the 17th circuit feels like that today, don't you? You notice the 18th isn't even here. I mean, they feel it, but anyway, it was a great honor being on this board. And why is it a great honor? Just because of the relevant and the important things that we are doing together, and we are truly combined, the State Bar and the Representative Assembly, in what we are doing in our work.

But I did not want to give you this morning a broad shotgun approach to what is happening at the State Bar. In fact, incrementally you are getting that through all the different agenda items and through the speakers. But instead I want to report on two distinctively different yet interrelated upcoming events.

The first event is the first annual -- don't you love the first annual -- but first annual Justice Initiative Summit, which will be on April 12th. The Committee on Justice Initiatives is an umbrella for four initiatives -- criminal issues, equal access, pro bono, and justice policy initiatives.

As you can see from the chart that was in
last year's annual report, and that chart is coming up here momentarily, there are many active projects, and these are all undertaken to assure quality legal services for all Michigan citizens. All the work is important, but it is also a little bit amorphoused and diffused. Justice Initiatives promised many things to many people resulting in many open programs, as you can see.

The summit will gather public policy decision makers and leaders in justice initiative core areas to focus on giving needed direction and priorities. It is part of the restructure of this area of the State Bar and that will fuel the budget process for justice initiatives.

Now, you are going to hear more about this, I am sure, during the update that is scheduled for immediately after lunch. But, as you know, the agenda goes in such a way that sometimes it may be before lunch. But that will be presented by co-chairs of that committee, Judge Cynthia Stephens and Terri Stangl.

The interrelated second event is a series of three diversity colloquia, and those will be on June 22nd, 23rd and 28th at law schools in Detroit, which happens to be Wayne State, Grand Rapids Cooley,
and East Lansing MSU. These symposia will focus on improving the diversity in our profession.

Diversity in the profession is also an amorphoused and diffused concept, meaning different things to different people. Through the symposia and the leadership of Gregory Conyers -- and I should introduce him. Go ahead and stand, Gregory.

Through his leadership and also the symposia -- and Greg, by the way, is the State Bar of Michigan's director of diversity, which is a newly created position during this Bar year -- but through his leadership in the symposia there will be a common understanding among stakeholders of what is a diverse Bar, and there will be a resultant statement in support of importance of diversity to the profession, a statement that hopefully will be signed by other members profession-wide.

The statement will be based on concepts that are similar to those voiced in my President's Page in the March issue of the Michigan Bar Journal titled, Diversity and Inclusion. If you haven't read that yet, I will urge you to, and if you haven't read February's, read that, and January's, and go all the way back.

You know, I am very thankful this is the
month that I am off, because you are not going to see
a President's Page in the April Bar Journal, and you
know why, don't you? It's that very important issue
called the directory issue.

Diversity signifies the concept of inclusion
that welcomes as equal contributors those with
differences which enhances the excellence, the
enrichment, the effectiveness and the success of our
profession.

I stated that these events are interrelated.
They are in some of their historical roots, which are
traced back over two decades to a 1986 Michigan
Supreme Court citizens commission report that reached
the very disturbing conclusion that over one third of
Michigan citizens believed that the Michigan court
system discriminated against individuals on the basis
of gender, race, or ethnic origin. Through various
task forces and the work of the Open Justice
Commission, and now Justice Initiatives, work
continues on increasing the pipeline of diverse talent
into the profession.

This history is on the State Bar of Michigan
website and is contained in the 2009 annual report of
the Equal Access Initiative of the Committee on
Justice Initiatives.
I want to maybe say one aside, and I am kind of reluctant, because it's probably a sore wound, but I am going to say it anyway. I am more interested that as a result of task forces, et cetera. Well, one of these task forces gave recommendations in 1989, and there were two of them. There was a task force on racial/ethnic issues and a task force on gender issues. These were created through the Supreme Court under the leadership of Chief Justice Dorothy Comstock Riley.

As a result of the recommendations, they asked for amendments to the Code of Judicial Conduct, the Michigan Court Rules, and the Michigan Rules of Professional Conduct. And specifically the recommendations were to prohibit invidious discrimination and sexual harassment by judges and lawyers.

This body adopted the recommendations, and the sticking point is those have never been enacted by the Michigan Supreme Court, and I know that that is something that your leadership continues to see as a kind of a thorn in the side. That is, the work that is done here, we keep a list of what hasn't been adopted by the Supreme Court, and one of the pushes is to make sure that those things that are discussed
here, adopted here, are hopefully, eventually adopted by or at least in Court Rules or Rules of Professional Ethics and that kind of thing.

So we understand that this is an evolutionary process. Much has happened, but much more must be done to promote activities that instigate improvements in the diversity of our profession so that we can serve a more diverse public. In fact, you are going to see that also in the report that will be given by Anne Vrooman on demographics of our Bar association.

By the way, this work is continuing also on the Judicial Crossroads Task Force, because there is a committee on Access to Justice, and I am sure you are going to hear more about that in the future.

So similar to Justice Kelly, I want to thank you for what you do in your day-to-day jobs. I know, because I was a private practitioner for 27 years, that when you are in the trenches, when you are on the ground level, sometimes you don't see those more altruistic values and principles that we all adhere to that you might see at the 52,000 foot level if you are out in space or maybe even the mile high, 5,200 foot level, and those are principles and ideas that we as attorneys are guarding freedom, we are guarding access to justice, we are guarding equality. We need an
open, strong, and fair administration of justice, and that's what we are doing as attorneys, and that's maybe what we lose sight of in our day-to-day activities. So I want to remind you of that, and you especially see it when you participate in pro bono activities, because many of those altruistic things come back to you and you see them.

And from my view in meeting many of you during the year, many lawyers, I see that view. In fact, you are going to see it today just in your own awards committee report, because there you are recognizing someone that you are not fighting at the trench level but you see them from a higher elevation.

This was really brought home, by the way, the importance of this at the ABA midyear meeting, which was just last month. And that is that we heard reports from the incoming chair of the president of the ABA, who is a Cuban American, and also the past president two years ago of the Florida Bar who is also a Cuban American. In fact, he came here when he was 11 years old, no visa, no nothing. Put on a boat by his parents to get away from Cuba, and they reminded us as attorneys that the constitution in Cuba was very similar to the constitution that we have here. Look at the difference between those two countries and look
at the difference you make as attorneys in guarding
the values in our constitution.

Also, I know throughout the year in meeting
attorneys that you all help in other ways. You help
not only in your day-to-day activities but your work
on commissions, on boards, your work at schools, your
work in your neighborhoods. You work in a variety of
different ways because you are seen as a person of
influence because you are an attorney. And we are
championing that through our Lawyers Help program. If
you haven't looked at that web page on the State Bar
website, please do so. You will be proud of what
attorneys are doing in this state.

In closing I want to say that I am very proud
to be an attorney. I am very proud that you are doing
what you are doing day-to-day and also in the
extra-curricular things as attorneys, and I think we
should all be proud of our profession for what we are
doing, the help that we are providing to others in all
different ways, as Justice Kelly just enumerated, and
also you should be proud of what you are doing as
Representative members. What you are doing here
again, as I said, is very important and it's very
timely for the issues of our day.

So thank you very much, and just let me
encourage you to continue to do the work that you are doing. Thank you.

(Applause.)

CHAIRPERSON JOHNSON: Thank you very much, Charles. The next item on our calendar is number seven, remarks from our executive director, Janet K. Welch.

As many of you know, Janet's career in State government is very diverse and very extensive. She started as a legislative assistant for the Michigan House of Representatives. She was chosen to create a nonpartisan legislative analysis office for the Michigan Senate, and she served as its director for many years before she decided to attend law school at the University of Michigan.

After a clerkship with the Michigan Supreme Court, Justice Robert Griffen, Janet Welch became an executive analyst in the office of the Chief Justice of the Michigan Supreme Court. She then served as the Supreme Court's legal counsel.

In the year 2000 she left the Supreme Court, and to the State Bar's benefit she came to work at the State Bar as legal counsel. She has now been working with us as our executive director. Her work with the Representative Assembly, the Board of Commissioners,
and her incredible staff have been a great service to
the legal profession in the state of Michigan.

I am sure that the entire Representative
Assembly will join me in welcoming back our executive
director, Janet Welch.

(Applause.)

MS. WELCH: Thank you very much, Elizabeth,
and all of you. By my count, this is the seventh time
I have addressed you as executive director of the
State Bar of Michigan, and for six times in my
capacity as reporting to you on the health of the
State Bar I have been able to say the fiscal situation
of the State Bar of Michigan is very sound. We are
meeting all of the obligations given to us by statute
and by the Michigan Supreme Court, not only I think in
an exemplary way, but even in some cases in an award
winning way, and, in addition to that, for six times I
have been able to tell you that we are meeting the
goals that were set out in the strategic plan by the
Representative Assembly and the Board of Commissioners
in a way that has been adapted every year to the needs
of the profession.

I am happy to say, although it's monotonous,
that my message is the same again this time and that I
hope to be able to be equally monotonous for as long...
as all of you are here in the Representative Assembly.

We have a very well managed Bar, thanks to our staff,
but I think that the foundation of our success and the
success that needs to be, it needs to be underscored,
is occurring without dues increases and in the face of
an economic environment that does not allow us the
luxury of floating on investment income.

The success really rests on the broad and
depth of our base that we have of lawyers who are willing to
do what you are doing here today, which is to give
generously of their time for the betterment of the
profession, and that is what makes our Bar really
remarkable, and it is what allows me to come before
you repeatedly, perhaps monotonously, and say that we
are in great shape as a Bar.

I won't reiterate the very depressing kinds
of news that the Chief Justice described to us about
the state of the economy and in particular in
Michigan, because you are all living it, as we are.

And so I just want to note that the fact that the Bar
is doing well in an environment where the citizens of
the state of Michigan are not doing well and the state
government is struggling is a challenge that we are
conscious of every day.

What our membership needs more than anything
right now is something that the State Bar of Michigan
can't give them, which is more paid work for the
underemployed and the unemployed lawyers of this
state. But what we can do is continue to provide
accessible and valuable tools to our members who are
practicing law to help them practice more cost
effectively and to do what has been underscored here
already, to mobilize our resources to help in pro bono
and access to justice, and we are doing that with
increased dedication as the environment in which we
are working deteriorates. Hopefully it's stabilizing,
but obviously it's a huge struggle.

We are also doubling and redoubling our
efforts always to look to member benefits that we can
bring to you, and I am happy to say that the Board of
Commissioners approved three new member benefits
yesterday that will be rolled out in the next month or
so that speak to services that practicing members use
that we hope will help them practice more cost
effectively. That is a supplement to Casemaker, which
is the free legal research tool that we announced last
September, and we have gotten positive reviews from
many members who say that it's helping them to do
their legal research in a more cost effective manner
and helping their bottom line.
In addition to that, in this environment we are doing something this year that I think is required of a Bar that cares about the future and cares about the citizens of this state, and that is the Judicial Crossroads Task Force that the Chief Justice mentioned. The task force began its work last October, and it just met for the second time this month.

The challenge of the task force is huge. It's to figure out, given the likely demographics of this state and the projections in terms of the economy, what changes should be made to the system, to the way we go about delivering justice, that will allow us not only to maintain the level of service that we have now but to be able to fix the problems that we have identified that need to be fixed, in particular our very inadequate public defense system, as well as the rising tide of pro se litigants and indigents who cannot get the services that they need to have justice in the system today.

It's a huge undertaking. There are over a hundred distinguished members of the Bar and the bench and some distinguished lay persons who have agreed to serve who have been working for months. I can't tell you what the results of the task force are going to
be. You don't ask the people that we ask to serve and
tell them what the answers are going to be. You have
to put them together and see what happens. But I can
say that if in September the task force only
recommends the safe and obvious answers, if they only
go for the low hanging fruit, we will have lost a
major opportunity to do something really valuable for
the state.

So I am hoping that what they come up with is
provocative and challenging, and I hope you are all
looking forward to what they have to say with as much
anticipation as I am, because we are the ones that are
going to be dealing with what they are recommending.

I began with a monotonous message, but I
would like to end in a different way than I ever have
before. Elizabeth alluded to extraordinary efforts
that Dawn Evans made last fall, and I want to
elaborate on that a little bit, even though it's a
little bit personal.

Two days after I addressed you last year I
walked out into a beautiful September sunshine day,
and four hours later I was being transported by
helicopter to Beaumont Hospital where I spent seven
weeks, and it was in that period while I was on life
support that Dawn assumed the mantle of acting
director of the State Bar, and I want to recognize her in front of you for the extraordinary efforts that she undertook, as well as the extraordinary efforts of the whole staff that kept the Bar going in the face of some funky times for a couple weeks. Not that I am indispensable, but it's always unnerving to have something that unanticipated happen. So I take that smooth, unruffled operation of the Bar in the face of my accident as evidence of what a strong Bar you have before you.

The experience that I went through really had the effect of increasing my appreciation of everything, and it has inspired the story I want to end with.

In my capacity as executive director of the State Bar I get to serve in the House of Delegates of the ABA, and it's a role that's very similar to the role that you are playing today, except that instead of 150 members, there are 550-some members and it lasts a day and a half instead of a day. There is a lot more folderol, but essentially the role that the members of the House of Delegates play is very similar to the role that you play in that we are grappling in the House of Delegates with issues of cutting edge issues for the profession, ethical issues, making
recommendations that really have an impact on the way in which the legal profession conducts its business and will conduct its business and the way in which it delivers services to the public and upholds the values of the justice system.

But being a member of a 550-member body can make you feel a little inconsequential and the day gets long, but I want to tell you about what happened a year ago at the midwinter meeting. The hot issue on the agenda at that meeting was the ethical issue of whether and to what extent to screen lateral hires in a way that can allow the law firm that the new hire has hired into to take on issues that would otherwise, or cases that would otherwise pose conflict.

There had been a huge amount of e-mail traffic about the issue prior to the meeting, and it was a recommendation that had come before the body several times and had been tabled. The Ethics Committee, Ethics 2000, had recommended liberalizing the lateral hire rules, and the House of Delegates had always turned it back, and it was before the House of Delegates again.

Interestingly, Michigan has had in place the rule that was before the House of Delegates a year ago since 1988. We were one of the first states to adopt
it, so, as you can imagine, Michigan delegation was pretty cool with the resolution, but the 24 states, 26 states that had not adopted a similar resolution were very apprehensive about it and very vocal in either being skeptical about it or in some cases suggesting that were the model rules to be changed to liberalize that rule that would sort of signal the end of the legal civilization as we know it.

The debate had gone on for quite a while. It was toward the end of the second day, and a motion was made to table the resolution, which is the way it had died in the past several times. The people in support -- there was a voice vote. Couldn't tell, too close. Asked the people in support of the resolution to stand. It took 15 minutes to count, because it was a very big body. They sat down. Another 15 minutes to count the people opposing the motion to table, and then, you know, another ten minutes, so very suspenseful. The vote was 218 votes to table, 219 votes not to table. And I have to confess that the first thought that went through my mind was thank goodness I wasn't in the bathroom.

But my second thought was what a privilege to be here to make a difference, and the way I typically end, the way I have ended every six times that I have
spoken to you is thank you very much for the service that you have, but I want to end it slightly differently and say how lucky you are to be here. I hope you appreciate the difference that you can make for the profession.

It is a wonderful privilege to be here and to serve and to grapple with the questions that you are grappling with. And also, thank you very much.

(Applause.)

CHAIRPERSON JOHNSON: Thank you very much, Janet. We are so glad that you are here to relate that story to us. We really appreciate your being here and reminding us of how important it is to be here.

At this time, pursuant to our calendar, we are right on schedule. We will take a 15-minute break. We will resume at five minutes after 11, on the dot. We are in recess.

(Break was taken.)

CHAIRPERSON JOHNSON: We are now back in session. The next item is number eight, approval of the award recipients for the Michael Franck Award and the Unsung Hero Award.

At this time I would like to call to the podium Mr. Jeffrey Nellis, chairperson of the
Mr. Nellis.

MR. NELLIS: Good morning again. Before I get started, I neglected to thank and recognize one other person which should not go unrecognized, and that's Anne Smith.

When I first got appointed to this position a year and a half ago, Anne started sending me e-mails, and I had no idea who this person was. I am in Ludington, so we are kind of out of it a lot of times. But Anne has been an incredible help to me and my committee, especially again with me being a couple hundred miles away. She has just been huge in helping us. You can tell we were involved, especially this year, in a lot of different things, and her ability to organize, you know, we had a couple of issues here just last minute in dealing with vacancies, and she just steps right up to the plate and does what has to be done. She is incredibly pleasant to deal with, which is a change for me. Anne, I can't thank you enough for all your help, so if we can recognize her.

(Applause.)

MR. NELLIS: Now, of all the things we did, and I said this last year, this is my favorite part of being the chairman of this committee. We get a chance
to not only examine lots of applications and see what
people are doing out there, attorneys are doing out
there. We just think usually in our day-to-day lives
who we are going up against and judges, and it's so
nice to be able to take a step back and see, you know,
ot only sort of pay tribute to people, what they have
accomplished over their career, but also to really
look at and recognize some of the really fantastic and
unusual things that people get involved in, that
lawyers get involved in. These are the people and the
attorneys who, quite frankly, give our profession a
good name, which is something that we could always use
help with.

So I am going to start with the Michael
Franck Award. This award is given to an attorney who
has made an outstanding contribution to the
improvement of the legal profession.

Now, this year our decision by our committee
was unanimous in the selection, but this year we
decided to pick two people, and, quite frankly, the
reason why we picked two people is because it was one
of those, like trying to choose between an apple and
an orange. They were both incredibly deserving
individuals, and it was really impossible to pick one
over the other.
We have the materials in your packet.

Obviously my little discussion won't even come close to doing justice to what these folks have accomplished, but the first individual, first attorney, is Sheldon Stark. He is not only, sort of in a prior life, one of the preeminent employment attorney litigators in the state of Michigan, but he has also served as ICLE education director, and I am sure everybody in this room at one time or another probably, perhaps several times a year, are beneficiaries of his work at the ICLE.

We as a committee felt after our own experiences and also the numerous letters of reference that we received that this individual has really established a lifelong record of achievements which have contributed to the improvement of our profession.

The second recipient is Attorney John VanBolt. He is the executive director and general counsel of the State of Michigan Attorney Discipline Board. I also note that he has served as a member of the Ypsilanti City Council and the Ypsilanti Housing Commission, among other things.

He has made a career long dedication to working in the area of lawyer ethics, which, again, is a very noble and admirable cause, and we feel that his
lifelong body of work was certainly something that
needed to be recognized.

So, again, our decision from our committee
was unanimous, and so at this time it gives me great
pleasure to make the motion to honor both Sheldon
Stark and John VanBolt as recipients of this year's
Michael Franck Award.

CHAIRPERSON JOHNSON: Thank you very much,
Mr. Nellis. Is there support for that motion?

VOICE: Support

There has been a motion and support to
approve Sheldon Stark and John VanBolt for the Michael
Franck Award. Is there any discussion?

Hearing none, all those in favor of approving
Sheldon Stark and John VanBolt for the Michael Franck
Award, please signify by saying aye.

Those opposed say no.

Abstentions.

Hearing none, the motion to approve
Sheldon Stark and John VanBolt for this year's
Michael Franck Award is approved.

And now for the Unsung Hero Award.

MR. NELLIS: Okay. The Unsung Hero Award is
presented to a lawyer who has exhibited the highest
standards of practice and commitment for the benefit
of others. And, again, what’s neat about this award is we kind of look outside the box and not just look at achievements in the area of law but what other types of things are these people doing to help the community. You know, we as a Bar are really trying to put an emphasis on our community leadership and community service and those types of things, and this award allows us to do this publicly and by recognizing somebody who has really made an outside-of-the-box kind of a commitment to our community.

This year’s nomination is a posthumous one, Lansing Attorney Kevin Moody. He was a shareholder at Miller Canfield, and he was instrumental in developing their pro bono program. In reading the materials, it appears that his efforts have resulted in more than 80,000 pro bono hours being billed by the firm alone. He has also served on the board of directors for Gateway Community Services, which works with youth, and there is, in fact, now a youth home, I believe in Lansing, that’s been named in his honor. In his attorney practice it’s my understanding that his practice focused on the area of Native American law.

Again, we had several really excellent submissions this year, but the agreement of the
committee was unanimous, and so at this time it is
again my honor to make a motion to award this year's
Unsung Hero Award to Kevin Moody.

CHAIRPERSON JOHNSON: Thank you, Mr. Nellis.

There is a motion. Do I have support?

VOICE: Support.

CHAIRPERSON JOHNSON: Thank you. There is a
motion and support to approve posthumously Kevin J.
Moody for the Unsung Hero Award. Is there any
discussion?

Hearing none, all those in favor of the
motion to approve posthumously the award to Kevin J.
Moody for the Unsung Hero Award, please signify by
saying aye.

Those opposed say no.

Abstentions.

The motion approving posthumously Kevin J.
Moody for Unsung Hero Award is approved.

I would like to thank Jeff and his committee
for this work, and I would also like to thank all the
many people who submitted nominations and for the fine
work that all of them are doing here in the state of
Michigan.

Moving on to the next item, number nine, the
Representative Assembly reapportionment. And a little
background on this.

The Supreme Court, Rule 6, Section 3, mandates that the Representative Assembly shall reapportion its circuits every six years based on February 1st attorney geographic location. This year, 2010, happens to be the sixth year.

Jeff Nellis' committee and I have been working since last fall with Jim Horsch of the State Bar getting preliminary reapportionment numbers, working with Cliff Flood, the State Bar's counsel. Then the February 1st numbers were presented to the Nominations and Awards Committee for their approval. A copy of the Court Rule and the reapportion numbers were included in your materials. I now would like to call again to the podium Jeff Nellis, chairperson of the Nominations and Awards Committee with his motion on the reapportionment. Mr. Nellis.

MR. NELLIS: Thank you, and again you have had the opportunity, I hope, to review the numbers in your packet. This is an accountant's dream, I guess. And basically, without getting into a lot of specifics, you know, things related to the economy obviously result in movement of attorneys from, you know, one county to another. Attorneys retire, we get new attorneys, and so that's why our bylaws require us
to sort of do a re-analysis every year to make sure that we have the appropriate representation.

So our committee again took a look at this. We certainly had input and talked in great detail with Jim Horsch, and I also spoke with Cliff Flood, and after analyzing all of the data, our committee was again unanimous in our approval. And so at this time and on behalf of the Nominations and Awards Committee, I am making the motion for the approval of the reapportionment consistent with the data that we provided in the packet today.

CHAIRPERSON JOHNSON: Thank you very much, Mr. Nellis. There is a motion. Is there support?

VOICE: Support.

CHAIRPERSON JOHNSON: There is a motion and support to approve the reapportionment numbers as presented by the Nominations and Awards Committee. Is there any discussion?

Hearing none, all those in favor of the reapportionment numbers as presented by the Nominations and Awards Committee, please signify by saying aye.

All those opposed say no.

Any abstentions?

The motion to approve the reapportioned
numbers as presented by the Nominations and Awards Committee passes and is approved.

Thank you, Mr. Nellis, and to your committee. I know that they worked very hard on these numbers, and a special thanks to Cliff Flood, the State Bar's legal counsel, and to Jim Horsch, who has just done an incredible job since last September in working with me on getting these numbers together. So thank you, Jim, for your hard work.

(Applause.)

CHAIRPERSON JOHNSON: Next item under tab number 10 is Anne Vrooman, who is the director of Research and Development. In light of the mandatory reapportionment for the Assembly this year, Anne will be making a presentation highlighting some of the changes in the demographics facing our legal profession in the state of Michigan this year. It's a great privilege that I present to you Anne Vrooman, director of Research and Development for the State Bar of Michigan. Anne.

(Applause.)

MS. VROOMAN: Thank you, Elizabeth, and thank you for allowing me this time to share this information.

I always find this information fun and
interesting. I am not sure that that's always shared when people start looking at statistics, but I hope that you will see as we go through some of this information how it really plays into a lot of what you do.

Right now what is happening is Anne and some of the other staff are providing an additional piece of information that wasn't on your desk when you first arrived, and we are going to talk about that as well.

Let me first give you a little bit of background about sort of how this information, how we get this information and then how it's sort of different than the reapportionment type information and how it is analyzed.

This information is taken, really once a year we pull all of the information that we have in the membership database and do the analysis. So it really is just a once-a-year snapshot, and it doesn't take into account, like reapportionment does, sort of the share, the proportion in each county. It's really the bigger overview picture, and I think you will see that both in the first part of this that we will go over, which is really sort of the statewide picture, and then even when we get to the county picture, which I will explain as we move along.
We gather this information from two main sources. One is when you do your membership application. There are things in that that are, you know, sort of static type of pieces of information. That's where we capture gender and race and ethnicity. Both of those are voluntary pieces of information, so the information that I am going to show you and that you have in the material is based on the information that we know that we have.

The way that we treat -- and we get about, on the gender I think we get about 96 or 97 percent of that supplied in that membership application. On the race/ethnicity, we get about 75 percent; 74, 75 percent.

What we do for the piece that's missing is just take that out and assume that there is probably what would be a typical distribution of that, so we don't skew the numbers then by having that piece in there as none, just so you are aware of that.

The others piece of information or the other data source that we have each year that gets updated is the dues statement, so when you do the dues statement, that's where we collect the information about what people are doing, so the occupational area that you are in, the firm size if you are in private
practice, any of those pieces. So all of that goes into our membership database, and, like I said, once a year then we pull all of that together and do the analysis.

So with that, let me get started then. We are going to work from this handout that was at your place when you first began.

The first slide here is really the big picture. The way that our membership database works is sort of once you are in it you are always in it. You are in it in some form or another, even if your status changes. So this is really the big picture view, and you will see, obviously, that that significant blue portion is the active members, and that's really what we focus on when we do this analysis. You will see the pretty big slice there that is the deceased, and, obviously, as time goes on and more members pass away, you know, that slice certainly grows.

The next slide, that's the proportion of, the percentage of nonresident active members to then resident members, and you can see that it's a pretty significant number, and actually, as we have been doing this for now the last three years, that number has increased, and it may be related to the economy.
So more members perhaps have taken jobs out of state, and certainly that's a number that we will continue to watch as we go along.

The next piece is just to show you that there is a small slice that we have foreign members, and as, you know, globalization occurs, I would certainly expect that this number will change.

This number is useful. Actually Janet and Charles went on a mission for the State Bar to Israel a couple years ago, and we were able to use this information to locate people in Israel that they were able to contact and, you know, do work abroad as well.

The next slide, this is -- let me just say that, you know, every year I try to do something a little bit different or build upon what we have. And, as you have heard Charles talk about, with the bigger focus going forward about diversity, I think it's really important that, you know, we sort of dive as deep as we can into the information that we have.

With Greg's new role, wanting then to look at sort of gender, race, and ethnicity in as many ways as we can, so you will see that really in what I am presenting to you today.

So this is the big picture then overall about gender, and overall of our membership the split is
about 69/31. We have actually seen it shift from about 70/30 just in the last couple years. When you consider the large membership, that's actually pretty significant, and I think you will see why.

The next slide is a picture of that, because this is a picture then of those members that joined in 2008, what the gender split is, and you can see how different that looks than the overall split.

The next slide is a view of the generational split with boomers and traditionals still comprising a very significant number. Just so that you can sort of do the ages as -- we often talk about, you know, the generations. So traditionalists right now are over the age of 66. Boomers are in that 51 to 66 age category, gen-Xers are in that 30 to 50 age category, and then millennials are 29 years and under. And we have got more information about age as we move along.

The next slide -- so by this generational view it shows the gender, and you can see how that has changed, you know, within each generation.

The next slide. This is the overall picture of race and ethnicity. Again sort of the general active Michigan residents. And just so that you have some point of reference, when you look at the big slice of, according to the 2008 U.S. Census estimate,
the European or white population in Michigan was 81.2 percent, so you can see that we sort of have some overrepresentation in terms of those numbers, and then the African origin population, according to those census is 14.2 percent, so you can see that there is significant underrepresentation in that area.

The next slide, this really adds gender to the race and ethnic piece. A lot of these I would encourage you to sort of go back and look at and think about more thoroughly. I just want to really sort of point out and explain what you have here, but I think that this information is useful as you think about policy decisions and things that you consider.

The next piece, this gives the dimensional look of gender, generational, and race/ethnicity, so you can see how changes have occurred through the generations in all of these pieces.

Next slide, this is what our members do, and when I first started doing this analysis, this was actually the most interesting slide to me, this picture. I think most people think about the legal profession in terms of, you know, sort of straight-up legal practice work, private practice work, and when you look at our membership, about 50 percent are in private practice, but the other 50 percent of our
members are something else.

And, as an overall goal and mission of my position in research, it really has tried to focus on who are our members, all of our members, and what are the things the Bar can do to serve them. So this is one way in doing this analysis that first we learn who they are and what they do, and then we will be taking steps to learn, you know, how we can serve all of those particularly nontraditional type members.

The next slide, this is just to show you -- you know, again we talked about that we have a pretty good slice of non-Michigan members, but how this occupational slide looks a little bit different for that group, and you can see that there is a significant number of corp counsel. So when you think about what people who are members of the Michigan Bar do in other states, that seems to be -- that's actually a much bigger slice than what we see in terms of the instate population, so it tracks outside of that distribution, as well as government.

For those that are in private practice -- now, again, just being clear about what we are looking at, so we have sort of that 50 percent slice. The whole universe then of the pie that you are seeing is that 50 percent slice and looks at, for those in
private practice, what is their firm size, and for
that you can see that a very significant number are
solo practitioners or solo and smaller, and when you
add those pieces together, of those in private
practice, about 72 percent are in either small or solo
practice.

The next piece here, this is a glimpse inside
the private practice area by firm size and gender, and
you can see some of the differences. Sort of a quick
way when you are looking at these things that look at
gender, again, thinking back to the overall big
picture that we are a little less than 70/30, so
69/31, when you look at numbers that sort of track
outside of that, I mean, that's where you start to see
differences and how that plays.

The next slide here puts together the race,
ethnicity, and generational piece, and, again, you can
see inside those generational cohorts, what the
differences are and what the trends are in that
direction, all of this giving you a picture of, you
know, if you think down the road what the Bar
membership will look at in 10 years, in 15 years, in
20 years, as you sort of take these numbers out.

The next piece is a snapshot in five-year
increments, and I want to explain this so that it's
not confusing. What this really does is -- so going back over like the last 28 years but taking, so saying, you know, just a snapshot of those members that joined in each of the years that you have represented here, this was the race/ethnic composition of those years. Again, just so that you can see what the trend has been and how it has moved along over a period of time.

This is a picture that really shows just the law school affiliation overall of our membership, and I think it's just an interesting thing when we think about, you know, you can think about the law school that you went to and find kind of what the percentage is. Wayne State has the largest number of members, followed by those that have others, and then you go back to the instate.

The next is just, again, continuing on the law school but by gender, and you can look at sort of how that tracks.

The next, this is just a trend line, and you can see, it's just a real clear picture going back, you know, through the years, and you can see how much closer together that line is coming, and that's reflecting certainly what you saw in the 2008 number that I showed you where it's really much closer to,
getting much closer to the 50/50 split, and you can see that actually happen.

And, again, this is just by gender and age group. So inside, taking a little bit smaller slice into the age groups, again, you can see what the difference is just in the gender split that way.

What I want to move to now is what was handed out to you, this booklet, and what I thought might be interesting for you is because you are a body that really comprises all of the state, and I know that you are aligned according to circuits, and most circuits are cut along counties, a way then for us to do this data is to look at it by calendar. And so what we did was just on, again, some of these diversity cuts do it by county so that you had a sense of what this is. But I want to, just if I could, there are sort of five key tables in this, and I want to just briefly touch on what you have in case there are any questions about what the data, how the data is displayed, just so that we are clear about it.

So the first table that you have are current members by join year and the county location. Now, again, remember that we do this pull once a year, so this is the number in each of these counties as of June 2009. People move, you know, so next year the
numbers could look different.

But what we try to do then is go back through this nine-year period and say of those that joined in this year then these are the numbers in the county. And so, again, this is not total membership in this. This is just looking back of people who joined in these Bar years, these are the counties then that they located in. So that's like newer lawyers in each of these counties.

The next slide or the next table is gender by county, so, again, it's the gender split. So, again, sort of a quick way to look at it is looking at kind of that overall split, 70/30, 69/31, and, you know, as you go down you can see places where there are significant differences there.

The next table that you have is race/ethnicity by county, and, again, it's taking sort of a deeper look in each county what the race and ethnicity split is, and you can go back to sort of that earlier data in your other handout that shows you the overall proportion to that and see what the differences are in each of the counties.

And then the final piece here is private practitioner -- well, not final piece, next to the final piece -- private practitioners by county. So
this, again, thinking about the big pie chart, and this is the 50 percent slice or thereabout of those that are in private practice, so for that universe the number of private practitioners then in each county, and then you have people in that other group, so sort of that 50/50. So you can certainly see in counties, you know, the weight of those that are in private practice versus other things.

And then the final is age groups by county. And, again, I think that this is important or interesting information, particularly in those smaller counties where you have the work traditionally, you know, being done by people who are beginning to age out, and so, you know, it's perhaps an opportunity to look at areas where maybe there won't be, you know, the legal resources that have existed in the past by county.

I don't know if you have questions now. I think we are pretty much on tab, but I am happy to either address a question now. I will also be around. I hope that you not only find this interesting but useful in your policy discussions, and let me just say two quick things about sort of, as I said, our efforts to understand better who our members are and what they need. Two key pieces of information we will gather
this year, one is the law practice economic survey, which is something that the Bar has done every three years for more than the last 30 years, and in 2010 we will collect that data again.

We had an extensive work group series that looked at the survey. We are revamping it for this year. One of the things that we know is that it gets used by attorneys, and in order for it to be useful we really, really do need more significant participation than we have had in the past, and I hope that you will help us in those efforts to gain that participation.

The other piece is something that we have not done in many years, in more than ten years, and that is that we are going to conduct just a membership survey. We are aiming to have that done at the same time that the dues notice goes on and hoping, again, for a great number of participation. We are putting together that work group that will begin working in April to talk about the areas and the questions that will be on it. It's an opportunity for us to learn more about the profession, more about how we can help our members, and, you know, we will certainly be back to the Assembly to share that information. Thank you very much for letting me be here today.

(Applause.)
CHAIRPERSON JOHNSON: Thank you very much, Anne. Lots of interesting information for all of us to take home and digest.

The next item on the calendar is under tab number 11, our public policy update. Our next speaker is Elizabeth Lyon. She is the director of Governmental Relations for the State Bar of Michigan. Elizabeth is the person who keeps us up to date and informed on all the goings on here in the state of Michigan and, quite frankly, throughout the country. She has been an invaluable resource for the State Bar, and I would like for you to welcome Elizabeth Lyon.

MS. LYON: Thank you, and good morning, and good almost afternoon. It's a pleasure to be before this body again today to update you on a couple of things that are ongoing in our public policy advocacy program. It's sort of a pleasure to highlight two things for you this morning that I think actually dovetail really well to all of the comments you heard this morning about what the needs are in our state and how lawyers can address that, and I think our priority public policy goals right now, lobbying against tax on legal services and reforming the public defense system, really hit very well with what the Chief Justice said to you this morning, what our
president said, what Janet said, and others.

Our public policy program and what we advocate on is actually very broad, but those two issues seem to be those that take the most of our time lately, so I will try to spend time updating you on that, the first being a tax proposed on legal services.

We first saw this introduced in 2007 and was something that the Bar very strongly came out and advocated against because of a very serious concern that it would impact the ability to access legal services, and those who were in difficult times making a decision about whether or not to retain an attorney to protect some very important rights might be discouraged to do so if extra money was required from a tax structure. That proposal was not adopted in 2007, and yet we see ourselves advocating against it once again here in 2010.

We first saw it introduced in the fall by Representative Mark Meadows, who is from East Lansing, a democrat, a lawyer who chairs the House Judiciary Committee. We then saw it again demonstrated in a proposal that was pretty comprehensive from the Michigan business leaders. We saw our governor, Governor Granholm, propose it in February of this year.
as part of her budget proposal for fiscal year 2011. We have also seen another colleague elected member who is also a democratic gubernatorial candidate, Representative Alma Wheeler Smith, introduce a plan that included a sales tax on legal services.

As you might imagine, the State Bar of Michigan yet once again is actively partnering with local and specialty Bar associations, sections, and you all to really demonstrate and educate what an impact a tax on legal services would be in our state.

We know, and I think all of you who follow what happens in Lansing, or what somebody might say what doesn't happen in Lansing, knows that right now the appropriations budgets have begun to move as the legislature is now in a two-week indistrict period. So we saw the House and the Senate both this week vote out budgets that originated in those chambers.

At this time those budgets are not connected to the revenue proposal from the governor for a sales tax on service plan, but, quite frankly, we know anything can and often does happen, so that's why the State Bar is working on this issue as a vote on it could take place, maybe not tomorrow, because tomorrow is Sunday, but whenever the legislature might be in session. So we are working very hard on that.
A few things that I would like for you all to keep in mind, because what we want to do is get our points across early and consistently, so if this issue comes up in lame duck, which is that funny period after the general election in November and before the members adjourn in December of this year for end of session, sort of that crazy time when anything can happen, especially with so many members of the House and the Senate and the Executive Branch not returning due to term limits.

Also now being talked about, a potential for a ballot proposal either for the August primary or the November general, so it's important that our information gets out there, and I want to share with you all the three main talking points that the Bar has been using that really seems to resonate, and you can find this information at your places this morning. We have given you both the State Bar's general statement against a tax on legal services and another piece that really we think sort of goes through and details more extensively what a tax on legal services is and defines it better so people understand what it is they are doing.

Also on your desk is, if you don't like reading the talking points and statistics and that
sort of information, we provided a couple of excerpts from the new State Bar of Michigan blog of which Janet is the author, and it's sort of a more fun vernacular to read and conveys the same concerns that I will talk with you about this morning.

Our three main talking points, and please remember these and have conversations if you are elected with legislators. Filing statistics, we see very clearly our circuit court filings, 65 percent are family related matters. So the people who are accessing legal services there are single parents seeking child support payments, seeking changes to custody arrangements. We see victims of domestic violence seeking personal protection orders, and other family related matters that are very serious.

The second biggest chunk is criminal cases, so those who either are appointed a public defense attorney or whose families are looking to help muster their defense services by putting together monies for investigators and other things, we see that chunk there, and then downward. And we know about other reasons why people are seeking legal services right now. Bankruptcy, trying to protect their homes from foreclosure and not becoming homeless like the example we heard from the Chief Justice this morning, and
those type of services which are so important today in
helping us to protect those services.

The other talking point that resonates really
well with legislators who are looking to not reinvent
the wheel, so to speak, but looking to other states
who do rely on revenue from the sales tax structure.
States who tax services do not tax legal services, and
for good reason. There are three states who do tax
legal services, and that's in that three-page and part
of that handout that's there. They are small states,
two of which, both New Mexico and Hawaii, have such a
broad base that they include medical services.

This reinforces another important argument
that we make, that legal, like medical services, are
not discretionary services. People are not choosing
to procure these services, just like they are not
choosing to be in the misfortunate circumstances that
they are in that requires them to seek the assistance
of an attorney. So, again, hand-in-hand medical and
legal.

The third state, which is South Dakota, that
taxes legal services. I have actually had some really
interesting conversations with their executive
director of their Bar association, who says that the
tax is actually collected like a gross receipts tax,
because it's been so incredibly difficult to implement, administer, and remit back to the state, so essentially it acts like a gross receipts tax, which you all know from your practices. Lawyers in the state of Michigan pay the Michigan business tax and the Michigan business tax surcharge, many of you do, unless you qualify for exemption. And then part of the tax is indeed a gross receipts tax, so we are already doing that here in our state, so that resonates very well with folks as well.

The third and what I think is somewhat a unique argument for the legal profession, all of the proposals that I talked about have been introduced have various exemptions within them. What seems to be a common exemption in all of them is a business-to-business exemption. So services provided to a business from a business, so services provided from law firms to businesses would be exempt under this plan, so it's purely a tax on consumer legal services, individual legal services.

So, and I think this might resonate well in today's world, this sets up an example where a family sues Toyota for a wrongful death. That family has to pay a tax on their legal services, and Toyota does not. And for a lot of people that just sort of
instinctually says, you know what, that's not fair, that's not right. That family has to pay a tax and Toyota doesn't? So that seems to resonate very well with folks too.

So I arm you with those talking points. I suggest highly that you contact your elected senators and representatives and convey to them your concern about the impact this will have on your clients and how this is not something that Michigan should do.

The other -- I am happy to take a question, sure.

VOICE: At this time?

MS. LYON: Or we can wait until the end.

Okay, I am going to move on then, and we will take questions at the end.

I have to say that it's a pleasure that every time I come before you I can report significant progress in public defense reform, so I am able to do that again this morning.

Two things that I want to highlight in terms of events before we go into the legislation that's been introduced. In February of this year the State Bar of Michigan was asked to pull together a panel for the American Bar Association's Standing Committee on Legal Aid and Indigent Defense. They
have an annual summit in conjunction with the ABA
meeting, and this year they really wanted to highlight
a collaborative effort for public defense services.

So I started in the State Bar of Michigan in
August of 2003, just a few short months after this
body adopted the 11 principles of an effective public
defense system in April of 2002. So I have always
known as part of my professional work here that the
State Bar of Michigan is a leader and strong advocate
of public defense reform. So when I look in the
national context and see that there are many state
Bars who are not stepping up to the plate to advocate
for reform and advocate for a strong public defense
system, it makes me very proud to be a part of this
State Bar, to be able to advocate on a position that
you all adopted and, indeed, made Michigan the first
state to adopt those ABA principles, and so I thank
you for that.

So it was in that vein that the State Bar of
Michigan was asked to pull together a panel of the ABA
to talk about why state Bars should be involved in
these reform efforts. And I was very honored to be on
a panel that was moderated by Dennis Archer, that had
our Chief Justice on the panel, Representative
Mark Meadows, James Neuhard from the State Appellate
Defender's Office, and also a professor from Illinois
to talk about the collective effort of those to move
for a public defense reform.

The other thing that I want to highlight is a
commitment from the federal level that I first talked
about in September from our U.S. Attorney General,
Eric Holder. He pulled together a symposium back in
March that had representatives from every single state
in the nation, plus all of the territories were
represented in a three-day symposium to talk about
public defense and how states and the federal
government could partner together to move forward
reform. I am pleased to be a part of the very large
and strong delegation from Michigan that participated
in that event.

So now on to the state level, which I know
you all are very interested in. In December of last
year we saw House Bill 5676 introduced by
Representative Mark Meadows and Representative Justin
Amash, so a very strong bipartisan effort to introduce
a bill so you can all finally see language about how
it is we are proposing to reform the public defense
system in Michigan.

This bill has now been the subject of two
hearings, and there is third hearing planned. So we
had a hearing back in December, we had a hearing in March, and the next hearing is scheduled for, I believe it's April 27 at noon, but look for that to be publicly noticed soon.

So we are starting to hear from individuals about what they like about the bill, what they don't like about the bill, and sort of a somewhat famous saying, let the games begin, if they have not already begun, about how we are going to partner together to move forward reform.

We are seeing very active participation by the Michigan District Judges Association, the Michigan Judges Association, Michigan Association of Counties, prosecuting attorneys, criminal defense attorneys, and it's really a pleasure to see so many people coming to the table and saying we support the concept of public defense reform. We want to help move this forward, and this is how we think we can do it well, so it's a pleasure to be working on that.

The bill, which I would strongly urge all of you to go online, and from the Michigan Legislature's website you can plug in 5676. There is the bill, which is actually a 28-page bill, so a little bit longer than some of the bills we deal with, but there is both analysis online and there is fiscal analysis
online for you to refer to.

I will say that there are conversations underway currently which would call for a phase-in approach of the system, so a four-year approach which would help to sort of -- with the cost of the system, so phasing in the function, and also phasing in the cost of it, which is going to be helpful for us, because we know it's going to be a difficult thing coming up with that price tag.

The other thing that I would want to make you all aware of as part of this collective effort, why the State Bar is not involved in the current litigation against the State. I did want you all to know that on April 14 the Supreme Court will be hearing oral argument the Duncan case, on motion that the State has appealed from the Court of Appeals ruling that came out last June, talks about governmental immunity of defendant's standing on the case, and so that will be up for oral argument on the 14th.

So I know that I have pretty much exhausted my time so I can answer questions at lunch or now, whatever is the --

CHAIRPERSON JOHNSON: Why don't we take one question now from the woman there, and then Elizabeth
will be available at lunchtime. If you will please
give your name and circuit when you are at the
microphone.

MS. SADOWSKI: Elizabeth Sadowski from the
6th circuit. I was at a meeting just this last week
with Alma Wheeler Smith, and she told us and our
entire group that she was no longer supporting a tax
on legal services.

MS. LYON: Yes, absolutely, Elizabeth, and we
are very grateful to the representative. She did
indicate to us, and publicly, that if her bills were
to move, that they would be substituted out, so a
small victory in our big fight, yeah.

CHAIRPERSON JOHNSON: If you have any further
questions, you can meet with Elizabeth Lyon during
lunchtime or certainly contact her any time at the
State Bar. Thank you very much, Elizabeth, for your
hard work for the State Bar.

(Applause.)

CHAIRPERSON JOHNSON: Moving on. The next
item is number 12, a report from the ABA House of
Delegates.

At this time I would like to ask
Vanessa Peterson Williams, member of the
Representative Assembly from the 6th circuit, to come
to the podium.

She is also a member of the Michigan delegation to the ABA House of Delegates and will give a brief report on the ABA midwinter meeting.

MS. WILLIAMS: Thank you. First I would like to just stay thanks. It is a honor for me to represent the State Bar in the ABA House of Delegates. I do echo Janet's sentiments about how important it feels when you are there and making a difference.

We met for the midyear meeting from February 8th and 9th of 2010. Just to give you a brief overview, there were about 14 categories of issues that we discussed, ranging from dues structure, there was criminal justice, domestic violence, ethics and professional responsibility, homelessness, poverty, immigration, intellectual property, international law, judiciary legal education, pay discrimination. There were some tort issues, uniform law issues, and then youth at risk issues. And I am just going to touch on some that I think may be of importance to you.

The dues issues, which I think impacts a number of different Bar associations and is also relevant on a national level, the ABA has a new dues structure based on what they called willingness to
pay, and so immediately you will see a reduction in dues for members who are age 60 plus, and I think it's one half of the regular dues rate. For those over the age of 75, the dues will be waived. After that there is going to be, I guess, every year a new dues structure, and the next group of people who will be impacted will be new Bar members, so new lawyers will see a dues decrease. And then regular members, there will be additional fee structures based on willingness to pay.

In addition to that, we looked at juvenile justice issues under the criminal justice topic. Those issues were to address some of the collateral consequences that young people face when they are in the juvenile justice system, and it's just to urge congress and government to provide more resources and opportunities to those youth, and then also to provide simplified Miranda warnings. That was an additional resolution, so that they actually understand what's going on when they are faced with those situations of arrest.

We looked at also reviewing fines for misdemeanor crimes, not for juveniles, but for all criminal defendants, and then also looking at urging congress and other governmental bodies to try to
lessen collateral consequences for criminal defendants in terms of parental rights, and the issue was that there were so many criminal defendants losing parental rights and they needed some additional assistance.

In terms of youth at risk and homelessness, there were resolutions regarding veterans and trying to increase programs to help with the homelessness and poverty faced by our veterans and also for increasing funding for homeless and runaway youth.

For legal education, the resolution adopted was to urge congress to enact some debt relief for new lawyers, and it wasn't where they would be without the responsibility to repay educational loans but because of the economic state of the country to provide them with additional deferment during a time that they are unemployed. So I know that there are deferrals right now that law students have for government loans, but due to the number of private loans that a number of law students take to join the profession, there was a resolution to try to provide some debt relief in those areas.

The ethics issue that we looked at was regarding rankings for law firms and for law schools. That became one of the big issues. The ultimate resolution that was passed was that the ABA would
examine efforts to publish national, state, territorial and local rankings of law firms and law schools.

The last thing I will bring up is a resolution that was actually withdrawn, but I bring it to your attention only because I did have some constituents to contact me prior to the meeting to ask that the Michigan delegation vote in favor of it, and it was the uniform law regarding the Uniform Collaborative Law Act, and that was withdrawn at that time. We did not discuss it. It was going to be taken back by the group that proposed it to do some additional research.

That's a brief overview of kind of what we did. You see my contact information. If there is ever anything that you want to know about the House of Delegates or you see an issue, either in the press or somewhere else, and you would like me and the Michigan delegation to address that, please let me know. Other than our State Bar delegate members, we also have other members of our State Bar who represent other ABA entities who sit in our delegation, and we always look to serve our state well. So just let me know. Thank you.

(Appause.)
CHAIRPERSON JOHNSON: Thank you very much, Vanessa, for that report. We so much appreciate having a member of our Representative Assembly on the ABA House of Delegates, and thank you for your hard work, Vanessa.

At this time, according to our calendar, we will break for lunch. For your information, lunch will be served upstairs. Follow the stairs out here up to the second floor.

We will now be in recess until 1 p.m.

(Lunch break taken 12:00 - 1:02 p.m.)

CHAIRPERSON JOHNSON: Thank you, everybody. It's now 1:00. We are back in session.

The next item is tab number 14 in your calendar, the Justice Initiatives update. In your program you have listed two presenters. I understand that, unfortunately, Judge Stephens is not able to be with us today, but we do have the other presenter here with us, and the presenter is Terri Stangl.

By way of introduction, most of you probably know Terri. She is a former member of the Representative Assembly, and she is director of the Center for Civil Justice in Saginaw. And, Ms. Stangl, at this time if you would like to come to the podium and make your presentation.
MS. STANGL: Good afternoon, everybody. I welcome the chance to be back with you for this occasion and to talk to you about something that's near and dear to my heart for many years, which is the Justice Initiatives. And I think many of us when we thought about going into law had some kind of a vision of justice and fairness that we hoped that we would be a part of. And it is easy in the day-to-day work of billing and clients and motions and rules and all the logistics to lose sight of that kind of bigger picture.

One of the fascinating things about thinking about law and justice is that we treat those things as real, even though we can't see them, like trees and mountains, and they become something that guide what we do in our work everyday, and the way that those things become real is through many, many, many agreements between people over a lot of centuries, that that's how we really made these concepts a living, breathing, evolving thing in the work that we do. So it's only fitting that we within the Bar have entities and organizations that continue that discussion about what is it we are aspiring to about things like justice and fairness in this decade at this time in our life. And there have been many
models that we have done that within the State Bar, and one of the homes for that right now is the Justice Initiatives.

And I think you saw a structure earlier this morning that shows it kind of involves a cast of thousands, lots of volunteers of all different kinds. It can be kind of confusing looking at it from the outside in, but what's really unique and wonderful about it is that it is a place where a lot of different voices come together -- civil, criminal, judges and attorneys and community. They come together to wrestle with these kind of questions and to think about what are we going to make real now, to ask hard questions about what actually is going on in our system, where do we hope to go, and what is it going to take on a practical level to get there? Because I think that's one of the really fascinating things about what we say with justice is that we look at that big picture, but justice is all about how do we resolve problems now, in the here and now. And I think the work of the Justice Initiatives looks at both those big pictures and those day-to-day practical solutions that make a difference in the courtroom, in the lawyer's office, and for the families and the individuals that go before the systems.
Many of you also, I think, in your role on the Assembly and in local and specialty Bars wrestle with some of these same issues in your local courts on how do things work, how do people get before the court, what do we do with unrepresented folks in these systems? And it's my hope and the hope of those of us on Justice Initiatives that some our work is things you can take back and use in your local communities and courts and also that we will hear from you about the challenges you face in your communities, because we know they are out there, and, in fact, I talked to several people over lunch who were telling me about challenges that they face due to limited resources in their communities. So in the last few years a number of the projects have been aimed at looking at some at the big picture and some at the local solutions.

On the big picture we have been looking at things like indigent defense system and updating what's really going on in Michigan. We have been looking at what's been happening in terms of these collateral consequences of criminal convictions, what is happening within our criminal system, how is that affecting people civilly in their days when they try to get jobs and go back into the community, and is there a way to revisit what we thought was a good idea
and make it work better for everyone.

On a practical level we come up with many different kinds of tools and kits and training. There is, for example, a questionnaire that lawyers can use when counseling criminal defendants to identify some of the collateral consequences. Like a checklist that could be used right in the courthouse or when counseling clients.

We have tool kits for judges and Bar associations on how to talk about and how to enhance pro bono. We have done trainings on domestic violence, foreclosure, and veterans rights to help train people that want to do pro bono, for those populations have the information and tools that they need.

There has also been a wonderful disability rights newsletter that I know has been used not only by community groups but by lawyers and courts to better be responsive to the needs and challenges of folks with disabilities. There is also resources for the public on juvenile justice and for ex-offenders.

A lot of these tools and information are up on the Justice Initiatives page on the State Bar website, and I know you all have tons of time, but I hope you will just file that away when you are
thinking about what might be useful in your local community or you can refer someone, because it is up there, and it is certainly ready and able for your use.

The other thing that JI has been involved with over the years is in policy recommendations. We try to be the voice within the Bar that when court rules and legislation come before us we are asking questions like how does this affect low income people, how does this affect unrepresented people, how does that affect special populations, and that's not a question we always want to answer by ourselves. We would like to hear what other people think about that too.

So if you are on committees and sections and have those concerns, I hope you will touch base with us or let Elizabeth Lyon know that you are thinking about it so we can have a conversation and maybe learn from each other about what our concerns are and what the solution might be before it comes to the Board of Commissioners or this body.

This year the Justice Initiatives is trying something new. In the past we have been very project focused, and this year, next month, we are going to be looking ahead to a gathering, a kind of summit, to
look at one of those big picture questions related to unrepresented folks in the court system and what are some options and choices, because it's a growing challenge. We all see it in the courthouse, and it's a challenge for the courts, as well as for attorneys and the community.

And it will not just be the usual people who live and breathe Access to Justice. It will be a broader group to talk about this, bring in some experts and talk about what can we do in the foreseeable future to make a difference, then try to align some of the resources at the Bar and the volunteers to work toward that goal so it will not be just a piecemeal type of project but a little more collaborative and coordinated approach to a very real and current problem.

So I look forward to hearing from some of you, as do I know my colleagues on the committee, and I definitely want to hear about the issues that concern you and in your communities so that we can as a Bar begin to pick the agreements we can make as to what's real in our court system and for justice in Michigan.

I am going to go on to the second thing, but I don't know whether anybody has any questions about
CHAIRPERSON JOHNSON: This leads us into our next item, which is number 15 on your calendar, and I am going to ask for Terri to remain at the podium. She is representing the Justice Initiatives Committee on the proposal for pro bono, the voluntary pro bono standard. Terri.

MS. STANGL: Thanks, Elizabeth. This is in tab 15. It is a proposal for a recommendation to modify the Michigan Rule of Professional Conduct 6.1 on pro bono service. What this change does is that it incorporates and updates the voluntary pro bono standard that has been in place in Michigan for 20 years, since 1990, and it puts it in to Rule 6.1 so that the entire sort of range of what we do in pro bono in Michigan is in one place, and it clarifies what counts.

In 1990 we came up with the first standard that was adopted in Michigan, and Michigan and local Bars have certainly distinguished themselves with their pro bono work over the years, many have won awards here, and in Michigan the State Bar and the Bar Foundation have established the Access to Justice fund, which allows attorneys who give through one of the community foundations methods to receive
substantial tax benefits for their donations as well.

The proposal today actually was already brought before this body back in 2003 as part of the big package of ethics rules, which some of you may remember those debates and discussion, and at that time it was approved and went forward on to the Supreme Court, along with a whole slew of other recommendations.

Subsequently in 2006 this body agreed that we should not cap the donation at $300 per year as the voluntary donation but should allow for a higher amount for those who were able to pay. Twenty years have passed, and $300 had not been increased in that time.

So this is really kind of a reaffirmation of what the Representative Assembly has done historically, but in the original ethics proposal and in the subsequent modification, and it not only incorporates the standard that we have had before, it reaffirms an aspirational goal, what we are looking for, and it also allows a more flexible standard for pro bono service that recognize that some people because of their job or circumstances might not be able to do traditional one-on-one representation and allows that to be counted toward pro bono, although it
makes it also clear that the core of what we are aiming for is for civil legal representation for indigents whenever possible.

So on behalf of Justice Initiatives, we hope you will do what you have done before and vote to codify this in 6.1, or recommend it be codified.

CHAIRPERSON JOHNSON: Thank you very much, Terri. At this time I would entertain a motion from the floor concerning the proposal.

MS. BLANKENSHIP: So moved.

CHAIRPERSON JOHNSON: So moved. Would you please go to the microphone and state your name and circuit, please.

MS. BLANKENSHIP: Shayla Blankenship from the 7th circuit.

CHAIRPERSON JOHNSON: Thank you. Is there support?

VOICE: Support.

CHAIRPERSON JOHNSON: There has been a motion and support to approve the proposed revision of the Michigan Rules of Professional Conduct 6.1, voluntary pro bono service. Is there any discussion?

Hearing none, all those in favor of the motion to approve the proposed revision of Michigan Rules of Professional Conduct 6.1, the voluntary
pro bono service, please indicate by saying aye. 

Those opposed say no.

Abstentions.

The motion in favor of the proposed revision of the Michigan Rules of Professional Conduct 6.1, voluntary pro bono service, passes and is approved.

Thank you, Terri Stangl and to Judge Stephens and your committee for your work on this matter. 

(Appplause.)

The next item is number 16, consideration of a proposal concerning attorney solicitation. At this time would the proponent, Ms. Elizabeth Sadowski from the 6th circuit, please come forward, and I understand there are also two other presenters, Mr. Carlo Martina and Mr. Jim Harrington, if you would also like to come forward.

MS. SADOWSKI: Good afternoon. My name is Elizabeth Sadowski. I represent the 6th circuit. I am also a past chair of the Family Law Section of the State Bar.

As you are by now aware, our section has become quite alarmed at the incidence of attorneys who have sent unsolicited letters to clients who are going through domestic relations cases before the defendants in these actions have had the opportunity to be
personally served with the action for divorce or
custody or support and before they have been able to
receive the injunctive orders that courts typically
enter under our Court Rules.

Now, I understand from some of you that there
are concerns that this is merely hypothetical. I can
assure it is not merely hypothetical. Domestic
violence and removal of children from the jurisdiction
of the state to another state, or worse yet to a
foreign state, especially a country that is not part
of the Hague convention can have disastrous,
disastrous effects.

I want to tell you about an incident that
happened just within the last 90 days in just one of
my cases. In this particular case the husband had
retained me but had not yet given me his retainer
check. He had borrowed it from his mother. He had it
in his pocket. This was a volatile divorce situation
to begin with. The wife pulled it out of his pocket,
said what's this, became absolutely enraged and
started grabbing the children, putting them in the
car, telling them to get their clothes and packing, we
are leaving for New Hampshire now.

In a fortunate turn of events, she then
became so enraged at my client that she began to hit
him and strike him, and he called the police. She was
arrested. And during the time she was arrested, I was
able to file that case and get an immediate ex parte
order restraining her from taking those children.

Now, whether she had found that check or
found a letter in the mailbox would have made all the
difference in the world, because if she had gotten to
that mailbox and gotten notice of a filing that I had
done before she could be served, that woman and those
children would have been long gone. It was only
because I was fortunate enough to have a judge who was
able to give me an ex parte order, sign that order
within a day or two and fortunate enough to have a
defendant to happen to be cooling her heels in jail
overnight that I was able to stop this event.

Now we are engaged in an ongoing custody
case, custody trial in Oakland County Circuit Court,
but for this fortunate chain of events I don't know
where those kids would be, but I know they wouldn't be
here. They would be gone.

We are asking you to approve a motion that
our Family Law Section takes as very, very serious.
We are asking you to adopt a resolution that our
Family Law Council has unanimously approved. We are
asking that the State Bar of Michigan support an
amendment to either the Michigan Rules of Professional Conduct or the Michigan Court Rules regarding solicitation of potential family law clients by attorneys.

Further resolved that the State Bar of Michigan proposes either an amendment to the Michigan Rules of Professional Conduct adding a new section or an addition to the Michigan Court Rules, Administrative Rules of Court as follows:

In any matter involving a family law case in a Michigan trial court a lawyer may not contact or solicit a party for purposes of establishing a client/lawyer relationship where the party and lawyer had no preexisting family or client lawyer relationship until the first to occur of the following: Service of process upon the party or 14 days has elapsed from the date of filing of the particular case.

I am going to ask two of our preeminent members of our Family Law Section to address you next. Mr. Carlo Martina, like I am, is a former chair of the Family Law Section. Mr. Jim Harrington is on our executive board. Both of these individuals are going to talk to you about the seriousness of our situation, and we hope you will give them your attention, because
we do believe this matter is of utmost importance to the families of the state of Michigan and their children. Thank you.

MR. MARTINA: Madam Chair and distinguished members of this Representative Assembly. We are here because of a genuine concern that Michigan families are going to suffer irreparable harm if we don't at least to some degree slightly restrict our conduct in the way that potential clients are contacted in domestic relations matters.

Our proposal is not about prohibiting attorneys from providing direct, truthful, nondeceptive information, as has been suggested. It's about ensuring that the very reasons for issuing an ex parte order, the prevention of irreparable harm, is not abrogated because someone drops a form letter on a defendant telling them they have been served.

Now, I know that there has been concern that we have left two categories out. One has to do with if there is a family member. The other has to do if it's a former lawyer. First, the fact that we left that in this parallels the very language that this august body and the Supreme Court has already approved in the very first sentence of MCR 7.3, that those are exemptions in terms of solicitation.
Someone who is family member, by virtue of that relationship, and is a lawyer may feel compelled to tell them. We can't prohibit that, they are family and a lawyer, but we wouldn't be wanting to prevent a lawyer from contacting, nor would we want to prevent a lawyer from contacting a former client after they have learned that their client has had an action against them. In that particular instance the attorney may be in some better position to be able to give them some perspective.

What we are looking at is a situation where a lawyer who has no idea what the case is about, no idea whether or not a restraining order has been issued and no idea that a circuit court judge has been elected by our citizens who has passed judgment based upon the rules of ex parte orders that there has been a showing that not only is there a risk of irreparable harm but also that notice itself will precipitate adverse action before an order can be issued.

This has been the law of the land forever. What does this mean? This means that we have accepted as lawyers and as jurists that there are instances where irreparable harm can be caused by mere notice. There is a reason why this is here. There is a reason why it's in the PPO statute. This has been well
thought out. There are many instances in which giving somebody notice of that harm is going to precipitate it.

Now, yes, there is always going to be people who no matter what an order says, they are going to do it. We can't stop that. But the Supreme Court and the U.S. Supreme Court has made it incumbent upon us to regulate our actions so we don't make the situation worse.

There are situations like Liz talked about in terms of taking a child where an ex parte order may make a substantial difference. There are situations where threats are made, that if you file for divorce I will clean out the bank accounts, I will change the beneficiary of the health insurance. You won't be able to get health insurance. I will change beneficiaries on the pension. Oftentimes these can't be undone. Harm happens. There is no insurance coverage.

The other interesting thing about this is, besides the fact that Mr. Harrington will talk to you about several U.S. Supreme Court cases that involve very similar rules, realistically speaking, 14 days is a very short period of time. It's less than the time to answer. And, additionally, if the defendant is
served in two or three days, an attorney can solicit
them all they want. The problem with it is that so
often in domestic relations matters there is a lapse
between the time that the action is filed, whether
it's a personal protection order, custody matter,
divorce matter, or separate maintenance, and it's
served.

And there is also one other issue in terms of
just basic privacy. I mean, this time right
afterwards is very difficult. Most of us,
particularly, for example, in domestic violence cases,
we want our -- I mean, I have been doing domestic
violence work for 25 years. Nancy Diehl and I had the
good fortune of getting a lifetime achievement award
on the 25th anniversary of the Wayne County Coalition
Against Family Violence. We know something about
this. We need to be able to give our clients plans on
what to do once that person is served, because we know
statistically the chance they will be injured or
killed in those first several days are through the
roof.

And, you know, it's been suggested that the
Family Law Section is doing this because we don't want
those trollers to take cases from us. Believe me,
most of us, just like you, spend enough time doing
this that's the least of our worries. We are contributing our time towards this Bar. That's not why we are doing this. It's because this problem, which has just started and which we can nip in the bud with a very simple rule, is going to pick up momentum, and sooner or later there are going to be tragic events. People are going to do outrageous things, and then the public is going to ask, This was foreseeable. As lawyers we know we have to take action if we know there is a reasonable risk of foreseeable harm. Why didn't you do anything? I think this is our opportunity, and I believe that we need to do something.

Mr. Harrington will give you a little bit of background on the Supreme Court issues that Mr. Dunn had addressed.

MR. HARRINGTON: Thank you, Carlo. Attached to your materials is an article that I wrote and was published in the March Family Law Journal which I entitled, The Constitutional Case for Controlling Trolling, which is what this petition and motion before you this afternoon is all about. But I would like to briefly give you a little evolution on how we got to where we are today.

Three years ago this matter came up when I
was on a council, and my initial reaction when someone said they wanted to control attorney solicitation was, don't we have enough controls already? Why do we need another rule regulating our behavior? And Judge Hammond spoke at that initial meeting, and Judge Hammond said, from Berrien County, a wise gentleman beyond his years, he said, One dead body is one dead body too many. We need to do something here, not after that dead body gets walked into this room or we have to respond to why we didn't do something when we had opportunity to do something today.

The original proposals that we talked about, and we have had a lot of communication back and forth with the Representative Assembly, originally was in all cases you may not solicit direct mail solicitation for a period of 21 days. Then we heard, oh no, that's way too broad. We have to go back and let's just have it in family law case codes, which is what you have here today. And then we heard 21 days is too long. What's the minimum that can possibly be invoked in order to affect this behavior?

What you see before you is the narrowest conceivable proposal which will, we believe, help impact a potentially lethal problem. Will a PPO stop a bullet? No. Have PPO's been an instrumental weapon
to try and preserve health and safety? Absolutely.

I then received feedback, and I am the chair of the Court Rules and Ethics, so feedback comes to me, and my committee, consisting of judges, referees, family law practitioners, nearly all of whom have 20, 25 years of experience, began to hear about the constitutional issues. We have a rule in my office. It's called Rule 11, enough research supports your conclusions. I had concluded that I thought this was constitutional, but I read about the Shapero case, which is actually in our MRPC.

The Shapero case does not say that you can't pass this proposal. The Shapero case by the United States Supreme Court said you cannot ban all direct mail solicitation, which is the opposite of what we are doing here. We are talking about a minimal 14-day or proof of service, whichever comes first. Shapero also opened the door to state regulation, and it's in the body of the case, state regulation. The Shapero case, and it's in your materials, was followed by Central Hudson holding you can regulate nonmisleading commercial speech where a substantial government interest is at stake.

I was asked a question by one of my friends out here who I haven't seen in a while, and said,
Well, Jim, do you any empirical studies to present to us today like they had in the Went For It case. Well, the empirical studies that the United States Supreme Court relied on in the Florida situation were letters, mass mailings that were sent out, and in one part of the response 50 percent of the people felt uncomfortable with direct mail solicitation. These weren't even family law cases. These were ambulance chasers.

Justice Souter in the Went For It opinion says you don't have to have empirical studies. Sometimes you can just rely on good old-fashioned common sense. Common sense says that when a judge has issued an ex parte restraining order or a personal protection order, common sense says that the best way to preserve the intention of those orders is that it be served by a process server, that notice not be given by a direct mail solicitation.

The support for this is not Oakland County support, it's not Wayne County support. We have had unanimous support for this proposal, every single member that has been on the Family Law Council representing 2,200 members of the section for the last three years. That's our empirical study.

Since we have made this proposal, our
committee has not received a single negative response to it representing the Family Law Section, and I can also tell you that I have had 13 of my clients, the other side of which have received these targeted solicitations, and the universal reaction has been offense that my divorce, why am I getting a letter from some lawyer that I never even heard about? And that percentage is 100 percent.

I think we have the opportunity to do the right thing today. Carlo and I and Liz are urging you to do the right thing today. In my materials I have cited federal statutes where they have a 45-day delay from soliciting representation where there has been mass accidents, 45-day delays where you have got Amtrak or other accidents.

The Arizona Bar has passed a 45-day suppression, and some people have suggested, well, why don't we just suppress the files? I submit that that is not a cost effective solution. I submit that we are seeing E-filing in our family law cases in Oakland County. Anything that is going to increase county or state taxes one dollar will be universally opposed, and the message we send out to Lansing with this proposal is we don't want to spend any more dollars. It won't cost any more dollars.
The other thing I want to mention to you is the reason we have put this in the form of either a proposed MRPC or in the form of a Court Rule is we just want it fixed. We don't want to tie ourselves in to whether the Supreme Court will get around it an MRPC two or three years from now or they might get into a Court Rule quicker.

The relief that we are asking you to give us today to send us on with your blessing to Lansing is either/or, whatever works. It's a very serious problem, and I submit there is a constitutional solution to it. Thank you.

CHAIRPERSON JOHNSON: Thank you very much, Mr. Martina and Mr. Harrington. Ms. Sadowski, I would call you again to the podium. At this time I would entertain a motion concerning your presentation.

MS. SADOWSKI: I move the materials as recited in the materials be adopted.

MS. FIELDMAN: Excuse me. I am here on behalf of the State Bar Professional Ethics Committee. I have been told I have an opportunity --

CHAIRPERSON JOHNSON: You are part of the discussion.

MS. FIELDMAN: I am sorry.

CHAIRPERSON JOHNSON: Not a problem.
There is a motion on the floor. Is there a second?

VOICE: Support.

CHAIRPERSON JOHNSON: There is a motion and support.

I do understand Mr. Bill Dunn, who has written you a letter that was in your materials, is not available today. I do understand that a Ms. Elaine Fieldman is here today, and in accordance, pursuant to Rule 3 of our permanent Rules of Procedure, a committee chair is allowed to have a microphone privilege, and in speaking with our parliamentarian, in Mr. Dunn's stead you may come and present at the podium. No objection.

MS. FIELDMAN: Good afternoon. Thank you so much. My name is Elaine Fieldman. I am here representing the State Bar Professional Ethics Committee in opposition to the proposal in front of you this afternoon.

The proposed rule restrains certain, not all, lawyers from soliciting prospective clients who are named parties in family law cases, all family law cases, not family law cases where it is alleged that there is a possibility for domestic violence or a possibility that children will be removed from the
home, all domestic violence cases for 14 days or until the lawsuit has been served.

Listening to the proponents of this rule, it sounds like every family matter case involves children being abducted or violence being committed. The solicitation at issue or the solicitation complained about typically involve a letter being sent to a named defendant saying do you know there has been a case filed against you. I am a divorce lawyer. You can call me.

Proponents concede that this very information of the information that there has been a case filed is readily available, public record, in newspapers, on the internet, matters of public record. People can find out about these things. These clients, the prospective clients, these defendants can hear about them from other people, from the newspaper, from the media, from friends, from their ministers, from others. The rule does not prohibit lawyers who have had relationships with these people in the past from telling them about it.

So, for example, under the proposed rule a lawyer who learns that an 80-year-old man who has filed a divorce case against his 80-year-old wife who is in a wheelchair can't hear about that divorce case
from a lawyer who is trolling, but a 30-year-old man
who was previously represented by a lawyer when he
beat up his wife can hear about that divorce case
being filed from the lawyer who represented him five
years ago on that assault case.

That's because the proposed rule is aimed at
solicitation and not at the threat of domestic
violence. There is no requirement that in preventing
the solicitation that there be any allegation of a
threat or a reasonable suspicion that there is going
to be domestic violence, nothing like that. All you
have to do is have the suffix, the prefix, whatever,
on your complaint that matches a domestic -- a family
matter case, and automatically for 14 days or until
proof of service is filed you can't send your trolling
letter.

Now, we have heard that, well, it really is a
short period of time, and it's probably less than 14
days, because often within two or three days of the
proof of service service is made, but there is no
requirement that you file a proof of service in two or
three days. How does anybody know that service has
been made? So for all intents and purposes it's going
to be a 14-day period.

The cases that were cited to you involving
the stay periods -- 45 days, 30 days, 20 days -- in ambulance chasing cases simply don't apply. Those involve, as was stated, ambulance chasing. That's for purposes of starting a lawsuit, where you are looking for plaintiffs.

If we are going to analogize it to our situation here, if you saw an article in the paper about a woman in a hospital who was beat up and her husband was under suspicion, he was a person of interest being interviewed by the police, and there was a court rule or there was a statute that said you can't call the wife, the woman sitting in the hospital, and say, you know, you don't have to take this kind of abuse. We are very experienced in handling divorce cases for abused spouses, why don't you let us start a divorce action for you? Then it would be analogous to the ambulance chasing cases. But here we have a case that's already been filed. The solicitation goes to a party, not to a prospective plaintiff.

If we want to analogize to the ambulance chasing cases on the other side, you have already had your complaint filed, you had your plane crash, you are representing the family, somebody is representing the family. Would anybody say you can't write a
letter to United Airlines and say did you know a complaint has been filed against you? Would you have to wait 14 days to send a letter to United Airlines? That's how they are trying to analogize it in this situation. The cases simply do not apply.

I think we all agree that commercial speech is protected. You can have restrictions. They just have to be very narrowly drawn. Here they are not narrowly drawn. While 14 days may be considered narrow, it's not narrow here, because it applies to every family matter case, not just cases where there is some reasonable chance that you have a problem, and it applies to lawyers in certain situations and not other situations. There is no showing here that there is a bigger danger if you find out from a lawyer who doesn't know the plaintiff -- know the defendant versus if you find out about the case from the newspaper, from a different lawyer, from a family member, from another source, from the internet.

In the example that was given, the very personal example that you heard about where the wife found the check in the pocket, she found out that way about a potential divorce case. She didn't find out about it because a lawyer wrote a letter. So there is no showing that this is going to prevent any harm, and
it's very, very, very overbroad. The Ethics Committee urges you not to adopt the proposed rule, and I thank you very much for your time.

CHAIRPERSON JOHNSON: Thank you. Is there any further discussion on the motion? Hearing none, there is -- I am sorry. If you would please go to the microphone and indicate -- excuse me, we'll have order. If you will please go to the microphone and give your name and your circuit, please.

MS. HAROUTUNIAN: Madam Chair, Ed Haroutunian from the 6th circuit. I have two questions for the proponents. One, what other states have such a rule with regard to the family law area, and, secondly, if a client finds out about a divorce but has not been served, can the attorney ethically deal with that client? Those are the two questions that I have, Madam Chair, and I would hope that someone from the proponent's side would respond.

CHAIRPERSON JOHNSON: Mr. Martina, if you can respond to that.

MR. MARTINA: I have to say, just like Arizona and Florida and other states who have taken, I think, very responsible moves towards dealing with issues like this, I don't know of other states that have done this. I don't know though if in other
states there are people out there who are contacting individuals on family law matters before they are even served. The reality of it is that we know this is a problem for those of us that do family law. You know, a substantial number of cases that get filed do require some sort of ex parte relief, and so what we are trying to do is deal with the problem before it develops a lot of momentum.

I really didn't understand the second question. I apologize.

MS. HAROUTUNIAN: May I?

CHAIRPERSON JOHNSON: Without objection, you may restate.

MS. HAROUTUNIAN: For clarification, here is the question. If a client finds out about a divorce but he has not been served with that divorce, can he go to an attorney and speak to the attorney without having been served?

MR. MARTINA: Oh, absolutely. First we have to remember, just because an ex parte order is effective when entered, it's not enforceable till served, but the bottom line is that if a person finds out that, absolutely, and they can look at an advertisement to take them to that lawyer or they could have maybe gotten a general solicitation by mail
from that lawyer previously, thought, you know, they
look competent, they are in the area, I can go to
them, or they could have seen them on radio or
television or any number of reasons. Absolutely
nothing would prevent that whatsoever. The lawyer
would be doing nothing wrong.

MS. HAROUTUNIAN: In follow up.

JUDGE CHMURA: If he wants to finish making a
statement.

CHAIRPERSON JOHNSON: Sure, and please
remember each speaker may only speak once and speak
for no more than three minutes.

If you want to follow up on your question,
yes, you may do that, Mr. Haroutunian.

MS. HAROUTUNIAN: The follow-up is, from the
attorney's point of view, will the lawyer be somehow
ethically, have an ethical problem by speaking to a
client who has not been served but who knows that a
divorce is coming, and my concern is what does that do
to the lawyer, because you are now potentially putting
that lawyer on the spot, and in my judgment there are
enough things in this world where lawyers are put on
the spot.

MR. MARTINA: This would not prohibit that at
all. If a person --
CHAIRPERSON JOHNSON: Mr. Martina, I am sorry. You can't answer that at this point. Thank you.

Yes, sir.

MR. MCCLORY: Mike McClory from the 3rd circuit. I am a former chair of the Probate Estate Planning Section, so I have enough knowledge to be dangerous about court rules. We dealt with a new probate code. We have a new trust code that takes effect April 1st. I doubt my wisdom in this area, because I don't do anything in it, but I just want to throw out some general things that I think we should consider as we are deliberating this.

The first is I was struck by, you know, not really having a valid example of it, like something that actually occurred as a result of solicitation that did cause this harm.

The other thing that I am, you know, struck by is that this is how we work with both trust code, probate code, other probate legislation, other court rules. If you don't have a consensus from these different groups and you try to get that, we would not usually go forward. What I am saying is that they have chosen, the Family Law Section, for their own tactical reasons when they had this consensus 18
months ago to come to the Bar section to try to get 
our endorsement to somehow maybe grease the skids. 

    Now, I have never dealt with something along 
this nature. Why they haven't and why they still 
don't, and they are free to do so as far as I know, 
unless this is one of those administration of justice 
issues, just submit this to the Supreme Court 
themselves, just to go ahead and do that and then have 
the comment process go through. I think what we have 
to be careful with as an organization, however we 
decide, and I am just really not quite sure what I am 
going to do myself, is that why they haven't chosen to 
do that 18 months ago when they had this consensus. 

    The other thing that strikes me is the 
question Ed asked about no other states having done 
something similar. For instance, when we were 
adopting Michigan Trust Code, which takes place 
April 1st, there are 22 states that have different 
versions of the Uniform Trust Code, which we drew out 
significant parts. So that shows we are kind of like 
in a trend line. We are going along in terms of doing 
that. 

    I am not saying that there can't be a problem 
here, but these are all issues from a policy 
standpoint that we have to consider in terms of doing
that, in terms of letting this go ahead on our own if
there is this dispute between the two different
sections or whether we are so sure that it's
overridingly important to go ahead and give this huge
endorsement. That's all I have to stay.

CHAIRPERSON JOHNSON: Thank you, Mr. McClory.

MR. KRIEGER: Madam Chair, Nick Krieger from
the 3rd circuit. I have a couple questions.

Constitutional issues aside, I think it could be more
precisely tailored, but that's neither here nor there.
I suppose it is, but my real question is what teeth
are there here? I mean, would this just be a general
grievable offense, and, if so, isn't it already
covered by MRPC 7.3(A)? 7.3(A), of course, is very
broad, but if you read the official comments, the
Supreme Court has stated that it is to be interpreted,
you know, in accordance with Shapero. It needs to be
read in a limited fashion so as not to violate
Shapero. Well, neither would this maybe, at least the
proponents say that it wouldn't.

So I think it might be a duplication of
7.3(A), which, of course, is broader and doesn't just
apply to family law cases, but it says that you can't
go out and solicit somebody if you are looking for
your own pecuniary gain. Well, of course, attorneys
always solicit people for their own pecuniary gain, but maybe it’s already covered.

And the last thing is, if it's in the Professional Rules of Conduct or the Court Rules, I don't think it's anything more than a sanctionable offense, and I want to know if I am wrong about that and if someone who does this could be sanctioned by a trial court. I find no parallel provisions to 7219 or 7319 for trial courts, which would allow a trial court to award general sanction for gross violation of the Court Rules or the Michigan Rules of Professional Conduct, whereas the Court of Appeals and the Supreme Court can. So maybe somebody could address that. Thank you.

CHAIRPERSON JOHNSON: Thank you, Mr. Krieger. Woman at the microphone here.

MS. OEMKE: Kathleen Oemke, 44th circuit. I am speaking in favor of the proposal. The idea that domestic violence is predictable is ridiculous. One never knows when anything is going to erupt. The calmest families can have emotional breakdowns and breakdowns in temperament so that people can be put in danger at a moment’s notice.

People can find out about their situation in public record if they are looking for it; however, as
we all know, people don't go looking for that information unless they have suspicions regarding that.

I believe that the previous attorneys or the family members that are attorneys that have contact with the person would have an established method of trust and would be able to assist the people in a domestic arena and perhaps prevent further damage.

Thank you.

CHAIRPERSON JOHNSON: Thank you, Ms. Oemke. Gentleman here at this microphone.

MR. LINDEN: Jeff Linden, 6th circuit. I am not necessarily in favor or against the concept of protecting the perceived harm. I tend to want to protect the perceived harm from occurring. My concern is in line with Mr. Haroutunian's comment that I don't think this proposal gets us there in the following way: It reads in the second clause, A lawyer may not contact or solicit a party for purposes of establishing a client/lawyer relationship.

In Mr. Haroutunian's example where a family law defendant becomes aware of the case that has not been either served with the case and the 14 days has not expired and seeks to contact a lawyer, as this is written, that lawyer that is contacted, let's say a
voicemail message was left, could not call that person
back without violating this proposal. And I don't
think that in this circumstance, as written, that the
risks to the professional who is not doing the
trolling that the people are trying to prohibit stands
at risk of having ethical or professional discipline,
which I don't believe was intended, and I understand
the proponents have argued that that isn't what it
says and that's not what's intended, but the language
used does appear to be contact, and calling somebody
back would be contact for purposes of establishing a
special relationship, and if you are not a relative
and you don't have prior business with that person,
you would violate this proposal, and to that extent I
think as written this is overbroad.

CHAIRPERSON JOHNSON: Thank you, Mr. Linden.
The woman at the microphone over here.

MS. WASHINGTON: Good afternoon,
Erane Washington, 22nd circuit, and I am neither in
favor or opposed. I don't know where I am yet, but I
do have some concerns with the way it's currently
written as well, and this goes to the issue of
predicting. I think that it's not in every case you
can predict whether there is going to be domestic
violence, but there are indicators. Having done
criminal law and some family law, I know that there
are indicators and there is a series of standards that
are used to determine whether or not someone is going
to be a batterer in a domestic situation, and there
are indicators with respect to children and whether
there is a risk of harm or them being taken out of the
city.

So my concern is in addressing that I have
the overly broad issue with family law in every family
law case this particular statute would apply, and I
would ask the committee whether or not they would
consider imposing some type of a duty on the family
law practitioner who is filing the case to provide an
affidavit indicating that there is some type of
domestic situation going on. In that event it would
be narrowly tailored to situations in which there were
domestic violence, and then you impose an ethical duty
upon the practitioner to actually take a look at that
and see whether there is an indicator.

And then, secondly, my next concern is that
in this particular situation where this rule would
apply it seems to go further in basically sending to
the public that whole rule that the first to file
actually ends up with the right to the children and
all those other issues. So I think you have to look
at it and deal with the overly broad way that it's written right now.

CHAIRPERSON JOHNSON: Thank you. Gentleman over here.

MR. WEINER: James C. Weiner from the 6th circuit. Two things. One, I listened to this, and I have feelings both ways, but I would like to say that I think this is simple enough, 14 days and up, it's a bright line rule, and it's actually probably very easy even ethically for us to take a look at.

Now, I would like to also propose a friendly amendment to say, A lawyer may not initiate contact or solicit a party. So that gets us around returning phone calls from somebody that's contacted them. That gets us around talking to somebody that they had solicited an attorney.

CHAIRPERSON JOHNSON: Mr. Weiner, will you repeat your friendly amendment, then I will ask the proponent if she is in favor of that.

MR. WEINER: I would like to add the word "initiate" immediately prior to "contact" on the second line.

MS. SADOWSKI: The proponent accepts the friendly amendment.

CHAIRPERSON JOHNSON: Thank you,
Ms. Sadowski.

Is there any further discussion?

MR. MIENK: Roy Mienk from the 55th circuit. I think to me the problem is that, as stated, it's a simple rule, and it was originally targetted at a specific problem of trolling. The rule should actually be specific to the problem. I mean, you can analogize this to all kinds of cases. Some of the worst cases I have seen are real estate property line cases, and the neighbors get notice of it, and then they are fighting.

So if you are looking to do all cases, then do all cases, but just to limit it to family law, if you are going to do this for trolling, make it specific for trolling. Define trolling and put it in the resolution, because it's just a general rule which to me anybody that did direct mailing would be in violation of, and so now we have got somebody who does a direct mailing in violation of the rule, and he could be brought up on ethical charges, and I think that's where I see the Ethics Committee is coming, that people that are not targetted by the rule would be in trouble.

CHAIRPERSON JOHNSON: Thank you very much. Any further discussion?
MS. SADOWSKI: Is response from the proponent allowable?

CHAIRPERSON JOHNSON: From the floor, if you want to move to close debate.

MR. WEINER: Point of order, shouldn't we vote on the friendly amendment first before we vote on --

CHAIRPERSON JOHNSON: No.

MR. WEINER: Oh, it's a friendly amendment.

CHAIRPERSON JOHNSON: It was accepted.

You are the proponent. If you wish to make a final statement, you may.

MR. REISER: May I just briefly be heard? If not, I will sit down and we will vote.

CHAIRPERSON JOHNSON: She has not come to the podium yet. I will allow it.

MR. REISER: John Reiser, 22nd circuit. I don't think this is to address trolling. I think this is to address the extra judicial things that go on prior. It's not the receipt of the letter or the sending of the letter. It's what gets done once they get notice and don't hire the lawyer. It's that which is done prior to the defendant coming in to court, alienating the assets.

As an assistant prosecuting attorney in
Ann Arbor, I have the luxury of law enforcement policies which strongly favor arrests in domestic violence cases, which means that the defendant is hauled before the court and the conditions are gone over with that defendant. Why I am supporting this is because over the last three years the Family Law Council has unanimously been in favor of it, and I understand that the Family Law Council is attorneys who represent both plaintiffs and defendants, both the wives and the husbands, and if we are nothing, we are an organization which regulates ourself, and those people who know best about this stuff are saying we got to do this to protect people, to protect families, and that's why I would urge our members to support this. Thank you.

CHAIRPERSON JOHNSON: Thank you very much, Mr. Reiser.

If there is no further discussion, the proponent may make a final statement, and I will call you to the podium, please.

MS. SADOWSKI: As Mr. Reiser stated, this is not an anti-trolling statute. This is a proposal to stop prior notice in order to prevent irreparable injury, loss, other damage resulting from the delay required to effect notice or that notice will
precipitate adverse action before an order is issued. That's what this is about. It is the problem with the notice requirement that would violate an ex parte order, the spirit of an ex parte order already in our statutes.

Our special proceedings section of our Court Rules, the 3.200, is inclusive of all family law matters. Thank you.

CHAIRPERSON JOHNSON: Thank you very much. There is now a motion on the floor, and the debate has been closed with the final proponent. There is a motion and a second on the floor to move the proposal as presented with the one word "initiate" inserted.

Hearing no further discussion, all those in favor of the proposal for attorney solicitation as proposed with the insertion please signify by saying aye.

All those opposed say no.

Any abstentions?

VOICE: Division.

CHAIRPERSON JOHNSON: At this point I have heard a call for division. There is no debate. I would ask -- I am going to repeat the request again, and I am going to ask you to stand. Will the clerk and the vice chairperson please count the votes.
Those in favor of the proposal for the attorney solicitation with the one word "initiate" inserted, please stand now.

(Votes being counted.)

CHAIRPERSON JOHNSON: Thank you. Those members may be seated. All those opposed please stand now.

(Votes being counted.)

CHAIRPERSON JOHNSON: Thank you. You may all be seated. The tellers have counted. The votes were 68 aye, 43 no. The motion carries. Thank you to all who participated in this, the Family Law Section, the Civil Procedure Committee. We appreciate very much your involvement in this issue.

The next and final item on our calendar is number 17, which is an informational update from the Special Issues Committee considering the revised Uniform Arbitration Act, and at this time I would like to call to the podium the chairperson of the Special Issues Committee, Ms. Krista Licata Haroutunian for her report of the Special Issues Committee.

MS. HAROUTUNIAN: Good afternoon. My name is Krista Licata Haroutunian. I am chair of the Special Issues Committee. I am from the 6th circuit.

I wanted to, number one, thank the officers,
Liz and Victoria and Steve, for all their assistance to the committee, because it was great. And I also wanted to thank the members, Ron Foster, Christian Horkey, Judge Kent, Mike McClory, Jeff Crampton, and Dana Warnez. Some of them were able to be here today and some of them are not able to be here today, but, regardless, I thank them anyway.

The Special Issues Committee, we held quite a few phone conferences with regard to the revised Uniform Arbitration Act and this issue that has come before the Assembly before. It got resurrected upon the writing of a white paper by Mary Bedikian, which is included in your documentation.

What you have under the tab is the initial revised Uniform Arbitration Act issued as presented originally to the Representative Assembly. The updated -- the only thing that got changed was, with the assistance of the Drafting Committee, some words got changed in the opposition paragraph, because the Consumer Law Section did draft a response, which you will also find in your materials, and the Family Law Section also submitted information with regard to the Domestic Relations Arbitration Act. In general they were in favor of the RUAA, but in any way that it conflicted with the Domestic Relations Arbitration Act
they disagreed, so that's important to know.

And you will also have the white paper, like I said, by Mary Bedikian, which gives you kind of a summary of the ADR's position, the section's position as to what this would mean to Michigan.

Following that item you have the Consumer Law Section's opposition to that, as well as the actual one-page paper from the Family Law Section.

There were a couple other items that came to Special Issues. One was from Labor and Employment, whose chair is Jeffrey Donahue. He had sent a letter expressing the idea that the Labor and Employment could not take a position on this issue based on the very nature of their section, but they did send us -- they sent us that in writing to make sure that we knew that they had at least looked at it and wanted to address it but could not based on the split in their membership.

The committee unanimously voted at our last conference meeting to continue to collect items that we are receiving from other sections and Bar associations to bring to your attention. We do not feel, as the Special Issues Committee we did not feel that we had collected enough information to sufficiently give you a good report, so we are
continuing to collect information, and people have now
gotten it on their radar and have said, yes, we want
to submit things to you.

So we wanted to give you the update. You
have the printed materials, so please review them. Go
back to your sections or special issues, or I mean
specialty Bars or other Bars that you are interested
in, and discuss this issue with them, and with that,
Madam Chair, our report to you then is that we are
going to come back to you at the next meeting.

CHAIRPERSON JOHNSON: Thank you very much,
Krista. We appreciate your committee's fine work and
the report to us.

At this time I have a few announcements. The
next meeting of the Representative Assembly will be
held on September 30th, 2010, at the Amway Grand in
Grand Rapids so that you can all plan ahead and get
your calendars in order.

Petitions for elections must be filled out
and submitted to Anne Smith. Information about the
elections can be found in the March issue of the Bar
Journal. If you have any questions, please talk to
Anne.

And a special note for those in the 3rd
circuit, due to a recent vacancy in the 3rd circuit
for a term that expires in 2012, there will be an
election for an additional spot for the 3rd circuit
for one seat in addition to the regular four seats
that are up, so that word can get out to the members
of the 3rd circuit.

Attendance sheets must be completed and
returned today for your attendance to be counted.
Please review the rules of conduct -- may I have
order, please. Please review the rules of conduct in
terms of your attendance here. If you are going to be
absent, you must get an excused absence, and there are
requirements for you to attend a certain number of
meetings. Please review that.

I would like to say for a moment a special
thanks for your support of the Representative Assembly
food drive and the Access to Justice fund. I am sure
you saw the huge amount of food that was collected out
there in the barrels, which is a wonderful
contribution, and I have been given the information
from the Access to Justice fund. We raised $565
today, and that doesn't include mileage reimbursements
that people may submit, so that's a wonderful
contribution in one day from the Assembly. I really
thank all of you, and I urge you to continue your
support financially to the Access to Justice.
I would like to thank the Lansing Area Food Bank and the State Bar Foundation, Linda Rexer and Celia Martin. If Celia is here, we appreciate your help very much. And a special thanks to the State Bar staff. When they heard that the Representative Assembly was doing a fundraiser, they also joined in and did a fundraiser, so thank you to the staff on their own initiative for doing that.

Since there is no further business to come before this body, we are adjourned.

(Proceedings concluded at 2:18 p.m.)
STATE OF MICHIGAN  
)  
)  
COUNTY OF CLINTON  
)  
I certify that this transcript, consisting  
of 135 pages, is a complete, true, and correct transcript  
of the proceedings and testimony taken in this case on  
Saturday, March 27, 2010.  

April 19, 2010  
_________________________________  
Connie S. Coon, CSR-2709  
831 North Washington Avenue  
Lansing, Michigan  48906