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 21, 2012, at the hour of 9:30 a.m.

AT HEADTABLE:

STEPHEN J. GOBBO, Chairperson
DANA M. WARNEZ, Vice-Chairperson
KATHLEEN M. ALLEN, Clerk
JANET WELCH, Executive Director
HON. JOHN CHMURA, Parliamentarian
ANNE SMITH, Staff Member

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Lansing, Michigan  
Saturday, April 21, 2012  
9:31 a.m.  

R E C O R D  

CHAIRPERSON GOBBO: Good morning to you all.  
As we get people settled down, I would like to call  
this meeting of the Representative Assembly to order  
and welcome you here to Lansing, Michigan at the  
Lansing Community College.  

With respect to the agenda, you should have  
the agenda in your booklets, and if you don't have  
your booklet, there should be extra copies available.  

At this point in time I am going to call  
Kathleen Allen as clerk to certify that a quorum is  
present before we begin.  

CLERK ALLEN: We have a quorum.  

CHAIRPERSON GOBBO: We have a quorum?  
CLERK ALLEN: That's right.  

CHAIRPERSON GOBBO: Thank you. I would like  
to call Vanessa Williams up so that we can adopt the  
proposed calendar.  

MS. WILLIAMS: Good morning, Mr. Chair. I  
move for the adoption of the calendar for the  
April 21st, 2012 Representative Assembly as presented  
in the material mailed to the body on March 19, 2012.
VOICE: Support.

CHAIRPERSON GOBBO: Hearing a second, any discussion?

All in favor say aye.

Any opposed say nay.

Thank you. Motion carries.

We are now moving down to approval of the September 15, 2011 summary of proceedings. Is there a motion to adopt the summary?

MR. COURTADE: So moved.

CHAIRPERSON GOBBO: Hearing a motion, is there a second?

VOICE: Second.

CHAIRPERSON GOBBO: Hearing a second, any discussion?

Hearing no discussion, I am going to call for an aye vote in the affirmative, please say aye.

Any opposed say nay.

Thank you.

At this point I am going to call Jeff Nellis up -- he is the chair of the Assembly Nominating and Awards Committee -- to deal with that committee filling vacancies.

MR. NELLIS: Good morning, everyone. Hope everyone had a good drive here.
I am the chairman of the Nominating and Awards Committee. I am Jeff Nellis, by the way, 51st circuit, Ludington, Baldwin. You probably recognize me from meetings past.

I have been the chair of this committee for a couple three years now, and we always have the goal of trying to have complete membership in this body, adds to our legitimacy, and I remember years ago when I started on this endeavor, I remember there were lots of vacancies, and over the years we have worked really hard to try and get 100 percent participation, and I am very pleased to report that we again have all of the seats filled this year, and that is certainly because of the fact that I have had great assistance on my committee. Anne Smith does a lot of the heavy lifting for us as far as getting us started, but at this time I would like to just read off the names.

VOICE: Can't hear.

CHAIRPERSON GOBBO: Starting with the 3rd circuit, Aaron Burrell. Also in the 3rd circuit, Elizabeth Johnson. 3rd circuit, John Clark. 3rd circuit, Dan McLean. 3rd circuit, Douglas Kaye. 6th circuit Barry Malone. 6th circuit, Ray Littleton. 6th circuit, Lawrence Shulman. 6th circuit, Michael Elkins. 6th circuit, Syeda Davidson.
9th circuit, Jeffrey Dufon. 12th circuit, Kevin Mackey. 16th circuit, R. Timothy Kohler. 19th circuit, Kathryn Glancy. 22nd circuit, Chad Engelhardt. 22nd circuit, Joan Vestrand. 24th circuit, Ryan Edberg. 26th circuit, Daniel Florip. 27th circuit, Eric Fox, and 54th circuit, John Bishop.

And I just want to add, and it's in the materials, this is for today's meeting and for the September 20th meetings only, so have to remember to then thereafter submit and fill out a petition for an election for your next term.

So I think we would like to entertain a motion, I believe, to seat these folks.

VOICE: So moved.

VOICE: Second.

CHAIRPERSON GOBBO: Hearing a motion and second, is there any discussion? Hearing no discussion, all in favor say aye.

Any opposed say nay.

Congratulations to you all.

(Applause.)

CHAIRPERSON GOBBO: You may now join your assigned circuits.

I am going to reserve comments following the
agenda from the Chair until later on, but one
housekeeping matter that I wanted to bring up is with
respect to attendance for today. The attendance
sheets will be essentially collected after the
official meeting is over, and following the official
meeting is going to be a meeting of the Assembly
Review Committee, which I will speak more about during
my remarks later on.

At this time I am pleased to call to the
podium Janet Welch, who is the executive director of
the State Bar, so that she may provide comments and
answer any questions that the membership may have from
the Assembly.

MS. WELCH: Thank you, Steve. It's my
privilege again to address you. This is my
responsibility twice a year, to address the
Representative Assembly. And I want you to know that
what I think about when I think about addressing you
is the challenge tell me something I don't know
already.

I assume that because you represent the most
informed and most committed members of the Bar that
you already know what the State Bar is providing to
you in the E-Journal, our flagship publication, the
Bar Journal, the E-newsletter, the public policy
newsletter, SBM today, the news line that you get as
an insider, and the State Bar of Michigan blog, so you
have been inundated with all that, so my challenge is
to tell you something that you haven't heard before,
and I do actually have three items that have not been
discussed in those publications that I think are
relevant to understanding the challenges that the
practicing Bar faces today as well as the State Bar of
Michigan.

So the first item is nonlawyer ownership of
law firms. You heard me talk about this a few years
ago when it had been introduced and adopted as a
reform to take place in Great Britain. Australia had
adopted a similar reform prior to it being adopted in
the United Kingdom.

And just a shorthand version of what that
means is the proponents of allowing nonlawyers to have
some ownership in law firms is that it is believed
that that ownership would help deliver low cost legal
services to people of moderate means and low income
people through the equivalent of Wal-Mart, for
example, so that the administrative burdens, the
billing burdens, the personnel burdens that solo and
small firm lawyers who typically provide those
services now absorb individually would be absorbed by
a corporation.

The jury is still out in England on how those reforms are going. They are following them closely. There are people who think that some of the promise of that change is starting to be delivered. They are a bit more critical, but obviously it's something that has just started, and there is a lot of data yet to be accumulated and analyzed.

In this country there are two, there have been two relevant developments. One is that there has been a lawsuit brought against the New York, New Jersey, and Connecticut Bars challenging the rule that prohibits nonlawyer ownership of law firms, partial ownership of law firms, or full ownership of law firms. That lawsuit in New York has failed at the trial court level, but it is still alive in the other two jurisdictions.

And I have to tell you that I spoke to a professor at MSU who believes that if that lawsuit does get legs and proceed, she believes that on First Amendment grounds that it has a good chance of prevailing at the U.S. Supreme Court given the current membership of the U.S. Supreme Court, so stay tuned to that issue.

Concurrently with that, the item of nonlawyer
ownership of law firms has been part of the agenda of
the ABA's 2020 Ethics Commission, and it has been
something, frankly, they have struggled with, and last
week or the week before, I am losing track of time,
but this is late breaking, they threw in the towel and
they said we are not going to make a recommendation on
that we are so divided on that subject.

So do not look for the ABA and Ethics 2020 to
be making a recommendation on that, but the Ethics
2020 package, which we all need to be thinking about,
is going to be advancing minus that item to the ABA
House of Delegates in August. So you will begin to
see some results from that commission moving through
the ABA. That's item number one.

Item number two that I think we need to be
paying attention to is, and I am happy to say that
this is not manifest here, turmoil in the state Bars
beginning to surface as a result, I think, of the
prolonged economic distress of lawyers. In Wisconsin
there is an ongoing attempt to convert the Bar from a
unified Bar to a voluntary Bar, and that challenge is
underway and being examined by the Wisconsin
Supreme Court at this moment.

And actually I have now heard of two
state Bars that have governing structures similar to
ours that are looking specifically at how technology can reduce the cost of a dual governing structure and a big governing structure, and I am keeping my eye on what they come up with to see if they have any good ideas about how technology can help deliver the mission of the Representative Assembly more effectively to the membership.

But the one I particularly wanted to highlight is the Washington Bar Association, which is a very highly respected Bar association, had a referendum called this year on their dues, and the entire membership was polled on dues and voted by 52 percent, which turned out to be about one third of the entire membership, but of the people who voted, 52 percent voted to reduce their dues by 25 percent, which is, as you can imagine, a big blow to an organization.

One of the reasons I want to tell you this is that the reduction of their dues, what it has been reduced to, is $20 more than you will pay next September. So I think we can all be pleased at what the State Bar of Michigan is providing to its members.

Finally, I wanted to report to you on something that you may have been aware of as an aftermath to that, and that is the anti-trolling Court
Rule proposal that this Assembly adopted after prolonged discussion and consideration has been considered by the Michigan Supreme Court.

The Assembly's proposal was published for comment at the end of the year, last year in December. An administrative public hearing took place last month, at which the Assembly's view was very robustly represented and was challenged equally robustly by questions from the Court, particularly on the issue that this Assembly focused on in a really, I think, intelligent and sophisticated way, and that was does this proposal meet the burden of the First Amendment or does the First Amendment prohibit this kind of restraint.

And the late breaking news is that I received a letter from the Chief Justice of the Supreme Court on Tuesday saying that the Court's decision on the proposal was that they at this point believe that there needs to be a stronger evidentiary basis for why the anti-trolling Court Rule change is necessary to meet the need, and the letter to the Bar challenges the Bar to come up with that evidentiary basis.

I actually think this is a really positive response to the Bar rather than just closing the file saying we don't think you met the burden. They are
telling us, you know, we understand the rationale for
the anti-trolling proposal, and we want you to help us
come up with a proposal that will withstand
constitutional challenge. So I think that's a step
forward in our relationship with the Supreme Court,
and it shows a level of respect for the State Bar and
the Representative Assembly which I think is a very
good sign.

So it may be ironic to end on a note saying
that the Supreme Court has told us that they are not
going to do something we asked them to do, but to say
that this is a positive sign, but that is the note I
want to leave you on. What you are doing really
matters, and to be engaged in this kind of dialogue
with the Supreme Court I think is a very good thing,
and I hope that encouragement sets the stage for an
ambitious agenda today. I thank you for your
attention.

(Applause.)

CHAIRPERSON GOBBO: Moving down the agenda, I
am going to welcome Elizabeth Lyon up to the podium.
Elizabeth serves, for those of you that don't know
her, serves as the director of governmental relations
for the State Bar, so please come on up.

MS. LYON: Thanks, Steve. Good morning,
everyone.

Since we last spoke in September there have been a few positive developments that I am happy to share with you today. In September we talked about how the recommendations from the Judicial Project Task Force report would be working its way through the Michigan Supreme Court and Legislature, and we have seen a few big initiatives from that. One, as you are all well aware, is the downsizing of Michigan's judiciary and the elimination through attrition of 36 trial court judgeships.

We are also seeing those things continue. We have seen legislation introduced by Representative John Walsh to establish business courts in Michigan. I believe that legislation will be moving very quickly here in the spring and likely will at least have hearings before the Legislature breaks in June for their summer recess so that the House of Representatives can go home and campaign for their election in November.

We have also seen pilot projects for business courts established through Supreme Court administrative order. So those are some big initiatives. We are seeing other ones, like specialized courts and other matters also working its
way through.

We have also talked a lot about small claims jurisdictional limits. The State Bar of Michigan has been lobbying this issue ten plus years at this point trying to keep a rational limit increase in play. Just Thursday in the House Judiciary Committee we had been fighting an increase to 10,000 -- it's currently 3,000 -- came out of the Senate at 8,000, and now we see it will come out of the House at 5,000, being effective September 1, 2012, and then every three years after that increasing by 500 until you get to 7,000 on January 1, 2024. I realize that sounds like a lot of money, but to be perfectly candid, we were surprised given the odds against us that we got this good a deal.

The other thing I am happy to report is the State Bar of Michigan just returned this week from its annual trip to Washington, D.C., to meet with each member of our congressional delegation, so that's 15 in the House of Representatives and our two U.S. Senators. We had a great team this year -- Janet Welch; our president, Julie Fershtman; Bruce Courtade; and Judge Tim Hicks from Muskegon, who is president of the Michigan Judges Association.

The most important issue I think that we
lobby in D.C. is funding for the Legal Services Corporation. You are all very aware of the great things that our legal aid office is doing in the state and that they are constantly having their funding cut, which means direct client services are being cut, which we know means families are not being assisted in foreclosure matters, parents are not being helped to recruit child support payments and other very important issues of rights, as well as legal aid attorneys informing clients of their responsibilities in those matters as well.

The State Bar of Michigan is supporting the president's recommendation of 402 million as a funding request for FY13. As we were in D.C. this week, the Senate subcommittee for the appropriation and the full committee supported that amount, but the House side dropped it down to 328 million. So we will be working very hard to express support and why that's just so important in Michigan.

Most importantly, I am going to end talking with you about where we are at with reform of our trial level system of providing public defense services because I think that's probably the most important one for you all having adopted the 11 principles.
Since you last met in September, and I am certain that probably you are aware through emails and other communications that we have sent that the Governor appointed a commission through executive order to study the issue and make report and recommendations back to him and the State Legislature by July 15.

That commission started meeting in October, about a week after the E.O. was issued. They met twice in December and then have been meeting monthly since that time. They just had a meeting yesterday. So if you are keeping track, it's been a really busy week.

The commission is really looking at making some important structural recommendations to our system. They are recommending that a permanent commission be established and that commission be housed in the judiciary branch in the Supreme Court Administrative Office. This is very similar to how our State Appellate Defenders Office is already sort of within the judicial branch. We sort of mimic that structure.

The commission would be tasked with providing standards and recommendations by which local systems would have to meet the sort of floor of a
constitutionally efficient system. The recommendations, because I know a lot of you will want to read them in detail, the Michigan Campaign for Justice has made the recommendations available on their website, www.mijustice.org, and you can get it right from their front page. They have the recommendations that were adopted at the March meeting already posted online. That includes the recommendations for the composition of the commission, what the obligations of that permanent commission would do, and so forth.

At the meeting yesterday they wrapped up a few additional recommendations and are starting to hammer out findings that will be included in their final report. They did decide to schedule two additional meetings of the commission, one for May 22nd and one for June 18th. Might have those dates -- it's May 18th and June 22nd, I apologize.

Those meetings are open to the public. They are held in Lansing, and you are welcome to attend those. So they will be looking at moving that forward.

There will be legislation drafted and introduced, if not this summer, early in the fall to establish that permanent commission. We so far from
the recommendations that have been adopted by this temporary commission know that we have support from the four legislators who were appointed to the commission and also support from the administration, so we are very optimistic that these recommendations will indeed be adopted this legislative session by the end of December 2012 and that that commission will be up and running in early 2013, if not earlier. So good news to report on that front.

And I saved a bit of time, at least seven minutes, to answer questions if you have them. Or I could keep talking.

All right. Well, I will be around for the rest of the day, so if you do have additional questions, please ask, and I will let you guys move through your agenda.

(Applause.)

CHAIRPERSON GOBBO: Thank you, Elizabeth. And she meant what she said. If you have any questions, feel free to ask her about how it is to deal with the Legislature.

We will move down to agenda item number five, which is approval of 2012 award recipients, and I am going to ask Jeff Nellis as the chair of the Nominating and Awards Committee to come back up.

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I have to say Jeff and his committee are one of the hard working committees of the Assembly because there are certain things that they have to constantly do to fill positions in terms of vacancies on the Assembly and then also to consider the working candidates for the various awards that the Assembly will give out at the annual meeting. So I want to thank you, Jeff, for your hard work.

MR. NELLIS: Could I have the committee members to stand real quick and be recognized.

(Applause.)

MR. NELLIS: Steve is right. I mean, I am the one who always gets to come up here and talk, but they do all the hard work, and between filling the vacancies and picking these award nominees, it involves a lot of phone calls, a lot of conferences, going through paperwork, and they have just done a great job this year, and I really appreciate everything that they have done.

With regard to the awards this year, as you know, our body awards two awards, the Michael Franck Award and the Unsung Hero Award. Our nominees, their information is in your packets, but the Michael Franck Award is an award given to an attorney who has made an outstanding contribution to the improvement of the
This year's nominee, the person that we ultimately chose, was James Fisher, and, again, you have his information, but just to kind of give you the highlights. He has been a private practitioner working primarily out of Barry County. I know now he is a retired judge, I believe he works for Law Weathers. He was an assistant prosecutor in Barry County. He was a city attorney. He was appointed judge in 1995, circuit judge in Barry County, and served in that capacity until 2011 and then retired, and then just most recently, and I think one of the real feathers in his cap is being appointed to chair the Indigent Defense Advisory Commission, which as any of you who are involved in the practice of criminal law know that that is a huge undertaking, and what that group is really trying to do is take a look at how, in our state how we fund indigent defense and what kind of changes and recommendations can be made to improve that system.

So that's a huge undertaking that he has become involved in as a retired judge. So we just felt his entire body of work, kind of like a lifetime achievement award, that he was a very worthy recipient of that award.
With regard to the Unsung Hero Award, and we do this sometimes, we actually are nominating two people, and the Unsung Hero Award goes to an attorney who has exhibited the high standards of practice for the commitment and benefit of others, and sort of in laymen's terms this is an attorney who maybe we don't all know about it but has done some outstanding things to help the little guy, so to speak, things that are important but may not get a lot of attention, but these are folks that do these types of things because they know it's the right thing to do, it's their passion, and they are really not interested or worried about the recognition that they may or may not get. So this gives us a the opportunity to recognize some people who have done outstanding things for the less fortunate.

This year again we have two people that we are putting before you today. The first is Judy Calton from Honigman, Miller, Schwartz & Cohn in Detroit. Besides being an excellent practitioner, what her claim to fame is that she has created a program called Access to Bankruptcy Court, which helps to partially compensate attorneys who represent indigent folks who are trying to go into bankruptcy court. If you are involved in that area of practice,
you know, it's obvious if someone is going to
bankruptcy court they don't have a lot of money to
invest in an attorney, so this has been a very
successful program and, again, it's something that's
definitely worthy of recognition.

A second person is Jeffrey Kopp from
Foley Lardner law firm in Detroit, and his, I guess,
what do I want to call it, he has a back toward
military affairs. He is a West Point graduate, was in
the JAG Corps, and he has created a program called
Project Salute, which provides free legal advice to
low income veterans.

He is also, I believe, the president of
The Barristers, is involved in a nonprofit called
Arkay, Inc., which trains folks with mental health
disabilities. So, again, he is very active in helping
folks who are less fortunate, not to mention that he
has actually served active duty in Iraq.

So, again, we have, for this award we have
two very diverse and two very worthy nominees. So I
am going to ask that we entertain motions to accept
those folks as our award nominees this year.

VOICE: So moved.

CHAIRPERSON GOBBO: Hearing a motion, is
there a second?
VOICE: Second.

CHAIRPERSON GOBBO: Hearing a second, is there any discussion on the motion?

All in favor say aye.

Any opposed say nay.

Motion carries. Thank you very much, Jeff, and to your committee.

(Applause.)

CHAIRPERSON GOBBO: It is with great pleasure that I am going to introduce Julie Fershtman, the president of the State Bar. Not only is Julie the president, she was a former chair of this body many years ago when I first became involved with the Assembly as a section chair and bringing a proposal forward to the Assembly, but she is also a good friend, so, Julie, please come on up.

(Applause.)

PRESIDENT FERSHTMAN: Good morning, everybody. I realize that looking at the agenda I am the only thing that holds you back from the midmorning break, so I recognize that a lot of you are looking to get out, check your cell phones, use the facilities, having something else to eat, so I will try to keep my remarks as brief as I can. I realize too that I am a little ahead of schedule, but I won't take advantage
of the opportunity. I have been up here long enough to know that everybody is busy, your time is valuable.

Let me first begin by thanking every single one of you for your commitment to the profession and to the State Bar of Michigan by serving on the Representative Assembly and by giving up your Saturday morning, and part of your afternoon for that matter, to be here today.

As you know, the work that the Assembly does is meaningful, it's important, and it's, in my opinion, at least worth your time, and I hope you agree. But let me share with you about five points that I would like to pass along to you about what the Bar has been up to.

You have already heard from Janet, you have already heard from Elizabeth Lyon, and as Bar leaders yourself you are keeping up very closely with what the Bar has been doing, so what I offer to you may be information that you may already know, but some is information you may not know.

First let me begin by talking just briefly about the public policy work that the State Bar has been engaged in. Again, you have heard from Elizabeth, you have heard from Janet about what we have been doing. You have heard about the Indigent
Defense Advisory Commission, and you probably know that improvement in the indigent defense system, or lack thereof, has been a very important issue that the Bar has been involved in and has been trying for years to get changes made in.

Well, fortunately, as you have heard, changes could be on the way, and we are excited about it, and we are very pleased to have been a part of the Indigent Defense Advisory Commission, not by way of membership but by way of a resource, and thanks to Janet and thanks to Elizabeth, the State Bar has been serving as a valuable resource to the commission and its work.

I also want to do something that Janet and Elizabeth are not very willing to do, and that is toot the horn of the State Bar when warranted, and I would like to share with you some good news. As you heard from Elizabeth's remarks, a delegation from the State Bar of Michigan went to Washington this past week, and I was among them. I got to sit in on meetings with legislators. We had 17 legislative meetings over two days in Washington, D.C.

But between the two days of meetings was a wonderful ABA reception where the State Bar received a very prestigious award. And they don't like to talk
about it because they are modest people, but it was called the ABA Grass Roots Advocacy Award. It is a prestigious award, and it's given to an individual or a Bar association who has demonstrated a very strong commitment to working with constituents, working with the ABA, and working in the legislative arena.

And the State Bar earned that award. We didn't quite know why until we got there. We earned it for a couple of things, and one was the work that we have done on legal services funding, and that's through the efforts of Elizabeth Lyon and through Janet and other members of the Bar working with them.

The other reason we learned that we earned this award is that the State Bar of Michigan really stood out from Bar associations all over the country by the Judicial Crossroads Task Force that many of you who have served here for a number of years have heard about, and the fact that the State Bar of Michigan joined together members of the Bar and the judiciary to explore the problem of inadequate court funding and problems on the horizon and proactively got together to work on reforms.

We were ahead of the curve, because the American Bar Association for Law Day has asked Bar associations from all over the United States to join
forces and protest at their state capitols to try to get more funding for the courts. That's a reactive mode, but thanks to the foresight of the State Bar of Michigan and, frankly, our executive director, we were ahead of the curve by working on reforms and helping the Legislature make decisions that were, we believe, in the best interest of the profession.

The outcome, as we know, of the Crossroads Task Force is that legislation has been introduced. It's painful legislation, painful because it resulted in a reduction of judgeships, but at least we know that the interests of the Bar, we believe, were well served, because those reductions were attrition based, and instead of cutting off the judgeship midway, these reductions were, we think, reasonable and fair.

So before I continue, I would ask for a round of applause to congratulate the State Bar for winning the award.

(Applause.)

PRESIDENT FERSHTMAN: At the first part of my remarks I promised you five. Let me move ahead to the next one.

Improvement of services. When I stood in front of the membership at the September 20 or so meeting of, the 15th I guess it was, meeting of the
Bar, that was when the Representative Assembly met previously, one of the initiatives I had which, as you know, can't really be an initiative, because the State Bar president is governed by a strategic plan, but one of the most important areas of attention, I thought, was the improvement of Bar services, in particular the improvement of services benefitting solo and small firm practitioners.

By way of background on that, our member statistics have shown that 51 percent of the State Bar membership is composed of private practitioners, but of that 51 percent, 71 percent is made up of solo and small firm practitioners. A large component of our Bar fits in that category clearly, as you know, and thanks to this economy or no thanks to this economy that component of our membership has been in recent years struggling.

The economy has hit us very, very hard. We can't as a Bar do anything to help you get business. We can help you learn how to market yourself, which I will get to in a moment. But we can at least do things that will help you run your practice better and help you learn more about the practice of law.

So what has the Bar been doing in that area? Well, first we have a practice management resource
center. I won't stand here and tell you what it is. You are all Bar leaders, you have probably visited the site and read about it, and if you haven't, because I know we have some newly admitted members to the Assembly here, go to the State Bar website. Visit the Practice Management Resource Center link and take a look at some of the resources that the PMRC offers, but one of the initiatives that I thought would be especially valuable is improving the PMRC, expanding its content, doing more, being more relevant, covering areas that the members really want to benefit from and learn about.

So we have an advisory committee that was just convened in September. The advisory committee is about to issue a report. Right now they have a rough draft, and you will be hearing more about it, but here is what it means for all of us.

This advisory committee report will help the Bar expand and improve its Practice Management Resource Center, and what we can take away from that then is we will find more resources available for free online about developing a practice, managing a practice. We will find maybe more books in the lending library. You don't want to invest in a book, you can borrow it. We can expand our holdings. We
can even expand offerings through the website to
include video information or additional, again,
additional links on relevant topics.

We can offer better services that go out on
the road to help members like us, either at local Bar
meetings or at specially planned meetings. You can
learning more about this when the report comes out and
when we work with the State Bar staff to make this
center better.

So I offer you an opportunity, take a look at
the center now by the website, but take a look in the
months ahead, and you will see that we will be trying
harder to make this PMRC a better product for you.

Next is the Member Services Committee of the
Bar. One of the things I said back in September was I
really would like to see the Member Services Committee
leverage the power of our large State Bar membership
and offer better, more expanded services, meaning
discount programs, for example, that we can use, and I
am happy to say that at our Board of Commissioners
meeting that was just held yesterday at the State Bar
offices, we learned that the committee has been
working very hard and taking its charge very
seriously. You will learn about new benefits. They
are about to be unleashed. We have a few details to
work out, but two of the benefits I thought were especially useful. Why? Because I personally am kind of a techy nerd.

One is there will be a discount program through Apple Computers, not a huge discount, but, hey, every little bit helps when we are buying iPhones, iPads, whatever. The other discount is through Dell Computers. You will be learning about that. There is a retirement program discount. These are all on the horizon. You will be learning more about it. The committee has been taking its job more seriously.

Let me move on a little more with the third of the five points I wanted to cover this morning. I mentioned that as Bar leaders you follow up on what the Bar is doing, but sometimes you don't quite know what is coming up because it's in progress. I am happy to share with you one element of the Bar, and that is its attention to the delivery of pro bono services. We have Candace Crowley sitting in the back row, and she has been working very diligently, probably with Rob Mathis from the State Bar staff, who is involved in pro bono.

What are they doing? They are looking at exploring, they are exploring right now, ways to help
members of the Bar who want to provide pro bono
services get those opportunities better. The Bar is
exploring through surveys ways that the legal services
providers can tap attorneys like us who want to do
some pro bono work and utilize our services better.

The Bar, in short, is working with the people
who seek out pro bono assistance, mainly the overtaxed
legal services providers. They are trying to find
ways to get us together with them. I know Candace is
smiling there, because it's been a huge effort on her
part to get the information and help find meaningful
ways to work with it. So you will be hearing more
about that. And I think that it will help us more
effectively and more efficiently get out there and
serve people who are unable to otherwise hire lawyers
and maybe even find us.

Four, in our member survey that the State Bar
took many months ago, we learned that a serious
concern of our membership, and I am sure it would be
of all of you today, is the unauthorized practice of
law. I see it personally in part of my practice that
has slowed down, and that's the development of
contracts. I do contracts and forms for people in
businesses. That area has, in my experience, started
to dry up, and I have been trying to figure out why,
and I thought that maybe the reason is the invasion of our practice by these providers, like Legal Zoom that offer very low cost forms. The work that I would generally do, they are doing it for a lot less than me.

Many people within the Bar are wondering if these types of online programs that people can tap into and get forms at ridiculously low cost sometimes are legitimate and are appropriate. I am not able to answer that right now, but what I can tell you is that all of you here today have a proposal that is on our agenda, and that is to explore the unauthorized practice of law and how we address it by looking at the definition of the practice of law. With the definition of the practice of law, then the State Bar can better mobilize its staff to evaluate complaints and clamp down by way of injunctions or appropriate proceedings on perceived violators of that practice of law.

So all of you today at today's meeting, you have the power to take a look at what the definition is, and you have the ability to help the Bar move forward. I am not trying to speak one way or the other. I am not taking advantage of my floor privileges on a proposal that hasn't been moved yet,
but the point I offer to all of you as Bar leaders on the Assembly is you have got a tremendous opportunity at today's meeting to help the Bar move forward on an area that is of serious concern to you and to our membership, so please take this opportunity very seriously today, and I look forward to listening to the discussion.

Finally, and this is it before you break and get out in the hallway, one of my personal commitments, my personal, I guess, priorities as State Bar president is to be communicative and to be accessible to the State Bar membership, so I have thought about doing things a little differently, and what I started during my presidency, and it's still up now, is my personal presidential blog.

What is it? Well, a lot of you know what blogs are, and some of you are probably wondering what's that? And don't worry, if you don't know, you can take advantage of our soon to be Apple discount and get online a little more and start reading up on blogs.

My blog is www.sbmpres2012.com, and through that I offer you a chance to join me in some of my travels, because I will talk about places I have been. I have a picture up in my latest blog post of
Bruce Courtade and Elizabeth Lyon. They are walking ahead of me, so you see their backsides, but I briefly --

MR. COURTADE: Thank you.

PRESIDENT FERSHTMAN: Don't worry. I did a little photoshopping on that one. Good thing I didn't put myself in it, but Bruce, hey, you make a good appearance front or back.

You will see if you go to the blog though what we did in Washington, not in excruciating detail. It's a blog, and, as you know, blogs are brief. They don't go into great detail, but I share with you what we did. I offer links so you can learn a little bit more about our efforts in Washington, and as I continue traveling my goal is to update the blog and so you can come with me to some of the Bar associations that I visit.

So I offer that to you as an opportunity to learn a little bit more about what the Bar is doing, learn more about what I am doing, and my offer stands to remain willing to listen, to be communicative, to be accessible. So please don't hesitate to come and talk to me today if you have questions about the Bar, if you have ideas about what we should be doing or anything else that you think would be important for us.
to know.

I look forward to today's meeting, so thank you for being here. Thank you for listening.

(Applause.)

CHAIRPERSON GOBBO: Many thanks to Julie, Elizabeth, and Janet.

This body had requested some time ago, at least the majority of the body, had requested these type of updates, and to many I am sure it's informative, to others, may not necessarily care for the updates, but the Assembly is going to continue with them unless there are some changes, and we are talking about very devoted people, including yourselves, to be here on a Saturday morning.

The good news I have for you right now is that it's break time. So since we are leading by about five minutes, if you feel we need to take a 15-minute break, please do so, and I will try to promptly start at 10:35 with my remarks. Thank you.

(Break was taken 10:20 a.m. - 10:38 a.m.)

CHAIRPERSON GOBBO: If you all could start back to your circuits, please. Thank you. I am going to try to make my remarks as short as possible and try to stay focused, and for those of you that know me well, that might be difficult to do sometimes. But
the good thing is I really don't like talking in
public. I have gotten maybe a little more comfortable
with it over the years and so kind of a balance.

A couple opening things. First, you heard
from Janet Welch, who is the executive director,
Elizabeth Lyon. You know Dana and you know Kathleen.
Most of you also know our parliamentarian, Judge John
Chmura, who is here, and he usually remains quiet
until we really get into a brawl or something. So I
just want to also mention a few other people.

Anne Smith provides administrative support to
the Assembly and to the Assembly leadership, was
instrumental in getting here yesterday late in the
afternoon and then early this morning to make sure
that everything was arranged for the meeting. It's no
small chore getting things together.

Marge Bossenbery, who is the executive
coordinator working with Janet Welch and others in the
leadership of the State Bar, is also integral to this,
but as we move forward to the proposal for the
practice of law, I have to tell you, you have
salmon-colored sheets in front of you, salmon-colored
sheets, and those sheets were prepared sometime
between the hours of maybe 6 p.m. to 2:00 in the
morning by some of the dedicated Bar staff, and I
would like to personally acknowledge Danon Garland --
it's actually Goodrum-Garland -- because she was
instrumental in trying to help with the processes and
having the Assembly understand the construct of the
practice of law definition and annotated the rule.

Danon has a supervisor, and Dawn Evans, if
you could stand up, is the director of basically the
Professional Standards Division for the Bar.

Now, there are many others that provide work,
but I am not going to go through all the names, but I
wanted to point those persons out, because they really
do a lot to make sure that a meeting like this moves
along expeditiously.

We also have in the room with us members of
the Assembly either by virtue of the fact that they
sit on the Executive Committee of the State Bar,
meaning they are an officer or one of the
commissioners on the Board that are selected by the
president to constitute the Executive Committee.

The Executive Committee is the officers,
those selected commissioners, as well as the chair and
vice-chair of the RA, so Dana and I have a lot of
input to what the Board does on an ongoing basis, but
for special recognition, and it's very appropriate,
Mike Riordan just came into the room late from the
break. I want to introduce the Honorable Court of Appeals Judge Mike Riordan, recently appointed to that post.

(Applause.)

CHAIRPERSON GOBBO: And over the years we have had many members of the judiciary, judges participate with the Assembly, and one of our own sitting regular members elected from the 3rd circuit, Margie VanHouten, was recently appointed a circuit court judge.

(Applause.)

CHAIRPERSON GOBBO: And Mark Boonstra who retired because of term limits from the Assembly at the end of September's meeting was also appointed a Court of Appeals judge too. He is not here today, but I wanted to point out the fact that sometimes the Assembly may help in terms of -- I am only kidding.

One of the things that I wanted to point out during my remarks is that after the official meeting of the Assembly is that the Assembly Review Committee is going to be hosting a session where you are all invited to attend and provide comment concerning the operations of the Assembly, in essence.

The Assembly was formed, as I mentioned earlier, 40 years ago essentially, 1972, and has dealt
with policy decisions, but as we move into the future, you heard the remarks from Janet Welch about technology, some of the other challenges faced by sister mandatory Bars, particularly Wisconsin, but we are at a point where -- what I am going to maybe do is just read a quote, and it's a from a Scottish lawyer by the name of Hugh Patterson McMillan, an address on the Ethics of Advocacy from 1916. And I don't mean to preach, but it's easier for me to do this then to talk, kind of rambling.

The practice of law is more than a mere trade or business, and those who engage in it are guardians of ideals and traditions to which it is right that they should from time to time dedicate themselves anew.

Also Roscoe Pound, a pretty well-known early 1900s, 20th century dean of Harvard Law School, lived to the nice ripe age of 90-something. Historically there are three ideas involved in a profession -- organization, learning, and spirit of public service. These are essential. The remaining idea, that of gaining a livelihood, is incidental.

Our own first president of the Bar, Roberts P. Hudson, and this is a quote that is in one of the Bar rooms, meeting rooms, no organization of
lawyers can long survive which has not for its primary object the protection of the public.

And the reason why I read these quotes is that there are two themes that this meeting is comprised of essentially. One is going to be this practice of law definition. The other, as I mentioned, the Assembly Review Committee meeting after this meeting, and we need to start looking at ways that we can do things more efficiently, more effectively, and most of all more meaningfully in terms of going forward.

There are some bylaws that I personally believe constrain us from doing things, and I give you one example, the fact that we have committees, who I am going to recognize in a second, that the way the bylaws are set up, people have to be from different circuits, and there is a finite amount of people on those committees, but there may well be other persons on the Assembly who would want to serve on a particular committee because of expertise, interest, or otherwise, and I think we need to do something with that.

I am not suggesting that it should be infinite numbers, but I think ranges for appointments may be possible in terms of a range in numbers, you
know, from five to some number that's not unwieldy, and so that's what that charge to that committee is is to really start looking at things, and one of the things that is a concern, and it's a concern of the membership, and that is how meaningful is the Representative Assembly and why do we maybe give speeches and then not deal with substantive matters.

Now, you do have one bear of a substantive matter before you today, but it doesn't mean that's the only item that could ever be out on the Representative Assembly agenda, because I think the Board of Commissioners as a whole would like to have more things go to the Assembly if we could deal with it more quickly and promptly, and so this whole thing with the Assembly Review Process is to be kind of geared to seeing what we could do to ensure our relevancy as a body. So that's the one point.

The second point is with the practice of law definition. You have before you, literally before me too, is a distinguished panel, and the panel is a small portion of the Ad Hoc Committee that was formed by Tony Jenkins, who appointed me chair of the committee, to essentially review a work product obtained from the Standing Committee on the Unlicensed Practice of Law, and I have to tell you I sat on that
Unlicensed Practice of Law Committee for several years and a product was generated which looked like a pretty good product, but when it got to the Ad Hoc Committee with the membership, which I am not going to read all the members because their bios are listed in the agenda booklet, it was amazing how this definition became narrowed.

Now, it's not without controversy, and you understand that because you have some correspondence from different people that have weighed in one way or the other, but the panel was asked to essentially present on this so that if the Assembly members have any questions that you could ask those questions, and it is with extreme appreciation and pleasure that I am going to introduce Linda Rexer, who is better known as the executive director of the Michigan Bar Foundation, but also has served on the Committee for Self-Help, which is a separate initiative, but it is very much intertwined with the practice of law issues.

The Honorable Elwood Brown, who is a member of the Judicial Conference but also known as the chair of the Judicial Ethics Committee. Chris Hastings, a professor at Thomas Cooley Law School, and the current chair of the Standing Committee on the Unauthorized Practice of Law, and Jim Harrington, III, who is a
prolific writer and a member of the Family Law Section, and many of you may know Jim from one of the issues that Janet had updated you on, and that was the, for lack of a better term, the anti-trolling proposal to the Supreme Court.

So without further commentary other than I would like to ask Richard Barren and members of the Assembly Review Committee, Michael Blau, John Blakesee, and Kim Brightmeyer just to stand up so the membership know who is on various committees. Thank you.

(Applause.)

CHAIRPERSON GOBBO: If you stay later on, you will hear from Richard concerning the workshop that's going to take place.

We have the Drafting Committee, Josh Ard and Fred Herrmann, Martin Hillard, Erane Washington Kendrick and Lee Hornberger. If you could please stand just so the members of the Assembly know who you are.

(Applause.)

CHAIRPERSON GOBBO: The Hearings Committee is Eilisia Schwarz is the chair, Francis Hathaway, Marty Krohner, who is not here today, Alisa Parker, Michael Marutiak, Susan Murphy, Michael Delling. If
you are here, please stand just so the members --

(Applause.)

CHAIRPERSON GOBBO: The Nominating and Awards Committee, you have already heard from Mr. Nellis, and his membership had stood up, and I am going to read the names, Pamela Enslen, Anne McNamara, Dan Cherrin, and Margie VanHouton, the Honorable Margie VanHouton. At some point in time she might tire of that, I am not sure.

The Rules and Calendar Committee, which does a lot of work in refining what may go on the agenda, is chaired by Vanessa Williams. A former chair of this body is on that committee, Kathy Kakish, Amy Kline, Joshua Smith, Becky Bolles. If you are here, please stand.

(Applause.)

CHAIRPERSON GOBBO: And one remaining committee that we have, the Special Issues, David Gilbert is the chair of that committee. We have Maureen VanHoven, Krista Haroutunian, Monique Field, James Bartlett, Nathan Edmonds, Michael McClory, and John Mucha is an associate member, and I should say Lauren Rousseau was an associate member of Nominating and Awards, so I apologize for overlooking that. If you are here, please stand so the members -- you
already know who you are.

(Applause.)

CHAIRPERSON GOBBO: Thank you. I didn't do that for the sake of just providing an acknowledgement, but it really means a lot for these people to spend time on the Assembly and then to volunteer for a committee to do extra work. The main reason I did the introductions, besides acknowledging them, is that you should know who all the other persons are in the Assembly, particularly on the committees, in case you have some interest in asking about proposals or information that might help you either with the Assembly or otherwise. They are all good people to know personally.

Without further comment, I am going to just open up the panel discussion and moderate from here, and we are going to begin with Chris Hastings, who is going to start with kind of a historical view of UPL in the state of Michigan and some other interesting components to that. Chris.

MR. HASTINGS: Thank you Steve. I am just going to sit here if that's okay.

CHAIRPERSON GOBBO: That's perfectly fine

MR. HASTINGS: I think I got drafted for this role because I have been on the Unauthorized Practice
Committee for 12 years, and I know that because I have recently been advised that I am going to be term limited off for the second time.

I was involved, I think, in 1999 in drafting the committee's first effort to codify the practice of law, ergo the unauthorized practice of law, and the proposal didn't gain traction. It got tabled, and it sat there over a decade in which a lot of things happened in the unauthorized practice of law, a decade during which the committee felt relatively powerless to meet the challenges that were coming.

One was, one of those challenges was the internet and folks like Legal Zoom. Another was the franchised legal/paralegal services providers like We the People. Another was the bad economy, the fact that so many folks were unable to afford lawyers and went running to these folks who offered lower cost alternatives that were supposed to be and advertised to be competent to provide the services that people needed.

Another one was a Supreme Court decision, which you may not be fully versed on but which I feel like I read more than any other opinion in the history of my life, Dressel versus Ameribank. And perhaps you have heard a soundbite from Dressel versus Ameribank
that I am going to read to you.

   It reads, We hold that a person engages in
the practice of law when he counsels or assists
another in matters that require the use of legal
discretion and profound legal knowledge.

   Now, I remember talking with one of my
colleagues when that opinion came down, and he said,
expletive deleted, I am not sure I have used profound
legal knowledge in 20 years of practice.

   There are two ways to read Dressel. Frankly,
there are two ways that I think even some of the
people in this group read Dressel. One is, and I
think this one is wrong, and that's that that sentence
from Dressel from the conclusion reverses five or six
Supreme Court opinions that were handed down to that
day. The reason why I think that that reading is
wrong is because if you read all of Dressel you see
Dressel discussing and standing behind opinions that
were written before Dressel.

   But folks who want to engage in what we
believe is the unauthorized practice of law hold that
language up as a paradigm and they say, We don't
pretend that we are exercising profound legal
knowledge or legal discretion, we don't claim to have
those things; therefore, we can't be practicing law.
Now, that stands in stark contrast to the other interpretation of Dressel, which is simply that that sentence describes a sufficient condition for the practice of law but not a necessary condition for the practice of law, and, therefore, the Supreme Court is standing behind older precedent that says that, for instance, the creation of documents affecting legal rights is something that is also the practice of law. That's just by example.

The fourth thing that happened is that the State Bar started to get involved in providing alternatives to what I will call charlatans and providing things like, well, Grand Rapids or Kent County Legal Assistance Center, and I will disclose that I am on the board of that organization and have been for two terms. I think that's very important. Those are groups. Another is Linda's self-help group that are creating alternatives to these guys who are out there saying we can give you a trust, you need a trust, here is, you know, just fill in the banks and you have got a great document here, that were sponsored by lawyers, that were sponsored by us that we are behind making sure they are doing it right.

All those factors combined to convince the Unauthorized Practice of Law Committee that we needed
to take another stab at defining the practice of law.  
And let me tell you just a little bit about the unique challenges in Michigan of doing that.  

Here in Michigan we have perhaps, not the weakest, perhaps the second weakest regimen for enforcing the unauthorized practice of law among the 50 states and the territories. We have one remedy, and that's an injunction from engaging in the unauthorized practice of law. We have got lots of injunctions against people like We the People, injunctions saying you can't practice law, and they do, and we have to catch them doing it, and then we get another injunction. There is no criminal penalty, there is no other penalty, and there is no enforcement by anyone except the State Bar, and when I talk about resources declining, resources in Michigan are declining, the resources of this Bar association. We don't have unlimited resources to prosecute unauthorized practice of law claims.  

So our new effort, and here is the other thing that happened over the ten years that not much was happening on this, is the other states started marching on this, so in the ten years between our initial effort and our new effort five states and the District of Columbia codified definitions of the
practice of law that are similar -- I mean, the law is different everywhere -- but similar in form at least to the one that we are proposing, so it's something that can be done.

It's a trend. It's not something that is long haired, like it might have felt long haired in 2000. It's something that states are doing and having success with it. And what our new effort did was basically dust off the model that we had from ten years ago. To my dismay and great pleasure, the states who had enacted unauthorized practice of law, or the practice of law definition for the interim, had pretty much followed the same model we had.

So we dusted it off, we adjusted it for Dressel, and you have a definition that essentially has two main sections. Section A, which describes what the practice of law is, and Section B, which carves out what might be exceptions, including an exception for governmental or nonprofit groups who are providing legal information without providing legal advice and giving them a place in our jurisprudence to stand while they don't believe the lawyers provide information and forms that don't constitute the unauthorized practice of law and encourage people to talk to lawyers instead of encouraging them to use
them instead of a lawyer.

What we hope this proposal will do, and there is a lot more to be done, as Steve said earlier, is be a starting place for additional protection. What it will do for my committee specifically or it won't be my committee soon, because I am term limited off, will be to have something that lay people can understand, that people who are engaging in the unauthorized practice of law can understand that's not a stack of common law opinions.

You know, we can't give seven Supreme Court opinions to a lay person who has crossed the line and say, here, read these and you will figure out that what you are doing is wrong. We can provide them a two-page definition of the unauthorized practice of law and point out the provision that says, no, you can't do that, which will be immense help for the standing committee as we move forward marshalling very limited resources to try to stop these folks. That's all I have to say.

CHAIRPERSON GOBBO: Thank you, Chris. I am going to ask Linda Rexer to perhaps discuss how the self-help aspect kind of interplays with this to some degree. And once we get through the presentations, I encourage any of the members of the body to ask
questions. It would hopefully inform all of the members of the Assembly by any questions that are asked.

    Linda.

MS. REXER: Sure, Steve, thanks. I am going to be talking just briefly about what would be exception number (7), (B)(7), and that is the provision through a government or tax-exempt legal self-help center or program, neutral information and assistance for the public, and you can read the rest there. It ends, Without giving legal advise or legal counsel and without other than a nominal charge.

    And just say that this is, that the great number of people who go to court without a lawyer is only increasing. Most have no help doing that. It clogs the courts. It is something that other states have been working on. Michigan is by no means first in trying to come up with programs that assist the self-represented, but the way that this relates to the definition of the practice of law is that it must be done appropriately, because it is done through nonlawyers giving neutral information and not advice, and the people who are doing this need to be trained in the unauthorized practice of law, and they need to understand that distinction, and they need to provide
those services appropriately.

And so, therefore, this definition is very, very helpful to the growing number of providers that are doing this. In Michigan we already have at least five self-help centers. Chris alluded to the one in Grand Rapids, which is actually a national model and has been in existence for more than ten years helping thousands of people, and they are very diligent about training people to know that line between information and advice, and all of those centers and the work that's being done to look at other assistance for self-represented litigant folks will welcome this guidance so that what they do is appropriate and serves the public.

And I think one of the things that makes this come alive is to just understand about the scope of the need just a little bit, and that is that in Michigan more than three million of our 10 million population are poor enough to qualify for free legal aid, and you heard Elizabeth say that that's been cut. So this is not going away. There are many people who just cannot afford a lawyer. One of the self-help centers in Barry County did a study of just their divorce cases. Eighty percent of the divorce cases have at least one party in pro per, 50 percent
have both parties in pro per. That same center has
about 40 percent of its users have a household income
of less than $10,000, which you could parse out and
try to figure out whether that's subsistence or not.

These are not people who are hiring lawyers.
These are not people who can hire lawyers. So getting
the appropriate assistance and getting assistance for
the things that are appropriate for self-help is
important.

That brings me to the part of this exception
which says that this is for government or tax-exempt
legal self-help centers and programs, and that is
because the profit motive, if we are talking about
these increased numbers, the increased numbers of
people who need this help sort of spurs, you know, an
increased number of unqualified persons who are
economically motivated and willing to prey on those
people, and so not everyone who is economically
motivated of course would prey on poor folks, but we
try to strike a balance to see what would serve the
fundamental premise of this definition, which is, one
of the moves, protection of the public.

And we felt that one way to keep people from
being taken advantage of is to say that these services
should be without other than a nominal fee and
government or tax-exempt entities because, in addition to the fact that the profit motive might discourage those providers from referring users to lawyers when they need them, and nonprofit folks will refer people to lawyers when they need them, we know that from experience in other states and our experience here. There is also the fact that government and nonprofit entities must serve the public. Nonprofits are overseen by funders. The IRS and the state government entities, including courts, are overseen by entities that are accountable to the public, and so that is why we struck the balance there, and I think that might be enough for now.

CHAIRPERSON GOBBO: Thank you, Linda.

I am going to call on Judge Brown, because he has some unique perspectives on this. When the Ad Hoc Committee first met, Chris and I, as members of UPL, had been wrestling with language and other issues for years as some predecessors on that committee had wrestled with it. Judge Brown got right to the heart of the matter, probably typically what a judge would do when they have to go through many briefs and many cases, and the construction of this rule, the revised version, from what UPL had originally proposed is really a part of the work that he and Jim Harrington
did in terms of providing insight on the Ad Hoc Committee.

So, Judge Brown, if you could primarily address that and any other comments that you would like to make.

JUDGE BROWN: Thank you, Steve. This was certainly a monumental task when we first approached, at least when I first approached it, because I, unlike Chris, I had not been involved in this before. When I came in, my function was essentially to represent the judiciary on this committee from our perspective.

There was bringing to the table from that experience of my own in the courtroom, I knew where Linda was coming from on hers, and there are a number of individuals who appear before me and before every judge in the state who are without counsel who have no idea what they are doing and legitimately cannot afford a lawyer. They just don't have anything.

So the idea was when we first approached this and took a look, or at least when I first approached this, is to look at what the possibilities were. Because we had two choices. One is to seek a statutory revision, which is not likely to happen. The other is to seek a rule-based procedure, which I think we have a much better shot at.
The rule-based procedure that we have, we have to take into consideration as well the practical effect and how we think the Supreme Court might view this. So in order to do that as lawyers, of course, we look at, when we look at Dressel, we look at maybe the bottom line with the holdings, but when you are dealing with a rule-based definition of something such as what the practice of law is, I think it's important to look at Dressel and the instructive nature of the Supreme Court's decision to us, because they told us that the definition of the practice of law was possible. We were invited essentially by this decision to do something.

So if all you do is focus on the holding, you are missing, I think we are missing the point. If you would look at the discussion that they had in arriving at that holding, it's very instructive. And, as Chris said, the Supreme Court mentioned with approval many previous decisions, both from the Court of Appeals and the Supreme Court, and they gave examples throughout that discussion of what did constitute the practice of law and cited other cases to support that.

All of this is in this salmon-colored sheet that Danon and staff prepared for your benefit. It's an excellent work product. It explains this very
well.

The definition that we presented has support in the law. It's support that's discussed in Dressel itself. So when as a group we started putting this together, we had to continually focus on that, because we had representation from every section, basically every section in the State Bar, and we got a lot of comments from people who would take it back to their group and bring it back to the table at meetings, and sometimes it was, you know, there were people saying it's not inclusive enough, and then there were others saying it's overbroad.

So what we consistently did was go back to the law, what is it that supports this part of the definition, and is there legal authority for it? And the result is what you have before you.

So the process I think was very involved by the Bar. It was very involved by the people who were representing the various sections of the Bar, and the work product you have before you is supported by the law, by Dressel. I agree with Chris, Dressel did not, in my view, reverse anything from the past, and if you look at it, it discusses with approval much of the prior decisions. So I guess that's all I have, Steve.

CHAIRPERSON GOBBO: Thank you, Judge. That's
very informative.

Jim, from the perspective of the major section and from your own professional experience with this, because you were brought into the UPL aspect kind of the same way the judge was, not having served on UPL before and wrestling with issues from the segment of that practice area.

MR. HARRINGTON: Thank you very much. I had been a member of the Family Law Council who works on behalf of the section, 2600 members, for six years and also six years chair or co-chair of court rules and ethics for the council, and that was sort of my perspective and my viewpoint when I went to the first meeting up here in Lansing over a year ago regarding the unauthorized practice of law, and when I went to that meeting I had no idea why I was there and what I was doing, and my first question or thought was, well, isn't this well decided what the practice of law is? We know what it is, don't we? And I was actually stunned to realize that there was no definition of the practice of law here in the state of Michigan, and this was, last year was 2011, and for a lay person to attempt to ascertain what is or is not the practice of law, that lay person, I think, would have to invoke profound legal knowledge in order to understand and
comprehend Dressel, and I think it's a beautiful statement of Dressel by the judge, is it sufficient or is it necessary? Is everything else okay in the practice of law if it doesn't involve the use of profound legal knowledge? And I think clearly there are many aspects of the practice of law that may not involve profound legal knowledge.

So from meeting one through the final meeting, I can tell you that that proposal that sits in front of you was vetted and wordsmithed and comma edited and dashes and possessives, as well as getting to the sentence, the ultimate sentence structure, as carefully as anything that I have ever seen. It was actually a very enlightening practice to work with the various members of the various groups that were present there.

I concluded when we finally approved the proposal that's in front of you that this is really a good work product. Is it perfect? Surely not. There will surely be those who would have critiques or suggestions, but to try to encompass and take Michigan law and set it down to seven or eight succinct paragraphs, I think it is a terrific work product, and I am also pleased to report to you that at last Saturday's Family Law Council meeting here in Lansing,
as a matter of fact, the Family Law Council approved unanimously 19 to zero this proposed definition of the practice of law.

I was also heartened, a little bit off topic, I was heartened to hear from Janet Welch that anti-trolling is not dead, and similar to anti-trolling, because I spoke to you a year or two years ago on anti-trolling and it finally made it up to the Supreme Court level, I think it's pretty clear that what we do here today is not necessarily the final word.

We are not passing a law. We are making a recommendation which will be reviewed and vetted at higher levels and above our pay grades, but I think this is a wonderful beginning to the process. It has taken a long time. Everybody has worked hard. So from the Family Law Council and section perspective I have no hesitation to recommend approval and endorsement of this definition and let the process continue.

CHAIRPERSON GOBBO: Thank you, Jim. I really want to see the Assembly ask anybody on this panel any question you want, because there is a certain expertise that you are not going to find, other than maybe from the RA itself, in terms of the different areas that weighed in on this. So, Matt, please step
up, identify yourself.

MR. MATTHEW SMITH: Good morning, Matthew Smith from the 17th circuit, Kent County, Michigan. If I could beg the Chair's permission, I would like to make an observation first rather than a question.

This is my first full year on the Representative Assembly, so it's kind of fun to watch how you guys do everything, but I have served the State Bar for 18 years on the Criminal Law Section as one of their officers and chair. Steve serves on it with me. I look around the room here, I see some other members of my group.

We are a very unusual group in the State Bar, and that is that we are the only section that has people in it that are widely disparate in the type of practice that we have. In fact, we are opponents. We have prosecutors, we have defense attorneys, and we have judges. We pride ourselves over the last 18 years of being a very homogenous group. Almost all of our votes after sometimes long consideration are unanimous. Occasionally we'll have a dissent, rare though that may be.

When we came time to sit down and talk about the unauthorized practice of law, and in fact the salmon-colored sheets you have are the same ones that
we had at that meeting, we ended up with a 9-6 vote to support it in principle. In my 18 years I have never seen that. And I just wanted to take a minute to point out what happened at our meeting.

What happened was is everybody looked at it and said great idea. Unfortunately, they said great idea but, and this was very reminiscent of what happened to this type of proposal about ten years ago. Our group virtually to a person, there were 20 of us, said maybe we should add this little provision here or what about a waiver provision or is this overbroad, is this too narrow. Twenty different opinions. Well, maybe 18. We sat down and argued this, I think well over an hour. It was a long time for our group. We got out of that meeting very late.

What we have before us here today is a proposal that these folks have worked on very diligently, that at least it is a good start. Is it a perfect document? No, it's not. Do we all have things that we think should be added to it or that we could look at later down the road or things that we could modify? Yeah, but we can't let this one die the death of a thousand cuts. I would support it.

CHAIRPERSON GOBBO: If I could ask you a question, because we don't have actually the proposal
before us at this point in time, and what I was hoping is that this would be an opportunity to ask the panel any questions rather than, more or less, comments about the actual proposal, because we are going to have that come up at the appropriate time.

MR. MATTHEW SMITH: Mr. Chair, the reason I did that was simply because, as we begin the process of going over this document, we are going to be tempted to do the same thing we did Tuesday night, and that is, yeah, but, what about, how come? And I think we should keep our focus more on whether or not this is the right thing to do and can we modify it later or do whatever as opposed to stand up and oppose it because your yeah but didn't quite get in. I simply bring this up as an observation of what we went through Tuesday, and you were there.

CHAIRPERSON GOBBO: It's a good observation. I am just questioning the timing of it.

MR. MATTHEW SMITH: I made my observation. Thank you.

CHAIRPERSON GOBBO: Thanks, Matt.

MR. COURTADE: Bruce Courtade, 17th circuit. The question I have reading through the materials, one of the issues that, one of the letters we received pointed out was that potentially a family member
giving family member advice could violate this rule. I would like a response from the panel about whether you considered that, whether you agree with that as a concern or how that would be addressed.

CHAIRPERSON GOBBO: Let me add to that context, because the context that I have heard is a son goes to court with the father and the father is standing next to the son before some judge, and the father is whispering in the son's ear as a context perhaps.

MR. HASTINGS: I have a unique perspective on that, having sat through 12 years worth of UPL meetings. In that case the father may well cross the line in terms of offering advice that he is not qualified to give. The standing committee on the unauthorized practice of law would never touch that case. I think that falls into a matter of prosecutorial discretion. That's not what we are after. We have standards for litigation. All of our decisions are reviewed by the Board of Commissioners and approved before any action is taken, and one of the standards, the most important standard, is this something that offers the prospect of continuing harm to the public, and a father advising his son doesn't do that.
CHAIRPERSON GOBBO: What I should mention is that under the RJA the sole and exclusive prosecution has to be through the State Bar. So it's not a penal statute, which I think some people that I have talked to get kind of confused about a little, that it's a court rule being used for administration and defining the practice of law and not as a punitive methodology. It could turn into that, because the only remedy we have, as Chris mentioned earlier, is injunctive relief. I suppose if somebody violated the injunction they might be subject to criminal intent, so I am just adding that in. Are there any other questions?

JUDGE BROWN: I agree with Chris, there are two basic ways of looking at this. Number one, does it violate the letter of the definition, and if it does, what do you do about it? So there is a lot of anecdotal types of situations that you could bring up that say, well, listen, this really doesn't hurt anybody too bad, why shouldn't they be able to do it, and that's different than whether or not it is the practice of law.

So we have to define, we have to have the threshold first of what is the practice of law and then make the decision what you do about it, and, as indicated, the State Bar makes that decision with very
limited resources, so you have to have practical
approach to all of that.

CHAIRPERSON GOBBO: Thank you.

MR. POULSON: I am sorry. I had to work my
way over here. There used to be a microphone over
there in the old budget days.

I oppose a family member exception to the
practice of law. I can just picture it in court with
family members getting up with their son at their side
trying a case with a life sentence, and I am confident
that would happen, so that's my first comment.

CHAIRPERSON GOBBO: Again, what I was hoping
is that we would have questions to the panel as
opposed to discussion on the motion. There is no
motion out there at this point, so I appreciate the
observations, but I think it would inform the body if
questions were being asked of the panel so they could
respond. We will take a short break, and then we will
get to the actual agenda item.

MR. POULSON: My question relates to the
preamble on line six where it says, Legal services to
others are qualified to do so by education, training,
and experience. And I would ask the panel where in
the application for the State Bar membership does
experience come in? As far as I understand, it does
not. You get a B.A., a J.D., you pass the quiz, they look into your background, which is painful for old people, easy for young, but there is nothing on experience, so I would ask the panel why they included that.

MR. HASTINGS: I am not sure I have a textual answer. You know, I can't remember exactly who put that word in there. It may well have been me, and I guess my only answer, my best answer is that our ethical rules require us to have a certain modicum of expertise in an area before we walk into that area, so we are not permitted, although we may be licensed to do something, we have to have the ability to practice in that area as a matter of our professional ethics.

MR. POULSON: Thank you.

MS. KAKISH: Kathy Kakish, 3rd circuit. How comparable is this to the definitions of the practice of law in other states?

MR. HASTINGS: Formally it's the same. Practically it differs in the way that our substantive law differs from the law of other states. For instance, the precise holding applying law to fact holding of Dressel is that people who are involved in transactions or interested in transactions, they charge a fee for these legal documents. The state of
Washington is exactly the opposite on that key point, but the structure is the same. (A) tells you what lawyers can do and no one else can, and (B), as carved out, trump (A) if they apply.

CHAIRPERSON GOBBO: Next.

MR. FLESSLAND: My name is Dennis Flessland from the 6th circuit, and I wanted to ask if you considered the debt consolidation companies and how they operate in this context? I mean, they will very often contact debtors. They will say make your monthly payments to us, which is kind of setting up a trust fund, then when the debtor gets sued they give them legal advice of some sort to file an answer or at least move the thing into litigation, but they don't get involved in the negotiation, they don't get involved in litigation, they very often don't get involved in payment, and they are very often out of state. Do you have any -- did you discuss that, or how does that fit in with this rule? Thanks.

JUDGE BROWN: I can tell you that we discussed a lot -- I can't say we discussed that one, but we discussed a lot of situations. As I indicated earlier, the members of the committee represent a lot of widespread area of practice, and throughout discussions you brought in a lot, well, what about
this or what about something else?

What we tried to focus on in establishing a rule or a definition was not so much individual situations that we might be confronted with but with a more definitional approach following the case law that's been presented and then see if those situations fit within that.

So the definition that we have, your example may very well fit within that in a given situation and it may not in another. And so what we are trying to do is present a threshold from which we can operate to determine whether or not as situations occur, how does that fit within the definition, is it a violation of the definition, is there an exception for it and, if not, and it is determined to be a violation of the definition, then you go to the next step as to what to do about it.

So I think we have to concentrate on that threshold part of it, piece of it before we ever get to the, well, what about this person or what about this activity, because once you have that definition, then you can make those kinds of decisions, and until you have that definition it's pretty hard, and that's the reason that we are proposing the definition to begin with or try to come up with a definition to
begin with so that it would give us somewhere to start to make the decision based on a factual scenario as it's occurring.

MR. FLESSLAND: I just wanted to follow up. Does the fact that somebody takes money in a trust context to pay to others, does that fall within the definition of the practice of law in some fashion?

MR. HASTINGS: I don't think that the specific taking of dollars into trust does. I do think, and I agree with everything that Judge Brown said about trying to take the law as it stands now. We don't have any published opinions on debt consolidators, so we don't have much guidance to include in our definition.

I can tell you the standing committee is very concerned about that and we are actively looking for the right case to make some law on that and to have the existing law apply to those facts. We haven't found it yet but hope to.

CHAIRPERSON GOBBO: Next.

MR. JOSHUA SMITH: Joshua Smith from the 30th circuit. Quick question, hopefully quick question, on exception (B)(2), which is the exception for lay representatives and administrative agencies.

Now, obviously this says specifically
authorized by statute. Later on there is the
exception (B)(9) for activities specifically exempted
by the Supreme Court, and I guess my concern is
twofold. Now, obviously there are fairly clear-cut
cases where the statutes provide that a person can be
represented by an authorized rep. These are usually
social welfare benefits cases.

In many of these administrative cases the
State of Michigan -- in full disclosure, I worked for
the attorney general's office. When an agency
proceeds at a hearing and the other side proceeds in
pro per, typically the agency is not going to request
representation from my office, for the obvious reasons
that they don't feel they need an attorney present.
The agency instead will send a representative from the
agency to handle the hearing. Needless to say, this
is a nonattorney.

So my question is, and I am not familiar
with -- I know sometimes the statute allows this, but
I don't know if it allows it in all cases. Has the
committee considered that, A, and, B, do we have any
list of statutes and/or activities at an
administrative level that are exempted from the
practice of law or unauthorized practice of law?

CHAIRPERSON GOBBO: If I could take a stab at
this. I know that the list was compiled a while ago, and I am familiar, very familiar with the statutory provisions concerning what the rights of an agency. Quite frankly, when I have had the opportunity to comment on legislation, I attempt to ensure that whoever that authorized agent is is also an attorney, but there are many statutes, as you pointed out, that say and authorize a representative of a particular agency, and I know one area in particular that has gone in some complaints actually, UPL, is unemployment, because they have an advocacy program. When I was going to law school, some of the students I was attending with actually formed companies to act as advocates in those proceedings because the statute specifically provided for that.

So the application at a hearing, an administrative hearing, we have at least one administrative law judge in the room, is typically that if an administrative law judge under the ethical rules discovers somebody is not an attorney, they are supposed to report that to UPL and then, again, it falls into this threshold evaluation that has to be done by the Bar as to whether there is actually something that should be done about it.

So that's my two cents to the matter on that.
MR. JOSHUA SMITH: If I could follow up. I understand obviously there is the problem at the petitioner's level, the non-State level with companies like you just mentioned. I guess my main concern is with the State itself, because, of course, if the State were sued under unauthorized practice of law measures and it stuck, it would be enormously expensive for the State of Michigan to get a licensed attorney in all of those cases. I mean, that's the reason they don't get a licensed attorney in many of them, because it's quite pricey, and when you multiply that by the number of hearings, the number of agencies, it gets pricier yet.

CHAIRPERSON GOBBO: There is a greater issue there too that I will speak about just so that there is maybe an understanding of how difficult pulling the rule together is. You are dealing with two branches of government, the judiciary and the executive branch, and the legislative branch as the third, actually three branches of government, but the point I wanted to make is the legislature comes out with legislation and statutes, and in this case, although it's the Court, the Supreme Court that has the final say on matters of the judiciary and the practice of law, there had to be some acquiescence in terms of defining
certain callbacks.

So it's kind of a reverse, rather than defining it, they are providing a callback. There is that delicate balance of an overlap between the branches of government, and then, of course, the executive branch from your end and my end is trying to enforce those laws, and maybe it's not so clear sometimes what it really means.

MR. JOSHUA SMITH: It might be better that it's not clear for some of us.

JUDGE BROWN: I can tell you that there are a number of, from my perspective, I certainly don't know all of the statutory exceptions that are available, I just don't. I would guess most of us don't. But we know they are there. We know there are some. So we established this as an exception, because we are aware that they exist.

When you talk about whether or not it would get enormously expensive to be able to do that, if, for example, if there wasn't an existing exception and it was a concern enough, I would be willing to bet that if dollars are on the table and you find an exception carved out legislatively real quick that says something to the effect of in a situation you don't -- this agency can act without --
CHAIRPERSON GOBBO: And it's very -- the narrow exceptions I guess is the way I would define it.

MR. MUCHA: John Mucha, 6th circuit, Oakland County. Just a question about Section (C), I believe it's page eight, the nonlawyer assistance. I don't have my copy of the Michigan Rules of Professional Conduct with me, but just wondered whether this exception would allow someone to form a team or organization of nonlawyers, a lawyer format organization, have a group of people providing nonlawyer assistance under the supervision, quote-unquote, of a single lawyer in more name only than in practice, and, you know, is this exception that broad that it might allow something along those lines?

MR. HASTINGS: Boy, I sure hope not. It certainly wasn't the intent. Our intent was to call out the (inaudible), which are really quite well developed, look, we are going to cheat the actual rule.

The responsibilities regarding nonlawyer assistance is Rule 5.3 of the Rules of Professional Conduct which govern what we have to do when we oversee those folks who are providing services. We
are the clearinghouse, and if somebody stepped down in terms of fulfilling the function, it's the grievance folks, the discipline folks that have to handle that. But dealing with the lawyer, not the nonlegal professionals.

CHAIRPERSON GOBBO: Next.

MR. ARD: Hi, Josh Ard of the 30th. I just wanted to point out, it looks like you forgot to put "for another" in (A)(1)(2), so anybody that fills out a legal form for themselves or selects one for themselves would be engaged in the unauthorized practice of law, which is obviously not what you meant, so you may need to put something like "for another" or something like that in the (A)(1)(2). So just choosing, choosing the form to open probate is selecting a form and filling it out. You obviously don't want to mislead anybody into thinking that's the unauthorized practice of law.

JUDGE BROWN: Except for general (A) in the general definition.

MR. ARD: Right, general definition, but in (1) and (3) you mention another, so you might as well mention another in (2).

CHAIRPERSON GOBBO: Thanks, Josh.

Are there any other questions to the panel
members at this point in time? Okay.

I would like I guess for the Assembly just to recognize our visitors on the panel.

(Applause.)

CHAIRPERSON GOBBO: We are slightly behind in time on the agenda, and the next item, which is actually the consideration of defining the practice of law. We had Chris Hastings down as the proponent, and from the bylaws, the Assembly would have to recognize on two-thirds vote a section or committee representative chair, and I understand Mr. Tom Rombach, our treasurer, secretary is prepared to make a motion.

MR. ROMBACH: Mr. Chair, Tom Rombach. I am a representative of the 16th circuit here.

CHAIRPERSON GOBBO: Currently the secretary.

MR. ROMBACH: I am moving to adopt the proposed definition of practice of law as State Bar policy and include an annotated version of the supporting materials submitted to the Michigan Supreme Court. I also rise to speak from an institutional standpoint.

Obviously our first and foremost duty here is to protect the public. As you have seen from the panel discussion, we need guidelines for enforcement.
We need guidelines for compliance. We also need, quite frankly, to protect the profession, and for 15 years I have been in and around the Assembly. I was elected then. I was also a former chair, and everybody keeps asking when are we going to do more about unauthorized practice of law. And the profession is yelling for this improvement.

We have gone as far as we can, you know, given the Dressel decision and given the fact that right now the public has to, each and every decision that comes down, has to parse it so that they know where to go, and even our membership doesn't seem to be able to agree on where we are at. So the fact, from a practical standpoint, that this isn't a perfect document, I mean, I think that we are missing the point, and I think Mr. Smith made that.

So if our membership wants this, we have to do something, and right now the State Bar is the exclusive enforcement agency to do this, and we have a great deal of discretion, so I am not too worried that we are going to go after dad for saying, hey, Junior, I am filling out a form, okay. We also, as Judge Brown said, we have some limited resources, but we are complaint driven. I don't think Junior at 12 is going to say, Oh, well, I read the Dressel
decision, I have looked at the Supreme Court rule, and now I think I should, you know, I have had an argument with dad and I am going to go to the State Bar and file a complaint, from a practical standpoint.

But we need to focus, are we doing the right thing here? Each and every provision of this is supported by the law as you see in the salmon handout here. The special committee is populated by our best and brightest practitioners. They can't be held to an impossible standard, and sometimes we, as all lawyers, hold everything up to perfection, and in this case this is still a work in progress.

Because this is a proposed court rule, the Supreme Court still has to weigh in. This is just a suggestion for them. We still have to have public hearings. We still have to go before them and advocate for the final rule, so there is a whole lot of input to be had. This is the starting point for the State Bar of a long and perhaps drawn out process. Just please, you know, at this juncture don't veto this thing, one of the State Bar's highest priorities.

The other thing is that what is the institutional cost here of failure? This is just another test of the RA's powers and responsibilities and abilities, quite frankly. Are we able to in one
mind set our sights on a particular purpose and accomplish that goal, and if we are all going to die of a thousand cuts, as I think it was put, then we all fail.

This initiative was undertaken in 1999 through 2001. What happened? We didn't even get to see it at that point because it didn't hit the critical mass that it took to come in front of this body. Now the Supreme Court has invited us to do this, as you heard in the Dressel decision, to produce a rule-based enforcement mechanism, and that's exactly what we have done. Quite frankly, we have reached the end of our rope to where we are at. I am rising as a representative of the Board of Commissioners. We recommended this to the Assembly, but we respect the fact that the Assembly is the final policy-making body.

So right now what are we doing to enforce these things? Well, I know a little bit about that. Quite frankly, the moron that's in charge of the enforcement mechanism here needs some direction, and you are looking at him, okay. So when this comes in, you know, I would like some set of guidelines instead of just the staff and the complaints that drive in. What does the Assembly want us to do? And this is our
opportunity to speak in one voice to come forward with a work product, and that's what I am asking here to do.

So this is a finely woven fabric. I don't want each and every one of us to pull a single thread out or we are going to end up with no work product at all, and we are just going to destroy this.

So an overwhelming number of the Representative Assembly members and members of the profession, quite frankly, have come up to me as chair of the Professional Standards Committee and said, What are you doing about this? And so I really feel strongly that we should do something about this.

So please don't endanger this entire effort at some quest for perfection. It's an imperfect document, the best we have come up with, and I would like this to go through without a great deal of amendments. We can discuss it to death, I don't mind, but unless there is something that you have to say that has to be in here, because right now this is 95 percent right, and the one five percent that I really feel strongly about may be the one five percent that somebody over there can't live without, so I veto the part he likes, she vetoes the part that I like, and then we all end up with nothing, and that's where we
have been for the last ten years. I believe that we need to move forward. Thank you, and that's the basis I am supporting this proposal.

VOICE: Second the motion.

CHAIRPERSON GOBBO: Hearing the motion and second, is there any comments or discussion? If there are, just use the podium, and I guess just form a line right behind Kathy.

For the sake of expediency, because we are a little over the allotted time, and I don't have a problem staying late, I live locally, but I know many people might have other commitments, so we are going to ask everybody to kind of adhere to maybe a three-minute time frame, and if somebody pulls out the bylaws, you might find it's a lot longer time, and if I multiply it by everybody in the room, we won't be done until next weekend.

MS. KAKISH: Kathy Kakish, 3rd circuit. I am in total support of this proposal, and I am in total support because of this panel discussion today. I have to admit when I first read it in the booklet, I only read what we are voting on, and I did not read the introduction. I was confused. Then I read the introduction and it started to make sense. However, I had a lot of questions. Then there were things that
were mentioned in the panel today which put everything into focus.

Chris, you talked about the problems and the struggles that we have had. You have talked about the lack of enforcement, injunctions being the only method to counter the problem. Linda, you focused on the (B)(7), the pro bono self-help centers. Judge Brown, I thank you very much for focusing on two items that I had questions about. One of them is I didn't understand that there were two routes to take. One, the statutory provision or the rule based. It clarified a lot of the process for me and, Judge, thank you very much for providing such a succinct overview of Dressel. James, focusing on the definition, or the lack thereof in the state of Michigan, focus on the Family Law Council and perhaps what their thoughts were on this and your focus also pointing out that what we are doing here is making a recommendation.

I don't know -- my question, I guess, would be to talk to the proponent. Tom, you mentioned that you were moving to include annotations along with what we are going to vote today. These annotations, would they include the introduction that is in our booklet, and, two, and could they also include the highlights
of the panel discussion, because I believe what the panel has discussed today really focused the issue. We know down the road when documents are not attached they get lost, and other people are going to review this, what we are proposing today. The background information, I believe, is so important. So I guess, Tom, my question to you is will we have the introduction in our booklet, will it be rewritten so that what was discussed here today would be included?

CHAIRPERSON GOBBO: Kathy, if I could just ask a question of clarity. Are you suggesting the report, as well as the draft rule unannotated plus the annotation, is that what you are suggesting?

MS. KAKISH: I really don't know. What I know is that in our booklet we have what is called the introduction report of the special committee. That's what helped me focus --

CHAIRPERSON GOBBO: I think Tom's motion probably intended to include the report, because the rule and the report really are kind of one document because of the appendices to it, but I would ask Tom just as a proponent of the motion to clarify that.

MR. ROMBACH: I am for incorporating everything that's done here. I mean, that entire presentation by the Representative Assembly, the
representative Bar is going to have to be presented to the Supreme Court at some juncture, so basically that document in its entirety.

CHAIRPERSON GOBBO: So just for clarity of what the motion was made by the proponent. I know the one thing Kathy asked for is the transcripts presumably to go along with that, because that contains the panel discussion. I don't know if that would be a standard practice. I know that the Court has access to the transcripts anyway.

Janet, if you want to address just a problem that's posed by that.

MS. WELCH: I am not sure it's a problem, but just a general observation that actions that are taken by the Representative Assembly, policies that you adopt, even if you adopted just the unauthorized practice of law, or the definition of the practice of law, what happens next as we advocate what it is that the Representative Assembly has adopted is that we bring to bear everything that we can in order to persuade four members of the Supreme Court or 56 members of the House or 19 members of the Senate and the Governor. So of course we will take everything that has been persuasive to you and use that and probably add to it going forward, what would be
persuasive.

MS. KAKISH: Janet, thank you very much. I am in total support of this proposal.

CHAIRPERSON GOBBO: We have a motion that was moved by Tom Rombach, and you heard kind of the explanation, so I don't hear an amendment to that motion. I am just going to keep that motion as it is. Went over the three minutes, but I think the procedural thing helps to understand what may happen.

Go ahead, please, next.

MR. POULSON: Despite my objection to line six, word number four, I see this happening in court all the time, parents wanting to get up and advocate for their son or daughter, and even though attorneys are free for the indigent, and they make a complete mess of it based on what they watch on TV, and I think it very important that it actually not occur, and I support this proposal despite my quibbling over the word.

I didn't want to leave the impression that I don't support it. I think it's necessary, and I think people are being disserved in numerous ways, many of which are present here. I see debt consolidation agencies not only giving advice, I see them actually keeping the money. So we have got a big problem and
the public relies on us. I would just like to mention my support.

CHAIRPERSON GOBBO: Thank you very much.

Next.

MR. COURTADE: Bruce Courtade, 17th circuit. I am one year ahead of Tom in chairs for the State Bar, so since he is the current moron who leads the unauthorized practice of law, I am the preeminent moron.

Nonetheless, this is a great proposal. This is absolutely necessary. I commend the committee for its work. Outstanding work product. This is something that you cannot possibly, I don't care how long we as a group would sit down and try and work this thing out, we will never come up with a single definition that everybody will agree with, but we need something in place. We need this proposal to go forward. We need the Supreme Court to look at it and hopefully -- my personal preference is they send this rule out, they adopt this rule, but at a minimum let's keep the conversation going. I fully support this. I thank the committee. I thank staff for the outstanding work on this.

CHAIRPERSON GOBBO: Thank you, Bruce. Next.

MR. HERRMANN: Fred Herrmann, 3rd circuit.
Probably the best thing I learned in law school was a
passing comment by one of my favorite professors who
said, If we were smart we would call this fact school,
and of all the materials we received for analysis of
this, the one thing that jumped off the page at me was
footnote two of the committee's report which gave a
specific example of how things can go wrong when a
member of the public engages a form factorY instead of
an attorney. And that type of example, whether it's
either a hypothetical, a detailed hypothetical, or
perhaps a real world experience one of us has had in
dealing with a client who had something go wrong by a
using a form factory, any of those types of details
that we can tack on to this proposal I think would be
critical to gaining traction, and I think it's
particularly important given Executive Director
Welch's comments today on the anti-trolling provision
and the Supreme Court's reaction to that.

Empirical evidence will go a long way, I
think, to advancing this proposal. I know we are
focused on the language. We are trying to come up
with a rule that embraces every possibility, but I
would encourage you to include as much detail as you
can of either real world or at least hypothetical
instances where the public would actually be harmed,
and that footnote two I think is an excellent example
of, wow, that jumped off the page with me. You fill
out a form and you have made a grave error that has a
significant impact on a member of the public.

CHAIRPERSON GOBBO: Thank you. Next.

MS. ORTNER: Ava Ortner from the 6th circuit.
I commend all the hard work that went into this, and I
hate to rain on everybody's parade, but I don't think
that this is a document that ought to be approved. I
have to agree with the Oakland County Bar Association,
the letter that was submitted by Mr. Peter Alter, the
president of that association.

The overbreadth of one particular section to
me is terribly troubling. I draw your attention to
Subsection (6), and imagine the following conversation
between two lay people. You can't park there, you
will get a ticket. You can't cut down that tree, it's
on your neighbor's property. It's against the law.
If you hit her, she can sue you, that's assault. So
if you weighed everything on one hand that lay people
say that sounds like the giving of legal advice to
another against all of the legal advice all of us
lawyers give in the state of Michigan, you are
including a bigger pile of commentary that is
perfectly everyday discussion.
Now, I understand that enforcement is an issue and nobody is going to enforce it that way; however, a lot of what we have heard here is that this document is intended to give guidance to lay people. If this isn't a chilling effect on people's first amendment right, I don't know what it is.

Maybe there is a first amendment lawyer in here that could say that a lay person would not be the slightest bit inhibited to continue giving their free legal advice that they give to one another every day of the week all over the place. In my opinion it's grossly overbroad.

CHAIRPERSON GOBBO: Thank you for the comments. Next

MS. VULETICH: Victoria Vuletich, 17th circuit. My understanding, just to respond to the speaker before me, is that there is a provision in the proposal that would not prohibit general discussions among the public about legal matters.

In 1999, I had the privilege of coming to the State Bar of Michigan to serve as unauthorized practice of law counsel, and I was there for ten years. I have tried these cases. I have answered the phones of people who have called having something very important to them devastated in their life because
they were the victims of an unauthorized practice of law perpetrator. I have seen the harm that companies repeatedly impose on people for profit.

I have spent time with State Bar attorneys, the Probate and Estate Planning Council, who for a long time have seen much of their practice come under fire from these unauthorized practitioners, and part of our Achilles heel as lawyers is that we can get so lost in the trees in arguing about language and commas and overbreadth and this and that that we fail to act. Based on ten years of experience, what I have seen, the harm that's going on out there, it's time to act, and I heartily support this proposal.

CHAIRPERSON GOBBO: Thank you. Next.

MR. LITTLETON: I will be quick. My name is Ray Littleton, and I just got moved in. I am in the 6th circuit.

You know, I come from a family of doctors, and I think it's really funny, because if you had a roomful of doctors and they had a proposal before them about the unlicensed practice of medicine, they would be in and out of there in five minutes and, you know, approve the proposal and it would be on its way, ready to go, but you get a roomful of attorneys and we want to argue against a proposal for protecting our way of
life, our practice.

I mean, this is something that's, I mean, it's an honor to be in this practice. We went through a lot to be here, to be in whatever position that you are in at the moment, and it's something we do need to protect, and I just want to respond really quickly to the comments that were stated before about, well, now we are going after citizens when someone talks to someone else and says, well, if you cut down that tree or if you do this or if you park in this, you will get a violation.

You know, I want to use the same analogy, the same comparison. I mean, you see people every day who talk about how to treat a bruise or you go on Web M.D. to get a remedy or something of that nature, and that's a lot different than someone who is actually performing a surgery or someone who is going to draft a will or is going to draft a contract for someone actually to use. I mean, these are -- there are two different levels between someone saying, well, I have an opinion about this or I think this is how this is supposed to be and someone who is creating a document, and that's definitely something we need to protect.

CHAIRPERSON GOBBO: Anybody else? My one comment is that the rule certainly can be interpreted
as trying to protect the profession in some way, but the major focus is on the citizens, the members of the public that are out there that have been injured by this.

We as attorneys, and you heard me say those quotes earlier on, we as attorneys also have an obligation to ensure that the public is protected, but I think everybody can come up with some type of response in terms of a question. Have you ever seen an attorney and you asked the question, how, number one, did they pass the bar exam? And number two, how do they survive in practice, because there is something that they had just done unethically or they just are not competent, and this rule doesn't address that, but as a profession it's something that we, and I think as this policy-making body of the Bar, we have to ask that question, how can we better address that going forward? So those are my personal comments with respect to the rule and some other goals that we should have.

I have one more person who would he like to come up and speak.

MS. ROUSSEAU: I have just a quick comment. Lauren Rousseau, representative of the 6th circuit.

In looking at this proposal and listening to
all the comments and the panel discussion, there are aspects of the specifics that do seem somewhat overbroad to me, and I was wrestling with that a little bit as you were talking about it, but then I realized that basically what this proposal does, and even its overbreadth, is just put the issue into the hands of the State Bar when you are talking about enforcement, so it gives the State Bar some level of control over trying to prevent the public from being harmed by the people who we really want to prevent from doing things that are harming the public.

So there may be some issues about, you know, you could possibly read some of these definitions in terms of family members or neighbors talking back and forth and that being a problem. As a reality, we are really simply saying we are putting this into the hands of the State Bar so that they have some power, some control to take action when the public can be harmed, and I think that that's a good thing.

CHAIRPERSON GOBBO: Thank you. Is there anybody else before I call for a vote? I want to make sure everybody has a chance to weigh in on this. It's probably one of the most substantive items that we have dealt with for quite a while.

Seeing no more comments, I am just going to
call for a vote. All in favor of the proposal as presented, please say aye.

Any opposed, please say nay.

Are there any abstentions? I see one abstention.

It carries on the voice vote. I don't know. There is no need to call for division, but I am just curious as to whether a count might be advisable -- never mind. I actually was planning to say that as a joke.

Move down the agenda to one old matter of business, and I am going to recognize the original proponent of proposed Court Rule MCR 7.301(B). It was amending that proposed court rule.

MR. QUICK: Dan Quick, 6th circuit. Great pleasure of informing you before, since I have the last agenda item, that this item is being withdrawn from consideration of the Representative Assembly at this time and without prejudice. Thank you.

CHAIRPERSON GOBBO: If there are no objections, the withdrawal of that item will stand. Thank you, Dan.

Now, is there a motion, and I don't know how many people might want to make this motion. It probably should be unanimous. Is there a motion for
adjournment?

VOICE: So moved.

CHAIRPERSON GOBBO: Hearing a motion and support, all in favor say aye.

Thank you. If there was any nays, talk to me later on.

(Proceedings concluded at 12:11 p.m.)
I certify that this transcript, consisting of 99 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case on Saturday, April 21, 2012.

May 9, 2012

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