STATE OF MICHIGAN
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE
ASSEMBLY of the STATE BAR OF
MICHIGAN

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Proceedings had by the Representative Assembly of the State Bar of Michigan at Lansing Community College - West Campus, M-TEC Center, 5708 Cornerstone, Lansing, Michigan, on Saturday, April 25, 2015, at the hour of 9:30 a.m.

AT HEADTABLE:

VANESSA PETERSON WILLIAMS, Chairperson
DANIEL D. QUICK, Vice-Chairperson
FRED K. HERRMANN, Clerk
JANET WELCH, Executive Director
HON. JOHN CHMURA, Parliamentarian
ANNE SMITH, Staff Member

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Representative Assembly              4-25-15

Lansing, Michigan

Saturday, April 25, 2015

9:31 a.m.

Record

Chairperson Williams: The April 25th, 2015 meeting of the Representative Assembly is now called to order. My name is Vanessa Williams, and I am serving as your chair. Here with me today we'll have our parliamentarian, Judge John Chmura, who will help provide order for us today.

Mr. Clerk, do we have a quorum today?

Mr. Herrmann: Madam Chair, we have a quorum.

Chairperson Williams: So at this time we will ask the chair of the Rules and Calendar to come to prepare us to move for our agenda for today.

As you note from the e-mail that we sent out in our announcement, there is an additional agenda item that we will ask to be added as a special order. It's regarding the Supreme Court proposed amendments to Michigan Rules of Professional Conduct 1.5 and the request for comments. We felt as an executive team that it was important to bring it to the body so that if there are any issues that you feel that impact the larger bar that we could address those.

Are there any objections to us adding
that as a special order today? Hearing no objections, we will then prepare for our motion.

MR. ANTKOVIAK: Good morning, Madam Chair, Matthew Antkoviak, chair of the Rules and Calendar Committee. At this time I would move the adoption of the proposed calendar as amended.

CHAIRPERSON WILLIAMS: Is there a second?

VOICE: Second.

CHAIRPERSON WILLIAMS: It has been moved and properly seconded that we adopt the revised calendar that's provided to you at your desk today. All in favor, please say yes.

All opposed no.

Hearing none, the motion passes.

At this time we'll have our chair of the Nominating and Awards Committee come to fill our vacancies.

Prior to us filling our vacancies, we will address item 1(D), the approval of the September 18, 2014 summary of proceedings. That summary has been provided to you in the materials that were mailed. Is there a motion for approval?

VOICE: So moved.

CHAIRPERSON WILLIAMS: Is there a second?

VOICE: Support.
CHAIRPERSON WILLIAMS: Having been moved and properly seconded to approve the summary of proceedings of September 18, 2014, are there any questions or discussion?

Hearing none, all in favor please indicate by saying yes.

All opposed may say no.

The motion passes.

MS. MOSS: Thank you, Vanessa. Good morning, I am Shenique Moss. I represent the 30th circuit, and it is my pleasure today to be the chair of the Nominating and Awards Committee.

We have a number of vacancies to fill, but before I do, I would like to thank the members of the Nominating and Awards Committee. If you are here, please stand. Elizabeth Johnson, Erica Zimny, Lee Hornberger, and Daniel Cherrin. Thank you so much.

I would also like to take this opportunity to thank the RA leadership for the amazing job that they do leading the Assembly. And last, but not least, I would like to thank Anne Smith, who does a phenomenal job of providing support to us and answering all the questions that come up through the process.

Each of you should have a memorandum that is
from Vanessa to the RA dated April 24, 2015, with the proposed slate of candidates to the fill the positions for the following year. Candidates, could you please stand when you hear your name.

In the 3rd circuit, Daniel Ferris, Mwanaisha Sims, Aghogho Edevbie, Randall Tatem.

In the 6th circuit we have Matthew Aneese, Heather Atnip. James Brennan, Patrick Crandell, Anthony Kochis, Christian Ohanian, Cesare Sclafani.

In the 7th circuit we have Jay Edwards.

In the 8th circuit we have Tracy McCarn-Dinehart.

In the 10th circuit we have John Lozano and Thomas Fancher.

In the 19th circuit we have Mark Quinn.

In the 20th circuit we have Maureen VanHoven.

In the 22nd circuit we have Elizabeth Kitchen-Troop and also Ashish Joshi.

In the 28th circuit we have Melissa Ransom.

In the 30th circuit we have Carmen Fahie.

In the 31st circuit we have Gerry Mason.

In the 45th circuit we have David Marvin.

In the 49th circuit we have Nathan Hull.

And last but not least, in the 57th circuit we have Christina DeMoore.
At this time I move for the appointment of the slate of 25 candidates.

CHAIRPERSON WILLIAMS: Having been moved for the appointment of the slate of 25 candidates just announced, is there a second?

VOICE: Support.

CHAIRPERSON WILLIAMS: Are there any questions or discussion?

Hearing none, all in favor please indicate by saying yes.

If there are any opposed, please indicate by saying no.

Let's welcome our new members to the Representative Assembly.

(Appause.)

CHAIRPERSON WILLIAMS: While they are moving to find their seats, are there any first-time members of the Representative Assembly? Would you stand if it's your first time.

(Appause.)

CHAIRPERSON WILLIAMS: We will now hear again from our chair of the Assembly Awards Committee.

And you will notice as we are moving forward, if any chairs are empty beside you, the staff will come now to remove the clickers. We will use clickers
for electronic voting based on our vote today, and so we want to make sure that we are capturing the number of representatives who are in attendance. As you see there is an empty seat beside you, if you please raise your hand so they can quickly get to you.

It appears that we have all of the additional clickers. We will move forward with Chair Moss regarding the nominations of awards nominees.

MS. MOSS: Thank you again. As Vanessa indicated, I will now be making two motions for award recognition on behalf of the Nominating and Awards Committee. The first is for the Unsung Hero Award, and the second is for the Michael Franck Award.

As you know, the Unsung Hero Award is presented each year to an attorney who has exhibited the highest standards of practice and commitment for the benefit of others. Our candidate this year for the award is the Honorable Allie Greenleaf Maldonado. Judge Maldonado is the chief judge of the Little Traverse Bay Bands of Odawa Indians. Before working with the tribe, she was in private practice and served as a staff attorney for the U.S. Department of Justice. Judge Maldonado is recognized as an expert in the Indian Child Welfare Act and has worked closely with the State Administrative Office to bring
Michigan in compliance with the act for the first time since its passage.

Perhaps the most important accomplishment for the purposes of this award is that Judge Maldonado has worked tirelessly to improve the lives of the members of the Native community, which includes overseeing the implementation of federal grants for tribal substance abuse courts and specialized domestic violence courts.

Judge Maldonado was nominated by Raymond Mensah. Raymond wrote in his nomination that Judge Maldonado has shown that she is willing to be hands-on to ensure the success of the LTBB community members. She just does not just talk the talk, but she walks the walk where it matters most.

Our committee believes that she is very deserving of this award, at this time I move for the Representative Assembly to award the Unsung Hero Award to Judge Allie Greenleaf Maldonado.

CHAIRPERSON WILLIAMS: You have now heard the motion from the Nominating and Awards Committee to nominate Judge Allie Greenleaf Maldonado as the recipient of the Unsung Hero Award.

VOICE: Second.

CHAIRPERSON WILLIAMS: Motion having been made and properly seconded, is there any discussion?
Hearing none, all those in favor of accepting Honorable Allie Greenleaf Maldonado as the recipient of the Unsung Hero Award, please indicate by saying yes.

All those opposed may indicate by saying no.

The motion passes unanimously.

We will now hear from Chair Moss for the next nomination.

MS. MOSS: Thank you, all.

As I mentioned, the second award given by the Representative Assembly is the Michael Franck Award. The Michael Franck Award is given annually to an attorney who has made an outstanding contribution to the improvement of the legal profession. Our committee believes that this award should be presented posthumously to Vernon Kortering, who passed away in January of this year.

Vernon founded the Kortering Law Firm where he focused on Workers' Comp, labor law, and disability law. Prior to starting his firm, he clerked for the Supreme Court Justice Eugene Black and later worked for the largest law firm in Muskegon.

Vernon was nominated by his son, Attorney David Kortering, who is also a member of the RA, Daniel Bonner, who is the managing attorney of Legal
Aid of Western Michigan, Muskegon Office, and the Muskegon County Bar Association Board of Directors.

David wrote in his nomination that his father was considered a Maverick, as well as an attorney's attorney. He built an illustrious career and reputation as a prominent civil rights advocate, trendsetter, and pioneer who fought for the underprivileged and downtrodden. Daniel wrote in his nomination that Vernon lived the spirit of pro bono. Equally important, Judge Timothy Hicks wrote in a letter to the Kortering family that Vernon was perhaps the best person at using the law for its highest purpose, to help provide justice to those less fortunate, and to move our society to better places. He also indicated that while Vernon was a skilled advocate, he understood one could zealously argue cases without creating enemies or losing friends.

Our committee believes that Vernon exemplified the highest ideals of law in public service, so at this time I move for the Representative Assembly to posthumously award the Michael Franck Award to Vernon Kortering.

VOICE: So moved.

CHAIRPERSON WILLIAMS: The motion having been made and seconded that we accept Vernon Kortering
posthumously as the recipient of the Michael Franck
Award, is there any discussion?

Hearing none, all those in favor, please
indicate by saying yes.

If there is anyone who is opposed, please
indicate by saying no.

Hearing no opposition, the motion passes
unanimously. Thank you.

(Applause.)

CHAIRPERSON WILLIAMS: At this time, I have
an opportunity just to offer some remarks. Again, I
would like to say welcome to both new -- I won't say
old, but I guess seasoned representatives, and welcome
back today and thank you for your attendance and your
diligence in terms of reading the materials. I am
happy to see that everyone arrived, and hopefully that
was without incident.

I know that some people have approached us
about the seating. It wasn't to keep certain members
away from the mike. What we thought today is that
instead of our usual seating that we would just try to
mix it up a little so that you can get to conversate
and know some of the members that you may not normally
see because they are sitting so far away from you
during our meeting.
Each of you have been elected to represent, and those who are recently appointed, appointed to represent your circuit. And so what we do is what we always do when we come here, we come to live out what was decided some 43 years ago, that we would come to represent a more robust voice of the Bar, to bring diverse ideas and to really stand and stand strong as a body to represent what should be the final policy-making ideas and decisions within the Bar for the State Bar of Michigan. What we do is important. We provide direction to the Board of Commissioners, and so, again, thank you for coming.

You all have received the materials per our rules. You received the rules 42 days before. Because of some of the comments we have received, I know that folks have read the material, so thank you for that.

As you see, today we have mostly internal issues, other than our special order, and really a spring cleaning type day. Last year we spent a lot of time talking about the task force and various challenges on the State Bar. Today we will take an opportunity, after looking back at things that had been brought to the Assembly Review Committee and then looking back at the various hearings and comments that
faced the Bar last year, we decided that we needed to make our own adjustments to our rules, and so that's what we will stand together to do today, to look and see how we proceed and how we do that in the best way as the final policy-making body of the Bar and to protect the First Amendment rights of all of those other members who send us here to represent their voices.

Just thinking about it, there is always a concern about who has the right to decide what we should consider. Are we equipped with deciding that, and when thinking about that and thinking about what we have to do today and what we do whenever we gather as the Representative Assembly, I just think about a quote from Lou Holtz, and I think if we look at these things whenever we are taking action, we will be fine. There are three things, making sure, one, we do the right thing; two, we do the best that we can do; and then we always show that we care. And that's really our purpose for coming here today, to do the right thing, to do it the way we should do it, and to show people that we care.

When we look at Keller and we talk about those things today, you will see what we are guided to do, and it's really around making sure the courts are
efficient, making sure that we protect the public and, in an effort of doing that, making sure that we run our body efficiently.

Today you will hear from the Assembly Review Committee mostly, because they are internally brought resolutions, and we will talk about the electronic voting, and I know we voted before by electronic tally, but what we would like to do is to make sure that our rules are consistent with our actions, and so we would like to formalize some of the things that we have done before.

We will talk about the minority report in terms of giving our body an opportunity to represent all voices fully. So, in addition, if you are new and you may not know, we provide a majority report to the Supreme Court regarding our proposals. If this passes, we will also be able to provide the minority view as well.

And then lastly, we'll have the Keller review process as an action item, and, like I said, we really want to make sure that when we come to take things into consideration, be it policy, court rules, we want to make sure that we do it appropriately and that we protect the people that we have been elected to serve within the State Bar.
As we look to do this, we have been meeting as an executive team, and I know we have traditionally two meetings as a body. Our executive team has been working very diligently since the Bar year began, and so I would like to formally on the record thank our Vice-Chair, Dan Quick, and our Clerk, Fred Herrmann, for all of the time they spent meeting with me either on the phone or breakfast meetings or just making sure we could provide the best leadership possible.

What we look to do in that vein is to come up with a three-year plan, and so that way, because I only serve as chair for one year, after this meeting we have one regularly scheduled meeting in October, we don't want the initiatives to die, and so we worked as a three-person team to try to pass some initiatives that we can span over the three-year leadership course so there is some continuity and consistency in terms of making sure we run the best possible Representative Assembly that we can.

Some of the things that we are looking to do would be to look at our dues structure. As you know, we are the body that determines the dues for the State Bar, and so we have empowered our Special Issues Committee to take a look at the dues structure, especially as it relates to nonresident members of the
State Bar and other issues, and so they will work closely with the State Bar treasurer at looking at that and coming back to this body with recommendations if there are any in our October meeting or thereafter.

We would also like to look at the structure of the RA. When you are looking at other governing bodies, not every state bar has a robust body that determines policy as we do, but there are other entities, like the ABA when you look at their House of Delegates and how they are structured, and so we would also like to have one of our committees, most likely our either Assembly Review or Special Issues, take a look at the structure of our RA. We are not looking to change that this year, but it could be during the course of the leadership of our Vice Chair or our Clerk.

And so the big type of things that we are considering that we look for your opinion would be whether or not we have sections to designate some type of representative to our body. It would mean that we would grow our body, but we would also expand into the rest of the Bar in terms of adding those different ideas and that voice to our body. I am sure that many of you sit in a section, but it would give section leadership in terms of a section council an
opportunity to appoint a member if that's a way that we decide to go.

Another thing that we are looking at is just strengthening engagement, and so you will see in our rules, they provide for our Hearings Committee to hear hearings outside from folks who are not members of the Representative Assembly. They are allowed to request a hearing so that their voices can be heard. We are looking to be more proactive and have our Hearings Committee actually contact some of the section council and affinity bars to go out and arrange hearings so that we can hear not on just a particular issue but to see if there are issues that we need to address, and so as an executive team that we have to make sure that we are bringing in all of the voices of the Bar, and this is the best way to do that.

Another way of increasing engagement, we are just looking to make sure that we have the best website presence that we can have. As you know, the Representative Assembly page has been buried under a number of layers and tabs within the website, and so with the Bar revamping the website and its look, we would like to take advantage of that and make sure our members can easily get to the materials they need and members of your circuit can get to the materials they
need to contact you.

We are continuing to work with the Board of Commissioners, so we will continue that relationship. As long as I have been a member of the RA, it's always been a very positive and strong one, so we will look to continue to work with the Board of Commissioners so that if there are policy issues that need to be addressed by this body that we can also bring in the voice of a Board of Commissioner.

Other than that, that's a lot that we have kind of taken on. We hope that you have felt some benefit from our monthly announcements just to make sure that the Representative Assembly stays connected. If there is any time that you feel that there is something else, some service that we can provide better as a leadership team, we are very open to that. There is never a time that we look at your comments as criticism. We really look at it as an opportunity to serve you and to serve the Bar better.

There are a few things that you should be mindful of today. If you are running for reelection, those petitions are due on April 30th. Yesterday the Board of Commissioners voted to change the reimbursement policy of the Representative Assembly, so there are two items that I would like to bring to
your attention.

First, you only have 45 days now to turn in your reimbursement form. I know our staff had been very lax in the past and you would be given until the end of the Bar year, but that is no longer the case. Also, for any expenses over $25, you must submit a detailed receipt for that. Those new rule changes will be attached to the reimbursement form, but I wanted to make sure I bring that to your attention.

Also, I want to take the time to thank our Assembly committees, and I am not sure what the past history has been in terms of meetings, but we have been meeting quite a bit, and they have been meeting outside. I would like to thank our chair for Assembly Review. Our Chair, Kim Breitmeyer, and members of her committee, if you would stand, please.

(Appause.)

CHAIRPERSON WILLIAMS: Our Drafting Committee is headed by Michael Thomsen. If you could stand and members of that committee.

(Appause.)

CHAIRPERSON WILLIAMS: We have heard from our Nominating and Awards Committee headed by Shenique Moss. Thank you very much for your service on that committee.
Rules and Calendar is headed by Matthew Antkoviak. Members of that committee, if you would stand.

(Applause.)

CHAIRPERSON WILLIAMS: And Aaron Burrell, who could not be here today. He is our Special Issues Committee. If members of that committee could stand, please.

(Applause.)

CHAIRPERSON WILLIAMS: At the end of the day we will remind you regarding the clickers that you have in your possession to make sure that those are all left on the desk or turned in. If they are missing, we have a fee that we have to pay, and so we want to make sure that we collect those.

Again, I know that it's always a great sacrifice for you to be here on a Saturday, and so I thank you for your service. I hope that you find spring cleaning that we will do today for our organization to be worth your time. Again, thank you for your service, and we will continue our meeting now with our Assembly Review Committee report.

MS. BREITMEYER: Good morning, all of you. I am Kim Breitmeyer, the chair of the Assembly Review Committee, and I am here to first present regarding
something that the members of our Assembly Review Committee have been working on since the beginning of the year. We have met several times by phone with the members of the committee, who include Robert LaBre from the 43rd circuit; Ken Morgan from the 6th circuit; Martin Hillard from the 17th circuit; and Vince Romano from the 3rd circuit.

I would like to thank all of the members of the Assembly Review Committee here for all of their thoughts and ideas and the time that went into helping with dealing with a lot of these standing rules that we are going to be talking about today and also helping to come up with the survey questions that we had circulated to the full membership that I will talk about first. I would also like to thank the members of the Executive Committee for participating in that process, and also Anne, and I have those sentiments as Shenique for all of her help through this process.

First I am going to talk about the survey that we circulated electronically to the full membership, and I want to thank the almost 80 people who responded to the survey and offered your comments and your votes.

The first question we posed was, Are you generally in favor of electronic voting at in-person
meetings of the Representative Assembly? And overwhelmingly the response was yes, at 90 percent. We had a few comments here that you can see displayed on the screen.

The second question we asked was have you, If you answered yes to one, which one of the following do you prefer? Handheld device that reveals only the number of votes on the screen seen only by the vote counter, a handheld device that also displays to the user that his or her vote was registered, and we got a fairly strong majority that you liked the handheld device that displayed to the user that his or her vote was registered.

Question number three was, Are you generally in favor of the RA allowing remote electronic voting outside of in-person meetings? And this would be a situation where we would have some kind of electronic survey circulated via e-mail or some other social media, and the responses to this were a little bit more mixed, with a slim majority of about 54 percent saying yes.

Question number four, What limitations or conditions would you prefer regarding the use of remote electronic voting? What we received here was 42 percent of respondents said that remote electronic
voting between meetings regarding substantive issues are necessary to remain relevant as the final policy-making body of the State Bar of Michigan.

Question number five, Are you generally in favor of using electronic communications between members about topics relevant to the RA outside of in-person meetings of the RA? And we definitely received almost an 80 percent majority said yes to that question.

Finally, question number six, If you answered yes to the previous statement, do you agree with the following statement, electronic communications between RA members using media like Yammer, E-blasts, blogs, social media, and electronic surveys is useful in furthering debate and discussion regarding substantive issues in advance of an in-person meeting but all voting should occur at in-person meetings? And we received about a 66 percent yes to that question.

Does anyone have any questions or concerns about the results of the survey or want to offer some additional comments at this time?

CHAIRPERSON WILLIAMS: I'm Elizabeth Bransdorfer, 17th circuit. I wondered if we had information on the demographics of who responded and who didn't respond to the survey?
MS. BREITMEYER: I don't believe we did collect demographics other than the number of respondents from the Representative Assembly. Any other questions?

MR. POULSON: I note briefly from the reseating, the I, Barry Poulson from the 1st circuit, am seated to the left of my colleague, Matthew Abel. I am having a hard time processing that.

A couple things that I thought when I answered that survey were ambiguous for me at the time I answered, but one was clear, we don't necessarily trust the gadget yet, but a little light lights up says your vote was counted, so I think we have to see that we have almost a consensus on that. I pressed the button, I have no idea. I know I pressed the button.

And the second question, in terms of remote voting, when I answered I thought I wasn't clear in my own mind about what I was voting, if I would be voting on substantive matters remotely or whether they would be procedural matters. Because I think when we hash out -- I know this issue today on family law, I don't practice family law. I have no opinion on the issue. I am looking forward to hearing the commentary of my colleagues together, and so I wouldn't want to vote on
that remotely, but if it's a question about approving
this or defeating that or changing this, then I am
comfortable. So maybe the survey could go another
round and say what about these three categories.
Thank you. Appreciate that.

CHAIR BREITMEYER: I am glad you raised those
issues, because those were issues that came up with
the committee and the Executive Board. We talked
about whether we wanted to ask a more general question
or more specific question, and we ended up deciding to
ask the more general question, thinking we could
follow up with more specific questions to clarify.
Thank you.

Any other questions or comments?

CHAIRPERSON WILLIAMS: Before I move, the
clerk will come and address the one question about the
clickers, because we had a lot of discussion about the
committee and the Executive Board regarding the
clickers that we will use today.

MR. HERRMANN: Good morning, everyone.
Before we get into today's voting, the question from
the floor prompted this. We were going to address it
anyway, but now is a good time. The clickers you have
in front of you, the LED light was mentioned. If you
press any of the buttons on your key pad, and please
do that right now to verify, you will see the LED
light blink when you press. That's your verification
that your clicker is working and your vote is
registering. With respect to the votes, it's yes, no,
or abstain, as it always is, across the top row. So
one is yes, two is no, and three is abstain. So if
you make a note of that now, you can track it when we
get to the voting.

Just so you understand the procedure, each
clicker will only register one vote; however, it's
your last press of a button that is your vote. In
other words, if you mispress, if you say no but meant
to say yes, feel free to press the one as your last
vote. Up here we will ensure that we give you an
indication that the voting is now open to accept your
electronic votes, and we will also ask to ensure that
everyone has registered their vote before we close the
vote, and the computer I have in front of me will show
all the votes coming in when we open, and once we
confirm voting is closed, I will press the button and
close the vote, and that will seal the voting on each
particular issue.

Just so you know, these clickers are being
borrowed by the Representative Assembly from ICLE for
free. We will continue to attempt to do that from a
fiscal standpoint, but we are also exploring other
options, may or may not come at greater cost, that
provide enhanced reporting features for these
clickers. We are still investigating that. Have I
covered everything? Anyone have any questions? Thank
you, Madam Chair.

CHAIRPERSON WILLIAMS: If there are no
further questions on that item, we will move to item
number six, which is an action item regarding the
consideration of proposed amendment to the
Representative Assembly Permanent Rules of Procedure,
5.1 Voting.

MS. BREITMEYER: I want to explain a little
background behind this proposed amendment to Rule 5.1.
The Representative Assembly counted votes by
electronic tally, if you remember last year at the
April meeting and then at various other meetings in
the past, and the amendment that we present today
establishes a procedure for the tallying votes by
electronic means.

The Representative Assembly Review Committee,
the survey that we discussed earlier, which revealed
the desire of the body as a whole to have the ability
to tally votes on proposals electronically. The
Assembly Review Committee conducted the survey, which
revealed the desire to have the ability to tally votes electronically. Ninety percent of responses indicated they were generally in favor of electronic voting at in-person meetings; 75 percent said they preferred a handheld device that also displays to the user that his or her vote was registered; and a slim majority of respondents, about 54 percent, indicated that they were generally in favor of allowing the remote electronic voting outside of in-person meetings.

Forty-three percent of respondents felt that remote electronic voting between meetings should be used regarding substantive issues to remain relevant as the final policy-making body, while 25 percent felt that it only should be used for matters concerning pro forma or housekeeping issues. The remaining 29 percent did not favor the use of remote electronic voting between meetings under any circumstances.

Here today we are talking about whether the Representative Assembly could support an amendment to the Permanent Rules of Procedure of the Representative Assembly Section 5.1 to clarify its ability to vote using electronic devices and language of the amendment should be displayed above, that unless a written ballot is required, voting shall be by a voice vote or electronic tally at the option of the chair. If by
voice vote when the chair is in doubt, a roll call vote, either by voice or an electronic vote, shall be taken and a record kept to indicate the individual vote of each participating Representative Assembly member. If a division is requested as to the voice vote and supported by at least 20 members of the RA, or when a position is to be taken on proposed legislation and the position of the Assembly is not unanimous, a roll call vote, either by voice or electronic vote, shall be taken, and a record kept to indicate the individual vote of each participating RA member.

So the question is, Should the RA adopt this resolution to amend the Permanent Rules of Procedure of the RA Section 5.1 Voting to clarify the ability of the RA to vote using electronic devices? We move to accept that motion.

CHAIRPERSON WILLIAMS: A motion having been made to accept the proposal to amend the Representative Assembly Permanent Rules of Procedure 5.1 Voting, is there a second?

VOICE: Support.

CHAIRPERSON WILLIAMS: Motion having been made and properly seconded, is there any discussion?

MS. KAKISH: Kathy Kakish, 3rd circuit. I
have a question related to the very last sentence for
the addition of 5.1. It says, A roll call vote shall
be taken and a record kept to indicate the individual
vote of each participating Representative Assembly
member. Now, if the chair determined that the vote is
not electronic but voice vote, does this mean that the
Assembly will now take the name individually of each
person saying aye or nay? That's how I read this, and
I am wondering about how difficult that would be in
such meeting.

CHAIRPERSON WILLIAMS: No, it would be a roll
call where we would go through each member and it
would be recorded by our court reporter. If it was
electronically, it would be recorded by your name and
circuit to show evidence of your voting.

MS. KAKISH: May I add? But the normal path
that we do it now is that they would count the people
who stand up for a roll call. This addition means
that not only do we count the names, the numbers, but
now we have to register the names, and I am worried
about how much time that would take.

CHAIRPERSON WILLIAMS: That's always been a
part of rules where a division is called or we are
voting on legislation or some type of policy that
impacts legislation, so the change here is just to add
the electronic voting. The actual roll call vote in terms of legislation, that's always been a part of it. So if you see the requirement for the roll call vote when there was some doubt has always been a part of our rules.

Chair recognizes the member at the microphone.

MS. JOHNSON: Thank you, Madam Chair. Elizabeth Johnson of the 3rd circuit. I also have similar concerns as Ms. Kakish, but my concern is in the middle of the paragraph when it talks about on our regular votes, not roll call votes, it is not customary to ask for individual names, and the sentence is that we would indicate the individual vote of each participating Representative Assembly member.

I feel that this body has always maintained a nonpartisan approach. I feel this sentence, while well intended, would have absolutely the wrong effect and would allow people to vote more on partisan lines than we ever have before, and I would actually make a friendly amendment to delete the section on the individual votes, the line where it says, To indicate the individual vote of each participating representative member when it's for regular votes and not for roll call votes.
MS. BREITMEYER: We are going to accept the proposed friendly amendment as part of the original motion.

CHAIRPERSON WILLIAMS: The chair recognizes the member at the microphone.

MR. FLESSLAND: Dennis Flessland from the 6th circuit. As I read this rule, the chairman will have the opportunity for a regular vote of either having a voice vote or a vote by electronic device, and we are striking the division of the house vote where you stand up. It seems to me that the chairman ought to have that option of having people stand in the event that we have a technologically failure or we have the situation where we can't borrow the ICLE devices and we haven't purchased our own. It seems to me that's something that ought to be in the chair's discretion, and I think it would be a good idea to add back the option of having a standing vote if the chairman thinks that's appropriate.

CHAIRPERSON WILLIAMS: Chair recognizes the member at the microphone.

MR. FALKENSTEIN: Peter Falkenstein, 22nd circuit. This amendment that's being accepted now, is that going to foreclose the need for ever having a roll call by electronic vote? If it doesn't foreclose
that, then I have a comment, but if we are no longer
ever going to need a roll call by electronic vote or
if we are going to ever have to have that, then I see
a potential problem. I will just state the problem
anyway.

MS. BREITMEYER: The answer to the question
is that we would still be able to have a roll call
vote.

MR. FALKENSTEIN: Then the question is how
will that work given these devices are not assigned to
individual members? My circuit has six seats. We
were not assigned seats, so I could take any device,
and you will not then record who each device was
assigned to and not get a roll call by the electronic
device.

MS. BREITMEYER: And the answer I am getting
here, it's a framework for future technology, so when
we are able to implement.

MR. FALKENSTEIN: You agree that it is a
problem right now, but in the future we will try to
rectify it?

CHAIRPERSON WILLIAMS: Correct.

MR. FALKENSTEIN: Thank you.

MR. MASON: Good morning. My name is
Gerry Mason from St. Clair County, which is the 31st
circuit, and I support the amendment as presented. One, I think we have to do everything we can to integrate new technology, to make voting more accurate and more efficient with some of the concerns that have been raised in mind. I also think that as representatives of the Bar and Assembly members and representatives of the legal profession, we are held accountable, and that means that if it's called to a voice vote, sobeit. We make our living based on controversy, so the idea that there is some sort of controversy, I wouldn't want anybody to know how I vote, defeats the purpose of me being here on Saturday. I am going to go back to my Bar and give a report of what I did. If they are not happy with it, I guess they could remove me or someone could run against me.

I think it's important that we are held accountable and that when the chair deems a voice vote or -- we obviously function under Roberts Rules of Order, which can call for any number of things that may or may not even be listed in our rules, that we should be held accountable to each other as well as to the Bar. Thank you.

CHAIRPERSON WILLIAMS: Thank you.

MR. ROMANO: Vince Romano, 3rd circuit. I
also support the matter. However, I am troubled by the record of individual voting. I heard Vanessa say that we have always done that. I voted an awful lot in this body over the years, and I have never had my vote identified in any way, roll call or individual votes. I am not troubled to stand up and identify myself how I am voting. I am troubled by a record of votes among the body of individuals. I hope we can come up with a way to eliminate that position.

CHAIRPERSON WILLIAMS: Thank you.

MS. BREITMEYER: Any further comments or questions?

CHAIRPERSON WILLIAMS: Any other comments or questions from the body? The chair recognizes the member at the mike.

MR. FERGAN: Robert Fergan from the 22nd circuit. I am looking at the language as amended, and it talks about when the chair is in doubt a roll call vote, either by voice or electronic vote, shall be taken and a record kept when it's for regular votes and not roll call votes, but that language doesn't make sense. So, you know, somebody needs to fix that before we vote. I don't have the particulars in mind.

MS. JOHNSON: As the member who made the amendment, I have no problem with leaving it, after
the word "kept," and taking out the word for regular
votes and not roll call votes, if that would satisfy
the gentleman from the 22nd.

MR. FERGAN: I would also suggest getting rid
of the contraction and putting it as -- sorry.

CHAIRPERSON WILLIAMS: Would you accept his
amendment?

MS. BREITMEYER: And I accept that.

CHAIRPERSON WILLIAMS: Chair recognizes the
member at the mike.

MR. ROMANO: Vince Romano. Again, I am still
from the 3rd circuit. I would ask that that period we
just inserted, I would move that that same period be
put at the end of the motion after the words "record
kept."

MS. BREITMEYER: I accept that friendly
amendment.

MR. MOILANEN: That's what it says.

CHAIRPERSON WILLIAMS: Chair recognizes the
member at the mike.

MS. KAKISH: Kathy Kakish from the
3rd circuit. I did serve as chair of the
Representative Assembly in the past, and my main
concern, and I am sorry to mention it, but I think I
can just only see it logistically what could happen in
a meeting. If a roll call vote is asked by the chair by voice, what normally happens is that those who are in favor would stand up, correct, and then there would be appointed people who would start counting the individuals who are standing up. I am very concerned with the language here at the end, which says that a roll call vote, let's say it's by voice, shall be taken and a record kept to indicate the individual vote of each participating Representative Assembly member.

Now, for those who are leading the meeting, they would have to necessarily read this as saying that as those ayes, the people let's say who are standing up with their aye vote, somebody is going to have to now record each members' name. I can only imagine how long this would take in a meeting. This is different than an electronic recording. That's my concern, unless if I am reading this incorrectly.

MR. FALKENSTEIN: I would like to add on to that comment, please.

MR. ROMANO: Would the Chair just take a friendly amendment? It's a question. If the Chair took a, accepted a friendly amendment with that period, then this point is not up.

CHAIRPERSON WILLIAMS: Just a point of order,
when you have a comment, you will have to move to
the --

MR. FALKENSTEIN: I would like to just tag on
to the comment by my esteemed colleague here. I
agree -- well, a roll call vote generally means you
call the roll, every member, 140 members. That's
going to take an inordinate amount of time to go
through the whole roll. What I would offer as an
amendment is that we limit it to electronic voting.
If a roll call is required, that it done by electronic
vote. Hopefully the technology will be available soon
so that everybody will have an assigned clicker, and
then the roll call vote essentially occurs when
everybody clicks in their vote, but to do a roll call
vote by voice is going to keep us here till midnight
if we have several of those. I can see it taking 20
minutes just to do a roll call vote of all 140
members. I would offer an amendment that we take out
the words "either by voice or an electronic vote" and
just say "a roll call vote by electronic vote shall be
taken." And what that means is that we won't be able
to do it until such time as the technology is
acquired, but hopefully that can happen pretty
quickly. Yeah, Roll call vote by electronic vote, and
then you will have your record, and it will only take
a few seconds. Thank you.

    MS. BREITMEYER: We are not accepting the
friendly amendment from the floor. Some of the
reasoning is that we are talking here only when there
is a division what type of a vote would be taken.

    CHAIRPERSON WILLIAMS: Chair recognizes the
member at the mike.

    MR. ROMANO: So perhaps I was inarticulate or
misunderstood, but the period that was placed in the
fourth line after "record kept," record kept, period,
and the balance of that is red lined. Then my
reference was to the same language at the end of the
motion, to put that same period after "record kept,"
put it on the second to the last line after the words
"record kept, period."

    MS. BREITMEYER: You were proposing that at
the last sentence instead of --

    MR. ROMANO: Correct. Someone else made that
friendly amendment regarding the first sentence. I am
going to the very bottom. There, where the cursor is
now. That's where I was suggesting a period also be
placed.

    MS. BREITMEYER: I didn't understand.

    MR. ROMANO: So I was inarticulate.

    MS. BREITMEYER: That's okay.
MR. ROMANO: Then I would propose that as a friendly amendment.

MS. BREITMEYER: We will accept that friendly amendment.

We are accepting the friendly amendment that we add the period to the first "kept" and the last.

CHAIRPERSON WILLIAMS: The chair recognizes the member at the mike.

MR. SMITH: Joshua Smith, 30th circuit. To the extent that you did take a voice roll, I mean, I think it can be done quickly rather than writing down each individual member's name. We already have a list of members by circuit. You can just keep track of it on this, couldn't you? That would be faster than writing every name down.

CHAIRPERSON WILLIAMS: That's a result of the amendment that the chair just accepted, so if you want to scroll from the beginning down so that you can see what the amendment would look like now.

MS. BREITMEYER: As amended, the language is, Unless a written ballot is required, voting shall be by voice vote or electronic tally at the option of the chair. If by voice vote when the chair is in doubt, a roll call vote, either by voice or electronic vote, shall be taken and a record kept. If a division is
requested as to the voice vote and supported by at least 20 members of the RA or when a position is to be taken on proposed legislation and the position of the Assembly is not unanimous, a roll call vote, either by voice or an electronic vote, shall be taken and a record kept.

MR. FALKENSTEIN: Chairman, I have offered an amendment, which if you did not accept as friendly, I will have to offer, I guess, as hostile, unfriendly, but that was that wherever a roll call vote is required for that we eliminate voice as one of the options. So that there are two places which has a roll call vote, so to say, a roll call by electronic vote shall be taken and a record kept. And the point being we don’t want to waste that much time on voice roll call votes, so that was my amendment, and I think you said you were not accepting it, so I am offering it as an amendment to be voted on. Thank you.

CHAIRPERSON WILLIAMS: There is a motion on the floor that the proposed amendment be amended to eliminate a voice vote --

MR. FALKENSTEIN: For a roll call.

CHAIRPERSON WILLIAMS: -- for a roll call.

Is there a second?

VOICE: Second.
CHAIRPERSON WILLIAMS: The motion has been made and seconded. Is there a discussion on that amendment?

MR. CRAMPTON: Jeff Crampton, 17th circuit. I just pulled up the rules, because it was hard to read them in here. I think this entire discussion is really unnecessary. The rule says -- I am reading 5.1 -- voting shall be by voice vote unless a written ballot is required or the members stand and are counted when the chair is in doubt or division is requested, provided however --

CHAIRPERSON WILLIAMS: At this time we can only discuss the proposed amendment.

MR. CRAMPTON: This is the amendment. I am addressing the amendment.

CHAIRPERSON WILLIAMS: That the gentlemen just made?

MR. CRAMPTON: Yes, because it says, Provided, however, that a roll call vote shall be taken and a record kept thereof at any time a request for such vote is made and supported by at least 20 members of the Representative Assembly or when a position is to be taken on proposed legislation and a position of the Assembly is not unanimous.

So we already have to take a roll call vote
under certain circumstances. The question is can we do it electronically if we have the technology. So this amendment is really not necessary, and, frankly, most of this discussion is not necessary, because this entire proposal is just to say can we do things electronically that we now have to do by voice or standing up, and we already have to take a roll call vote under certain circumstances. Frankly, I have never seen one in my seven years on this Assembly, but it could happen, so I think I would oppose the amendment of that, and, frankly, I think we should vote on the proposal as originally drafted. Thank you.

CHAIRPERSON WILLIAMS: Any other comments as to the amendment?

VICE CHAIR QUICK: Dan Quick, 6th circuit. So we currently cannot do division with our current electronic technology for a roll call vote, so if we accept the amendment, we have now emasculated ourselves from being able to do it, because that's the only other way to do it is to have people stand up by voice, and so I would oppose the amendment.

CHAIRPERSON WILLIAMS: Any other discussion?

MR. HOLSOMBACK: Mark Holsomback, 9th circuit court. If we have technology that allows for a vote
of this nature and we have a failure or compromise of that technology, having the ability to do a voice vote, I think, would be helpful, so we just could do it the old-fashioned way if the technology fails, and I am sure the RA would want to do it electronically if we can to save time, but if there is some failure, we should have the ability to take the vote.

CHAIRPERSON WILLIAMS: Thank you. Any other comments? Seeing no members standing at the mike, we will now move to the question. All of those in favor of the amendment to strike "either by voice or," please indicate by saying yes.

All those opposed, please indicate by saying no.

The Chair determines that the motion fails.

At this time we will move to back to the original proposal as amended by the friendly amendment that has been accepted. Is there any further discussion?

MR. PAVLIK: Is it the intent -- my apologies, Adam Pavlik, 54th circuit. I just want to be clear, is it the intent of this proposal to eliminate rising votes? Okay, it is not.

CHAIRPERSON WILLIAMS: No.

MR. PAVLIK: That's all I wanted to be clear
on. By a rising vote, I mean a circumstance where we would have everyone who wants to vote aye or nay stand, you can eyeball it and tell roughly speaking how many people are in favor and against. I just wanted to know whether this rule speaks to that.

MS. BREITMEYER: It doesn't change that. It just gives us the additional option formally that would include electronic voting.

MR. MOILANEN: So we are going to vote electronically on this vote?

VOICE: Call the question.

CHAIRPERSON WILLIAMS: Seeing no other members at the microphone, we will move to the question.

All of those in favor to accept the proposal to amend the Representative Assembly Permanent Rules of Procedure of 5.1 Voting as it appears on the screen, please indicate by pressing your -- I guess you would log your vote now. One is for yes, two is for no, and three would be abstention.

At this time I just would like to confirm that everyone has voted. We are closing the vote. We will ask the clerk to indicate what the tally shows.

MR. HERRMANN: Madam Chair, we have 87 percent yes, 13 percent no, zero abstentions.
CHAIRPERSON WILLIAMS: Thank you. The vote passes.

MS. JOHNSON: Point of order, Madam Chair. Elizabeth Johnson again from the 3rd circuit. We usually have calculated our motions on the number of votes, not a percentage. Do we have a number of votes on yes or no?

MR. HERRMANN: We have 94 yes, Madam Chair, 14 no, and zero abstain.

CHAIRPERSON WILLIAMS: Did everyone hear that? It was 94 yes, 14 no, and zero abstentions.

At this time we will move to item number seven, consideration of proposed amendment to the Representative Assembly Permanent Rules of Procedure 4.4 Minority Reports. In addition to the special order that was sent to you at the time of the announcement, we also sent a substitute motion or proposal that does not change in substance the ability to bring a minority report. There were some additional changes clarifying between section minority report, the representative minority report, and the ability that the length of the minority report would equal that of the majority versus the 500-word limit that was in the original materials that were mailed to you.
Following the e-mail of the proposed substituted proposal, we received a note that there was a clerical error, and we removed duplicate words that showed the following in the motion, in the proposal twice, and so those things have been moved out of the proposed amended language.

Are there any objections to having consideration as to the substituted proposal as you have at your desk now? Seeing no motion towards the mike, we will move forward with the proposal as it is presented at your desk today.

MS. BREITMEYER: Thank you. The second issue that the Assembly Review Committee had worked through this year had to do with drafting a change to the Permanent Rules that would respond to the recommendations that the RA as a whole provided to the Michigan Supreme Court Task Force Committee regarding the First Amendment issues that were raised in the Keller matter, and this was to add the concept of minority reporting.

In furtherance of a desire to promote transparency from the deliberations of the RA and present to the Michigan Supreme Court a full view of the opinions of the body regarding recommendations, the RA should allow its members to author minority
reports. Currently the RA provides a mechanism for section members and councils to offer minority reports to accompany their proposal to the RA. The completeness of the deliberations contemplated by Section 4.4 of the Permanent Rules of Procedure of the RA would be applicable in the context of the Assembly recommendations to the Michigan Supreme Court.

So that's a background into the language that's presented to you today, amendment to Section 4.4 Minority Reports.

The section minority report is a written report stating the view of less than half the members of a section, section council, or a committee on a recommendation of the majority report of the section. The content of the minority report must reflect the minority views presented to the section, section council, or committee orally or in writing at the time it acted on the matter unless the section, section council, or committee did not notify its members in advance that the matter was considered. The report must be printed at the request of its proponents over their signatures and appended to the report to which it relates.

And so that with a few amendments, there is what's currently in the rules concerning the minority
report section. What we are adding is Representative Assembly minority reports, and the language there is that members of the RA voting in the minority on a proposal to be submitted to the Michigan Supreme Court may collectively submit a minority report to accompany State Bar recommendations to the Michigan Supreme Court if the majority proposal has been adopted by less than 75 percent of the members present and voting. The content of the minority report must be limited to the views presented on the floor of the Assembly meeting during the debate on the merits of the proposal. A member of the Assembly must invoke this rule by making a motion for the submission of a minority report immediately following the vote on the following proposal from which the minority report dissents have been adopted, and must identify the authors of the minority report. The length of the report may not exceed that of the majority and must be submitted to the Clerk within 14 days of the conclusion of the meeting at which the motion passed. The Clerk must review the report with the Drafting Committee to ensure compliance with the word limitations and reasonable consistency with the minority opinions expressed during the debate on the recommendations and largely reflected in the
transcript of the proceedings. The Clerk and Drafting Committee shall have the final decision on the draft of the minority report submitted.

At this time I would like to make a motion. Should the Representative Assembly adopt the above resolution to amend the Permanent Rules of Procedure of the RA Section 4.4 Minority Reports to allow members of the RA to provide a minority report to accompany recommendations to the Michigan Supreme Court?

CHAIRPERSON WILLIAMS: The motion having been made that the Representative Assembly adopt the proposed amendment to the Representative Assembly Permanent Rules of Procedure of 4.4 Minority Reports to allow the members of the Representative Assembly to provide minority reports to accompany recommendations to the Michigan Supreme Court. Is there a second?

VOICE: Support.

CHAIRPERSON WILLIAMS: Motion having been made and there being a second, is there any discussion? Chair recognizes the Vice Chair.

VICE CHAIR QUICK: Dan Quick, 6th circuit. Under the category of wisdom come late is better than none at all, in the seventh line of this proposal you will see the phrase "by making a motion." Having
participated in the drafting of this, I do not think it was the intent that there would have to be a motion in order to include a minority report. It's simply a right that has to be invoked. If it's obviously adopted as a motion, we would then have to vote on it, so I have a friendly amendment proposal to replace the word "motion" with "request."

MS. BREITMEYER: I will accept that friendly amendment.

CHAIRPERSON WILLIAMS: Chair recognizes the member at the mike.

MR. SMITH: Thank you. Joshua Smith, 30th circuit. The only issue I really have with this, and I do think it's a very good idea, is that it only applies if the majority proposal has been adopted by less than 75 percent of the members present and voting. I think it makes it more of a minority, unless there is a super majority in support of the proposal, and I think that to a large extent defeats the purpose of having a minority report. That is, you could have a compelling argument for a minority report even though it's less than 25 percent of the members present and voting were in the minority. So I guess I would ask for a friendly amendment putting a period after, in line four, a period after Supreme Court, and
then -- I am sorry. In mine it's line four. In yours it would be recommendation to the Michigan Supreme Court, period, and then striking out the rest of that sentence that pertains to the 75 percent aspect of the rule. Thank you.

MS. BREITMEYER: I am going to reject that friendly amendment. The idea behind having the limit in the language to the 75 percent was to reduce the administrative burden on the RA as a whole and only consider issues where there is a more significant opposition to the issue.

MR. SMITH: I would like to move to make that an amendment then, if I may, please.

CHAIRPERSON WILLIAMS: You are making the motion to strike on the line, if the majority proposal has been adopted by less than 75 percent of the members present and voting?

MR. SMITH: Yes.

VOICE: Second.

CHAIRPERSON WILLIAMS: The motion has been made and properly seconded. Is there any discussion on the motion to amend the proposal to strike "if the majority proposal has been adopted by less than 75 percent of the members present and voting."

Chair recognizes the member at the mike.
MR. BUCHANAN: Rob Buchanan from the 6th circuit. I think the problem with publishing every minority is that it has no meaning, so I think you want to have this provision, so if there is a close question then it's more persuasive than if you publish every minority, because if you publish every minority, then it has no meaning to the Supreme Court or anyone else who looks at it. So I would vote in opposition to this amendment.

CHAIRPERSON WILLIAMS: Chair recognizes the member at the mike.

PRESIDENT ROMANO: I think there ought to be a mechanism that allows the minority to have input as to when the report gets, the minority report gets submitted, so I think the number is too low, the 75 percent. I am speaking to eliminate the language.

CHAIRPERSON WILLIAMS: So you are supporting the amendment?

MR. ROMANO: I am supporting the amendment that would eliminate the red line there.

MR. FALKENSTEIN: Peter Falkenstein, Washtenaw County. In addition to the administrative burden, quite frankly, I don't want to see a single ideologue who needs to comment on every proposal to which he or she may be opposed filing a minority
report that's going to be sent to the Supreme Court. That just makes no sense to me.

CHAIRPERSON WILLIAMS: Are there any other comments on the amendment that has been proposed? Seeing no motion --

PRESIDENT ROMBACH: Tom Rombach, 16th circuit. I think this is the law of unintended consequences. When you say section minority reports at the top, I don't think you really mean to be messing with that, but you are. We have had a continuing concern about particularly outside groups not understanding the difference between sections and committees, and when you label that section, you are only furthering the confusion within our own group, because it says minority reports.

A section minority report is a written report stating the views of less than half the members of a section, section council, or committee, and fundamentally a committee is far different than a section. I appoint the members of the committee, so it's just one person's viewpoint of who we stack the committee with, while a section is representative of the votes of its members. So the difficulty is that I agree that the Representative Assembly should have a greater role, and they are not really dealt with in...
CHAIRPERSON WILLIAMS: We'll have to take your comments when we move back to the main motion.

PRESIDENT ROMBACH: I am sorry?

CHAIRPERSON WILLIAMS: We are debating now the amendment by the gentlemen regarding striking the --

PRESIDENT ROMBACH: That's fine, but I just want to make sure that we are cognizant of the environment in which we find ourselves.

CHAIRPERSON WILLIAMS: We will come back to that, Mr. Rombach.

PRESIDENT ROMBACH: No problem. I will share that next.

CHAIRPERSON WILLIAMS: Any other comments regarding the proposed amendment regarding striking this language?

MR. LITTLETON: Ray Littleton, 6th circuit. I think striking out the 75 percent requirement just really takes away the whole purpose of the minority report. I mean, the purpose of it is to show a close question and the fact that something is not entirely decided by the Board, and so when you take out the percentage requirement, like counsel said, I mean, it just devalues the whole purpose of that report.
CHAIRPERSON WILLIAMS: Any other comments regarding the amendment to the proposal? Seeing no motion towards the mike, we will move to the question. All of those in favor of striking "if the majority proposal has been adopted by less than 75 percent of the members present and voting," please indicate by saying yes.

All those opposed, please indicate by saying no.

The chair determines that the motion failed. So now we will move back to the discussion on the main motion. I recognize the member at the mike.

MR. LABRE: Rob LaBre, 43rd circuit. I first have a question, because I am little ignorant on the process. How soon after the transcripts are made do we propose our proposed rule to the Supreme Court? What's the time limits before we say, okay, we have accepted this rule and then it moves up? You follow what I am saying?

CHAIRPERSON WILLIAMS: We don't have a set time limit. It's just done as a matter of course after we get the --

MR. LABRE: Might I suggest a friendly amendment initially, that we strike the words 14 days and insert after a transcript of the meeting has been
posted on -- within a reasonable time after a
transcript of the meeting has been posted on the
State Bar website. Fourteen days just seems like you
better get it done now, and, given our schedules, that
can be difficult. You probably want to double check
what was said at the meeting itself before we start
spouting off.

MS. BREITMEYER: I am rejecting the friendly
amendment, and the reason is that the 14 days just
marks the time of the transcript getting delivered to
the Drafting Committee for them to go through that --
regarding the minority report. I am sorry, not the
transcript but the minority report gets sent to the
Drafting Committee for the Drafting Committee to
review it, so that doesn't limit the amount of time
for all that to happen before it goes to the Michigan
Supreme Court.

MR. LABRE: That went by me a little fast.
If I follow you, I just want to reflect what you are
telling me so I understand it clearly. Fourteen days
for the Drafting Committee to receive the minority
report, correct?

MS. BREITMEYER: Correct.

MR. LABRE: And my point is, I want people
to -- if they are going to make a minority report,
before we send it even to the Drafting Committee, we want to make sure what we say is accurate according to what was posted in the transcript and that we are not just spouting off in anger within 14 days and you get a bunch of information that is inaccurate. If someone is serious about submitting a minority report, they are going to want to review the transcript and post their arguments with valid facts and their reasons well thought out, which you are going to want the transcript on the one hand, and you are going to want a reasonable time on the other.

So if the position is that this is not acceptable as a friendly amendment, I will just move that that become part of the language. Did I understand you right? Was I reflecting you accurately or was I not?

CHAIRPERSON WILLIAMS: So you're making a motion at this time to strike 14 days and add a reasonable time after the transcript?

MR. LABRE: That doesn't look right. It should be submitted to the clerk after the conclusion of the meeting within a reasonable time after a transcript.

CHAIRPERSON WILLIAMS: Our rules require that an amendment be limited to six words. Are you able to
limit that? We will just leave it. Do you have it all in here?

MR. LABRE: I just had a really good suggestion. Instead of 14 days, strike 14 days. Within 90 days and insert 90, or actually strike 14 and insert 90.

CHAIRPERSON WILLIAMS: Is there a second to strike 14 and make it 90 days?

VOICE: Second.

CHAIRPERSON WILLIAMS: Motion having been made and seconded, is there any discussion in striking 14 days and making it 90 days, or striking 14 days and adding 90 days? Any discussion on that amendment?

MR. HERRMANN: Madam Chair, Fred Herrmann, 3rd circuit. I think the notion of an opportunity to review the transcript is, under the best circumstances, valid. However, when we come before this body to debate issues, I think the assumption is that everyone comes prepared with their best understanding, knowledge, and arguments, and the majority of positions that are taken would not leave this floor with the benefit of the transcript, and, therefore, I think it's equitable for everyone to present their views. If a minority report is to be submitted, this presents an opportunity to preserve
that right and provides a reasonable timetable to process that minority report. I don't think the availability of the transcript should necessarily be tied to that. Thank you.

CHAIRPERSON WILLIAMS: Chair recognizes the member at the mike.

MR. CRANDELL: Patrick Crandell, 6th circuit. My question is would 90 days, at what point does a minority report and the entire position of the Representative Assembly then become irrelevant to the discussion? If we are waiting three months to get a minority report submitted that then has to be vetted, that then has to be submitted to the State Bar, does the question become irrelevant at that point?

CHAIRPERSON WILLIAMS: Any other comment or discussion? I don't see any other motion toward the mike, so we will move for the question.

All of those in favor of accepting the amendment to change 14 to 90 days indicate by saying yes.

All of those opposed, please indicate by saying no.

The Chair determines that the motion fails. At this time we will move to the discussion of the main proposal. Are there any other comments or
discussion? Chair recognize, again,

President Rombach.

PRESIDENT ROMBACH: Thank you. Hopefully I am speaking in order this time, Madam Chair, but my concern relates back to the initial language. Again plugging in the word "section," the word "a section, minority and majority report of the section." Again, the problem I have in trying to educate people outside the State Bar is there is a fundamental difference between sections and committees, and we need to recognize that within our own rules, and I don't think by butchering this rule that it does that. I do believe that if you just take that out, Section 4.4 speaks to minority reports. It may not be the cleanest, but it still could be plugged in, and I know the intent of the body is to carve out a specific area for Representative Assembly minority reports, I still think that would play, because it's much more specific language that you are adding here, but if you want to do this, I would make sure that the committees, the sections and other entities of the Bar are aware of this happening. I would like some input from them, and, again, I think the language is totally inappropriate.

CHAIRPERSON WILLIAMS: Are you making a
friendly amendment that we strike "section" in the title in the first of the section.

   PRESIDENT ROMBACH: I would like "section" taken out twice, and I would like "of the section" taken out, and I think the rest of it is just cleaning up the language. If you want to say the content of minority report, I don't think that changes substance. It's better and cleaner language from the rest of it, and, again, I don't believe that that's going to interfere with -- the intent of the motion is to carve out a special procedure for the Representative Assembly, as I think is appropriate.

   MS. BREITMEYER: I accept the friendly amendment.

   PRESIDENT ROMBACH: Thank you very much.

   CHAIRPERSON WILLIAMS: Chair recognizes the member at the mike.

   MR. PAVLIK: Adam Pavlik, 54th circuit. As much as anything, I just have a question about the -- if you want to scroll down a little bit. Is the there any particular reason that we are confining this to proposals that are submitted to the Michigan Supreme Court? I mean, I would almost think we could strike the language, strike all the language, you know. Any proposal that this body makes I would think
you would want to make the opportunity to submit a minority report to be sensitive to the Keller concerns, the minority and so on. I just wanted to ask the question. It could be there is another bylaw or something like that that's in play, but I wanted to ask the people who have been involved in drafting this proposal whether there was a reason. I know most of our proposals go to the Supreme Court, but we just had a conversation about proposals that we would make with respect to legislation and whether we need to have a roll call vote on that or not, so that would go to the legislature I would think, rather than the Supreme Court, so that was my question as much as anything.

CHAIRPERSON WILLIAMS: Are you making a friendly amendment that we strike Michigan Supreme Court?

MR. PAVLIK: I don't have a firm position on that one way or the other. I wanted to bring my question to your attention. If you want to make changes, good. If you think that's a valid concern, go ahead and do that, but I just wanted to raise the question.

CHAIRPERSON WILLIAMS: Recognize the member at the mike.
MR. MOILANEN: I can wait.

CHAIRPERSON WILLIAMS: He just made a comment. He didn't make a friendly amendment, so we have no action to take.

MR. MOILANEN: My name is Philip Moilanen, 4th circuit, and I have a question. Essentially what this rule provides is that the Clerk and the Drafting Committee prepare both the majority and the minority report, since they have the final say on the content of it. The motion doesn't address who is the author of the minority report. When it mentions it in the language on mine, it's about seventh line up from the bottom, maybe eighth line up, and the other part of it has to do with the timing. I think I would offer an amendment to the motion. Where the word conclusion appears, when it's referring to "conclusion" of the meeting, substitute "receipt of the transcript" for that word, so that whoever is preparing the minority report has 14 days after the transcript is received, and obviously the Drafting Committee and Clerk will have the benefit of the transcript as well. Since they are going to be vetting the minority report based on whether it's consistent with what's in the transcript, you have got to start with the document, at least in the opinion of the person who writes the
minority report, is consistent with the arguments that were made at the meeting. They may not have been the only one that thought of something and they might want to talk to the people who had other ideas to conclude what should be in the minority report if there is going to be one. So that's my motion.

MS. BREITMEYER: I reject the friendly amendment.

MR. MOILANEN: It wasn't friendly, I don't think.

VOICE: Second.

CHAIRPERSON WILLIAMS: There being a motion made and a second that the word "conclusion" is stricken and "receipt of the transcript" appears in the proposal, is there any discussion? Seeing no movement toward the mike, we will move to the question.

All of those in favor of striking "conclusion" and adding "receipt of the transcript" as it appears on the screen, please indicate by saying yes.

All of those opposed, please indicate by saying no.

The chair cannot determine if the motion passes, so we will need to do a division count. All
of those in favor, please stand.

   MR. FALKENSTEIN: What do we have these
   clickers for? Use the clickers.

   CHAIRPERSON WILLIAMS: The issue is that this
   is not programmed, so there is no way for us --
   
   MR. MOILANEN: Can't count yes and no?
   
   VICE CHAIR QUICK: It's programmed only -- he
   set it up for those limited.

   MR. MOILANEN: Pretend it was one of the
   other questions. Has there ever been a motion that
   did not pass by 75 percent?

   CHAIRPERSON WILLIAMS: I don't know.

   You may be seated. So there were 66 yes, so
   that is a simple majority of the members present, so
   we don't have to further the vote. It passes.

   Was there any further discussion on the main
   proposal?

   MR. KOENIG: I am Alan Koenig from the 9th
   circuit. Just in response to Mr. Quick's motion to
   change the word "motion" to "request," I think the
   word "motion" six lines up from the bottom should be
   changed to "request" to be consistent to that.

   CHAIRPERSON WILLIAMS: That's referring to
   the primary motion.

   VOICE: That's wrong.
MR. KOENIG: I'm sorry.

MS. BREITMEYER: The second use of the word "motion" would be the primary motion to publish the minority report.

MR. KOENIG: Thank you. I was just corrected on that.

CHAIRPERSON WILLIAMS: Chair recognizes the member at the mike.

MR. MOILANEN: Again Philip Moilanen, 4th circuit. Just one more change. I would think in the last -- I am trying to figure out where it goes in, but include the author of the minority report in the committee that is having the draft so that at least changes are discussed, including the minority in the discussion of the changes. Still leave the clerk and the committee with the authority to finalize the words of the minority report, but include at least one person who was making the request for the minority report to be on that group. So you could say the Clerk and the Drafting Committee plus the person who requested and submitted the minority report. You can just say "who submitted the minority report." I don't mean them to have the final authority, but to be serving on that committee anyway for that particular report.
CHAIRPERSON WILLIAMS: Instead of there you would move it up?

MR. MOILANEN: I don't mean to give that person veto authority over what the Drafting Committee does but to have them included on the committee that is preparing the minority report so that those views are reflected.

CHAIRPERSON WILLIAMS: So would you go add that, if you go to the line underneath the other addition that you made and we would say the Clerk must review the report with the Drafting Committee and the author of the minority report to ensure, is that where you're --

MR. MOILANEN: No, I don't mean it there. Just in the final conclusion. Somebody has got to do the final draft of what's going to actually be included in the document. And I am okay with the Clerk and the Drafting Committee having to approve that. I just want to make sure that one of the authors of the minority initial submission are included in the people that are looking at that document, because if they say you emasculated our report, at least you are going to hear that from them.

MS. BREITMEYER: May I ask a question about the friendly amendment that you were discussing?
MR. MOILANEN: Sure.

MS. BREITMEYER: The concern I have with adding some language to the last sentence there is that it looks like it would give the author the final decision on the draft.

MR. MOILANEN: That is not my intent at all.

MS. BREITMEYER: If we moved it up to the sentence before and we he said the clerk must review the report with the Drafting Committee and the author of the minority report to ensure compliance.

MR. MOILANEN: That doesn't quite do it, because we are talking about what the final document is going to look like, running it past the person who drafted the minority report and have them say, yes, you have captured it correctly, it's okay, or to say, no, you didn't, and here is what you missed, so you have a chance to look at it again and make a change if you agree that you missed something. You don't have to put them on the committee necessarily, and I don't want to give them the veto authority over what you finally submit.

MS. BREITMEYER: Just to point out, that sentence that I was referring to, it does discuss that the Clerk must review the report to ensure compliance and reasonable consistency with the minority opinion.
expressed during the debate, so that would then allow
that author to be a part of that discussion. They
would, but they would be in the last sentence also.
The suggestion is that have input from the person who
submitted the minority report in that last line.

MR. FALKENSTEIN: Have input.

MS. BREITMEYER: May I make another
suggestion?

MR. MOILANEN: Sure.

MS. BREITMEYER: How about, if you want to
include it in that last sentence, that we say, The
Clerk and the Drafting Committee, comma, in
consultation with the author of the minority report.

MR. MOILANEN: That would be fine. Another
alternative suggested was that for purposes of that
report you include the author of the minority report
in the committee so it's still a committee decision.

MS. BREITMEYER: Which would you like to
propose as a friendly amendment?

MR. MOILANEN: Well, I think having them on
the committee makes more sense, because that makes it
simpler, for that report only, not for everything else
that you do.

MS. BREITMEYER: I am rejecting the friendly
amendment to add the author to the committee.
MR. MOILANEN: Well, then my motion would be as you have it worded up there now.

CHAIRPERSON WILLIAMS: I don't know that you have to make a motion. Were you willing to accept the friendly amendment the way it's written?

MR. MOILANEN: Okay.

MS. BREITMEYER: I am willing to accept the friendly amendment.

MR. MOILANEN: That's fine by me if everybody else wants it that way.

CHAIRPERSON WILLIAMS: Chair recognizes the member at the mike.

MS. KAKISH: I would like to go back to Mr. Rombach's comments. Can we go up to section. I just needed to make sure. Thank you.

CHAIRPERSON WILLIAMS: Chair recognizes the member at the mike

MR. FANCHER: Tom Fancher, 10th circuit. I just have some questions for my own clarification. The task seems to assume one minority report, and it uses singular throughout. I can well imagine a situation where there may be a 60/40 vote where the 40 have more than one opinion in opposition to the majority, maybe strongly held. Is it the sense of the change that the Clerk in composing, I assume it's the
Clerk, in composing this will take more than one minority report and combine them, or is it just first come first serve?

MS. BREITMEYER: It is the intent that there could be multiple minority reports that, in the sentence, the first sentence of the proposal.

So the author of this minority report would be collectively submitting the minority report, in other words, taking into account all of the minority opinions and drafting. I am sorry I was a little bit unclear.

CHAIRPERSON WILLIAMS: Are there any other comments on the proposal? At this time we will get ready to call the question.

MS. BREITMEYER: I am going to reread. Is there some additional comment?

MR. ROMANO: Have you closed?

JUDGE CHMURA: Yes.

MS. BREITMEYER: I am going to reread the proposal as amended. Minority reports. A minority report is a written report stating the views of less than half the members of a section, section council, or a committee on a recommendation of the majority report. The content of the minority report must reflect the minority views presented to the section,
section council, or committee orally or in writing at
the time it acted on the matter, unless the section,
section council, or committee did not notify its
members in advance that the matter would be
considered. The report must be printed at the request
of its proponents over their signatures and appended
to the report to which it relates.

Representative Assembly minority reports.
Members of the Representative Assembly voting in the
minority on a proposal to be submitted to the Michigan
Supreme Court may collectively submit a minority
report to accompany State Bar recommendations to the
Michigan Supreme Court, if the majority proposal has
been adopted by less than 75 percent of the members
present and voting. The content of the minority
report must be limited to the views presented on the
floor of the Assembly meeting during the debate on the
merits of the proposal. A member of the Assembly must
invoke this rule by making a request for the
submission of a minority report immediately following
the vote on the proposal from which the minority
report dissents have been adopted, and must identify
the authors of the minority report. The length of the
report may not exceed that of the majority and must be
submitted to the Clerk within 14 days of the receipt
of the transcript of the meeting at which the motion passed. The Clerk must review the report with the Drafting Committee to ensure compliance with the word limitations and reasonable consistency with the minority opinions expressed during the debate on the recommendations and largely reflected in the transcript of the proceedings. The Clerk and Drafting Committee, in consultation with the author of the minority report, shall have the final decision on the draft of the minority report submitted.

CHAIRPERSON WILLIAMS: Motion having been made and seconded and discussion having occurred, all those in favor of the proposal as its presented on the screen please vote at this -- actually we are going to vote all at once, so if you are in favor, please vote one, if you are opposed, please vote using two, and if you are abstaining, please vote using the number three. The voting is open.

It appears that all votes have been taken. If not, please indicate so. Seeing no hands raised or motion toward the mike, we are closing the vote.

Mr. Clerk, if you could give us the numbers for the vote.

MR. HERRMANN: Madam Chair, we have 96 yes, 10 no, and one abstention.
CHAIRPERSON WILLIAMS: The motion passes.

Thank you.

At this time we will proceed to take our break. We will come back in ten minutes, please.

(Break taken 11:21 a.m. - 11:35 a.m.)

CHAIRPERSON WILLIAMS: We are ready to go back into session. At this time I would like to see if there is consent to move outside of the order of the agenda. Chair Michael Thomsen has to leave to go be present at a funeral, so we would like to move him now prior to having comment from our executive director. Are there any objections to moving that agenda item forward? Hearing no objections, we will proceed with Chair Michael Thomsen from the Drafting Committee.

MR. THOMSEN: Thank you, Vanessa. Good morning. In January of this year our chair of the Assembly, Vanessa Williams, requested that the Drafting Committee prepare a presentation that would be ultimately placed upon our State Bar website. This presentation was to be more or less a how-to instructional type presentation that would make it easier for members of our State Bar to become involved in the Representative Assembly process by drafting a proposal. So the idea here is to encourage
participation in the Representative Assembly process
as the final policy-making body of our State Bar, by
our State Bar members. The result is the presentation
that is in your materials, and I am just going to go
through briefly for you. And I would just like to
take the opportunity to thank the members of the
Drafting Committee and also Vanessa and Dan Quick and
Fred Herrmann. Their assistance and input in
preparing this proposal was invaluable, and I
appreciate it, as I do the participation of the
committee members.

So what we have is a title to this
presentation, Your Voice in the State Bar of Michigan.
What would you like to change? Drafting and
submitting a proposal to the Representative Assembly.
This is a title that hopefully will be an attention
grabber and be an invitation for members of our
State Bar to participate in the process. We would
like them to know that they can change things.

How many times have we all heard someone in
the courtroom or outside the courtroom in the hall
after a hearing saying, You know, they really should
change that rule. Well, we all have the opportunity
to participate in such a change by bringing a proposal
to the Representative Assembly.
We have a brief history of the Representative Assembly, because not everyone in our State Bar is familiar with the Representative Assembly, and if you will see the last bullet point, it says it was created in order to increase the proportion of members who actively participate in policy-making for the Bar. Well, once again, that's what this is all about. It is what is meant to occur. Drafting a proposal is easy, and anyone can do it as long as you are a member of the State Bar, and if you are going to submit a proposal through your Representative Assembly, you must draft a proposal that is easy, and anyone can do it from your delegate, there is a link in the last bullet point so that you can find who your delegate is from your circuit. Once again, try again, trying to make it easy for everyone.

Proposal must be stated in the form of a question and then the next part is the issue and then the proposal, and the proposal, and once again, there is a link that you can check on to see sample proposals, and we have cut-outs of every page of the presentation to be helpful to those that are interested in preparing a proposal. Then drafting a proposal, how do you draft a proposal? Every proposal has seven parts, and once again, there is a link that you can check on to see sample proposals, and we have cut-outs on every page of the presentation to be helpful to those that are interested in preparing a proposal.
Representative Assembly meeting. And, of course, there is an explanation of the proposed language. If it's added, it should be underlined. The proposed deleted language should be struck through, with the cut-out to illustrate that format.

Part two is a synopsis in which we provide a brief summary, the reason for the proposed change and/or proposal, noting what entity or entities support the proposal. And, once again, we have a cut-out and portion of that relating to the synopsis is magnified for the ease of the reader.

Part two of synopsis, the sponsor of the proposal is reminded to make a Keller analysis under the Keller standards, and we have a link that takes them to the Keller standards, and they are reminded, once again, that the two permissible subject areas under Keller are regulation of the legal profession and improvement in the quality of legal services.

Then we move to part three, background, and this is the part of the proposal where you are required to provide substantial background regarding history and the need for the proposed change, and the background information is not to exceed five pages basically. And, once again, we have the cut-out that's highlighted as the background.
And then part four, opposition. Fill in the reasons and/or arguments against the proposed issue and, once again, the cut-out illustrates the opposition section for assistance.

Part five, prior action by the Representative Assembly. Provide the history of the current issue within the context of the Representative Assembly, and we have a link to the archives for the Assembly where you can find archives of previous meetings and proposals.

And then moving on to part six, state the known fiscal and/or staff impact of the proposal on the State Bar of Michigan or simply state "impact unknown" if it's not known. Once again, the cut-out for illustration.

And then part seven, State Bar of Michigan position, the voting format, and the drafter is reminded to cite the issues using the exact same language used in the form of a question, the issue, and then moving on to when to submit a proposal.

Matters to be considered for the Assembly calendar must be submitted and postmarked no later than 42 days before the Assembly's next scheduled meeting, and then there is a link where the interested person can see the calendar of meetings and other information.
And then submitting and sponsoring a proposal, this is instructional as to where the proposals must be submitted, and which is basically any Representative Assembly delegate, any member of the Board of Commissioners, any State Bar section or committee by 1/3 vote of its members, as well as any local bar association.

After you submit a proposal, what's next? Your proposal is submitted to the Assembly for discussion and a vote. You may attend the Assembly meeting where your proposal is being presented, even if you are not a member of the Assembly. You may contact your circuit's delegate to the Assembly to find out what happened with your proposal. And you may seek to become a member of the Assembly by becoming a delegate from your own judicial circuit.

That concludes the presentation.

Once again, I would just remind everyone in the Assembly that we should all be ambassadors for the Representative Assembly and encourage participation. I feel that this was a very good idea that Vanessa had to stimulate participation in the Representative Assembly process, and hopefully it will be a success. Thanks.

(Appplause.)
CHAIRPERSON WILLIAMS: Another thing too for our Drafting Committee, the committee generally works drafting the proposals for this meeting and really took on this extra task with a lot of enthusiasm to help us with our engagement throughout the Bar.

Next we will move to item number nine, which are the remarks and the Keller update from our executive director.

EXECUTIVE DIRECTOR WELCH: Thank you very much. Good morning, everyone. I will forego remarks and go straight to the Keller report. I am very grateful to the officers of the RA for giving me some direction about what to speak about, because I know at least three people are interested in what I have to say.

For those of you who were in the Assembly last September when I presented on Keller, some of what you are going to see is familiar, but even if you have a photographic memory, pay attention, because I have new insights and updates to add to the basic information about Keller.

I was asked by the National Association of Bar Executives to present on this subject in Houston in February, and so you will see some of the historical background on Keller and some of the
churning that's going on right now about the first amendment and mandatory bar associations.

    So going back 80 years -- this is our 80th birthday month, by the way. Going back 80 years, the charter adopted by the Michigan Supreme Court for the State Bar of Michigan as a mandatory Bar begins with our responsibility to aid in promoting improvements in the administration of justice and advancement in jurisprudence. We only have three things that we are told we have to do, and the very first one has to do with public policy. Next slide.

    For 80 years we have been responding to that mandate, and the way in which we have been doing that is in three ways: Make recommendations on court rules, mostly state, mostly to the Michigan Supreme Court, also occasionally to the federal bench, responding to the Federal Rules of Civil Procedures typically. We make recommendations on legislation, aiding in the improvement in jurisprudence. By the way, that used to say science of jurisprudence. You will see all across the country the first 20 bar associations that were made mandatory talked about advancements in the science of jurisprudence. We are a little bit more modest and just talk about jurisprudence.
So we also occasionally advocate at the federal level typically for adequate funding for the Legal Services Corporation. And, finally, and not insignificantly, and this is an area in which the Representative Assembly has been particularly impactful is that we have been involved in comprehensive reform initiatives, often initiating them, such as criminal indigent defense reform, for example, Custodial Interrogation Task Force, going all the way back actually to the codification of the Michigan Rules of Civil Procedure, that the bar has been a primary player, I would say, in that field.

So what are the limits on our advocacy? The main topic today is the First Amendment limits on our advocacy through Keller. That is a baseline. We cannot overcome what the U.S. Supreme Court says our limits are. The Michigan Supreme Court can't overcome that, but they can narrow, the Michigan Supreme Court could narrow what we can do even beyond what Keller says. And in addition, of course, politics restrict what we are able to accomplish as to our resources.

And I just want to say a little bit about that. I have had members who cave under the idea that we have to think about the political environment in which we are trying to advance objectives that the
Representative Assembly and the Board of Commissioners adopt, and my response is that our positions are not symbolic positions. We are taking positions in order to advance improvements in jurisprudence in the way that the justice system functions or to prevent degradation of the environment in which we effectuate justice, and sometimes that calculation is we may support A and B, but by putting all our eggs in A's basket may prevent us from doing B, so we have to figure out what our priorities are and what we can accomplish.

Similarly, there are things that we are not equipped to do in terms of our resources. Pre-Keller, in 1980, for example, the Bar was very much behind a ballot initiative on merit selection in Michigan, and the Bar's resources to advance that were limited and it did not pass, those of us that can remember back that far. A point of instruction, the Ohio State Bar Association, which is a voluntary bar, spent over a million dollars a decade later advancing the same initiative for the Ohio State Bar Association and lost by almost 80 percent, 80 percent rejection, despite having every editorial board in the state of Ohio on board. So, you know, the resources are an important consideration about what we can do.
Our strategic plan recognizes that, and this is a strategic plan that the Representative Assembly and the Board of Commissioners both adopted, and it says in our public policy goals we need to aggressively advocate for issues that support our statement of purpose, minimize divisiveness, so we have to think about whether or not what we are doing is pretty controversial within the profession and also whether or not the position we are taking is achievable. So that's always in the back of our minds on staff, and you will hear staff making comments about the achievability and the potential divisiveness of various issues.

Now to the main topic, Keller. The basic information that everyone should be aware of, it's a 1990 decision. It was unanimous. It upheld the right of the mandatory bar associations to take ideological positions, and that was very much in doubt, but the language is pretty ambiguous. It sets limits on what mandatory bar associations can do, and there is a wide range of interpretation about what those limits means, and each state implements them differently, and at the end of this presentation, I will give an example of where that's going at the moment.

The key Keller holding compels the
association and integrated bar are justified by the
states in regulating the legal profession and
improving the quality of legal services. So that's
what we can constitutionally fund activities to carry
out, but we can't do anything outside of whatever that
means.

So the decision itself recognized that it was
ambiguous. It says precisely where the line falls
will not always be easy to discern. We can't do gun
control. We can't do nuclear weapons freeze
initiatives, thank you very much. But we are free to
do whatever we want with discipline and ethical code.
We can make all the recommendations we want. But
clearly there is a lot of territory between those two
areas of guidance.

The guidance that we look to in Michigan
comes from the Michigan Supreme Court in
Administrative Order 2004-1. So what the Michigan
Supreme Court said in 1993 and again in 2004 was that
we can take public policy positions related to the
regulation and discipline of attorneys, the
improvement of the functioning of the courts, the
availability of legal services to society, the
regulation of attorney trust accounts, and the
regulation of the legal profession, including
education, ethics, competency, and the integrity of the profession. That's perhaps more helpful than Keller itself, but there is a lot of room to argue about, for example, what falls within the availability of legal services to society or improvement in the functioning of the court.

So that brings us up to last year when we had a challenge to the status of the mandatory bar and the creation of the Task Force on the Role of the State Bar, and I just want to remind you of what the unanimous order of the Michigan Supreme Court creating the task force said. They said that we are charged with determining whether our duties and functions can be accomplished by means less intrusive upon the First Amendment rights of objecting individual attorneys, which is a quotation from a Michigan Supreme Court case, Falk, from 1982, I believe, and that standard, the less intrusive standard, is not something that's within Keller. That is only Falk, and Falk was not majority opinion of the Michigan Supreme Court, but, nonetheless, this was the direction of the task force. So that's why I think you saw some very serious attention to considerations about what more could be done to accommodate the views, minority views of members of the State Bar.
So this is just an overview of where the various mandatory bars stand, and those of you who were here last September, you saw this slide, but not animated this way. What you are seeing is historically how states went from non-mandatory bars to mandatory bars. There are 32 mandatory bars. If anyone can make sense of this politically or geographically or historically, please talk to me after the meeting, because it's fascinating the ways in which some states became mandatory and some didn't and in what order.

So the white states, which mostly surround us actually, are states that do not have mandatory state bars. The states that are the same color we are are mostly the original mandatory states, and they became mandatory through the legislature. The darker states are states that became mandatory later, mostly by order of their Supreme Court, and the model states are the ones that are sort of straddling, they have both a mandatory state bar and a voluntary state bar.

So just to highlight the blue states, the light blue and the dark blue mandatory states, every one of them has a different way of dealing with mandatory and dealing with Keller. There are similarities, but the differences probably trump the
similarities.

So this is where things stand right now, and this is that this has evolved since Keller. Among the mandatory states and the District of Columbia, four of them do no lobbying, essentially no public policy advocacy -- North Carolina, Virginia, West Virginia and District of Columbia. District of Columbia has 100,000 members. Very little lobbying, according to the executive directors of the bars at Alabama, California, Kentucky, Mississippi. California, they have a very, very regulatory bar that's regulated directly by the legislature. They run actually the disciplinary court, so they have a very different system, and it's evolved -- it was different even before Keller V. State Bar of California and has become much more regulatory since then.

So in the majority category all over the map of doing some lobbying, we find Michigan, and I am highlighting states that currently are being challenged for the activity. The public policy activity is under intensive scrutiny, and it does include, in addition to us, Arizona, which has invoked a task force to look at the role of the State Bar created by their Supreme Court given three times as much time as our task force had. North Dakota, which
is subject to a challenge I will go into a bit more
detail about, and the state of Washington.

So in terms of anything goes, there are two
states that fall into that category. Wisconsin is a
mandatory bar. Do we have any members of the
Wisconsin bar in the Representative Assembly? All
right. Wisconsin does not have any regulatory
functions at all, but they advocate in the legislature
on anything, regardless of whether it falls within the
two categories that are Keller permissible, and then
they keep track of how much it costs them to advocate,
and then they refund the money to the members, any
members who want refunds. It's another way of
handling it. It's probably something that could be
subject to constitutional challenge. It would be
interesting to see if that happens.

The Nebraska bar is an anomaly. As of a year
ago last November, the Nebraska Supreme Court said you
have to be a member of the Nebraska State Bar, but you
don't have to pay dues to the Nebraska State Bar. So
they can do whatever they want in terms of advocating,
because they are not using compelled dues at this
point. But they also are operating on about 30
percent of the income they had before the
Supreme Court did a U-turn on them.
So let's go to the next slide, and I will give you a bit more. This is the absolute up-to-date information on what's happening.

A year ago last June there was a case decided that had to do with the unionization of public health care workers in Illinois, Harris V. Quinn, and it was largely considered to be a potential threat to the Abood case, public unions and their ability to do any public policy. There were several dozen amicus briefs filed saying, please don't wipe out the Abood decision, which is a Michigan decision, and the Abood decision is also, it's one of the decisions that Keller rests on. So there was a lot of concern that the Harris case might pull the plug out from under mandatory state bars and their ability to use member dues for any kind of public policy.

Justice Alito has been openly hostile to Abood, and he wrote the decision, but he went out of his way to say, We are not taking on mandatory state bars, and I think it's worth taking some time to read what he had to say. Licensed attorneys are subject to detailed ethics rules, and the bar rule requiring the payment of dues was part of this regulatory scheme is what he is saying.

We are not going there. All of you who are
worried about mandatory state bars, this is not
something that you should be worried about, but you
note he keeps pointing to the mandatory state bars' rules and ethical practices, which is, you know, one half of what Keller said. Keller says the regulations of the legal profession, but the other half says including the quality of legal services. So it's not clear if there are other challenges to the mandatory state bar where he might come down in terms of defining that broad, undefined category between nuclear weapons and ethics. So that's just out there for all of you to go to and read and think about if you want.

So the North Dakota case was filed in February, and that's a challenge to the North Dakota State Bar's funding of opposition to a ballot initiative that dealt with shared parenting, and that's in federal courts. Obviously keeping an eye on it. Obviously you can go online. You can Google it and find both the complaint and the response brief.

And, finally, in March the Washington State Bar Association responded to a mandatory challenge, also in federal court.

So those are significant developments, I think, since last September, and I hope that's what
the officers were asking for in terms of an update on
Keller. I know that I am standing between you and
lunch, but I would be happy to take any questions, as
long as you don't ask me to predict what the
Supreme Court, the Michigan Supreme will do or the
U.S. Supreme Court will do. Thank you very much.

(Applause.)

CHAIRPERSON WILLIAMS: We thought it would be
important to see what the landscape of Keller is today
prior to us taking on your next item for action, which
is the consideration of proposed amendment to the
Representative Assembly Permanent Rules of Procedure
5.1 Voting to add in a Keller vote process, and I
would ask that our chair of the Assembly Review
Committee join us again for that proposal.

MS. BREITMEYER: Thank you, Chair Williams.
I am going to present this last proposed amendment to
the Representative Assembly Permanent Rules of
Procedure 5.1, and I want to emphasize that this
proposal mirrors in majority with the Board of
Commissioners' recent change to their procedure.

As you heard from the background of the
Keller discussion, there has been an increased
awareness of our obligations under Keller, and, as a
result, this proposal comes before you.
On April 26, 2014 the RA adopted the following proposal: Should the Representative Assembly make recommendations and/or provide comments to the Task Force created by Administrative Order 2014-5 or directly to the Supreme Court on whether the role and functions of the Assembly support the State Bar's status of a mandatory bar; and on any proposed revisions of the administrative orders and court rules governing the State Bar as they relate to the Assembly to improve the governance and operation of the State Bar, through the following steps:

First, commission the special committee, recently established by the Assembly Chairperson, with the responsibility to summarize the comments and recommendations made at the April 26th meeting and incorporate them as part of an Assembly report, which was done, and submit the report to the Task Force or the Supreme Court directly, or after a future review by the Assembly, as soon as practicable, and

Secondly, open the floor of the meeting in last April for member comment on the two matters.

And that was done. On November 21st of 2014, the State Bar Board of Commissioners adopted a Keller vote process to occur before any vote taken on a position of support or opposition to legislation. The
Keller vote process implemented the Board's response on the issue to the Task Force on the Role of the State Bar report to the Michigan Supreme Court. The Board of Commissioners articulated a process that requires a vote of the Board to be taken before taking a position on the merits of legislation to determine Keller permissibility and to articulate the reasoning behind the Keller determination. The Board of Commissioners implemented a requirement that two-thirds of the Board support a determination that an action is permissible to allow a Board vote on a position on the merits of the legislation.

The Board relied on an independent staff memo, prepared and disseminated to the Board, addressing the permissibility of the State Bar of Michigan in taking a position on specific legislation.

This proposal before you recognizes the fact that we as the Representative Assembly should also support and adopt a rigorous decision-making process to determine if proposed State Bar advocacy outside the judicial branch conforms to Keller and subsequent prevailing law on the constitutional standard for mandatory bar advocacy. As articulated by the Board of Commissioners, this process would further safeguard State Bar members' First Amendment rights and expand 
opportunities for dissenting members to communicate their opposing viewpoints.

The proposed language in 5.1 states that, adds 5.1.1 Keller vote. Any proposal to be submitted for a vote, where applicable, shall first be submitted to counsel and/or bar staff, as applicable, who is not a member of the Representative Assembly, for an independent opinion as to the permissibility of -- and I am going to add just an amendment here of "the" vote. I think it was just a typographical error -- by the Representative Assembly on the merits of such proposal under Keller V. State Bar of California and subsequent governing and/or authoritative law on the constitutional standard for mandatory bar advocacy. The opinion of counsel and/or bar staff, as applicable, should articulate the reasoning behind the determination and accompany the applicable proposal at the time of publication pursuant to Section 2.5 of these Rules. A Keller vote shall be taken prior to the Representative Assembly taking a position on proposals, where applicable, to determine the permissibility of the vote under Keller. A two-thirds vote of the members of the Representative Assembly present is required to support a determination that a vote on the proposal is permissible.
What we are considering today is should the Representative Assembly adopt this resolution to amend the Permanent Rules of Procedure of the Representative Assembly Section 5.1 Voting to require the Representative Assembly to implement the voting process to ensure that the Assembly's votes conform to Keller V. State Bar of California and subsequent governing and/or authoritative law on the constitutional standard for mandatory bar advocacy? I am making this motion.

CHAIRPERSON WILLIAMS: There has been a motion that the Representative Assembly adopt proposed amendment to the Representative Assembly Permanent Rules of Procedure of 5.1 Voting, that's Keller, to require that the Representative Assembly implement a voting process to ensure the actions conform to Keller V. State Bar of California and subsequent governing and/or authoritative law on the constitutional standard for mandatory bar advocacy. Is there a second?

VOICE: Support.

CHAIRPERSON WILLIAMS: Motion having been made and seconded, is there any discussion?

Chair recognizes the member at the mike.

MR. FLESSLAND: Dennis Flessland from the 6th
circuit. Do I understand correctly that the Representative Assembly and the Board of Commissioners have separate Keller votes and that could a proposal coming from the Representative Assembly where we have voted that something is compliant with Keller, submit, and then that go to the Board of Commissioners and their Keller analysis says it does the comply with Keller? Or do I misunderstand the process here?

MS. BREITMEYER: There are two separate processes. The Board of Commissioners would be considering a different issue with their Keller determination intact, and then the Representative Assembly would be considering a different issue with their own Keller analysis.

MR. FLESSLAND: So we are going to oppose something to do with the process for issuing a medical marijuana license, we think that the burden of proof is too high or unfair and our analysis is that we are dealing with a procedural issue, not a substantive issue, and we think it complies with Keller. That gets bumped up to the Board of Commissioners. They could evaluate the same issue and say it doesn't comply?

CHAIRPERSON WILLIAMS: No, there are two separate processes. We reference the Board of
Commissioners' process. It's based on the Board of Commissioners taking action within their meeting. This proposal is based on the action that we would take in our meeting. Once we make a ruling, we would proceed to a vote and then our vote would stand. It would not go to the Board of Commissioners.

MR. FLESSLAND: There is no duplication? I was concerned about duplication of effort or inconsistent rulings.

CHAIRPERSON WILLIAMS: Right, there is no duplication. The chair recognizes the member at the microphone.

MR. PAVLIK: Adam Pavlik, 54th circuit. I am sympathetic to the sensitivity that we are trying to add to Keller here, particularly given the heat that the State Bar is feeling with the Task Force last year and whatnot. Ultimately, I am of the opinion that an independent Keller vote is an ultimately misguided measure. The reality is Keller is a constitutional rule. We cannot vote our way into compliance with Keller. If a motion came before this body to be in favor of a nuclear weapons ban or something like that, even if all 150 of us voted, we thought it was Keller compliant, a dissenting member could still file a constitutional challenge against the State Bar of...
Michigan and, under Keller, that would likely be upheld.

So, although I am sympathetic to the desire to be more sensitive to the Keller interests of dissenting members, ultimately we cannot vote our way into Keller compliance. I think that, you know, to the extent that a member of this body thinks that a given proposal is not Keller compliant, they've got tools under our general parliamentary law that they can take advantage of. They could either make a point of order that it is inconsistent with our charter and bylaws to consider a particular matter, then the chair would make a ruling on that. They could appeal the decision to the chair if they wanted to, or they could object to the consideration of the question, which both of those are motions that our parliamentary authority already recognizes.

So to me institutionalizing a separate Keller vote process is unnecessary, will lead to frustration. It will have this kind of megadebate, a debate about the debate, which I don't think will be particularly fruitful or a pleasant process, frankly, for us to go through, particularly given the likelihood it's ineffective in any event, because we can't vote our way into Keller compliance.
CHAIRPERSON WILLIAMS: I will just ask the executive director to maybe comment on procedurally what this will provide the Representative Assembly in terms of any type of challenges as to our actions.

EXECUTIVE DIRECTOR WELCH: Thank you, Vanessa, because I invited her to invite me to comment on that.

One advantage that we are seeing in having a more formal process at the Board of Commissioners level is advancing the conversation about what Keller means in Michigan and how it conforms to the guidance that we have gotten so far from the Michigan Supreme Court in terms of the categories, because we were finding that when you are faced with a proposal that seems like a really good idea or a really bad idea, we are lawyers and we are very adept with coming up with reasons why something fits within a constitutional construct and articulating those reasons and having some consensus in the bodies that are making the decisions on public policy and having some sort of ongoing record about that would be helpful for staff, so staff doesn't end making those determinations.

That was sort of the thinking behind advancing it at the Board of Commissioners level, and it seems to be helpful for us.
CHAIRPERSON WILLIAMS: Chair recognizes the member at the mike.

MR. BLAU: Michael Blau of the 6th circuit, and this would probably be in the form of a question to Kimberly and to Janet, and it's a question regarding the submission of a Keller opinion to counsel and/or bar staff, and I have a real concern and question as to who would be drafting the Keller opinion that would come before us where we would make that initial determination as to permissibility? With the language as I see it there, it could be independent, private counsel and bar staff both submitting opinions, which leads arguably to potentially differing opinions as to permissibility under Keller, and then, two, who would actually be, if it's just a counsel, who that counsel would be submitting it, because I see a potential problem. It could come with a Keller opinion before this body, then there is the discussion, and let's say the Assembly decides to act opposite to the Keller recommendation, and I could see that probable political and practical difficulties, as well as supposedly an expert opinion as to Keller being brought before us, and here is the Assembly that's going contrary to that determination of Keller
permissibility. So it's unclear what that language means in the proposed amendment.

MS. BREITMEYER: Thank you for your question. You are correct that the language there contemplates that it could be outside counsel, it could be legal counsel for the State Bar, and that opinion would create an attorney-client relationship between whichever attorney and the Representative Assembly as a whole that the Representative Assembly could either accept or reject.

EXECUTIVE DIRECTOR WELCH: I have been invited to make another comment. One thought that I hope my presentation left people with is there really is no expert on Keller, and I think this sort of is responsive to the representative who made the point that it doesn't matter, even a unanimous vote by this body. The experts are the U.S. Supreme Court and at the lower level the Michigan Supreme Court, but having someplace to start, having something written that actually responds to the language I think is a helpful aid to the conversation. It's important that everyone who votes on a public policy matter as a representative of a mandatory bar association understands what Keller says, whatever it means, and I think it is important that the Bar provides to both
the Representative Assembly and the Board of Commissioners a fix on any changes in the jurisprudence. I mean, there really haven't been any. There are hints of what might come, but there haven't been any, and so recognizing that's part of our obligation, I think, is an improvement.

CHAIRPERSON WILLIAMS: Chair recognizes the member at the mike.

MR. HILLARD: Martin Hillard, 17th circuit. I had a couple of questions first that Janet largely spoke to, so I will just re-echo those. I think there is value in us receiving those opinions and doing a thoughtful consideration of the Keller issue rather than just blindly assuming that it probably is permissible.

And the second, to extend on that, is my colleague that spoke first is correct, no matter what vote we take on whether it's Keller permissible or not doesn't make it permissible or for that matter doesn't make it impermissible, but I think there is value to be conceding publicly that we are not ignoring Keller, that we are not just blindly voting on issues, oh, yeah, the Supremes said that a couple decades ago, that's nice, but that we actually give it reflection. Maybe we will make mistakes on occasion in that
determination. As Janet pointed out, ultimately it's
nine people in Washington that can tell us whether we
were right or wrong, but I think there is value to be
seen that at least we took the question seriously.

CHAIRPERSON WILLIAMS: Thank you. Chair
recognizes the member at the mike.

MR. FALKENSTEIN: Peter Falkenstein, 22nd
circuit. Two quick comments. First of all, I think
we all agree there is no real efficacy or legal
significance in what we would do here, as the prior
commenters have said. The question I have is where we
decide to go forward after initiating this process and
we may be facing a challenge to action that we do
take. Do we want to have a public record that 32
percent of our own membership felt that the action we
decided to ultimately take was in actuality
unconstitutional? So we would be creating, assuming
that it's not unanimous here and we get two-thirds
majority, we have one-third of our membership on
record saying that what we are doing is
unconstitutional, is that going to come back to bite
us at some point being on public record?

But the real question I had is if we decide
to adopt this, I have a question with the phrase
"where applicable," because that's the triggering
phrase, and it seems to me to be pretty ambiguous as to what is going to trigger the whole process and what determines who and how do you determine in the first instance whether there is going to be a Keller analysis required, and the term "where applicable" just doesn't really help. So I don't know what the suggestion is, but I would hope we can be a little more specific as to what triggers this whole procedure if we chose to adopt it.

   MS. BREITMEYER: To answer your question, I am going to take the last one first, but the reason why we put the language in there "as applicable" was to give us flexibility if we were considering other matters besides, for example, court rules. If we were voting on something like that, we wouldn't necessarily have to do a Keller analysis in that circumstance.

   And the other issue that you raised had to do with making a public record of perhaps a minority viewpoint on whether we should even go forward with a vote, and as we voted earlier, that would happen, there would be a record created as a minority viewpoint. We debated that hotly within the context of our own committee. I think that was a healthy debate and a good question to ask about. We came down on the line we would rather have that careful
consideration, that thoughtful consideration of Keller
than not.

CHAIRPERSON WILLIAMS: Chair recognizes the
member at the mike.

MR. BUCHANAN: Rob Buchanan. I am from the
17th circuit this time.

Mine picks up a little bit on the last
comment, which I think you probably want a friendly
amendment to adjust the language so it's any proposal
on public policy or any proposal on legislation,
because certainly if it relates to changing bylaws or
anything from an administrative standpoint, we don't
need to do a Keller on it. So I would adjust the
language so you are focusing on things that are Keller
related, such as legislation.

MS. BREITMEYER: I am going to reject the
friendly amendment, and I will give you a reason why.
We wanted to maintain the flexibility with that
language "as applicable," instead of giving a laundry
list of issues that would fall within Keller analysis,
and I think that would give us a little bit more
leeway if we came up with something that didn't touch
upon the Keller principles without giving that laundry
list.

CHAIRPERSON WILLIAMS: Chair recognizes the
MR. WEINER: James T. Weiner from the 6th circuit. I would like to reiterate that I think that it would be better to start, instead of eliminating that first "where applicable," say, Any proposal that potentially impacts or has a Keller consideration shall first be submitted to counsel. I think that it's just a little too, "where applicable" is a little too open.

I would also like to point out that you did state on the last page that there is no financial impact. If we do have outside counsel representing and bringing or in making these opinions, there will be financial impact, and I want everybody to understand that. Thank you.

That's a little bit inartful. Maybe we want to say that has potential Keller impacts. That has potential Keller impacts or has any potential Keller impact.

MR. FALKENSTEIN: How about actually implicates Keller concerns?

MR. WEINER: Okay. That would be -- just trying to write it on the fly here, but I want to limit this consideration to things that have potential Keller concerns, and especially, you know, I mean,
obviously -- I am assuming that the Drafting Committee would probably take a look at that beforehand and actually submit it to the Bar beforehand, but I just wanted to make sure that we are not doing an overkill here.

MR. ROMANO: How about implication, Jim?

MR. WEINER: Yeah, potential --

MR. FALKENSTEIN: That potentially implicates Keller --

MR. WEINER: Or it has potential Keller --

MR. FALKENSTEIN: Keller implications.

MR. WEINER: Yeah, change to implications there instead of impacts. I think that makes it clear, okay.

MR. FALKENSTEIN: That gives you plenty of flexibility.

MS. BREITMEYER: I accept the friendly amendment.

MR. WEINER: I think the end probably needs to be eliminated there too.

MR. FALKENSTEIN: This is a semantics problem. That new clause should come after to be submitted for a vote. It should say, Any proposal to be submitted for a vote, comma, which has potential Keller implications, comma, shall first be submitted.
Any proposal to be submitted for a vote of the body which has potential Keller implications, comma, shall first be submitted.

MS. BREITMEYER: We are going to the top.

CHAIRPERSON WILLIAMS: That will be fine.

MS. BREITMEYER: Get rid of the second "shall."

MR. FALKENSTEIN: Take out and. There you go. "Applicable" should go also, down to the fourth line.

MS. BREITMEYER: I am accepting the friendly amendment as written

MR. FALKENSTEIN: Got one more applicable.

CHAIRPERSON WILLIAMS: That's in. That doesn't implicate the first.

MR. FALKENSTEIN: Counsel or bar staff, you are right. Sorry.

CHAIRPERSON WILLIAMS: Any further discussion? I don't see any members at the mike and no movement.

MR. ROMANO: Before we vote or walk away from this, we owe Kim a real vote of thanks, because she busted it, as you can tell by the two proposals before us.

(Appplause.)
MS. BREITMEYER: Let me read it one more time
before we take a vote. Any proposal to be submitted
for a vote which has potential Keller implications
shall first be submitted to counsel and/or bar staff,
as applicable, who is not a member of the
Representative Assembly, for an independent opinion as
to the permissibility of the vote by the
Representative Assembly on the merits of such proposal
under Keller V. State Bar of California and subsequent
governing and/or authoritative law on the
constitutional standard for mandatory bar advocacy,
collectively Keller. The opinion of counsel and/or
bar staff, as applicable, should articulate the
reasoning behind the determination and accompany the
applicable proposal at the time of publication
pursuant to Section 2.5 of these Rules. A Keller vote
shall be taken prior to the Representative Assembly
taking a position on proposals, where applicable, to
determine the permissibility of the vote under Keller.
A two-thirds vote of the members of the Representative
Assembly present is required to support a
determination that a vote on the proposal is
permissible.

CHAIRPERSON WILLIAMS: At this time we are
going forward with a vote on the proposal as presented
on the screen. All those in favor will press one on
your clicker, all those opposed press two, and any
abstentions will be recorded by pressing three. The
vote is open.

Is there any member who is still attempting
to vote? Please indicate by raising your hand.
Seeing no hands raised, we will close the vote.

Mr. Clerk, if you could tell us what the
voting results are.

MR. HERRMANN: Madam Chair, we have 77 yes,
25 no, and 2 abstain.

CHAIRPERSON WILLIAMS: So the vote passes.
Thank you for your attention to this matter.

(Applause.)

CHAIRPERSON WILLIAMS: At this will time we
will invite our esteemed president up for remarks.

Mr. Rombach.

(Applause.)

PRESIDENT ROMBACH: Tom Rombach on behalf of
the 16th circuit. I am very proud to be here,
obviously. I gained my first opportunity to serve
officially the State Bar by being elected to the
Representative Assembly. It certainly is probably my
proudest moment, being in this group. I also
strategically always admire how the Rules and Calendar
Committee, of which I used to chair, apportions this programming, so by putting me at the end they avoid a stemwinder speech to separate you from your loved ones and from your communities. But I do admire the fact that I think we have got a lot better work product coming out of this process, although it is sausage making at its core, so I applaud each and every one of you here in the Assembly for your input and also thank you for taking your time out of your schedules and sacrificing a Saturday here to advance the Bar's mission.

Additionally, I also applaud the Assembly for its Keller concerns. Certainly we learn from the attacks on the Bar and also from the concerns expressed by the Task Force and other entities that we really need to be most sensitive and, additionally, careful, as we have seen today, with the Keller concerns and the First Amendment free speech rights of our dissenting members, and although we can't cure any of our constitutional deficiencies by voting, I found, at least at the Commission level, and I think even our discussions today, the fact that we are bringing up these concerns forthrightly rather than say this is a great proposal, I am against nuclear war, as the example was given, that perhaps that is a baliwick
that is outside the parameters and gamut of the State Bar of Michigan, so, again, thank you very much for your consideration of those topics.

Additionally, I would like to recognize at this point I do have some of our members of leadership that I would like to recognize that are here with us. Lori Buiteweg, who is my successor from Washtenaw County, 17th circuit -- 22nd circuit -- is here. Thank you, Lori. And I will try not to bungle the next one. This is 6th circuit, Jennifer Grieco, who is our treasurer. Thank you, Jennifer. And Rob Buchanan, I forget the circuit he is from. I remember the 17th, because that's one in addition to my 16th circuit, so I do understand where Grand Rapids is located Rob. Thank you. And he is here on behalf of our Executive Committee.

And also, the primary purpose that I come in front of you today is basically my theme for the year has been addressing the needs of 21st century lawyers and their clients, and the whole idea here is to try to map out a future for our profession and for the people that we care about. That certainly includes our clients and the public generally, because, quite frankly, if we don't start planning this, we see around the globe and around the nation, as Janet
pointed out, the fact is that change is coming, and we
can either accommodate and plan for that change, or
that change will be imposed upon us.

   For instance, in Great Britain, when the
political powers to be with the parliament thought
that the profession was not accommodating change,
impervious to change, instead they opposed a lot of
guidelines that I am not quite sure if the people in
this room could live with. One would be nonlawyer
ownership of law firms, for instance. That's
certainly a topic that could be debated, but I would
want it to be determined by the people in this room as
our final policy-making body, and not necessarily by
the people outside of this room that know better or
think they know better certainly than we do as
lawyers.

   So, again, if we can accommodate that change,
then we are best served, and I am talking about
thinking about 10, 20, 30, 40 years down the road, not
just within the worm's hole viewpoint of today's date
and time. And one of the ways we are trying to do
this is to kind of bring together a think tank of
sorts, and that's what you may have heard of with this
21st Century Practice Task Force.

   Now, I will admit that we've appointed 36
masters of the universe, that by the fact that they are appointed for their elected positions, these are people that uniquely in our state can both accept and implement change, but the whole idea here is that we need the great ideas. We need the next big thing for our profession to be brought in front of this group. They are only going to meet three times, and the first meeting, in fact, is Monday at the State Bar building, and I believe that we have every one of the members attending, with the exception of one, who is at a Comerica board meeting who heads their audit committee, so that the timeliness, he couldn't make it, and that's Reggie Turner, one of our past presidents.

But what we need to do is we need to inform this group about what we as lawyers and as Representative Assembly members think should be the priorities and, quite frankly, what ideas we can bring to the floor, and by doing that we can do that through participation on one of the three committees, and I am very gratified by the fact that a lot of people in this room have volunteered, in fact, to serve on one of those three committees, the first being the affordability of legal services. And by affordability, we are talking about access to those
that have 125 percent of a poverty line income and below, but we are also talking about a family of four making $94,000 a year that does not perceive or perhaps, in fact, can't afford hiring a lawyer, which surveys show that they need a lawyer, they have maybe two or three times a year that they have a problem that is uniquely capable of being solved by an attorney. And the fact is maybe they identify it, maybe they don't, but if they don't think that they can hire lawyers, then indeed, in fact, they don't hire lawyers.

And, quite frankly, when I travel around the state and I think about $94,000 in annual income, well, that's, quite frankly, most of our membership isn't making $94,000 a year or more, so the idea that Henry Ford brought to our state and that we all celebrate the fact that the people on the assembly line can actually afford to buy the final work product, and when we are pricing ourselves out of our market of serving our own membership, then we are going to fall on hard times eventually, if not now.

And I know, I understand big firms have struggles, and I understand as a solo practitioner that the solo and small practitioners also have struggles right now, and the idea that we have a
greater unmet legal need than ever before and we have
more lawyers than ever before, somehow we have got to
match that up more appropriately. So the idea is to
get folks on this task force to consider these
problems, think about them for a year, and come up
with a final work product.

But what does that mean to us in this room?
Well, that final work product isn't happening in a
vacuum. The task force can come up with some great
ideas, but, quite frankly, absent the Representative
Assembly's reviewing these and adopting these, this is
our final policy-making body, and we need your
direction and we need your input and, quite frankly,
we want your approval here. So whatever is happening,
we are going to need to come back to you in order to
get that done. And the gentleman that pointed out,
hey, what's the difference between the Assembly and
the Commission? Well, the Commission is operating
when the Assembly isn't operating, and it's moving
much faster, but primarily this is a management group.
This isn't a policy-making group. So, as you said
today when we looked at what is happening to the
sections. Well, that was done by the Assembly, not by
the sections. You folks were changing their rules,
and it wasn't a major change, but I am sure that a lot
of people in this room serve on sections, and I recognize a lot of people, even the blind school here recognize your talents and put you on a committee. Now, again, I appreciate your willingness to step up and volunteer.

So the first committee, the Affordability/Accessibility Committee, is very important to this effort. But, I mean, the Namesake Committee is the second committee, and that's building a 21st century practice. That's something I aspire to achieve one day in my legal career, and from what I am told from the big-timers in the room, not only do I have to build it and they shall come, but you also have to maintain it, despite the challenges that are in front of us, so that's a separate challenge.

And, again, we have a lot of bright minds in that group, many of whom are in this room today, and we are counting on them to come back to figure out how do we make the transition from law school and successful completion there and transition these folks into a successful integration within our legal community, because we know a lot of those folks are unemployed. We know a lot of those folks are underemployed, and maybe they don't have the same skill sets.
When I came out, it was pretty much trial by fire. You just end up in court, and people take care of you and laugh at you, and you get better over time, at least that was my experience, and I am still trying to achieve the better over time, but the laughing at me and trial by fire is still something I seem to experience on a daily basis. But we need to understand that transition. We need to understand how one gets to the apex of one's career, and we also need initiatives coming in front of the Assembly before.

Since my involvement here in 1998, I think I have attended every Assembly meeting since then. It's not always a mind-numbing experience, but, as we come into succession planning, I mean, how do we get out of this muck and pass the baton on to the next generation?

And, thirdly, we have to recognize that we have to modernize the regulatory machinery within our profession, because none of these changes -- we talk about unbundling legal services. We can't do that in a vacuum. We can't simply say, hey, I want to make sure that my retainer becomes nonrefundable and, you know, I am told that we can do that with an engagement fee, for instance. The fact is if we are going to gravitate away -- and I read some of the materials in
your packets today, because I am a voting member. It's my packet too. The fact is that if there is going to be a death of the hourly billing and the consumers want more item pricing, so that's more flat fee, that's more a la carte type of services, that we need to make sure that the discipline system can grasp that and different fee billing strategies so that we can, indeed, offer our services to a public that wants certain services.

I mean, we still have to make sure they are accommodated, because they are the ones paying the bread. At the same time, first and foremost, we have to protect the public, because that's the one branding thing that we have. The accountants and the financial planners and the realtors and the summation purveyors over the internet and scoundrels from points unknown, we don't know that their first and foremost ideas are to protect the public. In fact, William Hubbard, our ABA President, has said that there is a hundred million dollars that was brought to the fore to invest in legal information purveying about five years ago, and at this moment there is almost a billion dollars a year that's being spent, and that is not necessarily by lawyers. That's by investors, because they see the financial opportunity and many of the opportunities
that we are leaving on the floor.

So we more properly have to tailor our services to the services that the public is demanding, and we still need though to first and foremost protect the public. That's going to be the charge to the people in this room that are going to take up the gauntlet far after I am gone.

So right now we have the task force bill. We probably have most of the committees filled. So the people that haven't yet volunteered that still want a role in this process, I am told now what we are working on is work rows, because each of these committees are not to be silos. Obviously, there is a lot of overlap, and in order to deal with specific problems that we have to have people populating particular areas of interest for them, and so we are going to reach out, and if you want to volunteer for any of these efforts, you can see me and I can probably lose your interest and lose your application, or you can see Candace Crowley, who professionally does this and makes sure that these things don't fall through the cracks, and apply with her to participate in one of those posts, and so I encourage you to do that as well. It's an exciting prospect. It's an exciting time.
And one thing, as Michael Thomsen, I believe, said, is that when you say what do you want to change? I mean, it's a very important concept. The Assembly is on the cutting edge. At the same time, anything that's coming to me for change, everything that's coming to any of our leaders here for change, and you have three leaders up here that are incredibly skilled, that have served on our Board of Commissioners in Vanessa, Dan, and Fred, and they regularly give input, they regularly participate, and, quite frankly, they are the ones that are bringing the ideas in that are expressed here and ideas on their own initiative.

But what we need to do if we want to change, then not only do we need to participate here, but we need to feed in these ideas, even if they are hairbrained stunts that I have come up with, and put them through a process where that we can assign these to their appropriate forum, to the appropriate group. Some of which I am sure will be assigned here, and others might be assigned to a committee, or they might be assigned to an outside agency or they could be assigned anywhere. A lot of these things are going to be working in parallel, so if you have got a great idea, the moment is now to share that. If you have
got a corner on the market, instead of my lemonade stand, if you understand how we can start pushing this stuff out in cartons and by bulk, then I would love to hear that too, because we are always looking to improve.

I know as lawyers we have a lot of bright minds, a lot of fearless advocates, and we are always looking to push the ball further down the field, so I am counting on your help in the remaining six months of my term, and I know that Lori is going to count on your help when the Task Force comes back after its third meeting with this tremendous work product, and the timing is in March of next year, because we understand there is an Assembly meeting in April, so you will see that. And along the way it's the people in this room that I am counting on standing up. There is going to be a process that Vanessa and the leadership has put in place so that you can participate. Town hall meetings, whatever. I think the Hearings Committee is going to be in charge of some of that that we have discussed, so that we can get the input of each and every lawyer that wants to participate, that wants to contribute. So, again, thank you very much for your interest. Thank you very much for your attention, and go forth and do good
deeds. Thank you, Vanessa.

(Appause.)

CHAIRPERSON WILLIAMS: I am keenly aware of the time and that we are over by ten minutes. Unless there is some objection, I am going to resist taking a break. We do have box lunches. I just think we can probably get through the last agenda item, unless there is some strong objection to that, and what this is, we just wanted to offer an opportunity to have some open discussion on the Supreme Court's request for comments as to the proposal on Michigan Rules of Professional Conduct 1.5. We aren't looking to take action, but we wanted to know if there were some voices of the Assembly that had some larger impact so that we could hear it today. So if there are any comments, please move to the mike now.

MS. KITCHEN-TROOP: Elizabeth Kitchen-Troop from the 22nd circuit. I just want to say generally I haven't completely formed an opinion about this, but after reading the materials, I practice predominantly family law in Ann Arbor, and I think that I have some concerns about this concept of value-added fees in the context of family law cases. I feel like we are already bound by the Michigan Rules of Professional Conduct to being zealous advocates for our clients,
and I think this value-added fee sort of incentivizes behaviors or decisions by attorneys that aren't necessarily appropriate in a family law context when you have cases that are very sensitive and stakes that are very high, including, obviously, custody terminations. I also have some concerns about whether or not the client is going to have a clear understanding of what covered fees are determined. It's just general thoughts.

CHAIRPERSON WILLIAMS: Thank you. Chair recognizes the member at the mike.

MR. MASON: Good afternoon. My name is Gerry Mason. I am from St. Clair County, the 31st circuit. About 40 percent of my practice is family law, and I would like to echo what sister counsel said. Judge Duncan Beagle up in Genesee County has a great expression. When there is a criminal case, people are on their best behavior. When there is a family law case, people are on their worst behavior. And we need the attorneys to be driven as zealous advocates by the oath we take as lawyers and not by profit in a contingency type of situation, because when you get a divorce case with clients who are upset or may be behaving badly, if one of the lawyers is, it's an absolute disaster. And I don't think this
would be good for the profession in terms of the
perception of our profession, but I certainly don't
think at the end of the day the clients would benefit.

CHAIRPERSON WILLIAMS: Seeing no other
members at the mike, we are going to close this
portion, and I do thank you for your comments. Again,
it was an opportunity for us to provide information.
Earlier there was a light colored yellow sheet with
the Supreme Court alternatives. We think that we have
collected all of those. If we haven't collected
yours, if you would leave it on your desk, I would
appreciate that.

Just one matter before we adjourn. I did get
a request from a Representative Assembly member to
make a statement. Mr. Kortering, is he still here?

MR. KORTERING: I wanted to thank everybody.
I didn't get hit by a bus or struck down by a friendly
amendment, but I want to thank Ms. Moss and the Awards
Committee for nominating and honoring my father today.
It means a lot to my family and it also means a lot to
the community in Muskegon. We are a small community.
It was very nice, and I will get more say in October.
Thank you. I appreciate it.

(Applause.)

CHAIRPERSON WILLIAMS: As is our custom, the
reimbursement forms are being distributed right now. You can turn those in before you leave. Thanks to the staff for all of your hard work, especially to Anne Smith. Thank you for putting everything together for us today.

So if there is no further business of the Assembly, I will entertain a motion to adjourn.

VOICE: So moved.

CHAIRPERSON WILLIAMS: Is there a second?

VOICE: Support.

CHAIRPERSON WILLIAMS: All in favor of adjourning, please indicate by saying yes.

Is there any opposition?

We are so adjourned. Thank you very much.

(Proceedings concluded at 1:01 p.m.)
I certify that this transcript, consisting of 129 pages, is a complete, true, and correct transcript of the proceedings of the Representative Assembly on Saturday, April 25, 2015.

May 18, 2015

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