STATE OF MICHIGAN
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE
ASSEMBLY of the STATE BAR OF
MICHIGAN

Proceedings had by the Representative Assembly of the State Bar of Michigan at Lansing Community College, MTEC Center, West Campus, 5708 Cornerstone, Lansing, Michigan, on Saturday, April 30, 2016, at the hour of 9:30 a.m.

AT HEADTABLE:

   DANIEL D. QUICK, Chairperson
   FRED K. HERRMANN, Vice Chairperson
   JOSEPH P. MCGILL, Clerk
   JANET WELCH, Executive Director
   HON. JOHN CHMURA, Parliamentarian
   CARRIE SHARLOW, Staff Member
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Lansing, Michigan
Saturday, April 30, 2016
9:33 a.m.

RECORD

CHAIRPERSON QUICK: Ladies and gentlemen,
good morning.

ASSEMBLY MEMBERS: Good morning.

CHAIRPERSON QUICK: Excellent. My name is
Dan Quick. I am chair, and I am so glad to see all of
your smiling faces here on Saturday morning. Let me
officially call our meeting to order.

Mr. McGill, do we have a quorum?

CLERK MCGILL: I am happy to report we do
have a quorum.

CHAIRPERSON QUICK: Excellent. A few
introductory comments as we move into our agenda.
First of all, let me welcome and thank all of you for
being here and point out a few other luminaries who
are present, whether they are in the room at this
precise second or not. This includes our president,
Lori Buiteweg, who is here and will be sitting up here
at the table.

PRESIDENT BUITEWEG: I am sitting with my
delegation.

CHAIRPERSON QUICK: Or you can be down there
with the people. Stay with the people.

It includes multiple members of our Board of Commissioners, of course our Executive Director, Janet Welch, and a number of our State Bar staff, our parliamentarian, Judge John Chmura, and of course my vice chair, Fred Herrmann, and Joe McGill as clerk. So welcome to all of you.

A few reminders on protocol for today. Remember that when speaking to the Assembly you do so by moving in an orderly fashion to the microphones and, when it is your time to speak, you announce your name and your circuit. These proceedings are being recorded for posterity of the State Bar, and that cannot happen unless you follow those procedures.

We remind you that generally a member is permitted only to speak once on an item, which normally isn't a problem, but wanted to remind you of that rule. We also are voting today on our formal items with our clickers. All of you I think have used these before. Joe McGill will give you a little tutorial in a few minutes, a little reminder on how to use these. The important point I am trying to make to you is do not walk out with them, because we get charged, and they are really expensive. So please make sure you return those.
And last but not least, remember that we take attendance at the end of our meeting and will be circulating sheets at that time.

So with that, I will call up Ms. Jennifer Frost on behalf of the Rules and Calendar Committee to move for adoption of our proposed calendar.

MS. FROST:  Good morning.  Jennifer Frost, 39th circuit, on behalf of the Rules and Calendar Committee.  I move for adoption of the proposed calendar.

CHAIRPERSON QUICK:  Do we have a second?

VOICE:  Support.

CHAIRPERSON QUICK:  All in favor.

Any opposed.

We are off to a good start.  Thank you, Jennifer.

I would also refer your attention to the October 8, 2015 summary of proceedings in your materials and entertain a motion to approve that summary.

VOICE:  So moved.

CHAIRPERSON QUICK:  Thank you, sir.  Do I have a second?

VOICE:  Second.

CHAIRPERSON QUICK:  All in favor.
Any opposed. Two and 0.

Now, let me call up Michael Brown on behalf of the Assembly Nominating and Awards Committee to address both the filling of vacancies and approval of our 2016 award recipients.

MR. BROWN: Thank you. I move that we approve the nominees for the vacancies to the Representative Assembly that are contained in your packet, with two additions. Strike the name of Benjamin Parmet from the 47th circuit and, if there is no objection, add to the 44th circuit Nancy Nawrocki.

CHAIRPERSON QUICK: Do I have a second to the motion?

VOICE: Support.

CHAIRPERSON QUICK: All in favor of welcoming new members to the Assembly say aye.

Any opposed?

A round of applause, please, for our new members.

(Appause.)

CHAIRPERSON QUICK: Please feel free to join your circuits as opposed to the VIP seating in the back.

Mr. Brown, floor is yours.

MR. BROWN: Yes, I move that we nominate
Tessa Hessmiller and Jerrold Schrotenboer for the Unsung Hero Award and that we nominate Lynn Chard for the Michael Franck Award.

CHAIRPERSON QUICK: Do we have a second on the motion?

VOICE: Second.

CHAIRPERSON QUICK: Any discussion regarding our candidates or nominees for these prestigious awards?

Hearing none, all in favor of bestowing these awards as designated say aye.

Any opposed or abstained. Motion passes.

Thank you, Mr. Brown.

(Applause.)

CHAIRPERSON QUICK: For the chair's report, ladies and gentlemen, I just wanted to say a few words, and then we will jump forward in our agenda. As you know, the Representative Assembly is the final policy-making body of the State Bar. To me, the word of importance in that title is representative, and I thought a little bit about exactly what that means. I found some words of one of our founding fathers, John Adams, on this topic that I thought was illuminating.

As good government is an empire of laws, how
shall your laws be made? In a large society
inhabiting an extensive country, it is impossible that
the whole should assemble to make laws. The first
necessary step then is to depute power from the many
to a few of the most wise and good.

Now, before you all get carried away with the
wise and good thing, let me also share with you
John Adams' words upon being elected to the
Massachusetts House of Representatives. I have
accepted a seat in the House of Representatives, and
thereby have consented to my own ruin, to your ruin,
and the ruin of our children. I bid you this warning
that you may prepare your mind for your fate.

Notwithstanding John Adams, I would submit to
you, humble representatives, that you are wise and
good. And how do I know this? Well, first of all,
you have done the threshold necessary thing, which is
given up your time and your energies to roll up your
sleeves on behalf of the State Bar of Michigan and
participate here as representatives. I know that you
will consider issues with care, bringing to the table
your experiences, both personal and professional, and
no doubt that you all will seek to do what is the best
on behalf of all members of the State Bar of Michigan
and the public of our state.
Our goal as your officers since the last meeting has been to try to find ways to help you obtain this noble end. As you will hear today, there has been work done on important items that are improvements to the Assembly, our means and our quality of communication with each other, within the Bar, and with the members of the Bar at large. We have taken up our duty to consider, under the rules to consider the dues that are charged to the mandatory State Bar of Michigan, and you will hear a presentation on that today. We are evaluating improvements to our court system, our court rules, our rules of ethics, and we will hear about State Bar's 21st Century Initiatives and the important items that will be coming down the pike for consideration by this body in future meetings. That, I submit to you, are wise and good tasks.

I thank and applaud you for your commitment and efforts, and I urge you in between our meetings to get involved through our committees and to participate through them. I think you will find that service rewarding.

Lastly, as part of the chair's announcement, under the tab for that there is a short report on a reapportionment. This is done pursuant to our rules
periodically. It is based purely on the population of the various circuits, and you will see there a few changes based upon State Bar of Michigan data. I will share with you that at the Board of Commissioners and the Representative Assembly level there has been some consideration about revisiting the language in the Supreme Court Rules or suggesting that somebody else revisit them to consider whether or not that language is optimal, but at least for the moment the language is what it is, and the reapportionment will take place as designated.

So, with that, let me see, do we have Mr. Burrell present? Welcome Aaron Burrell, who is the chair of the Special Issues Committee, to talk to us about dues.

MR. BURRELL: Thanks, Dan. Good morning. My name is Aaron Burrell, representative from the 3rd circuit and the chair of the Special Issues Committee. As you may recall, in 2014 the Supreme Court entered an administrative order establishing a task force on the role of the State Bar of Michigan. The task force ultimately issued five recommendations, one of which was that membership dues for inactive State Bar members should be reduced, inactive member reinstatement should be more accessible and rationed.
Pursuant to this recommendation, at the beginning of last Bar year former Representative Assembly Chair, Vanessa Williams, and the Representative Assembly Chair for this year, my colleague, Daniel Quick, along with the Assembly officers, asked the Special Issues Committee to examine issues relative to the current dues structure of the State Bar of Michigan.

In doing so, the committee examined the public comments relative to Senate Bill 743, which sought to make the State Bar of Michigan a voluntary bar. Had robust discussions regarding ways to modify and potentially enhance the dues structure of the State Bar of Michigan. Ultimately the committee discussed a number of options modifying the current dues structure, including graduated scales, lowering the disciplinary fees for inactive and retired members, removing the disciplinary fee for retirees altogether, and perhaps removing the three-year limitation on inactive status.

The committee brought these alternatives to Executive Director Janet Welch and Chief Financial officer Jim Horsch, who have researched and considered each option, and they have graciously agreed to provide the information regarding the current dues structure and the impact of any proposed modification.
This information is intended to provide background and a framework for future recommendations to this body relative to the dues structure, so at this time I turn it over to Jan and Jim, who will provide us with more information on this very important topic. Thank you.

EXECUTIVE DIRECTOR WELCH: Thank you, Aaron.

It takes two people to handle this topic, and this is the way we are going to handle it. Jim, who is our chief finance guy and technical expert, is going to be doing the play-by-play on this. He is the author of the fancy slides you are going to see, and I am here for color commentary, so I will try to make it fun and exciting. With that, I will let Jim begin.

MR. HORSCH: Thank you very much, Janet.

And, Carrie, I think you are going to do the slides for us. You can go to the next slide.

The Michigan Supreme Court, obviously, is the entity that sets the dues pursuant to Court Rule and Administrative Order, and the RA has the exclusive authority over the dues increase recommendations.

EXECUTIVE DIRECTOR WELCH: My comment here is that only you with the State Bar of Michigan can make a comment to the Supreme Court officially on what the dues should be, so you can think of yourself sort of as congress and declaring war.
MR. HORSCH: As Aaron said, the recommendation from the Task Force on the Role of the State Bar in 2014 did want to look at reducing inactive member dues. And, as we will show some statistics on how the Michigan's active dues are well below the national average, Michigan's inactive dues are on the high side.

These are the inactive dues. You can see $180 of your $285 go to support the State Bar. The State Bar doesn't get all of the money. $90 goes to support the discipline system, and $15 are to the Client Protection Fund.

EXECUTIVE DIRECTOR WELCH: Again, these allocations are set by the Supreme Court, and your recommendation in terms of dues can address allocations. The history of that is that the Supreme Court has sometimes taken the recommendation in terms of both the amount and also the allocation verbatim from your recommendation and sometimes they have altered them.

MR. HORSCH: Now, as you can see, the inactive dues are less, and that's because inactive members do not have the license to practice law, but they get all of the other benefits an active member would get. As you can see, the amount that goes to
the State Bar has been reduced by 50 percent, and the amount that goes to the Client Protection Fund has also been reduced by 50 percent, but the amount that goes to the discipline system is a hundred percent at $90. You are at about 187.50, or 66 percent of active dues members.

And this is a chart that will show you all of the different dues structures, and we do have discounts for active and inactive members with 50 or more years of service, and those dues amounts are listed up there. We also have another category for emeritus members. Emeritus members are those members who have 30 years of membership or are 70 years of age, and they get all the privileges except the license to practice law.

EXECUTIVE DIRECTOR WELCH: So a little history here that really impacts how the operational revenue of the Bar has been where it has been for the last decade, and that is the last time that the RA visited this issue, in 2004, but the RA recommended that the exemption that had been in place at that point for members 70 years or older, complete exemption from dues be removed but only going forward, that there be a grandfathering in of everyone who had already been exempted from paying dues at age 70 or
above, and the Supreme Court rejected that grandfathering recommendation and instead said if you are still practicing, it doesn't matter what your age is, we are going to require you to pay the full amount, the full freight, and that was in place for about a year, I think. And there was a great outcry, particularly from the people who had been exempted from paying dues forever, and the outcome of that, the Supreme Court went back and revisited their original order and created the structure that you see here, which is a break if you have been in practice for 50 years at least, and they also created an emeritus status, because one of the things that we discovered when the Supreme Court did remove the exemption altogether was that members who had been paying and weren't practicing were very unhappy at the idea of not being a member of the State Bar of Michigan. It isn't just a license and status, it's an identity. So that's sort of the background of how that happened.

And the significant thing is that when you, the Representative Assembly, made your recommendation to the Court for what the dues amount should be, it was based on the calculation of what the grandfathering provision if it were in effect would mean, and so when the Court did not grandfather in
people 70 or older at that time, there were more dues that were coming in, and the Supreme Court reduced the amount that the RA asked for in half. Little history.

MR. HORSCH: And some more history, as a matter of fact. For those who want to go back to 1970, you can see that the dues were only $60 a year, and over that time, due to dues increases, it's gradually increased. The last dues increase, as Janet mentioned, was in 2003-2004, and it was set by the Court at $315 for an active member, and in 2013 the Supreme Court reduced the discipline portion of the fee by $10, so then it went down to 305, and a couple of years ago the Supreme Court again reduced the Attorney Discipline fee, by $20 this time, because their fund balance was at $5 million, so they reduced it by another 20, and now it's at the current level of 285.

EXECUTIVE DIRECTOR WELCH: Just one point about the structure of what you are seeing. This sort of jump up in dues at these regular intervals of several years is by far the most dominant model for setting dues for membership organizations, and it is particularly dominant for mandatory Bar associations.

The rule of thumb when I came to the Bar, across the country and in Michigan, was a dues cycle
was about seven years, so you set the dues, when it is increased, you set it at an amount above what your operational expenses are anticipated to be for about three or four years, anticipating that you will bank the excess and then live off of it for a few more years so you don't have to keep going through the transactional costs of increasing the dues year by year.

MR. HORSCH: Stay on the slide for a minute, Carrie. I want to point out since the last dues increase it's been 13 years, so almost twice as long and we are projecting in our financial forecast, as many here on the Board of Commissioners would know, that we are not going to, if things stay the same, we are not going to need a dues increase for another seven years or so.

EXECUTIVE DIRECTOR WELCH: So that would be an extraordinary run on a single dues increase, and there are lots of reasons why we have been able to go as long as we have, but I would say the two most dominant reasons that I can think of, one is that inflation has been historically low for a long period of time, and the other reason is that the Bar has been very, very active and strategic about automating functions and holding costs down through technology.
MR. HORSCH: This is the history on the inactive dues. Inactive dues weren't payable until the last dues increase in 2003-2004 when the category of voluntary inactive dues was established by the Court, and at that time the dues rate was $217.50, and as a result of the two recent decreases by the Supreme Court on the Attorney Discipline System fees, those total fees for inactive member dues have dropped down to $207.50 to the current amount of $187.50. And I would point out that we have a higher percentage of members in this category from out of state, inactive, and also members who leave the work force temporarily and then come back and become active members again.

EXECUTIVE DIRECTOR WELCH: So in 2004, just to note, we really didn't have a good handle on our inactive members, because they didn't owe us anything, and so it wasn't worth our time to track them, I guess, although we had to notify everyone who was officially on our books as an inactive member that they were now obligated to pay dues, and we discovered we had thousands of inactive members who we couldn't track down, in part many of them had a very good excuse, they were deceased, we discovered, or they went into the inactive inactive. So one beneficial consequence of the change is that it really cleaned up
our files considerably.

    MR. HORSCH: This is a graph of the number of inactive members through the years since the category was established. As you can see, we have been between 1,200 and 1,300 inactive members over the years.

    EXECUTIVE DIRECTOR WELCH: I have nothing funny to say about this.

    MR. HORSCH: Now what we are going to do is compare the State Bar of Michigan's dues to the other mandatory bars in other states, so I have got a series of graphs here that will show you just how good the State Bar of Michigan is compared to other states and other mandatory bars initially here.

    So you can see that the active dues at $285 is well on the lower part of this graph, so we are doing very good here compared to other mandatory bars.

    EXECUTIVE DIRECTOR WELCH: Can we go back?

    MR. HORSCH: Sure.

    EXECUTIVE DIRECTOR WELCH: If it were up to me, we would just stay on that slide forever, it looks so good. If I were you, I would be saying, So what is that mandatory bar down there at the very end that is just like less than half of what the State Bar of Michigan is paying and half of everybody else on the low end, and that is Nebraska, which two years ago was
sort of de-unified. It was broken into two parts. You have to be a member of the Nebraska Bar, but you only have to pay dues that are related to discipline and the actual licensing costs. So in the Bar world nationally, the folks who study this look at Nebraska and say they have managed to find the worst of all possible models. It's really a struggle both in this model to serve the functions, the licensing and professional functions, as well as the association functions that support the system. Just to note. And I believe that the highest is Alaska, but many, many lawyers pay much, much more than members of the State Bar of Michigan pay.

MR. HORSCH: Basically 79 percent of the mandatory jurisdictions have higher dues, active dues, than the State Bar of Michigan.

Now, if we compare the State Bar's active dues to all states, what we do here is we compare our mandatory dues to the required payments that attorneys have to make in all states, so even though they don't have mandatory Bars, they still have to pay for their license, and when we add that up, we still fare pretty good. We are 19 percent lower than average, and 67 percent of the jurisdictions have higher dues and fees than the State Bar. Now, I will say that that does
not include mandatory continuing legal education for
any of the states, and if you were to factor that in,
I would --

EXECUTIVE DIRECTOR WELCH: We would be down
at the bottom.

MR. HORSE: We would be at the bottom. Next
slide, please.

Now a little different story when you look at
the State Bar of Michigan's inactive dues compared to
other mandatory bars, and in this case we are on the
higher end. At $187.50, you can see that we are 32
percent higher than average, and so this is a little
different story, and if you go to the next graph,
Carrie, we have another view of this. This is the
State Bar's inactive dues as a percent of the active
dues, so we are at 66 percent, and compared to all the
other jurisdictions, we are way up by the top. So we
are 173 higher than average when you look at it as a
percentage of active dues.

So there is a case to be made, and I know the
committee has been looking at this, to lower the
inactive dues, and, obviously, members are not
practicing, so there is a lower burden on the
discipline system, and then 79 percent of the
mandatory bars have inactive status, and Michigan's
inactive dues are currently among the highest. There is a recommendation that would reduce the dues from $187.50 down to $125 and would reduce the inactive 50 or more years of service from $97.50 to $65. Now, these changes would impact revenues in total by about $80,000.

EXECUTIVE DIRECTOR WELCH: So that's the background that we presented to your committee, and the committee has asked us to present to you. I think if there are questions that Jim and I would be available to answer them at this point or at any point going forward if you want to e-mail us or go through your leaders to ask any questions.

CHAIRPERSON QUICK: Any questions or comments from the Assembly? I know that was a lot of math before 10 o'clock. Yes, sir.

MR. LEVIGNE: Thomas Levigne with the 3rd circuit. Can the State Bar afford the decrease in revenue? I just wanted some feedback on that.

EXECUTIVE DIRECTOR WELCH: I would say, as executive director of the State Bar, that the question of what the Bar can afford is a question for the leaders of the State Bar, thinking about what it is that we have to accomplish and what it is that we want to accomplish and being as efficient as we can. So
there isn't an answer that is, you know, a black
letter answer to that question. The Bar will be going
through a strategic planning process this year, and
you could make the case that we need more, that
members in Michigan would be better served if their
dues were, active member dues were closer to the
national average, that we could be doing more for you,
or you could make the case that we could try more
efficiency, and so I am punting on that question to
the leaders where it really needs to be answered.

MR. HORSCH: I would just add a comment that
depending on which portion of the dues would be
lowered, it could be shared between the Discipline
System and the State Bar, so that would reduce it, and
the State Bar, for example, has revenues of 10
million, so if half of that were shared by the
State Bar, that would be a very small portion of total
revenues. There is a case to be made on whether or
not the State Bar should share any of that, because
the State Bar has already reduced it by 50 percent,
and a lot of the complaints in our dues areas from
inactive members is how come we are paying for
discipline when we are not practicing, so that would
be kind of how it's viewed.

EXECUTIVE DIRECTOR WELCH: While we are in
the numbers territory and we are talking about dues, we have to make assumptions about how people would behave if the dues were lowered or raised for inactive membership. And so the $80,000 is a guess that people would make the same choices. More people might go inactive if the fees were more reasonable. I am not sure what -- or, if the criteria for coming back in after you had been inactive, if those criteria changed, then the assumptions change as well.

The other thing that we need to be looking at going forward is that we are predicting fewer members, which will also affect dues and revenues going forward.

CHAIRPERSON QUICK: Before we hear from our next -- Carrie, would you put the last slide up, because that demonstrates sort of our current -- no, the last slide. One more. It's in the hard copy at least that you have. It gives the summary of the next steps involved with continuing to be considered.

Yes, sir.

MR. RENNER: William Renner, 15th circuit, Branch County. Why are we doing this? I mean, speaking as a person who is in their sixties, when I go to Wendy's and they give me the 10 percent discount, I say to myself, Why weren't you there when
I had four kids at home and I could have used it? And I say to the State Bar somewhat similar to what I would have said at Wendy's, why are we doing it for older members? Why aren't we doing it for the new members, the ones who just get out of law school that are saddled with debt? If you have got 50 years in, statistically you have got to be at least 75 years old, so you either can afford it or you can't and you are either a lawyer or you are not. So I am just wondering why we are giving a Wendy's break to the group, hopefully the group of attorneys that can most afford to pay the dues? That's just my comment.

MR. HILLARD: Martin Hillard, 17th circuit.

Just curious from the discipline fund portion, what percentage of disciplinary actions actually involve inactive members?

EXECUTIVE DIRECTOR WELCH: I do not know the answer to that question. I think that if you are inactive -- I am making eye contact with our Professional Standards Division director here. If you are inactive and you are practicing, that's an ethical violation, and that would be the circumstances under which you would be addressing the problem.

MS. GOODRUM-GARLAND: Danon Goodrum-Garland, Professional Standards Director. The only situation
that I can think of is that if you are inactive in Michigan but eligible to practice, licensed in another jurisdiction and engaged in unethical conduct in that jurisdiction, then the disciplinary system would have concurrent jurisdiction to bring some disciplinary proceeding, so that would be the limited circumstances that I can think of right now.

MS. KAKISH: Kathy Kakish, 3rd circuit. I have a point of order and then two comments. Point of order, Dan, you mentioned we had some handouts or some hard copy. I don't see it in our booklets, and there was nothing on our table.

CHAIRPERSON QUICK: Maybe I am just special, but we can certainly make it available after the meeting.

MS. KAKISH: We would appreciate that.

Two comments. When do we expect the issue to be before the Representative Assembly, if it will be, and the second issue is who are the committee members, if Aaron can introduce them. Thank you.

CHAIRPERSON QUICK: Mr. Burrell.

MR. BURRELL: I would ask the Special Issues Committee to just stand if you are here in the room. They were excellent this year. If we can give them had a hand, please, because they worked very hard.
MR. BURRELL: Thank very kindly, Special Issues Committee members. We prepared that recommendation to submit to essentially the other stakeholders that are going to be affected by this particular reduction in dues. I would note in responding to the first gentleman's comment that it was inactive members, not necessarily older members. Many older members will also receive that reduction, but it was all inactive members. That includes younger members. That's to bring our dues structure in line with the remainder of the country, and we anticipate, hopefully, that we can get comments from all of the stakeholders on this particular topic this year, within the next few months, and hopefully we can bring this to the full body for a vote at the next session.

CHAIRPERSON QUICK: Yes, sir.

MR. JOCUNS: Bernard Jocuns, 40th circuit. In regards to the inactive status, is it even necessary to have any sort of money allocated for any sort of discipline?

EXECUTIVE DIRECTOR WELCH: I don't know that the case has ever been made for why the allocation is the way it is. The general theory of every member
supporting the discipline system is that, even though
the vast majority of members of the Bar, active or
inactive, are not subject to discipline, the
profession benefits by a system that responds to
unethical conduct by lawyers, and so that every lawyer
has an obligation, inactive or active, to support that
system.

CHAIRPERSON QUICK: Yes, sir.

MR. POULSON: Good morning. Barry Poulson, 1st circuit. This, by the way, will be my last
meeting, so I am stepping down. I have enjoyed your
company. I would hate to see an imposition upon the
State Bar of greater efficiency. I think they are
incredibly efficient. I have watched the organization
try to save money and effectively save money. I
cringe at the idea of hemming them in further.

Mr. Renner is a very young man. I understand
that he sees the sliding scale. I am 67 here in a
couple months, and I don't want a break because I turn
70, but I do have a sympathy, as he does, for people
in their first years of practice. This $285 is really
hard the first couple years. It's tremendous.

Finally, a second category, and that's the
category of public defenders, and you know and you
hear from me every meeting, this is the last time, the
State of Michigan has yet to appropriate a single penny for the payment of public defenders. All this stuff about the MIDC and they make lots of rules to make our jobs harder, but not one penny. So, to me, the State Bar dues, which are mandatory, are, which public defenders have to pay out of their pockets -- I have heard some of the prosecutors have it paid by the state, the county -- in effect is a tax on the presumption of innocence. Public defenders prices go up, we get extra deals on health insurance that costs us more, and we have new required training from the MIDC, and yet the State Bar still charges us to be a public defender. So I think the disparity there between prosecutors and public defenders needs to be addressed in the dues structure as well.

(Appause.)

CHAIRPERSON QUICK: Seeing no further Assembly members, please join me in a round of applause to Jim Horsch, Aaron Burrell, and Janet Welch.

(Appause.)

CHAIRPERSON QUICK: I do encourage each of you to speak to your fellow professionals in your circuit, in your network, and if you have further commentary on this topic to send it to Aaron for
consideration by the committee as he goes, as the
committee goes and gathers up additional feedback from
various stakeholders and contemplates the form in
which this will be presented to us in the fall.
Obviously important, serious business. I do apologize
for the early math, but it is a very important topic.

Next on our agenda, ladies and gentlemen, I
would like to ask Dan Cherrin to come to the podium.
He is the chair of our Ad Hoc Outreach and Publicity
Committee. You will recall this body sanctioned this
committee to be organized a meeting or two ago to take
up all things dealing with the manner in which we
communicate with each other and with the Bar and with
our members. They have been hard at work, and turn
the microphone over to Dan.

MR. CHERIN: Thank you, and good morning,
everybody. Dan Cherrin, again from the 6th circuit.

Moving away from numbers and back to facts
and a little inspiration that Dan gave us this
morning, I want to start off my presentation with a
few questions before we get into some of the
recommendations that we made that are in your booklet.
So first, can you tell me who adopted a proposal to
authorize a study of appellate representation of
Who defeated a proposal that would have prohibited attorneys from making financial contributions to the campaign funds of judicial candidates? We did, in 1973. A great year, by the way.

Who approved the recommendation that the prevailing party in civil cases should under certain limited circumstances be entitled to reasonable fees at the discretion of the trial court, under guidelines and limitations provided by the Rule? We did again, and that was in 1976.

You can see that these are just some of the things that we have done as a Representative Assembly since we have been created as an official policy-making body of this State Bar.

The challenge is, in the next slide, that nobody knows all the good things we do, because we don't really pat ourselves on the back, we don't toot our own horn, and we don't go out to our own circuits and tell our colleagues what we are doing. We don't call our spouses on our way home from driving to Lansing, oh, my gosh, you won't believe what we voted on today. We will go back to our office.

So, although we are the ultimate policy-making body, no one knows what we do and as a
result I don't think a lot of people know what we do. People within our Bar don't even come to us for the issues. We have a few issues to vote on today, but where are some of these issues that we talked about in 1973, 1976, and before?

So our goal as a special committee, and I will recognize them at the end, is to increase our profile within the State Bar and also outside of the State Bar and to really expand our influence.

I went to a reception last night with Congressman Kildee, and Jim Ananich, Senate Majority Leader, was there. I was telling him I was coming from Royal Oak to Lansing today. You know, he didn't know much about the Representative Assembly. He is not a lawyer. I said, there is a lot of members of the State Bar that hire lobbyists that push for issues to change the law. That's something that this body, should ultimately be one of the things that we do.

So what do we look at as a committee, and this committee is amazing, and getting on the phone with our colleagues in the Bar is really inspiring, because we all want to do something very positive. So I recommend that everybody get involved in something and take a very active role in it.

So we looked at survey results from last
year. There is a survey on how the State Bar communicates with its members. We looked at the history. That's where I got some of the facts from that I thought were a little bit interesting. We looked at the final response from the task force report, the overall communication strategy, and when you first join the Representative Assembly you were given a brochure on what we do, and we looked at that.

So where we focused. We focused on these four areas, but we really tried to concentrate on the third one. We tried to look at ways that we could provide better tools for members to communicate with your constituents, with colleagues in your circuit.

It's funny. I am in the 6th circuit. I don't know anybody sitting in the 6th circuit. At least I don't think I do. I know a few people, but they are not here today. So how well do you know people within your own circuit to communicate with, let alone people with a firm in Grand Rapids?

To work harder at linking us as an Assembly to the sections, raising our profile and making more people aware of what we do through PR and marketing, which is one of my fortes, and increasing communications amongst ourselves, doing a little bit more networking, getting a chance to learn from each
So we looked at what can we do in the short-term and what can we do in the long-term, and I won't bore you with going through every single detail, so I extracted some of the highlights there.

Certainly to update the Representative Assembly website. That should be the first line of defense, a place that we go to to get information and should be easy to find and easy for us to refer people to to interact with us and see what we are doing.

To revise orientation material. The new members of the Representative Assembly, this is your opportunity to really make an impact and find ways to make an impact and for us to use and feed off of your energy as to why you became a Representative Assembly member and for us who are more experienced or have been in the Representative Assembly for a few years to get inspiration from you.

And then for us to get the tools and resources to go back to our constituents and educate them on what we did or how we can help them. The easier it is that we have things to have, the better off I think we will be as a body. The background of things that we debated here today, some of the mental notes that we took from some of the impressions that
people had. Some that would just cut and paste and send it out.

I remember as an intern in Washington in college, I did this huge report for my boss, and he is like, What are these little numbers by the sentences? I said, Well, those are footnotes, citations. And he is like, No, in Washington we don't use footnotes. We lift things. We lift it from here and we put it in here. But so we are not, in order to -- I say that because, the easier it is to give us the information, the easier it is for us to get out the information to people that need it.

Some of the things we can do in the long term, we can increase our profile in the media through State Bar of Michigan media. We get e-mails almost every day from the State Bar, a lot from the commission, a lot from the sections you are in, and so we should have our own communications that we send out to people.

And the State Bar Journal, we should have a section. Love it for our chair to have a column and talk about some of the issues and provide that inspiration or find other ways to heighten our profile through the media that we already have.

Re-establish ourselves and connect with the
State Bar and specialty Bars and sections that we have and reinforce our important role and evaluate the role that other bars have and see kind of best practices from around the country.

In the long term, we can engage others in conversations about what we do. We can invest in better tools and technology. I think that the State Bar has some of the technology, but we learned that they can't get to the Representative Assembly that they do for the commissioners or some of the sections, and so how can we bring up the technology to impact everybody and to benefit everybody?

And then to define and simplify the process by which issues come before this body for us to debate and evaluate. Those are just some of the things we can do in the short term and long term.

So again I ask you who approved recommendation for the Supreme Court that all attorneys actively engaged in private practice be required to maintain malpractice insurance policy? We did.

Who rejected a proposal that the State Bar endorse a rule mandating the use of letter-sized paper in all Michigan courts? Imagine what we could do now with the technology.
So what will we do next? You have a few
issues before you today, but there are a lot more
issues for us to talk about that are out there that
are not coming to us. We need to go out and find what
these issues are. We need to go out and talk to more
people about what you do and bring those issues before
us.

Before I leave, I want to recognize and thank
the members of this committee who were just dynamite.
If you are here, please stand and be recognized, and I
want to thank you very much for your service. So
thank you.

(Applause.)

CHAIRPERSON QUICK: So obviously the work of
this committee is ongoing, but I will give a moment
for Assembly members to approach the mike and share
with us any things you may have.

Mr. Poulson, this is your last meeting, so
maybe speak now or forever hold your piece.

MR. POULSON: I think I will be holding my
piece. Thank you very much.

CHAIRPERSON QUICK: So we will recognize our
president, Ms. Buiteweg.

PRESIDENT BUITEWEG: Which microphone? Good
morning. Lori Buiteweg, 22nd circuit. I might
suggest that everybody in the room get a Twitter handle if you don't already have one, that the RA get a Twitter account and use social media as one way to generate ideas. I have a Twitter handle, and Janet Welch has a Twitter handle, and the State Bar has a Twitter account, so social media is just one idea, and it's kind of fun, so I have been tweeting about the meeting this morning. Feel free to follow me and tweet ideas throughout the meeting. Maybe that might be one way to increase communication and ideas. Just an idea.

MR. CHERIN: What's your Twitter handle?

PRESIDENT BUITEWEG: It's @LoriBuiteweg.

CHAIRPERSON QUICK: I am not going to ask for a vote on whether anybody thinks it's a good idea that they put me in charge of a Twitter handle. One moment, Peter. Janet.

EXECUTIVE DIRECTOR WELCH: I feel obligated to say that if you are tweeting as an RA member and that's your identity as a twitterer, you have to disclaim that you are speaking for the State Bar of Michigan or the RA, but having said that, having been very bureaucratic and nodding to the First Amendment and Keller and our bylaws, I would say that I endorse the idea that Twitter can be an amazing tool for
engaging conversation without issues and particularly engaging the stratum of our membership that is new to the profession and is otherwise challenging to engage.

CHAIRPERSON QUICK: Yes, sir.

MR. FALKENSTEIN: Peter Falkenstein, 22nd circuit. I strongly endorse Ms. Buiteweg's proposal. Any method of communication that restricts lawyers to 140 characters has to be a positive thing.

CHAIRPERSON QUICK: Let's not give the judiciary any ideas.

Seeing nothing further, one last round of applause for Dan and his committee.

(Applause.)

CHAIRPERSON QUICK: Risking being corrected one additional time, I believe you all have something that looks like this near you. If you do not know what the 21st Century Task Force is, you are going to get in an earful in a moment from its organizers, but I am sure that you have, because the Bar has been leading with this program for some time. I had the distinct honor of serving as a member of the task force. The final report has been issued. It is available in full through the State Bar website. It was a little too hefty for us to publish and hand out, being the expense-minded organization that we are, but
it is readily available on the full Bar website.

To tell us more about this, I am greatly honored to welcome to the podium two of the past chairs of the Representative Assembly, as well as past presidents of the State Bar of Michigan, Bruce Courtade and Julie Fershtman.

(Applause.)

MR. COURTADE: Good morning, everybody. I am Bruce Courtade, former chair of this body, long ago, although I still see some familiar faces. Some people that just keep recycling, so it's good to see those faces again.

Julie and I are going to spend about 20 minutes this morning trying to bring you up to speed on the task force, where it started, its genesis, and where we are today. We hope to leave a little bit of time at the end if you have any questions or comments, but we are just going to plow ahead.

The task force was originally thought of back in 2013 when -- I wish I could take some credit, being the State Bar president at the time, but it was Janet Welch who was the driving force, and back in June of 2013 at the Bar Leadership forum we heard from Professor Richard Susskind talking about the future of the law, and we had prepared to launch a task force,
and then, as some of you may realize, there was a little hiccup, and the State Bar was sort of directed to look inside itself and examine some other issues. But then eventually, under Tom Rombach's leadership, Tom did a phenomenal job pulling together a task force from around the state as geographically, ethnically, gender, practice-wise. Any type of diversity we could get we tried to get. We had buy-in from all of the major stakeholders -- the courts, the legislature, the governor. The Supreme Court had a representative on the task force and also had the director of SCAO. So it was very widespread, a lot of input.

We encouraged, from the start, the task force to think outside the box, and we always talk about coloring outside the lines. There were no sacred cows, and from the start, anything you thought of that could be something that the State Bar could do better, ought to do better, needed to be addressing as we move into the new century, it was on the table.

So that was the background, but one of the first thing we did is we came up with a series of guiding principles, and we are going to sort of scroll through them. I will just encapsulate them in one sentence each.

First, we recognized the Bar's long-standing
commitment to protecting the public. Those of you who
have been in the State Bar building know that's on the
wall, and that was in the hearts and minds of every
person on the task force.

We encourage innovation, but not at the cost
of the ethics. We want to be more efficient, but no
less ethical.

Emphasize getting useful information to the
people who needed it as quickly as possible.

Recognize the need for representative
diversity within the entire justice system, from the
first interaction to the end.

We were not interested in making change for
change's sake. If somebody wanted to change
something, they had to show why it was necessary and
especially how it would help protect the public.

Again, the focus was on ethics, and we
realized that some of the things that we were even
thinking about implementing would never be able to be
adopted without significant rule changes, either to
the Court Rules or the Rules of Professional Conduct
or the rules governing the Board of Law Examiners. So
we knew that from the start, but we said, you know, if
you are going to do it, we have to make it work
ethically.
And then, as far as it related to the education of our members, we wanted to make it very clear, we are not pointing fingers at the law schools and saying, you know, these young kids are the problem, because in many ways the students who are coming out right now are better prepared for the 21st century than those of us who have been practicing for 30 years. And one of the things you will see Lori will talk about that we had to address was we're a precedent-based profession. We are all based on looking what they did 80 years ago and that, dang it, if it worked 80 years ago, it's going to work now. Well, now it doesn't in many instances. So that was an important thing.

As far as the time line, as I mentioned, we started back in June of 2013 was the first real kick-off, although Bar leadership had been talking about it for a while. November of 2014 we had the summit on the future of legal services at which we heard from Fred Headon, who was the former president of the Canadian Bar Association. If you haven't had a chance to check out his video that's available on the State Bar website, please do so. The Canadian Bar went through a massive study, came up with a lot of great ideas we felt very free to pirate, so we grabbed
a few of them, but he does a wonderful job explaining
the need for the organized bar to change.

We also heard from Chief Justice Bob Young,
who was telling us the Bar has to address the needs of
its members better, and we took that to heart.

We formed three different substantive
committees. Access and affordability had 65 members
led by Linda Rexer and Libby Hines, judge from
Ann Arbor. Building a 21st Century Practice had 72
members that was led by former State Bar President
Ed Pappas and former Oakland County Circuit Judge
Barry Howard. The Committee on Modernizing Regulatory
Machinery, 58 members led by Michigan State Law
Professor Renee Knake and former Michigan Supreme
Court Justice Mary Beth Kelly.

And I know, and Dan mentioned he was one of
the members on the task force, but I know that several
members of this Assembly were involved too, so if any
of the Assembly members -- Victoria -- who were
involved could stand up and be recognized for your
work, I would appreciate that.

(Applause.)

MR. COURTADE: This jumble of words sort of
represents what went on for a while, because we had 16
committee meetings, countless subcommittee meetings,
face-to-face teleconferences, electronic communications back and forth. We had three significant task force meetings. Conservatively, more than 3,000 nonbillable volunteer hours went into this, and that's not counting the midnight oil that was burned by the State Bar staff, which did an absolutely extraordinary job.

I tell you what, these people, we had the first meeting. I challenged them to color outside the lines. You would not believe how many Picassos we have working within the State Bar of Michigan, because they came up with hundreds of ideas. Very few, by the way, were discarded out of the box, just saying, no, that won't work. Everything was considered. And Julie will fill you in on what we ended up doing.

We had the November 12th task force meeting, got most of the reports back from the subcommittees, and we voted on them using the little clickers that guys have and prioritized them, and then March 1st the task force met and approved the final work product, which is available online, and I was very proud of the way that this report came out, because it does not read like a report. It's got great information. I encourage you all to take a look at it.

MS. FERSHTMAN: What came out of the task
force was a focus in the end on five overarching
issues. There was a lot of overlap, given the
committees that you heard we had, and we were told
from the get-go that there were, in the words of
Candace Crowley at the State Bar, no silos. It's a
phrase I, frankly, didn't know until the task force,
but everybody was encouraged to think outside the box
and to look for ideas regardless of what other
committee those ideas would impact. In the end, and I
am going to walk you through or under the
circumstances of time maybe rush you through, in the
end we had a number of proposals and ideas that came
into the recommendations that intertwined with others.

Let's start with the first one, and I
recognize there is a lot to cover. I am going to take
you through it quickly. You have access to the
materials, and I strongly suggest you take a look, but
the first problem was a dysfunctional legal
marketplace. In essence, what was considered, and you
can read what's on the board, is access to justice in
large part. There is, as we know, a justice gap. We
have 80 percent or more of legal needs of the poor
that are unmet, even in today's world where we have
all sorts of delivery opportunities available. What
the task force looked at is that we could look at ways
to help people find resources and get help.

Sure, we have Michigan Legal Help, which is a great website, and it's taken off tremendously, but the key is to help people get legal services and also encourage people to seek out legal services by building value, and specialty certification was among the many issues in that vein.

Let's go to the next site, which is the key innovations, the next page. Still on the first issue, I can't give you the whole list of all of the innovative ideas that came out of the task force, but one of the key innovations of this particular issue was lay navigator, and a lay navigator is somebody who has special training who could help pro se litigants walk through the system and seek out an effective way to get their matter solved. And, of course, we have the Michigan Legal Help website, which I mentioned. We have legal help centers in the court, but part of the lay navigator proposal is to help pro se litigants get the job done.

Some of you may be thinking, Isn't that invading the legal profession? Isn't that effectively helping people put us out of business? No, not at all, because, as we know, pro se litigants compose a very large percentage of dockets of the judges or of
the caseload of the judiciary right now. Pro se
litigants are taking a tremendous amount of time in
the court system. If there is a way to help these
people, and, again, these are people who probably
would never even consider hiring an attorney, a
private practice attorney, then the Bar should
consider ways of helping deliver that. So this is
just a flavor, a piece of the first issue that we
considered.

Let me take you to the next one, and this one
is -- I will just read the problem, significant issues
for new lawyers, new challenges for experienced
lawyers, and, as Bruce and I sat in the back and
listened to a few comments made, we heard somebody
address one of the very issues that the task force
looked at, which is new lawyers. They are facing a
very challenging legal market right now. You don't
need me to tell you. The lawyers coming out of law
school are having a very difficult time getting
employment, but at the same time they are saddled with
massive debt, and, in addition, getting out of law
school, new lawyers have questionable skills to make
them practice-ready from the moment they get out of
law school and try to develop their own practice.

So these were some of the issues that we
looked at as the problem, but the problem continues to
the more seasoned lawyers who, in part, are facing
challenges by technology. Technology is continuing to
change, and, frankly, it's very difficult for us in
our day-to-day workload to keep up with the various
changes. This is part of the problem of the second
issue, but then the innovations that we consider and
that are part of the report of the task force that is
before you and that you can access are very
interesting ideas that came out of the task force.

Briefly, sequential bar admission process,
which is a very innovative proposal, was one of the
ideas and the innovations out of the task force, and
that would include -- I don't have a lot of time to
get into details, but the MPRE, the entrance exam,
right after the first year of law school. That's one
of the proposals. Multistate Bar exam, the proponents
of it, while a student is still in school and has just
taken some of the classes that are part of the
multistate. Practice-ready testing, minimum hours of
work that law students can undertake to help make them
practice-ready. A option within that was to allow law
students to represent low income people, with
supervision, of course, by a more experienced lawyer.

In addition, that's the law student
component, and that's part of it, there was a
discussion of, and it's in the report, specialty
certification program. Mandatory continuing legal
education? No. That's still off the table. And the
question is what can we do to encourage attorneys to
utilize education as a way of becoming more competent,
serving their clients better. Specialty certification
is the idea. So this is among the list of innovations
and proposals within the second issue.

Next one is inefficient and overly complex
legal process. Litigators out there, how long have
you waited in court while the judge is taking on a
huge docket and you are stuck billing your client by
the hour waiting for your motion to be called, waiting
for your status conference, only to give your client a
six-hour bill for something that you would expect
would only take maybe an hour and a half at best.

In our town hall meeting, this was one of the
topics that we discussed, but this particular issue of
the task force was really more focused on improving
efficiency for the benefit of lawyers and the public,
which includes, among many other things, and I don't
have time to get into them all, promoting processes to
help lawyers think more efficient, and courts for that
matter.
There is a process many of us have heard of called Lean. We don't advocate any particular one in this report, but it was discussed. We had Professor Linna at Michigan State, who is a huge proponent of it. What is it? It is a systematic way to improve the efficiency of what you do to get something done in considerably less time. Can we learn more about how we can utilize concepts and principles to be more efficient at what we do? We can, and that was part of the discussion. I encourage you to look at that section of the report.

Let's get to the fourth, and that is regulatory hurdles. Well, I don't have a lot of time to discuss the regulatory hurdles and the issues that we discussed. Let me get right to the innovations and share a couple of them with you. One is, because of existing ethical limitations, hurdles, if you will, unbuckling, scope representation or the effort of an LSR has been pretty much off the table for us. So the client comes to you and worked out a settlement of the matter, and all they want you to do is help prepare the settlement agreement, help get the settlement perhaps finalized or formalized on the record. You can't do that under certain ethical limitations that we have. Why don't we get rid of those limitations
and allow lawyers to effectively practice in an unbundled fashion? That was one of the innovations of our task force.

Another was ethical guidance of online marketing of legal services. We have got websites. Just about every person here, if you are a private practitioner, probably has or is going to develop a website. How are you going to do that? What about these online websites, LegalZoom, Rocket Lawyer? Should we be more attuned to it? Should we be more careful about how they impact how we practice? Yes. And this was part of the task force report.

Let's get you to the fifth one, and are we there, Carrie? Yes, we are. Cultural resistance to innovation. That was the fifth overarching principle of our task force, and in the interest of time, I will just share with you this.

The concept of innovation in law practice seems to have been lost. Our task force thought it would be critical to put innovation at the forefront, and we need to think innovation in the legal system, so what we are looking to do through the work of the task force and the many things that we will be doing that we are taking forward would be help establish Michigan as a leader in modernizing the delivery of
legal services in an ethical and in a very efficient way. In the end, when we look at the innovations that we proposed here, we have justice innovation guidelines, justice innovations, but more specifically when you read the report, one of the proposals is and one of the recommendations is for the Bar to be integrally involved in the establishment and the housing of a justice innovation center, and it would allow people to serve as advisory members drawn from throughout the profession, even a futurist, and help the Bar to continue to think about ways to improve what we do, look at regulatory hurdles to the practice of law, and to continue moving us forward.

At this point I will turn us back to Bruce. Actually, no, I think, Bruce, this is part of mine. Let's take you on. There is no way to read all that. Back row especially. Good luck trying to read all that, but I encourage you, in the interest of time, to take a moment, go online, please read the report, and you will see an entirely long list of recommendations that are much longer than we can even share as Bruce and I are up here today, but there is a lengthy overview of them. They are organized. I encourage you to take a look.

Reports that led to these recommendations, I
can assure you, were voluminous. The amount of
volunteer time that you heard was probably
conservatively 3,000 hours based on the volunteers who
took a look at what is going on around the country,
what are the thinkers doing in terms of the legal
futurists that we can learn from. We even had
students, interns, who took a look at some of the most
popular books about practicing law and innovating the
practice of law, distilling points for us so that we
could learn from that and utilize those in developing
recommendations.

So, without going into them point by point, I
would tell that you the list is lengthy, but I
strongly suggest that you see in there if there is
something of interest to you or perhaps something that
is not of interest to you, because the discussion will
continue going forward about the implementation, the
timeline for implementation, and the Representative
Assembly will play an integral role in that, but I
think now would be the best time to turn it over to
Bruce. He is going to discuss where we go from here.

MR. COURTADE: And one thing I would like to
follow up on that Julie mentioned was the justice
initiative center, and that's, just so you understand,
that's something that the State Bar is going to be a
part of, but it's going to involve not only members of the State Bar, it's going to involve members of the court, it's going to involve nonlawyers, and it's something that from this point forward is going to be a standing, almost like the Michigan State Bar Foundation, a separate body that is going to consider future innovations. This is not, this report is not a one-and-done deal. This is something that's going to go on into the future.

Where do we go from here? Well, Lori has already appointed -- excuse me, President Buiteweg has already appointed a steering committee to implement and to direct where the recommendations that have been made ought to go so that they can be implemented. The State Bar has ownership of this work product, so the State Bar is going to be leading the way on it. Some of the issues are, they are going to be teed up to you guys as early as September. Some of them will go to the Board of Commissioners. Some will need Supreme Court approval. When we start talking about changes to the Rules of Professional Conduct, the State Bar can't do that. That's got to be done through the Supreme Court. Some are going to require legislative changes. So when you actually take a look at the scope of the recommendations, you will realize
this is not something that can be done overnight, much
like the Judicial Crossroads Task Force Report took.

How long has that been now, Janet? Six
years, and there are still a few pieces of fruit
hanging on that tree. This is going to take many
years to do the implementation. And then we did
mention the innovation center. That's something that
will be going forward.

So what do the Assembly do now? Take a look
at the task force work product. Study it. It's
actually sort of an exciting read for bar wonks, to
see where our future is going.

Within the website, and we will get to that
in a minute where it has the link, the State Bar
website, you can drill down and you can get every
piece of the background material that the task force
and its subcommittees reviewed in coming up with their
recommendation. The State Bar of Michigan website is
now a repository that is looked at nationwide. State
bars around the United States are looking at Michigan
to see what we have done, because no other organized
bar that we are aware of has involved all of the
stakeholders in the way that we did, so this is an
exciting time to be a Michigan lawyer.

Be prepared to talk about these proposals as
early as September and embrace change. You don't really have a choice, people. The way that we practice law is so dramatically different from when I started in 1988. I would hazard a guess that it's a lot different than those of you who started practicing in 2008, and it's going to continue to change at an ever increasing pace as technology makes the world even flatter than it already is.

So with that, the next slide shows you michbar.org/future. That's where you can find all of these materials, including the report and including all of the background materials that you can read to your heart's content. I would encourage you not to print it, unless you buy stock in Georgia Pacific ahead of time. But any questions that you have, feel free to direct them to Julie or me or the State Bar staff, again did a phenomenal job, and we look forward to working with you in the future. Any questions?

CHAIRPERSON QUICK: Round of applause, please.

(Appause.)

CHAIRPERSON QUICK: Ladies and gentlemen, I cannot impress upon you enough, having participated at least as a part of the task force, the meaningfulness of this endeavor. This is not stuff that's being done
around the edges. These are topics that matter gravely, not just to our profession but to the public to which we are sworn, and I encourage you to take this opportunity to have your voice heard and your comments considered by reaching out to the task force.

With that, we will take a ten-minute break.

We will resume promptly at 11 o'clock. Thank you.

(Break taken 10:52 a.m. - 11:03 a.m.)

CHAIRPERSON QUICK: Please take your seats, ladies and gentlemen. Ladies and gentlemen, take your seats, please. Ladies and gentlemen, if you do not have a clicker for voting, you need to get it now. You can get it out front from Marge Scott, so hopefully everybody has one.

At this time I would like to invite our clerk, Joe McGill, to just remind us all briefly the mechanics of voting through our clickers as we move into that portion of our agenda.

CLERK MCGILL: Good morning, everyone. Joe McGill from the 3rd circuit, current clerk. For most of you, you have used these devices before. The only buttons you need to be concerned with are the top three rows, buttons 1A, 2B, and 3C. Button number one is an affirmative yes. Button number two is a negative no, and button number three is abstain. So
when we open the voting on the various action items, you will be able to indicate your vote, and then we will close the voting and display the results.

CHAIRPERSON QUICK: At this time it's my privilege to invite Karen Safran, the chair of the State Bar of Michigan Civil Procedure and Courts Committee and the proponent of our next agenda item.

MS. SAFRAN: Good morning, everyone. As Dan said, I am Karen Safran. I am the chair for the Civil Procedure and Courts Committee, and I am here as the proponent of a rule change to MCR 8.119(I), and the reason for this request -- I am calling it almost a common sense type proposal. We have run into an issue that is replicating itself, at least in the Wayne, Oakland, and Macomb practice, I think particularly in the business court because we tend to see a lot of protective orders in the business courts, but we have run into an issue where there is potential conflict between MCR 2.302, protective orders, and MCR 8.119(I) which deals with sealing records and sealing court records.

And what has been happening, at least in those three counties, and I can't speak for any other counties, because that's just where my practice is, so what's been happening though with recurring frequency
in those three counties is parties are negotiating a protective order. The protective order says that documents designated as confidential may be filed under seal, and they then go to file a motion, a dispositive motion or a motion to compel or any sort of other pre-trial nonsense that we all do -- it's true -- and they go to seal an exhibit to the motion that was designated as confidential and produced by somebody in discovery, and the courts are saying, no, you can't do that, even though you have a Court Rule that says you can and a court order that says you can, we can't do that because under it MCR 8.119(I) we can't seal records without an independent hearing and good cause.

So what's been happening is you want to file your motion, you want to attach a confidential document, you file your motion. You also then have to file a motion for leave to file the exhibit under seal that may or may not be contested. So now you have an extra mini level of litigation. When the court ultimately hopefully grants that motion, MCR 8.119(I) requires that the court clerk send a copy of that order to the Supreme Court and SCAO.

If this is continuing with regularity, the response to the motion could have something
confidential, you will need a second motion for leave
to file, so now you have two side motions. In some
instances the dispositive motions, the courts allow a
reply brief. If you want to attach something to your
rely brief, you could have a third motion. So for one
motion you could end up with three submotions for
leave to seal, three orders that must go to both the
Supreme Court and SCAO, and it just continues to
create a delay and administrative expense and
additional costs, costs of litigation, costs of
administration of the courts that I don't believe is
in the interest of justice, and I don't think it's
consistent with what the rules were designed to do.

So the idea -- I will just step back for a
second. Personal example. I am dealing with a
business case in one of the tri-county area cases,
courts. I will admit that it's fairly contested, and
we have had 15 motions for leave to file under seal in
that case to date, 15. And, you know, it's not
unique -- it may be unique in the number of motions,
but it's not unique in terms of the practice.

I have discussed this with business judges in
Macomb, in Oakland. I have seen it in Wayne. So this
is an issue that courts are concerned with. It is a
frustration for litigants to go through this, and I
have also kind of perhaps off the record discussed it with someone at SCAO who kind of said we don't want copies of all of these orders. So I think it's something that can easily be resolved, and the idea is to try to balance the interest of the litigants in protecting confidentiality versus the interest of the public in access to the courts.

So the idea in this particular rule amendment is to allow the protective order to govern the sealing procedure. So if something is confidential under the protective order, it can be filed under seal. That procedure will govern. However, members of the public still have the right, because the proceeding is still open, the record is still open, they still have the right, if they see something has been filed under seal, to come in and challenge it, have a hearing, which is consistent with the current rule, have a hearing and challenge the propriety of sealing the document so that it's not removed, it's not hidden from the public view.

So that's the ultimate goal of this amendment, and I would open up for any comments, and I hope that you favor us with a yes vote today.

CHAIRPERSON QUICK: First of all, Ms. Safran is not a member of the Assembly, so do I have a motion
to adopt the proposed language by the committee?

VOICE: So moved.

CHAIRPERSON QUICK: Do I have a second?

VOICE: Second.

CHAIRPERSON QUICK: Now, is there any discussion, members of the Assembly, regarding this proposal?

MS. BRANSFDER: Hi. I am Liz Bransdorfer. I represent the 17th circuit. For purposes of my comments today, I am also a member of the council and the recording secretary of the Family Law Section of the Bar.

After receiving the materials for this meeting I took this recommendation, as well as the next two, to the Court Rules and Ethics Committee of the Family Law Section. From that, recommended that the section support this committee at the council meeting. At the beginning of this month council voted 20 to nothing to support.

The problem may be a problem in business courts. We know it's a problem in Family Division. There is a move around the state among some Family Division judges to have presumptive sealing of all of the family division cases. Many of us think that that's an overreach, but being able to more easily
seal individual documents will help protect the
confidentiality of children and litigants whose
medical records or psychological evaluations are
frequently needed in family law litigation and,
therefore, council, and I personally as a family law
attorney, strongly support and hope too that the
Representative Assembly will approve this recommended
change. Thank you.

MR. KOROI: Mark Koroi, 3rd circuit, Wayne
County. I would like to support. I think it makes,
and to what the prior speaker said, it makes family
law cases more presumptively private, because what I
see in cases which there is dispute between, say, like
a policyholder and insurance company when a person
investigates is go through all the records or any
losses in the court's files. They try contacting
ex-spouses, children, and these create more problems,
and very often I see in even auto accident cases if
they have an investigator, then subpoenas the person,
an ex-spouse for a deposition, and it derives
information from family law files. It is causing more
dissension. I think anything that can keep family law
cases more private should be incorporated.

You recall paternity cases are largely
private now, largely because we had Mayor Young and
his paternity case. That particular issue was in the public spotlight back in the late '80s, and because of that there were changes made in paternity cases. We need more privacy for litigants in family law cases so these abuses don't happen. Very often take a lot of information. One thing that was mentioned was medical reports, psychological reports. There is no reason for the public to know about a minor child's psychological report or anything in the public court record even referencing that. It should be kept private so this can't come back later and just create more and more family discord. Thank you.

CHAIRPERSON QUICK: Seeing no other speakers, we will call the question. Oh.

MR. FALKENSTEIN: That's fine.

CHAIRPERSON QUICK: Go ahead.

MR. FALKENSTEIN: Call the question.

CHAIRPERSON QUICK: On your clickers, one is yes, two is no, three is abstain. Is the voting open?

CLERK MCGILL: Voting is open.

CHAIRPERSON QUICK: Any last votes? Voting is closed.

CLERK MCGILL: We have 90 yea, two nays and zero abstentions.

(Appplause.)
CHAIRPERSON QUICK: Another proposal from the Civil Procedure and Courts Committee is our next agenda item. Speaking on behalf of the committee, I am honored to present to you George Strander, who is the Probate Court administrator in Ingham County and a member of that committee. Mr. Strander.

MR. STRANDER: Good morning.

VOICE: Good morning.

MR. STRANDER: I am here on behalf of the Civil Procedure and Courts Committee to recommend a change to a section of Court Rule 5.125. Let me give you a little bit of background as to why we think this Court Rule should be changed in this way.

In probate law under the Estates of Protected Individuals Code, there are guardians for minors and guardians for incapacitated adults. Both of those kinds of guardians have to file annual reports on the condition of their wards. Also, pursuant to the Court Rule at 5.409, this requirement to report is echoed, as is the requirement to serve the report on interested persons. The problem is that at the section of 5.409 it directs us back to a section of the Court Rule for service on interested parties, and that's 5.125(C)(23). The problem is that (C)(23) only refers to interested persons in relation to adult
guardianships. It does not refer to individuals who
would receive service for a guardianship for the
minor.

So the suggestion today is to amend
5.125(C)(23) to add in the language to allow for those
individuals who would be interested in any other
action in a minor guardianship to receive service of
those reports.

CHAIRPERSON QUICK: Thank you, Mr. Strander.
Does a member of the Assembly wish to move for
adoption of this recommendation?

VOICE: So moved.

CHAIRPERSON QUICK: Do we have a second?

VOICE: Support.

CHAIRPERSON QUICK: Thank you. Is there any
discussion regarding the proposal? Please move to the
microphones.

MR. FLESSLAND: Dennis Flessland from the 6th
circuit. Did the committee give any thought with
respect to the adult guardianship of listing the
parents of a person subject to an adult guardianship
as an interested party? Sometimes -- I mean, in my
experience we have had people with mental illness,
drug abuse issues, something like that, where a
guardianship has been established for them, and they
may or may not have parents -- or may or may not have
a spouse or children, but the parents are very often
involved in their care. Does that make any sense, or
do the heirs of law, presumptive heirs, cover parents
you think?

MR. STRANDER: It does. It certainly does
make sense at (C) where it talks about those who would
receive service of a report for an adult guardianship,
it covers those who are the initial presumptive heirs,
if there is a spouse or adult children, but if those
individuals are not there, it will eventually go back
to the parents.

MR. FLESSLAND: I am just thinking of a
situation that I had one time where a guy had a mental
illness thing. He did have a child, which would have
been, I guess, his presumptive heir, but his parents
were really the active ones involved in doing this and
in taking care of him and managing his affairs, and I
just thought that maybe that would be an appropriate
addition. Just a point of reference, I guess.

CHAIRPERSON QUICK: Thank you.

MR. PAVLIK: Adam Pavlik, 54th circuit. Two
of the questions that I had were -- in the language of
the proposal, it says that for minor guardianship the
parents of the minor or, if neither of them are
living, any grandparents would receive the report of
the guardian. I feel like that raises potential
definitional concerns, particularly in circumstances
where parental rights have been terminated, and so
we're then left with a debate over who the parents or
who the potential grandparents of the child are,
whether you have got a distinction between bio versus
legal parents of a child. That was one thing that
came to mind, and the other thing that I wondered
about is if the parents or the grandparents are not
the adult presumptive heirs of the minor, that makes
me wonder whether there is a falling out or some sort
of difficulty in their relationship such that should
those people, if they are not the presumptive heirs of
the minor, be getting these reports in the first
place?

MR. STRANDER: As to the first comment, at
(C)(19), this is the exact list which already exists
for those who receive notice on the petition for the
appointment of the guardian or for the appointment of
the modification -- or the modification or
termination, so that language is already taken right
from current Court Rules.

MR. PAVLIK: Okay.

MR. STRANDER: The second question, did that
deal with a situation where the minor had a child?

MR. PAVLIK: No, I am just thinking of any set of circumstances -- the Estates of Protected Individuals Code sets up a set of presumptive heirs for everybody, and so my thought is, in normal circumstances, parents or grandparents, you know, there is a schedule by which these people end up as adult presumptive heirs of a minor, so why isn't it sufficient just to say for a minor guardianship the adult presumptive heirs of the minor and strike the middle language there, because to the extent that those people are outside of the category of people that would be adult presumptive heirs of the minor, unless I misunderstand.

MR. STRANDER: I think they are talking about a situation where the parents may not exist and they have minor siblings. They want to make sure that an adult gets service.

MR. PAVLIK: Okay.

CHAIRPERSON QUICK: Seeing no further comments, we will call the question. Is voting open?

CLERK MCGILL: Voting is open.

CHAIRPERSON QUICK: Voting is open. One for yes, two for no, three for abstain. Voting is closed.

CLERK MCGILL: Happy to record we have 81
yea, six nay, four abstentions.

CHAIRPERSON QUICK: Thank you very much.

(Appause.)

CHAIRPERSON QUICK: Next, on behalf of the Civil Procedure and Courts Committee, Jules Olsman to present on a proposed change to the Model Rules of Professional Conduct. Mr. Olsman.

MR. OLSMAN: I didn't hear him say he was honored to introduce me.

VOICE: There are reasons for that.

MR. OLSMAN: Damn right. Familiarity breeds contempt. Where is our PowerPoint? Do we have a PowerPoint?

First just want to tell all of you how appreciative I personally am of your efforts on behalf of lawyers in Michigan, and I know it's a pain in the ass to have to go to Lansing on Saturday and sit around and say what are we doing, but I am just telling you, if you don't, somebody else will, and they may not have your level of diligence or skill or a different agenda, so I am always glad to see especially younger people participate in this process. I am kind of an old dog, and I have done a lot of different things, but hats off to all of you being here.
This is a proposal to deal with what I would call anonymous advertising by lawyers, basically dot com advertising, and so this came up here about three, almost three years ago with a proposal that would have required that whoever was paying for the ad had their name, either the name of a lawyer or the name of the law firm in the ad, and what was unacceptable to some firms that advertise -- and I just want to make a disclaimer here, when I use any -- I am going to show you some billboards, and I am not picking on anybody. I am just using them as examples of concrete problems. So this isn't something floating around in my imagination. These are real issues. But there are firms that advertise under what they call a trade name, and some of these are the large law firms like Dan's firm, Dickinson Wright, advertises as Dickinson or markets themselves as Dickinson, and there was some objection to them having to put on the bottom of a thing Dickinson Wright or whatever their name is. When I started, they were all still alive. But anyway.

So that proposal didn't sit well, which I thought was kind of hilarious, that big, what we used to call silk stocking law firms, would care about attorney advertising issues, which always seemed to be
not necessarily related to the personal injury bar
but, you know, divorce and other practices, but
apparently they were.

So that didn't fly, so we retrenched, and
back in January we met again, and this went through
the Civil Procedure Committee, who I also appreciate
their hard work. I sat on that committee for a long
time, till they kicked me off that too, and they do
very, very serious hard work with a lot of thought.
So I came back to them with another proposal, and this
is what we got out of it. Carrie, can we have the new
one. There you go.

This would be the proposed change to
Rule 7.2, and it simply requires that if you advertize
or market under a dot com name, your ad or whatever
you want to call it, form of marketing, has to link
basically to a website that lists the lawyers that are
performing the services, period. And that's to
prevent -- and can we get the next slide?

First of all, protection of the public, and I
am going to show you a couple billboards in a second
that go to this. Talking about preventing the
unauthorized practice of law; that is, commercial
organizations that are not lawyers pretending to be
lawyers, and you will see what I mean in a second.
They are not lawyers. They are not law firms. I don't know what they are, but they have set up these entities, and what they are is referral services. And that's fine. That's fine. I mean, we can't control everything, but we can certainly prevent people from pretending to be lawyers when they are not, and that's what this is about.

And also, besides protecting the public, you know, we are here to protect our profession as well.

We just heard several people talk about how miserable it is for new lawyers getting out of law school who have no opportunities, can't find jobs, this, that and the other thing. There is no case, there is no this, there is no that. Well, I think all of us in this room, as a secondary object of what you do, we are here to protect our profession too. Public first. Always public first. Profession, absolutely. You are elected by other lawyers to serve here, and you are here to help make our profession a better place to work and a better place to be.

Next. The first question you always draw is, well, is this -- and I can tell you that I had talked about this with several of the Supreme Court justices, which, in case all of you don't know it, you can talk to these people about anything you want as long as
it's not a case. So you can call up Brian Zahra, you
can call Dave Viviano, you can call them all up, talk
to them about anything you want about this.

Now, I have talked to them about these
issues. None of them see any issue or any problem
with it, because it is commercial speech. We can
regulate it. It is not a restraint on First
Amendment. In fact, Professor Sedler from Wayne State
Law School, who many of you know was involved in this
in terms of consulting on it, and his point was you
are getting people more information, not less. You
are giving them accurate information, not less. It's
all promoting free speech. He said nobody could
seriously argue that this is an impingement on free
speech.

Okay. Now, let's go. First of all, and I
want to say it again, I am not here to pick on anybody
or bother anybody, but if I was sitting where you are,
I would say, well, you got any examples that you could
talk to? I do. If you have your I-phone or whatever,
I invite you to look up what this is, okay. This is
not a law -- I don't know what it is. It's not a law
firm. They have billboards up everywhere advertising
for all kinds of commercial services, personal injury,
business, this, that, and the other thing. I don't
know what they are.

Now, it seems to me I am entitled to know what they are. Who are you? Who are you? All I want to know is who are you. Just tell us who you are. Are you ashamed to tell us who you are? Just tell us who you are. That's all we are asking. Next.

Now, these are not only here, these are all over the country. All right. Now, you want to look them up, look up Motor City Accident Attorneys. Go ahead. Nothing. Nothing. Just we're a team. Fine. Who is on your team, you know? You go buy tickets to go to a game, you don't know who's on the team. Who's on the team? That's all we want to know. That's all we want to know, who is on the team. Next.

Now, the issue of website advertising with nothing on it. Carrie, next.

Okay. This is a -- again, I am not quite sure what it is. It strikes me as a referral service, and if you dial in 1800-LAW-FIRM, I don't see the names of any lawyers. If you type in my name, you are going to get our firm, our pictures, everything. If you type in, you know, anybody's name here that does it, I am sure that almost all of you have your picture, your name, what you do, how many verdicts you have had, what kind of work you do, because you are
marketing yourself to the public, and that's fine, that's fine. If you want to do it, say it, that's fine. Say we are not a law firm. We are a referral service. We are not lawyers. We may be lawyers, but we don't handle your case. We are here to refer you to somebody else. I can't stop that. Okay. Next.

All right. Now, ta-da, you knew we were going to get here, okay. Now, my own personal view and, you know, no matter what -- I started before there was advertising, and all you could advertise I think was Proctor of Admiralty. You weren't allowed to advertise. Now, we are not going to change it. It doesn't matter. It's a fact of life. It's a trade dollar industry, attorney advertising, and the people who make the ads, market the ads, blah, blah, blah. Doctors advertise, dentists, everybody. So we are past the argument about it's not good for our profession. That's what we always discussed.

Now, Mark Bernstein and Sam, I know these people well, and if you look in the bottom right-hand corner of the ad, it says the Sam Bernstein Law Firm, and that's because when we started this a few years ago I asked people what do you think, what do you think? No problem. That's when he had an ad that just said 1-800, just had an icon on it. And they
agreed. They agreed there is no harm in putting your name. All we want to know is who are you.

So the Civil Procedure Committee recommends and I ask you today as your proponent to pass what I would regard as a very moderate proposal here to simply give the public more information and to help protect our profession.

CHAIRPERSON QUICK: Thank you. Do we have a motion?

VOICE: So moved.

CHAIRPERSON QUICK: Do we have a second?

VOICE: Support.

CHAIRPERSON QUICK: Thank you very much. Is there any discussion on the proposal?

MS. BRANSDORFER: Hi, I'm Liz Bransdorfer, 17th circuit, and again I support this personally, but also on behalf of the Family Law Section council. We discussed this at the Civil Procedure and Ethics Committee meeting at the beginning of this month, and council voted -- this one is a little more controversial -- 17 to 1 to 1 to support the committee's recommendation.

Family law is one of those areas where there are starting to be national law firms and there are starting to be lawyers who are advertising for clients
or other people who are advertising for clients or who are providing online legal services for a fee where you can't find out who the lawyer is, who you would be hiring. Your client comes in with a packet that they got from a website, and there is, you know, it's supposedly Michigan law specific, but there is no lawyer attached to it, and it's starting to be a problem in family law, and so the Family Law Council supports the recommendation of the committee, and we all hope that you will approve it as well.

CHAIRPERSON QUICK: Point of personal privilege. Liz twice has mentioned she reached out to a section and committees within that section, and to the extent any of you participate elsewhere within the Bar and there are topics that come up on your agendas, I urge you to do as Liz has done and share that, and I am sure Dan Cherrin will be working on this under his committee as well, but that sort of subject matter input is very important to us, so thank you for doing that. Yes, sir.

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

MR. OLSMAN: Get that man a taller microphone. You can just pick the whole thing up.

MR. OHANESIAN: This is a practical question.
I agree with the spirit of what's trying to be done here, but you are trying to go after corporations and people who aren't lawyers in the state of Michigan, and you are amending the Michigan Rules of Professional Conduct, and I am just trying to envision -- this is a mechanical question -- how is this going to work if you are trying to reach out -- I mean, the people you are trying to reach out for aren't lawyers in the state of Michigan or don't even have offices in the state of Michigan. I am professing ignorance here. What is the mechanical process for enforcing this if that's truly the goal of what this is?

MR. OLSMAN: Well, it's an interesting point. I mean, let's be blunt, that these are referral services. They are there to, in our vernacular, bag cases and refer them to lawyers, and how they do it, what their mechanism is for, you know, whether you pay a monthly fee -- I mean, we all get, I mean, everybody in this room I am sure gets solicited daily, if not weekly, from somebody who says they want to come to your office and talk to you about how you can get more cases. You know, I don't have a clear answer for you on that, because we can't fix every problem, okay. You know, you cannot stop people from advertising. I
realize that.

Those of you who are up late see the mesothelioma ads that run consistently late at night. They all have a law firm on them. All of them have a name. I mean, it may be hard to read, but they are there, and you can't, you can't stop them. I mean, I had a chat this morning with Adam Pavlik at length about it. He expressed concern about interstate commerce. You can't stop people from advertising, but we can stop people from pretending to be lawyers in the state of Michigan who are not lawyers.

Are you asking me would somebody file a grievance? I mean, what would they do?

MR. OHANESIAN: Yeah, I mean, if they are not lawyers, I mean, what is the reach-out mechanism? What is the method to reach out to them to correct the problem here?

MR. OLSMAN: Let me ask you this: If you are not here to get cases to refer to lawyers, what are you here for? I mean, the person who spoke about the family law, if you have a national organization or businesses that are out to get family law cases so they can refer them to family law practitioners for a fee or whatever, eventually you are going to find the person that's doing it. Somebody is doing the work.
They are here to get law cases. I mean, they are not here to sell screwdrivers or something like that. They are here to get law cases. So, you know, we have to start somewhere. Good question. I suppose the answer will be that at some point we are going to find out who the beneficiary is who is doing the work and say are you 1-800-LAW-FIRM, or if you are, you put your name on there, period.

MR. FALKENSTEIN: Peter Falkenstein from the 22nd circuit. Just to follow up on your point. In cases where an outstate referral firm that is not actually a law firm is advertising into the state and purporting or at least representing to be lawyers or a law firm, the remedy is to go to court. Sue them for false advertising under the Lanham Act, and there is no reason that that couldn't be done independent of any changes to our professional code. If they are misrepresenting themselves to consumers, there are remedies in court for that.

The question I had is the language of the amendment, which says, Services of a lawyer or law firm advertising under the heading, phone number, et cetera, shall identify the lawyers or law firm providing the services. Now, how does that impact the, quote-unquote, mesothelioma firms that -- they do
state that they are a law firm in Texas, but they also state that your case will be referred to other attorneys.

MR. OLSMAN: But they are doing that. They are saying you know, who they are. As soon as you see the ad, you know who they are.

MR. FALKENSTEIN: Right, but they are not going to be providing the services, so the ambiguity is that they may be a firm in Texas that's trying to get clients who they then refer out to lawyers in 50 states, and the question is, if it requires identifying who is going to be providing the services, I mean, the legal services.

MR. OLSMAN: I see. You think should they say who they refer the cases too?

MR. FALKENSTEIN: According to this language, that's who will be providing the services. They are not advertising themselves as referral. They are advertising to sign you up for a class action or whatever for your injury suffered by every drug that's ever now invented, but they also --

MR. OLSMAN: I'm trying to get those, you know.

MR. FALKENSTEIN: But they are not going to be providing the services. They admit it's going to
be referred. So I am not understanding what the
consequence of this language is, whether there is an
ambiguity that needs to be cured as to who actually
will be providing the services that's being
identified.

MR. OLSMAN: You know, what my colleague,
Dan, pointed out when we were nashing this out in
January is it may be better to have something a little
more broad and a little more expansive rather than
trying to -- I can't solve every -- we all in this
room can't solve every problem there is. I am telling
you right now, what you are talking about is what I am
trying, that's the problem I am aiming at is the
people who don't do that. The national law firm
that's trying to get family law cases in Michigan but
does not say who they are.

For example, I don't know in particular that
law firm, but let's say Baron & Budd or somebody from
Texas that does asbestos is advertising here and says,
you know, call this number, we are Baron & Budd, or
whatever. Your case may be referred. They are a law
firm. They are a law firm. We know who they are, and
if you called there and said, Well, who are you going
to send my case to in Michigan, they might say, We are
going to send it to Dan Quick. That's who is going to
get -- I don't have a problem with that. Where every
hand is on the table, we know who they are. Who is
1-800-LAW-FIRM? Who is Gold Star Wages?

MR. FALKENSTEIN: No, I understand everything
you are saying, and I agree with it. To me there is
an ambiguity in the language that may not work out the
way you are suggesting, and one idea that I just had
is if you were to change "providing the services" to
say the phrase "retaining the client," that it might
be the firm in Texas that is signing you up as the
client, but they would not ultimately --

MR. OLSMAN: But see, a lot of those firms
don't sign up the case. They get the case, and then
they call you and say, Hey, we got a case for you.

MR. FALKENSTEIN: I don't have the answer.
It's just an ambiguity, that's all.

MR. OLSMAN: I barely have the question.

MS. SPIEGEL: Good morning. Mary Spiegel
from the 2nd district, and I stand in support of this
amendment for a couple of reasons. This morning what
I am hearing a lot of comments are, and what it
reminds me of that old saying that we are letting the
perfect become the enemy of the good or of the better,
and in this case I think that this is maybe not
perfect, but it's better.
Now, I work as a legal aid attorney. This doesn't impact me, because, believe it or not, folks, I get plenty of walk-in clients, but the fact of the matter is that many of those clients are misrepresented or are lied to. There are charlatans out there who are posing as legal services. I had a client who was actually being sued by a person who assisted them in a landlord/tenant matter, and that person called themselves a legal service person. And so if we have information about who exactly is providing those legal services instead of housing helpers, we will have a more informed public, even the legal aid clinic level. I don't see how that can hurt my clients or how it can hurt yours.

MR. ROMANO: First a point of information.

CHAIRPERSON QUICK: Could you identify yourself.

MR. ROMANO: Vince Romano, 3rd circuit.

First, point of information. Are you aware of any complaints from the public being lodged about these matters?

MR. OLSMAN: Am I personally? Well, I am aware of situations where people have been -- when you say complaint, you mean any person who is unhappy?

MR. ROMANO: To the extent that you are
talking about protection of the public, individuals
that need protection.

    MR. OLSMAN: I am personally aware of
scenarios where people have retained at least one of
those entities -- yes, of course, I am personally, but
that's not -- that's not the issue here. The issue
here is to stop the practice, and can I point to a
database that would reflect complaints? No, because
right now there is no place to lodge a complaint. So
that's what we are trying to do here. No, I don't
have a database where I can tell you that somebody has
received a complaint that 1-800-DIVORCE or something
screwed up their divorce, no.

    MR. ROMANO: I spent 25 years -- I should
explain, I spent 25 years in legal marketing business,
president of the company that does that work, and so I
am always very cautious when looking at rules that
would restrict what I think are pretty permissive
advertising rules of the state of Michigan, because I
think, as was pointed out, it's a slippery slope. You
know, once you start down that slope of restriction,
however innocuous the initial restriction may seem,
you make it easier for the successive restrictions to
come about, and so that's why I would speak in
opposition to this matter.
I think the system is working fine. We have, as the last speaker pointed out, there are other remedies available should someone be harmed. There are institutional remedies within our own Bar looking at the unauthorized practice of law complaints can be addressed to. So I think we have mechanisms in place that can protect the bodies of concern that you have addressed so far, so I hope that this Assembly would reject this provision. Thank you.

CHAIRPERSON QUICK: Thank you. Yes, sir.

MR. MASON: Good morning. Gerry Mason from the 31st circuit. This isn't a case of restrictions. It's a case of disclosure, and anybody who practices law who sees clients, you have clients walk in where they have contacted these firms, maybe they have been taken advantage of or their case has been mishandled, and we do, as Mr. Olsman pointed out, have an obligation to protect the public, but we also have an obligation to protect our profession, and, as part of the 21st Century Initiative, the realities of online advertising and the ethics of online advertising are something we have to deal with in a coherent manner, and it's not asking too much for someone to advertise in this nature to disclose who they are and who is going to get your case so these people actually
understand what's going on, because when you get a case that someone has had on LegalZoom or some other entity and it's all screwed up, we have to deal with it, but at the end of the day, even if wasn't the lawyer who originally took this case, we get blamed for it.

CHAIRPERSON QUICK: Thank you. Yes, sir.

MR. PHILO: John Philo from the 3rd circuit. I would like to speak strongly in support of this. I work at a, one of my hats, at a nonprofit. We do equivalent legal aid work. I can say twice in the past four or five years I have had people come in who believe they are represented by some of these firms right on that billboard, and you have to explain to them they are not the attorney, they are a referral service. It's misleading to the public. They think they are represented by those firms. For that reason alone, I think that this is a small step in the right direction.

CHAIRPERSON QUICK: Thank you.

MS. STERLING: I am Lea Ann Sterling from the 13th circuit, and I believe that we already have an ethical rule that addresses what is the underlying purpose here, and that is we are, as attorneys, not allowed to share referral fees with nonattorneys, and
I think that that takes care of the situation. What other point is there except to share in the referral fee? They are not doing it out of the goodness of their heart.

MR. OLSMAN: Do you want an answer to that? A lot of these firms, when somebody will call -- I mean, I can tell you that we have been approached by, not a medical care provider but what I could call a quasi medical care provider who wanted to send us cases, and I said thank -- I always say the same thing, No thanks, and tell who is ever listening on your hidden microphone I am not interested. But I said, Well, we are not allowed to fee share with a nonlawyer. The answer is, Oh, we have a lawyer. We have a lawyer who is part owner of the company. Believe me, they have already outfoxed you on that one.

CHAIRPERSON QUICK: Yes, sir.

MR. KOROI: Mark Koroi for the 3rd circuit, Wayne County. I just want to point out that it's a step in the right direction. We need to do this because there is too much fraud. These particular ads target groups of people. Recent immigrants. It targets people of foreign languages. People that are, the inner city people, people that are
unsophisticated. They don't understand it's a trick for them to believe something that's not there, and I think these are very, very slick operators, and I have seen this. Almost every case -- I do a fair amount of personal injury work. Almost every one of those cases had someone that serves as contact to these people and probably are used to providers. Say a person goes to submit a claim, that claim is going to have somebody calling up a law firm saying contact this person and try to draw this person. There is some kind of slimy type of conduct involved there.

About a month ago, for instance, I got a call from an insurance company, and they said, You have been replaced by another attorney. I said, Not true. I have talked to my client. Well, somebody filed a lawsuit in your client's name. And I contacted that attorney. He didn't know anything about the lawsuit being filed, and we don't know how it got filed, but somehow he said I will file -- well, the dismissal happened. People were shocked when they heard this happened, but it's happened. It occurs, and it's due to some kind of -- well, I didn't even know who these people were, but this was a major case, somebody got wind of it, and this fraud took place, and it was corrected when I contacted the attorney who was the
attorney of record, but he didn't know it was filed. The attorney is on the cover letter, and your signature is on it. He said, I don't know. I never filed this.

But this type of abuse goes on in the personal injury context and the divorce context as well, because I have seen this so often, and how it impacts people like me who do plaintiff's work is because, you know, there is the attorneys that no how to market cases through providers, so this is one step. It's the tip of the iceberg of what's out there, and it's hurting the honest practitioners, so I would encourage not only this rule but any other rule that tends to ameliorate this problem that targets people that are consumers of the public.

CHAIRPERSON QUICK: Thank you.

MS. DINEHART: Tracie Dinehart representing the 8th circuit. I stand in support of this; however, as the presenter had indicated, the rule that I think we really need to be attacking here is the rule with regard to fee sharing for attorneys and nonattorneys. It seems to me that the presenter has indicated that there is a nice little loophole in this that these companies are utilizing to basically bring on an attorney as a strawman in order to allow these
referral services to go into place. So if that's what's happening, then why aren't we attacking the rule with regard to referral services and fee sharing between attorneys and looking at that rule specifically as it relates to that loophole that's already been pointed out?

MR. OLSMAN: Well, one, it's perfectly acceptable for one attorney to refer a client to another attorney and accept a referral fee. There already is a prohibition against fee sharing among lawyers and nonlawyers. That prohibition already exists. But, you know, I told you. I mean, I know personally from the contact that all you have to do is say, okay, we want you to work, we are going to have you come work with us, and if we get a case, then you are the cover for why the referral fee will come to you or you can own the company or whatever. But, you know, I don't have a perfect -- the person who indicated he can't let perfect stand in the way of the good. We are just on the tip of the iceberg, as others -- others have said it better than me. It's a first step. Let's see how this goes.

MS. DINEHART: But doesn't that relate directly to our conflict rules where we have conflict rules in place where attorneys can't be part of
specific organizations or they can't own parts of businesses or take part in book royalties or things along those lines in order to circumvent the rules, and isn't that exactly what we are now faced with here is that we are now utilizing our own words to circumvent our own rules so that we get through a system in a loophole.

CHAIRPERSON QUICK: Thank you. Any further comments?


CHAIRPERSON QUICK: You are violating our rule.

MR. MASON: I'm sorry. Gerry Mason from the 31st circuit. What needs to be explained is these websites actually solicit us and tell us that -- you join them. You pay so much money each month, and I think that's how they get around this referral issue or deal with it is essentially what they do is they try to get us to pay to join these sites, and so there is another avenue to that business aspect.

CHAIRPERSON QUICK: Thank you, sir. Yes, ma'am.

MS. ATNIP: Hi. Heather Atnip representing the 6th circuit.

My practice is catastrophically injured
individuals, and I have to tell you I strongly support this practice. You guys may not be aware of the complexity of the scheme that is going on regarding these types of organizations. It's been addressed on a national level. We need to do something in the state of Michigan. People are dying on tables because they are referred by one of these places to medical providers and shady attorneys. I strongly support this, Jules.

CHAIRPERSON QUICK: Thank you.

MR. FALKENSTEIN: Call the question.

CHAIRPERSON QUICK: Seeing no further speakers, we will take a vote. One for yes, two for no, three for abstaining. Is the voting open?

CLERK MCGILL: The voting is open.

CHAIRPERSON QUICK: Please vote now.

Three, two, one, voting is closed.

CLERK MCGILL: We have 85 yea, six nay, and four abstentions.

CHAIRPERSON QUICK: Thank you very much.

(Applause.)

CHAIRPERSON QUICK: A few closing comments. First of all, I cannot thank enough my vice chair and my clerk for assisting moving us forward to this meeting, as well as our committee chairs, whom I would
like to recognize. Kim Breitmeyer, the Assembly
Review; Mike Thomsen on our Drafting Committee,
Alan Sullivan on Hearings; Dan Cherrin, who you heard
from today; Shenique Moss, Nominating and Awards; and
Ray Littleton for Rules and Calendar; and Alan Burrell
for Special Issues. Please, a round of applause for
all of their services.

Reimbursement forms for today's meeting are
due by June the 14th. You may receive those from Bar
staff, or they are online. Nominations for the next
Assembly clerk are due by July 25th. Proposals for
our September meeting, of which I think we will
already have plenty it sounds like, but if you want to
make a proposal, they are due by August the 8th. The
Assembly next meets on September 22nd at DeVos Hall in
Grand Rapids in conjunction with the State Bar's
annual meeting. Thanks my to State Bar staff. Those
present include Janet Welch, Peter Cunningham,
Carrie Sharlow, Marge Bossenbery, Jeanette Socia. I
believe I have seen some others around.

Candace Crowley, and, of course, our madam court
reporter for her great assistance.

With that, the meeting is adjourned.

(Appause.)

(Proceedings concluded at 11:59 a.m.)
1 STATE OF MICHIGAN  
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2 COUNTY OF CLINTON  
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I certify that this transcript, consisting  
4 of 96 pages, is a complete, true, and correct transcript  
5 of the proceedings had by the Representative Assembly on  
6 Saturday, April 30, 2016.  
7  
8 May 18, 2016  
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10 Connie S. Coon, CSR-2709  

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