

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.

R E C O R D

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

1 him brother, but, no, we are not related, and I just
2 want to thank everyone from the State Bar who is here
3 and present.

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

6 CLERK REBECK: Yes, we have a quorum.

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

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

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

15 VOICE: Second.

16 CHAIRPERSON CUNNINGHAM: All those in favor.
17 Thank you very much, Jennifer.

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

21 Do I hear a motion to accept the summary?

22 VOICE: So moved.

23 CHAIRPERSON CUNNINGHAM: Thank you. And the
24 second?

25 VOICE: Support.

1 CHAIRPERSON CUNNINGHAM: All those in favor?
2 All right. The summary of proceedings are
3 approved.

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

9 JUDGE BROWN: Good morning, everyone.

10 You should have received a slate of nominees
11 to fill the vacancies for the Representative Assembly.
12 Is there a motion to approve the slate?

13 VOICE: So moved.

14 JUDGE BROWN: Is there a second?

15 VOICE: Second.

16 JUDGE BROWN: Any discussion?

17 All in favor.

18 Opposed.

19 Motion passes.

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

22 (Applause.)

23 JUDGE BROWN: We will move on to the approval
24 of the 2019 award recipients. The Nomination and
25 Awards Committee reviewed potential nominees for these

1 positions. For the Unsung Hero Award, we are
2 nominating Clarence Dass. Are there any other
3 nominations from the floor?

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

6 VOICE: So move.

7 JUDGE BROWN: Support?

8 VOICE: Support.

9 JUDGE BROWN: All in favor.

10 Opposed.

11 Motion passes.

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

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

17 VOICE: So moved.

18 JUDGE BROWN: Support?

19 VOICE: Yes.

20 JUDGE BROWN: All in favor.

21 All opposed.

22 Motion passes. Thank you.

23 CHAIRPERSON CUNNINGHAM: Thank you, Judge.

24 The term "honorable" is an honor given to
25 judges, but in this case the Honorable Michael Brown

1 has really demonstrated that to be an appropriate
2 title for him as a person beyond his office. He has
3 been exemplary in his service to this Assembly for
4 some time, both before and after, so I do thank him
5 for coming before you.

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

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

24 That's our core purpose. That is our core
25 being. That is our foundation of what we do, being

1 prosecutors, defense attorneys, civil attorneys,
2 family law attorneys. It's all in terms of
3 representing clients, an officer of the legal system,
4 and a public citizen having that special
5 responsibility for the quality of justice.

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

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

19 Now, most states have created integrated bars
20 as essential instruments to assist in regulating the
21 legal profession, promoting the lawyer's ethical
22 obligation, and developing the law and administering
23 justice. We are ministers of justice. We perform an
24 important government function. We are seeing that as
25 a theme of discussion that we have today. This

1 fundamental obligation, fundamental duty, fundamental
2 part of our character to be an officer of the legal
3 system.

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

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

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

25 The internet. Well, I'm crawling through the

1 jungle, somebody told me about an internet, I would
2 have given them a real look.

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

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

25 We also have two proposals, two proposals

1 that have come from members of the Bar, proposals
2 about interim administrator, proposal about vacation
3 time, and you will here some proponents arguing for
4 that, and we will have the opportunity to debate and
5 discuss that.

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

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

19 Now, when we looked at the initial part of
20 governance, I questioned whether we are effectively
21 using the resources that we have. Are we effectively
22 making the best use of the committee system? We have
23 a Special Issues Committee, and I have charged that
24 Special Issues Committee to look at the issue of fair
25 and just representations on juries. That's not

1 something that will be done overnight. That's a
2 long-term process that I have started, and I have
3 started it with the commitment and acceptance of my
4 successor, Aaron Burrell, that we do expect that this
5 will be looked at and considered.

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

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

19 (Applause.)

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

1 eloquence about the noble profession that we represent
2 today.

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

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

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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

1 successfully by believing in common myths. Any large
2 scale human cooperation -- whether a modern state, a
3 medieval church, an ancient city, or an archaic tribe,
4 or a bar association -- is rooted in common myths that
5 exist only in people's collective imagination. So
6 what does that have to do with challenges to the
7 integrated bar?

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

19 Imagine them looking at you, wondering what
20 are these strange things that each of you keeps
21 playing with, but grappling with such familiar topics
22 as to how to protect clients when a practice ends, and
23 think of their surprise at your faces. Women, lots of
24 women in this room, people of color, strange dress.
25 What happened to all the suits? Use your imagination

1 about what we can be going forward thinking about how
2 surprised, proud, astonished they would be about who
3 we are today.

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

6 CLERK REBECK: At least 50.

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

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

19 So I think this is what the world looks like
20 to the U.S. Supreme Court at this moment, kind of
21 black and white; that what they know about the
22 mandatory bar they know from what their predecessors
23 told them about the State Bar of Wisconsin and the
24 State Bar of California, and they really don't know
25 anything about how that contrasts with what happens in

1 the non-integrated bar states. So what we have been
2 doing has been organizing to tell the story, to tell a
3 deeper, more enlightened story about this picture.

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

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

25 So Keller V. State Bar of California, which

1 is what we are all living with right now, again upheld
2 the constitutionality of an integrated bar but said
3 that mandatory dues, compelled dues, could only be
4 used by the integrated bar for purposes related to
5 subject matter, purposes related to the regulation of
6 the legal profession, or improvements in the quality
7 of legal services, and we all are very familiar with
8 how we have learned to live with those restrictions.

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

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

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

24 So what's happened since that? Here is
25 Fleck, the only case that's been to the

1 U.S. Supreme Court and remanded back. In the
2 immediate aftermath of that happening, there was a
3 lawsuit filed in the State of Oregon, Gruber, which
4 just this week the magistrate recommended dismissal,
5 made findings on recommendations of dismissal, so
6 that's good news at this point for the Oregon
7 State Bar.

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

23 So I am happy to say that we are, with all of
24 this activity, that the integrated bars have gotten
25 together for the first time ever. We have had, if you

1 can imagine the conference call with 24 integrated
2 state bars, we have had more than one of those, and we
3 have prepared for, not only Fleck, but what might
4 happen going forward from Fleck.

5 So the briefs in Fleck were filed last month,
6 the end of last month, and here are the arguments.
7 Not surprising. Fleck is arguing, has a big argument,
8 a big-bore argument and a small-bore argument. The
9 first one is that mandatory state bar associations
10 violate freedom of speech and association and
11 characterizing the integrated bar basically as a not
12 even glorified trade association. And the small-bore
13 argument is that the way in which the State Bar of
14 North Dakota carried out it's opt-out option for
15 activities that were outside of Keller violated the
16 First Amendment.

17 So the State Bar of North Dakota's defense
18 is, first of all, that Fleck in the first round before
19 the appeal to the U.S. Supreme Court waived the right
20 to assert that Keller and Lathrop didn't govern the
21 outcome. Second, that Janus did not overrule Keller
22 and Lathrop, and, third, even assuming that the strict
23 scrutiny that was applied in Janus applies to
24 integrated bar associations, that the State Bar of
25 North Dakota can survive that level of scrutiny, and,

1 finally, that their opt-out procedure for payment of
2 non-germane expenditures is constitutional.

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

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

17 So what has happened is the beginning of this
18 month was the deadline for the filing of the amicus
19 briefs, and this is where things stand. There was
20 only one amicus brief filed on Fleck's behalf from the
21 Pacific Legal Foundation, and its main argument
22 basically is that integrated bar states do a terrible
23 job of regulating the legal profession, assumes that
24 they do regulate the legal profession, which is a
25 simplistic way of looking at what we do, and really

1 picking on the State Bar of California. Seriously, I
2 would recommend reading it. It's fairly entertaining.

3 There were two amicus briefs filed at the
4 cert level at the U.S. Supreme Court that are worth
5 noting, one from the National Right-To-Work Legal
6 Defense Foundation, and the other from the Goldwater
7 Institute, and the lead attorney on the amicus brief
8 at that level is from the Goldwater Institute. It's
9 actually the attorney, Fleck's attorney in the
10 8th Circuit.

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

21 Michigan's brief makes four points basically.
22 One, that any holding that the 8th Circuit comes up
23 with we say should be narrow and limited to the
24 State Bar of North Dakota, and we emphasize that the
25 variation among the integrated bar states is great

1 enough that you can't make a general determination
2 regarding the impact of Janus that applies to all
3 integrated bar states, and that determining what
4 constitutes government speech is a highly
5 fact-specific exercise, so it shouldn't be -- they
6 shouldn't make a determination that applies to
7 everybody.

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

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

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

25 The Missouri brief, just quickly, backs up

1 the State Bar of North Dakota's point that Janus did
2 not overrule Keller and Lathrop. It elaborates on the
3 point that Janus is consistent with Keller and
4 Lathrop. It makes a distinction between what
5 integrated bars do and the reasoning about agency fees
6 in Janus, and it also elaborates on the State Bar of
7 North Dakota's points about strict scrutiny.

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

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

19 At this particular point in time the
20 collective imagination of the nine justices of
21 U.S. Supreme Court are up for grabs. Our job right
22 now is to work toward helping them imagine the Bar the
23 same way we do. We are on our way, and the work that
24 you are turning to next, reimagining the possibilities
25 for how we carry out the business of governing the

1 integrated Bar in the state in the 21st Century is
2 really an important part of that work, and I look
3 forward to seeing you do that and helping you do that
4 work. Thank you.

5 (Applause.)

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

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

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

13 As our esteemed chairperson has indicated,
14 the R.A. was established in 1972. It's been a long
15 time since we have looked at governance of our Bar,
16 the Board of Commissioners, and the Representative
17 Assembly. You approved the Task Force in September.
18 We have had our first meeting on March 18th. That was
19 between officers of the R.A. and officers of the Board
20 of Commissioners. We had a really great discussion,
21 robust discussion about governance, about the problems
22 with our structure now, the process to determine
23 whether there is a better structure that can be made
24 and whether we can be more efficient, more effective,
25 more responsive.

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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

1 recently the Ohio State Bar Association, and he has
2 presented a number of times at the ABA Bar Leadership
3 meeting. Many of our members of the Board of
4 Commissioners have attended those meetings and had the
5 privilege of hearing him speak.

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

13 (Applause.)

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

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

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

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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

1 part of the journey for us, and I think that makes it
2 equally exciting I think for you as well. So we will
3 be examining where you are going as an organization.

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

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

21 So what is the rate of change in the practice
22 of law? And I am not a lawyer, but I can imagine that
23 the complexity in your field has changed dramatically,
24 and the opportunities for people to get legal services
25 has changed dramatically.

1 In fact, I was with the orthodontist
2 recently, and that's an area where you want to change
3 very slowly, I would suspect. Somebody being in my
4 mouth, I want to make sure they have a good practice
5 going on before any experiment from them, and you can
6 go online today and get your orthodontia online. They
7 will send you the mold. You get to apply it yourself,
8 probably wonderful flavors and everything, and so the
9 orthodontists were saying, well, that's fine, you can
10 start doing that, but then when you need that fixed,
11 which will be pretty soon, you will come back to us as
12 a professional.

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

18 So does the rate of change impacting the
19 profession and practice of law, has the way you are
20 making decisions at the State Bar of Michigan kept
21 pace with the rate of the change in the profession and
22 practice? So this is a line of inquiry we ask. Do
23 you have the capacity to make decisions, consequential
24 decisions, on a timely basis to impact professional
25 practice in the state of Michigan? So that's kind of

1 a line of inquiry that we like to start with. Have
2 you evolved this process or not? What does it look
3 like today? What did it look like, as you said, back
4 in the 1970s.

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

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

24 Which body should make decisions? Again, you
25 have got quite a bit of complexity. You have got the

1 Supreme Court that's involved. You have the Board of
2 Commissioners, you have this body, and you also have
3 your districts. There is really four, at least four
4 levels of governance under your umbrella to begin
5 with. So we will unpack that in just a minute.

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

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

22 We don't always want to assume that everybody
23 knows what governance is, so we are not going to
24 define it for you here, but, again, we are just going
25 to reflect that your mechanism for governance is

1 complex. It's more complex than the average
2 organization out there, so we need to be cognizant of
3 that, how does that look. In the governance model,
4 and if you look at the American Bar Association, which
5 was incorporated over 200 years ago, one of the first
6 organizations to model their governance structure at
7 the time, we all know how functional that can be.
8 That does usually generate a little more of a
9 reaction.

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

21 That's the best pilot that I have seen
22 recently, and this was not directly applied to your
23 organization, but six pages of double space, and so we
24 have gone to an element from control to an element of
25 distributing the authority to get the work done.

1 How do we do that differently today with the
2 social media, with the mechanisms of communication,
3 with the constraints on your time and talent that
4 exist today that didn't exist 200 years ago or even in
5 the '70s when your governance structure was really
6 implemented? How does all that impact, and how does
7 that impact your investment of time and intellect and
8 to driving the success of the State Bar of Michigan?
9 What are these elements? So that's what we include
10 and consider in this process.

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

24 They're generational. My dad was an
25 association manager back in the '60s, and the way they

1 did things in those days is very different than the
2 way you do things today. Some of that is generational
3 based of the impact of element of time and longevity.
4 Do you want to sit in these seats for the next ten
5 years and then move to the Board of Commissioners'
6 seats or some other leadership opportunity and spend a
7 lifetime in that? We are finding on a generational
8 basis that's less appealing than it has been to past
9 generations.

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

13 The Task Force met a couple of weeks ago and
14 advanced some of the work, and one of the things we
15 talked about the R.A. specifically to the State Bar of
16 Michigan, what are the trends that are impacting you,
17 and so while we won't go into detail on this, we did
18 start talking about your environment of change under
19 your roof and what is it going to be impacting on the
20 governance basis. So just some of the elements that
21 the bonding with the organization is a different
22 capacity. You know, in the old days we wrote our
23 dues, because that's what we did. We were told to do
24 that. We do that for life. That's no longer the case
25 in voluntary situations these days.

1 So there are some elements around the bonding
2 and recognition that the State Bar of Michigan is your
3 identity, and what that means today is generationally
4 in the legal profession is very different by
5 generation, if you will.

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

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

23 Some of the early themes, and this is what we
24 look to as investigators. Jeff and I will be doing a
25 lot more due diligence. You will see the process in

1 just a minute, but one of the themes that we are
2 finding, and some of this emerged from our first
3 Task Force meeting, confusion of roles between this
4 body and the Board of Commissioners, who's got what
5 line of authority, what responsibility out there?
6 There is a lack of clarity in that.

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

11 Your cumbersome size and structure, and
12 that's -- it depends on what lens you are looking at.
13 So this is an area we will be interested to further
14 probe. We have seen bodies such as this of over 600,
15 and we have seen much, much smaller, and we have seen
16 organizations that don't have this body. How do you
17 get those decisions made and inputting into direction
18 with smaller bodies or without the opportunity to have
19 150 people under this roof adding in their intellect
20 to inform decisions?

21 What's the R.A.'s role in governance and
22 advancing issues? We have got some examples of how
23 bodies such as this are really working in a different
24 way these days to really inform decisions in a very
25 meaningful context.

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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

1 written word that we collect and assess, then we
2 actually compare that to what has actually happened
3 here. What's your practice? How are you implementing
4 these elements? Because what you say you are doing
5 and how you are doing it oftentimes don't necessarily
6 line up directly.

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

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

22 Then we doing a mapping exercise where we
23 talk about what's written, what's your practice, and
24 then what's the desired. What can this look like?
25 That's where we have to incorporate that element of

1 culture. Because the desired future, if it's not
2 reasonable and feasible for you to make that type of a
3 change, then why pursue it?

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

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

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

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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

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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

1 it's not realistic in their eyes, then could be a lot
2 of work that does not get approved.

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

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

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

24 So what are the guiding principles? Employ a
25 phased-in implementation approach in order to mitigate

1 adverse impact on members, and sometimes this means,
2 as an example, we are working with another
3 organization that decided to cut their Board size in
4 half. That's a very aggressive and bold move, and so
5 the point for their phased-in element was some people
6 will not be sitting in this room next year, but we are
7 going to make sure everybody serves out their term, so
8 their element has the phased-in approach.

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

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

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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

1 and driving change and impacting change for the
2 professional practice in Michigan. How can you spend
3 more time looking up and out instead of down and in
4 the work? It's one of our early reflexes that we are
5 going to be examining with you.

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

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

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

23 One other element, too, we talk about is use
24 of group size, because we do know that size matters,
25 and so on the left side you will see some of the uses

1 of a large body. Again, the largest house we dealt
2 with was 600, so your size is one of the smaller
3 houses, not the smallest by any chance.

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

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

18 Shaping is the next key word we use, which is
19 input into advocacy issues, for instance, and, again,
20 with social media or a different electronic basis, we
21 can be procuring your background and knowledge in
22 issues on a more timely basis. That doesn't mean you
23 have time to make a broader decision for this large of
24 a group, but you have the capacity to get input into
25 informing positions such as advocacy.

1 And then protecting is the third element we
2 see very favorably in larger groups. I mentioned the
3 orthodontist. You don't want change in your mouth
4 going on on a split-second notice. You want that
5 debated, you want that refined in committee and task
6 force and so on, so really what we call really
7 protecting the elements of the profession on that
8 basis.

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

19 And, again, it's not the fiduciary. Now, you
20 do have some fiduciary responsibilities in this body.
21 We talked about the dues already. So that's an
22 unusual element too in a large body, so you would have
23 a large body approve the dues. That's part of this
24 allocating the resources, which will be your
25 responsibility to perform.

1 So that's one of the questions that we are
2 going to be asking as we go, who's got what level of
3 authority. Your dues is a good example. It's an
4 unusual element. Why is that the case here? Does
5 that meet supporting your strategies for the
6 organization or not? That's part of the questions
7 that we ask. The smaller board on the right side is
8 the leadership body, and what we see in that area is
9 the ability to be nimble and flexible to make the
10 decisions.

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

19 And we are not here with a recommendation on
20 sizing, but we are going to provide you with a
21 resource that says what happens in these different
22 sized groups, how you inform decisions and how do you
23 communicate decisions, what's the latest research on
24 that, and how is it impacted in the association
25 environment that we are seeing today? It ultimately

1 is a fiduciary board that has the responsibility for
2 making certain decisions.

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

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

21 So the last slide that I really have for you
22 is the opportunities to engage, and I am not sure if
23 you broadcast who are the members of the Task Force,
24 for instance, but at some point it might be
25 appropriate to identify the members of the Task Force.

1 Likely, some of you are going to know or know of who
2 are representative of that body, so they will be very
3 actively engaged in the process.

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

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

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

24 CHAIRPERSON CUNNINGHAM: Thank you very much,
25 Mark.

1 Jennifer, do you want to address the members
2 of the Task Force?

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

12 (Applause.)

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

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

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

22 CHAIRPERSON CUNNINGHAM: We are going to move
23 now into consideration of the interim administrator
24 proposal. I would ask that if any of you, and
25 obviously you are all invited to participate and at

1 the appropriate time to make comments or debate as you
2 want to, but please, please, please, identify yourself
3 by name and circuit number. Connie has got to take
4 down everything, and she is facing this direction.
5 She is not going to see you. So please, please,
6 please, the first thing out of your mouth is your name
7 and your circuit number for the benefit of our
8 overworked court reporter.

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

14 Mr. Dettmer, if you would, please.

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

17 CHAIRPERSON CUNNINGHAM: Thank you.

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

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

25 This proposed policy is consistent with the

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

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

22 And Alecia is going to run through and help
23 me run through a quick slide show here. The policy
24 addresses, as I said, death, disability, discipline,
25 and disappearance. Inadequate, inadequate succession

1 plans, and I don't know that there are inadequate
2 succession plans. I know there are no succession
3 plans for most of us. I don't want to ask anybody to
4 raise their hands to see if anybody has a succession
5 plan, but it primarily hurts our clients, and the
6 greatest ethical duty we have is to our clients, and
7 it also affects our families and our interests in the
8 practice.

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

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

21 Here is the snapshot of solo and small
22 practitioners. There are literally almost 7,500 solo
23 firms, and of that 5,500 of us are over 50 years old.
24 Small firms add up to another 6,100. So there is
25 13,000 lawyers that are practicing in really small

1 firms, which you just have to recognize, and I admit
2 this is what this rule is directed at and pointed to.

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

14 I can just say I became involved with this
15 because back almost ten years ago now a sole
16 practitioner in Traverse City, a really good
17 54-year-old man, who had started at Miller Canfield,
18 decided he was going to go out on his hone. High tech
19 guy. Knew everything about technology. Didn't need
20 any staff. Had his clients and his office, and on the
21 way to a meeting he stroked out and died, and the
22 court asked me to wind down his practice.

23 I walked into this office that was no bigger
24 than this platform, and I couldn't even figure out how
25 to open the file cabinets, and it took almost three

1 years of digging to wind down his practice and protect
2 his clients. Great lawyer, well intentioned, no
3 succession plan, no thought about, and it really
4 taught me the lesson that I am standing in front of
5 you on behalf of the Master Lawyers Section,
6 21st Century Practice, the Workgroup, the Bar staff.
7 We have all really worked hard over a lot of years, at
8 least going back to 2010, and we appeared here in
9 2012. We had a lot of questions then. We, I believe,
10 have answered them with this proposal, and we are back
11 before you.

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

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

1 administrator then under the process will agree to
2 take on that responsibility.

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

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

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

1 in early 2018.

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

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

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

25 If a lawyer doesn't appoint or can't appoint

1 a person of his or her choice, then they will
2 participate in the State Bar program with an annual
3 participation fee, and the State Bar will participate
4 or will assume the responsibilities, will assume
5 finding the appropriate geographically-located lawyer
6 to assist and go from that approach.

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

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

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

25 Bar will be ready to boost their resources

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

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

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

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

23 So I am prepared to take questions, and
24 Alecia has been the star staff person on this matter,
25 and what I can't answer, she will.

1 CHAIRPERSON CUNNINGHAM: Before we proceed
2 any further, can I get a motion on the floor from a
3 member of the Assembly? The wording, Resolved,
4 State Bar of Michigan should recommend rule changes to
5 allow SBM to implement an IAP and require attorneys in
6 private practice to designate an IA or participate in
7 the IAP.

8 VOICE: So moved.

9 CHAIRPERSON CUNNINGHAM: Is there a second?

10 VOICE: Support.

11 CHAIRPERSON CUNNINGHAM: Thank you.

12 Discussion. We have heard the presentation.

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

14 Alecia, did you want to add something to it?

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

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

23 I presented the issue here in our county Bar
24 association meeting. We are a relatively small, rural
25 county, and most of the people are in private practice

1 there. The main question they had was what provisions
2 would there be for training for continuing legal
3 education, so forth, for the people that would be
4 signing up to be independent administrator for
5 somebody? And in general, just so you know, the
6 overall consensus was they liked the idea. They think
7 it should have been around a long time ago.

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

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

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

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

25 We have actually spoken with ICLE to provide

1 trainings through their program. So, for example, you
2 are in a rural county, so you may not want to come to
3 Lansing for a training, but there would be training
4 available through the State Bar for anyone who is
5 interested in participating in the program, and you
6 could do those at any time, and as part of the
7 program, it would be at no cost. So we are not asking
8 you to pay to take a class on how to do that.

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

20 MR. BARNES: Thank you.

21 CHAIRPERSON CUNNINGHAM: Nick, you had a
22 question?

23 MR. OHANESIAN: Nicholas Ohanesian,
24 17th judicial circuit.

25 I am approaching this from the standpoint of

1 an administrative law judge, Social Security
2 Administration, and we have most of the attorneys
3 coming in front of us are a small firm or solo
4 practitioners. We had the situation happen now where
5 somebody has passed away unexpectedly. He had 40 or
6 50 clients at the time, separate. I was very glad,
7 because there was some informal group of attorneys
8 that did step up to handle this, to assume his cases,
9 but at the same time I can't -- you know, I think it's
10 unfair as it currently sits, as the situation
11 currently sits, to have to ask somebody to take on
12 cases, especially in Social Security work. They may
13 not have been good cases; they may have been great
14 cases. A lot of these people went uncompensated
15 because maybe the cases weren't that good. So I just
16 rise in support of this proposal.

17 CHAIRPERSON CUNNINGHAM: Thank you.

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

20 Two questions. The first is in the handouts,
21 page 47 at the top of the page, it says, When an
22 attorney in private practice becomes incapacitated,
23 SBM staff would file in the probate court where the
24 attorney's practice is located an ex parte petition
25 requesting that the court appoint the IA designated

1 attorney. Is there currently a statute or a court
2 rule that would allow a filing in probate court?

3 MS. RUSWINCKEL: There is not.

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

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

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

25 Is there a number that you have in mind? I

1 mean, I am a sole practitioner. I like this idea.
2 It's something that as you get older and get into your
3 practice you don't want to face, and I am still
4 practicing -- knock on the mike -- but I understand
5 that this is going to happen some day to me, and so I
6 like the idea. It brings attention to myself to do
7 something like this.

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

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

23 So it would just depend on the particular
24 situation, so it's not necessarily focusing on solo
25 practitioners. It's focusing on any attorney who

1 needs someone to step in. Normally it would be the
2 firm, but there are instances where it could be
3 someone else.

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

8 MS. RUSWINCKEL: That's correct.

9 MR. DETTMER: Everyone in private practice.

10 MR. PERKINS: Thank you.

11 CHAIRPERSON CUNNINGHAM: Any further
12 discussion or comments?

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

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

25 MS. RUSWINCKEL: It would be both. But it

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

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

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

20 MS. COLE: Angela Cole from the 42nd circuit
21 court. I just am wondering maybe taking the step just
22 a little bit further, but I had someone come within
23 the last year who had hired an attorney six months
24 after he was disbarred or suspended, and they took,
25 and the attorney didn't know until after their mother

1 died. Three days after the mother died they found out
2 that he had stolen a hundred thousand dollars of her
3 money, and then, as they are uncovering everything,
4 found out he had been disbarred six months before that
5 and had stole thousands and thousands of dollars from
6 other people and was under investigation.

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

19 MS. RUSWINCKEL: Well, that should be built
20 into the Attorney Discipline System and how they would
21 manage that person going forward and the obligations
22 that they would have under that program. I am not
23 sure -- if there were an interim administrator in
24 place though, presumably that person would be in
25 winding down the office, so they would notice on a

1 Saturday if things are moved around. I don't know
2 that it would solve the problem, but hopefully it
3 would, at the very least, provide an additional layer
4 of notification regarding where the law firm was.

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

10 MS. COLE: Thank you.

11 MR. ROTENBERG: Steven Rotenberg,
12 6th circuit, and, as this was being presented, I
13 started thinking about a technical problem. I am a
14 sole practitioner. I have two offices, and my firm
15 doesn't have a lot of capitalization, because I am it.
16 You are looking at the entire firm. If I die or
17 become disabled, this is a wonderful problem, but
18 within about 40 days all my stuff is going to wind up
19 in a dumpster because I am going to be evicted. My
20 firm will be gone.

21 So all this wonderful stuff with the records
22 here, this doesn't actually solve a possible practical
23 problem. How do you actually keep the records in
24 their place, in a file? I am going to assume that a
25 law firm typically can't be packed up in a weekend in

1 any quick, easy way. So how do you propose that we
2 solve that problem, because with the continuation, I
3 don't see any funding for this. I don't really see
4 that it's the State Bar's position to fund
5 landlord/tenant relations after the tenant has died,
6 and I just see this is a problem, a technical problem
7 that I don't see any structure for overcoming.

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

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

24 MR. ROTENBERG: I would assume that if I was
25 incapacitated my clients would, for the most part,

1 take a bill paying vacation, and I suspect that's
2 fairly common.

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

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

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

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

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

25 MR. ROTENBERG: Okay. Thank you.

1 CHAIRPERSON CUNNINGHAM: At this point I
2 would like to interject that we will be stopping at
3 12:00: We have one more proposal. If we are not able
4 to finish that proposal, I would entertain a motion to
5 postpone consideration. I certainly don't want to cut
6 anybody off, and I want everyone to have the
7 opportunity to speak to this motion and the subsequent
8 motion, but we are leaving at 12:00.

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

13 CHAIRPERSON CUNNINGHAM: May I have your name
14 and circuit.

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

17 CHAIRPERSON CUNNINGHAM: Thank you.

18 MR. KLAASEN: I assume, from what I have
19 heard, that you have to name an IA on your Bar dues
20 every year, and so every year they would come back and
21 ask the person who you have named whether they are
22 willing to do it. If I was going to be asked to do
23 this, I would say, I am not doing it unless I get paid
24 for it. And, likewise, if I am agreeing to do it, do
25 I have to notify my carrier that I agree to do it and

1 that I might get stuck doing a bunch of stuff that I
2 may or may not be qualified by my own experience to
3 do, and, you know, who is going to pay the bill and
4 when does the attorney-client relationship end, and
5 those are just a couple of the questions that come to
6 my mind, along with a whole bunch of others. But
7 there is going to be a cost involved in this, and
8 somebody, either the attorney is going to have to
9 build something into his fees to cover this, or
10 somehow, but I just got all kinds of questions about
11 this.

12 MS. RUSWINCKEL: Well, the program, first of
13 all, is a program where we anticipate that people will
14 have reciprocal agreements, right? You are both
15 taking a chance, but it's a reciprocal agreement.

16 You are not forming necessarily an
17 attorney-client relationship with the clients of this
18 person. Instead, what you are doing is ensuring that
19 the deceased or disbarred or whatever, the lawyer, is
20 able to, their clients are able to get to a lawyer
21 that can do that.

22 So, for example, if you get into a small
23 practice firm and you don't know how to do Social
24 Security Disability work, you wouldn't necessarily
25 take on those clients of the Interim Administrator.

1 Instead, you would help and assist someone else, a new
2 lawyer, in getting the file to them and getting them
3 up to the speed and getting to the client to them.

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

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

15 MS. JOLLIFFE: Elizabeth Jolliffe from the
16 22nd circuit. My first question is is there a
17 critical mass number of participants who would have to
18 choose to be in the IAP to fund it? What if only a
19 thousand participate?

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

21 MS. JOLLIFFE: It's going to cost more, but
22 if a thousand participate and they pay 150, that's not
23 going to be enough to provide the resources to this
24 1,000 that you are talking about, which I think sounds
25 wonderful.

1 MR. DETTMER: That was part of the issue in
2 2012. The focus of this is to get each lawyer to find
3 an IA so they don't have to participate in the IAP,
4 and so there is some incentive to do it voluntarily.
5 I would actually hope there would not be an IAP
6 program that, you know, people had to pay into, but
7 the Bar needs to have that office, they need to have
8 that staff, they need to develop, help us develop that
9 program.

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

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

25 MS. JOLLIFFE: And then I think, Alecia, just

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

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

22 MR. LARKY: My name is Sheldon Larky. I am
23 from the 6th circuit. I am probably, I think, the
24 oldest, the longest serving member on the Assembly.

25 (Applause.)

1 MR. LARKY: No, no, no. I think I started in
2 1974 and go six years, get off one year and come back
3 on.

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

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

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

25 I think this proposal is a good proposal. It

1 makes sense. I don't like the idea that we are going
2 to have it. As you suggest, Mike -- we go back many
3 years -- I don't like the idea that maybe a thousand
4 people take it on, and if that happens out of the
5 45,000, that means we are going to be hit with Bar
6 dues that could be in the thousands, could be
7 theoretically. I don't want to say that.

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

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

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

20 MS. STARKS: Thank you. Reh Starks from the
21 9th circuit. My question is is there going to be a
22 graduated cost scale to take into consideration how
23 this fee may impact young lawyers? We have already
24 heard from Mark earlier today that the young lawyers
25 are feeling a bit disassociated from the State Bar. I

1 know that a lot of them are opening up sole practices,
2 so costs are a concern. Are we even asking
3 consideration with that?

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

17 MS. RUSWINCKEL: It's also a great
18 opportunity though for a young lawyer to match and
19 find someone who has been practicing a while and have
20 that reciprocal agreement, because then the young
21 lawyer could be in a position to take over the
22 practice of another lawyer, especially in small
23 jurisdictions where everyone kind of knows each other,
24 and it's also a great opportunity for, for example,
25 the Young Lawyer Section to say, okay, we know that we

1 all are going to need this now. Can we build
2 relationships amongst ourselves to foster
3 relationships so, while it's not a great answer, you
4 do have a no-cost option.

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

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

24 MS. RUSWINCKEL: Part of the plan is, like I
25 said, putting together some type of a matching service

1 within the Bar, who is willing to, would be willing to
2 take it on. And then also there is that outreach
3 component as well.

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

16 MS. STARKS: Thank you.

17 CHAIRPERSON CUNNINGHAM: Mr. Lavigne.

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

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

25 CHAIRPERSON CUNNINGHAM: If there is anyone

1 else. I didn't see the last couple people. Anyone?

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

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

9 Voting is closed.

10 Motion passes.

11 CHAIRPERSON CUNNINGHAM: And the number,
12 please.

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

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

22 MR. JOCUNS: How about we do it fast.

23 CHAIRPERSON CUNNINGHAM: Well, you want to
24 try that.

25 For proposal two, Mr. Josh Blanchard, the

1 chair of the Criminal Law Section, and Bernard Jocuns
2 are going to make a presentation. Gentlemen, please.

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

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

1 the day. So from Greenville, Michigan,
2 Josh Blanchard.

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

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

17 The proposed rule must be scheduled 90 days
18 in advance, and then there is a simple method for
19 resolving problems if they come up. So if there is a
20 problem that crops up, if it's a court hearing, you
21 send a notice to the court. If you properly noticed
22 it, it gets rescheduled. If there is a deposition
23 set, you point it out. If opposing counsel doesn't
24 reset it, you inform the court, whose obligation it is
25 to quarter that theory that, unless the notice wasn't

1 properly filed, and even then the judge has discretion
2 to still adjourn.

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

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

1 leave. If you do those things, it's done and your
2 vacation is secure.

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

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

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

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

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

20 VOICE: Support.

21 MR. JOCUNS: Thank you.

22 VOICE: Move the question.

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

25 VOICE: Second.

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

7 You want to call the question now, stand.

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

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

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

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

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

20 Voting is closed.

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

23 (Applause.)

24 CHAIRPERSON CUNNINGHAM: I have got to end
25 the meeting by thanking very much Judge Chmura. I

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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.

(Applause.)

(Proceedings concluded at 11:53 a.m.)

1 STATE OF MICHIGAN)
)
2 COUNTY OF CLINTON)

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

7
8 May 3, 2019

Connie S. Coon, CSR-2709

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