

STATE OF MICHIGAN  
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE  
ASSEMBLY of the STATE BAR OF  
MICHIGAN

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Proceedings had by the Representative Assembly of  
the State Bar of Michigan at Lansing Community College,  
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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1           with the people. Stay with the people.

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

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

15                    We remind you that generally a member is  
16          permitted only to speak once on an item, which  
17          normally isn't a problem, but wanted to remind you of  
18          that rule. We also are voting today on our formal  
19          items with our clickers. All of you I think have used  
20          these before. Joe McGill will give you a little  
21          tutorial in a few minutes, a little reminder on how to  
22          use these. The important point I am trying to make to  
23          you is do not walk out with them, because we get  
24          charged, and they are really expensive. So please  
25          make sure you return those.

1                   And last but not least, remember that we take  
2                   attendance at the end of our meeting and will be  
3                   circulating sheets at that time.

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

7                   MS. FROST: Good morning. Jennifer Frost,  
8                   39th circuit, on behalf of the Rules and Calendar  
9                   Committee. I move for adoption of the proposed  
10                  calendar.

11                  CHAIRPERSON QUICK: Do we have a second?

12                  VOICE: Support.

13                  CHAIRPERSON QUICK: All in favor.

14                  Any opposed.

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

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

21                  VOICE: So moved.

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

24                  VOICE: Second.

25                  CHAIRPERSON QUICK: All in favor.

1                   Any opposed. Two and 0.

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

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

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

14                   VOICE: Support.

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

17                   Any opposed?

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

20                   (Applause.)

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

24                   Mr. Brown, floor is yours.

25                   MR. BROWN: Yes, I move that we nominate

1           Tessa Hessmiller and Jerrold Schrottenboer for the  
2           Unsung Hero Award and that we nominate Lynn Chard for  
3           the Michael Franck Award.

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

6                   VOICE: Second.

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

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

12                   Any opposed or abstained. Motion passes.  
13           Thank you, Mr. Brown.

14                   (Applause.)

15                   CHAIRPERSON QUICK: For the chair's report,  
16           ladies and gentlemen, I just wanted to say a few  
17           words, and then we will jump forward in our agenda.

18                   As you know, the Representative Assembly is  
19           the final policy-making body of the State Bar. To me,  
20           the word of importance in that title is  
21           representative, and I thought a little bit about  
22           exactly what that means. I found some words of one of  
23           our founding fathers, John Adams, on this topic that I  
24           thought was illuminating.

25                   As good government is an empire of laws, how

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

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

14                        Notwithstanding John Adams, I would submit to  
15          you, humble representatives, that you are wise and  
16          good. And how do I know this? Well, first of all,  
17          you have done the threshold necessary thing, which is  
18          given up your time and your energies to roll up your  
19          sleeves on behalf of the State Bar of Michigan and  
20          participate here as representatives. I know that you  
21          will consider issues with care, bringing to the table  
22          your experiences, both personal and professional, and  
23          no doubt that you all will seek to do what is the best  
24          on behalf of all members of the State Bar of Michigan  
25          and the public of our state.

1                   Our goal as your officers since the last  
2                   meeting has been to try to find ways to help you  
3                   obtain this noble end. As you will hear today, there  
4                   has been work done on important items that are  
5                   improvements to the Assembly, our means and our  
6                   quality of communication with each other, within the  
7                   Bar, and with the members of the Bar at large. We  
8                   have taken up our duty to consider, under the rules to  
9                   consider the dues that are charged to the mandatory  
10                  State Bar of Michigan, and you will hear a  
11                  presentation on that today. We are evaluating  
12                  improvements to our court system, our court rules, our  
13                  rules of ethics, and we will hear about State Bar's  
14                  21st Century Initiatives and the important items that  
15                  will be coming down the pike for consideration by this  
16                  body in future meetings. That, I submit to you, are  
17                  wise and good tasks.

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

23                   Lastly, as part of the chair's announcement,  
24                   under the tab for that there is a short report on a  
25                   reapportionment. This is done pursuant to our rules

1           periodically. It is based purely on the population of  
2           the various circuits, and you will see there a few  
3           changes based upon State Bar of Michigan data. I will  
4           share with you that at the Board of Commissioners and  
5           the Representative Assembly level there has been some  
6           consideration about revisiting the language in the  
7           Supreme Court Rules or suggesting that somebody else  
8           revisit them to consider whether or not that language  
9           is optimal, but at least for the moment the language  
10          is what it is, and the reapportionment will take place  
11          as designated.

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

16                         MR. BURRELL: Thanks, Dan. Good morning. My  
17          name is Aaron Burrell, representative from the 3rd  
18          circuit and the chair of the Special Issues Committee.  
19          As you may recall, in 2014 the Supreme Court entered  
20          an administrative order establishing a task force on  
21          the role of the State Bar of Michigan. The task force  
22          ultimately issued five recommendations, one of which  
23          was that membership dues for inactive State Bar  
24          members should be reduced, inactive member  
25          reinstatement should be more accessible and rationed.

1 Pursuant to this recommendation, at the beginning of  
2 last Bar year former Representative Assembly Chair,  
3 Vanessa Williams, and the Representative Assembly  
4 Chair for this year, my colleague, Daniel Quick, along  
5 with the Assembly officers, asked the Special Issues  
6 Committee to examine issues relative to the current  
7 dues structure of the State Bar of Michigan.

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

20 The committee brought these alternatives to  
21 Executive Director Janet Welch and Chief Financial  
22 officer Jim Horsch, who have researched and considered  
23 each option, and they have graciously agreed to  
24 provide the information regarding the current dues  
25 structure and the impact of any proposed modification.

1           This information is intended to provide background and  
2           a framework for future recommendations to this body  
3           relative to the dues structure, so at this time I turn  
4           it over to Jan and Jim, who will provide us with more  
5           information on this very important topic. Thank you.

6                     EXECUTIVE DIRECTOR WELCH: Thank you, Aaron.  
7           It takes two people to handle this topic, and this is  
8           the way we are going to handle it. Jim, who is our  
9           chief finance guy and technical expert, is going to be  
10          doing the play-by-play on this. He is the author of  
11          the fancy slides you are going to see, and I am here  
12          for color commentary, so I will try to make it fun and  
13          exciting. With that, I will let Jim begin.

14                    MR. HORSCH: Thank you very much, Janet.  
15          And, Carrie, I think you are going to do the slides  
16          for us. You can go to the next slide.

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

21                    EXECUTIVE DIRECTOR WELCH: My comment here is  
22          that only you with the State Bar of Michigan can make  
23          a comment to the Supreme Court officially on what the  
24          dues should be, so you can think of yourself sort of  
25          as congress and declaring war.

1                   MR. HORSCH: As Aaron said, the  
2                   recommendation from the Task Force on the Role of the  
3                   State Bar in 2014 did want to look at reducing  
4                   inactive member dues. And, as we will show some  
5                   statistics on how the Michigan's active dues are well  
6                   below the national average, Michigan's inactive dues  
7                   are on the high side.

8                   These are the inactive dues. You can see  
9                   \$180 of your \$285 go to support the State Bar. The  
10                  State Bar doesn't get all of the money. \$90 goes to  
11                  support the discipline system, and \$15 are to the  
12                  Client Protection Fund.

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

21                  MR. HORSCH: Now, as you can see, the  
22                  inactive dues are less, and that's because inactive  
23                  members do not have the license to practice law, but  
24                  they get all of the other benefits an active member  
25                  would get. As you can see, the amount that goes to

1           the State Bar has been reduced by 50 percent, and the  
2           amount that goes to the Client Protection Fund has  
3           also been reduced by 50 percent, but the amount that  
4           goes to the discipline system is a hundred percent at  
5           \$90. You are at about 187.50, or 66 percent of active  
6           dues members.

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

16                    EXECUTIVE DIRECTOR WELCH: So a little  
17          history here that really impacts how the operational  
18          revenue of the Bar has been where it has been for the  
19          last decade, and that is the last time that the RA  
20          visited this issue, in 2004, but the RA recommended  
21          that the exemption that had been in place at that  
22          point for members 70 years or older, complete  
23          exemption from dues be removed but only going forward,  
24          that there be a grandfathering in of everyone who had  
25          already been exempted from paying dues at age 70 or

1           above, and the Supreme Court rejected that  
2           grandfathering recommendation and instead said if you  
3           are still practicing, it doesn't matter what your age  
4           is, we are going to require you to pay the full  
5           amount, the full freight, and that was in place for  
6           about a year, I think. And there was a great outcry,  
7           particularly from the people who had been exempted  
8           from paying dues forever, and the outcome of that, the  
9           Supreme Court went back and revisited their original  
10          order and created the structure that you see here,  
11          which is a break if you have been in practice for 50  
12          years at least, and they also created an emeritus  
13          status, because one of the things that we discovered  
14          when the Supreme Court did remove the exemption  
15          altogether was that members who had been paying and  
16          weren't practicing were very unhappy at the idea of  
17          not being a member of the State Bar of Michigan. It  
18          isn't just a license and status, it's an identity. So  
19          that's sort of the background of how that happened.

20                        And the significant thing is that when you,  
21          the Representative Assembly, made your recommendation  
22          to the Court for what the dues amount should be, it  
23          was based on the calculation of what the  
24          grandfathering provision if it were in effect would  
25          mean, and so when the Court did not grandfather in

1 people 70 or older at that time, there were more dues  
2 that were coming in, and the Supreme Court reduced the  
3 amount that the RA asked for in half. Little history.

4 MR. HORSCH: And some more history, as a  
5 matter of fact. For those who want to go back to  
6 1970, you can see that the dues were only \$60 a year,  
7 and over that time, due to dues increases, it's  
8 gradually increased. The last dues increase, as Janet  
9 mentioned, was in 2003-2004, and it was set by the  
10 Court at \$315 for an active member, and in 2013 the  
11 Supreme Court reduced the discipline portion of the  
12 fee by \$10, so then it went down to 305, and a couple  
13 of years ago the Supreme Court again reduced the  
14 Attorney Discipline fee, by \$20 this time, because  
15 their fund balance was at \$5 million, so they reduced  
16 it by another 20, and now it's at the current level of  
17 285.

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

24 The rule of thumb when I came to the Bar,  
25 across the country and in Michigan, was a dues cycle

1           was about seven years, so you set the dues, when it is  
2           increased, you set it at an amount above what your  
3           operational expenses are anticipated to be for about  
4           three or four years, anticipating that you will bank  
5           the excess and then live off of it for a few more  
6           years so you don't have to keep going through the  
7           transactional costs of increasing the dues year by  
8           year.

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

17                      EXECUTIVE DIRECTOR WELCH: So that would be  
18           an extraordinary run on a single dues increase, and  
19           there are lots of reasons why we have been able to go  
20           as long as we have, but I would say the two most  
21           dominant reasons that I can think of, one is that  
22           inflation has been historically low for a long period  
23           of time, and the other reason is that the Bar has been  
24           very, very active and strategic about automating  
25           functions and holding costs down through technology.

1                   MR. HORSCH: This is the history on the  
2                   inactive dues. Inactive dues weren't payable until  
3                   the last dues increase in 2003-2004 when the category  
4                   of voluntary inactive dues was established by the  
5                   Court, and at that time the dues rate was \$217.50, and  
6                   as a result of the two recent decreases by the  
7                   Supreme Court on the Attorney Discipline System fees,  
8                   those total fees for inactive member dues have dropped  
9                   down to \$207.50 to the current amount of \$187.50. And  
10                  I would point out that we have a higher percentage of  
11                  members in this category from out of state, inactive,  
12                  and also members who leave the work force temporarily  
13                  and then come back and become active members again.

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

1           our files considerably.

2                   MR. HORSCH: This is a graph of the number of  
3           inactive members through the years since the category  
4           was established. As you can see, we have been between  
5           1,200 and 1,300 inactive members over the years.

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

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

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

17                   EXECUTIVE DIRECTOR WELCH: Can we go back?

18                   MR. HORSCH: Sure.

19                   EXECUTIVE DIRECTOR WELCH: If it were up to  
20          me, we would just stay on that slide forever, it looks  
21          so good. If I were you, I would be saying, So what is  
22          that mandatory bar down there at the very end that is  
23          just like less than half of what the State Bar of  
24          Michigan is paying and half of everybody else on the  
25          low end, and that is Nebraska, which two years ago was

1           sort of de-unified. It was broken into two parts.  
2           You have to be a member of the Nebraska Bar, but you  
3           only have to pay dues that are related to discipline  
4           and the actual licensing costs. So in the Bar world  
5           nationally, the folks who study this look at Nebraska  
6           and say they have managed to find the worst of all  
7           possible models. It's really a struggle both in this  
8           model to serve the functions, the licensing and  
9           professional functions, as well as the association  
10          functions that support the system. Just to note. And  
11          I believe that the highest is Alaska, but many, many  
12          lawyers pay much, much more than members of the  
13          State Bar of Michigan pay.

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

17                   Now, if we compare the State Bar's active  
18          dues to all states, what we do here is we compare our  
19          mandatory dues to the required payments that attorneys  
20          have to make in all states, so even though they don't  
21          have mandatory Bars, they still have to pay for their  
22          license, and when we add that up, we still fare pretty  
23          good. We are 19 percent lower than average, and 67  
24          percent of the jurisdictions have higher dues and fees  
25          than the State Bar. Now, I will say that that does

1 not include mandatory continuing legal education for  
2 any of the states, and if you were to factor that in,  
3 I would --

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

6 MR. HORSCH: We would be at the bottom. Next  
7 slide, please.

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

20 So there is a case to be made, and I know the  
21 committee has been looking at this, to lower the  
22 inactive dues, and, obviously, members are not  
23 practicing, so there is a lower burden on the  
24 discipline system, and then 79 percent of the  
25 mandatory bars have inactive status, and Michigan's

1 inactive dues are currently among the highest. There  
2 is a recommendation that would reduce the dues from  
3 \$187.50 down to \$125 and would reduce the inactive 50  
4 or more years of service from \$97.50 to \$65. Now,  
5 these changes would impact revenues in total by about  
6 \$80,000.

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

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

17 MR. LEVIGNE: Thomas Levigne with the  
18 3rd circuit. Can the State Bar afford the decrease in  
19 revenue? I just wanted some feedback on that.

20 EXECUTIVE DIRECTOR WELCH: I would say, as  
21 executive director of the State Bar, that the question  
22 of what the Bar can afford is a question for the  
23 leaders of the State Bar, thinking about what it is  
24 that we have to accomplish and what it is that we want  
25 to accomplish and being as efficient as we can. So

1           there isn't an answer that is, you know, a black  
2           letter answer to that question. The Bar will be going  
3           through a strategic planning process this year, and  
4           you could make the case that we need more, that  
5           members in Michigan would be better served if their  
6           dues were, active member dues were closer to the  
7           national average, that we could be doing more for you,  
8           or you could make the case that we could try more  
9           efficiency, and so I am punting on that question to  
10          the leaders where it really needs to be answered.

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

25                       EXECUTIVE DIRECTOR WELCH: While we are in

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

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

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

20                   Yes, sir.

21                   MR. RENNER: William Renner, 15th circuit,  
22           Branch County. Why are we doing this? I mean,  
23           speaking as a person who is in their sixties, when I  
24           go to Wendy's and they give me the 10 percent  
25           discount, I say to myself, Why weren't you there when

1 I had four kids at home and I could have used it? And  
2 I say to the State Bar somewhat similar to what I  
3 would have said at Wendy's, why are we doing it for  
4 older members? Why aren't we doing it for the new  
5 members, the ones who just get out of law school that  
6 are saddled with debt? If you have got 50 years in,  
7 statistically you have got to be at least 75 years  
8 old, so you either can afford it or you can't and you  
9 are either a lawyer or you are not. So I am just  
10 wondering why we are giving a Wendy's break to the  
11 group, hopefully the group of attorneys that can most  
12 afford to pay the dues? That's just my comment.

13 MR. HILLARD: Martin Hillard, 17th circuit.  
14 Just curious from the discipline fund portion, what  
15 percentage of disciplinary actions actually involve  
16 inactive members?

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

24 MS. GOODRUM-GARLAND: Danon Goodrum-Garland,  
25 Professional Standards Director. The only situation

1           that I can think of is that if you are inactive in  
2           Michigan but eligible to practice, licensed in another  
3           jurisdiction and engaged in unethical conduct in that  
4           jurisdiction, then the disciplinary system would have  
5           concurrent jurisdiction to bring some disciplinary  
6           proceeding, so that would be the limited circumstances  
7           that I can think of right now.

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

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

16                    MS. KAKISH: We would appreciate that.

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

21                    CHAIRPERSON QUICK: Mr. Burrell.

22                    MR. BURRELL: I would ask the Special Issues  
23          Committee to just stand if you are here in the room.  
24          They were excellent this year. If we can give them  
25          had a hand, please, because they worked very hard.

1 (Applause.)

2 MR. BURRELL: Thank very kindly, Special  
3 Issues Committee members. We prepared that  
4 recommendation to submit to essentially the other  
5 stakeholders that are going to be affected by this  
6 particular reduction in dues. I would note in  
7 responding to the first gentlemen's comment that it  
8 was inactive members, not necessarily older members.  
9 Many older members will also receive that reduction,  
10 but it was all inactive members. That includes  
11 younger members. That's to bring our dues structure  
12 in line with the remainder of the country, and we  
13 anticipate, hopefully, that we can get comments from  
14 all of the stakeholders on this particular topic this  
15 year, within the next few months, and hopefully we can  
16 bring this to the full body for a vote at the next  
17 session.

18 CHAIRPERSON QUICK: Yes, sir.

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

23 EXECUTIVE DIRECTOR WELCH: I don't know that  
24 the case has ever been made for why the allocation is  
25 the way it is. The general theory of every member

1 supporting the discipline system is that, even though  
2 the vast majority of members of the Bar, active or  
3 inactive, are not subject to discipline, the  
4 profession benefits by a system that responds to  
5 unethical conduct by lawyers, and so that every lawyer  
6 has an obligation, inactive or active, to support that  
7 system.

8 CHAIRPERSON QUICK: Yes, sir.

9 MR. POULSON: Good morning. Barry Poulson,  
10 1st circuit. This, by the way, will be my last  
11 meeting, so I am stepping down. I have enjoyed your  
12 company. I would hate to see an imposition upon the  
13 State Bar of greater efficiency. I think they are  
14 incredibly efficient. I have watched the organization  
15 try to save money and effectively save money. I  
16 cringe at the idea of hemming them in further.

17 Mr. Renner is a very young man. I understand  
18 that he sees the sliding scale. I am 67 here in a  
19 couple months, and I don't want a break because I turn  
20 70, but I do have a sympathy, as he does, for people  
21 in their first years of practice. This \$285 is really  
22 hard the first couple years. It's tremendous.

23 Finally, a second category, and that's the  
24 category of public defenders, and you know and you  
25 hear from me every meeting, this is the last time, the

1 State of Michigan has yet to appropriate a single  
2 penny for the payment of public defenders. All this  
3 stuff about the MIDC and they make lots of rules to  
4 make our jobs harder, but not one penny. So, to me,  
5 the State Bar dues, which are mandatory, are, which  
6 public defenders have to pay out of their pockets -- I  
7 have heard some of the prosecutors have it paid by the  
8 state, the county -- in effect is a tax on the  
9 presumption of innocence. Public defenders prices go  
10 up, we get extra deals on health insurance that costs  
11 us more, and we have new required training from the  
12 MIDC, and yet the State Bar still charges us to be a  
13 public defender. So I think the disparity there  
14 between prosecutors and public defenders needs to be  
15 addressed in the dues structure as well.

16 (Applause.)

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

21 (Applause.)

22 CHAIRPERSON QUICK: I do encourage each of  
23 you to speak to your fellow professionals in your  
24 circuit, in your network, and if you have further  
25 commentary on this topic to send it to Aaron for

1 consideration by the committee as he goes, as the  
2 committee goes and gathers up additional feedback from  
3 various stakeholders and contemplates the form in  
4 which this will be presented to us in the fall.

5 Obviously important, serious business. I do apologize  
6 for the early math, but it is a very important topic.

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

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

18 Moving away from numbers and back to facts  
19 and a little inspiration that Dan gave us this  
20 morning, I want to start off my presentation with a  
21 few questions before we get into some of the  
22 recommendations that we made that are in your booklet.  
23 So first, can you tell me who adopted a proposal to  
24 authorize a study of appellate representation of  
25 indigent defendants? Anybody? We did, in 1974.

1                   Who defeated a proposal that would have  
2 prohibited attorneys from making financial  
3 contributions to the campaign funds of judicial  
4 candidates? We did, in 1973. A great year, by the  
5 way.

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

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

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

24                   So, although we are the ultimate  
25 policy-making body, no one knows what we do and as a

1           result I don't think a lot of people know what we do.  
2           People within our Bar don't even come to us for the  
3           issues. We have a few issues to vote on today, but  
4           where are some of these issues that we talked about in  
5           1973, 1976, and before?

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

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

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

25                      So we looked at survey results from last

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

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

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

20 To work harder at linking us as an Assembly  
21 to the sections, raising our profile and making more  
22 people aware of what we do through PR and marketing,  
23 which is one of my fortes, and increasing  
24 communications amongst ourselves, doing a little bit  
25 more networking, getting a chance to learn from each

1           other.

2                       So we looked at what can we do in the  
3           short-term and what can we do in the long-term, and I  
4           won't bore you with going through every single detail,  
5           so I extracted some of the highlights there.  
6           Certainly to update the Representative Assembly  
7           website. That should be the first line of defense, a  
8           place that we go to to get information and should be  
9           easy to find and easy for us to refer people to to  
10          interact with us and see what we are doing.

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

19                      And then for us to get the tools and  
20          resources to go back to our constituents and educate  
21          them on what we did or how we can help them. The  
22          easier it is that we have things to have, the better  
23          off I think we will be as a body. The background of  
24          things that we debated here today, some of the mental  
25          notes that we took from some of the impressions that

1           people had. Some that would just cut and paste and  
2           send it out.

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

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

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

25                      Re-establish ourselves and connect with the

1 State Bar and specialty Bars and sections that we have  
2 and reinforce our important role and evaluate the role  
3 that other bars have and see kind of best practices  
4 from around the country.

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

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

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

22 Who rejected a proposal that the State Bar  
23 endorse a rule mandating the use of letter-sized paper  
24 in all Michigan courts? Imagine what we could do now  
25 with the technology.

1                   So what will we do next? You have a few  
2                   issues before you today, but there are a lot more  
3                   issues for us to talk about that are out there that  
4                   are not coming to us. We need to go out and find what  
5                   these issues are. We need to go out and talk to more  
6                   people about what you do and bring those issues before  
7                   us.

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

13                  (Applause.)

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

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

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

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

24                  PRESIDENT BUITEWEG: Which microphone? Good  
25                  morning. Lori Buiteweg, 22nd circuit. I might

1 suggest that everybody in the room get a Twitter  
2 handle if you don't already have one, that the RA get  
3 a Twitter account and use social media as one way to  
4 generate ideas. I have a Twitter handle, and  
5 Janet Welch has a Twitter handle, and the State Bar  
6 has a Twitter account, so social media is just one  
7 idea, and it's kind of fun, so I have been tweeting  
8 about the meeting this morning. Feel free to follow  
9 me and tweet ideas throughout the meeting. Maybe that  
10 might be one way to increase communication and ideas.  
11 Just an idea.

12 MR. CHERRIN: What's your Twitter handle?

13 PRESIDENT BUITEWEG: It's @LoriBuiteweg.

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

18 EXECUTIVE DIRECTOR WELCH: I feel obligated  
19 to say that if you are tweeting as an RA member and  
20 that's your identity as a twitterer, you have to  
21 disclaim that you are speaking for the State Bar of  
22 Michigan or the RA, but having said that, having been  
23 very bureaucratic and nodding to the First Amendment  
24 and Keller and our bylaws, I would say that I endorse  
25 the idea that Twitter can be an amazing tool for

1           engaging conversation without issues and particularly  
2           engaging the stratum of our membership that is new to  
3           the profession and is otherwise challenging to engage.

4                   CHAIRPERSON QUICK: Yes, sir.

5                   MR. FALKENSTEIN: Peter Falkenstein, 22nd  
6           circuit. I strongly endorse Ms. Buiteweg's proposal.  
7           Any method of communication that restricts lawyers to  
8           140 characters has to be a positive thing.

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

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

13                   (Applause.)

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

1           it is readily available on the full Bar website.

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

7                       (Applause.)

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

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

19                      The task force was originally thought of back  
20 in 2013 when -- I wish I could take some credit, being  
21 the State Bar president at the time, but it was  
22 Janet Welch who was the driving force, and back in  
23 June of 2013 at the Bar Leadership forum we heard from  
24 Professor Richard Susskind talking about the future of  
25 the law, and we had prepared to launch a task force,

1           and then, as some of you may realize, there was a  
2           little hiccup, and the State Bar was sort of directed  
3           to look inside itself and examine some other issues.  
4           But then eventually, under Tom Rombach's leadership,  
5           Tom did a phenomenal job pulling together a task force  
6           from around the state as geographically, ethnically,  
7           gender, practice-wise. Any type of diversity we could  
8           get we tried to get. We had buy-in from all of the  
9           major stakeholders -- the courts, the legislature, the  
10          governor. The Supreme Court had a representative on  
11          the task force and also had the director of SCAO. So  
12          it was very widespread, a lot of input.

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

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

25                 First, we recognized the Bar's long-standing

1           commitment to protecting the public. Those of you who  
2           have been in the State Bar building know that's on the  
3           wall, and that was in the hearts and minds of every  
4           person on the task force.

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

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

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

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

17                      Again, the focus was on ethics, and we  
18           realized that some of the things that we were even  
19           thinking about implementing would never be able to be  
20           adopted without significant rule changes, either to  
21           the Court Rules or the Rules of Professional Conduct  
22           or the rules governing the Board of Law Examiners. So  
23           we knew that from the start, but we said, you know, if  
24           you are going to do it, we have to make it work  
25           ethically.

1                   And then, as far as it related to the  
2                   education of our members, we wanted to make it very  
3                   clear, we are not pointing fingers at the law schools  
4                   and saying, you know, these young kids are the  
5                   problem, because in many ways the students who are  
6                   coming out right now are better prepared for the 21st  
7                   century than those of us who have been practicing for  
8                   30 years. And one of the things you will see Lori  
9                   will talk about that we had to address was we're a  
10                  precedent-based profession. We are all based on  
11                  looking what they did 80 years ago and that, dang it,  
12                  if it worked 80 years ago, it's going to work now.  
13                  Well, now it doesn't in many instances. So that was  
14                  an important thing.

15                  As far as the time line, as I mentioned, we  
16                  started back in June of 2013 was the first real  
17                  kick-off, although Bar leadership had been talking  
18                  about it for a while. November of 2014 we had the  
19                  summit on the future of legal services at which we  
20                  heard from Fred Headon, who was the former president  
21                  of the Canadian Bar Association. If you haven't had a  
22                  chance to check out his video that's available on the  
23                  State Bar website, please do so. The Canadian Bar  
24                  went through a massive study, came up with a lot of  
25                  great ideas we felt very free to pirate, so we grabbed

1 a few of them, but he does a wonderful job explaining  
2 the need for the organized bar to change.

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

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

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

22 (Applause.)

23 MR. COURTADE: This jumble of words sort of  
24 represents what went on for a while, because we had 16  
25 committee meetings, countless subcommittee meetings,

1 face-to-face teleconferences, electronic  
2 communications back and forth. We had three  
3 significant task force meetings. Conservatively, more  
4 than 3,000 nonbillable volunteer hours went into this,  
5 and that's not counting the midnight oil that was  
6 burned by the State Bar staff, which did an absolutely  
7 extraordinary job.

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

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

25 MS. FERSHTMAN: What came out of the task

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

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

1 to help people find resources and get help.

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

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

21 Some of you may be thinking, Isn't that  
22 invading the legal profession? Isn't that effectively  
23 helping people put us out of business? No, not at  
24 all, because, as we know, pro se litigants compose a  
25 very large percentage of dockets of the judges or of

1           the caseload of the judiciary right now. Pro se  
2           litigants are taking a tremendous amount of time in  
3           the court system. If there is a way to help these  
4           people, and, again, these are people who probably  
5           would never even consider hiring an attorney, a  
6           private practice attorney, then the Bar should  
7           consider ways of helping deliver that. So this is  
8           just a flavor, a piece of the first issue that we  
9           considered.

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

25                   So these were some of the issues that we

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

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

25                      In addition, that's the law student

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

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

18 In our town hall meeting, this was one of the  
19 topics that we discussed, but this particular issue of  
20 the task force was really more focused on improving  
21 efficiency for the benefit of lawyers and the public,  
22 which includes, among many other things, and I don't  
23 have time to get into them all, promoting processes to  
24 help lawyers think more efficient, and courts for that  
25 matter.

1                   There is a process many of us have heard of  
2                   called Lean. We don't advocate any particular one in  
3                   this report, but it was discussed. We had  
4                   Professor Linna at Michigan State, who is a huge  
5                   proponent of it. What is it? It is a systematic way  
6                   to improve the efficiency of what you do to get  
7                   something done in considerably less time. Can we  
8                   learn more about how we can utilize concepts and  
9                   principles to be more efficient at what we do? We  
10                  can, and that was part of the discussion. I encourage  
11                  you to look at that section of the report.

12                  Let's get to the fourth, and that is  
13                  regulatory hurdles. Well, I don't have a lot of time  
14                  to discuss the regulatory hurdles and the issues that  
15                  we discussed. Let me get right to the innovations and  
16                  share a couple of them with you. One is, because of  
17                  existing ethical limitations, hurdles, if you will,  
18                  unbuckling, scope representation or the effort of an  
19                  LSR has been pretty much off the table for us. So the  
20                  client comes to you and worked out a settlement of the  
21                  matter, and all they want you to do is help prepare  
22                  the settlement agreement, help get the settlement  
23                  perhaps finalized or formalized on the record. You  
24                  can't do that under certain ethical limitations that  
25                  we have. Why don't we get rid of those limitations

1           and allow lawyers to effectively practice in an  
2           unbundled fashion? That was one of the innovations of  
3           our task force.

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

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

18                    The concept of innovation in law practice  
19          seems to have been lost. Our task force thought it  
20          would be critical to put innovation at the forefront,  
21          and we need to think innovation in the legal system,  
22          so what we are looking to do through the work of the  
23          task force and the many things that we will be doing  
24          that we are taking forward would be help establish  
25          Michigan as a leader in modernizing the delivery of

1           legal services in an ethical and in a very efficient  
2           way. In the end, when we look at the innovations that  
3           we proposed here, we have justice innovation  
4           guidelines, justice innovations, but more specifically  
5           when you read the report, one of the proposals is and  
6           one of the recommendations is for the Bar to be  
7           integrally involved in the establishment and the  
8           housing of a justice innovation center, and it would  
9           allow people to serve as advisory members drawn from  
10          throughout the profession, even a futurist, and help  
11          the Bar to continue to think about ways to improve  
12          what we do, look at regulatory hurdles to the practice  
13          of law, and to continue moving us forward.

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

25                        Reports that led to these recommendations, I

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

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

22                        MR. COURTADE: And one thing I would like to  
23          follow up on that Julie mentioned was the justice  
24          initiative center, and that's, just so you understand,  
25          that's something that the State Bar is going to be a

1 part of, but it's going to involve not only members of  
2 the State Bar, it's going to involve members of the  
3 court, it's going to involve nonlawyers, and it's  
4 something that from this point forward is going to be  
5 a standing, almost like the Michigan State Bar  
6 Foundation, a separate body that is going to consider  
7 future innovations. This is not, this report is not a  
8 one-and-done deal. This is something that's going to  
9 go on into the future.

10 Where do we go from here? Well, Lori has  
11 already appointed -- excuse me, President Buiteweg has  
12 already appointed a steering committee to implement  
13 and to direct where the recommendations that have been  
14 made ought to go so that they can be implemented. The  
15 State Bar has ownership of this work product, so the  
16 State Bar is going to be leading the way on it. Some  
17 of the issues are, they are going to be teed up to you  
18 guys as early as September. Some of them will go to  
19 the Board of Commissioners. Some will need  
20 Supreme Court approval. When we start talking about  
21 changes to the Rules of Professional Conduct, the  
22 State Bar can't do that. That's got to be done  
23 through the Supreme Court. Some are going to require  
24 legislative changes. So when you actually take a look  
25 at the scope of the recommendations, you will realize

1           this is not something that can be done overnight, much  
2           like the Judicial Crossroads Task Force Report took.

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

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

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

25                      Be prepared to talk about these proposals as

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

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

19                       CHAIRPERSON QUICK: Round of applause,  
20           please.

21                        (Applause.)

22                       CHAIRPERSON QUICK: Ladies and gentlemen, I  
23           cannot impress upon you enough, having participated at  
24           least as a part of the task force, the meaningfulness  
25           of this endeavor. This is not stuff that's being done

1           around the edges. These are topics that matter  
2           gravely, not just to our profession but to the public  
3           to which we are sworn, and I encourage you to take  
4           this opportunity to have your voice heard and your  
5           comments considered by reaching out to the task force.

6                         With that, we will take a ten-minute break.  
7           We will resume promptly at 11 o'clock. Thank you.

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

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

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

19                        CLERK MCGILL: Good morning, everyone.  
20           Joe McGill from the 3rd circuit, current clerk. For  
21           most of you, you have used these devices before. The  
22           only buttons you need to be concerned with are the top  
23           three rows, buttons 1A, 2B, and 3C. Button number one  
24           is an affirmative yes. Button number two is a  
25           negative no, and button number three is abstain. So

1           when we open the voting on the various action items,  
2           you will be able to indicate your vote, and then we  
3           will close the voting and display the results.

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

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

22                   And what has been happening, at least in  
23          those three counties, and I can't speak for any other  
24          counties, because that's just where my practice is, so  
25          what's been happening though with recurring frequency

1           in those three counties is parties are negotiating a  
2           protective order. The protective order says that  
3           documents designated as confidential may be filed  
4           under seal, and they then go to file a motion, a  
5           dispositive motion or a motion to compel or any sort  
6           of other pre-trial nonsense that we all do -- it's  
7           true -- and they go to seal an exhibit to the motion  
8           that was designated as confidential and produced by  
9           somebody in discovery, and the courts are saying, no,  
10          you can't do that, even though you have a Court Rule  
11          that says you can and a court order that says you can,  
12          we can't do that because under it MCR 8.119(I) we  
13          can't seal records without an independent hearing and  
14          good cause.

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

24                        If this is continuing with regularity, the  
25          response to the motion could have something

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

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

22 I have discussed this with business judges in  
23 Macomb, in Oakland. I have seen it in Wayne. So this  
24 is an issue that courts are concerned with. It is a  
25 frustration for litigants to go through this, and I

1           have also kind of perhaps off the record discussed it  
2           with someone at SCAO who kind of said we don't want  
3           copies of all of these orders. So I think it's  
4           something that can easily be resolved, and the idea is  
5           to try to balance the interest of the litigants in  
6           protecting confidentiality versus the interest of the  
7           public in access to the courts.

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

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

24                       CHAIRPERSON QUICK: First of all, Ms. Safran  
25          is not a member of the Assembly, so do I have a motion

1 to adopt the proposed language by the committee?

2 VOICE: So moved.

3 CHAIRPERSON QUICK: Do I have a second?

4 VOICE: Second.

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

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

13 After receiving the materials for this  
14 meeting I took this recommendation, as well as the  
15 next two, to the Court Rules and Ethics Committee of  
16 the Family Law Section. From that, recommended that  
17 the section support this committee at the council  
18 meeting. At the beginning of this month council voted  
19 20 to nothing to support.

20 The problem may be a problem in business  
21 courts. We know it's a problem in Family Division.  
22 There is a move around the state among some Family  
23 Division judges to have presumptive sealing of all of  
24 the family division cases. Many of us think that  
25 that's an overreach, but being able to more easily

1 seal individual documents will help protect the  
2 confidentiality of children and litigants whose  
3 medical records or psychological evaluations are  
4 frequently needed in family law litigation and,  
5 therefore, council, and I personally as a family law  
6 attorney, strongly support and hope too that the  
7 Representative Assembly will approve this recommended  
8 change. Thank you.

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

24 You recall paternity cases are largely  
25 private now, largely because we had Mayor Young and

1 his paternity case. That particular issue was in the  
2 public spotlight back in the late '80s, and because of  
3 that there were changes made in paternity cases. We  
4 need more privacy for litigants in family law cases so  
5 these abuses don't happen. Very often take a lot of  
6 information. One thing that was mentioned was medical  
7 reports, psychological reports. There is no reason  
8 for the public to know about a minor child's  
9 psychological report or anything in the public court  
10 record even referencing that. It should be kept  
11 private so this can't come back later and just create  
12 more and more family discord. Thank you.

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

15 MR. FALKENSTEIN: That's fine.

16 CHAIRPERSON QUICK: Go ahead.

17 MR. FALKENSTEIN: Call the question.

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

20 CLERK MCGILL: Voting is open.

21 CHAIRPERSON QUICK: Any last votes? Voting  
22 is closed.

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

25 (Applause.)

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

7                   MR. STRANDER: Good morning.

8                   VOICE: Good morning.

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

14                   In probate law under the Estates of Protected  
15 Individuals Code, there are guardians for minors and  
16 guardians for incapacitated adults. Both of those  
17 kinds of guardians have to file annual reports on the  
18 condition of their wards. Also, pursuant to the Court  
19 Rule at 5.409, this requirement to report is echoed,  
20 as is the requirement to serve the report on  
21 interested persons. The problem is that at the  
22 section of 5.409 it directs us back to a section of  
23 the Court Rule for service on interested parties, and  
24 that's 5.125(C) (23). The problem is that (C) (23) only  
25 refers to interested persons in relation to adult

1 guardianships. It does not refer to individuals who  
2 would receive service for a guardianship for the  
3 minor.

4 So the suggestion today is to amend  
5 5.125(C)(23) to add in the language to allow for those  
6 individuals who would be interested in any other  
7 action in a minor guardianship to receive service of  
8 those reports.

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

12 VOICE: So moved.

13 CHAIRPERSON QUICK: Do we have a second?

14 VOICE: Support.

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

18 MR. FLESSLAND: Dennis Flessland from the 6th  
19 circuit. Did the committee give any thought with  
20 respect to the adult guardianship of listing the  
21 parents of a person subject to an adult guardianship  
22 as an interested party? Sometimes -- I mean, in my  
23 experience we have had people with mental illness,  
24 drug abuse issues, something like that, where a  
25 guardianship has been established for them, and they

1           may or may not have parents -- or may or may not have  
2           a spouse or children, but the parents are very often  
3           involved in their care. Does that make any sense, or  
4           do the heirs of law, presumptive heirs, cover parents  
5           you think?

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

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

21                   CHAIRPERSON QUICK: Thank you.

22                   MR. PAVLIK: Adam Pavlik, 54th circuit. Two  
23          of the questions that I had were -- in the language of  
24          the proposal, it says that for minor guardianship the  
25          parents of the minor or, if neither of them are

1 living, any grandparents would receive the report of  
2 the guardian. I feel like that raises potential  
3 definitional concerns, particularly in circumstances  
4 where parental rights have been terminated, and so  
5 we're then left with a debate over who the parents or  
6 who the potential grandparents of the child are,  
7 whether you have got a distinction between bio versus  
8 legal parents of a child. That was one thing that  
9 came to mind, and the other thing that I wondered  
10 about is if the parents or the grandparents are not  
11 the adult presumptive heirs of the minor, that makes  
12 me wonder whether there is a falling out or some sort  
13 of difficulty in their relationship such that should  
14 those people, if they are not the presumptive heirs of  
15 the minor, be getting these reports in the first  
16 place?

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

24 MR. PAVLIK: Okay.

25 MR. STRANDER: The second question, did that

1 deal with a situation where the minor had a child?

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

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

19 MR. PAVLIK: Okay.

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

22 CLERK MCGILL: Voting is open.

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

25 CLERK MCGILL: Happy to record we have 81

1           yea, six nay, four abstentions.

2                   CHAIRPERSON QUICK: Thank you very much.

3                   (Applause.)

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

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

10                   VOICE: There are reasons for that.

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

14                   First just want to tell all of you how  
15 appreciative I personally am of your efforts on behalf  
16 of lawyers in Michigan, and I know it's a pain in the  
17 ass to have to go to Lansing on Saturday and sit  
18 around and say what are we doing, but I am just  
19 telling you, if you don't, somebody else will, and  
20 they may not have your level of diligence or skill or  
21 a different agenda, so I am always glad to see  
22 especially younger people participate in this process.  
23 I am kind of an old dog, and I have done a lot of  
24 different things, but hats off to all of you being  
25 here.

1                   This is a proposal to deal with what I would  
2                   call anonymous advertising by lawyers, basically  
3                   dot com advertising, and so this came up here about  
4                   three, almost three years ago with a proposal that  
5                   would have required that whoever was paying for the ad  
6                   had their name, either the name of a lawyer or the  
7                   name of the law firm in the ad, and what was  
8                   unacceptable to some firms that advertise -- and I  
9                   just want to make a disclaimer here, when I use any --  
10                  I am going to show you some billboards, and I am not  
11                  picking on anybody. I am just using them as examples  
12                  of concrete problems. So this isn't something  
13                  floating around in my imagination. These are real  
14                  issues. But there are firms that advertise under what  
15                  they call a trade name, and some of these are the  
16                  large law firms like Dan's firm, Dickinson Wright,  
17                  advertises as Dickinson or markets themselves as  
18                  Dickinson, and there was some objection to them having  
19                  to put on the bottom of a thing Dickinson Wright or  
20                  whatever their name is. When I started, they were all  
21                  still alive. But anyway.

22                   So that proposal didn't sit well, which I  
23                   thought was kind of hilarious, that big, what we used  
24                   to call silk stocking law firms, would care about  
25                   attorney advertising issues, which always seemed to be

1 not necessarily related to the personal injury bar  
2 but, you know, divorce and other practices, but  
3 apparently they were.

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

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

20 First of all, protection of the public, and I  
21 am going to show you a couple billboards in a second  
22 that go to this. Talking about preventing the  
23 unauthorized practice of law; that is, commercial  
24 organizations that are not lawyers pretending to be  
25 lawyers, and you will see what I mean in a second.

1           They are not lawyers. They are not law firms. I  
2           don't know what they are, but they have set up these  
3           entities, and what they are is referral services. And  
4           that's fine. That's fine. I mean, we can't control  
5           everything, but we can certainly prevent people from  
6           pretending to be lawyers when they are not, and that's  
7           what this is about.

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

21                        Next. The first question you always draw is,  
22          well, is this -- and I can tell you that I had talked  
23          about this with several of the Supreme Court justices,  
24          which, in case all of you don't know it, you can talk  
25          to these people about anything you want as long as

1           it's not a case. So you can call up Brian Zahra, you  
2           can call Dave Viviano, you can call them all up, talk  
3           to them about anything you want about this.

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

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

1 know what they are.

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

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

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

17 Okay. This is a -- again, I am not quite  
18 sure what it is. It strikes me as a referral service,  
19 and if you dial in 1800-LAW-FIRM, I don't see the  
20 names of any lawyers. If you type in my name, you are  
21 going to get our firm, our pictures, everything. If  
22 you type in, you know, anybody's name here that does  
23 it, I am sure that almost all of you have your  
24 picture, your name, what you do, how many verdicts you  
25 have had, what kind of work you do, because you are

1 marketing yourself to the public, and that's fine,  
2 that's fine. If you want to do it, say it, that's  
3 fine. Say we are not a law firm. We are a referral  
4 service. We are not lawyers. We may be lawyers, but  
5 we don't handle your case. We are here to refer you  
6 to somebody else. I can't stop that. Okay. Next.

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

19 Now, Mark Bernstein and Sam, I know these  
20 people well, and if you look in the bottom right-hand  
21 corner of the ad, it says the Sam Bernstein Law Firm,  
22 and that's because when we started this a few years  
23 ago I asked people what do you think, what do you  
24 think? No problem. That's when he had an ad that  
25 just said 1-800, just had an icon on it. And they

1           agreed. They agreed there is no harm in putting your  
2           name. All we want to know is who are you.

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

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

10                      VOICE: So moved.

11                      CHAIRPERSON QUICK: Do we have a second?

12                      VOICE: Support.

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

15                      MS. BRANSDORFER: Hi, I'm Liz Bransdorfer,  
16           17th circuit, and again I support this personally, but  
17           also on behalf of the Family Law Section council. We  
18           discussed this at the Civil Procedure and Ethics  
19           Committee meeting at the beginning of this month, and  
20           council voted -- this one is a little more  
21           controversial -- 17 to 1 to 1 to support the  
22           committee's recommendation.

23                      Family law is one of those areas where there  
24           are starting to be national law firms and there are  
25           starting to be lawyers who are advertising for clients

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

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

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

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

25                       MR. OHANESIAN: This is a practical question.

1 I agree with the spirit of what's trying to be done  
2 here, but you are trying to go after corporations and  
3 people who aren't lawyers in the state of Michigan,  
4 and you are amending the Michigan Rules of  
5 Professional Conduct, and I am just trying to  
6 envision -- this is a mechanical question -- how is  
7 this going to work if you are trying to reach out -- I  
8 mean, the people you are trying to reach out for  
9 aren't lawyers in the state of Michigan or don't even  
10 have offices in the state of Michigan. I am  
11 professing ignorance here. What is the mechanical  
12 process for enforcing this if that's truly the goal of  
13 what this is?

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

1 realize that.

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

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

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

18 MR. OLSMAN: Let me ask you this: If you are  
19 not here to get cases to refer to lawyers, what are  
20 you here for? I mean, the person who spoke about the  
21 family law, if you have a national organization or  
22 businesses that are out to get family law cases so  
23 they can refer them to family law practitioners for a  
24 fee or whatever, eventually you are going to find the  
25 person that's doing it. Somebody is doing the work.

1           They are here to get law cases. I mean, they are not  
2           here to sell screwdrivers or something like that.  
3           They are here to get law cases. So, you know, we have  
4           to start somewhere. Good question. I suppose the  
5           answer will be that at some point we are going to find  
6           out who the beneficiary is who is doing the work and  
7           say are you 1-800-LAW-FIRM, or if you are, you put  
8           your name on there, period.

9                       MR. FALKENSTEIN: Peter Falkenstein from the  
10           22nd circuit. Just to follow up on your point. In  
11           cases where an outstate referral firm that is not  
12           actually a law firm is advertising into the state and  
13           purporting or at least representing to be lawyers or a  
14           law firm, the remedy is to go to court. Sue them for  
15           false advertising under the Lanham Act, and there is  
16           no reason that that couldn't be done independent of  
17           any changes to our professional code. If they are  
18           misrepresenting themselves to consumers, there are  
19           remedies in court for that.

20                      The question I had is the language of the  
21           amendment, which says, Services of a lawyer or law  
22           firm advertising under the heading, phone number,  
23           et cetera, shall identify the lawyers or law firm  
24           providing the services. Now, how does that impact  
25           the, quote-unquote, mesothelioma firms that -- they do

1 state that they are a law firm in Texas, but they also  
2 state that your case will be referred to other  
3 attorneys.

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

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

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

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

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

24 MR. FALKENSTEIN: But they are not going to  
25 be providing the services. They admit it's going to

1           be referred. So I am not understanding what the  
2           consequence of this language is, whether there is an  
3           ambiguity that needs to be cured as to who actually  
4           will be providing the services that's being  
5           identified.

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

17                       For example, I don't know in particular that  
18          law firm, but let's say Baron & Budd or somebody from  
19          Texas that does asbestos is advertising here and says,  
20          you know, call this number, we are Baron & Budd, or  
21          whatever. Your case may be referred. They are a law  
22          firm. They are a law firm. We know who they are, and  
23          if you called there and said, Well, who are you going  
24          to send my case to in Michigan, they might say, We are  
25          going to send it to Dan Quick. That's who is going to

1           get -- I don't have a problem with that. Where every  
2           hand is on the table, we know who they are. Who is  
3           1-800-LAW-FIRM? Who is Gold Star Wages?

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

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

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

17                   MR. OLSMAN: I barely have the question.

18                   MS. SPIEGEL: Good morning. Mary Spiegel  
19          from the 2nd district, and I stand in support of this  
20          amendment for a couple of reasons. This morning what  
21          I am hearing a lot of comments are, and what it  
22          reminds me of that old saying that we are letting the  
23          perfect become the enemy of the good or of the better,  
24          and in this case I think that this is maybe not  
25          perfect, but it's better.

1                   Now, I work as a legal aid attorney. This  
2                   doesn't impact me, because, believe it or not, folks,  
3                   I get plenty of walk-in clients, but the fact of the  
4                   matter is that many of those clients are  
5                   misrepresented or are lied to. There are charlatans  
6                   out there who are posing as legal services. I had a  
7                   client who was actually being sued by a person who  
8                   assisted them in a landlord/tenant matter, and that  
9                   person called themselves a legal service person. And  
10                  so if we have information about who exactly is  
11                  providing those legal services instead of housing  
12                  helpers, we will have a more informed public, even the  
13                  legal aid clinic level. I don't see how that can hurt  
14                  my clients or how it can hurt yours.

15                  MR. ROMANO: First a point of information.

16                  CHAIRPERSON QUICK: Could you identify  
17                  yourself.

18                  MR. ROMANO: Vince Romano, 3rd circuit.  
19                  First, point of information. Are you aware of any  
20                  complaints from the public being lodged about these  
21                  matters?

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

25                  MR. ROMANO: To the extent that you are

1            talking about protection of the public, individuals  
2            that need protection.

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

14           MR. ROMANO: I spent 25 years -- I should  
15           explain, I spent 25 years in legal marketing business,  
16           president of the company that does that work, and so I  
17           am always very cautious when looking at rules that  
18           would restrict what I think are pretty permissive  
19           advertising rules of the state of Michigan, because I  
20           think, as was pointed out, it's a slippery slope. You  
21           know, once you start down that slope of restriction,  
22           however innocuous the initial restriction may seem,  
23           you make it easier for the successive restrictions to  
24           come about, and so that's why I would speak in  
25           opposition to this matter.

1                   I think the system is working fine. We have,  
2                   as the last speaker pointed out, there are other  
3                   remedies available should someone be harmed. There  
4                   are institutional remedies within our own Bar looking  
5                   at the unauthorized practice of law complaints can be  
6                   addressed to. So I think we have mechanisms in place  
7                   that can protect the bodies of concern that you have  
8                   addressed so far, so I hope that this Assembly would  
9                   reject this provision. Thank you.

10                   CHAIRPERSON QUICK: Thank you. Yes, sir.

11                   MR. MASON: Good morning. Gerry Mason from  
12                   the 31st circuit. This isn't a case of restrictions.  
13                   It's a case of disclosure, and anybody who practices  
14                   law who sees clients, you have clients walk in where  
15                   they have contacted these firms, maybe they have been  
16                   taken advantage of or their case has been mishandled,  
17                   and we do, as Mr. Olsman pointed out, have an  
18                   obligation to protect the public, but we also have an  
19                   obligation to protect our profession, and, as part of  
20                   the 21st Century Initiative, the realities of online  
21                   advertising and the ethics of online advertising are  
22                   something we have to deal with in a coherent manner,  
23                   and it's not asking too much for someone to advertise  
24                   in this nature to disclose who they are and who is  
25                   going to get your case so these people actually

1 understand what's going on, because when you get a  
2 case that someone has had on LegalZoom or some other  
3 entity and it's all screwed up, we have to deal with  
4 it, but at the end of the day, even if wasn't the  
5 lawyer who originally took this case, we get blamed  
6 for it.

7 CHAIRPERSON QUICK: Thank you. Yes, sir.

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

20 CHAIRPERSON QUICK: Thank you.

21 MS. STERLING: I am Lea Ann Sterling from the  
22 13th circuit, and I believe that we already have an  
23 ethical rule that addresses what is the underlying  
24 purpose here, and that is we are, as attorneys, not  
25 allowed to share referral fees with nonattorneys, and

1 I think that that takes care of the situation. What  
2 other point is there except to share in the referral  
3 fee? They are not doing it out of the goodness of  
4 their heart.

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

18 CHAIRPERSON QUICK: Yes, sir.

19 MR. KOROI: Mark Koroi for the 3rd circuit,  
20 Wayne County. I just want to point out that it's a  
21 step in the right direction. We need to do this  
22 because there is too much fraud. These particular ads  
23 target groups of people. Recent immigrants. It  
24 targets people of foreign languages. People that are,  
25 the inner city people, people that are

1           unsophisticated. They don't understand it's a trick  
2           for them to believe something that's not there, and I  
3           think these are very, very slick operators, and I have  
4           seen this. Almost every case -- I do a fair amount of  
5           personal injury work. Almost every one of those cases  
6           had someone that serves as contact to these people and  
7           probably are used to providers. Say a person goes to  
8           submit a claim, that claim is going to have somebody  
9           calling up a law firm saying contact this person and  
10          try to draw this person. There is some kind of slimy  
11          type of conduct involved there.

12                        About a month ago, for instance, I got a call  
13          from an insurance company, and they said, You have  
14          been replaced by another attorney. I said, Not true.  
15          I have talked to my client. Well, somebody filed a  
16          lawsuit in your client's name. And I contacted that  
17          attorney. He didn't know anything about the lawsuit  
18          being filed, and we don't know how it got filed, but  
19          somehow he said I will file -- well, the dismissal  
20          happened. People were shocked when they heard this  
21          happened, but it's happened. It occurs, and it's due  
22          to some kind of -- well, I didn't even know who these  
23          people were, but this was a major case, somebody got  
24          wind of it, and this fraud took place, and it was  
25          corrected when I contacted the attorney who was the

1 attorney of record, but he didn't know it was filed.  
2 The attorney is on the cover letter, and your  
3 signature is on it. He said, I don't know. I never  
4 filed this.

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

16 CHAIRPERSON QUICK: Thank you.

17 MS. DINEHART: Tracie Dinehart representing  
18 the 8th circuit. I stand in support of this; however,  
19 as the presenter had indicated, the rule that I think  
20 we really need to be attacking here is the rule with  
21 regard to fee sharing for attorneys and nonattorneys.  
22 It seems to me that the presenter has indicated that  
23 there is a nice little loophole in this that these  
24 companies are utilizing to basically bring on an  
25 attorney as a strawman in order to allow these

1 referral services to go into place. So if that's  
2 what's happening, then why aren't we attacking the  
3 rule with regard to referral services and fee sharing  
4 between attorneys and looking at that rule  
5 specifically as it relates to that loophole that's  
6 already been pointed out?

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

23 MS. DINEHART: But doesn't that relate  
24 directly to our conflict rules where we have conflict  
25 rules in place where attorneys can't be part of

1           specific organizations or they can't own parts of  
2           businesses or take part in book royalties or things  
3           along those lines in order to circumvent the rules,  
4           and isn't that exactly what we are now faced with here  
5           is that we are now utilizing our own words to  
6           circumvent our own rules so that we get through a  
7           system in a loophole.

8                   CHAIRPERSON QUICK: Thank you. Any further  
9           comments?

10                   MR. MASON: Over here, Dan. Just briefly.

11                   CHAIRPERSON QUICK: You are violating our  
12           rule.

13                   MR. MASON: I'm sorry. Gerry Mason from the  
14           31st circuit. What needs to be explained is these  
15           websites actually solicit us and tell us that -- you  
16           join them. You pay so much money each month, and I  
17           think that's how they get around this referral issue  
18           or deal with it is essentially what they do is they  
19           try to get us to pay to join these sites, and so there  
20           is another avenue to that business aspect.

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

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

25                   My practice is catastrophically injured

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

10 CHAIRPERSON QUICK: Thank you.

11 MR. FALKENSTEIN: Call the question.

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

15 CLERK MCGILL: The voting is open.

16 CHAIRPERSON QUICK: Please vote now.

17 Three, two, one, voting is closed.

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

20 CHAIRPERSON QUICK: Thank you very much.

21 (Applause.)

22 CHAIRPERSON QUICK: A few closing comments.  
23 First of all, I cannot thank enough my vice chair and  
24 my clerk for assisting moving us forward to this  
25 meeting, as well as our committee chairs, whom I would

1           like to recognize. Kim Breitmeyer, the Assembly  
2           Review; Mike Thomsen on our Drafting Committee,  
3           Alan Sullivan on Hearings; Dan Cherrin, who you heard  
4           from today; Shenique Moss, Nominating and Awards; and  
5           Ray Littleton for Rules and Calendar; and Alan Burrell  
6           for Special Issues. Please, a round of applause for  
7           all of their services.

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

23                       With that, the meeting is adjourned.

24                       (Applause.)

25                       (Proceedings concluded at 11:59 a.m.)

1 STATE OF MICHIGAN )  
2 COUNTY OF CLINTON )

3 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 Connie S. Coon, CSR-2709

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