Proceedings had by the Representative Assembly of the State Bar of Michigan at Lansing Community College M-TEC Center, 5708 Cornerstone, Lansing, Michigan, on Saturday, April 29, 2006, at the hour of 10:00 a.m.

AT HEADTABLE:

LORI A. BUITEWEG, Chairperson
EDWARD L. HAROUTUNIAN, Vice-Chairperson
ROBERT C. GARDELLA, Clerk
JOHN T. BERRY, Executive Director
JOHN M. BARR, Parliamentarian
ANNE SMITH, Staff Member

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REPRESENTATIVE ASSEMBLY 4-29-06
Lansing, Michigan
Saturday, April 29, 2006
10:02 a.m.

CHAIRPERSON BUITEWEG: The April 29, 2006 meeting of the Representative Assembly is called to order.

Mr. Clerk, is there a quorum present?

CLERK GARDELLA: Yes, I do confirm there is a quorum this morning.

CHAIRPERSON BUITEWEG: Thank you, sir.
At your desk you will see a revised calendar for today's proceedings. May I have the chairperson of Rules and Calendar come forward and move for the adoption of the revised calendar.

MR. LARKY: My name is Sheldon Larky from the 6th circuit. I move that the calendar be amended and we reduce all the times in half and that we try to get out of here by 1:00.

CHAIRPERSON BUITEWEG: Is there a second to the motion?

VOICE: Second.

CHAIRPERSON BUITEWEG: All those in favor. The motion passes.

May I also have a motion to approve for floor privileges as speakers in front of us today those individuals who do not automatically have floor privileges by way of the Permanent Rules of Procedure.

VOICE: So moved.

CHAIRPERSON BUITEWEG: Is there a second to the motion?

VOICE: Second.

CHAIRPERSON BUITEWEG: Okay. And all those -- is there any discussion? All those in favor of the motion to grant floor privileges to the people who are on the agenda and do not automatically have privileges, please say aye.

Any opposed.

Motion carries. That will save us time later. Mr. Larky, I am headed in your direction.

I would like to call forward the chair of the
Nominating and Awards Committee, Mr. Carl Chioini, to move for the adoption of the proposed members, interim members.

MR. CHIOINI: Madam Chair, we have three vacancies, the 6th judicial circuit, and the committee has nominated Daniel Quick. Daniel Quick, unfortunately, is not here this morning. He is in Hawaii. Given the choice.

We have another vacancy in the 44th -- that's a good excuse -- 44th circuit would be Michael J. Olson of Howell. Michael had some obligations, and he could not be here, but he does want to participate.

We have a vacancy for the 57th circuit, Ms. Jennifer J. Schafer of Petoskey. I don't know if Jennifer is here this morning or not.

I would move for the nomination of these three individuals.

VOICE: So moved.

CHAIRPERSON BUITEWEG: Is there a second?

VOICE: Second.

CHAIRPERSON BUITEWEG: It's been moved and seconded to nominate Dan Quick from the 6th circuit, Michael Olson from the 44th circuit, and Jennifer Schafer from the 57th circuit for the task described in the memorandum attached to the materials. Is there any discussion?

All those in favor.

Any opposed.

Motion carries.

Moving right along. I would like to take a
moment to introduce the folks who are up at the front

table here just so that you will know who they are if

you are a newer member. We have a number of new

members with us this morning, and I was pleased to do

an orientation for them earlier, and we would like to

welcome them to their first meeting.

Anne Smith is the assistant, executive
director's assistant, and has put all of the materials
together for us today and was here very early this
morning putting everything at your seats and has been
putting forth a lot of labor to make this thing
happen, so thank you, Anne.

John Berry, executive director of the Bar,
who is going to speak to you shortly.

John Barr, who is sitting in for Cynthia
Stephens today as parliamentarian on very short
notice. Mr. Barr is a principal in the law firm of
Barr, Anhut & Associates and has practiced law in
Washtenaw County for many years. He is a former
member of the Representative Assembly and the Board of
Commissioners. He has served as parliamentarian for
both of those bodies.

Presently John is on the State Bar of
Michigan Awards Committee and serves as a hearing
panelist for the Attorney Discipline Board. He
represents a number of municipalities and nonprofit
organizations and is called on frequently to give
legal opinions on parliamentary procedure. Thank you
very much, Mr. Barr, for filling in for us as
parliamentarian today.

And we have Ed Haroutunian, Vice Chair of the Assembly, and Bob Gardella, Clerk of the Assembly, and Connie, our stenographer.

Moving right along on the agenda. If you could please turn to item three. Really rather than provide you with lengthy remarks, I wanted to take my opportunity for the chair's remarks to call your attention to this chart which the leadership had asked the Governmental Relations Department to publish for us so that the leadership of the Assembly and the Assembly members could better track what's going on with the proposals that we have taken up in the past, and we think that this chart is going to be very helpful to all of us in recalling what positions we have taken and what the status of those positions is.

And in conjunction with that you will see three proposals at your desk, at your seat, that pertain to proposals that -- two of them pertain to proposals that were recently adopted by the Assembly, and it's our understanding that the Supreme Court may move before the September meeting on the adoption of those proposals in some form or another.

The proponents of those proposals see a need to amend them, and we would like to be responsive to
those needs and do that prior to the Supreme Court
taking action, and so that is why those two items are
on the calendar at this particular time, because they
pertain to the status of past proposals. As does the
proposed amendment to Permanent Rule 4.8, also
pertains to the status of past proposals. And so
that's just an explanation of why they are where they
are on your agenda.

Lastly, I would just like to ask for your
future feedback on the way the meeting feels to you
today. We took information and suggestions from the
Assembly Review Committee and also from things that we
learned from the Bar Leadership Forum up on
Mackinac Island last year about making meetings more
meaningful for the people who attend them. And so we
took those suggestions to heart, and we have been
providing this morning the Practice Management
Resource Center.

I hope you have had a chance to go back there
and look at the software and learn about the center,
and we are going to have JoAnn Hathaway talk about it
a little bit more later on in the agenda, and you will
have two more opportunities to go back there if you
haven't already, at lunch and after the meeting.

We have also asked for an educational

presentation during the lunch hour. The Law and Media
folks are going to be here for a very interesting
presentation during lunch, and Kathy Kakish, the
liaison, will tell us a little more about that later
as well.
So we are trying to make your time worthwhile by cramming as much as we possibly can into this agenda and still give you time to enjoy some sunshine. So please send me by e-mail or phone your comments about how you like this or don't like this, these changes to our meeting, because our goal as leadership is to be responsive to your requests and your needs.

So that concludes my remarks. I would like to invite Terri Stangl to the podium to present the Justice Initiatives' proposed revisions to MCR 2.402(C).

MS. STANGL: Thank you, Lori. Good morning everyone. Terri Stangl from the 10th judicial circuit. I am here today as a member actually, not on behalf of Justice Initiatives, but this does relate to a proposal that was brought originally to this body by the Legal Aid Committee in 2004, and it was adopted by the Representative Assembly, and it concerned two Court Rules that were intended to ensure that the parents of minor children received actual and timely notice in guardianship proceedings, particularly temporary guardianship proceedings. This body proposed language to the Supreme Court which was published this year for comment.

When those rules were originally adopted by this body and prior to that time they were circulated by Legal Aid Committee to about five or six different Bar entities and sections and judicial conference for comments, and at that time there were no comments that were raised.
Since the time that the rule has been published, however, State Bar has received some comments and suggestions from individual judges and from other members of the Bar.

Because the Bar wishes to ensure that the proposal that is considered by the court has the benefit of some of these ideas but without taking any action to rescind what is there, because in terms of our credibility with the court I believe it's very important that if we put a proposal forward that we can engage in discussion but we not pull it back.

My proposal -- two things. The first one is that the State Bar be authorized to have discussions with these interested stakeholders to find out what their approaches and concerns are, and if there is a consensus position about how to improve the rule, that the State Bar should be authorized to communicate that to the court so that there can be a discussion, we can hear the ideas, if we agree that there is a better way do something, that can be communicated. That's the first proposed resolution.

The second one is a technical change that the probate and estate council and a couple of judges have mentioned, which we completely agree with, it was our original intention, and what it does is it makes sure that children age 14 and older continue to receive notice of the proceedings affecting them, which is the current law, the current rule, and just by the wording, inadvertently it looks like it could be the parent or the child, and that was not the intention.
So I would like to handle these matters separately, and initially I would move for the adoption of the first resolution on the handout that you received today. The language of that resolution starts on page two and continues onto page three.

CHAIRPERSON BUITEWEG: Is there a second to the motion?

VOICE: Support.

CHAIRPERSON BUITEWEG: Is there any discussion? It's been moved and seconded to adopt the first revision to the proposed changes to MCR 2.402(C).

All those in favor please say aye.

Any opposed.

Motion carries.

MS. STANGL: My second motion is adoption of the second resolution concerning the wording change to the proposed Court Rule. That is on page three of the resolution I have provided.

VOICE: Support.

CHAIRPERSON BUITEWEG: I have heard a second to the motion. Is there any discussion? All right.

All those in favor say aye.

Opposed.

Motion carries.

Thank you, Terri.

I would next like to invite to the podium Mike Blau, who is the spokesperson for the Justice Initiatives Committee, to discuss the proposed revisions to the proposed changes to MRPC 6.1?
MR. BLAU: Good morning Michael Blau, 22nd circuit. This is the rule, Michigan Rule of Professional Conduct 6.1. It's a voluntary standard for pro bono service.

Back in November of 2003 the Assembly adopted two proposals, one that would basically set the voluntary standard in Michigan for pro bono service at 30 hours of service or three cases of pro bono service per year.

VOICE: Can you speak up a little bit? Back here we can't hear you.

MR. BLAU: Sure. This rule basically, in November 2003 the Assembly supported a voluntary standard which called for 30 hours of pro bono service or three cases per year or a contribution of $300 for pro bono service on an annual basis, also broadened the scope of what would be looked at as pro bono service recognized by the Bar.

The proposal that is being brought to you this morning is basically to amend that standard of the contribution of $300 to add two words, or more, and that derives out of basically the Southeast Michigan Access to Justice Corporate Committee had suggested that minimum contribution of $500 for lawyers who are in a position financially to be able to do that would be appropriate.

So the only change that is being asked to be made in the proposal is to add the language "or more," and if you look on the second page of the handout, the suggested resolution is that we are asking that State...
Bar of Michigan support Justice Policy Initiatives' request to further recommend that change in MRPC 6.1 to allow credit for pro bono service to be based on a two-tier system of either a contribution of time or a financial contribution.

So I would ask that there be a motion that in effect this change be allowed.

VOICE: So moved.

VOICE: Support.

CHAIRPERSON BUITEWEG: It has been moved and seconded that the State Bar of Michigan should support the Justice Policy Initiatives' request to further recommend changes to MRPC 6.1 to allow credit for pro bono service to be given based upon a two-tier time and money system.

All those in favor.

Opposed.

The motion carries.

MR. BLAU: Thank you.

CHAIRPERSON BUITEWEG: Thank you. Thank you, Mike.

Next I would like to call to the podium Michael Pope, the chairperson of the Rules and Calendar Committee, who will present to you the proposed revisions to the Representative Assembly

MR. POPE: With the 9th overall pick, the Detroit Lions select. I just always wanted to do that.

Michael Pope, 32nd circuit, chair of the Rules and Calendar Committee. You have before you a proposal to change or amend the permanent rules of the Assembly, Rule 4.8. What we are attempting to accomplish with this is two things.

The first paragraph addresses timing as far as follow-up procedures concerning our proposals to the Supreme Court. Second part is adopting, the second paragraph is adopting a procedure where our future officers and chairs will have some means to know what the Assembly has done in the past and what's out there still pending.

The Rules and Calendar Committee felt this was appropriate as it would provide a reliable system for follow-up with the Supreme Court and a system that would assist future chairs and officers.

With that, I guess I would ask for a motion to adopt the amendments to Permanent Rule 4.8?

VOICE: Second.

CHAIRPERSON BUITEWEG: It has been moved and seconded to make the proposed changes to Rule 4.8. Is there any discussion?

MS. FERSHTMAN: Thank you. Julie Fershtman, 6th circuit, past chair of the Assembly.

I speak out in opposition to the proposal,
and I could take bits and pieces of it and tell you why some would be good, some would be bad. Given the time constraints today, I think it makes the most sense to just take this proposal and commend the people who brought it forth but drop it, and the reason is this.

On the positive side, what the Assembly is trying to do here is very commendable, if not essential. It's important that everything that we do with these meetings gets followed up upon and action gets taken, but the problem is, in practice, I think this could be dangerous, if not suicidal, to the continued existence of the Assembly. And the reason is that discretion really is the key when we are talking about the actions of the Assembly and the following up that takes place from the time the meeting occurs into the future.

And take a look at what we have already got. If you look you can see that Lori and her good leadership has put together a grid, and we can see the grid at all of our meetings. The Board of
people within the Bar who can use their discretion, use their contacts, know how the system works, and with the prodding, if needed, from the Assembly leadership, they can come forth, they can try to get action taken on these proposals, as can everybody sitting here today.

Institutionalizing how we act, requiring that there be meetings, being in the face of the Michigan Supreme Court, I submit to you, is a mistake, and we should not let this be part of the way the Assembly works. Thanks.

CHAIRPERSON BUITEWEG: Other discussion?

Mr. Haroutunian.

VICE CHAIR HAROUTUNIAN: Madam Chair,

Ed Haroutunian from the 6th judicial district.

I think Julie's comment is well taken, particularly with regard to the issue of discretion. And, therefore, I would move that two words be changed in this proposal, and it's the 8th line down from the top, the word is "will" and to change the word "will" to "may" and also the 10th line down, toward the end of that line, the word "will" to be changed to the word "may," and by doing that I believe that Julie Fershtman's comment in effect becomes implemented in this proposal, which I think is certainly very important for this organization, and, therefore, I would so move that the proposal be amended in that fashion.

CHAIRPERSON BUITEWEG: Does the proponent accept the friendly amendment?
MR. POPE: Yes, I would.

CHAIRPERSON BUITEWEG: Is there further discussion?

MR. ROMANO: Point of clarification. Could you identify again, please, the location of the changed words.

CHAIRPERSON BUITEWEG: Yes, certainly.

Beginning with the sentence that reads, If no response is received after six months, the governmental relations department of the State Bar of Michigan, instead of "will," it says "may" send a letter to the clerk of the Michigan Supreme Court, et cetera, et cetera.

The next change is beginning with the sentence, If no response is received after two months, the governmental relations department, rather than "will" would say "may".

MR. ROMANO: Thank you.

CHAIRPERSON BUITEWEG: Further discussion? Can you go to the microphone, please, and identify your name and circuit. Thank you.

MR. GOBBO: Steve Gobbo from the 30th district.

I think this will be an easy one. I think there is a word missing in the first sentence, prepared no later than ten business days.

CHAIRPERSON BUITEWEG: Do you accept that modification, Mr. Pope?

MR. POPE: Yes.

CHAIRPERSON BUITEWEG: Thank you for pointing
that out.

Is there any further discussion?

MS. FERSHTMAN: I get to speak; it's a new motion. I leave it to our parliamentarian, but it's a different motion because it's been amended. I don't know if I have privileges, but I believe I do.

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CHAIRPERSON BUITEWEG: You may speak a second time.

MS. FERSHTMAN: I will be brief. The amendment is commendable, because it does allow that discretion on the part of the Bar and the Assembly, but the point still is discretion, and why institutionalize this mechanism for follow-up when we can leave it to the Representative Assembly with the grid, with the point being made of what's being acted on and what isn't. Why don't we leave it with the Assembly to simply do what it believes is necessary and the Bar staff to do what it believes is necessary to make sure that our proposals receive proper follow-up.

You are still forcing yourself to follow or at least try to follow a certain mechanism. Why do it? I say we drop the whole proposal, commend everybody for their interest in getting things to move ahead, but work in different ways, use your discretion and let this go.

CHAIRPERSON BUITEWEG: Further discussion?

JUDGE KENT: Wally Kent, 54th judicial circuit. I agree with Ms. Fershtman. Guidelines have a way of becoming mandates whether so rephrased or
not. We have seen it time after time, guidelines are

expected to be followed or we are disciplined for or
criticized for failing to follow them. Let's not put
it down in black and white. If it works, let's do it,
but let's not require it. Thank you.

CHAIRPERSON BUITEWEG: Further discussion,
Mr. Rombach.

MR. ROMBACH: Yes, Tom Rombach, 16th circuit.
I am speaking against the proposal, and, again, I
think it's made with the best of intentions. I like
the amendment language too, but Julie Fershtman, our
previous Representative Assembly chair, and a number
of other folks have worked pretty closely with the
Supreme Court to get them to listen to us, and it's a
pretty tenuous relationship.

I am not sure if I would put it in as stark
terms as Julie did that this could rise to the effect
of eliminating the Assembly. At the same time,
anybody that reads the Court Rules can indicate that
the State Bar is not the final arbiter of what goes on
in our profession in the state. It's the Michigan
Supreme Court. And if I were in charge of something
and somebody else dictates to me, well, look, if you
don't respond appropriately, we are going to take
action, and we don't have any of the cards in our
favor and all the cards are face up, I don't think
it's a real smart strategy to adopt if we are trying
to kiss up to them to get something adopted.

    Now, I would, you know, point our attention
to things that first started when I was Representative
Assembly Chair, such as the ethics revision, known as
ABA ethics 2000. Last time I checked it's 2006. We
were first taking this up in 2003. I was told, hey,
we can back off. We have got a little bit of time.
Then we took up in a very deliberative process in a
number of our meetings to do an exceptional job and
put that before the Michigan Supreme Court.
    Again, I checked their docket, and they
published three proposed different standards that we
have all debated again, but they haven't acted on that
yet either.
    Now, I am not quite sure we are in a position
to walk in there two months later and say, hey,
Supreme Court, what's happening with this? Then a
couple months later walk in and say, hey, we are going
to insist on a meeting with your staff because you
haven't enacted something that's taken six years to
put into effect.
    So, again, I would defer to the strategies as
adopted by our elected leadership, our Board of
Commissioners, our elected leadership on the
and I wouldn't even suggest how we should do that on a case-by-case basis. Some things we should move faster on, and other things we need to be more deliberate, so I speak forcefully against this proposal. The best of intentions; it's just not what we should do. Thank you.

CHAIRPERSON BUITEWEG: Thank you, Mr. Rombach.

Further discussion? Mr. Romano.

MR. ROMANO: Vince Romano, 3rd circuit.

The Supreme Court may take its time paying attention to what we do, but they certainly pay attention. I speak against the proposal along the same lines that Julie and Tom just did, two distinguished leaders of this group.

The Supreme Court will be aware of it. They will become aware of this rule, and I just think it casts us in an unfavorable light for them to look at this rule as creating a mechanism whereby we can lean on them. They will only be leaned on when they consent to being leaned on. I think this proposal is poor choice.
All those in favor of the proposal, please say aye.

All those opposed.

Motion fails.

Thank you, Mr. Pope.

Our next speaker is Mr. Tom Cranmer, the president of the State Bar of Michigan. Mr. Cranmer is, because we have so many new members, going to give us a little overview of some of the State Bar structure and introduce those members of the Board of Commissioners who are here today as from the Executive Committee and also give us an update on the Custodial Interrogation Task Force, which is in keeping with our monitoring of past proposals. This was something that was passed by the Assembly at our previous meeting.

Mr. Cranmer, thank you for coming.

MR. CRANMER: Good morning to everyone. I am going to talk a little bit about the things that Lori has asked me to talk about, but I am going to probably throw her a bit of a curve and spend a little more time talking about something else I think you all ought to be aware of.

Let me talk first with what's officially on my agenda, which is update on Custodial Interrogation Task Force. As this body will remember, one of the, I think, important things that we adopted last year was support for the principle that with regard to

typographical error of the "than" inserted between "later" and "ten" and the two words "will" changed to "may".

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custodial interrogations that they ought to be
recorded, either in an audio sense or a video sense,
and what you directed that we do is to appoint a task
force to take a look at this very important issue, and
that's exactly what we have done.

If you look around to the various screens
situated around the room, you will see the members of
the task force. I am not going to go through and list
each of the individuals, but it will take you just a
moment in glancing at the list to see that it's a very
distinguished list of individuals, chaired by our
immediate past president, Nancy Diehl, prosecutor with

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the Wayne County Prosecutors Office, and Valerie
Newman, who is with the State Appellate Defenders
Office.

In addition to both Nancy and Val there are a
number of individuals, both judges, police chiefs,
representatives of various committees, and I think it
will be an excellent task force, and I am looking
forward to their fine work.

Let me next shift to talking just a little
bit about the structure of the State Bar. I have to
tell you, when I looked at the slide I said, wow.
It's got all the information. It's not as confusing
as it might seem. Let's start at the top, and, again,
I am not going to spend a lot of time on this, but I
want to talk a little bit about it, because we have
made some reference to it earlier today.

The State Bar is an interesting organization
for a whole host of reasons, but not the least of
which is that we were created, in the upper right-hand corner, by the Legislature, but we are actually supervised by the Michigan Supreme Court. And that creates for some interesting dynamics, to be sure.

As many of you know who are veterans, I think, of the Assembly we a number of years ago did not have the best of relationships with the Michigan Supreme Court. I think that's changed substantially over time as a result of a number of things. I think it's changed as a result of the good work done by this body, the Representative Assembly, in taking on issues of substance and providing cogent comments to the court for their consideration, and all you have to do is look at something that we mentioned just a few moments ago, the ethics 2000 project and the work that this body did with regard to attorney discipline issues.

I think it's also been a product of the hard work of John Berry and staff who have significantly improved the relationship with the Supreme Court. I can tell you that I have had a number of interactions with the court, and the fact that the staff is being led by John Berry is something that's repeatedly brought to my attention. They have great confidence in John.

And then also I think the work of the Board of Commissioners has helped in terms of solidifying the relationship with the Supreme Court. We now meet on a regular basis with the Supreme Court. I meet about once a month with the court, along with our
But one of the things I do want to assure you about is the court is aware of what we are doing, both at the Board level and the Representative Assembly level, so have confidence that the things that are of importance to you do get communicated to the Court, and the Court is aware of those items.

Being mindful of Sheldon Larky's proposal earlier, I am not going to spend a lot of time on the internal structure of the State Bar, but what I am going to do is talk just a little bit about some of my observations as the president, since I am about halfway through, because I think they impact all of us in this room.

It has been a tremendous honor to serve as the president of this organization, but I want to tell you that it is one that presents continuing challenges, I think not only to me but to you people as well, and I think one of the biggest challenges that we have -- I kind of had a sense of this coming in, but it's been reinforced since I have gone out and spoken with some of the different Bar associations -- is letting people know what we do as an organization.

We continue to be a great mystery to our members out in the field, and I think that's true for probably three reasons. The first is that there is a
certain degree, candidly, of just disinterest and
apathy, and I think that's perhaps as a result of the
difficulties of the practice, the fact that many of
our members I think want to spend more time, devote
more time and energy to things at home, their home
life, and perhaps just disinterest in general. And
there is a certain portion, I think, of our membership
that we are always going to have difficulty in
reaching.

The second reason I think is that we as an
organization are not great self promoters. John Berry
has certainly said this before, and I think he cringes
a little every time I say it, but it's absolutely
true. We are great inventors, we have wonderful
programs, and we are terrible marketers. We do a
terrible job, I think, of getting the word out to the
folks, our members, as to what we do.

Candidly, that's true with this body, it's
true with the Board of Commissioners, it's true with
the State Bar as a whole. We have to do a better job.
It's been one of my goals this year, and I think with
more effort we can do a better job.

And then lastly, I think that we have to do a
better job individually in terms of getting the word
out. One person, the president, can't possibly

deliver the message all by himself or herself. You
are the elected leaders of the Bar. We as a group
have to do a better job of communicating to our
members what we are about and what we are doing.

And the good news in that, as far as I am
concerned, is that we have great news to communicate.
The Bar, I think, is doing a wonderful job in terms of
serving its members. We have terrific programs, but
we have got to get people to understand what it is
that we have.

One of the things I find most discouraging as
I am out there talking to people, people are still
amazed that we have something called the e-journal,
and that's been out four, five, or six years. It's an
award winning program that was literally copied by the
American Bar Association, and for some folks that's
still a mystery, that's something brand new. And I
kind of smile to myself when I talk about that.

But the latest thing that we have, which I
hope you have already seen, and if you haven't you
take the opportunity to see it, is our Practice
Management Resource Center. The Practice Management
Resource Center is something we talked about for many
years and is a wonderful, wonderful tool that should
help the vast majority of our members.

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If you look demographically, we have got a
membership that is largely composed of solo
practitioners or people in small firms, and there is
no reason that individuals who go out and practice
should have to reinvent the wheel for things like time
management, how I should handle my files, how I should
capture my time, how I should bill my clients. All of
those things are things that we should be able to share with each other to be that much more efficient, that much more productive, and to make a better use of our time, and that's what the Practice Management Resource Center is all about.

But I can tell you from my own experience it's going to be months, if not years, before we get that word out unless we all kind of work together.

One of the great suggestions I saw in our materials that Lori put together was the idea about taking notes from the meeting and writing an article for your local Bar association. That's one of the ways, but another way I think is just talking it up. Again, as elected leaders, I think communication goes two ways. Hopefully you are getting information from your membership to bring to the meeting as far as your positions are concerned, but we also have to be communicators ourself and let our members know what it is that we are doing.

Again, it should be a task not only that we have because we are the elected leaders, but it's a task we should welcome because we have an awful lot of good things going on at this Bar association, both in terms of programs and the various positions that we have adopted and the policies that we are trying to seek to have implemented by the Supreme Court.

So I urge you to do that. I urge you to be a communicator with me, and I think if we can all work together to do that we will do a better job of communicating with our members. Lori, thanks.
CHAIRPERSON BUITEWEG: Thank you, Tom.

(Applause.)

CHAIRPERSON BUITEWEG: Thank you, Tom. And I have a question for you. No, not for you, Tom, for the Assembly. If I were to try to put together a synopsis of what happened in today's meeting in a narrative format and sent it to all of you by one of the e-mail blasts, hopefully you have been getting those, how many of you do you think would take that and edit it however you wanted and pass it along to your local Bar publication? Okay. I will do that, and I would ask you to follow up then on that.

Now next on the agenda we have John Berry who

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is going to speak to us about our new strategic plan and give us the financial update on behalf of Jim Horsch, who is unable to be with us today.

MR. BERRY: Good morning, and I did listen to that first vote you had about time, so I will be as quick as I can on this.

It is a privilege to follow our president, Tom Cranmer, and a privilege to represent a staff that works extremely hard and to know that he is looking for the very best in this organization. Tom, I don't cringe when you say we need to market more. I am right with it. In fact, it's a great lead-in to my presentation. I couldn't agree more that we need to continually strive to be better at what we do and also to sell that.

I will have a short presentation by slides on two topics that obviously tie together. One is a
modification of our strategic plan, and the other is the finances and the fuel that drives that engine.

So, Nancy, the next slide, if you could.

Our strategic plan, your strategic plan that you approved and is proposed today for slight modifications has various components to it, and, very quickly, the first one is the programs and services goal, and I want to report just quickly a couple items

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on each one these areas about where we are at with it and what it means, but the bottom line is we are going to provide programs and services, advance its mission, respond to member needs, and exceed members expectations.

The first example to report back to you is that your issues committee presented to the Bar that UPL was an important issue to you, and I don't know how much information you got, but I have been involved in UPL effort for over 20 years in this country and actually supervised the largest effort in Florida ever, and I want to tell you proudly that we received a jail time for one of our UPL folks recently, and not only was it jail time, it was 220 days of jail time. This may actually be the longest jail time, I haven't researched it yet, but it may be the longest jail time in the United States for UPL. It was someone which we had gotten an injunction, continued to rip off folks, and we got him put in jail, got restitution and got a fine.

And I want to tell you we are listening to you. We can't prosecute everybody that's engaged in
this area, but when you have a prosecution like this, the word gets out we are serious. And we continue to try to educate people about why you don't go to them.

Also, under programs and services we have been working very much with ICLE and others to try to help in the educational effort, to try to be able to with your solo -- how many people have been to the Solo Practice Institute, by the way, here? Many of you have reported back that that's a good program, and we are joining together with them in our and actual meeting to work on that as well.

Next, public policy goal, will aggressively advocate for issues that support its statement of purpose, minimize divisiveness and are achievable. As you know, the Bar has focused much more now on helping lawyers at their desk, but we also pick some battles, and when it's Keller permissible and when we are united as a Bar, we are effective at going to the Legislature.

Tom Cranmer also recently went to represent all of us in an educational effort. We are trying to bill the fact that we are not just there to hand out to get what we want, but we are also there to help the Legislature and our society understand very complex legal issues that are out there.

In reference to the next slide, Nancy, human resources goal, we are continuing to try to improve the staff that we have. We are continuing to try to
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improve the diversity that we have within the Board and the Rep Assembly, working together in those areas. I am going to talk briefly in a minute about our fiscal resources and where we are at and where we are headed.

The structure and governance goal on the strategic plan, there has been incredible progress that you have already heard from our president in this body itself over the last several years on the work that you have done and also in the effort to coordinate between the Board and the Rep Assembly. There is much more discussions back and forth over the agendas and on how we can make sure we are not redundant and that we are engaged in the most effective way to be able to help in the Bar.

Now, the next thing I would like to quickly talk to you about which are in your materials is the revisions to the strategic plan. The strategic plan really has kept its core issues to it, and there has not been a major change to it, but there has been some tweaking and some emphasis.

The first one is the Practice Management Resource Center, which is an effort to help lawyers at their desk, and you have heard from Tom about that, you have heard from me about it. JoAnn is going to be able to describe it, and please, please, even if it's
five minutes, when you get a break, go back to the
back and take a look. We worked with the Law Practice
Section to help us, the Management Section to help us
with that, coordinate. We continue to work with them
on it.

Another emphasis of the strategic plan is to
strengthen the character and fitness program, to take
a look at all ways, both in a procedural way, to make
sure -- it's been a long time since we have looked at
the procedures of that process, and are we doing it in
the most up-to-date way, and are we getting the right
decisions out of it. So we are going to be
emphasizing that.

The other, you will hear something about
this, is continue to participate in the discussions of
e-filing and educate, not only educate our members
about it, but listen to our members' needs concerning
it.

One of the areas we need to talk to our
members about, and we are not exactly all of one mind
on this, is certification and designation. There is a
lot of positives to certification/designation, but
there is also some who feel that's not the best way to
go, and so we will be seeking input from you, and we

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will be seeking input from our members as to what to
do concerning that.

And then, finally, establishing the ability
of the Bar to be known by the media, the public, and
members as a source of reliable information on legal
issues. Again, the effort that we had, both in the
Legislature, but in many other areas, one of the programs we started fairly recently was our Public Policy Resource Center, which is a spinoff of the e-journal, which is not just top down legislative information and issues, but it's educating our members and our sections and our committees and the individual to say what's going on and what might be important to you and how can you best be able to react to those issues.

Final set of slides on this particular issue is the recent accomplishments. I have mentioned already the UPL and ethics, Practice Management Resource Center, and I find it a little humorous as well, as Tom mentioned, and I won't mention the folks that this occurred to, but many of the leaders of our profession in this state still are under the thought processes that we actually reduced our lawyers and judges assistance program. Well, that is correct, five years ago. When we were in financial difficulty we moved back off of one person from lawyers and judges assistance. When we did, I kept the promise to Bill Livingston that not only would we come back and replace that position, but I felt that the Representative Assembly and the Board felt like we should do even more, and we are doing more.

So we not only have replaced what we lost, but we now have additional resources to help judges, to help lawyers that are in trouble dealing with drugs, alcohol, stress, gambling or whatever else, and both help the lawyer and help our profession and
protect the public.

Two areas that I think directly go to the issues that Tom raised that the Board has approved under our strategic plan, that you approved, that this is sort of the implementation of it, is that we have an outreach and external affairs manager and a research and development director. What's that mean?

We think it's vitally important to share with our membership and every constituent group and member of the Bar what we are doing. Candace Crowley is back here. Candace is our new leader of that effort. Most of you know her from her tremendous efforts in Justice Initiatives, and we needed a bright lawyer. We got one. We needed somebody who is known by everybody in the world. If you don't know Candace, you are probably the only person in the state that doesn't know Candace, and she will be going out to share what we are doing, to talk about these issues.

And Charles Toy and I were talking a little while earlier, just as Tom was, probably four years from now we are still going to be trying to get to more people to tell about the Practice Management Resource Center. With Candace's help, I think we will have fewer people that we will have to go out and tell than we would have before.

Connected with that is a new research and development director. Ann Borman is back here. Ann, I would just like to introduce you as well. Ann comes to us from tremendous experience, both educationally and working with the court and many agencies,
envisioning and taking information from our membership
and nationally and looking at what are the big picture
issues that are affecting you and then providing
options to this body, options to the Board, options to
our membership of how we can deal with it.

So instead of constantly being like a goalie
in the playoffs trying to fend off hockey pucks, we
are going to take the offensive, and we are going to
see what areas need to be worked on, and between those
two areas I am very hopeful that it may be less than a
year, but in two or three years Tom can come back and
say they listened and that we have really gotten more
active in this area.

Final comments I want to give you and then
turn it over to the body is where we are at
financially. Now, the good news is -- how many people
here love Power Point presentations, raise your hands.
Are you nuts? If Jim Horsch was here we would have 62
Power Points. This is what an accountant and CPA
loves is Power Point presentations. I have reduced it
down to, I believe, three, and it was a good thing,
because I wouldn't be able to get through my
presentation.

First one, when I first came here we were in
a situation in which we were in heavy deficits. Now,
this is not to paint John Berry as a greet person and
the previous people as bad people, because there are
cycles, and I came in a situation where you hadn't had
dues. There were other reasons as well, and I think
we became much more efficient and we made some tough
choices through our Board and this Rep Assembly and
others, but we started building upon surpluses, and
over the last number of years, based upon cuts, but
also based upon some very efficient work, we were able
to build surpluses in the Bar. And so, as you see,
that has built over the last number of years.

Now, I will say that in the upcoming years we
are going to start getting closer to balanced budgets,
and then ultimately you are going to get into a
situation where you have deficits. Even if you cut
programs, there is a point in time in which the
accumulation of inflation and the accumulation of what
happens in organizations eventually catch up to you.

I want to point out something to you under
the strategic plan that you approved -- it hasn't been
changed in this new modification -- is the statement
that says we will seek a dues increase when necessary
and we will seek every other method first to avoid a
dues increase.

I want to remind you, and also I want to
thank you, I want to remind you that by the time --
and let's show the next chart, Nancy. Two other
charts, then I will finish that thought.

Our administrative fund also has gone up
during this entire time period, which gives us good,
not only a good surplus year to year, not only a good
program programmatically, but our resources, the
amount of money that we have available for rainy days
has improved as well.
Final one. This is what I want to talk to you about. This projection says by the year 2009 and 2010 we'll have reached the point where we will be getting dangerously close to having less than a 33 and a third percent minimum reserve line, in other words money in the bank, savings. When we hit that point is when you normally are going to need a dues increase.

Now, I wanted to give you some perspective on this. All of the programs you have heard about, all of the continuation of the e-journal, the Practice Management Resource Center, the Public Policy Resource Center, all of the efforts we have made have been done with one $20 increase, and by this year over almost 17 years.

When we came to you before you approved a $40 dues increase and a cost of living increase, we got $20 of that and basically covers inflation. So I am here to tell you, first of all, in celebration that we have been good stewards of the money that we have had over this time period. I am also here to tell you the good news is for both Tom's term and Kim's term of president they don't have to worry about a dues increase. As it gets a little further down the line, that thought will come up, and I won't name names. Some people maybe even in this body may be listening
to me closely.

But as we go through the process we have projected out so that we can make decisions as we go to try to look at programs and see where we can cut and deal with the issues, but I do want to give you both the short-term, the past history, where we are at now and where we are headed.

Bottom line conclusion, you have an excellent strategic plan that you approved, and I thank you. It's being acted upon in strong ways. We need to sell it, as Tom says, and I believe financially we are very secure now. We intend to stay that way.

So I thank you again for the opportunity to serve you as your executive director on behalf of the entire staff, and I leave it to you for your decision making from here on out. Thank you very much.

(Appause.)

CHAIRPERSON BUITEWEG: Thank you very much, John. And just to sort of expand on what Tom Cranmer and John Berry have said, you are all probably leaders in your local Bar and in your communities, and there may be things that your local Bar would like to do or could use a little help with, and I just encourage you to get to know who the staff is at the State Bar, who they are, what their responsibilities are, because they can and will be incredibly helpful to you in your efforts to promote various projects at the local Bar level. I think you will be very pleasantly surprised at how welcoming they will be to your requests for input and for assistance. So I hope I am not speaking
for them, but I think that's the case. We have got a great Bar staff.

Next I would like to introduce Tom Rombach, who is going to present a proposed adoption of the revisions to the strategic plan. Mr. Rombach.

MR. ROMBACH: I am Tom Rombach from the 16th circuit. I would like to thank the members of the Special Issues Committee on whose behest I am standing before you today. In contrast to Sheldon's remarks, I would like to name them. John Reiser from Washtenaw, Victoria Valentine from Oakland, Barbara McQuade and Susan Haroutunian from the 3rd circuit, Wayne County, Christian Horkey from Monroe, Adrianne Iddings from Lenawee, Dan Harris from Emmet, and Ron Foster from Ottawa where we had not been represented a significant portion of time.

John Berry has outlined the strategic plan as a critical blueprint to the State Bar's future direction. It describes the policy and management goals of our organization. As a management document,
Last year the strategic plan was revisited and revamped by the State Bar Board of Commissioners with input from the Representative Assembly.

The Representative Assembly committee that I chair, the Special Issues Committee, now believes it's the appropriate time to consider the revised State Bar strategic plan.

I believe that the revisions of the State Bar strategic plan must be approved. Just as in 2003 the strategic plan may not yet be perfect, but I believe it's a vision that we could all pretty much agree upon.

On that basis I would like to move that the

provisions of the strategic plan for the State Bar of Michigan arising from the March 10, 2005 strategic plan Retreat from the Board of Commissioners be adopted.

CHAIRPERSON BUITEWEG: Is there a second?

VOICE: Support.

CHAIRPERSON BUITEWEG: Is there discussion?

It's been moved and seconded to adopt the amendments to the strategic plan for the State Bar of Michigan.

All those in favor say yes.

Opposed

Motion carries. Thank you, Mr. Rombach.

Is Mr. Erwin here? A moment, please.

I would just like to take this opportunity to have you notice we are 40 minutes ahead of schedule.
At this time I am going to introduce Mr. Dan Dalton who is going to introduce the proponent of this -- or this is not a proposal. I am sorry, this is an informational presentation on the trust account overdraft rule. So, Mr. Dalton, welcome, and the podium is all yours.

MR. DALTON: Thank you very much. Good morning, everybody. My name is Dan Dalton. I am with the Client Protection Fund. What the Client Protection Fund does is we are a part of the State Bar, and we review clients' inquiries and complaints where attorneys take money from the clients and very essentially looking at those claims to determine whether they should be reimbursed from the Client Protection Fund. It's a great agency within the State Bar.

By way of background, I am an attorney with the law firm of Tomkiw Dalton in Royal Oak. Today I will be introducing a number of speakers to talk about this proposal. Joe Garin of the law firm of Lipson, Neilson is here. He will do a presentation. Fallasha Erwin will be answering questions. He is the chair of our committee, and Roshunda Price, who I just saw, will also be answering questions as well.

Why are we here today? We are here for a very important reason and that is the consideration of a rule that will be introduced at the next meeting in September in conjunction with the State Bar Foundation, the Attorney Discipline Board, and the Attorney Grievance Commission for trust overdraft
21 notification in the state of Michigan.
22 Why is this needed? In the last four years
23 the Client Protection Fund has paid over $1,028,414 to
24 clients whose funds were taken by attorneys, not that
25 many attorneys. It's probably a handful or so of

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1 attorneys altogether.
2 What we have noticed through analyzing these
3 claims is typically attorneys start real small where
4 they will take just a couple dollars out of client
5 trust accounts and then they return those dollars, and
6 they notice that nothing is taken and there is no
7 adverse action, and then they go larger and go larger
8 and go larger until a point where they just can't
9 repay. And at that point in time the client suffers.
10 So what we are doing is we are looking at how
11 can we resolve that problem, and we have looked at
12 what other states have done, and this proposal that we
13 are going to talk about today we would like to have
14 some comment on before it's introduced next September.
15 is to note whereby financial institutions would notify
16 the State Bar agencies on these issues when the
17 overdrafts start to occur on these IOLTA accounts.
18 Again, the idea is to maintain
19 self-regulation of our profession, to protect our
20 clients, the lawyers within the State Bar and the
21 State Bar itself.
22 With that, I will turn the podium over to Joe
23 Garin.
24 MR. GARIN: Good morning. I have been on the
25 Client Protection Fund for about three years, and my
law practice is focused primarily on representing lawyers in malpractice cases, ethics disputes, and then business disputes, so I have seen a lot of bad lawyers in my career, and a lot of times it's a matter of risk management issues that lawyers get tripped up on things, and the rest of us as honest, hard working practicing lawyers get sucked up into the problems that they cause. That's why the Client Protection Fund was established, so that we can try and repay some of the clients who have experienced bad attorneys.

One of the ideas, the primary idea that we want to talk about today is the trust account overdraft notification requirement, which basically, if you look up at the map here on slide one, you can see it's been established and enacted in 36 states, including most recently in Louisiana, so in the wake of Katrina they were able to pass this.

Michigan, we have outlined in red, is one of the remaining states, 14 remaining states, that does not have any trust account overdraft protection, along with states like West Virginia, Mississippi, and Texas. The time has come for this kind of rule to be adopted in Michigan. If you can go to the second slide for me, please.
We talk about self-regulation of our practice
or of our business as attorneys, and if you go to the
State Bar's website, they have got the quote from
Robert Hudson which we have added and we want to put
up in front of you today, No organization of lawyers
can long survive which has not for its primary object
the protection of the public. That's very prominently
displayed on the first page of the State Bar's
website. As a self-regulating, self-policing
profession, we have to be cognizant of that all the
time so we can keep clients happy and try and maintain
our esteem in the public's perception.

Again, if you notice, 36 states have enacted
this type of rule. Michigan, the time has come for
Michigan.

Since 2002, Dan mentioned this, the State Bar
of Michigan through the Client Protection Fund has
paid out in excess of a million dollars. Sixty-nine
percent of these claims have come from nine lawyers in
nine different counties. You go to our next slide,
please.

We have identified the geography of these
claims. It's not just Detroit, it's not Grand
Rapids, it's not Lansing, it's not Flint. These
claims are all over the state. You can see, for

example, with Mark Light there were 32 claims in
Ingham County for a hundred thousand dollars. The
Jacks claim was a class action where there was a
hundred thousand dollars paid out in Wayne County.
Collison in Saginaw, 86,000, 13 different claims.

What we see with a lot of these really bad actors are they are high frequency of claims, where the claims are coming in and they have had problems with their finances and they are borrowing money, and it results in ultimately these people lose their licenses and they leave many clients disappointed and upset with the legal system because they have not been compensated for what it is they went to see the lawyer for originally; the lawyer has stolen their money.

We have put some headlines up from some of the new stories you will see like in the national law journals, like the lawyer in New Jersey who was suspended amid a gambling probe, and Dan touched on this. What will happen is the lawyer wants to go to the casino, he doesn't have the money, so he is going to hit his client trust account for maybe $500, maybe he wins that time and pays it back, but it's the time after that or the time after that when they are not able to pay it back and they start bouncing checks that the Overdraft Protection Rule will come into play.

The next one we talk about in the next slide, the states report where it's working. In New York, where they have had it for many years, from February of '93 to February of '06 they have had 145 lawyers who have been disciplined for misusing client funds, and these are a result of trust account overdraft notification to the State Bar.

New Jersey there have been 85 attorneys that
have been discovered and disciplined for their
overdraft protection, or their overdraft on client

The states record that it's working. We were
able to get this from the state of Minnesota, and what
they point out is that since the beginning of their
trust account overdraft notification requirement, that
amendment to the rules, the number of files and
referrals coming in for lawyers who are bouncing
checks on their trust accounts has gone way down. The
number of investigations that they have to do for a
trust account overdraft has gone way down.

They talk about the most common cause of an
overdraft problem, and that's the late deposit, and
typically there is no sanction to the attorney for a
mere timing in making the deposit.

There is a firm that I represent in Colorado,
and they have a high volume practice, and they had
this incident come up where they paid a client a check
on Monday for funds that were deposited the same day
and they asked the client to hold the check. The
client ran it over to the bank and cashed it and of
course it bounced, because the funds weren't ready.

And so the notification went out to the State
Bar and also to the law firm, and it was a matter of
writing a letter saying, well, look at, we deposited
the check. We asked the client to hold it. They ran
over and deposited it. The funds were there. They
just weren't ready.

It was immediately dismissed. That's not the
kind of thing this rule is intended to get at. The
typical way that most states handle it is that they
would dismiss something like that. It's the lawyer
who is abusing and using their client's funds and not
able to play clients currently that the rule would go
after.

So actually what's next, how it works,
basically real simple. There is an overdraft on the
account. The bank would send out a notice to the
lawyer and to some police agency at the State Bar or
the Attorney Grievance Commission. The lawyer is then
given an opportunity to explain why the overdraft
occurred, and based on that explanation there is
either going to be a file opened or it's going to be
closed out.

Most states, what we have heard is if it's
closed out, it's not a record they maintain throughout
the lawyer's career except it might be kept for 12
months or a little beyond that just to see if there is
a pattern, whether the lawyer needs to be educated how
to run their trust account.

Again, we don't have firm language for a rule
modification that we are presenting to you. We just
want to bring this to your attention, because in
September we do plan to come back with a rule and ask
for your endorsement of that rule so that we can get
it enacted in Michigan. And basically what's going to
happen now is we will be working with the Attorney
Discipline Board, the Attorney Grievance Commission,
and the State Bar of Michigan Foundation to draft a
rule based on -- there is a model rule and then the 36
states that have it have a variation, and then we
would present that and ask for your endorsement in
September.

So if you have questions, we can answer some
of those for you. It's not that scary. It's

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something we really need.

CHAIRPERSON BUITEWEG: Please state your name
and circuit.

MR. GEAR: John Gear with the 30th circuit.

I am very pleased to see this proposal. Ears perked
up when I heard you say we are not going to keep
history for -- you sounded like your intent was, well,
these will disappear. So if they are careful and they
do a few hits and then get the warning, then you will
lose the history, and so five years later when they go
for the big bucks, you won't have that record.

I really encourage you to do this proposal.

I think it's an absolute necessity. When you look at
the slides from John Berry about the image of the Bar
and the public esteem, I think it's crucial that we
make not only this step but every step to lead to a
hundred percent recovery for all victims of lawyer
theft.

I mean, you know, your program is just a
start. There is such a low cap on what people can
recover from your fund that I think you need to then
go on and keep raising that cap funded by a
proportional fee for the amount of money that lawyers
handle, because we need -- if we are going to get the
reputation, we need to stop attorney theft and be aggressive about recovery for people who are victims of attorney theft.

MR. GARIN: Those are all great points, and while we are working on language for the rule, if you have ideas for something you would like to see or any of the policing mechanisms for that, contact our committee and we would be happy to try and work with those ideas and suggestions.

The idea that this is not a way to go out and witch hunt against lawyers who are bouncing checks. It's not what they are intending to do. What we want to do is get the bad lawyers who are using their client's money, and they shouldn't be using their client's money. That's what we want to promote.

CHAIRPERSON BUIEWE: Mr. Gardella.

MR GARDELLA: One comment. Robert Gardella from the 44th circuit.

I would stand in favor of the concept and proposal that you have. Unbeknownst to many of you, I was the attorney for the State Bar on behalf of the Client Protection Fund over the last five, six, seven years. I can't remember exactly how many years. It's gone by quickly, but I was the person who sued the disbarred attorneys or the disciplined attorneys all over the state of Michigan. Went to a lot of
different courts, and it was one of the hardest jobs in the world. These are sophisticated people. Many of them don't want to pay. Many of them don't care about our profession, but we are in this to show the general public that we do care.

This rule is basically already in effect in our state, practically speaking, not officially or technically. But what happens is many other states, they have this rule in effect, so banks in Ohio or Indiana or New York, whatever the state may be, if they have branches in Michigan and an attorney bounces a check out of the trust account, the State Bar is going to get notified from those banks who are headquartered in other states. So it's Chase Bank or other banks, we are already getting notified at the State Bar that these bounce.

So we are not really changing the course of history here. We are basically just codifying and accepting what already exists and staying consistent with all the other states. So I think it would be necessary, and it's a rarity for this to happen, but I think practically speaking we should stay up with what other states are doing, and I think this is good for our profession, and I think we will get to vote on this in September, but I would ask you all to keep that in mind for when we are here in September because I think it is a good thing for us to have us to stay up to date.
MR. GARIN: That's actually a great point.

We are not trying to make new rules or make any
conduct, make any new conduct unethical. What we are
doing is just providing another method of notification
so that other people besides the bad lawyer who is
bouncing the checks, other people can discover and
investigate why checks are being bounced. That's the
only thing.

CHAIRPERSON BUITEWEG: Are there any other
questions or comments? And I would encourage you to
come forward if you have any, because I think the main
reason why these folks are here to talk to us about
this today is to find out if there are questions or
concerns about this that can be addressed at the
September meeting. So if you have anything on your
mind, step forward and speak now, otherwise we will
thank you for your time and your patience.

(Applause.)

CHAIRPERSON BUITEWEG: Next I would like to
call forward JoAnn Hathaway who is going to tell us a
little more about the Practice Management Resource
Center, and I again encourage you to take some notes
about this and communicate with your constituents
about this great new service that the Bar has to
offer. JoAnn.

MS. HATHAWAY: It will be my pleasure today
to talk about the newest membership benefit at the
State Bar of Michigan, the Practice Management
Resource Center. After much planning and a lot of
hard work the center did launch on February 11th of
this year, and we are very pleased to provide this to you.

Today I will be giving you a guided tour through the various modules of the center and also talk to you just a bit about our goals and vision for the future.

As you open into the home page of the State Bar of Michigan website you will find a dedicated link to the PMRC.

As you enter the site you will see that we actually have four modules at the current time. We have what we refer to as our practice management help line, our resources link. We have a lending library and also our educational center.

What I would like to do today is to begin with a discussion of our help line. As with our ethics hot line, as I indicated, now we have a

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practice management help line. We have a dedicated 800 number or questions can actually be submitted to us right online through a dedicated folder.

We do ask for a P number when you call in just so we ensure that we are providing information to our members only, and I would like to stress that this is not just for our membership. It is also for your support staff. So we encourage you to suggest to your secretaries, legal assistants, and legal administrators that they utilize this service.

We are available for just about any practice management question you might have. Please don't limit your docket control, conflict checking,
calendaring, and some of the regular things you might think of. We have had a lot of calls about quality of life, marketing. Just we like challenges, and if we don't have the information readily available, what we will do is we will find out. We will do some research and we will call you back.

It was interesting, I was telling John Berry just the other day when we were in the strategic planning meeting, I had a member call me, and she had been in practice for several years, had a very successful practice. She had a few associates working for her. She had some legal assistants, a receptionist, a secretary, and she had a thriving practice. And we were on the phone for approximately 45 minutes, and she was actually referred to us by ELJAP, and she couldn't identify what her needs were. She said I am so stressed out. You know, I can't -- trying to run the business and trying to practice law at the same time, it's just kind of a slippery slope, and she knew she needed help but she didn't know where that was. So we were able to actually help her with that after long discussion and several questions.

We realize that many times people don't know where they need help, but we invite you to call and ask us so we can help explore that with you.

On our website we do have a dedicated page to resources, and on this resources page we have approximately at this time, it's ever changing, but we have forms, guidelines, checklists, how-to kits,
articles of interest and links. And we have various topics, as you can see, and you can telescope through this page and you can see the varying forms and documentation that's available to you.

We want this to be a page that's ever changing. We don't want you to go in six months from now and see the same forms, guidelines, checklists,

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et cetera. So what we have been doing is we have been adding to this, and to enable you to identify new forms, et cetera, we do flag them as new and they are flagged for a month. And so we do want to add to this monthly.

What we are doing at this time too, and we give credit to Nancy Brown and her team for this, what they have been able to do is we have been heavily tracking the hits on our website, and I was amazed at how indepth this tracking system is. We can track the visits. We can track the hits, but all the way down to each page that's visited. So what we are doing in this resources section is we are looking at, you know, what's the most widely viewed document here, and those areas that we find that you are going to and visiting often, then we want to continue to provide more areas or I should say more documentation in those areas. In those areas of little interest we may replace with something else.

Interestingly, just in case you are wondering what's viewed right now, marketing plans, those tend to be big. Business plans, a lot about client communication, and also fee setting and client
Those seem to be the hot areas at this time. Our educational center, we are very pleased to provide this, and, in fact, it was interesting. I was at the ABA tech show, and I will tell you a little bit about that in just a moment. But in talking with several other practice management advisers across the United States, they were very impressed with what we were offering.

We currently have 12 state-of-the-art PC's in our educational center, and we are continuing to obtain new software, practice management and other software, so that you can come in, you and your staff can come in and demo the software for as long or as little a period of time as you would like. And we will be there to help you and to provide information for you.

And that can be available to you either by signing up online or if you would like to call in and talk to one of us, we will be happy to personally arrange a convenient time for you to come in.

As most of you know, we do have five of our PC's available and some of the software in the room just behind the sign-in table, so we invite you again to join us over the lunch hour. We will be available after adjournment today, so we are going to be here.

The next link. Just from our educational page, we have a link to a legal software directory,
and we have the software categorized by type. And as you link further into the software category list, you will see that we do provide an actual link to the software vendor, a brief description of the type of software, what capabilities it has, and the name of the vendor.

And we have quite a few listed. We are not really endorsing any of these software products at this time, but we have done extensive research to ensure that those that we do have listed are tried and true vendor programs, and we feel comfortable on having them on our list. Also this list will be changing.

Before we get into the library, even though the library is up right now, I would like to say one other thing about our educational center because I think it's very important to bring this out. We do have the brief questionnaire for you that you have at your table, and if you would take a few moments to fill out the questionnaire as far as the programs and what areas you would like additional training in and programs you might like to see in the center, we would very much appreciate your feedback. We want this to be a busy place. We want to have a lot of programs in our educational center and we plan to do that.

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first experience, and I don't know how many of you
have ever had the opportunity, but it was a wonderful
event, and it's kind of mind boggling, everything
that's available out there, but it's wonderful.

I did have the opportunity to speak to
several vendors and kind of toss around a few ideas
with them about training sessions, demonstrations in
our educational center, and there were some people
that definitely had an interest, and, of course, why
wouldn't they. I mean, they have an opportunity to
talk to you about their products, but also it's a
win-win situation for everyone.

So we do plan to use the educational center,
not just for demos, for training sessions, for
seminars, for your staff to come in if you want
personalized training, so it is going to be a heavily
used center, but we do really encourage your feedback
because we want to provide a benefit that's meaningful
to you and programs that you really want us to have.
So please feel free to call us at any time with your
thoughts. We would really appreciate that.

I just thought I would mention, I am not up
here to give a plug about the new Amicus VII, but in

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case anyone is using Amicus and looking to upgrade,
the folks from Gavel and Gowan (sp) gave the 13
practice management advisers that were there a
training session, an hour long training session on
Amicus, and we do have that in our demo center if
anyone is interested in coming in and taking a look at
that. It has a lot of new features. I think people
will be very pleased.

Now, moving on to the lending library. It's coming soon and it's coming very soon. We just got several boxes of new publications in, and we hope to have that launched. We have a few procedural areas to address, and we are going to be launching our lending library. We have several different practice management publications, CD's. They will be housed in the educational center. So if you were to come into the educational center, not only could you or would you have the benefit of test driving several different software programs, but also you could peruse our shelves and maybe take some texts back to your home or office. This is going to be available for your staff as well.

Right now I would like to move on to the goal and the vision for the future Practice Management Resource Center. We are still in the strategic planning phase of this. This is not all inclusive. But as of right now, and in no particular order, we do want to ensure that we have seminars that we are providing across the state, so we are bringing programs to your geographic region. In fact we are pleased to announce that our first seminar is going to be May 23rd up in Marquette, so we are starting from the top on down, and we are happy to bring those to the folks up in the UP.

We also will be doing onsite assessments in your law practices, at your request of course, and these can be as indepth or as streamlined as you
prefer. Risk management or practice management or, again, even though they are so closely intertwined, so these would be at your request.

Also, we really want to work closely with the law schools, and we are exploring that avenue so we can assist the law students with areas of practice management.

And again in the strategic planning meeting with John Berry this week he again stressed I really would like you to focus on partnering with businesses to ensure that we can get some cost saving benefits for our membership, just as we recently did with Staples, or I say we, it was not the PMRC, it was our

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Member Services Division, Kathleen Fox's, group, and I think that is such a wonderful benefit that her group was able to provide to the members. So we hope to continue to partner with folks to give you discounts on products.

Last but not least, we are very excited about partnering with the Law Practice Management Section. We are going to be working with Vince's group and meeting with them on May 13th to have some strategic planning. There is just such a wealth of information that we can tap into there and partner together to provide practice management aids. That's something that we want to do and we are definitely working on at this time.

So at this time before I close I would like to invite any questions, if anyone has any questions from the floor.
MS. RADKE: JoAnn, where is it going to be in Marquette?

MS. HATHAWAY: We are going to be at the Landmark Inn

Anything else?

Thank you for allowing me to share about the PMRC. It was a pleasure.

(Applause.)

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CHAIRPERSON BUITEWEG: Mr. Berry.

MR. BERRY: I just wanted to make two very brief comments. One is I want to recognize two people seated in the audience, Joan Vestrand and Vince Romano, for the personal work they have done. We have made reference to the committee and the work they have done and also the work the committee will be doing in the future to make sure we can connect, but I want to personally thank you.

And the final thought is, consistent with our strategic plan, Dadie Perlov is the one that helped us with our original plan. She made a comment about the fact that there is no problem having a bunch of information to lawyers about various things, there is no problem with dumping you with tons of information about technology, but her emphasis was it's up to Bar associations to filter that information in a way that makes it useful to you and help you, and I think that's the main goal of this is that we go to the tech shows, we get the information, and if you call up with the simplest of questions, like it's out of control, what do I do, then we are there to help you. So we
thank you very much.

CHAIRPERSON BUITEWEG: Thank you, John.

All right. We have reached a point on our agenda where it's now 11:30, and we have been so efficient that it's supposed to be 12:00 right now.

I will do whatever the membership wants me to do. I think we have a few choices. One of them is to break at this time. Lunch will be ready in ten minutes. This would give us ten minutes to use the restroom, to go look at the PMRC, to talk to somebody you have got a case with, you need to give them a document for the case, whatever it is you need to do for ten minutes, then we could head upstairs, we could get in line, we could get seated and hopefully get started with the Law Media presentation, and then come back at 1 instead of 1:30. That's one option.

Another option would be to select something from the agenda and put it on now. There are some restrictions on that though. For the next proposal, the Uniform Law Commissioners proposal, I know that Mr. Webster was planning to be here, and I think he was planning for it to be at 1, so I don't believe that he is here yet. And some of these other proposals might require a little more fortitude and some lunch before we get into them.

We could do a presentation right now, but, again, I don't know that everybody is here that was planning on coming later in the afternoon after lunch.
So I will do whatever you want. My suggestion is that we break now and then reconvene at 1.

MR. LARKY: Madam Chair, point of order. Our agenda that was approved by the membership was to continue on till 1:00. That was approved by the membership, so let's just keep going.

CHAIRPERSON BUITEWEG: Is there a second?

MR. LARKY: It wasn't a second. You have already approved it. Let's just keep going.

CHAIRPERSON BUITEWEG: So you are making a point of order. My understanding of the motion was that we would continue with the agenda by reducing the time in half but not necessarily that we would wait until 1 to eat. I didn't understand it that way.

Let me just get a show --

JUDGE KENT: Madam Chair, I would agree with you and think we have a consensus that we have reached the time in half for the agenda items, but we did not accelerate the agenda in the sense that we would continue on ad infinitum. I agree with your suggestion that we break now, take our lunch break and that we resume at 1:00.

VOICE: I second that.

CHAIRPERSON BUITEWEG: Raise your hand if that's okay with you. Just do it informally.

We will break now. We will reconvene at 1.
Take ten minutes to use the facilities.

I am sorry, just a moment. I promised Kathy Kakish that she could just tell you very briefly about the Law Media presentation.

MS. KAKISH: Just your attention for one little second. I do have a teaser, because we do have an celebrity from Southeast Michigan on the panel of the Law Media Committee, but that's a teaser. I will tell you just in a second.

This is Kathy Kakish, 3rd District Court, 3rd judicial court, 3rd circuit court. I am from Wayne County. I am trying to hurry here, and that's what happens.

I have served as the liaison for the Law and the Media Committee for the last two years, and I have attended a couple of their sessions. What they did is they developed a special program where they go into the media outlets, whether radio, television, or the printed media, and they educate these journalists and media people as to how to access the law in terms of information, in terms of working the court systems. It's a wonderful, energetic program that they have, and I thought to bring them here to the Representative Assembly and to give one of their presentations.

On the flip side, they also have a different type of presentation which is designed for you and me. It's designed for lawyers as to how to work effectively with the media and what to do and not do when they are dealing with the media.

The committee comprises about 13, 14 lawyers
who before becoming lawyers were members of the media, they were journalists, whether in the print or electronic media. It's a group of very energetic, engaging, enjoyable people who really know what they are doing and make the process so wonderful.

So what's happening today is that we are going to break for lunch. And in about ten minutes, once people, you know, the first of the people can get their lunch, bring them over to the lunch area, and this presentation will give, this group will give their presentation as to how we lawyers should interact with the media and how we can use the media effectively.

And two panelists, two of the panelists will be, of course, our State Bar president, Mr. Cranmer, but also Brian Dickerson. For those who are familiar with him, he is a columnist with the Free Press, well known with the Southeast Michigan area. He is going to be also a member of that panel.

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And I personally extend an invitation to you to attend this. This group is great, energetic -- the three E's -- energetic, engaging, and enjoyable. I look forward to seeing you over lunch. Thank you very much.

(Lunch break taken from 11:36 a.m.-1:10 p.m.)

CHAIRPERSON BUITEWEG: I am going to reconvene the meeting at this time, and I hope that you all enjoyed the presentation by the Law and Media Section. They certainly had many good tips for us as we try to negotiate the media in our daily practices.
So I know that I certainly enjoyed it.

We have a number of dignified people with us today that we were going to introduce earlier and were remiss in failing to do so. One of the persons is here to discuss with us the next item on the agenda, and that's Mr. Robert Webster, past president of the State Bar of Michigan and a Michigan Uniform Law Commissioner. And we also have a number of members from the Board of Commissioners Executive Committee. Kim Cahill. Kim, you want to sort of raise your hand so people know who you are. Ron Keefe, all the way from Marquette over here; Ed Pappas, Oakland County in the back; Charles Toy over here from Lansing; Richard McClellan over here from Lansing; Julie Fershtman from METROPOLITAN REPORTING, INC. (517) 886-4068

MR. MCCLELLAN: Thank you. Let's take a couple of minutes. I am not going to go through the material in your book, but I want to give you a little more background. There are two institutions in the structure of State Government that really provide
lawyers direct input into the legislative process, and
that involves the Legislative Council. The
Legislative Council is a constitutionally established
body and composed of the leadership of both the House
and Senate. Within the Legislative Council are
several agencies, one of which is the Legislative
Service Bureau that drafts all the legislation. Two
of the others are the ones that I want to talk about
today. One is the Michigan Commission on Uniform
State Laws, and the second is the Michigan Law
Revision Commission.

I am the chairman of the Michigan Law
Revision Commission, and one of our statutory duties
is to review the recommendations of the National
Conference of Commissioners on Uniform State Laws.
And so we get their reports from the National
Conference of Commissioners and then make
recommendations to the Legislature as to whether we
think one of these uniform laws should be taken up.

The National Conference is composed of
commissions from all the states, and Michigan has such
a commission. Judge Webster is a member of it. The
reason I wanted to come today is to talk about sort of
the background.

Michigan no longer pays dues to the National
Conference of Commissioners on Uniform State Laws, and
that limits our ability to participate, even though we
continue to have the commission. So before you is a
recommendation that we recommend to the State that
they again begin paying dues to the commission.
A little bit of background. As you know, Michigan as a state government has had some financial challenges, and one of the things is that this is an entity that was just part of the funding of the Legislative Council when they had to cut back, and rather than cut back the number of drafters in the Legislative Service Bureau, they decided, well, let's not pay dues to a number of these organizations. But it has a significant impact, I think, in the long run on the state of our legislative process.

Partly because with term limits in the legislature, much more rapid turnover of legislators, you don't have the institutional knowledge. You used to have a chairman of a judiciary committee in the House that may have been in the Legislature 10 or 15 years. You now have a chairman of a committee like that that has been in the Legislature two years. So there is really a lack of institutional knowledge, and it's one of those hidden impacts that's occurring that you can't really measure easily, the decline in sort of quality bill drafting and attention to some of these legislative issues that may be important to the people but that aren't important politically.

There is no lobbyist working on a lot of the issues that the National Conference comes up with. We do pretty mundane and boring subjects, but they are pretty important, Uniform Commercial Code, some of the uniform laws dealing with children and interstate issues dealing with children. So there is a lot of,
there are a lot of important subjects.

The recommendations before you are two. One, to support the involvement of the State Bar in participating, attending the meeting of the National Conference of Commissioners on Uniform State Laws and, secondly, to support restoring the participation and funding of Michigan's role again.

As I am not on the national -- I am not on the Michigan Commission on Uniform Laws, but we benefit greatly by having Michigan participate in that so that we can do our job when we get the reports at the National Conference. With that, I will turn it over to Judge Webster.

JUDGE WEBSTER: I am very glad to be here to speak to a subject that's near and dear to my heart. The National Commission is composed of the commissions from each state. In other words, we have our own Michigan commission and we participate with everybody else as a part of the National Commission.

It's been, since 2004, it's been kind of an embarrassment to go down to the national meeting because Michigan's dues have not been paid by the Legislature. They chopped that off. This year the assessment to Michigan is $50,000. In the past it's been somewhere in the range of 40 to 50. That's
designed to pay for the functions of the commission during the year.

What we do is assign members of the commission to drafting committees, and those drafting committees meet usually two or three times during the year for a weekend, three days. Then when they have finished their work, the work product comes to the national meeting, and that's a wonder to behold.

It's a seven-day meeting. Each bill that is referred or uniform law that's referred in is read line by line and debated line by line before all of the commissioners. Many changes are actually made at that point in time. The finished work product is something that a Legislature can look at, maybe make a few adjustments, but they have got a law in their laps that a tremendous amount of legal talent has gone into that could not be replicated in the state. It just can't.

You are talking about the Uniform Commercial Code, Uniform Partnership Act, Uniform Condemnation Act, I believe, just there is a lineup of bills as long as my arm, and Michigan's participation in enactment has been a little behind too, and we, I think last year there was one bill introduced, and it didn't pass, but we do have a number that have.

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We would like and espouse one part of the motions that are before a liaison from the State Bar to attend the national meetings, and in order to encourage that person to go we would appreciate the State Bar considering paying for their expenses. That
person can report back and can guide bills into the Law Revision Commission and into the various committees of the State Bar for consideration, and so that when they hit the Legislature there is support for them.

We don't have an adequate structure to do that at this time, and we are working very hard to get it done.

I don't know what else I can say. Oh, the individual, the individual commissioners have not had their expenses paid for some time, and it's quite a burden. I think it indicates in the material that you have that it's something like $2500 for an individual commissioner to attend, participate for seven days, and some that are not -- they are not great spas, but wherever we go, it does cost money. I pay for it out of my own pocket, but that's just my expression of appreciation for everything that's being done.

Michigan Commissioners, we have had some real stars. Charlie Joyner was one. Mike Franck for most of his legal life. J.J. White is the chair of our commission right now, Michigan commission, and just luminaries like that.

The State Representatives, they have got a couple of new reps that are very interested, and that's Representative David Law and Representative Condino. So we are getting a little more vital. There is a guy named Tom Buiteweg too that's part of the commission.

So I think that's about the best I can do for
MR. MCCLELLAN: Thank you, Judge. At this time I would like to move the adoption of the resolution as printed in your book regarding should the state of Michigan pay the assessments and the costs necessary to permit Michigan to participate in the NCCUSL annual meeting. So moved.

VOICE: Support.

CHAIRPERSON BUITEWEG: Is there a second?

VOICE: Support.

CHAIRPERSON BUITEWEG: And is there any discussion? Mr. Barton.

MR. BARTON: I have two questions. Bruce Barton, 4th circuit. Two questions basically. Who decided to stop paying the dues, and what was the reason? What was the purpose or the reason for stopping dues and expenses?

MR. MCCLELLAN: The Appropriations Committee of the Legislature, the subcommittees that handle the general government bill, when they began to really have serious cutbacks, it was not included in the annual appropriation bill for the legislative branch. That's who decided it, and they decided it because they were cutting a lot of programs and they claimed -- they had to make choices, and they didn't make a choice to support this.

CHAIRPERSON BUITEWEG: Mr. Miller.

MR. MILLER: Randall Miller, 6th circuit. The problem that I have is that there has been word on the street for several years of a political agenda...
with the organization, that the uniform laws that are
being sought have an agenda and there are people
pushing behind it, and I thought the point of this
whole body was nonpartisan. I have a problem with
supporting that if that is actually true. I can't say
for a fact that it is. I have never been to a
meeting, but if there is a certain thrust of what is
taking place at this meeting, I have a serious
objection to supporting this proposal.

MR. MCCLELLAN: You know, I only get the

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reports, and each issue, each recommendation, some
obviously there may be points, but usually the issues
that come from the National Conference of
Commissioners are not partisan usually, so I don't
know of any. I have never seen one that gets into
that area, but that doesn't mean there aren't
differences of opinion. But usually they have a broad
base of support within the Bar, because there is a
need for uniformity in the way you treat that.

You would have to -- there may be one or
another. On the other hand, they come to the state
and then they go through the legislative screen here.
I mean, it's up to each legislature to decide to adopt
it. The National Conference of Commissioners has no
ability to impose their proposal. They only recommend
them.

JUDGE WEBSTER: In the years I have been
there and participated in the adoption of uniform laws
I have never seen a partisan bent to it. There have
been, there have been questions that come from the
private sector that have raised debate, vigorous
debate, but I have never seen anything that was
dictated by a party or had a taint of partisan
politics to it. I really have not. Frankly, I am
surprised. If that's the word on the street, I have

MR. GARRISON: Scott Garrison, 6th circuit.
We are asking the State, telling the State of Michigan
that they have to pay the $50,000? Is that what we
are doing?

JUDGE WEBSTER: Begging.

MR. GARRISON: Because to me that goes back
to the whole discussion we had on the very first topic
this morning, which was we can't tell the State what
to do nor should we try, and then I am afraid that if
we pass this and the State says, no, we are not paying
it, that they will then turn to the State Bar and say, well, you pay it.

MR. MCCLELLAN: No, you don't have to worry
about that. This is simply to sort of add some weight
to the discussions that will go on in the
 Appropriations Committee, what groups do we pay dues
to. The State pays dues to a lot of groups, and I
think that it helps in that discussion, because I can
tell you the one person that doesn't want it is the
head of the Legislative Service Bureau who is on the
commission, because it means that he may have to make
-- he may not get some money he would like for his
programs.

But it's simply to say we think this is a
useful program, and they will either fund it or they
won't fund.

MR. GARRISON: And would they have to pay the
total 146,000 in arrears as well in addition to the 50
for next year?

MR. MCCLELLAN: I have no idea. My only
interest is having the state begin to participate as a
dues paying member.

MR. GARRISON: One last question. My
understanding is that we are still attending meetings
and that we are still participating, correct?

JUDGE WEBSTER: We are participating. There
was a point in time, I know with me, where I was the
only delegate or the only member at the Michigan
table. That I believe occurred last year also, and so
we are participating, but not in a really heavy way
because of the lack of funding.

MR. GARRISON: So they may lump the
arrearage. How many commissioners do we have? It
says to allow, to permit the Uniform Law
Commissioners, i.e., more than one at $2500 a pop, and
then I am assuming that we are also going to be paying
for their weekend meetings in addition to the annual
meetings.

JUDGE WEBSTER: No, they are paid for by the
MR. GARRISON: Those are paid for by the commission.

JUDGE WEBSTER: That comes out of the dues. We have been getting support. I mean, I have been on a committee and have traveled with, I was supported and paid for that, but while my state didn't pay the dues.

MR. GARRISON: Thank you.

JUDGE KENT: Wally Kent, 54th circuit. I rise in favor of the motion and would say that this is a benefit not only to the profession but to our clients and all of them. Sitting on the bench, as I do, I see so many situations which involve interstate activities which, frankly, are almost insoluble because there is no coordination of laws between the states on many issues. I see it, for instance, in guardianships where people are moving from state to state. How do we transfer the authority of a guardian from one state to another? That's only one example, and that's only one area of the law in the probate.

Our society being as mobile as it is now, even though I sincerely believe in state's rights, nevertheless we still have to work together as states to benefit our entire populous, and this is the way it can be accomplished. Michigan needs to participate fully, and Michigan needs to subsidize the cost of doing this for the benefit of its citizenry.

CHAIRPERSON BUITEWEG: Other questions or
comments? All right. It has been moved and seconded
that the State Bar of Michigan take the policy
position that the State of Michigan should pay the
assessments it owes to the National Conference of
Commissioners on Uniform State Laws and pay the costs
necessary to permit Michigan's uniform law
commissioners to attend NCCUSL's annual meeting.
All those in favor please say aye.
All those opposed say no.
Motion carries.
Next motion.
MR. MCCLELLAN: The second motion in the book
is a motion that I would like to make to have the
State Bar of Michigan's Board of Commissioners appoint
and pay the expenses of a liaison to attend the NCCUSL
annual meeting and report back to the chairperson of
the Public Policy and Image Committee and chairperson
of the Representative Assembly regarding events of the
meetings for further dissemination to State Bar and
committee chairpersons. So moved.
VOICE: Support.
not a voluntary bar that can take stands on matters that are considered ideological in nature. So to the extent that this ever passes, we put ourselves in a very difficult position. How do we finance -- how do we pay for people to attend when they may be taking stands on matters that are purely ideological in nature. Some may not be. Do we allow rebates? Do we require them to pay back a portion? Do we let the State Bar staff, which as I understand and as I actually know, is already overwhelmed with looking at various proposals in the Legislature and Court Rule proposals, do we put it before the State Bar to vet these matters?

I view it as a very difficult issue because I think that what generally this group does is a very commendable thing, but the difficulty is we cannot support a proposal that puts us into the field of ideological work, and that's why I would stand in opposition to it.

CHAIRPERSON BUITEWEG: Are there any other comments or questions?

JUDGE WEBSTER: I would comment on that.

CHAIRPERSON BUITEWEG: I was going to say the proponents have the right to close the debate, so feel free, Judge.

JUDGE WEBSTER: I just would comment on the proposal for a liaison. That person would not be a voting member of the commission and would not be taking positions with regard to the passage of uniform laws but would be in a position to report back to the
state on those laws that had been passed, and if they
have an inappropriate ideological bent to them, why of
course the State Bar can't do anything about them, but
it would be a great assistance to have a liaison
between the commission and the State Bar, but there
would be no taking of positions by that person.

MR. MCCLELLAN: I would just say that I think
that's a legitimate concern. We have to be sensitive
to the Keller rules, but my perspective is that it's
valuable to have a representative of the Bar
participate in these and report back to the Bar.

For example, the commission may come up with
something that's very important to the Family Law
Section, and it would be useful to have the State Bar
report to that section. It doesn't mean that we are
involving the State Bar at that time in participating
in that.

So I agree there is a sensitivity there, and
I think we have to think through it, but my view was
that this would be valuable. For example, we invite
the State Bar to come to the Law Revision Commission
meetings, and just because it's helpful. In fact,
they used to always have the meetings at the State
Bar, to have somebody there from the Bar to just be
aware of what we are looking at, as part of the State
Bar's sort of obligations to keep its member apprised
of public policy developments, which I think is
different from getting involved, and I am on your side
on whether we would be involved in an ideological
matter, taking a position in the State Bar, because,
you know, that's a pretty important restriction. I do not see this as affecting that, but I think your raising the issue is appropriate, that we need to be careful about that.

JUDGE KENT: Wally Kent, 54th circuit. Is there any reason why we couldn't rely upon Judge

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Webster and others of equal competence as a courtesy to convey and communicate the information to the Bar without having to get involved in this?

JUDGE WEBSTER: I am totally unreliable, Wally.

JUDGE KENT: Thanks, Bob.

MR. MCCLELLAN: The people are all lawyers and it's a matter of whether it's an institution that the Bar wants to try to be involved in the way suggested by this resolution.

MS. STANGL: Terri Stangl, 10th circuit. I sort of have a related question. I am curious whether this Bar liaison was seen as an internal arrangement until hopefully the State may fund it, or whether it was seen as something to continue if the commission was fully staffed.

JUDGE WEBSTER: With the mechanism of an -- and I think I should make it clear that the contemplation is that the liaison would be a senior person who is staffed at the State Bar so that they can come back and work on this stuff, Keller permissive, but I think that it would go on until it was found to be useless. We need this structure. Other states have it also. We have the ABA also with
us on particular bills. But I do think as a matter of structure it would be --

MS. STANGL: One final thing. Previously when the commission was fully staffed and funded by the State how, if at all, were those communications handled with the State Bar, or was there really not a structure previously?

JUDGE WEBSTER: There was no structure, and I think it was more a matter of direct lobbying into the Legislature, the Law Revision Commission and individual legislators who were members of the commission. There are three right now who are, and they introduce bills, but a lot of the bills just fall by the wayside because they are not individually interested in them.

MR. MCCLELLAN: Let me tell you, I know in the earlier years when I first was appointed to the Law Revision Commission two things went on. We had our meetings at the State Bar and Mike Franck always attended. We have been trying to restore that in our revision.

Secondly, Tom Downs was chairman of the Law Revision Commission. He was also a commissioner and, as you have noticed, he is a life member of the National Conference. So there was more of an
institutional relationship that the word was transmitted, albeit informally, because Tom would be at the national meeting and then he would come back and chair the meetings with the Law Revision Commission. Mike Franck was there and was, you know, he was able to communicate to those parts of the Bar that needed to know what was going on. So we have lost some of that as things have changed in the last few years.

JUDGE WEBSTER: We also had William Pierce who was executive director of the National Commission and worked here in the state also, Professor Pierce.

CHAIRPERSON BUIEWE: Mr. Barton.

MR. BARTON: Bruce Barton, 4th circuit. I had the privilege as chairperson of this Assembly to serve on the Board of Commissioners with Judge Webster, and I am going to say this with complete confidence. If he is going to be the liaison we are talking about, there is not going to be a problem with partisan politics, and on the other hand we are going to be very well represented.

CHAIRPERSON BUIEWE: Any other comments or questions?

It has been moved and seconded that the State Bar of Michigan Board of Commissioners appoint and pay the expenses of a liaison to attend NCCUSL's annual meetings and report back to the Public Policy and Image Committee and the Chairperson of the
Representative Assembly regarding the events of the meeting for further dissemination to the Stare Bar section and committee chairpersons.

All those in favor of the motion please say aye.

All opposed.

Motion carries. Thank you.

JUDGE WEBSTER: I want to express my appreciation for your attention to this.

CHAIRPERSON BUITEWEG: Next on the agenda is a proposal regarding the Domestic Relations Court Rules, and here today to present that proposal is John Mills, the immediate past chair of the Family Law Section.

Take it away, John.

MR. MILLS: Thanks, Lori. Good afternoon. I am torn between listening to Andy Doctoroff and speaking very slowly and deliberately and getting everything said within the two and a half minutes Mr. Larky gave me to present this.

This is a proposal on behalf of the Family Law Section to facilitate the entry of the judgment of divorce where a settlement has been reached prior to the commencement of litigation. Materials are under tab 11 in your packet if you want to take a look at those, or hopefully you already have.

Family law cases these days are more often settled than they are tried. Less than one percent of cases on a statewide basis ever actually go to trial. Most of them are settled. In the larger counties,
Oakland being one of them, I am told that less than half of one percent go to trial.

That means they are being settled, they are being mediated, they are being arbitrated. There is some other alternate dispute mechanism that's being used to get these cases resolved.

So ADR is becoming more and more useful in these, and there has been a new movement in ADR called collaborative law, collaborative mediation, where people actually get together well before the case is even filed, sit down, resolve all their issues, come up with a settlement agreement, and they simply need to get into court, get it through the system and get it entered.

Right now there is no real mechanism for that in the Court Rules. While ADR has become more popular and more progressive, the Court Rules still anticipate that someone is going to file as a plaintiff, someone is going to respond as the defendant, they will slug it out for 60 days or 180 days or a year or a year and a half and eventually get divorced.

The proposal, therefore, is to recommend amending Court Rule 3.201 to include what we are calling prefiling settlements and then to recommend the adoption of a new court rule, MCR 3.222, to facilitate getting a divorce entered with a minimal amount of court contact and administrative requirements.

The key points in the new proposed rule are that it eliminates adversarial language in the
pleadings. There is a requirement that a settlement be reached before the case is filed, and the settlement has to be filed with the initial petition for divorce, and a requirement that both parties through the settlement procedure be represented by counsel, and both counsel have to sign off on the settlement and on the petition for divorce. No proper representation, not under this scenario.

Let me tell you what the proposal does not do. It doesn't make divorces easier to obtain. Much of the work required in any divorce is going to take place either after the case is filed or before the case is filed. More often than not -- well, I shouldn't say more often than not, but in a lot of occasions now a lot of the discovery and a lot of the negotiation and a lot of the actual settlement is taking place before the case is ever filed.

If you have seen the new divorce or the new Supreme Court guidelines for resolving divorce cases, DO cases, cases without minor children have to be through the system in 90 days. You don't have to serve the summons until 91 days. Cases involving minor children have to be resolved within 270 days.

So you are either going to settle a divorce case on the court's guidelines and deadlines or you are going to settle it on the parties' deadlines, which might allow for perhaps, let's slow things down, see if we can reconcile, let's get this appraisal done right or that valuation done properly so that we can have everything on the table and know what we are
Another thing this proposal does not do is it does not eliminate judicial discretion to accept or reject a settlement or make findings in the best interest of the children. Judge still retains all of that ability.

Another thing, it does not shorten the time required to obtain a divorce. The 60-day requirement from date of filing to date of judgment, the earliest date of judgment is jurisdictional. You can't waive that without a statutory change. This does not waive that. There is also a provision for minor children divorces that says you have to wait 180 days. In my experience, and I think it's more the rule than the exception, in the larger counties anyway, that that 180 days is routinely waived upon a proper showing down to at least 60 days.

The proposal was presented and debated and kind of tweaked by the Family Law Council, the Family Law Section, and they have endorsed it and sent it on to you for consideration. With that as the background, I move for the adoption of the proposed amendment to MCR 3.201 and the adoption of proposed rule MCR 3.222.

CHAIRPERSON BUITEWEG: Is there a second?

VOICE: Support.

CHAIRPERSON BUITEWEG: Discussion?

Ms. Radke.

MS. RADKE: Victoria Radke from the 47th circuit. John, I just have a question. Why is this
only going to be applicable to divorce and separate maintenance agreements? Why didn't the Family Law Section want to make this applicable to other family law issues like paternities and family supports which could use this procedure as well?

MR. MILLS: Well, what we looked at was trying to facilitate a mechanism to eliminate a lot of the administrative problems, specifically where you had prefiling settlements. Unless it's a brand new support case. I mean, is that what you are talking about?

MR. RADKE: Yes.

MR. MILLS: A DS case?

MR. RADKE: Or a DP.

MR. MILLS: I suppose it could apply to that too. We just didn't consider it out that far. We considered it strictly for separate maintenance and divorce actions.

MR. RADKE: Might it be better if they included paternities and family supports which fairly often parties who split don't want a divorce or get a separate maintenance and want to support these kids or haven't been married and they want to come to an agreement without having to go through court and they don't want to be labeled as a defendant in a support case.

MR. MILLS: We haven't looked at that. I am
told you can bring that proposal in September if you like.

MR. RADKE: I guess we are going to have to do that. Thank you.

CHAIRPERSON BUITEWEG: Ms. Johnson.

MS. JOHNSON: Sheila Johnson, 22nd circuit. I raise in favor of this proposal. I think it's very consistent with the change in culture over the years, that we are encouraging people to reorganize their families on their own without interference from the court, and I think that the way we do it now is an interference. It does cause -- it always causes an edge. As a mediator I know that, you know, if one person files you are already behind zero when you start to mediate that case. When we mediate, we start talking about how you tell the kids until you get to the very end when you need a lawyer to review this, and all through the case we do encourage people to consult lawyers.

The one thing I heard from Mr. Mills that does concern me is that you would file the settlement agreement at the time you filed the petition. That would be confidential normally and I am very concerned about that.

MR. MILLS: It wouldn't be the settlement agreement. It would be the judgment.

MS. JOHNSON: Right, I would think the
judgment of divorce with the petition, is that what you file?

MR. MILLS: Yes.

MS. JOHNSON: And then the settlement agreement remains confidential.

MR. MILLS: Yeah, assuming you have a bifurcated settlement agreement.

MS. JOHNSON: And there is Veronique Liem, I also have authority to speak for her as well, another representative from our circuit. She also would rise in favor of this.

CHAIRPERSON BUIEweg: Mr. Miller.

MR. MILLER: Randall Miller, 6th circuit. While I am not proud to say that I have now officially been divorced for five weeks, I will say my former spouse and I kind of lived something substantially similar to this. We got together with our attorneys. We had a number of meetings beforehand. We avoided depositions. We avoided court. And the cooperation that went through the process has really carried over into helping raise our kids and to stay in touch that way.

I can't say the same is true for everybody else I know that has been in my situation. So it's a shame this really wasn't before us long before, because I think that this program would be outstanding, and I support it wholly. Thank you.

MR. WEINER: Jim Weiner, 6th circuit. While I generally support collaborative law, I don't support this particular reason of it. I have a couple of
problems. One, I thought I heard you say that the statutory waiting periods of 60 days and 6 months for children are not waived. In fact, your proposal C -- okay, entry of the judgment of divorce waives the 6 months for minor children. It does do, so what you said, at least what I thought I heard you say, was in error.

I do support collaborative law and I do support and I want to see something workable. I just don't think this one proposal is workable, and so I would like to see some more work on it before it's actually enacted, but, like I said, I generally support collaborative law and I generally support the concept of ADR and communication. I would like to see something like the judgment sets up as a, if there is a judgment in place and it's done, it's set up as a temporary restraining order through a TRO or something -- not a TRO but a temporary order to keep the status in place during the period, the 60 days or the 90 days, and then it's automatically entered if it is not challenged or something like that.

I just think that's a better way. That's just me. But, like I say, I do generally support collaborative law and the whole ADR process.

MR. MILLS: On the jurisdictional guidelines, I think I said that the 60-day period is still in place, you can't waive that. That's statutory. I think the 180 days is statutory also, and if you go to the middle of that section, we are talking about Section H in the proposed 3.222, in the middle of that
it says, Cases involving minor children, the court
shall find, pursuant to statute, et cetera. May want
to change that word "shall" to "may," because I think
the court then has the jurisdiction to waive 180 down
to 60. Can't waive it below 60.

MR. WEINER: I think the issue for me is I
would like to see for at least some of my clients that
a position with child support and maintenance and
being put in place be in place for six months before
the divorce is filed, divorce is -- even in areas of
collaborative law where parties are getting along,
just because I think it might be right for -- I am
looking the opposite way where somebody enters into

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something and then decides to renig on it.

CHAIRPERSON BUITEWEG: As a point of order,
we can speak once on a proposal.

MR WEINER: Sorry.

CHAIRPERSON BUITEWEG: It's okay.

Yes, sir.

MR. KORTERING: David Kortering from the 14th
circuit. Mr. Mills, I have a question about how has
this been viewed by the Friend of the Courts in all
the counties in Michigan, in other words family court
services, when there is children? If you are doing
this you are basically bypassing, opting out of the
Friend of the Court. Now I know in Muskegon County,
even though you want to opt out, you can't do it
without a conciliation conference. So how are they
going to be receptive of this, doing this before
filing? With the uniform orders of support and
spousal support orders that are now coming through, I know it's a new time for them --

MR. MILLS: Well, we haven't spoken to all the Friends of the Court around the state, but there are Friend of the Court representatives on the Family Law Council who reviewed this, and basically they don't have a problem with it, at least not that was raised in council debate.

What you are doing is you are opting out of all of the administrative stuff because basically you have settled the case. They don't need to get involved if you have settled the case, the supports are within guidelines, all of the other provisions appear to be, you know, in order.

MR. KORTERING: So in effect if they were to look at your proposed judgment, and if everything meets the statutory language and their approval, they sign it and then you have no more dealings with them?

MR. MILLS: It doesn't require people to opt out of Friend of the Court if that's where you are going with it. They could still stay within the Friend of the Court system. They would still have to move the court to opt out of the system, similar to what they have to do now.

MR. KORTERING: Thank you.

CHAIRPERSON BUITEWEG: Are there other questions or comments. It has been moved -- I am sorry, yes, sir.

MR. LABRE: Bill LaBre, 44rd circuit. I would like to amend the motion to go from "shall" to
"may" in the 180-day rule.

CHAIRPERSON BUITEWEG: Do you accept the friendly amendment?

MR. MILLS: Yes.

CHAIRPERSON BUITEWEG: Is there any discussion on the friendly amendment?

VOICE: Second.

CHAIRPERSON BUITEWEG: You don't need a second on a friendly amendment. I read the Roberts Rule.

It has been moved and seconded to adopt the language in the packet regarding MCR 3.222(B) and -- strike that.

It has been moved and seconded that MCR 3.222(B) should be added to provide for non-litigious terminology in filings involving pre-settled divorce and separate maintenance cases pursuant to the language set forth in your packet of materials with the exception that the word "shall" under 3.222(B)(8) on the sixth line be changed to "may."

All those in favor of the proposal or the motion say aye.

All opposed.

Motion carries.

We are on our last proposal, and this one pertains to real estate, and we have here today to present this proposal regarding the gap between --
MR. MILLS: I am told we didn't do 3.201.

CHAIRPERSON BUITEWEG: I am sorry. Thank you. There are actually three motions. My apologies. There are actually three proposals before you. One is pertaining to 3.201. The one we just voted upon is 3.222(B). The third one is 3.222(C-K).

So, John, if I could have you make your motion on 3.201, we will vote on that.

MR. MILLS: I move that 3.201 should be amended to include procedures that apply specifically to attorney-approved divorce and separate maintenance agreements that are signed before the divorce or separate maintenance case is filed.

VOICE: Second.

CHAIRPERSON BUITEWEG: Any discussion?

All those in favor say aye.

All those opposed say no.

Motion carries.

And now we will go to 3.222(C) through (K).

MR. MILLS: I move that MCR 3.222 Sections C through K should be added to provide for an applicable, streamlined approach to entry of judgments in filings involving pre-settled divorces and separate maintenance cases.

CHAIRPERSON BUITEWEG: Second?
CHAIRPERSON BUITEWEG: Is there any discussion?

MR. RADKE: I believe that the language that's in this section should also be changed "shall" to "may," the court may waive the waiting period.

CHAIRPERSON BUITEWEG: And the proponent has stated that you are correct on that. Any other questions or discussions?

With that amendment from "shall" to "may," all those in favor of the motion say aye.

All those opposed.

Motion carries.

Now I will plow right along and thank you all for bringing that to my attention.

Our next proposal is regarding real estate, and David Charron, the chairperson of the Real Property Law Section, I believe is here, Mr. Charron, to present this proposal, or not. Well, it's quite possible that Mr. Charron didn't get notice of the revised calendar, because of the timing of it, and he may be expecting this matter to be on the agenda later today.

VOICE: It's only five minutes away.

CHAIRPERSON BUITEWEG: The revised had it at
welcome.

MS. AKERS: Thank you. Good afternoon, everybody, and thank you for giving me a few minutes to make a presentation to you today.

You have a written informational report in your materials, and I will be back here in September, and at that point I will be asking this group to perhaps take some action based on recommendations that we may make.

I am here today to say a few words about what is the hottest topic that everybody is talking about that's actually been around for a number of years, and very few people seem to have been talking about it or at least it was sort of isolated in a few particular areas.

The compelled or coerced waiver of attorney-client privilege, some people phrase it that way. Federal governmental officers often object to phrasing it that way. Here is what it really means when you hear about compelled or coerced waiver.

Beginning actually as far back as 1999, but in particular 2003, Larry D. Thompson, then Deputy Attorney General, issued a memo to all U.S. prosecutors on the issue of cooperation of businesses in an investigation. List a number of factors, and a few of those factors are whether the business agrees in advance to waive its attorney-client privilege, turn over to the government whatever information it has that would otherwise be privileged.

Another aspect of cooperation is when the
corporation has a policy of providing legal representation to its senior executives in an investigation. The Department of Justice began wanting the corporations to refuse to pay the legal representation.

The penalty for not agreeing to waive the privilege is you are more likely to be charged with a crime and you may be charged with a more serious crime than if you had not waived your privilege.

This has led to what some people call a culture of waiver, and right now the requests for demands for waivers are going on beyond federal criminal investigations. The SEC is also requesting waivers. The IRS has begun to take the position when

it's auditing a business you must waive your privilege in order to be considered cooperating with the IRS. HUD has recently issued a policy that local public housing authorities that are supposed to be independent of HUD and are creatures of state law, when they retain counsel for the authority, HUD has taken the position they must also waive their attorney-client privilege as a condition of being one of these public housing authorities.

Now, for the last several years there has been national debate over the subject, but as near as I can tell, first of all, I am a commercial litigator, I wasn't aware of it. Many people that I work with weren't aware of it, and, in fact, it seems that the debate mostly took place among criminal defense lawyers who were obviously concerned. They are
representing the businesses in the criminal proceedings. Also federal prosecutors and judges.

In 2004 the ABA got involved in this issue and created a task force which has been very active, taken a number of positions, done a number of papers, and in late 2005 John Allen, who is the co-chair of the task force with me -- and by the way, John extends his regrets. I am sure many of you know John. His daughter is graduating from college today, and so, you know, go figure. He decided to go to his daughter's graduation.

At any rate, in late 2005 John Allen, who is a liaison to the ABA task force, sent some information about this to the State Bar, who immediately turned it around and sent it to the Business Law Section. I am an officer of the Business Law Section, and so this came to me to take a look at, did I know anything about this, and when I read what was going on with businesses and compelled waivers, I have to admit I was quite taken aback. One, that I didn't know this and, two, that it had been going on so long and how did I miss it. Had I been asleep or exactly what?

The Business Law Section, Chairman Eric Clark and I, sent a letter to our president, Tom Cranmer, who was already certainly aware are of these issues, given his background, and we asked Tom whether Michigan would create a task force to address these issues, and I have to say I am so grateful to Tom, he responded literally within a matter of an hour or two, creating the task force, and since that time we have
been very busy putting the task force together.

We do have some representatives here today.

Sam Damren has come in for the meeting solely to be
able to answer questions you may have. Dawn Evans is

here I know and has been involved in the task force.
We have a number of others, and we have been doing
quite a bit of work in quite a short time.

The task force has several purposes listed in
your materials. In part our goal is to inform members
of the Bar and businesses to the extent that they may
not already be aware of these developments in the law.

We are also going to gather information. We
are going to coordinate with other entities doing
something similar, and we are going to be back to make
a report to you in September, and our intent is to
make a proposal and request that you take a position.

I do want to take just a couple of minutes to
address the issue of what's the big deal? Some of the
federal prosecutors say, oh, you lawyers, chicken
little's, big deal. Nothing that's going on is
nothing more than criminal investigations, and
besides, you people are just trying to protect a bunch
of criminals, and, therefore, who cares.

Well, two fold, one, I think we all care
about the rights of everyone confronting the legal
system, but let me also tell you what makes me care so
much about this in my own private practice.

I am entirely a commercial litigator. I am
with Bodwin, which means I do a lot of litigation with
banks. What I am going to tell you is true. I have
condensed, and I am not going to give you identities.
This is not all one incident, but the features of it
all are true.

Bank groups sometimes affiliate and make
large loans to businesses, and there is one where
multi businesses were doing a food type product and
they borrowed many millions of dollars from the bank
group. They were planning to expand into many
different states, and so they needed a lot of
financing, and in this particular case the financing
was asset based, meaning it's basically secured by
accounts receivable. It's not secured by real
property or guarantees or other things that banks feel
much more comfortable with.

And things with the loan, there were some
bumps along the way, just like there always are when a
business is trying to expand, you know. They should
have gotten their collateral report in on Friday, but
they didn't, so they got it in on Tuesday instead.
These things happen, and banks don't call the loan the
first time a report doesn't show up when it's due.

But over time things were looking funny with
this. They weren't going right and they weren't
getting the right information, so the bank did exactly
what we want a business to do, particularly in these post-Enron days, which is the bank retained counsel and said, Tell us what's going on here, get to the bottom of this. Maybe it's okay, but things are kind of smelly.

And so the law firm did the thing it should do, which is it hired forensic accountants, and the charge was you do a thorough and searching and brutal evaluation of what's going on here at this bank, and, if you find that there are weaknesses in our controls, tell that to us so that we can make amends, and that's exactly what happened is there was a thorough and brutal report prepared that detailed every time a form wasn't filed on time and every single solitary time something in the manual wasn't done exactly the way it was supposed to have been done. I mean, you can envision what a report would look like on any business. All businesses have bumps and so on.

Well, ultimately this did turn out to be massive criminal fraud. There have now been criminal convictions of people, and they bilked millions and millions of dollars out of these banks and out of others as well, and when the feds began investigating the crime, crimes, they contacted me, as did SEC lawyers, because they wanted to know what information

my bank had about these loan transactions and what was really going on, and what I did is said to them, Well, I will give you the nonprivileged information. I do have information that is within the scope of the subpoena; however, it's privileged, and I am pleased
to say that in those instances the prosecutors that I dealt with said in each case, Okay, don't give me your privileged report for now, just give me your unprivileged material, and if I need to I am going to come back to you later. And I will say that they never did come back to me, and so I never had to actually get into a battle.

Now, here is what is really the big deal to me, a commercial litigator, especially here in the 6th circuit. If you give privileged information to the government in an investigation, that is deemed to be a waiver of the privilege as to all parties and for all purposes. Therefore, if I had turned that report over to the feds, it would no longer be privileged, and that's pretty clearly established. The circuits are somewhat different, but in the 6th circuit that is well established.

Here is the next thing that happened. My client, the bank, made a claim on its insurance policy, and the underwriters wanted to know whether my bank followed all of its various procedures or basically screwed this loan up and shouldn't, for that reason, be able to collect on the insurance policy, plus the insured, as you well know, has a duty to cooperate with the insurer when the insurer is conducting an investigation related to a claim.

Now, I said to the insurance company, I have a report and it's privileged, and given that you keep telling me ever other day you are reserving your rights, we are adverse enough, that I am not going to
turn that privileged report over to you, but I can
tell you right now, if I had given it to the
government, even if the government had agreed in
writing that this was confidential, I only turned it
over for the purpose of cooperating with an
investigation, and the prosecutor even agrees this
can't be used for any other purpose, unenforceable
agreement. Therefore, I would have had to give it to
the insurance company.

Now, I guess you could say, well, if it's the
truth it's the truth and shouldn't the insurer see it?
Well, as a litigator I know what can be done with long
lists of things that maybe each individual item isn't
particularly important, but all together they create a
picture, and I guarantee we would have had no end to

fighting and probably litigation with the insurance
comp any if I had to turn the report over.

Now, the next thing that happens is the other
banks in that group who have also lost millions of
dollars want to know, Hey, agent bank, just exactly
how carefully were you keeping track of what reports
were being submitted and whether dollar figures were
matching up? And should there -- there wasn't.
Should there have been litigation? Bank group versus
my client, the agent bank, and I have a report of
every single solitary thing, people who have inside
knowledge and who were looking for trouble came
up with. What would have happened in litigation? And
I could go on generating and add an employee who was
named in the investigation in the attorney's notes
then gets fired and sues, and now that employee wants
to know what did my boss say about me everywhere.

There is no end to the hypotheticals that I
could come up with, and the point here is my client
was not being criminally investigated. I am sure
prosecutors keep an open mind about these things, but
my client was the victim. My client was not the
criminal, so to speak, that people say, well, you are
just trying to protect criminals.

No, my client was eager to cooperate with the

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officials. My client wanted to recover what money
could be recovered.

Plus they were taken for a ride. They wanted
these people convicted, and so it's people like my
client who, number one, as a responsible business
undertook an investigation that was very thorough and
was very expensive and that was designed to lead to
what problems are there, just what we want the client
to do, and look at the number of ways that that could
have come back against my client and I suppose, if I
had waived it, still could.

That's the problem that gets me excited is
not just protecting people in a criminal investigation
but also protecting everyone who is involved in an
investigation.

Now, there is a lot going on right now. You
may be reading about things in the news. Here is just
a brief summary of what you will be seeing if you
haven't noticed it already. There is a trial going on
right now in New York. You may have read about it in
the New York Times, Wall Street Journal. These issues are getting coverage in publications of general interest.

There is a trial right now. KPMG is on trial in New York on allegations that some of its representatives created illegal tax shelters, and the prosecution in the investigation strongly urged KPMG not to follow its policy of providing representation for its executives who were implicated, and so that's what it did, partly presumably to avoid indictment itself. And right now there is briefing going on. There will be a hearing on May 8th, and what the judge will decide is whether the Thompson memo when it encourages people, encourages businesses to cut off your executives, whether that is unconstitutional, improperly interfering with their right to counsel.

The briefs are being submitted this coming week. Argument is on May the 8th.

Other states are forming coalitions, and the Michigan group has been particularly active, and I would like to invite all of you, if you haven't gotten the invitation yet, we are having a program on May the 10th, and this will be a panel discussion, and, believe me, I think this is going to be extremely interesting. This is being located in Livonia, Michigan. We put it someplace that if you are coming from the center of the state, west side of the state, wherever, you have got easy access to expressways.

This will partly be presentations, and we have a federal judge. We have a representative of
both the United States Attorney's Office, in fact the United States Attorney, Steve Murphy, is on the panel, and he is also bringing in someone from Maine justice from the Department of Justice in Washington, and of course we know what their policy is. They will be talking about their policy. Judge Borman, federal district court in Detroit, will be talking about the view from the bench.

We are also bringing in Stephanie Martz from Washington, D.C. Stephanie works for the National Association of Criminal Defense Lawyers. She is very outspoken and very active. And, Sam and Dawn, you have seen some of the e-mail chains that have been going around as our group has been discussing the topic. This is going to be a very lively, interesting discussion, and we do have some other inhouse counsel, for example, on the panel and other representatives.

I believe that if you haven't seen it yet, the invitation will be posted on the State Bar's website on Monday. We have capacity for a lot of people, but I have to tell you I am absolutely shocked at the amount of interest that there is out there in the community, and so I don't know this group, many of you may well have already been tuned into this all along. Maybe some of you it's new too, and so Sam and
I am both here happy to answer any questions that you might have in anticipation of our coming back in a few months and asking you for something. Does anybody have any questions, things you would like me to address? Thanks very much for your time, and thanks all of you for for listening to this; Tom, for helping us out so much; State Bar staff, Lori, everybody for helping us out. We really care a lot and we think this is important. Thanks very much

(Appplause.)

CHAIRPERSON BUITEWEG: We look forward to seeing you back in September.

We will return now to item number 14 on the agenda, which is the consideration of the proposed resolution regarding the gap between filing and recording of deeds. David Charron is here. There he is. Dave, chair of the Real Property Law Section, is going to present this proposal.

Take it away, Dave.

MR. CHARRON: Thank you. Greetings. My name is Dave Charron. I am here on behalf of the 3400 member Real Property Law Section of the State Bar. We are asking your assistance with a problem matter we are experiencing all across the state of Michigan involving what's commonly referred to as the gap period. It's also referred to as the missing books of entry.

Basically when either you or I go to record a document with our local register of deeds, a deed or a
mortgage, you go to the counter, you pay a fee, you
present the document, and you hand the document over
to the register of deed's clerk who is present. Under
a 1846 statute, that document is supposed to be
reviewed and then logged into something called a
reception book or a book of entry temporarily until it
can be permanently indexed and assigned a libre and
page number at a later time.

The reality in the state of Michigan is that
most of the counties are not keeping books of entry.
So what that means is the document which is delivered
to the register of deeds's office is in the possession
of the register of deeds for hours, days, if you are
in wayne county months, before it is searchable,
before it's of record with the county.

So when we speak about a gap, we are talking
about the moment in time from the date and time that
document is delivered, a fee is paid to record it
until the time someone can search it and it's in a
record that's searchable, it's logged in, it's
assigned a date, a time, that it's recorded.

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What we are finding all across the state, and
unfortunately if you are in wayne county you have the
worst situation, bad things are happening in the gap
period. We have people selling the same piece of
property several times. We have people borrowing and
pledging mortgages on the same piece of property on
the same day or at any time during that gap period.
Title companies can't search. We have had instances
with troubles with construction liens knowing whether
or not a document was actually recorded. We have had some direction from the Supreme Court with respect to construction liens. We have a holding that says basically the 90-day period that applies to a construction lien is satisfied when you drop the document off to the register of deeds and pay the fee. We don't have a similar holding with respect to all the other type of documents that are involved in the state of Michigan that are processed through the register of deeds office.

Another problem we are experiencing is that, quite frankly, these bags of documents or boxes of documents that are sitting around are getting reshuffled during the gap period, either intentionally or by unscrupulous employees shifting priorities of these documents. Erase notice dates. The register of deeds is supposed to be keeping track of who wins the race. That is being distorted because there is no one keeping this book of entry that's a 150 year old law is being ignored, and bad things are happening.

At the present time, as of last Tuesday, we have 96 bankruptcy cases in the state of Michigan which are being certified to the Michigan Supreme Court on the question if a register of deeds never keeps a book of entry is the document -- is the mortgage considered recorded? If you look at our statutes, the act of recording occurs when the register logs in that document the day you bring it in, the day you pay your fee. If they don't do that per the statute, is that document ever recorded?
Bankruptcy trustees, bankruptcy attorneys are swarming all over this, and they are seeking, quite frankly, to set aside those mortgages which never got put into that book of entry which was never kept.

So bottom line is we have some issues. We have been working -- I met last week with the Michigan Association of Register of Deeds about the problem. It's a well-known problem, that the Michigan Supreme Court was taking Wayne County under its wing for about two years monitoring on a quarterly basis their progress in getting up to speed. I am pleased to report that there is no longer a 6 month or a 90 day gap in Wayne County. They are down to 60 days, but 60 days is still too long. Michigan law does not allow any gap.

So we are here today to seek your support in helping us basically enforce a 150 year old law. Until the law is changed, and we are working on a change that will incorporate the latest technology, but until then we have to live with what we know, and the old law works. I guess that's the bottom line. If they would just follow it, we would have someone keeping track of who won the race, we would have a searchable index so there wouldn't be fraud or employee misconduct, and then eventually the document will be permanently indexed and all will be well. That's why I am here today. If you have any questions, I would like to handle them.

CHAIRPERSON BUIEWE: Do you want to go ahead and make a motion, Dave?
MR. CHARRON: For this reason the Real
Property Law Section is requesting that the State Bar
of Michigan should support enforcement of the
statutory requirement that county registers of deed
maintain entry books pursuant to MCL 565.24.

CHAIRPERSON BUITEWEG: Is there a second?

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VOICE: Second.

CHAIRPERSON BUITEWEG: Any discussion?

Mr. Larky.

MR. LARKY: Madam Chairman, Sheldon Larky,
6th circuit.

We have a two-page letter from Lori Wilson,
president of the Michigan Association of Register of
Deeds. If there was ever a time that we could do good
PR work, this might be the time. My suggestion is
that we vote down the motion or table it, because this
woman and the association is reaching out to us for
our assistance, and rather than for us to shove it
down their throat a statute that's been on the books
and all of us have lived with, albeit unhappy, this
may be the time for good PR for our association.

So my suggestion is that we vote no on this
proposal and take the advantage of meeting with the
association.

CHAIRPERSON BUITEWEG: Mr. Gear

MR. GEAR: John Gear, 30th circuit. I just
have two questions. How does this differ from asking
for injunction to follow the law, which I always
thought would never issue, and if I show up and I try
to record one of these and I say, Okay, are you going
pile, am I entitled to bring an action for mandamus and say, No, the law says clerical function, you know you have to put a date and time of entry on this right now or not? You know, can I get a mandamus to make the court do their job?

MR. CHARRON: You should be able to get a mandamus to make the clerk do their job, that's correct.

MR. GEAR: So what do I need this for?

MS. LARSEN: Suzanne Larsen, 25th circuit. I have a question regarding these entry books. Would this proposal support computerized entry books?

MR. CHARRON: At the present time entry books may be computerized. They are just not existing in many areas, computerized or written.

MS. LARSEN: Do you have any idea across the state how many of the counties are currently complying with the law, whether it's computerized or paper entry books, versus how many aren't?

MR. CHARRON: We have estimates from the title companies that most counties are not. They are just going directly to the permanent index. When you come into the register of deeds office you leave your document. It's just sitting there waiting to go into the permanent index. There is no temporary index that
makes it searchable or that logs in the time, date, minute it's received.

MS. LARSEN: I guess I just want to make sure I understand this, but if a document is received, it's, for example, immediately scanned or immediately time date stamped with a document number, scanned into the system but just not indexed, is that complying with the entry book, or only if there is a separate index?

MR. CHARRON: It could comply with the entry book requirement.

MS. LARSEN: Thank you.

CHAIRPERSON BUIEWE: Judge Kent.

JUDGE KENT: Wally Kent, 54th circuit.

Mr. Charron describes what is definitely a problem statewide. I have no quarrel with that. However, this is not a fight for the State Bar to enter into, I don't believe. The Bar, as such, is not an aggrieved party, should not take a position in the matter. We are not an interested party. In fact this is a potential Keller issue, I think. I am not that familiar with the Keller requirements, but I suspect that it at least could be argued.

The parties in interest are the banks, the title companies, the property owners. They should pursue their remedies in the courts and in the Legislature, but the Bar should not take a position. We don't have a dog in the fight. We should stay out.
For many years, perhaps that's why I have some of my white hair, the workings of the register of deeds at Wayne County have been a joke. I find it amazing that a statute 140, 150, 160 years old for the State Bar to say, not that they are going to file for a writ of mandamus, superintending control or anything else, they are going to seek the enforcement of that statute that somehow that's a Keller issue and somehow
we have no dog in the fight when it's individuals who
own pieces of property, it's individuals who give us
their deeds to record, trusting that we are going to
make sure they get good title.

I find that if there is an issue that the
State Bar of Michigan needs to be involved in and not
leave it to the title companies and not leave it to
the register of deeds, some of whom are obviously
incompetent, it's this issue.

As I understand your request, it isn't for
you to be the white knight; it is only for you to have
the authority of the State Bar to see that a statute
is enforced for the rights of the public. I intend to
vote yes. Thank you.

CHAIRPERSON BUITEWEG: Ms. Valentine.
MS. VALENTINE: Victoria Valentine, 6th
circuit.

My question is how does your proposal address
the issue in this letter from Lori Wilson with regard
to the mail problem? I think the concern is if things
come in the mail how do you determine the priority of
what is entered first? What's on the top, what's on
the counter first, what the postmark date is, and how
does this address this issue?

MR. CHARRON: This does not address that
issue. The current statute does not address the
issue. Hopefully proposed legislation will deal with
how do you treat mail and how do you treat Fed Ex
packages, all of those other forms of delivery to the
office.
Right now we have individual register of deeds making decisions on a county by county basis as to what priority they give things received in the mail or hand deliver or Fed Ex, and there is absolutely no guidance in the statute.

MS. VALENTINE: Do with we need further legislation on this perhaps?

MR. CHARRON: Yes, and that is what is going to occur. It's working right now. We have a five-person group at the Real Property Law Section that's begun the process of addressing this issue.

MS. VALENTINE: Thank you.

Hearing from Mr. Barton.
MR. BARTON: Bruce Barton, 4th circuit. I agree, one, that we should not take on the register of deeds. In view of that letter, we ought to give it some consideration at least. I agree, however, that we should not adopt something that could be interpreted to say that we should not support enforcement of laws. For that reason I move that we table and go home.

VOICE: Support.

CHAIRPERSON BUITWEG: Also no debate on the motion to table.

And so all those in favor of the motion to table say yes.

All those opposed say no.

Okay. The motion to table carries. And we will table this matter.

The last item on our agenda pertains to something which I know that, I know that Tom Cranmer gets asked a lot of questions about it as he goes around the state talking to local bars, because I have been there a few times with him when it's been asked about electronic filing in the state of Michigan. Many of our constituents and we ourselves want to know what's the state of this process at this point in Michigan? Are we going to have it? Is it going to be mandatory? What is coming down the pike so that we can be ready, and here to tell us what the state of e-filing is Janet Welch, general counsel for the State Bar, and Hannah Watkins from the Michigan Court of Appeals. Welcome, Janet and Hannah.
MS. WELCH: Thank you, Lori. I am Janet Welch, and I am pleased to be here with Hannah Watson, who is right at the center of the activity in the Court of Appeals on e-filing, and I think you will all be pleased to hear that we spoke with her earlier in the week and we looked at the time we had and we decided to cut it in half, and then when I heard the motion this morning, I said, well, we can cut it in half again. So I think that's what we are going to do.

I am going to tell you a little bit about developments which are both interesting and I think good news in terms of what the Representative Assembly has told the Supreme Court about what they want in terms of e-filing.

The interesting news is that the Supreme Court for many years has been supporting, through technology and budget, e-filing projects throughout the state. And that is compatible with what the State Bar has been asking them to do. We have been saying lawyers want this, we want the ability to have the convenience and the cost savings of e-filing.

In March of this year the court through its budget indicated that they are no longer going to provide funding support for e-filing projects. There are two reasons. The first reason, which is interesting for us and it's a challenge for us, is
that in the jurisdictions where there were e-filing projects -- I am talking about Ottawa County, Eastpoint, to some extent Washtenaw County, and the new project in Oakland County -- the response of the lawyers in those jurisdictions was really underwhelming, sort of like they were building it and we didn't come, which puts us in a little bit of an awkward situation. It's sort of like, you know, the tenants go to the landlord and say build an elevator because we are tired of taking the stairs, and the elevator gets opened and people keep taking the stairs.

So I guess my message for you is, as this progresses, use it and encourage people to use it. We have told them we want it, and we have to prove it.

The reason this isn't bad news is that as the court has been doing these e-filing projects over the years, at the same time commercial vendors have begun to offer the service of e-filing, and we now have states in this country who have e-filing in pretty extensively throughout their court system through commercial vendors, and there are enough commercial vendors right now that are competing with a product that it looks like it will be a cost effective way for e-filing to be available to courts and to lawyers through commercial vendors, and that's the direction that we are going in. It looks like a paradigm shift.
The court is looking to the State Bar and to partner with the Supreme Court and the judicial branch to put together sort of an informal consortium of folks who are interested in e-filing, and the consortium will serve as a clearinghouse of proposals of present information, and right now we are putting together language that will describe that consortium. So we are at the center of activity. It's not dead. It's actually moving forward. That's a positive development.

The Supreme Court also has a technology advisory group, one of whose task is to come up with e-filing court rules, and that project has just come out of the subcommittee of the tag group and is before the bigger group. So there is a draft out there.

The good news is that it has within it the proposal that this Assembly adopted last September to provide for voluntary service, e-service between lawyers by e-mail, and there was enthusiasm on everybody's part about that proposal.

Even better news is that there is an internal agreement not to hold that particular piece of the e-filing court rules hostage. It looks like that's going to move ahead, so I have good news to report on that front.

Obviously this is an area that changes every month, but we think it's moving in the right direction, and your guidance last September has really helped that along.

I am going to turn this over to Hannah now,
because she has more of the hands-on story about
what's happening in the Court of Appeals, and I think
that's good news too.

MS. WATKINS: Hello. Thank you for inviting me.

I am Hannah Watson. I am the manager of the
Lansing district clerk's office. The Court of Appeals
has participated in the Supreme Court pilot project.
We began doing e-filing through that venue in June of
2005, so we have just under a year's worth of
experience.

We started with just MPSC cases for a number
of reasons. One is MPSC has e-filing, and so we were
going to work with a bunch of attorneys and their
staffs who have experienced e-filing already, and it's
a small group of people and very concentrated in the
Lansing area, and even though, as Janet mentioned, the
response was pretty underwhelming across the state and
in all of the courts, actually in the Court of Appeals
it was pretty successful. We had 440 documents filed
in 35 cases in these ten months or so.

MPSC would probably have only about 20 cases
open at any one time. So when you say 440 documents
were filed, we had pretty good luck.

However, the Supreme Court is going to
discontinue it in September 2006.

I have a few additional reasons of why they
are going to do that. I thought that that e-filing
system was pretty clunky. It was a complicated look,
complicated to navigate. The portal size was too
small. It was only five megabytes. MPSC has large briefs, lots of appendices, and they would have to break up their briefs into sometimes three and four transmissions in order to get it through. There was no e-service. So those were some other reasons why, even though the MPSC has been great, the attorneys have been great in cooperating with us, they are not sorry to see it go.

What I want you to know is that the Court of Appeals is very, very committed to e-filing and e-service, and we are going ahead on our own. We have had several vendor presentations in which State Bar representatives have been present, Mr. Horsch, METROPOLITAN REPORTING, INC. (517) 886-4068

Mr. Cranmer I believe, Joe Firestone and some other attorneys have been a part of it. They will continue to be a part of it.

I believe we are very close to approaching a vendor to try to work out a contract or an agreement to begin e-filing again. Chief Judge Whitbeck is committed to having e-filing up and running in our court by the end of the year. I personally believe that it will be before that.

When I say we are committed, I mean everyone from the chief judge to the chief clerk to our IT staff to even folks like me. We are also committed to try to find a system that will be hopefully easier and more helpful for you all to use and your staffs to use and that we can be available as a resource for other courts.

I would just like to note that I think
evidence of our commitment to e-filing and going
forward with it is evidenced in a lot of the things
that we do already online. We have our website.
Internally we have, for example, our guilty plea
cases. We have our transcripts scanned and attached
to our docket events so that the judges don't get
paper transcripts anymore. Our research reports
internally are being downloaded to the judges
electronically, no paper anymore.

Hopefully you have seen that opinions and
orders are available to you that can be e-filed to you
if you like. We have case inquiries optioned out on
the website, case call schedule, interactive forms,
all of these -- I brought some brochures with me today
in case you are not familiar with what we are doing,
and I will lay them on the table out there for you if
you want to pick one up.

I guess what I am saying is that the Court of
Appeals has always been committed to using its limited
resources to do as much as we can technologically, and
we will be doing that with e-filing, and we are going
to go ahead with it and have it up and running just as
soon as we can. Thank you.

(Appause.)

CHAIRPERSON BUITEWEG: A couple of
announcements and housekeeping issues. Petitions for
membership on the Representative Assembly are due on
Monday. If your term expires in the September of 2006
meeting, please make sure that you fax or get your
petition to Anne unless you are term limited, by
Monday. If you are term limited as of the September meeting, we would very much appreciate you talking around to people in your area to see who might be interested in filling your seat and asking them to submit their petition by Monday.

Also the position for the clerk of the Assembly, those petitions are due by July, I believe, I think it's July 15th. So I just, since we don't have a meeting between now and then, I just wanted to remind you that if you are interested in the position of clerk of the Assembly to just let one of the officers know and we will direct you to a petition so you can file that.

And also the blue attendance sheet should be at your desk. Do not forget to turn those in. If you don't turn it in, you won't be here.

And I would just like to say that I am very, very proud of the members today in the Assembly and the quality of the debate that we had. It's evident to me that everybody read the materials ahead of time, was well prepared and had thoughtful comments and questions, and our transcript is going to look very good, so I am proud of that. Thank you all for coming, and I look forward to seeing you in September.

(Meeting adjourned at 2:49 p.m.)
I certify that this transcript, consisting of 143 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case on Saturday, April 29, 2006.

May 12, 2006

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