STATE OF MICHIGAN
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE ASSEMBLY of the STATE BAR OF MICHIGAN

Proceedings had by the Representative Assembly of the State Bar of Michigan at Lansing Community College - West Campus, 5708 Cornerstone, Lansing, Michigan on Saturday, April 13, 2019, at the hour of 9:30 a.m.

AT HEADTABLE:

RICHARD L. CUNNINGHAM, Chairperson
AARON V. BURRELL, Vice-Chairperson
CHELSEA M. REBECK, Clerk
JANET WELCH, Executive Director
HON. JOHN CHMURA, Parliamentarian
CARRIE SHARLOW, Staff Member

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Lansing, Michigan
Saturday, April 13, 2019
9:29 a.m.

RECORD

CHAIRPERSON CUNNINGHAM: Good morning. The April 13th, 2019 session of the Representative Assembly is now in order. I will begin by making a few introductions. I use the prerogative of the Chair, and I would like you to meet, first of all, our vice-chair, Mr. Aaron Burrell, from the 3rd circuit. Next to him is our clerk, Ms. Chelsea Rebeck, from the 6th circuit. To your left and my right, the Honorable John Chmura. He will be serving as our parliamentarian, and next to him, our illustrious leader, Janet Welch, the Executive Director of the State Bar.

We also have a number of people throughout the floor here that I think are deserving of some special recognition. We have our court reporter, Connie Coon, taking down everything. We have some State Bar people here who have done a tremendous job of putting this together, and we rely on them for everything. Carrie Sharlow sitting up front running the AV committee, the AV equipment. In the back I see Katie Hennessey. Peter Cunningham was around. I call
him brother, but, no, we are not related, and I just
want to thank everyone from the State Bar who is here
and present.

I will now ask for the certification of a
quorum. Ms. Rebeck, do we have a quorum present?

CLERK REBECK: Yes, we have a quorum.

CHAIRPERSON CUNNINGHAM: That being the case,
I would ask that Jennifer Frost come forward to one of
the mikes, and Jennifer is going to make the motion
for the adoption of the calendar. Please, Jennifer.

MS. FROST: Jennifer Frost of the 39th
circuit. I move to adopt the calendar as proposed.

CHAIRPERSON CUNNINGHAM: Any comments or
thoughts? Do I hear a second?

VOICE: Second.

CHAIRPERSON CUNNINGHAM: All those in favor.

Thank you very much, Jennifer.

We also have now the summary of the
proceedings, September 27. Any comments, thoughts to
the summary of proceedings? All right.

Do I hear a motion to accept the summary?

VOICE: So moved.

CHAIRPERSON CUNNINGHAM: Thank you. And the
second?

VOICE: Support.
CHAIRPERSON CUNNINGHAM: All those in favor?
All right. The summary of proceedings are approved.

Our next order of business will be to fill the vacancies on the Assembly, and I will call forward the Honorable Michael Brown, who is chair of the Assembly Nominating and Awards Committee.
Judge Brown.

JUDGE BROWN: Good morning, everyone.
You should have received a slate of nominees to fill the vacancies for the Representative Assembly. Is there a motion to approve the slate?

VOICE: So moved.

JUDGE BROWN: Is there a second?

VOICE: Second.

JUDGE BROWN: Any discussion?

All in favor.

Opposed.

Motion passes.

Congratulations to all of the new members of the Representative Assembly. You can take your seats.

(Applause.)

JUDGE BROWN: We will move on to the approval of the 2019 award recipients. The Nomination and Awards Committee reviewed potential nominees for these
positions. For the Unsung Hero Award, we are nominating Clarence Dass. Are there any other nominations from the floor?

Is there a motion to approve him as the award winner by unanimous consent?

VOICE: So move.

JUDGE BROWN: Support?

VOICE: Support.

JUDGE BROWN: All in favor.

Opposed.

Motion passes.

We are on to the Michael Franck Award. The Nominations Committee is nominating Mary Chartier. Is there any other nominations from the floor?

Seeing none, is there a motion to approve by unanimous consent?

VOICE: So moved.

JUDGE BROWN: Support?

VOICE: Yes.

JUDGE BROWN: All in favor.

All opposed.

Motion passes. Thank you.

CHAIRPERSON CUNNINGHAM: Thank you, Judge.

The term "honorable" is an honor given to judges, but in this case the Honorable Michael Brown
has really demonstrated that to be an appropriate
title for him as a person beyond his office. He has
been exemplary in his service to this Assembly for
some time, both before and after, so I do thank him
for coming before you.

The next item on the agenda is the Chairman's
Report. Well, my report to you is that the legal
profession in Michigan is alive and well. Actually we
are thriving. We are composed, and we can see it in
this room, of people who work for the government,
people who represent clients, who work in big firms,
who work in small firms, who do a variety, who teach,
but we have a common thread, a common thread to this
legal profession, what we are all about, what our
duties are, what our responsibilities are, what our
character is.

Now, that character is put no better than we
see in the preamble to the Michigan Code of
Professional Responsibility. What we are told there
is that a lawyer is a representative of clients, an
officer of the legal system, and the public citizen
having special responsibility for the quality of
justice.

That's our core purpose. That is our core
being. That is our foundation of what we do, being
prosecutors, defense attorneys, civil attorneys, family law attorneys. It's all in terms of representing clients, an officer of the legal system, and a public citizen having that special responsibility for the quality of justice.

Now, in Michigan we have chosen a system to carry out that fundamental concept. We have an integrated bar, and in Michigan the integrated bar has long served and served well the responsibilities and duties that we have. And I don't think that there is any better way to put this than the way that it was put in the brief, the amici brief that the State Bar filed in the Fleck case.

The attorney representing the interests of the State Bar made the note that an integrated bar is a state governmental organization requiring membership and financial support of all attorneys admitted to practice in this jurisdiction.

Now, most states have created integrated bars as essential instruments to assist in regulating the legal profession, promoting the lawyer's ethical obligation, and developing the law and administering justice. We are ministers of justice. We perform an important government function. We are seeing that as a theme of discussion that we have today. This
fundamental obligation, fundamental duty, fundamental part of our character to be an officer of the legal system.

We are going to hear from our Executive Director, and she is going to talk to us about the Fleck case, some of the attacks actually on the concept of the integrated bar, the Bar that has served us so well, the concept that has served us and the citizens and the whole legal system in Michigan.

Now, after that we are going to move on to an area that you authorized the last meeting. We talked about needing to see an examination of a way we do business. All of us here are part of the governance of the State Bar. We all have that duty and obligation to carry out this fundamental requirement, but how do we do that? What are the methods? What are the ways that go about?

Now, we have a system of governance that was really last looked at about 50 years ago. As I look around this room, 50 years ago most of you weren't even here. Fifty years ago I was crawling in a jungle in Vietnam. I wasn't thinking about terms of State Bar governance, so maybe it's time to look at what's happened in the last 50 years.

The internet. Well, I'm crawling through the
jungle, somebody told me about an internet, I would have given them a real look.

But is this something that we should look at? Is this something we should consider? It's about 50 years since we last did this. So this Assembly appointed or authorized us to develop a task force to look at State Bar governance, and the Task Force displayed initially some real wisdom here, because they recognized that we really shouldn't wing it, we shouldn't try to do it on our own, we should look for some professional help, we should go to a real pro, and so we did. And so you are going to see a presentation today by Mark Engle, the professional that we went to.

The presentation you are going to hear today is really the techniques and the procedures that are going to be followed to develop any necessary changes in governance. We are not going to debate whether the changes are necessary now. We are not going to debate what those changes are going to be. What we are going to do is have an informational presentation from Mark about the procedures that are going to be followed and the way that things are going to be, so that's what I see coming today.

We also have two proposals, two proposals
that have come from members of the Bar, proposals about interim administrator, proposal about vacation time, and you will here some proponents arguing for that, and we will have the opportunity to debate and discuss that.

And, finally, the thing I would like to talk about is recognizing. As was said in that brief, the integrated bar is a state governmental organization. We carry out. We are ministers of justice. We carry out and have a duty to look a little bit further in ways that would help establish this.

One of the fundamental commitments that we have as an organized bar is a commitment to diversity and inclusion, that all people should participate equally, not only in bar membership, but in the justice system as a whole. All should have the ability to enjoy the protections of the legal system on an equal basis.

Now, when we looked at the initial part of governance, I questioned whether we are effectively using the resources that we have. Are we effectively making the best use of the committee system? We have a Special Issues Committee, and I have charged that Special Issues Committee to look at the issue of fair and just representations on juries. That's not
something that will be done overnight. That's a
long-term process that I have started, and I have
started it with the commitment and acceptance of my
successor, Aaron Burrell, that we do expect that this
will be looked at and considered.

The head of our Special Issues and the chair
of that committee, Dave Gilbert, has given me his
commitment that he will be involved in this very
actively, and I think that Dave is especially suited
to do so with his background as a long-term criminal
defendant and now the elected prosecutor in Calhoun
County and the recognition of the importance of having
fair and balanced juries. How can that come about?
Well, that's what they are going to look at. That's
one of the charges that I have given.

So, in summary, and I promised Janet I would
not use all my time, you are going to have an
interesting day today. Thank you.

(Applause.)

EXECUTIVE DIRECTOR WELCH: Good morning
everyone. I did not know what your chairman was going
to say today, but every time I hear him speak I am
reminded that good lawyers make good leaders and good
leaders makes good lawyers. He has a gift for getting
right to the point, and I am hoping I can build on his
eloquence about the noble profession that we represent today.

So my assignment today is to bring you up to date on where we left off in September on challenges to the mandatory bar. Now we are calling it the integrated bar, and that's part of the story.

In September we were waiting to see whether the U.S. Supreme Court was going to grant cert, and literally we were waiting hour by hour thinking we might know that very day. They, of course, have granted cert in the Fleck case challenging the constitutionality of the North Dakota State Bar. And in the interim, between September and now, the State Bar of Michigan has been deeply involved in working with other integrated bars on how we respond to, not just the Fleck challenge, but challenges that are cropping up all across the country, and in the course of those conversations we have all realized that calling what we are a mandatory bar is a misnomer, and it's a misnomer for this reason. In every jurisdiction of this country in every state it's mandatory to be admitted to the bar, to become a member of the bar of that state in order to be licensed to practice law, and in every state in this country you have to pay a mandatory annual fee in
order to maintain your license.

The difference in the states that used to be called mandatory and that I have to keep reminding myself not to call mandatory bars, the difference in those states is that the states have chosen to integrate the bar, the lawyers of that state, into the regulation of the practice of law.

So right off the bat there is a change, but before I get into the detail of what's occurred in the six months that we have been apart, I wanted to warm you up with a word that is almost never associated with lawyers or the legal profession or the Bar, and that word is "imagination." So I offer this. This is your mental warm-up to build on what you have heard your chairman say today, and it's inspired by this book. Has anyone read this book?

So, like many books that I recommend, I haven't read it, but many people whose word I take say it's a great read. It's a New York Times best seller. I have read reviews, and the premise of the book is that human beings' distinction as a species is that we are able to collaborate and build based on intangible ideas. So this is a quote that sort of illustrates that.

Large numbers of strangers can cooperate
successfully by believing in common myths. Any large
scale human cooperation -- whether a modern state, a
medieval church, an ancient city, or an archaic tribe,
or a bar association -- is rooted in common myths that
exist only in people's collective imagination. So
what does that have to do with challenges to the
integrated bar?

Eighty-four years ago a small group of
Michigan attorneys imagined a State Bar that
encompassed all attorneys and whose primary purpose in
the familiar words of its president, the president of
the voluntary Bar at that time, Roberts P. Hudson, was
the protection of the public. So I invite you right
now to imagine those pioneering attorneys walking into
this room. What would they think of us today, an
organization of 45,000 lawyers with an operating
budget greater than the entire operating budget for
state government in 1935?

Imagine them looking at you, wondering what
are these strange things that each of you keeps
playing with, but grappling with such familiar topics
as to how to protect clients when a practice ends, and
think of their surprise at your faces. Women, lots of
women in this room, people of color, strange dress.
What happened to all the suits? Use your imagination
about what we can be going forward thinking about how
surprised, proud, astonished they would be about who
we are today.

So we have about a hundred lawyers in the
room. Chelsea, whatever the quorum turned out to be.

CLERK REBECK: At least 50.

EXECUTIVE DIRECTOR WELCH: So if we have at
least 50 lawyers in this room, we have probably got a
hundred different ideas about what the State Bar of
Michigan is, but what we collectively imagine it to be
is what matters for how effective we are. So with
that, here is the story of the last six months.

This is to remind you of who the integrated
bar states are and who the unintegrated bar states
are, and in red, those are the two states that the
U.S. Supreme Court has actually examined in the
context of the case -- Lathrop V. the State Bar of
Wisconsin and Keller V. State Bar of California.

So I think this is what the world looks like
to the U.S. Supreme Court at this moment, kind of
black and white; that what they know about the
mandatory bar they know from what their predecessors
told them about the State Bar of Wisconsin and the
State Bar of California, and they really don't know
anything about how that contrasts with what happens in
the non-integrated bar states. So what we have been doing has been organizing to tell the story, to tell a deeper, more enlightened story about this picture.

So, again, to remind you what the actual jurisprudence is that we are working with, Hanson -- so we have this back and forth between the brown union cases and the blue integrated bar cases. Hanson was a railroad union case that had what I consider a throwaway line about mandatory bars, I believe that was the word they used, being that it's okay to impose an agency fee on railroad workers, because it's okay to have a mandatory bar. I mean, without any explanation, that's fine. Then when the court took the case in Lathrop against the State Bar of Wisconsin, they referred back to Hanson and said, as we said, everything is okay in terms of the First Amendment with mandatory bars.

Along comes Abood in the middle of the '70s and said that agency fees are okay, but only if the money that unions are spending is only for the purposes of the collective bargaining that benefits the nonunion members who are having an agency fee imposed on them, and there has to be strict accounting for that.

So Keller V. State Bar of California, which
is what we are all living with right now, again upheld
the constitutionality of an integrated bar but said
that mandatory dues, compelled dues, could only be
used by the integrated bar for purposes related to
subject matter, purposes related to the regulation of
the legal profession, or improvements in the quality
of legal services, and we all are very familiar with
how we have learned to live with those restrictions.

So last June along comes Janus, which was a
challenge to agency fees in the context of public
sector unions and public sector employee unions, and
it tossed out Abood.

Keller decision references Abood liberally
and says, in effect, one way in which the integrated
bar can make sure that it's not violating the First
Amendment is to use the procedures that we have laid
out in Abood for opt-in/opt-out charges relative to
accountability. So that sets the stage for Fleck.

The Fleck case, as you will recall from
September, was pending pre-Janus, and what the court
did was send it back to the 8th Circuit where the
State Bar of North Dakota had prevailed and said,
Please reconsider this in light of Janus.

So what's happened since that? Here is
Fleck, the only case that's been to the
U.S. Supreme Court and remanded back. In the immediate aftermath of that happening, there was a lawsuit filed in the State of Oregon, Gruber, which just this week the magistrate recommended dismissal, made findings on recommendations of dismissal, so that's good news at this point for the Oregon State Bar.

The next case, two days after Gruber was filed, there was an amendment to a case against the State Bar of Washington, Washington State Bar Association, that was at the 9th Circuit that was amended to a count based on Janus just three weeks ago, I believe, two weeks ago. The State Bar of Texas was sued in the 5th Circuit, and last week the Executive Director of the Oklahoma Bar -- this one got my attention in particular -- was the sole defendant in a case filed in Oklahoma in the 10th Circuit, and two days ago the State Bar of Wisconsin was sued in the 7th Circuit, a civil rights complaint. Wisconsin, by the way, gets sued regularly. But you see a lot of action west of the Mississippi, and with Wisconsin, you know, the flood may be coming in our direction.

So I am happy to say that we are, with all of this activity, that the integrated bars have gotten together for the first time ever. We have had, if you
can imagine the conference call with 24 integrated
state bars, we have had more than one of those, and we
have prepared for, not only Fleck, but what might
happen going forward from Fleck.

So the briefs in Fleck were filed last month,
the end of last month, and here are the arguments.
Not surprising. Fleck is arguing, has a big argument,
a big-bore argument and a small-bore argument. The
first one is that mandatory state bar associations
violate freedom of speech and association and
classifying the integrated bar basically as a not
even glorified trade association. And the small-bore
argument is that the way in which the State Bar of
North Dakota carried out its opt-out option for
activities that were outside of Keller violated the
First Amendment.

So the State Bar of North Dakota's defense
is, first of all, that Fleck in the first round before
the appeal to the U.S. Supreme Court waived the right
to assert that Keller and Lathrop didn't govern the
outcome. Second, that Janus did not overrule Keller
and Lathrop, and, third, even assuming that the strict
scrutiny that was applied in Janus applies to
integrated bar associations, that the State Bar of
North Dakota can survive that level of scrutiny, and,
finally, that their opt-out procedure for payment of non-germane expenditures is constitutional.

The result of the discussions that the integrated bar states have had, these mammoth calls that we have had, resulted in a joint defense agreement that has allowed us to discuss in detail ways in which we could collaborate, the ways in which our views of the integrated bar were compatible and how we could advance our arguments effectively.

These are the states that participated in the joint defense agreement, and I really want you to take a look at this and appreciate how remarkable this is. Integrated bar states have never -- no two integrated bar states have ever collaborated like this, and we have 18 states that have signed a joint defense agreement.

So what has happened is the beginning of this month was the deadline for the filing of the amicus briefs, and this is where things stand. There was only one amicus brief filed on Fleck's behalf from the Pacific Legal Foundation, and its main argument basically is that integrated bar states do a terrible job of regulating the legal profession, assumes that they do regulate the legal profession, which is a simplistic way of looking at what we do, and really
picking on the State Bar of California. Seriously, I would recommend reading it. It's fairly entertaining.

There were two amicus briefs filed at the cert level at the U.S. Supreme Court that are worth noting, one from the National Right-To-Work Legal Defense Foundation, and the other from the Goldwater Institute, and the lead attorney on the amicus brief at that level is from the Goldwater Institute. It's actually the attorney, Fleck's attorney in the 8th Circuit.

So on the pro-integrated bar side, Michigan's brief, joined by Alaska, Arizona, Kentucky, South Dakota, and Wyoming, is joined by a brief from Missouri, which is in the 8th Circuit -- the State Bar of Missouri is in the 8th Circuit -- a California brief that basically says we are not like that anymore, we are not integrated or mandatory, leave us alone, and a surprising and interesting brief from a Texas ethics professor. So I will tell you a little bit about what each of them say.

Michigan's brief makes four points basically. One, that any holding that the 8th Circuit comes up with we say should be narrow and limited to the State Bar of North Dakota, and we emphasize that the variation among the integrated bar states is great.
enough that you can't make a general determination regarding the impact of Janus that applies to all integrated bar states, and that determining what constitutes government speech is a highly fact-specific exercise, so it shouldn't be -- they shouldn't make a determination that applies to everybody.

Secondly, we said that integrated bars operate under restrictions that protect members' free speech and go into detail about what those are in each of the states, the amici states.

We have said that construing Janus to muzzle integrated bar states would impair state regulation of the legal profession, the Bar's reliance argument. If you read Janus, you know that reliance was a big part of the argument. Knocking down the union's reliance argument in particular was a big part of the majority.

And, finally, that Janus did not overrule Keller, and in that part of the brief we really emphasized, as your chairman pointed out, that what is distinctive about bars and the integrated bars and how we are different from unions, and, finally, tying that to the point that integrated-bar speech is not private speech.

The Missouri brief, just quickly, backs up
the State Bar of North Dakota's point that Janus did not overrule Keller and Lathrop. It elaborates on the point that Janus is consistent with Keller and Lathrop. It makes a distinction between what integrated bars do and the reasoning about agency fees in Janus, and it also elaborates on the State Bar of North Dakota's points about strict scrutiny.

So Texas ethics legal counsel is basically a reliance argument that says that integrated bars do a great job of elevating the regulation of the legal profession and ethics, and it would do real harm to undo do that.

So I want to get back to this point in conclusion. What's been happening in the last six months is that we have been retelling the story of who we are, that we are not a static, self-protecting trade association but rather a dynamic government institution created to further the public good.

At this particular point in time the collective imagination of the nine justices of U.S. Supreme Court are up for grabs. Our job right now is to work toward helping them imagine the Bar the same way we do. We are on our way, and the work that you are turning to next, reimagining the possibilities for how we carry out the business of governing the
integrated Bar in the state in the 21st Century is really an important part of that work, and I look forward to seeing you do that and helping you do that work. Thank you.

(Applause.)

CHAIRPERSON CUNNINGHAM: Thank you, Janet. We do appreciate the information.

I would like to move on now, and I would ask our president, Jennifer Grieco, to come forward. We are going to talk about the Task Force on Governance.

PRESIDENT GRIECO: Good morning, everyone. How are you?

As our esteemed chairperson has indicated, the R.A. was established in 1972. It's been a long time since we have looked at governance of our Bar, the Board of Commissioners, and the Representative Assembly. You approved the Task Force in September. We have had our first meeting on March 18th. That was between officers of the R.A. and officers of the Board of Commissioners. We had a really great discussion, robust discussion about governance, about the problems with our structure now, the process to determine whether there is a better structure that can be made and whether we can be more efficient, more effective, more responsive.
This examination was prompted by three major changes affecting the Bar association and the practice of law. One is the change in the delivery of legal services and its regulation, the challenges to the mandatory Bar that Janet just talked about, and the advancements of technology and access to information.

Change is difficult, change is hard, but we need to be Bar leaders who are focused on what is best for the organization. How do we best serve the 45,000 members of the State Bar and, more importantly, the public that we all serve.

As Mr. Cunningham has indicated, we have retained a company, Mark Engle and Jeff Henry from Association Management firm. We are fortunate to have Mark Engle here with us today to report on our initial meeting, that meeting we had on March 18th, and to give the R.A. members a sense of the process going forward. Mark did the same yesterday with the Board of Commissioners.

Just a little bit about Mark and his expertise. He is a principal at Association Management Center. He received his doctorate of management from Case Western Reserve University in Cleveland, Ohio, focusing on nonprofit governance. He has worked with a number of bar associations, most
recently the Ohio State Bar Association, and he has presented a number of times at the ABA Bar Leadership meeting. Many of our members of the Board of Commissioners have attended those meetings and had the privilege of hearing him speak.

So I am going to have Mark Engle come up and speak. I don't know if you wanted to say anything else now about the process. And Mark is going to go through with all of us the process that our Task Force is going through and let you know what that process is and how you are going to be asked for input at various points along the way. So Mark Engle, please.

(Applause.)

MR. ENGLE: Thank you. Good morning. Pleasure to be here.

And if I have learned anything in the last ten years working with the state bar associations, if you have seen one state bar association, you have seen one state bar association.

Just to support what Janet said about the work that you are doing right now with the challenges. Each bar association is very different, and it's always fun to look under the sheets and unravel the mysteries of how you work and how you get things done, and I think that's a good start of what we are trying
to achieve here.

So my purpose in being here is really four-fold. One is to observe. I always like to learn about how governance is implemented in different organizations. So I am observing, I am learning with you, and I am going to share methodology about the journey we are going to go through in looking at your governance structure and examine some opportunities for efficiency changes perhaps, and then also to let you know we are in the process that we are going to be seeking your input and guidance, so those are the four elements that we are getting into.

As Jennifer just said, we are very early in this process, so that's why I consider this to be a safe zone to come, because if you ask questions, we don't have answers yet other than around the methodology and the opportunity to weigh in. But if we have learned something so far in our initial investigation, it's that you are a large, complex organization, and we do need to understand more about who you are, how you operate, and the culture of the organization, and the capacity for change, because the variables we examine in each of the organizations that we look at are generally the same variables, but the application is always unique, and that's the exciting
part of the journey for us, and I think that makes it equally exciting I think for you as well. So we will be examining where you are going as an organization.

First of all, the charter of the resolution that you approved, this was taken from your resolution from, I think it was the September meeting, so this should look familiar to most of you, but we are examining whether there is a necessity for change in the structure of governance, the scope of operations of the State Bar of Michigan and to make recommendations to that effect.

So when we start this process with organizations, and we deal with nonprofits from the social sector of a billion dollar budget to very small, narrow associations, so we have a pretty good depth and breadth of areas that we investigate. So we always started our line of inquiry, What are we trying to investigate for you? And so these are the types of questions that we are going to be examining as we go through this process.

So what is the rate of change in the practice of law? And I am not a lawyer, but I can imagine that the complexity in your field has changed dramatically, and the opportunities for people to get legal services has changed dramatically.
In fact, I was with the orthodontist recently, and that's an area where you want to change very slowly, I would suspect. Somebody being in my mouth, I want to make sure they have a good practice going on before any experiment from them, and you can go online today and get your orthodontia online. They will send you the mold. You get to apply it yourself, probably wonderful flavors and everything, and so the orthodontists were saying, well, that's fine, you can start doing that, but then when you need that fixed, which will be pretty soon, you will come back to us as a professional.

Change is going on out in our communities in every profession we can imagine, and so one of the questions we always ask, Are there significant changes in the practice of law? I suspect that there is on a daily basis.

So does the rate of change impacting the profession and practice of law, has the way you are making decisions at the State Bar of Michigan kept pace with the rate of the change in the profession and practice? So this is a line of inquiry we ask. Do you have the capacity to make decisions, consequential decisions, on a timely basis to impact professional practice in the state of Michigan? So that's kind of
a line of inquiry that we like to start with. Have
you evolved this process or not? What does it look
like today? What did it look like, as you said, back
in the 1970s.

Secondly is your personal investment of time.
You are here on a weekend. You could be working or
probably spend time with family or other activities.
What is the ROI for your investment of your time in
the governance of the State Bar of Michigan? When is
it most productive and when is it least productive and
how can we advance that? What's the right size and
composition for a decision-making body for the
State Bar of Michigan?

There is wonderful research out there about
decision-making groups. Size does matter. Your
capacity to impact and influence decisions changes
with the different size and structure of the
decision-making body. We have great research on that,
but how does it translate into, again, your cultural
environment here? Those are the questions we ask. We
know what the research is out there, but how does it
get applied under your roof? What are the elements
that need to be considered in that process?

Which body should make decisions? Again, you
have got quite a bit of complexity. You have got the
Supreme Court that’s involved. You have the Board of Commissioners, you have this body, and you also have your districts. There is really four, at least four levels of governance under your umbrella to begin with. So we will unpack that in just a minute.

And what types of issues should be addressed methodically. As we talked about orthodontia, you want that to evolve slowly. Work in your mouth should evolve slowly with good science and rigor. And then there is other elements around if you could impact the profession, or the practice I should say, with online orthodontia. Those are elements on a competitive basis that require timeliness to take advantage of opportunity and to respond to challenges to safeguard the practice.

So what issues can work methodically over time and should be vetted broadly and deeply, and what issues are more timely and how do we adjust the decision-making structure for that. So those are the areas that we look to in examining this kind of a process.

We don't always want to assume that everybody knows what governance is, so we are not going to define it for you here, but, again, we are just going to reflect that your mechanism for governance is
complex. It's more complex than the average organization out there, so we need to be cognizant of that, how does that look. In the governance model, and if you look at the American Bar Association, which was incorporated over 200 years ago, one of the first organizations to model their governance structure at the time, we all know how functional that can be. That does usually generate a little more of a reaction.

And so the governance models of the past have always been about control. That's the key word in there. When you look at the length of the bylaws and the control elements around how we get our work done, the ABA bylaws and constitution, for instance, are 41 pages, single-spaced, all the things you really cannot do. It's all about control. I am not just picking on them, but that's a good example, and then you look at some of the recent developments around bylaws and the control mechanism, and we are talking about streamlining.

That's the best pilot that I have seen recently, and this was not directly applied to your organization, but six pages of double space, and so we have gone to an element from control to an element of distributing the authority to get the work done.
How do we do that differently today with the social media, with the mechanisms of communication, with the constraints on your time and talent that exist today that didn't exist 200 years ago or even in the '70s when your governance structure was really implemented? How does all that impact, and how does that impact your investment of time and intellect and to driving the success of the State Bar of Michigan? What are these elements? So that's what we include and consider in this process.

So why are state bars rethinking governance? No question there is a focus on being more timely and nimble in our decision-making process. Entrepreneurialism is a word that we are now using in this sector, because there are sources of revenue that need to be tapped as an entrepreneurial aspect. It's been a very competitive environment out there, and you can get CLE, I suspect, in many different environments. You can get competitive space for your time and talent like there has never been before. You want to make sure you keep your talents under this roof instead of all the other opportunities that are out there.

They're generational. My dad was an association manager back in the '60s, and the way they
did things in those days is very different than the way you do things today. Some of that is generational based of the impact of element of time and longevity. Do you want to sit in these seats for the next ten years and then move to the Board of Commissioners' seats or some other leadership opportunity and spend a lifetime in that? We are finding on a generational basis that's less appealing than it has been to past generations.

So those are the factors that are really driving organizations to be rethinking about what does governance -- what should it look like in the future.

The Task Force met a couple of weeks ago and advanced some of the work, and one of the things we talked about the R.A. specifically to the State Bar of Michigan, what are the trends that are impacting you, and so while we won't go into detail on this, we did start talking about your environment of change under your roof and what is it going to be impacting on the governance basis. So just some of the elements that the bonding with the organization is a different capacity. You know, in the old days we wrote our dues, because that's what we did. We were told to do that. We do that for life. That's no longer the case in voluntary situations these days.
So there are some elements around the bonding and recognition that the State Bar of Michigan is your identity, and what that means today is generationally in the legal profession is very different by generation, if you will.

Also, we are looking at short-term engagements versus committee assignments for years after years. Task forces doing the work instead of committees. More meaningful work. Are we tapping you intellectually while you are here or are we just asking you to respond to reports and updates? So how does that meaningful work look? What are the structures that we have, the response time necessary to respond to a threat or opportunity before us?

So lack of consistency in policy. Can this body overrule a decision made by another body? What does that look to the outside world when we are trying to advocate for a position or a policy, for instance. And then, of course, there are some major implications for resources these days, both time and financial aspects. So those are some of the trends we identified.

Some of the early themes, and this is what we look to as investigators. Jeff and I will be doing a lot more due diligence. You will see the process in
just a minute, but one of the themes that we are finding, and some of this emerged from our first Task Force meeting, confusion of roles between this body and the Board of Commissioners, who's got what line of authority, what responsibility out there? There is a lack of clarity in that.

Inefficiencies in decision making. Sometimes this is time-sensitive material that needs to be approved, so there is some efficiency improvements in the process that can be made, we suspect.

Your cumbersome size and structure, and that's -- it depends on what lens you are looking at. So this is an area we will be interested to further probe. We have seen bodies such as this of over 600, and we have seen much, much smaller, and we have seen organizations that don't have this body. How do you get those decisions made and inputting into direction with smaller bodies or without the opportunity to have 150 people under this roof adding in their intellect to inform decisions?

What's the R.A.'s role in governance and advancing issues? We have got some examples of how bodies such as this are really working in a different way these days to really inform decisions in a very meaningful context.
Waning engagement. There is too much competition for your time these days, whether it's on a personal or professional basis, so we need to be considerate of that.

And then reliable competencies in the boardroom. We have got some recent research out of Texas A & M that talks about the role of competency in different seats, whether it's in your seats here or in the Board of Commissioners or on your committees and task forces.

How do you comprise the workgroups? Are there competencies necessary to drive strategy for the organization? Some excellent research just emerged on that basis.

How are you going to do this? So you have already appointed the Task Force. It met for the first time a couple weeks ago. We are in the discovery phase that's going to last us through June and figure out all these different elements we need to look at with the bylaws, some of the operating procedures, past minutes, past studies that you commissioned on this organization and how you get your business done. A lot of material to go through, a lot of reading to do.

So we look at kind of what we said is the
written word that we collect and assess, then we
actually compare that to what has actually happened
here. What's your practice? How are you implementing
these elements? Because what you say you are doing
and how you are doing it oftentimes don't necessarily
line up directly.

So that's the discovery phase. Then the
interviews and survey phase will start in July and
probably go through September. We'll throw you
one-on-one interviews. We do a select group, a
representative group of different thought, different
backgrounds to really find out how are things wired
here? What does it look like today, and where are the
challenges that you have? Where can you be more
efficient and effective with decision-making and
investing your time and talent in this organization?

We talk about the most and least use of your
time, and we really want to uncover that. That would
actually be part of the quantitative survey that you
will all be invited to participate in. High
expectations for some good results from that.

Then we doing a mapping exercise where we
talk about what's written, what's your practice, and
then what's the desired. What can this look like?
That's where we have to incorporate that element of
culture. Because the desired future, if it's not reasonable and feasible for you to make that type of a change, then why pursue it?

So we talk about what is that gap? What can realistically be done to advance governance and productivity for your organization? We analyze that. And part of the findings are, obviously, feeding that mapping process, but are also driven by that mapping process. Then ultimately we come back to you with these recommendations, and that will be this time next year.

We were delighted when we started talking with your leadership about that sequencing and timing. We think with one year, this is a good amount of time to be methodical, be purposeful in what we are doing. So it's not a rush situation. We don't feel the urgency of a time pressure here, so we can actually go through this in a logical sequence that should make sense for the recommendations that we will be driving to you hopefully next year at this point.

We do work from a charter, if you will, and so this should look very familiar to you at the top end. That's the opportunity statement that is taken from, I think, the resolution and background materials that you provided. The opportunity and the goal
statement should be very familiar to you.

The next two parts of it will have individual slides so you have a chance of reading it more clearly.

That is the objectives, and this was clarified to our first Task Force meeting. And at a high level we would say, all right, what are we really trying to achieve? Now, this is broader than just the governance context of it, but under the governance context we need to make sure that we are meeting your objectives overall and certainly are not conflicting.

So this is a little bit of motherhood and apple pie to a certain degree, and some of it is more pertinent drilled down to the governance element of it. How do we improve member engagement, making valuable use of your time in that process and increasing it?

Building value. Not necessarily increasing your time in this Assembly, by the way, but increasing the time and commitment for overall membership role. Building value for members and State Bar of Michigan.

Developing the structure to allow you to be more responsive and effective. You know, the decision-making time generally is compressed these days in the environment we all live in, and how do we...
be more responsive and effective in that basis?

   Definitely require simplify the structure.
We know there is complexity in your structure.
 Doesn't necessarily mean elimination, but it does
need clarification of roles or responsibilities. So
it's not a foregone conclusion of what that structure
might look like, but we clearly have to understand
there has got to be some clarity in the roles and
responsibilities and that may result in some
simplification.

   Utilizing technology to facilitate
participation. We have so many tools at our
fingertips these days. How are you incorporating it
in this body and the Board of Commissioners and
getting your work done on a governance basis?

   Again, back to the competency and the
balanced engagement to inform strategies. Do we have
the right people in the room with the intellect and
the background to inform the decision-making of the
organization? What does that look like? We have some
excellent research to help guide the discussion around
that.

   And then presenting recommendations that will
be acceptable to the Supreme Court. Again, you have
that stopgap. You have your desired state, but if
it's not realistic in their eyes, then could be a lot of work that does not get approved.

Position the Board and the R.A. so that people are seeking to be engaged. Wouldn't it be nice to have a lineup of people waiting at the door to be engaged in that? So when you look forward many years down the pike, you could be able to say, Were we successful by the lineup of people seeking leadership opportunities in the State Bar of Michigan?

And then clearly define the roles and functions of the governing bodies. So that's going to be what we are going to be focusing on.

The guiding principles are what we get agreement on early on. We stressed this with the Board yesterday, and the key to this is when we come down to some final recommendations, we need to make sure that we are not violating these principles so they become a very important document. I would consider these still to be a draft at this point. We are accepting information to derive these in a very clear and concise way in the organization, so they are a draft at this point. This will ultimately become an important page as we continue our work.

So what are the guiding principles? Employ a phased-in implementation approach in order to mitigate
adverse impact on members, and sometimes this means, as an example, we are working with another organization that decided to cut their Board size in half. That's a very aggressive and bold move, and so the point for their phased-in element was some people will not be sitting in this room next year, but we are going to make sure everybody serves out their term, so their element has the phased-in approach.

Sometimes phased-in approach means you have different permission levels for different elements of governance change, so that's a phased-in element right there as well. Some of the phased-in means you can make efficiency changes today because they are not structural, but they are significant, and we have some recommendations on some of the tools and techniques to be able to drive efficiencies that don't require approval. Frankly, they just require implementation of good best practices or leading practices these days. On a phased-in basis, that's kind of the context that we need for that crowd.

Ensure transparency of process and objectives through frequent, open, and candid communication. I am going to be here for this morning, so this is one of the elements of it, so if you want to catch me out in the hall or weigh in, we will show you some other
opportunities to lead into this process.

It should be open and transparent. That means, if we are communicating well, there shouldn't be a lot of surprises. You should see a natural path, an evolution of where we are trying to go with this process, but that doesn't mean that we are going to be able to communicate every day or you are going to pay attention to all the information that comes out there too. But the concept is to be open and transparent of what we are trying to do.

Ensure timeliness and decisiveness and action and outcomes, and it's always interesting to go to board meetings time after time again and see the same agenda items, which can be good, because if you have a big issue, like your integrated bar situation, you are going to be dealing with that on a time-after-time basis, but if the Board or the R.A. is undoing work that's done by a committee or some other enterprise, that's a problem. That's a flag that we look for. So, are you decisive in making actions and outcomes?

Provide a structure allowing them to pursue a proactive agenda. One of our initial reactions was it can be very defense oriented, meaning you are focusing on getting the work done at hand, and we think there might be some opportunity to look up into the future
and driving change and impacting change for the professional practice in Michigan. How can you spend more time looking up and out instead of down and in the work? It's one of our early reflexes that we are going to be examining with you.

Build trust through member inclusiveness and a consensus-based approach. We are going to be asking a lot of questions of a lot of you and see if we can build an evolutionary model in governance that makes sense to your community.

Reduce costs through improved efficiency and effectiveness, and this is always one of the goals we try to do. If you are working more efficiently, hopefully it will generate, not necessarily cost-savings, but certainly some efficiency in process, which helps staffing and other elements that impact the Bar association.

So those are the key principles, and, again, we are going to welcome your input on that throughout this process, and the examination of the work and the recommendations come back in align with these principles, or are we out of line with some of them.

One other element, too, we talk about is use of group size, because we do know that size matters, and so on the left side you will see some of the uses
of a large body. Again, the largest house we dealt with was 600, so your size is one of the smaller houses, not the smallest by any chance.

So the use of a large group we have seen very effective, because when you take a look at the room makeup here, you have a lot more robust balance in this room than the Board of Commissioners of 32 and then your Executive Committee of 10, and so how do you use this group to really inform strategy?

So when we look at constructive uses of a larger body, we look at the ability to scan. What we were saying, looking up and out, what's going on in the future in the practice and profession of law and what you will be considering as the State Bar of Michigan strategically in the future. How are you using this body to inform the strategies for the future?

Shaping is the next key word we use, which is input into advocacy issues, for instance, and, again, with social media or a different electronic basis, we can be procuring your background and knowledge in issues on a more timely basis. That doesn't mean you have time to make a broader decision for this large of a group, but you have the capacity to get input into informing positions such as advocacy.
And then protecting is the third element we see very favorably in larger groups. I mentioned the orthodontist. You don't want change in your mouth going on on a split-second notice. You want that debated, you want that refined in committee and task force and so on, so really what we call really protecting the elements of the profession on that basis.

So those are the three key elements we see being used in large bodies such as your R.A. When we think about that, we are not thinking about urgency. We are thinking about strategy. Low urgency but high importance is the bucket that we are in, and so that means we can be slow and thoughtful. We can be methodical in our approach to these types of things where we are informing direction, instead of making decisions in that capacity, and it's a very different context.

And, again, it's not the fiduciary. Now, you do have some fiduciary responsibilities in this body. We talked about the dues already. So that's an unusual element too in a large body, so you would have a large body approve the dues. That's part of this allocating the resources, which will be your responsibility to perform.
So that's one of the questions that we are going to be asking as we go, who's got what level of authority. Your dues is a good example. It's an unusual element. Why is that the case here? Does that meet supporting your strategies for the organization or not? That's part of the questions that we ask. The smaller board on the right side is the leadership body, and what we see in that area is the ability to be nimble and flexible to make the decisions.

When you look at the research on the quality of the decision making, you are talking about broadly informing decisions, such as a large body as this. When it comes down to making the decision, the decision research shows that quality is improved with a smaller group making the decisions. So that's why we see that element being the decisional body, for instance.

And we are not here with a recommendation on sizing, but we are going to provide you with a resource that says what happens in these different sized groups, how you inform decisions and how do you communicate decisions, what's the latest research on that, and how is it impacted in the association environment that we are seeing today? It ultimately
is a fiduciary board that has the responsibility for making certain decisions.

When we talk about what are the key responsibilities of a board, and if you are familiar with Board Source, it's a nonprofit organization for nonprofit governance, volunteers and for staff. Talks about really the elements of setting direction, allocating resources, providing oversight and planning succession, and that succession concept has been the right talent in the room, competency and the balanced representational elements of the right people with the background.

So those are the key elements in a smaller body. If you will say we have a predisposed thought process coming in here, we say what's good in a large body and what's important in a smaller body, how does your balance work, and then making sure that there is clarity between those roles and responsibilities. So that's kind of how the work gets informed on that basis.

So the last slide that I really have for you is the opportunities to engage, and I am not sure if you broadcast who are the members of the Task Force, for instance, but at some point it might be appropriate to identify the members of the Task Force.
Likely, some of you are going to know or know of who are representative of that body, so they will be very actively engaged in the process.

We will be doing interviews one on one, and oftentimes we do small focus groups electronically for the interview process, so that will be happening July to September after we do our discovery and can define what are the questions that need to be programmed in there.

We do anticipate having a quantitative survey, which will be, I am fairly certain it would include everybody in this room and then some, and I know the staff has been very receptive and very supportive to us, especially in these early stages, providing the information and being the conduit. So they are very intimately involved in this process. And then ultimately we will be back next year with a report to you on what we found, what the recommendations are of the Task Force.

Okay. So the questions you can ask me out in the hallway here, and I guarantee we probably won't have an answer yet, but it will be very interesting what's on your mind at this point.

CHAIRPERSON CUNNINGHAM: Thank you very much, Mark.
Jennifer, do you want to address the members of the Task Force?

MS. GRIECO: The members of the Task Force are all of the officers of the Board of Commissioners and the R.A., so that’s myself; as president-elect, Denny Barnes; Rob Buchanan, who is here; Dana Warnez; James Heath, who is our treasurer; Rick Cunningham; Aaron Burrell; Chelsea Rebeck; Julie Fershtman; and Dan Quick. So you know these people. These are our ten members of the Task Force, so feel free to reach out to any of us at any point in time.

(Applause.)

CHAIRPERSON CUNNINGHAM: Thank you, Jennifer, and thank you, Mark.

At this time, we are going to take a break. We are a little bit in front of schedule, but I would still like to be back here. Let’s make it 15 minutes, and if you can be back at five minutes to the hour, and we will begin right with the presentation of Mr. Dettmer.

(Break taken 10:39 a.m. - 10:56 a.m.)

CHAIRPERSON CUNNINGHAM: We are going to move now into consideration of the interim administrator proposal. I would ask that if any of you, and obviously you are all invited to participate and at
the appropriate time to make comments or debate as you want to, but please, please, please, identify yourself by name and circuit number. Connie has got to take
down everything, and she is facing this direction.
She is not going to see you. So please, please,
please, the first thing out of your mouth is your name and your circuit number for the benefit of our
overworked court reporter.

Again, we are moving now into the
consideration of interim administrator proposal. The proponent is Mr. Michael Dettmer with the Receivership Workgroup. Mr. Dettmer, and from the State Bar, Alecia Ruswinckel.

Mr. Dettmer, if you would, please.

MR. DETTMER: Thank you. And pursuant to
your request, my name is Michael Dettmer, P12709.

CHAIRPERSON CUNNINGHAM: Thank you.

MR. DETTMER: Which tells you how old I am.

First, seriously, I want to step back and thank you for your service to the Bar. It's not easy weekends and responsibilities. I have always perceived that you, the Representative Assembly, was the advocate for and the defense of self-regulation, which is so important.

This proposed policy is consistent with the
Bar's right and responsibility for self-regulation. I also want to quote the amicus brief that the Bar had filed a few weeks ago. They quote Harris, the Harris case, Harris versus Quinn, which is a 214, where Justice Alito, on behalf of the court, said in part and in dicta, States also have a strong interest in allocating to the members of the Bar rather than the general public the expense of ensuring that attorneys adhere to ethical practices.

What this policy addresses is our continuing ethical duty when we become unavailable by death, disability, disappearance, discipline. The duties, the ethical duties, and those ethical duties are actually laid out not only in the rules, but there is an ethical rule in Michigan, 374, or an opinion, and it talks about the duties of competency, diligency, protection of client confidences, and the safeguarding and maintaining, maintenance of records. A lawyer's duty to meet these obligations can only be carried out through appropriate advanced planning, and that's what this is about.

And Alecia is going to run through and help me run through a quick slide show here. The policy addresses, as I said, death, disability, discipline, and disappearance. Inadequate, inadequate succession
plans, and I don't know that there are inadequate succession plans. I know there are no succession plans for most of us. I don't want to ask anybody to raise their hands to see if anybody has a succession plan, but it primarily hurts our clients, and the greatest ethical duty we have is to our clients, and it also affects our families and our interests in the practice.

Just to give you a practical view of this, right now there are 41 pending claims, Client Protection claims, relating to just 13 deceased lawyers, who the clients are demanding over a million dollars from you and from me and the Bar through the Client Protection. So it's a real problem, and it has only grown.

Lawyer demographics in Michigan, as you can see, the greatest part of the Bar is over 50 years old. Fifty-five percent of us are over 50 years old. I am in the 11 percent range and going down fast. Median age is 53.

Here is the snapshot of solo and small practitioners. There are literally almost 7,500 solo firms, and of that 5,500 of us are over 50 years old. Small firms add up to another 6,100. So there is 13,000 lawyers that are practicing in really small
firms, which you just have to recognize, and I admit
this is what this rule is directed at and pointed to.

So if an attorney does not have a succession
plan, how are the clients going to be notified? How
are active litigation proceedings or probate
proceedings stayed? How are pending cases transferred
to a new attorney? How are client files transferred,
returned, and destroyed? How are employees, rent, and
other bills paid? How is the law practice wound down
or continued? How are the funds in trust returned?
And that return of trust funds is really what the
Client Protection litigation that we just looked at is
about right now.

I can just say I became involved with this
because back almost ten years ago now a sole
practitioner in Traverse City, a really good
54-year-old man, who had started at Miller Canfield,
decided he was going to go out on his hone. High tech
guy. Knew everything about technology. Didn't need
any staff. Had his clients and his office, and on the
way to a meeting he stroked out and died, and the
court asked me to wind down his practice.

I walked into this office that was no bigger
than this platform, and I couldn't even figure out how
to open the file cabinets, and it took almost three
years of digging to wind down his practice and protect his clients. Great lawyer, well intentioned, no succession plan, no thought about, and it really taught me the lesson that I am standing in front of you on behalf of the Master Lawyers Section, 21st Century Practice, the Workgroup, the Bar staff. We have all really worked hard over a lot of years, at least going back to 2010, and we appeared here in 2012. We had a lot of questions then. We, I believe, have answered them with this proposal, and we are back before you.

How do these things evolve if there is no succession plan? Right now under Rule 119(G), the Attorney Grievance Commission can step in, but they are not equipped to do it, they don't have the finances to do it, and basically they are acting as a bandaid to this problem. And, candidly, they want dearly to transfer this to the State Bar of Michigan.

This proposal, the State Bar will help create succession plans. Right now there has been a lot of work. There is a planning in the practice management. There is a planning document that can be used. There is the new Ethic Rule 374 that can be used, but what we are trying to do is allow each lawyer to pick an interim administrator on his or her own, and that
administrator then under the process will agree to take on that responsibility.

The Bar then will become a training facilitator, helper, and if a lawyer does not want to do this voluntarily, then the Bar will step in and develop -- we are developing an interim administrator program that, as part of that responsibility, that lawyer will be assessed additional dues, additional fees, and with that the Bar will take the responsibility for helping and dealing with that succession plan.

This slide just talks about the current receivership program as it is under the AGC, and it shows you there are 37 pending receiverships, not including informal assistance. They indicate that they get 10 additional calls per week, takes up to 30 minutes to serve, and really they become and have become just an informal facilitator of winding down numerous practices. They have limited resources. They do not have the day-to-day ability to do this, and it's apparent when you look at what they do do.

I just lay out who the Receivership Workgroup is, and you may know some of these people. This has been going on, as I said, in some fashion since at least probably 2010, and the workgroup was developed
in early 2018.

So what was our task? One, develop a transition from the AGC to the State Bar of Michigan. Two, and probably most importantly to all of us -- I am a sole practitioner myself -- is provide a no-cost option. How do we do this without additional cost?

Three, we attempt to outline responsibilities and clear avenues for compensation, provide ethical guidelines. If you accept the responsibility of interim administrator for a practice, we are providing immunity for attorneys winding down that practice. And last, we attempt to address the concerns raised by you when this was first done in '12, and I am sure there will be questions today.

So the two options -- it's just an optional thing -- one, go out and find a lawyer or a law firm that will serve as the interim administrator. This will be done on the Bar dues proposed. It'll be another question, Who is going to serve as your interim administrator? When you put that lawyer's name down, the Bar then will respond to that lawyer asking that lawyer to confirm that he or she will take on that responsibility, and then the Bar will be there as a resource for that lawyer.

If a lawyer doesn't appoint or can't appoint
a person of his or her choice, then they will participate in the State Bar program with an annual participation fee, and the State Bar will participate or will assume the responsibilities, will assume finding the appropriate geographically-located lawyer to assist and go from that approach.

The duties of the interim administrator determine what must be done efficiently to wind down the practice. Protect the clients, obviously. Again, State Bar will develop the tools and resources, and we have a lot of those already.

Compensation, the affected lawyer, and the affected lawyer is the lawyer who dies, disappears, is disciplined or is disabled, will take the responsibility in the first instance to pay the interim administrator. Secondly, the fund that will be developed for the Bar program, the IAP program, will be available for funding State Bar appointed IA's and other IA's in certain circumstances.

Tools. Tools will start with the dues process, that there will be a simple nomination and acceptance. There is the R.A. existing Planning Ahead Guide, which I ask all of you to look at. It's very good, and it's been developed over a number of years.

Bar will be ready to boost their resources
for record retention. There will be outreach. I know
the Master Lawyer Section is intent on participating
in educational programs to assist lawyers. There will
be model motion and order templates, and the State, I
guess I'll just say, the State Bar will create a group
that will step up to this and assist all of you.

Obviously the ethical benefits, this is
self-explanatory, but we are obligated ethically to
protect the public and clients. We have to require
lawyers to contemplate end-of-practice issues.
Attorneys have a plan in place to protect their
practice and staff, clear avenues for compensation and
clear and uniform rules for the IA program.

That's what we had done and are willing, and
are willing to move on doing even in a stronger sense.
So is that it? That's the end of the slide.

This is one of those tough issues. I don't
want to sugar coat this, but this is one of those
self-regulation issues. This is an issue about
ethical responsibilities, and it's about what we as an
integrated Bar do and not have done for us by a state
legislature or other potentially regulating bodies.

So I am prepared to take questions, and
Alecia has been the star staff person on this matter,
and what I can't answer, she will.
CHAIRPERSON CUNNINGHAM: Before we proceed any further, can I get a motion on the floor from a member of the Assembly? The wording, Resolved, State Bar of Michigan should recommend rule changes to allow SBM to implement an IAP and require attorneys in private practice to designate an IA or participate in the IAP.

VOICE: So moved.

CHAIRPERSON CUNNINGHAM: Is there a second?

VOICE: Support.

CHAIRPERSON CUNNINGHAM: Thank you.

Discussion. We have heard the presentation.

Mr. Dettmer, if you can have a seat there, please.

Alecia, did you want to add something to it?

At this point would someone in the discussion, someone like to present any questions, make any discussion? Remember, when you go to the microphone, please begin by identifying yourself and your circuit number, please. Makes it a lot easier for the court reporter.

MR. BARNES: John Barnes, 45th circuit, St. Joe County. That's southwest corner of the state.

I presented the issue here in our county Bar association meeting. We are a relatively small, rural county, and most of the people are in private practice...
there. The main question they had was what provisions would there be for training for continuing legal education, so forth, for the people that would be signing up to be independent administrator for somebody? And in general, just so you know, the overall consensus was they liked the idea. They think it should have been around a long time ago.

As a practical matter, many of the people in our county already do this on an involuntary -- or an informal basis. We do that for each other, and I myself have acted as a receiver to run for a while and then wind up the practice of a person who no longer could practice law.

So I have had practical experience doing it. It wasn't fun. I never got compensated. It would have been a whole lot nicer if this process had been there, because I basically had to make it up as I went, and it wasn't fun.

But what provision would there be for that continuing education so we know what we are getting into when we sign on and say, yeah, I will do that for you.

MS. RUSWINCKEL: That is an excellent question. Thank you.

We have actually spoken with ICLE to provide
trainings through their program. So, for example, you are in a rural county, so you may not want to come to Lansing for a training, but there would be training available through the State Bar for anyone who is interested in participating in the program, and you could do those at any time, and as part of the program, it would be at no cost. So we are not asking you to pay to take a class on how to do that.

And then also you would have staff at the State Bar, if the program were implemented, and those staff members would be able to assist you with any questions. So they would be on call for you, even if you were appointed or nominated by someone else, because ultimately the program in itself is to protect clients, not just the clients of those people who participate in the program, but for all clients. So we would have both of those provisions in place to ensure that people who do step up and take on that responsibility have someone to assist them.

MR. BARNES: Thank you.

CHAIRPERSON CUNNINGHAM: Nick, you had a question?

MR. OHANESIAN: Nicholas Ohanesian, 17th judicial circuit.

I am approaching this from the standpoint of
an administrative law judge, Social Security Administration, and we have most of the attorneys coming in front of us are a small firm or solo practitioners. We had the situation happen now where somebody has passed away unexpectedly. He had 40 or 50 clients at the time, separate. I was very glad, because there was some informal group of attorneys that did step up to handle this, to assume his cases, but at the same time I can't -- you know, I think it's unfair as it currently sits, as the situation currently sits, to have to ask somebody to take on cases, especially in Social Security work. They may not have been good cases; they may have been great cases. A lot of these people went uncompensated because maybe the cases weren't that good. So I just rise in support of this proposal.

CHAIRPERSON CUNNINGHAM: Thank you.

MR. PERKINS: Dennis Perkins, 44th circuit out of Howell.

Two questions. The first is in the handouts, page 47 at the top of the page, it says, When an attorney in private practice becomes incapacitated, SBM staff would file in the probate court where the attorney's practice is located an ex parte petition requesting that the court appoint the IA designated
attorney. Is there currently a statute or a court rule that would allow a filing in probate court?

MS. RUSWINCKEL: There is not.

MR. PERKINS: And so we would be looking at doing something like that?

MS. RUSWINCKEL: Yes. If the court implemented the program the way that the workgroup has designed it, then that would be a provision that they would have to take into consideration, and they may decide it would be the circuit court, but the workgroups thoughts were, oftentimes the probate court has, if it's an incapacitated person, they have a conservatorship, or they have the estate if they are passed away, and so those two things can really line up together so that they ensure, the court can ensure that however it's wound down it's done in such a way that it doesn't have a negative or positive impact on either, that both are treated fairly.

MR. PERKINS: The second question is today's presentation dealt with how many solo practitioners there are over the age of 50 and 60 and how many small firms, one to ten, and the resolution or the motion is to look at -- to help lawyers for the end of practice, and basically we are looking at private practitioners.

Is there a number that you have in mind? I
mean, I am a sole practitioner. I like this idea. It's something that as you get older and get into your practice you don't want to face, and I am still practicing -- knock on the mike -- but I understand that this is going to happen some day to me, and so I like the idea. It brings attention to myself to do something like this.

However, what if I was a member of a firm that had one to five attorneys? A lot of times those attorneys are the firm, the client both hires the attorney and the firm, and would there need to be an IA designation for small firms at that juncture? Are we talking guys and gals like me, or we talking small firms? What are we talking about?

MS. RUSWINCKEL: It could be both. Presumably you would nominate the firm. However, we have had a couple of situations in the client protection world where the firm was owned by an attorney who had been practicing for a significant amount of time, and they hired brand new lawyer, and the new lawyer said, I can't do that. I am brand new. I have been out six months. Now the lawyer is gone.

So it would just depend on the particular situation, so it's not necessarily focusing on solo practitioners. It's focusing on any attorney who
needs someone to step in. Normally it would be the firm, but there are instances where it could be someone else.

MR. PERKINS: Based on that, then you are really talking about, I mean, whether it be Dennis Perkins, PLLC, or Miller Canfield, you are talking about everybody doing a designation?

MS. RUSWINCKEL: That's correct.

MR. DETTMER: Everyone in private practice.

MR. PERKINS: Thank you.

CHAIRPERSON CUNNINGHAM: Any further discussion or comments?

MR. BACKUS: Good morning. Robert Backus from the 21st, Isabella County.

I have a question in regard to the IA and where duty lies. For example, in the scenario where the solo practitioner passes away, you know, conceivably that firm, that practice is an asset of that attorney's trust, the decedent's estate. Does the IA have a fiduciary duty of some sort with respect to the surviving spouse, the family, the beneficiaries of the deceased attorney, or does the responsibility and fiduciary duties flow the other way for the client.

MS. RUSWINCKEL: It would be both. But it
would be both, because they have a duty to effectively
wind down the practice in that situation, and they
would have a duty to do things like determine whether
or not there were outstanding fees owed to the lawyer
and what steps should be taken to collect those fees.
Maybe that collection is simply saying to the estate,
You have this right to collect these. It really
depends on the particular situation, but the duty
would be to everyone involved in the process, just
like a traditional receivership that would be in place
under the Court Rules.

MR. BACKUS: Follow-up question, if I may.
In terms of who that individual may be that an
attorney may nominate, do they have to be a licensed
practicing attorney in the state of Michigan as
opposed to my brother or my daughter who are licensed
to practice in another state?

MS. RUSWINCKEL: They would have to be
licensed to practice in Michigan, yes.

MS. COLE: Angela Cole from the 42nd circuit
court. I just am wondering maybe taking the step just
a little bit further, but I had someone come within
the last year who had hired an attorney six months
after he was disbarred or suspended, and they took,
and the attorney didn't know until after their mother
died. Three days after the mother died they found out that he had stolen a hundred thousand dollars of her money, and then, as they are uncovering everything, found out he had been disbarred six months before that and had stole thousands and thousands of dollars from other people and was under investigation.

So is there anything in here, because their question to me was could I help them file a Client Protection Fund claim. Also, they were so frustrated because he was doing this in a firm. They were going to a firm on a Sunday afternoon when no one was around, and they had no indication that he wasn't a practicing attorney. So is there any kind of protection in here for a future claim as well, when an attorney is suspended and someone is taking over and working with those clients? I mean, I am just putting that out there. Is there something that can be built in to protect?

MS. RUSWINCKEL: Well, that should be built into the Attorney Discipline System and how they would manage that person going forward and the obligations that they would have under that program. I am not sure -- if there were an interim administrator in place though, presumably that person would be in winding down the office, so they would notice on a
Saturday if things are moved around. I don't know that it would solve the problem, but hopefully it would, at the very least, provide an additional layer of notification regarding where the law firm was.

So, for example, if it was in the same office that person had always practiced in, that person wouldn't have access anymore because the interim administrator would come in and be managing whatever space that was.

MS. COLE: Thank you.

MR. ROTENBERG: Steven Rotenberg, 6th circuit, and, as this was being presented, I started thinking about a technical problem. I am a sole practitioner. I have two offices, and my firm doesn't have a lot of capitalization, because I am it. You are looking at the entire firm. If I die or become disabled, this is a wonderful problem, but within about 40 days all my stuff is going to wind up in a dumpster because I am going to be evicted. My firm will be gone.

So all this wonderful stuff with the records here, this doesn't actually solve a possible practical problem. How do you actually keep the records in their place, in a file? I am going to assume that a law firm typically can't be packed up in a weekend in
any quick, easy way. So how do you propose that we
solve that problem, because with the continuation, I
don't see any funding for this. I don't really see
that it's the State Bar's position to fund
landlord/tenant relations after the tenant has died,
and I just see this is a problem, a technical problem
that I don't see any structure for overcoming.

MS. RUSWINCKEL: The duties of the IAP or the
interim administrator would include a wind down of the
practice, but also within the provisions it would
include for space and transportation of records. So,
for example, your office may not be able to be
maintained, but there would be space somewhere else
where they would basically come in with a truck, just
like the Attorney Grievance Commission does now, load
it all up, take it back to their office so they could
be effectively managed without being in the space and
incurring additional costs.

Now, if you had clients who were still paying
bills or you had outstanding bills where you had money
in the IOLTA account, they would wrap that up too so
maybe there would be enough capital from what you had
done the month before.

MR. ROTENBERG: I would assume that if I was
incapacitated my clients would, for the most part,
take a bill paying vacation, and I suspect that's fairly common.

MS. RUSWINCKEL: I am sure that it would be, but at least there would be someone saying to either you or your estate, You still owe this money to the lawyer.

Now, of course there are all kinds of factors involved with that, and every practice is different, but part of the point of this program is to protect those clients, but it's also to protect your interest in your firm and whatever interest your family may have in your firm as well.

MR. DETTMER: If you have an interim administrator appointed pursuant to the voluntary approach to this, I guess there is an assumption that somebody you know and trust and when you die or are disabled that person will immediately be involved.

MR. ROTENBERG: I am pretty sure that those who I know and trust would not be terribly interested in the basket of clients that I have.

MR. DETTMER: But they, seriously, under the program they have signed up and at least have the responsibility to inventory those unwanted clients and find a home for them.

MR. ROTENBERG: Okay. Thank you.
CHAIRPERSON CUNNINGHAM: At this point I would like to interject that we will be stopping at 12:00: We have one more proposal. If we are not able to finish that proposal, I would entertain a motion to postpone consideration. I certainly don't want to cut anybody off, and I want everyone to have the opportunity to speak to this motion and the subsequent motion, but we are leaving at 12:00.

MR. KLAASEN: I will try to be brief, but my brother who was here before me, you know, just sort of gave rise to -- I have a billion questions about this thing.

CHAIRPERSON CUNNINGHAM: May I have your name and circuit.

MR. KLAASEN: Terry Klaasen, 4th circuit from Jackson, Michigan.

CHAIRPERSON CUNNINGHAM: Thank you.

MR. KLAASEN: I assume, from what I have heard, that you have to name an IA on your Bar dues every year, and so every year they would come back and ask the person who you have named whether they are willing to do it. If I was going to be asked to do this, I would say, I am not doing it unless I get paid for it. And, likewise, if I am agreeing to do it, do I have to notify my carrier that I agree to do it and
that I might get stuck doing a bunch of stuff that I may or may not be qualified by my own experience to do, and, you know, who is going to pay the bill and when does the attorney-client relationship end, and those are just a couple of the questions that come to my mind, along with a whole bunch of others. But there is going to be a cost involved in this, and somebody, either the attorney is going to have to build something into his fees to cover this, or somehow, but I just got all kinds of questions about this.

MS. RUSWINCKEL: Well, the program, first of all, is a program where we anticipate that people will have reciprocal agreements, right? You are both taking a chance, but it's a reciprocal agreement. You are not forming necessarily an attorney-client relationship with the clients of this person. Instead, what you are doing is ensuring that the deceased or disbarred or whatever, the lawyer, is able to, their clients are able to get to a lawyer that can do that.

So, for example, if you get into a small practice firm and you don't know how to do Social Security Disability work, you wouldn't necessarily take on those clients of the Interim Administrator.
Instead, you would help and assist someone else, a new lawyer, in getting the file to them and getting them up to the speed and getting to the client to them.

It's a wind down. It's not necessarily an assumption of the practice. You could do that. You could presumably purchase the practice, but within that, you would have to follow all of the requirements of purchasing a practice and the Ethics Rules, and you would have to ask the court to be able to do that.

So you are not necessarily taking on their practice. You are assisting them in continuing or winding down for a short term, short term for years sometimes unfortunately, but for a shorter term period.

MS. JOLLIFFE: Elizabeth Jolliffe from the 22nd circuit. My first question is is there a critical mass number of participants who would have to choose to be in the IAP to fund it? What if only a thousand participate?

MR. DETTMER: It's going to cost more.

MS. JOLLIFFE: It's going to cost more, but if a thousand participate and they pay 150, that's not going to be enough to provide the resources to this 1,000 that you are talking about, which I think sounds wonderful.
MR. DETTMER: That was part of the issue in 2012. The focus of this is to get each lawyer to find an IA so they don't have to participate in the IAP, and so there is some incentive to do it voluntarily. I would actually hope there would not be an IAP program that, you know, people had to pay into, but the Bar needs to have that office, they need to have that staff, they need to develop, help us develop that program.

MS. JOLLIFFE: Which leads to my second question. Do you imagine, does the Bar imagine that it could provide a listing on the website of people willing to be an IA? I think we talked in 2012 about some lawyers might develop this as a niche practice.

MS. RUSWINCKEL: Right, and actually in Illinois they have a matching program, and so what the thought was is we would get in contact with them and find out how they are doing their matching program, how it is working, and, again, like with a lot of the other things that you have seen in the material, what don't you like about it, what could we do better? But we would definitely be looking at finding, similar to the mentor matching program that we have now, absolutely.

MS. JOLLIFFE: And then I think, Alecia, just
going to reiterate what you said earlier, if we describe it as an inventory role or an administrative role, a winding down role, I think that's a much more familiar concept to people, rather than thinking that they have to take on and start handling and practicing all these other cases that they have no idea what's going on. It may not be in their own practice area, and they might have conflicts. If you stress the inventory aspect, I think it will make it much more palatable to people, I guess.

MS. RUSWINCKEL: They have worked, spent a lot of time on the name, so Yuily Osipov -- I can give you the spelling later -- is the one who coined the name, and it was because receiver has that legal connotation to it, and that's not what this person would be doing. That's why the name is interim administrator. It's different than what they are doing anywhere else in the country, but that's because it better describes what the person is doing. In the interim they are administrating, performing administrative tasks on behalf of the firm.

MR. LARKY: My name is Sheldon Larky. I am from the 6th circuit. I am probably, I think, the oldest, the longest serving member on the Assembly. (Applause.)
MR. LARKY: No, no, no. I think I started in 1974 and go six years, get off one year and come back on.

I was scared out of my gourd in 2012 when this was presented in another matter. I went home and I talked to my wife, and she said, You are going to be a son of a bitch if you leave me high and dry and I can't figure out what I am going to do with the practice. And I said to myself, Okay, I love my wife dearly, but I love my profession just as well. And I got and hired an attorney to take over my practice in the event that something happens to me.

It scared me, and to everyone in this room -- and I am a sole practitioner. I have been since 1983, and I was with a firm previous to that time, and previous to that time I had no problem because I had partners and I always knew what was going to happen, but since 1983 I have been a sole practitioner.

I think every one of us has to go home tonight and say to ourselves, What happens if I become disabled tonight? What happens if I die on the way home? Will my spouse be able to take care of my practice? Will my partners be able to take care of my practice? What am I going to do with my clients?

I think this proposal is a good proposal. It
makes sense. I don't like the idea that we are going
to have it. As you suggest, Mike -- we go back many
years -- I don't like the idea that maybe a thousand
people take it on, and if that happens out of the
45,000, that means we are going to be hit with Bar
dues that could be in the thousands, could be
theoretically. I don't want to say that.

MR. DETTMER: Let me interrupt you, Shel.
You won't be, unless you opt into the IAP. The Bar
dues won't be spread amongst 45,000.

MR. LARKY: I am glad that you posted that.
So to everyone in this room, my feeling is
twofold. Number one, pass this. Number two, go home
and think about what your own practice is tonight.
And, seriously, I don't care if you are 23 or 73, it's
important that we do this. Thank you.

CHAIRPERSON CUNNINGHAM: Hearing or seeing no
further proposed speakers, I am going -- okay. The
lady that -- would you identify yourself.

MS. STARKS: Thank you. Reh Starks from the
9th circuit. My question is is there going to be a
graduated cost scale to take into consideration how
this fee may impact young lawyers? We have already
heard from Mark earlier today that the young lawyers
are feeling a bit disassociated from the State Bar. I
know that a lot of them are opening up sole practices, so costs are a concern. Are we even asking consideration with that?

MR. DETTMER: No, no. It's one of those reality issues to me who started out on my own is that when I received that license I had every right and responsibility of every other lawyer in the state and, you know, I will just say this. My first year of practice in 1972, I made $2,500, and, you know, I had -- and I am not saying that because -- you know, I have total sympathy for young lawyers and young practitioners, but a licensed lawyer is a licensed lawyer, and so I don't think there will be a graduated, unless the Supreme Court, who will ultimately decide this, creates such a scale. There is nothing anticipated.

MS. RUSWINCKEL: It's also a great opportunity though for a young lawyer to match and find someone who has been practicing a while and have that reciprocal agreement, because then the young lawyer could be in a position to take over the practice of another lawyer, especially in small jurisdictions where everyone kind of knows each other, and it's also a great opportunity for, for example, the Young Lawyer Section to say, okay, we know that we
all are going to need this now. Can we build relationships amongst ourselves to foster relationships so, while it's not a great answer, you do have a no-cost option.

MS. STARKS: I am currently the president of the Kalamazoo County Bar Association, and prior to that I was the president of the Young Lawyers Section for the KCBA for a few years, and we were experiencing some similar concerns which the SBM is experiencing with regard to the fight back and the dissociation that's occurring, and just concerns about the future of our organization.

All that being said, one of the biggest issues that we are having is getting people out to network and form that brotherhood and the camaraderie, and I don't know that -- while I can appreciate that the hope and the intent would be to partner a younger attorney with perhaps an older attorney. Is there something that can be built into this to truly encourage and facilitate that so as to not ding a young lawyer necessarily but also to promote the fraternity, the brotherhood that we want to exist throughout not just our county but our state.

MS. RUSWINCKEL: Part of the plan is, like I said, putting together some type of a matching service
within the Bar, who is willing to, would be willing to take it on. And then also there is that outreach component as well.

So, for example, especially when it's initially out there, having someone go to the local bar association, the courts would be aware that this is happening, and so trying to build those relationships between even like, say, the judges, because a lot of people go to judges and say, hey, you know, I am having this problem, what do you think? They could say, you know what, here are some additives for you to take. So the education component is not going to be to this room or to only solo practitioners. It's going to be explained to everyone.

MS. STARKS: Thank you.

CHAIRPERSON CUNNINGHAM: Mr. Lavigne.

MR. LAVIGNE: Thomas Lavigne, 3rd circuit. I believe one way to address the cost issue is just to make the fee mandatory to all members of the Bar. That way we wouldn't have the issue if only a thousand participate what are we going to do.

MS. RUSWINCKEL: And that may be something that the court decides.

CHAIRPERSON CUNNINGHAM: If there is anyone
else. I didn't see the last couple people. Anyone?

Okay. At this point we can call the question. Chelsea, you want to go through the voting procedure, please.

CLERK REBECK: If you are voting yes, you are going to press one. If you are voting no, press two, and if you are abstaining, press three. The voting is open.

Voting is closed.

Motion passes.

CHAIRPERSON CUNNINGHAM: And the number, please.

CLERK REBECK: Eighty-three yes, 26 no, and two abstentions.

CHAIRPERSON CUNNINGHAM: Thank you. We will now move on to the next proposal. The question becomes, we are not going to get this done by noon. I promised you that we would go by noon. You have got two choices. Either I get a motion to postpone this till September, or we start it and see how far we can get and continue on until we are done.

MR. JOCUNS: How about we do it fast.

CHAIRPERSON CUNNINGHAM: Well, you want to try that.

For proposal two, Mr. Josh Blanchard, the
chair of the Criminal Law Section, and Bernard Jocuns are going to make a presentation. Gentlemen, please.

MR. JOCUNS: This will be quick. Truncated, I promise. Anyway, three years ago I happened to go to a conference in Traverse City, and I was catching up with a colleague, and he let me know that he was getting married. And, no, I was not trying to talk him out of it. His wife and business partner actually is pretty cool. He was telling me a story about this -- you know, I asked the question, Where you going on your honeymoon? So the response was, Well, I don't know if I am going on a honeymoon. Why? Because it looks like I am getting bound up by a judge.

So no disrespect to Judge Chmura or Judge Brown or any dignitary that may be here today, and I am in a jurisdiction where my backyard where I do most of my work in Lapeer, it's not like that, but unfortunately that does happen. So we talked about this off and on for a couple years, and Josh had really been a stalwart in getting behind this, and this is kind of in his progeny. And anyway, Josh is going to tell about the vacation court rule. Sometimes you need to get away, sometimes it's an emergency, and it's also mental health at the end of
the day. So from Greenville, Michigan,

Josh Blanchard.

MR. BLANCHARD: I wasn't going to tell the
story about my honeymoon, but the judge said, Well, you knew you were getting married when you took this
case, right?

So I think we can all agree the profession
can be a bit stressful. Breaks help us recharge, and
for those that are solo practitioners or married to
their partners, getting away can be really tough. And
so my proposed rule, which is largely borrowed from
North Carolina, would permit you to designate up to
three weeks of leave a year where a judge can't screw
with you. Your opposing counsel can't screw with you.
Once you designate it properly, nobody can notice a
hearing or deposition during your time away.

The proposed rule must be scheduled 90 days
in advance, and then there is a simple method for
resolving problems if they come up. So if there is a
problem that crops up, if it's a court hearing, you
send a notice to the court. If you properly noticed
it, it gets rescheduled. If there is a deposition
set, you point it out. If opposing counsel doesn't
reset it, you inform the court, whose obligation it is
to quarter that theory that, unless the notice wasn't
properly filed, and even then the judge has discretion to still adjourn.

I recognize that this isn't a problem everywhere for everyone, but I have talked to a lot of people in this room. It's a problem some places, and for folks who practice over a wide geographic area, it can become a real challenge to schedule a vacation when you might have cases pending in half a dozen or a dozen courts. And so this gives a simple way when you want to book something, send out the notice everywhere you have a case, and it's set and you can get away from work.

The procedure is simple. You file with the clerk of the court where you have the case pending. You file a notice with your name, address, phone number, and Bar number. It's got to be set in calendar week increments, so you can't do one day at a time, you know, three weeks one day at a time. So you notice the Monday that it starts, the Friday that it ends. You tell them how many other times you have done this in the year, because you are limited to three under this rule. You have got to make a statement that you are not doing it to delay the proceedings, so you shouldn't be using this for gamesmanship, and you file it 90 days before you
leave. If you do those things, it's done and your
vacation is secure.

I think we have got some folks who may stand
up, but I know we are short on time. So this has
support from the Criminal Defense Attorneys of
Michigan, the Marijuana Law Section, the Criminal Law
Section, and then the Lawyers and Judges Assistance
Committee, which I think operates LJAP, has supported
it, because they recognize how important it is to,
mental health, to have down time and time away from
the program.

And so happy to answer questions, but that's
all I've got for you.

CHAIRPERSON CUNNINGHAM: Comments? And,
again, please, your name and circuit number.

Bernard is a member of the Assembly. He will
make the motion.

MR. JOCUNS: I have a motion to approve the
proposed vacation court rule. Is there support?

VOICE: Support.

MR. JOCUNS: Thank you.

VOICE: Move the question.

CHAIRPERSON CUNNINGHAM: Is there a second on
calling the question?

VOICE: Second.
CHAIRPERSON CUNNINGHAM: Two-thirds majority is necessary to call the question. It will take -- I am going to ask you to stand if you are in favor of calling the question. We will do a count, because it will require two-thirds, and it's going to take longer to program that.

You want to call the question now, stand.

Does anybody want to question the fact that this is more than two-thirds?

MR. ABEL: The rest of the people can't take vacations.

CHAIRPERSON CUNNINGHAM: Thank you. The question is called. We'll have to erase Mr. Abel's comment there.

If there is no discussion, all those involved, Chelsea will run us through voting on it.

CLERK REBECK: For yes press one, for no press two, and to abstain press three. Voting is open.

Voting is closed.

Motion passes. Eighty-eight yes, 21 no, three abstain.

(Appause.)

CHAIRPERSON CUNNINGHAM: I have got to end the meeting by thanking very much Judge Chmura. I
don't think you recognize how much he has helped me today by telling me what's going on, but I am very appreciative to his services.

I do recognize the frustrations that some of you might feel about having not been able to address the issue, but, quite frankly, given the support of the number of people that stood up on the question, I don't think there is any issue at this point.

We will see you all in September. Thank you very much for your time this morning.

(Appplause.)

(Proceedings concluded at 11:53 a.m.)
STATE OF MICHIGAN

COUNTY OF CLINTON

I certify that this transcript, consisting of 90 pages, is a complete, true, and correct transcript of the proceedings had by the Representative Assembly on Saturday, April 13, 2010.

May 3, 2019

Connie S. Coon, CSR-2709

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