STATE OF MICHIGAN
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE
ASSEMBLY of the STATE BAR OF
MICHIGAN

Proceedings had by the Representative Assembly of the State Bar of Michigan at Radisson Hotel, Second Floor, Lansing, Michigan, on Friday, September 12, 2003, at the hour of 10:00 a.m.

AT HEADTABLE:

THOMAS C. ROMBACH, Chairperson
DANIEL M. LEVY, Vice-Chairperson
ELIZABETH A. JAMIESON, Clerk
JOHN T. BERRY, Executive Director
JOHN M. BARR, Parliamentarian
GLENNA PETERS, Staff Member

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RECORD

CHAIRPERSON ROMBACH: I would like to call the Assembly to order at this moment, so if the people in the back of the room can have a seat, and we will be ready to go.

At this time I would ask Madam Clerk, Elizabeth Jamieson, if we have a quorum present.

CLERK JAMIESON: We do.

CHAIRPERSON ROMBACH: So certified.

We will move next to item C, the adoption of the proposed calendar. At this time I would entertain a motion to amend the calendar to move item 19, which is the swearing in of Daniel M. Levy as 2003-2004 Chairperson of the Assembly, I would like to move that up to item 14, actually in front of item 14.

The reason we are doing that is because the Court of Appeals Judge, Kurt Wilder, who is going to swear in Mr. Levy is going to be available at that time and not later on after your debate this afternoon.

I would also like to move the remarks by Reginald M. Turner, President of the State Bar, and
remarks by Scott Brinkmeyer, President-Elect of the State Bar, up a notch to precede and eclipse my remarks as well.

I would entertain a motion to that effect.

VOICE: So moved.

CHAIRPERSON ROMBACH: Do I have have a second on that?

VOICE: Support.

CHAIRPERSON ROMBACH: Moved and seconded. Is there any discussion on this item? Hearing none, I would like to bring that to a vote.

All in favor, please signify by saying yes.

Any opposed, say nay.

Hearing nothing, I am going to turn now to Mr. Larky.

MR. LARKY: Mr. Chairman, I move that items number 13 and 15 be placed at the end of the morning session and that motion that I have for number 12 be reduced from 15 minutes to five minutes.

CHAIRPERSON ROMBACH: If I understand that -- and for the record, this is Sheldon Larky from the 6th circuit, right? You have been out of action for a year, Shel.

MR. LARKY: Sorry, forgot protocol.

CHAIRPERSON ROMBACH: If the new members can
remember to identify yourself. We are recording this. Connie Coon is our capable recorder, and so she needs to know who all you folks are when you speak.

So you would like to, again, Mr. Larky, move items, is it 13 and 15?

MR. LARKY: To the end of the morning session following number 12 by reducing my time to five minutes. In light of number 15 being basically a motion to table until November, that should take one minute, and consideration of the Assembly report probably will take less than three minutes.

CHAIRPERSON ROMBACH: So 13. And is it 15 and 14? I am having trouble hearing you, Shel.

MR. LARKY: Thirteen and 15.

CHAIRPERSON ROMBACH: Thirteen and 15, so 14 can stay where it's at. That's the appellate reduction task force report?

MR. LARKY: That would be immediately after lunch.

CHAIRPERSON ROMBACH: That would be immediately after lunch. So 13 is consideration of the report and recommendations of the Assembly Review and 15 is the Michigan Rules of Professional Conduct.

Is there a second for that?

VOICE: I second.
CHAIRPERSON ROMBACH: That's been moved and seconded. Is there any discussion on that?

If somebody is going to discuss that, I believe we have Elizabeth Jamieson, our clerk, is going to want to talk on that item. Go ahead, Elizabeth.

CLERK JAMIESON: Elizabeth Jamieson, 17th circuit. It isn't just a motion to table. Quite frankly, it's a rather extensive proposal as to how we are going to proceed with addressing the proposed Michigan Rules of Professional Conduct, what rules we feel need further debate, what rules we want to have published and may need further debate in the future, and what rules may not require any debate, and we have the potential of going through each of these rules, and we think it has such significant importance to the Assembly with regard to input to the Supreme Court that that's not something that's going to take five or ten minutes, and that's why we left it for the afternoon.

I think we would be doing a injustice to the Assembly and the significance of the Assembly and to our 30-some thousand members by just saying we are deferring everything to November. We are not going to have enough time in November to debate all of the
rules. We need to deal with that procedurally today so that we can set ourselves up to be very efficient in November.

CHAIRPERSON ROMBACH: Is there anybody else that would like to speak on the topic?

I would note, just as a housekeeping matter, I know that we have a team of ethics gurus from the committee that are scheduled to come in here this afternoon and are anticipating addressing that and answering any Assembly questions that may arise, and they have been notified pursuant to the agenda to be here. I know I did that myself. So I would prefer not to be made out to be a complete liar at least at this juncture in the meeting.

Anybody else who would like to speak on this item?

Mr. Larky, do you have any final remarks to wrap up?

MR. LARKY: No. I might have another motion.

CHAIRPERSON ROMBACH: Right, you have the motion.

MR. LARKY: No, I said I might have another motion.

CHAIRPERSON ROMBACH: The motion having been made and seconded to move items 13 and 15 to the end
of the morning agenda, all those in favor please indicate by saying yes.

All those opposed, please indicate by saying no.

In the opinion of the chair the noes have it.

MR. LARKY: Mr. Chairman, I have another motion. I move that item number 13 be immediately following number 12 in the morning session and that number 12 be reduced from 15 minutes to five minutes.

VOICE: Second.

CHAIRPERSON ROMBACH: Now we are moving for item 13 to be made immediately following item 12 and move that to the morning session.

MR. LARKY: And to reduce my time on number 12 to five minutes.

CHAIRPERSON ROMBACH: Again, my hearing is not so sharp, Shel.

So you want to reduce the amount of time apportioned to your --

MR. LARKY: To number 12.

CHAIRPERSON ROMBACH: -- 12, and then move item --

MR. LARKY: 13 up to the morning session.

CHAIRPERSON ROMBACH: Is there a second on that?
VOICE: Second.

CHAIRPERSON ROMBACH: All right. Would you like to speak to that, Shel?

MR. LARKY: I just want to save time. We are already running late, and this will probably speed up the morning session and help us with the afternoon and maybe we will get out earlier.

VICE CHAIRPERSON LEVY: Just as a matter of order, the time limits on the agenda are just advisory estimations. If we can get it done, we will get it done, but we can't shorten the time in a way that will just make it impossible for anybody to object to your proposal. If they object, it takes 10 minutes or 15 minutes, but as soon as we can start it we will do it as quickly as we can.

CHAIRPERSON ROMBACH: I tell you what, if we could reach maybe consensus on this, Shel, I would certainly entertain that as a favorable amendment if we have the time in the morning. All I know is I am committed to get a number of people in this Assembly meeting to that lunch on time, and so if I can add that provision on there, then --

MR. LARKY: If we can fill it in the morning, I have no problem with that friendly amendment.

CHAIRPERSON ROMBACH: Certainly. Any further
discussion on this topic?

As amended, Mr. Larky's motion is to move item 13 up to the morning, time permitting.

All those in favor, please indicate by saying yes.

Any opposed say no. That passes. Thank you very much, Mr. Larky.

Any other pre-trial motions to come before the body? Hearing none, we will move on to the item about the objections not having been filed to summary proceedings that you have in front of you, April 26.

I know there are a few clerical amendments that have been made to that. Does anybody else have anything to say about that, otherwise we will move to a vote.

Hearing nothing, all in favor of that passage, please indicate by saying yes.

Any opposed say no.

Thank you very much.

Under the next tab, filling vacancies, we have a number of people that have stepped forward to move into Assembly positions. Those are identified in your docket for today's proceedings, and a number of those people are present here today. If I may, from the 5th judicial circuit, Thomas Evans. I know he has been on and off before. Tom could you stand up,
please.

And then moving on to the 16th circuit, we have Charles Trickey, III. Chuck, would you like to stand and be recognized. Some of us don't recognize you, Chuck.

Moving on, from the 17th, Rob Buchanan. Rob, thank you.

26, we have Dennis Grenkowicz, late of the Board of Commissioners. Dennis. He is in the back.

From the 42nd circuit we have J. D. Brooks, and is J. D. here, please?

And from the 46th circuit we have Andrew Rogness of Sturgis. Andrew. Thanks.

We also have from the 35th circuit Daniel Loomis. Is Dan here? He is in the back. Thanks, Dan.

Having seen this number of suspects, at this time I would entertain a motion to allow them into the Assembly.

VOICE: So moved.

CHAIRPERSON ROMBACH: Is there a second to that.

VOICE: Support.

CHAIRPERSON ROMBACH: Is there any discussion of that item? Hearing none, we will proceed to a vote.
All in favor, please indicate by saying yes
Any opposed?
That passes unanimously.
To the degree that you are all able to act immediately, you can have your seats in the auspicious Assembly, and those that need to wait till January will do that. Actually you will probably come back in November, but we will visit that point in a moment.

Next we have remarks by our eminent leader Reginald M. Turner, Jr., President of the State Bar of Michigan. Reggie, and I would like to know --

(Appause.)

CHAIRPERSON ROMBACH: I would like to know two things. First, not to take the thunder out of Reggie's presentation, but, in thinking of lunch, if you didn't register for lunch tickets as you were supposed to, in the good graces of our incoming leadership, they are willing to give you an hour to go out front to the table and get a free luncheon ticket. So please do that perhaps during my remarks. Rather than fall asleep, you can go out there.

And, secondly, I just want to make a personal note that Reggie has done a spectacular job and without his leadership the Assembly wouldn't be dealing with the issues of the magnitude that we have
been able to consider this year. Reggie.

PRESIDENT TURNER: Good morning.

Tom, thank you for that kind introduction. I really think that the Representative Assembly owes Tom Rombach, Dan Levy, and Elizabeth Jamieson true gratitude for the hard work that they have done this year.

Tom said that it is because of me that you have been dealing with these really important issues over the course of the last couple of years, but, in fact, that is really because of the leadership of the Assembly and the aggressive way in which they have sought important issues facing our profession to bring those issues before you to give you the opportunity to deliberate as the final policy-making body of the State Bar of Michigan. And that is really the basis for the meaty agendas that you have enjoyed over the course of this Bar year.

And I am very proud to have served with Tom and Dan. They have been on my executive committee as president of the Bar this year and have served with Elizabeth as well on the Board of Commissioners. You have got great leadership in the Assembly, and I know that that leadership will continue over the course of the next several years as others move up through the
track.

I also want to acknowledge the really important work of the Bar's staff, and I will say a little bit more about that later. They have helped to make the issues that have come before this Assembly clear and concise, giving you very detailed background information so that as you deliberate regarding the important issues of the Bar you have the best information possible.

Because of all of the hard work that has been accomplished this year, we have managed to do a great deal as a Bar association, and I have been very privileged to serve as your president during the course of these very exciting times. Our Board of Commissioners, this Representative Assembly, and all of the volunteers of staff have advanced the mission and goals of the Bar in many important ways. I am going to talk about just a few of them, and I am going to try to do it as quickly as I can in keeping with your calendar. In fact, I am reminded of what I heard Elizabeth Taylor said to each of her husbands. I won't keep you long.

The strategic plan we adopted in 2001 was designed to maintain our core values and focus our resources in the areas most relevant to our members,
the courts, and the public. The plan calls for the Bar to employ sound fiscal management of the Bar's resources, to address public policy issues that are central to the administration of justice, not unduly divisive, and on which the Bar can achieve significant impact, to produce cost efficient services to help members be more effective and efficient in serving the public, and to support justice initiatives, including Access to Justice and Open Justice.

We have made tremendous progress this year in all of these areas. First, fiscal management. We have balanced our budget for three straight years, including the year going forward with the budget the Board of Commissioners just adopted, for a remarkable total of ten years without a dues increase. Moreover, we have carefully prioritized the additional services we are going to offer to members with the modest rate increase for the Bar year beginning October 1st.

This improved stewardship of your resources arises from faithful adherence of our entire team to the strategic plan. It is attributable to the end of the old presidential agenda which previously caused the Bar to add new programs each year, often without due regard for fiscal impact, and the new internal discipline that we have imposed with our new
executive director. He is not new anymore. I think he has actually come to the end of his three-year contract. It's unbelievable that he has been here for three years it's been such a privilege to work with him. And we also owe a debt of gratitude for our fiscal discipline to our finance director, James Horsch, and our human resources director, Kathleen Fox, both of whom are back in the back.

Second, on public policy. Our strategic plan calls for the State Bar to increase opportunities for member input when new policy areas are being considered and to expand publication and dissemination of information about issues being closely followed and legislative and regulatory achievements.

This year we have created a Public Policy Resource Center on the State Bar's website which offers members direct access to the bills and court rules the Bar is following to legislators and to public officials and to the positions of the Bar and its sections. The PPRC also encourages and facilitates direct member input through the web.

The e-journal now updates members daily by practice area about new legislation and court rule proposals of interest. Members can now subscribe to a weekly newsletter on current public policy events. At
the same time the bylaws governing public policy activity have been rewritten to provide better service to sections, more accountability and greater clarity about public policy positions taken by the State Bar, its sections and committees.

These improvements result from our leadership's commitment to the strategic plan and from the hard work and creativity of Janet Welch, our counsel, Nancy Brown, our director of communications, and all of the staff members who work with them.

Third, on member services. Our strategic plan mandates more attention to lawyers' needs in their offices, at court, and wherever they practice law so that we can serve the public more efficiently and effectively. One important aspect is our accelerated prosecution of the unauthorized practice of law which benefits members and, more importantly, which protects the public.

The Public Policy Resource Center I mentioned a few minutes ago is also a great advance in member services. One new Bar service that every member will receive is our upgraded Bar membership card. I remember going to one of the local Bar associations earlier this year and having a lawyer pull out the old Bar membership card and saying it was one of the
flimsiest cards in his wallet and that as a member of a learned profession he thought that we should have a more substantial membership card, something that he could be proud to display when entering court or going to other places.

Well, the staff of the Bar was already in the process of working to upgrade that membership card, and I think you will all appreciate the change in the membership cards you will receive for the upcoming Bar year. The card will be more durable, and it will allow for electronic transactions, like secure entrance to courts, for registration at CLE seminars, and many other uses down the road. So by creating a card that will function similar to a credit card, ultimately you will be able to engage in a lot of transactions using just your Bar membership card.

We are actively meeting with court personnel over the course of the next weeks and months to introduce them to the new card, explain its future applications, and so it will be a very, very convenient item for you to have.

Also new this year is the State Bar partnership with OfficeMax that will provide substantial discounts to members on office equipment and supplies. It sounds mundane, but with the
increasing economic pressures on our practices, whether you are a small firm or a sole practitioner or whether you practice in a firm with over a hundred lawyers, you know that there is increasing economic pressure from health care costs, from rising wages, from all kinds of sources, and every dime that you can save on every aspect of the operations of your office will be critically important. I know it will in my office, and so I encourage you to take advantage of this OfficeMax discount and to let your friends and colleagues know about it so that your offices can take advantage of these savings.

The experienced leadership of Lisa Allen-Kost, who runs our member services department, and the hard work of her staff can be counted on to implement these new member services programs with great efficiency but also to discover new ways over the course of the coming year to increase tangible practical benefits of State Bar membership.

Fourth, on professional standards. Maintaining the high standards of our profession is at the core of the State Bar's mission, and we do so vigorously through programs such as our ethics hotline, the prosecution of the unauthorized practice of law, and character and fitness reviews for
membership applicants.

This past year the Professional Standards Division under the leadership of division director Tom Byerley has been responsible for the complex and important task of guiding the State Bar's consideration of the ABA's comprehensive rewrite of the Model Rules of Professional Conduct through the Bar's Ethics Committee.

This proposal, as you very well know, will be considered today by this Representative Assembly and again in November, and this is very important work of the Bar, and Tom I think has indicated to many of you, and I know that the Supreme Court has indicated to me personally, that they are anxiously awaiting your input on these important issues.

Fifth, on justice initiatives. The strategic plan calls for the State Bar to strengthen its Access to Justice and Open Justice programs. Access to Justice is, as you all know, the Bar's award winning program to enhance the network of civil legal services providers for poor people and to promote lawyers' fulfillment of the voluntary standards of pro bono contributions.

Our award winning Open Justice program rising from the work of two Supreme Court task forces has
sought to foster a justice system that is free of bias 
in the administration of justice and which enhances or 
embraces the tremendous diversity in our great state. 
To date we have pursued these efforts through 
committees that have operated outside of the Board of 
Commissioners and this Representative Assembly, often 
with inadequate communication and inadequate support. 

After careful consideration of the needs of 
these programs, we decided to add them to the 
responsibilities of the Board of Commissioners, 
working with additional volunteers on relevant 
subcommittees in order to ensure that we are more 
effective in achieving our goals of an open and 
unbiased justice system which provides access to the 
neediest citizens in the state of Michigan. 

I have gone through a lot of new programs, 
and I haven't exhausted the list of all of the 
innovations in the State Bar this year, but I wanted 
to highlight those that are critically important to 
the advancement of the strategic plan. 

Again, I want to thank all of the lawyers who 
volunteered this year to help the State Bar pursue its 
mission and especially those of you here in the 
Representative Assembly. You are the epitomy of 
professionalism. Thanks to all of you, those who are
participating in affinity bars, sections, and committees. As I traveled around the state, these groups received me very warmly, they challenged me to think about many important issues facing our justice system and our society. I will always appreciate having these experiences, touching these lawyers, talking to them, and for all of that I am eternally grateful.

I am deeply indebted to the members of the Executive Committee of the Bar. We have much to celebrate with regard to our accomplishments this year, but we who endured many, many very long discussions of difficult issues know, as someone once said, that the perfect can be the enemy of the good. We also know that even excellent is rarely pleasing to all.

Throughout the year we were all grateful for the strategic plan because when we were in doubt it provided a beacon of light to guide us as we sought to make wise decisions.

I want to thank you again for your service and for giving me this time, and I will be back later to answer any questions that you have about the functions of the Bar this year or matters going forward. Thank you very much.
CHAIRPERSON ROMBACH: Thank you very much, Reggie.

Our next victim is going to be the President-Elect, who will be sworn in over lunch, I believe, and we will all be in attendance at that ceremony, I think. That's the eminent Scott Brinkmeyer from the 17th circuit.

PRESIDENT-ELECT BRINKMEYER: You know, I thought I kept Reg out late enough last night that he wouldn't have time to write a speech that covered every single point that I had to make. So I am going to be very brief, and I figure if I get out of here quick I won't be a victim.

Let me just make a couple of points. First of all, I want to echo what Tom and Reg said to one another, and this is not just a good old buddies back slapping club here, but both of them have done truly exemplary jobs for you, for us, for the lawyers of this state in the work that they have done over the past year. Reg is as fine a leader of the Bar as I have known, and I have known quite a few, and Tom is as fine a chair of the Assembly as I have known, and I have known a few and had the pleasure myself of serving in that position. It's always a great
pleasure to be back here with this body.

I also want to extend to you my congratulations for the fine work that you have done over the past year. See Ed Haroutunian here. He and many others of you worked so hard on the dues proposal. I really, really admire the effort, the hours, the time that you put into it, and I will talk a little bit more about that in a couple of minutes.

One thing that I would like to talk just a little bit more about, and Reg didn't go into detail, thank goodness, but I wanted to kick this year off with a bang, and we are going to do it. You are going to see a little bit more about it today, this morning I believe, but we have a new member benefit called the Public Policy Resource Center, and this is a really cool tool. If you haven't seen it yet, stick around.

It is an interactive site that you can access at your desk, and you will have immediate access to current and proposed legislation, court rules, and other administrative proposals that will be organized by practice area. It will allow you to access this information in easy fashion. It will give you background information on all of the legislators in the state. It will give you biographical information. It will give you the people who are supporting these
bills, and, interestingly, it's also going to give you
the ability to actually communicate with them online.

If you have commentary, if your sections,
your committees, your groups want to know more about
it, you are going to be able to communicate and
express your thoughts and ask questions online. I
think it's going to be a fascinating and a fabulous
benefit for you, and we are going to unfold it today.
It's pretty much already up, it's being refined, but
you will be able to go back home, and I will give you
the site, and tonight or tomorrow you can get right in
and start having fun.

In the past year I have chaired the Public
Policy Committee. As you may know, that committee
reviews legislation and court rules for you. We try
to sift through the thousands of bills, the many court
proposals and other matters that may be of interest to
lawyers. We meet a number of times a year at the same
time as the board meetings, and we try to have those
analyzed by committee members and to make proposals
that we feel are appropriate for lawyers and are
within the goals and objectives of our strategic plan
and which may be permitted by the Keller decision and
also by Supreme Court order 8093-5.

We have made certain amendments in our bylaws
and in our internal operating procedures this year
that I expect and hope, because we worked very hard on
this, will provide greater flexibility to our lawyers,
particularly through sections, to deal with
legislation on their own, so we will hopefully
minimize, if not eliminate, conflicts that have arisen
in the past between positions taken by the Bar and
positions taken by sections.

One requirement that I expect will pass is a
proposal to change those bylaws, and that will be that
from this point forward there is not going to be much
question that sections and other entities of the State
Bar can make presentations on proposals to legislators
or courts will have to further identify appropriately
who it is they represent and how those proposals were
reached.

But what we are going to do is further refine
our process to make certain that what we work on in
the Bar is within the confines of the plan and it's
something that we can speak to and that that hopefully
will then free it up that the sections will be able to
go after a lot more material and will be able to take
positions as they can and are not encumbered by Keller
and 8093-5.

You will be paying more this year in dues,
but that, of course, was to be expected, because this body approved, almost unanimously, not quite, but almost unanimously, a dues increase and other proposals that went to the Supreme Court.

As you by now should know, the Supreme Court granted most but not all of what you asked for. And you recall we went around the state and we sought input from lawyers all over the state, and there was nary a whimper from any region of this state about the dues increase that you have proposed for $40 and the CPI factor. I think of the four hearings we had less than ten people who were not members of this body or officers of the Bar show up at those hearings, and to me what that meant was people understood that, just like anything else that you pay for today or are a member of today, you can't find almost anything that hasn't gone up in ten years, and the number that you came up with, if you had applied a CPI factor to the dues in 1993, the time of the last increase, you would have ended up about where that proposal was.

Now, I don't want to pull any punches with you. We are not done in my estimation. We are duty bound, because this body and the Board of Commissioners unanimously approved the strategic plan, and, as you all should know, when our staff formulated
the cost estimates that are necessary to fully implement that plan that $40 that they came up with was the number. There was no fat in that number. We didn't ask for 40 looking for 20 or looking for 30 or 35. We knew, we talked about it, admittedly, we talked about how we should go through, but your executive director, a man of high integrity said, We are going straight up, we are going to tell it like it is, we are going to give them what we need.

We did not get that and, therefore, we have only a couple of options. Because we, as your officers, are duty bound to see to the implementation of that strategic plan as you have approved it, we must go back to the Supreme Court and ask them for the rest of the money. They didn't give us that $40, they only gave us 20, and they didn't give us that CPI.

The CPI factor is very critical for a couple of reasons. Number one, that will level things out in the future so that hopefully we would never have to go back to the Supreme Court. If inflation stays low, there would be no increase. If inflation goes up, then there would be an increase.

The second factor is that every time we do this, the enormous amounts of time that are involved on the part of your staff, countless hours in
formulating figures and cost estimates in trying to project what it's going to take, could be devoted to other better things, in my estimation, than going back every couple of years or three or four and trying to say, well, okay, here we want to come back again, we go through the Assembly again and ask for another increase.

So we hope to go back to them this year, and we hope that they will listen to what we ask for, because if they don't, we'll have to go back in years to come, and another problem with that is this, if the further out we go, that number will no longer remain $20. You know, you go out a couple years, it's going to be 25. Go out three or four years, it may be 35 or 40.

If you can get those two elements, if they will listen to us, and we appreciate that the reason they gave, the economic marketplace of today warranted caution, I understand that, but fortunately it looks like the economic marketplace is at least resurging somewhat, and I expect it to continue, I certainly hope it will continue, and you approved it. The lawyers of this state approved it, and we know we need it, so we will be going back.

I am not going to go over all the programs
that Reg just mentioned. You are hearing some of the things on your agenda today that we have been dealing with. You have a very important issue for our appellate lawyers to deal with today.

All I can say is I am excited about this next year. There are going to be a lot of challenges. I expect the Assembly to be a big part of that. I want to thank you, I want to thank all of your officers -- Tom, Dan, and Elizabeth -- for all the fine work that they and you have done. I look forward to working with all of you in the forthcoming year. Thank you.

(Applause.)

CHAIRPERSON ROMBACH: I guess I have a few words to say about today's undertaking. Over the last year we have taken on some of the central issues of our profession. We have been focusing on the essence of self government and how do we pay for it, what are our ethical standards, and how do we enforce them?

As far as the first question about how do we pay for self governance, we passed a resolution requesting a $40 increase in dues, amongst other items, and we have also said that we wanted to move the dues exemption to the age of 75. Obviously I was very proud of the Assembly. I think it was one of our best moments, and we took a lot of time and effort in
reaching those conclusions, and I was very proud to forward and advocate our position in front of the Michigan Supreme Court in one of their administrative hearings in June, as did Mr. Turner on our behalf, as well did Mr. Berry.

Fortunately, I skated through with few questions or none at all, and so did Reggie. However, Mr. Berry took the brunt of the criticism for this dues proposal. Perhaps they thought he was the brighter component of the crew and more likely to be able to answer the questions.

As you know, the Michigan Supreme Court, as Scott highlighted, had come back with a $20 increase in the dues and had moved our dues exemption actually to the age of 50 years of service, so that was configured a little bit differently than we had anticipated. Although they very patiently listened to our position, they have always determined to be the keepers of the moral compass and the ethical flame, and they took into consideration our feelings and they came forward with that conclusion.

Obviously I think that the advocacy that we waged is not over. I think that issue will continue to be in front of the Assembly and our leadership, and I am quite confident that we will continue to make the
Supreme Court apprised of our feelings.

Secondly, we try to encounter what are ethical standards, and, as we all know, we are bound by the Michigan Rules of Professional Conduct. Those were last passed in 1988 after an exhaustive five-year process, that the State Bar and the Representative Assembly were involved in each and every detail.

However, this time around we are facing our moral compass on the ABA 2000 report. Obviously by the year 2003 we figured we would get around to it, and based on their conclusions we are trying to move toward a more unified Bar presentation throughout the country, and that signal has been sent to us that that's the nomenclature that the Supreme Court is going to use in its drafting of these rules.

So I think it's every bit as consistent that we move forward in the program that they have outlined, and to that effect Mr. Levy and Ms. Jamieson have drafted a proposal that's before you today that would allow that approach and would move forward on that topic. Additionally, and I believe there is an amended copy of that in front of you, that will be discussed later on this evening, and hopefully it doesn't go quite that late.

But the Supreme Court now has sent a very
clear signal to us, and we should be listening, that they want our input essentially in September. We looked at the sheer volume of the materials in front of us and felt that there was no way that we were going to properly handle those issues here today, and, therefore, instead of looking to the debate, deliberation, decision making at this meeting, we said we are going to focus our discussion today and then have a highly unusual special meeting that we have been able to come up with a bare bones budget for which will be held at the Thomas M. Cooley Law School on November 14th.

Now, that's a Friday, so please calendar that appropriately. We found that when we call special meetings actually Fridays are as good as Saturday for people planning on short notice and that Cooley has offered their facilities for free, so that was an excellent price, and we were allowed to move into perhaps even a better lunch than what we have encountered in the past at our meetings in the Marriott. So we are going to see how that goes. It's a new and exciting adventure for us.

But when we went back to the court, actually John and Reggie and Scott, and said, look, the Assembly, I can't turn on a dime here, we would like more time,
they graciously extended our deadline until November. Actually I think they were talking about November 1st, and as you can see we are talking about November 14th. So I hope that doesn't make a huge difference in their minds.

What we need to do is make a decision here, focus our debate today and make that decision in November. I am convinced that further adjournments are going to be impossible to this. To that effect, in the interim period I have convened some of our leadership and decision making committees, namely the Special Issues Committee and its chair, Allyn Kantor, who we had so ably relied on for the dues proposal. Allyn is graduating today and moving on to the Board of Commissioners representing his circuit, and also Ed Haroutunian's Hearing Committee, we brought them in. We didn't require them to go around the state sampling opinions. It was to focus the debate this time.

So they had a share of this decision-making process, as well as all the committee chairs, and they have come up with a decision making model that's before you today. It's the best we could do under the circumstances in order to meet the drop dead date that is quickly approaching. And this is going to not only
necessitate a special meeting for us, but it's also
gothing to cause us to have an immediate amount and
commensurate amount of committee work between now and
November.

We are fulfilling our obligation in doing
this to represent our colleagues as the final
policy-making body of the State Bar of Michigan, and
if we fail to act, then we are not upholding our
obligation there. We should focus our attention on
the big picture items that we can have some input,
that the court will listen to us, and rather than have
the minutia debated here, we should focus on trying to
capture their attention with our best arguments, and I
think only through that approach that we have been
able to capture and elicit the court's decision making
in our favor.

If the RA members today have a disagreement
on what the Ethics Committee is going to propose this
afternoon in our discussion, then I would ask please
that you propose some type of alternatives so that we
can have our committees and our leadership and the
bright lights amongst us and those people who are
willing to contribute their time without compensation,
that they can look at these alternatives and consider
them and then bring them back to us in November.
Also please, if you could, be judicious in selecting the type of topics that we are going to bring on for discussion. As you can see in the proposal, a number of those have been outlined in which we have already received written comments from various sections and committees, and we basically said, rather than belabor the point today and have them all wage their battles for our hearts and our attention, that we pass those through to November.

Then there is a list in the middle that is essentially what we considered on the bubble. If the Representative Assembly members thought that these were particularly vital to speak to, then we would do that in November.

And then we have a third list of items that so far no one has voiced an objection to, and we felt that, although these topics are vitally important to the profession, at this point we don't have the time nor the resources to deal forcefully and prudently with those topics and that we are asking that those be passed forward.

I think if we are judicious in our efforts that we can, indeed, have a direct impact on the Michigan Supreme Court. They are going to be drafting these rules, and unless we are at the table with our
decision, then they are not going to be able to take that into consideration and perhaps we are facing a fait accompli promoted to the public, and we might have some input to be able to change that, but if you look at the history of the dues proposal, the history of the court's internal decision making, the history of their acting on the grievance matters which we have referred to special issues and instead got distracted with the dues proposal and did nothing, the court said, well, look, we gave you a deadline and you didn't meet it, and we are going to act anyway.

In order to have our brief properly prepared, we need to make sure we act today judiciously to narrow the debate, to focus our issues in November and make a final decision in November. I was very proud of this body being able to do that with regards to the dues. Otherwise, if we decide to debate everything, then we will end up deciding nothing.

Thirdly, we need to focus on how we enforce our ethical standards. This wasn't really on our radar screen, as you can tell, but before you will have some discussion today, and I know Tom Cranmer from the Professional Standards Committee of the Board of Commissioners is going to be here to outline this further and to have us consider the merits in
November, but that's a very important document that's going to come forward. Those are the proposed standards for lawyers sanctions, and, as you will probably hear more about those, basically that's the teeth of the ethical enforcement. And, if we say we do the Michigan Rules of Professional Conduct and then we don't look at how those are enforced, whether they be by some type of private censor or public reprimand or suspension or revocation of a license, those are all vitally important topics to us and we need to not lose sight that we have to apportion some of our attention to those as well.

So I hate to lump that all into the November docket; however, the Supreme Court has also made it very clear that they are seriously considering these standards at this juncture, and at the same time they are going to be deciding the Michigan Rules of Professional Conduct and their draft to go forward too for public comment. They are also going to be considering these.

So I know it's a heavy charge, but I am sure with the hours of time and attention we give it in November that this body would do an exemplary job of that consideration, and I will look forward to going back to my place as a back bencher in the 16th circuit
to help in that decision-making process.

So at this juncture I would like to turn to our next item and thank you very much for your attention. I see only half of the body falling asleep actually during that.

And the next item that I would like to consider is the professional standards report and the eminent Thomas Cranmer is here today. I would like to note, he is not going to mention this, but he has been in a prolonged jury trial in the Eastern District of Federal Court, and the judge had very kindly allowed him to be released. He couldn't come to any of the meetings yesterday, but in order just to do his presentation, so he has had several moments to prepare this, but fortunately he is a very knowledgeable guy and somebody that can make a great public presentation, as people on Channel 7 viewers in Detroit see at noon on Fridays, so with no further ado, it's Mr. Cranmer's time at the podium. Tom.

MR. CRANMER: Well, despite that flowery introduction, my remarks are going to be very brief, but I do want to say, as I am sure you all know, that in the issue and in the area of professional standards it's been not only a very interesting year for us on the Board of Commissioners as far as the Professional
Standards Committee is concerned, but certainly it's been a very interesting issue for all lawyers, I think particularly for all of us here in the Representative Assembly.

I don't think it's an overstatement to say that the issues that you are going to be wrestling with today and in the meeting in November that Tom alluded to are certainly some of the most important issues that lawyers are facing and I think perhaps some of the most significant issues that we in our professional lifetime will wrestle with from the area of professional standards.

I have had the pleasure in the past of serving as a member of this body of the Representative Assembly, and those of you who have been around long enough I think know, and it's not an overstatement to say that in years gone by one of the issues that we wrestled with at the Representative Assembly was tackling issues that were meaty enough and weighty enough really to warrant our time.

I don't think that there is anything more significant or weighty that we can wrestle with now than the issue of professional standards, and what we have coming up, interestingly enough, is a very interesting intersection, probably more by coincidence...
than design.

As a result of the ABA's prolonged effort in its Ethics 2000 analysis, we are now in the process of reviewing the Michigan Rules of Professional Conduct. At the same time, as many if not all of you know, the Michigan Supreme Court has published for comment rules concerning attorney discipline and the imposition of sanctions with regard to a violation of the Rules of Professional Conduct.

One of the things that we have worked on very, very hard over the past couple of years, both at this level and at the Board of Commissioner's level and particularly at the staff level, is to improve our relationship with the Michigan Supreme Court, the lawyers and the members of the Supreme Court.

Again, I don't think it comes as any surprise to anyone here that in years gone by we did not have a very good relationship with the Supreme Court, and that relationship was in part, I think, characterized by the fact that they didn't listen very much to what we had to say, in part I think because they didn't really respect what we had to say.

I think through a lot of hard work and effort through the lawyers here and through the staff that attitude has started to change, but I think in this
particular area, the area of professional standards, the court, as we have gotten the signals, is very interested in what we have to say as lawyers.

So the one message that I have for you and for us today is that as you debate these issues today and as you debate the issues in November, I hope we all keep in mind the very important opportunity we have to communicate to the court and to a court I think that's receptive to listening, and in the final analysis what I hope we do is I hope we give them a very careful and very thoughtful and very analytical response to the issues of professional standards, both as they relate to professional conduct and the potential sanctions that are imposed on lawyers who violate those rules.

We have an opportunity, I think we'll have some input, and I hope we just take full advantage of that time. Thank you.

(Appause.)

CHAIRPERSON ROMBACH: Thank you very much, Tom.

Next we have our public statements policy and Public Policy Resource Center report, and this is an interactive effort. I know that Janet and Nancy had put a lot of time into this, and this is the program
that Scott had highlighted earlier so that you can
find out how to use your web resources to communicate
directly and perhaps even respectfully to those
members that represent us from Lansing. Janet.

This is our general counsel and also the
former general counsel of the Michigan Supreme Court,
Janet Welch.

MS. WELCH: Good morning. I am very pleased
to be able to present this to you. The only thing
that would make me happier would be if I could be
sitting down there with Nancy making the presentation,
because Nancy Brown has been a wonderful working
partner in the creation of this new resource, and the
symbolism would be perfect if I could be shoulder to
shoulder with her down there.

What you are about to see is two very short
presentations. The first one is a presentation that
we put together for sections and committees explaining
to them the changes that we are making, that we made
this year in the bylaws and in the procedures for
sections and committees to be making recommendations
to the State Bar on positions. And then the second
one unveils graphically the Public Policy Resource
Center.

This was designed to answer the timeless
question whether 35,000 lawyers can speak with one voice. That's certainly a question that you grapple with all the time.

We have over the course of the last decade really been dealing with a number of old problems. Confusion about who speaks for the Bar, dissent within the organization about how to voice public policy positions, resentment when the Bar goes in one direction and sections want to go in a different direction or a section wants to go in a different direction.

Entropy I guess refers to the fact that we had provisions in our bylaws that, frankly, were being ignored and as a result we have had some missed opportunities in terms of our public policy advocacy.

Let me say that the State Bar as a whole, I think, has had a wonderful reputation for public advocacy and wonderful effectiveness. The environment in which we have been working has changed, and I think the changes that you are going to be seeing on the screen today is directly responsive to those changes, and the major changes in the last ten years, of course, have been Keller, technology, different way in which we can disseminate information and in which the decision makers receive information and, finally, term
limits.

Some specific problems that we have been dealing with are the old problem of having to comply with the Supreme Court rule that requires us to publish in the Bar Journal our intent to take a position before we can take a position, and, as you well know, many public policy issues move much too quickly for us to be responsive if we have to comply with that requirement.

Another old problem that we have been dealing with that we will always deal with as long as we have Keller is that we have sections that actually have more power than the Bar as a whole has to deal with public policy issues.

This is the administrative order that restricts the State Bar to these categories, these Keller defined categories, whereas our sections, of course, are free to advocate, because they collect voluntary member dues, on anything within their own jurisdiction.

This is the citation to Keller which defines what our restrictions are, and I just wanted to point out one of the ambiguities that we have to face every day and decide what it is that the Bar can deal with, and that is, as the Supreme Court has acknowledged,
the U.S. Supreme Court has acknowledged, that the line between permissible and impermissible dues financed activities is not always easy to discern. So our bylaws have to help us manage that ambiguity, and we have to have a process that allows that to happen.

Finally, a recurring problem that we have is that we have sections that, frankly, have different opinions about how public policy should be handled and which direction we should go on certain issues.

And, finally, we have State Bar committees that come to conclusions after a lot of hard work and would like to just go out and advocate those positions and bypass having to convince the Bar first that their ideas are the way we should go.

This is how we have -- one more problem. Finally, we have had in our bylaws, until this year, no requirement that the State Bar affirmatively look at what sections and committees come up with in terms of their recommendations. The way we have -- and the result, of course, is that there has been a great deal of confusion outside of the Bar about who speaks for the Bar.

That slide actually is right before the French revolution. I think the steps we are taking right now will prevent the fate of the aristocracy.
The old ways that we dealt with these problems are the following: Our bylaws just flat out said to sections and committees, you will do what we say, there will be no dissent. We prohibited sections from adopting any positions adverse to State Bar positions. And there is the old bylaw article that did that, and, frankly, in a lot of cases sections pretended that that provision didn't exist.

The new solutions which are now in place are the following: We are using technology to inform members and sections and the Bar about public policy issues and to exchange information about recommendations and position statements.

We have asked the Supreme Court to amend the order to, their administrative order on Keller to allow us to use the web to provide notice rather than publishing in the Bar Journal, and they have printed, published for comment our proposed modifications, and we have reason to believe that they are looking on those changes favorably.

We have made these changes in the bylaws. We have placed more responsibility on the Bar itself to communicate and act promptly in response to sections' and committees' recommendations. We have made clear the authority that sections have, including the
possibility that they can get permission from the Bar
to take opposing positions. We are coordinating all
the activity, public policy activity, of the Bar
through the use of technology, and, finally, the bylaws
now make clear distinctions between what sections can
do and what committees can do, because committees are
Keller restricted and sections are not, and that was
not, that distinction was not made clear in the bylaws
before.

This is a sample of how the bylaws have been
changed. Those are the new responsibilities that have
been added to the Bar. These are the changes that
reflect the clearer authority for sections, including
the ability of the Bar as a whole to expressly
authorize the sections to continue to advocate
positions contrary to the position of the Bar as a
whole.

And, finally, we have in our bylaws provided
for electronic notice and for hyperlinked text to make
the dissemination of information throughout the
organization and the membership more expeditious.

Finally, beyond the bylaws themselves is
making all of this work, and what we are hoping, what
we are looking for right now as our primary tool to
make it work is the new Public Policy Resource Center,
and now we have to switch to another presentation to take you to the actual Public Policy Resource Center.

What you are about to see, if you find it so much fun that you want to do it over and over again, is on the website. This is our Public Policy Resource Center. This is what it looks like when you click on the website. This is the new page. It contains links to legislation and court rules, a state legislative directory, links of interest, local government directory, State Bar positions, and a sign-up form for receiving our new weekly newsletter on public policy. We will continue to add new features to this over the coming months, and some of those features will be things that maybe you have recommended to us. We are already getting feedback about things people would like to see added to it.

If you want to view legislation for sort of by practice area, you click on the practice area that you are interested in. We have now more than 1600 bills characterized by practice area. It took us about four months to do that.

One reason is that there is basically no bill introduced in the Legislature that some lawyer is not apt to be interested in because of his or her practice area.
This is the end of our listings. If you want to view a description of a bill, you click on that bill, and it takes you to the description of the bill, and if a section or the State Bar takes a position, it will tell you what that has been. That's the official Michigan Legislature description. And, in addition to this, the e-journal will summarize new bills and court rules daily under specific practice area headings.

We will also be sending out our weekly newsletter, and this is the first edition, which came out on Monday. There is a summary of all the bills and court rules that have been posted that week. The first issue went out to 438 subscribers, and that was off a one-week sign-up period. If you would like to subscribe to it, you can be added to the mailing list either by signing up on the site or through a link in the e-journal.

In addition, for action items for public policy issues that are extremely important to the Bar that we have identified of high interest within our strategic plan, we have the ability to do action alerts. They will be posted in the e-journal. They will go out in the weekly e-mail newsletter and then will be posted on the website.

Another new feature is a legislative
directory that allows searches by committee, leadership, house and senate member name. To search, for example on the Judiciary Committee, you click on the committee. It takes you to a list of the committee members. You can click on a committee member and get additional information about the committee member. And if you want to send a message to the committee member, you can click on send message. You can send the message directly from the website or you can type your message and print it off and mail it. The message will not indicate that it comes from the State Bar. It will indicate that it comes from the member.

And we also have local government directory resources right on the site. You can browse for local officials by city. In this case we have selected Grand Rapids as a search. It lists all local government officials with e-mail links, and we also have the possibility of election information. Once every two years this becomes a very interesting feature. You can search by state and get the results, winners and the parties of all the state races.

Finally, we have added on this site internet forms so that State Bar sections and committees can submit their recommendations in compliance with the
bylaws directly online, and their public policy positions will be available to all of the members online and for passing on to the Board of Commissioners and to the Representative Assembly.

Finally, you can take this tour yourself on the website, as can all members, and we have had several hundred members already click on and take the tour.

This is some of the feedback we have gotten, and I have to tell you in the last few weeks when we have been getting rather negative feedback on a regular basis about the dues increases for inactive members and senior members, this has been a real joy to be getting these spontaneous positive feedback on this site, and it really, it's very encouraging because it's a lot easier to complain than to go out of your way to say that you like something.

So we are very encouraged that this is a resource that members as a whole will appreciate and that will also be a wonderful tool for the Representative Assembly to help you understand what it is that members are thinking about public policy issues and to help them be more informed about them.

MR. BERRY: If you don't mind, I would just like to make two brief comments about this. The first
one is, your executive director, having the privilege to work these two folks, Nancy Brown and Janet Welch, one day they came into my office after they left their offices piled up with papers and work and assignments and projects and said, We've got an idea and we've got an idea how we can add more work to ourselves during a time period when we did not know whether we were going to get a dues increase or not but something we really felt was going to be an incredible project, and I cannot tell you how proud I am of them. It would have been most easy for them to say I have got enough to do already and I am swimming with paperwork now. But I personally in front of everyone here want to thank them and their staff for doing this. This is an incredible resource.

The second point I want to make is I hope it didn't pass over you, this is a true sign of your new State Bar in this sense. This is a major change from the good old days when the Bar was from the top down. You have here the Bar saying that when it's important and within Keller and fundamental to our core functions the Bar is going to remain strong and vigilant in legislation and areas of public policy, but, number two, we recognize that our sections and our members have differing opinions, and they are going to
have the opportunities to be engaged in those opinions, and, third, as individual lawyers, we are going to give you and empower you through the Bar to be able to deal with these issues.

So those two points I think are a tremendous reflection of where we are coming, and, again, I want to thank the staff members that had a part in that. Thank you.

(Applause.)

CHAIRPERSON ROMBACH: In light of the time, I am going to have to make some executive decisions, and I hope that somebody would move. I am going to actually defer the Representative Assembly liaison reports from Tom Evans, David Perkins, and Nancy Diehl to perhaps after lunch, because I have to keep on track here. So if Nancy, David, or Tom are here right now, and I think you all are, would one of you make a motion just to come back after lunch.

MS. DIEHL: So moved.

MR. PERKINS: Support.

CHAIRPERSON ROMBACH: Okay, Nancy, seconded by David, and, again, I appreciate your patience here. That's been moved and seconded. Is there any discussion?

Hearing none, we will move that for a vote.
All in favor of deferring that item until after lunch, please indicate by saying yes.

Any opposed say no.

Thank you.

We will move next to the Nominating Committee report and the confirmation of the recipients of the 2003 Michael Franck award.

I am actually going to give the presentation instead of Chris Ninomiya. There was an unforeseen circumstance that did not allow him to be present here today. However, it's vitally important not only to acknowledge Chris' efforts, as well as those other members, the Nominating Committee that filled a number of the seats here today and have other people now in reserve that weren't able to be present that should fill the Assembly by our November 14th meeting. We just didn't want to hold those absences against them on short notice, so there will be some additional people to fill in the empty seats by then. So I would really like to congratulate Chris. He is graduating as well due to term limits, so he served his time here.

But I would indicate to the Assembly that in his absence I would acknowledge that the committee has chosen two very illustrious members of the Bar to be
award recipients of the Michael Franck award for their distinguished service.

First would be Justice Marilyn Kelly. I think everyone knows her support to the Bar, her service to the profession in the community dating all the way to the 1970s where she was a state school Board of Education member, her support now through different Bar activities speaking on behalf of sections. I know the Real Property Section. She also gives a regular update for the Family Law Section, and you could if you could have no better friend than Justice Kelly. Also her leadership within the Open Justice Committee, along with Judge Harold Hood.

And, secondly, Wallace Riley, and again it's not in particular order except alphabetical. Mr. Riley, of course, was our State Bar president, was also an eminent leader of the American Bar Association, one of Dennis Archer's predecessors, and has acquitted himself both nationally, statewide, and locally exceptionally well. He is currently president of the Michigan Supreme Court Historical Society, has been very active, a former leader of our foundation.

So on those bases the committee has chosen those two leaders to gain our Michael Franck honor. I would entertain a motion at this point to so award
those at lunch.

VOICE: So moved.

VOICE: Second.

CHAIRPERSON ROMBACH: Gardella and I hear a second as well.

Is there any other discussion of these topics to accept the Nominating Committee's recommendation? Hearing none, we will propose that for a vote. All in favor say yes.

Are there any detractors say no.

Hearing none, that passed unanimously.

I will next turn to John E. Berry, our executive director, and James Horsch, our director of finance and administration, and they will clue us into what they have been able to do with our budget in light of the Supreme Court actions. John.

MR. BERRY: I am listed at 15 minutes, but I will try to be briefer than that knowing you have a lot of very important decisions to make today. But thanks to the action of this Representative Assembly to help us get our dues increase as well as some incredible work by the Board of Commissioners and their leadership, the Finance Committee work through Kim Cahill, who is here, and the leadership, we were able to put together a budget which -- I would like to
reiterate what Scott Brinkmeyer said, which is we did not get the full dues increase. That was a significant difference in our ability to implement our strategic plan.

We will not and cannot be able to completely implement the strategic plan until we get full implementation of both the additional $20 and our cost of living increases or inflationary increases. But through the leadership of the Board of Commissioners we are going to be able to provide new services to our members and be able to go forth with our strategic plan and balance out the ability to be able to do these new services while at the same time being able to provide, at least several years down the road before we would have to have an additional dues increase.

If we are able to get into the next slide, if not -- there we go. Tremendous. I feel so much better.

This is one of the, probably one of two key slides. What are we going to do with the additional money? Number one, research tools for attorneys. We are working -- and you will hear briefly from Nancy Diehl in a moment about a new and exciting possibility of working with ICLE concerning a new research tool
for all of our attorneys, and we do have $200,000 in the budget for that.

Interestingly enough, I would like to let you know that we have saved approximately $300,000 on the annual meeting. Some people may not like the fact that it doesn't have quite as much pizzazz, but we are getting work done, we are having an opportunity to gather, and now we are able to take $300,000 and instead of servicing maybe 600 people at a meeting our entire membership on a research tool.

We are also adding areas of staffing in the area that you told us you were interested in, which is professional standards and our membership services, adding to our UPL and ethics effort, our lawyers and judges assistance program and our membership services.

We are reinstating the UMLI program. For those of you in the U.P. and those of you in Northern Michigan, thank goodness, thank goodness, Scott and I and Dan are getting ready to go to the U. P. in about two weeks, and this is probably the best news any of us have prior to that, and I look forward to Scott being able to unveil this. And I will say that our new president pushed very hard for this, and I agree completely with that. And then the legal milestone program will be continued. You see the total amount
of additions.

Budgeted revenues. If you are just coming in, this just gives you a brief understanding of where our money comes from. Obviously, most of it is from our base dues and from our increase, our dues increase, but we do bring in money from other sources, programs and services, Bar Journal, professional standards fees. Next up.

The actual spending of our money from our dues increase. This, again, very concisely points it out, where is it going? The two places you told us you wanted it to go when you approved the strategic plan, member services and our professional standards, particularly in the definition of the practice of law and UPL, we will be doing much more work, as well as our ethics area so we can continue to do better in that area. Next slide.

This is just an overall of the budget expenses totally. We do have an $8.7 million budget, and you again see a division between our professional standards side, which is our responsibility to the public and our profession as a whole, and also our responsibility to membership services, to our members.

You are seeing both the additional money going to that, but you are also seeing things as you
saw from Nancy and Janet that even without additional money resources real efforts to use vision and to try to use the resources we have to increase our help to our profession and to our members. Two more slides or three more slides and we are done.

Surplus and deficit. You heard earlier in the presentations by our leadership about the surplus situation. If you were to recall back in '00 and '01, in two years we were in the deficit of a million dollars. Now, that is not unusual, frankly, in a time period when you are at the end of a dues cycle, dues increase. Inflation has caught up to you, additional services have caught up to you, it's about time you get a dues increase, but we weren't able to get a dues increase when that occurred.

So we started to cut expenses, we started to be able to work better with the resources we had, turn it around in '01-'02 with an surplus, '02-'03 with a surplus, and continuing to have a surplus in next year's budget despite the fact that we did not get our full increase in our dues and despite the fact that, again, we weren't completely able to implement our strategic plan, but we were able to go forward. I think this is a great trend for us, and we are going to continue to try to do that.
Fund balance. Just to give you an idea, we are not only trying to keep a balanced budget like all of us are within our own area, but we are trying to keep our savings intact to make sure that on rainy days, and this will indicate as well that we have what is considered by most outside experts as a healthy fund balance, and that fund balance we intend to keep healthy to make absolutely sure in case all of a sudden our investments start going the wrong direction again.

I think we have one last slide. This is the last slide in reference to dues increase for the future. We will go forward, because it is our strong belief that the strategic plan that you implemented, our members worked with the implementing, and even representatives from the Supreme Court during the process of putting together what direction we should go, we are going to be arguing very strongly that we get the additional dues increase.

I want to point out in the Supreme Court order the Supreme Court actually gave an endorsement of our strategic plan, the direction we were going, as well as our fiscal management. But if, let us say, we don't get anything else and if we do just have the additions that we have for this year that I described
in the first slide, then within about three years we will start dipping deeply into our fund balance and ultimately within about five years we would be at the point where a fund balance that was up in the 50 percent rate would be down in the 20 percent rate, which would be drastically too low.

So what we will do is be fiscally responsible. As we go forward the next year or two we will consistently look at how other factors are affecting the fund balance, how far we can go forward. Hopefully we won't have to be back in two or three years, as Scott indicated, and have to go through the whole process we wanted to go through before, and I think we have a strong argument to be made.

I intend to be one of the realistic optimists, and I believe we have much to be proud of. We are much better off than we were before thanks to this body, and we will continue to try to serve you. So thank you very much for the presentation. I think I was a little under the 15 minutes. Thank you.

(Appause.)

CHAIRPERSON ROMBACH: We all owe a tremendous debt of gratitude to John for his stewardship, so I would just like you to keep that in mind to be gentle with the questions. At this point we have Mr. Turner,
Mr. Berry, and if we have a particularly easy question I might chime in.

Traditionally we have always had the Assembly be able to speak its mind at this juncture, and we are going to try to continue that tradition.

Does anybody have any ideas they want to share or accusations they would like to make at this point.

PRESIDENT TURNER: Just keep in mind we are standing between you and lunch.

CHAIRPERSON ROMBACH: Does anybody have any comment? Okay. So far the information has fallen on receptive ears. Thank you very much.

In fact, I know everybody will be available the rest of the day.

PRESIDENT TURNER: Gets them every time.

CHAIRPERSON ROMBACH: And I didn't want you to miss that rare opportunity to grill Mr. Turner or Mr. Berry, and, of course, it's always open season on the Representative Assembly chair, so I appreciate that.

I would like to next turn to the consideration of the proposal to amend Article IV Section 4 of the bylaws. This is Mr. Larky's initiative, and I know that Sheldon would like to
speak in that regards. Mr. Larky.

MR. LARKY: Mr. Chairman, Sheldon Larky, 6th circuit. I have under item number 12 a proposed motion, and the motion is as printed, and I move for the adoption by the Assembly, and I will provide the reasons.

CHAIRPERSON ROMBACH: Is there a second to Mr. Larky's initiative? Mr. Gillooly.

MR. GILLOOLY: So moved.

CHAIRPERSON ROMBACH: I made a tremendous tag team with Mr. Larky so far this morning.

Now that it's been moved and seconded, is there discussion on this topic?

MR. LARKY: May I indicate the reason I brought this motion forward. Assume that in your district that your district has three people that could be elected as members of the Representative Assembly and four or more people choose to run. If those three members want -- if we have to elect three people and there are four people or more that run, the bylaws mandate that there must be one half, one plus one half of the votes must be cast for people. In other words, if there are three people running, pardon me, three spots open, you must vote for two, you have to vote for two, no ands, ifs or buts.
Assume for a moment that you know one of the four candidates or more than one and you only want that person to be voted upon. You don't want to vote for any of the other people, you don't care for any of the other people, you don't know any of the other people, and you choose to vote what is commonly known as plunking.

It is inherent in any form of election within our state that we have the ability to plunk. We can vote for those people and only those people we either know, appreciate, back, whatever it is.

The State Bar rules as they currently exist mandates that plunking is not permitted.

I am suggesting that we should have the ability on behalf of our members, that they have the ability to vote for whomever they choose and that their ballot shall not be discarded because they didn't vote for the minimum number of people. Thank you.

CHAIRPERSON ROMBACH: Thank you, Mr. Larky. Is there discussion on this topic?

We are going to go to Mr. Barton now.

MR. BARTON: Bruce Barton, 4th circuit. I have been active in politics a great deal during my lifetime, and Mr. Larky's scenario calls to mind what
can happen in the political arena. It happens often that there are slates. In a situation where there are four candidates, two will get together and three candidates, or an election for two with three candidates would be a better example.

Two of the three candidates get together, and together they share their resources. They get, in our situation, the list from the State Bar. They mail to the Bar association, and two out of three gather their resources and get themselves elected, and the one person not on that slate may be the better candidate, but he lacks the problem that the combination is going to defeat him.

That's why in the political arena you can plunk, and I don't see any reason why we can't here.

CHAIRPERSON ROMBACH: Thank you, Mr. Barton. Is there other comments to be had on this topic? If so, I need somebody to approach the microphone so I know that they are interested. This is going to be Matt Abel from the 3rd circuit.

MR. ABEL: Thank you, Mr. Chair, it saves me the responsibility of identifying myself.

Considering that we are talking about voting, I was wondering if Mr. Larky or any of the other members had considered the concept of instant runoff
voting where you can vote your choices in a numerical order. Your first choice, your second choice, your third choice, et cetera, as far down as there are actually candidates, and while you are not required to vote all of the people, you could vote just your first choice or your first, your second, your third, and the way that it works in the counting is that the candidate who receives the least number of votes is eliminated, and those votes are then redistributed according to the voter's second choice, and it continues on until only the certain number that you are seeking to elect are elected. That would solve the same problem, I believe, that Mr. Larky is addressing. Thank you.

CHAIRPERSON ROMBACH: Thank you, Mr. Abel.

Mr. Haroutunian.

MR. HAROUTUNIAN: Mr. Chairman, Ed Haroutunian from the 6th judicial district.

I think Shel Larky's proposal is an extremely good one. I think that it is long overdue here in the Representative Assembly, and I would certainly encourage our members to approve this amendment.

CHAIRPERSON ROMBACH: Thank you,

Mr. Haroutunian.

Is there anybody else that would like to
speak to this topic? Hearing none, seeing none, and, 

Mr. Larky, did you want a final word?

MR. LARKY: No.

CHAIRPERSON ROMBACH: You are going to waive closing, and we will move directly to a decision. At this point we will move this for a vote.

All in favor, please indicate by saying yes.

Any opposed say no.

I believe the noes are hopelessly overwhelmed, and that passes almost unanimously.

I am going to move back on course. I am going to ask that Tom Evans, and I am sure these folks can make these presentations yet this morning.

Is Tom Evans still here to speak toward the Young Lawyer's Section update? Okay. I don't see him here at this junction. I will move to our next suspect, and that will be -- well, Mr. Perkins, is he here?

CLERK JAMIESON: He is.

CHAIRPERSON ROMBACH: He is outside. I will give him a moment. Ms. Diehl, the high octane, high voltage leader from our Executive Committee will be the next to energize our group.

MS. DIEHL: Thank you very much. It's really been great being the chair of the Program and Services
Committee, because I get to bring you good news. You see all the other folks always want to bring you bad news, but I bring you good news.

You have heard about some of the great services that are being offered, and I am really impressed, and I am not one who understands much about technology, but I sure love its results, and you have told us that you want a research tool. Lawyers need more help at their desk, and you want a research tool, and over the last couple years we have been looking at a number of opportunities from companies in terms of what they can provide and at what cost.

Well, you are probably wondering why it took us so long, but we have one of the best partners around in our state, and that's ICLE. And ICLE has been doing a lot, and they were moving towards the same situation of giving more to their members.

So what we have been working on is a partnership with ICLE to bring you a research tool. And we are not quite there with the final details, but I am going to tell you -- of course, I tend to be an optimistic person anyways -- but we are going to be there soon, and what we are going to bring to you is a tool that you can go on and have at your fingertips -- let's see now, let me get this straight -- all
published Michigan Court of Appeals cases, Michigan Supreme Court cases back since 1942, orders from the Supreme Court back to '83, unpublished cases from now forward, Court Rules, Rules of Evidence, Rules of Professional Conduct.

So for many of you who are just interested in Michigan cases and law, you are going to have at your fingertips the ability to get that information, and it's going to be user friendly, and we are going to go forward with that partnership and bring to you as part of your dues -- right? We can't do it all, since the Supreme Court didn't give us what we needed, but we wanted to bring you something, and this is really exciting.

I think it's amazing in terms of what we have already with the e-journal, what you have with the new Public Resource Center, and with the research tool with your dues I think we can be real proud about what the Bar has accomplished and look forward -- now, you know I came last time about OfficeMax, right. How many of you have called OfficeMax? Okay. Good, good, good. I have heard a lot of reports, a lot of reports, that in fact you are buying more supplies, throwing out half used legal pads because you are saving so much money. See, this is good.
That new Bar card you are going to get, some of you got real excited, you thought you were going to have a line of credit on it. There is no line of credit on the Bar card, but the other good news about that new Bar card is you probably don't know how much we are paying for that. You know what, are you using my new dues now to give me a better Bar card? I'll live with the flimsy one. We are saving money on the new Bar card. Better card, less money. Now we are going to bring you a research tool you can use at your desk.

All right. Got to get to lunch.

(Appause.)

CHAIRPERSON ROMBACH: As the result of an all points bulletin we have located Mr. Perkins. I would just tell you that he is actually one of our delegates to the American Bar Association, so he is going to give us a report on what all transpired in San Francisco, and as former chair of the Young Lawyers Section I know that he has been looking forward to getting this promotion to the Representative Assembly. Mr. Perkins.

MR. PERKINS: Good afternoon, everybody. I am going to be very brief, because we do have to go to lunch and keep this program moving.
Two things. First, I would like to say Justice Kennedy gave the keynote opening at the opening assembly for the annual meeting that was held in San Francisco this past August. And the keynote address was very moving. He reminded lawyers of their importance in society and even encouraged lawyers to look at things such as the mandatory sentencing requirements that are in federal court and the injustice and unfairness of the mandatory sentencing requirements.

Also, he talked about keeping freedom alive and the price that -- or the importance that the Bar association plays. We as lawyers play an important part in this.

One of the most historical events to have occurred was Dennis Archer becoming the first African-American president of an association where previously people of color could not even belong. Robert Grey will be the second person of color to be president of this association.

I wish all of you could have been there. Michigan was very well represented. It was a very moving experience personally and professionally from the standpoint that you had almost everyone going to walk down into the well of the house with President
Archer, and it was a very moving experience, again highlighting the importance, and we have talked about it in other places, the importance of diversity.

And through President Archer's leadership, diversity will continue to be discussed. I know Robert Grey is also going to take up that issue. President Archer is having a diversity summit in Washington D.C. October 22nd to 23rd, and he is inviting educators, corporate counsel, leaders of all national minority bar associations, government lawyers to come in and so everyone can talk about keeping the pipeline filled, because the only way that we can have a diverse profession is to make sure there is an abundance of young talent that comes in and everyone has an equal opportunity to advance in this profession which most of us truly care about, and it's through a diverse profession that the better good of society is reached.

All right. The other thing I want to say is that John Berry, he was in here somewhere, you need to know and understand that we in Michigan have a jewel in John Berry from the standpoint that he is nationally respected. People throughout the country recognize John Berry as a resource, a wealth of information and just somebody that is going to do an
excellent job. There has been -- at no time did he
have a resolution that he was supporting that did not
get passed. The numerous resolutions that were passed
in the House of Delegates at this meeting, if you want
a specific list of each and every individual one, you
can contact me later.

Going back to the conference that's going to
be in October, space is limited, but please try to at
least send somebody if you can't go. You can contact
Rachel Patrick or Yolanda Simmons at the American Bar
Association, phone number is 312-988-5409, and the
next meeting is the mid-year meeting to be held in
San Antonio, Texas, February 4th through the 10th.
Remember Michigan February, might be snow, so
San Antonio might not be a bad place to be, and the
annual meeting will be in Atlanta, Georgia, and that
is, I believe, the 5th through the 10th of August. Be
nice and warm then. Thank you. Just enjoy.

(Applause.)

CHAIRPERSON ROMBACH: I have just a couple
announcements that we need to make, and then we will
release you for lunch, and if you could be back here
at 2:00. One of the reasons Mr. Knight's matter is up
is that's kind of to warm up our discussion this
afternoon.
First of all, the State Bar is preparing a photo directory of Bar leadership, which includes each and every member of the Representative Assembly. Last time we put this together we had several blank spaces, our State Bar logos that replaced your visages in the manual, and what we are trying to do this time, instead of having you all look so remarkably similar, is that we are trying to get individual photos and have those submitted to the Bar. And I know Nancy Brown, who is here today running our audiovisual department, has requested the photos from all of you. Many of you have forwarded photos, but other folks have not, and you can either do that by handing the publicity shots that you carry around with you here today either out of your purses or wallets, you can hand them in. That's why I thought it would be a good time to remind you of this, or you could perhaps forward them through regular mail or even e-mail attachment. So please do that.

Secondly, I would like to also acknowledge Dan and Elizabeth for a moment. They need to show you the amended proposal for the Michigan Rules of Professional Conduct that there is going to be debated yet this afternoon. Dan.

VICE CHAIRPERSON LEVY: Real simply, what you
have before you is the proposed rules as of last night. We are trying to adopt some suggestions and changes that have been coming in so that we make clearer what it is that we are trying to do. The red strike will be what is, in fact, introduced this afternoon.

So just so that people know what we are talking about, the big substantive change is that we are not recommending the court adopt final positions. We are clarifying that we are asking them to publish these, that we are not closing the door on further discussion at the end of the November meeting.

But if you want to copy it down now or when you first come in, just so you have those changes when we do debate it.

CHAIRPERSON ROMBACH: And right now Glenna Peters has these. Our staff has been very active throughout the course of the morning. These will be on each and everyone's desktop when you return. If you are anxious to see the text over lunch, they will be upfront. I know Glenna will distribute them.

CLERK JAMIESON: Actually what we are asking you to do is to take out that proposal right now, look at the red line right now, and make the changes to your copy, because after lunch the red line is not
going to be there anymore. It's going to be what we are actually proposing. So this is your opportunity to easily see the changes that we have made.

CHAIRPERSON ROMBACH: Thank you, Elizabeth.

So at this point, hearing no -- and, again, she is talking about the one that is in, I believe the packet, right, of materials, or the one that's in the amendment version.

CLERK JAMIESON: Nancy, didn't it get distributed to everybody?

MS. BROWN: No.

CHAIRPERSON ROMBACH: No, they are upfront.

CLERK JAMIESON: Well, then we will have to do it first thing after lunch. Never mind.

CHAIRPERSON ROMBACH: Okay, never mind.

If there is nothing further to come in front of the Assembly this morning, we will release everyone to lunch. Have a good time. Listen carefully to the presentations, and I know the Chief Justice is going to give her state of the judiciary speech. Go forward and do good deeds. I will see everyone back here at 2.

(At 11:59 a.m., lunch break taken.)

CHAIRPERSON ROMBACH: We will resume our Assembly session. At this juncture I would like to
call Bill Knight. He is going to outline for us consideration and report and recommendations of the Assembly Review Committee. Bill is the chair, and he will make his remarks.

MR. KNIGHT: Thanks, Tom. I want to try and make this fairly quick today, and in your materials there are three motions that I am going to present at the end of this, but first I wanted to do the, kind of the year-end update of what your committee has done for the year.

And, again, the Representative Assembly Review Committee has kind of an odd role at times, so I am going to read the definition of what our duties are, which is that it shall periodically review the functions of the Assembly and shall from time to time make recommendations for amendments or other matters or procedures to improve the Assembly effectiveness and activity.

And during the past year what our committee has done is, instead of the large initiatives that we have done in the past with our surveys and things that the Assembly has done, is the committee has worked closely with your Assembly leadership on several issues which the leadership either had identified themselves or which was brought to the leadership by
other members of the Bar.

And these key issues in the past year, the first was, as the final policy-making body of the Bar, how can the Representative Assembly timely identify and address the important policy issues that are facing our Bar? And with our meetings being fairly infrequent, this has always been a problem.

In 2003 the two most obvious issues that we addressed were the membership dues increase and then the proposed ethic rules that we are facing today and we are going to address in November. And, clearly, what we have had to do on these, we have had to scramble at times to make sure that we were able to focus on the issues, identify the problems, and have some meaningful input into them, and that's what is happening here with these ethic rules today and in November.

That is something that the leadership has been struggling with with how can we see these issues coming towards us early enough that we can get it to the Assembly so that the Assembly and committees can actually do something about it. And the Assembly Review Committee has been working with them on that, and they have been utilizing our committee to do those kinds of things and to come up with some protocols for
that.

Second, it's been brought kind of to the surface the large number of vacancies which the Assembly has had over the past several years, and this has gone on quite some time.

In our survey with our membership which we did several years ago the Assembly members themselves identified the lack of relevance of the Assembly, and that was a great concern for a lot of our membership. Over the past couple of years the Assembly has, I think, quickly regained some of its stature and power within the Bar, and I think a lot of that has to do with the leadership that we have had over the past several years.

The result has been that our Assembly has been able to retain a lot of its members, and so our vacancies haven't occurred so much from members coming, being elected, and then drifting away and not attending the membership meetings but rather it's been some seats haven't been filled because no one has run for those seats.

So we have actually greatly improved the fact that our members are coming to the Assembly and staying once they get here, and also that's resulted in a much greater diversity within our Assembly, and
the Leadership and Review Committee has noted that, and we are pretty pleased with that.

However, these large number of seats that are vacant at times, our leadership has worked really hard to fill those seats. The Nominating Committee has put a lot of time into that, and I am pretty sure at our next meeting the number of vacancies will be even less.

The problem that we are having is this has been a very intensive effort right now to address the problem that's in front of us. We want to make sure it doesn't happen again in the future.

So, the Representative Review Committee has two things that it has asked me to do today, and the first is to advise you of some of this unfinished business which is pending before the committee so that we are going to kind of throw that in the lap of the committee for next year, and the first of that was to work next year with the Nominating Committee to help develop a procedure to ensure that worthy candidates are available and vacancies are filled. And, again, as I mentioned, a lot of this is that there are no candidates for some of the seats when the election time comes around, and if there are no candidates, obviously no one is going to fill those seats.
Whether we have our plunking or not, there is going to be no one elected.

Next was the development of criterion standards for the recipient of the awards, and I was real pleased today at our lunch meeting to see that Tom was the person who presented the Michael Franck Awards today and that it came from the Assembly was made very clear to the Assembly, and I think, with Tom I think it's been pretty obvious during his tenure as chair that any opportunity he gets he makes sure the membership hears that we are the final policy-making body and that we do have a role that we are playing within the Bar, and, again, with him handing out that award today at the meeting, I think that, again, kept that in front of Bar membership so they see who we are and what we are doing and that we get some stature coming out of this.

And then the last was the process for the presentation of awards. The Michael Franck award which was awarded today, we voted on about that long before we went over there and had Tom hand it out. Luckily it was approved, but it could have been a problem if it wasn't.

But that is one of those things where how much meaning does the process have in coming up with
these awards if it's kind of sprung on us when we read the literature and it's all been published that these are the people who are getting the awards when it is the Assembly who is handing out the awards. So we are kind of going to the Nominating Committee next year and saying what is the process that we can develop for coming up with these, some of these awards.

Then the second thing which I was asked to do today is bring forward these three resolutions which are in your materials, and these came to us by some individuals to speed this along. I was asked to make the motion on each of these resolutions, and what I would ask to do is I am going to make a little comment first on following through with what we have tried to do here before making the motions, and we will see how much debate we have with our time running quickly.

We have 30,000 members in the Bar association, and we have what is a fairly relatively small handful of people who are deeply involved in the Bar function and who devote their time to helping with Bar governance, helping with the practice of law, and the Michael Franck Award which this Assembly does give out each year is something that addresses those members of our Bar that are involved in that.

It was suggested to the committee that we
come up with an award for those members who aren't the Bar geeks, as they were referred to at times, who are so deeply involved with what's going on with the Bar, but they are out there in the trenches every day practicing law, really helping to keep the standard of practice of law high, where there was so much talk today at lunch about the lack of civility within the practice of law, and these are attorneys who aren't there necessarily trying to do something about that. They are just holding up themselves as a great example, working really hard, both in the practice of law, in their communities, doing things out there that they don't necessarily get recognition for.

And we thought it would be an excellent idea that we have an award for those type of people. The term unsung hero was presented to us, and we said we would bring that forward.

The other two resolutions kind of follow along on that, and they are kind of obvious if you review them, to address some of those issues that I was just talking about that were brought forward.

So if Mr. Rombach would allow me I would make the first motion, which is in your materials, that the Representative Assembly shall issue an annual unsung hero award in acknowledgement of a lawyer who has
exhibited the highest standards of practice and commitment for the benefit of others.

VOICE: Second.

CHAIRPERSON ROMBACH: It's been moved and I heard support on behalf of the Assembly Review Committee to consider the motion in your packets as read into the record by Mr. Knight. Is there any discussion on that item? Okay.

Hearing or seeing none, we will move that to a vote, unless Mr. Knight has any further comments.

MR. KNIGHT: No.

CHAIRPERSON ROMBACH: All those in favor of adoption of this initiative, please indicate by saying yes.

Any opposed say no.

In the opinion of the Chair, that passed unanimously, Mr. Knight.

MR. KNIGHT: Thank you.

The second resolution is that Rule 7.5 of the permanent Rules of Procedure of the Representative Assembly shall be amended as follows: 7.5, nominating and awards, the Nominating and Awards Committee shall consist of five members, each of whom shall be from a different judicial circuit. The committees shall perform the functions provided for in Rule 8.
VOICE: Second.

CHAIRPERSON ROMBACH: It's been moved and supported, again the second item in your packet under the Assembly Review Committee report. Is there any discussion on this item? Okay. I don't think that -- either people are alive or they are in concurrence, so I move that to a vote at this juncture.

All those in favor indicate by saying yes and indicating you are alive.

And anyone that isn't alive, please indicate by saying no.

Okay. Hearing nothing, that passed unanimously as well. We will move to yet another recommendation.

MR. KNIGHT: Basing this on my persuasive presentation, so going for three for three, I move that Rule 8.8 shall be added to the Permanent Rules of Procedure of the Representative Assembly as follows:

8.8, awards, the Nominating and Awards Committee shall meet and recommend qualified members of the State Bar as recipients of the Michael Franck and Unsung Hero Awards for vote by the Assembly.

VOICE: Second.

CHAIRPERSON ROMBACH: Having been moved and seconded, again subject to Assembly debate, is there
any debate? Hearing none, we will move that for a vote.

All in favor, please indicate by saying yes. Are there any opposed?
Hearing none, that passed unanimously.

MR. KNIGHT: Thank you.

CHAIRPERSON ROMBACH: Thank you very much, Bill. I am sure it is due to your persuasive advocacy.

Now, consistent with the amendment that we had made previously to the agenda, we are now going to move to, I believe, item 19. That is then going to yield to the consideration of the report and recommendation of the State Bar Appellate Delay Reduction Task Force. I see all those folks here as well, but at this juncture it's indeed a great honor and perhaps my final and most important responsibility of leadership in finding someone who will do a better job than me and lead the Assembly and succeed me. Fortunately the Assembly did that in its vote several years ago by ratifying Mr. Levy, Daniel Levy's retention within the leadership and currently is Vice Chair.

Because of the availability of Judge Kurt Wilder at this juncture, we are going to swear
Mr. Levy in now. I would ask that you take that and hold that in abeyance until the end of the meeting. At that point Dan can pry the gavel out of my cold, dead hand.

So I would like to introduce -- Judge Wilder has just left. He was in the room a moment ago. He was. I will tell you what, in the interim period I will do this. Dan, would you -- I can introduce your wife.

VICE CHAIRPERSON LEVY: Please.

CHAIRPERSON ROMBACH: That's Deborah Levy. She can come forward. I think she is going to be part of the ceremony, unbeknownst to her. I would also like to acknowledge Dan's parents are here as well, Bernard and Judith Levy. If they can stand up, and here is Judge Wilder, and he is going to perform our oath of office.

JUDGE WILDER: Good afternoon, everybody. It's a privilege to be here to administer the oath of office to Dan, and I congratulate all of you for giving up of your time and energy. There are no easy issues remaining. All the easy issues have been solved. I know there is a lot of talent in this room, and Dan, I think, has the perfect level of integrity, demeanor, and talent to lead you all this year.
With that, I would ask you to raise your right hand and repeat after me. I Daniel M. Levy, do solemnly swear, that I will support the Constitution of the United States, and the Constitution of this state, and the Supreme Court Rules concerning the State Bar of Michigan, and that I will faithfully discharge the duties, as chair of the Representative Assembly of the State Bar of Michigan, according to the best of my ability. Congratulations.

(Applause.)

CHAIRPERSON ROMBACH: Since I am only interim and almost a spent shell here before Dan seizes power, I would just like to acknowledge that for those of you that don't know our Court of Appeals Judge Wilder, he is from the first appellate district and had previously served as a Washtenaw Circuit Court judge before receiving that appointment from Governor Engler, so we would like to thank him for his participation today.

Our next item is consideration of the report and recommendations of the State Bar Appellate Delay Reduction Task Force. Previously when we set up this agenda the Rules and Calendar Committee had envisioned Bruce Neckers being available. Although he has been in attendance each and every moment of the State Bar
convention, other commitments are going to require him to be elsewhere at this juncture in the meeting schedule, and, therefore, we would like to introduce a pinch hitter, and in his own right he is extremely distinguished. He has served on the Neckers committee, so to speak, initially discussing and making a recommendation that had been adopted by our Board of Commissioners, and he also now serves pursuant to the appointment of President Turner -- well, President Brinkmeyer and immediate Past President Turner. They had appointed Tim McMorrow as one of the small group of opinion leaders and negotiators, so to speak, with Judge Whitbeck in consideration of this appellate delay reduction plan. And Mr. McMorrow is going to very capably fill Mr. Neckers' shoes. He is the chief appellate attorney from the Kent County Prosecutor's office.

Mr. McMorrow, if you want to come forward. I would also like to acknowledge, as outlined by our agenda, that Chief Judge Whitbeck has been kind enough to rearrange his schedule on extremely short notice in order to be here today as well, and I know he is going to advocate, of course, for the adoption of the plan. I believe that there would be perhaps a disagreement on some of those details that will be outlined later.
And I would also like to acknowledge as well Don Fulkerson, who does have a motion for Assembly consideration that is a little different than the one in your packets, and he is, in fact, probably soon to be immediate past chair. I know his appellate section is meeting as we speak, and he is taking his time away from that section meeting to be here to advocate on behalf of this proposal, and, being the chair, he would have Assembly floor privileges.

So those three are going to take center stage at this juncture. I believe that Mr. McMorrow can perhaps apprise us as to where the State Bar committee stands on these items. Tim.

MR. MCMORROW: Thank you very much, and you have in your materials, of course, the report of the Appellate Delay Reduction Task Force Committee, task force which I sat on, was appointed to by Bruce Neckers. I won't go over that in any great detail. I would summarize, I think, summarize this as follows, our general feeling with regard to the proposals.

If there is one overwhelming thing that has come across to me it is that if you have the sort of drastic reduction in briefing time that is proposed and if you have the complete elimination of stipulations to extend time, which presently, of course,
is only a single stipulation to extend time which
parties are able to use in the appellate process, this
will greatly and adversely affect the quality of
briefing. That is coming from the attorneys of this
state on behalf of our clients.

I don't know if there is any question that
that will happen. There is no way that you can take
the number of cases that are involved, narrow the
funnel, try to push them through the funnel and not
expect that there is going to be a great and drastic
decrease in the quality of the briefing.

In addition to which one of the things that
has really come across to me and I feel I have been
very well educated on is something that I really
didn't understand this really, I didn't understand
from my own experience, because my experience is
different than most appellate attorneys. I am a
prosecutor, which means, of course, that I am
salaried, I work for the government, and I am usually
the appellee.

It is really very interesting to me and been
very educational to me to get a much better
appreciation for what it is like for an attorney in
private practice who is trying to juggle several
different things, who does appellate work and is
either a solo practitioner or in a small firm trying
to put all of those things together and manage that
kind of a caseload in a way in which the attorney can,
number one, do an excellent job on behalf of his
client, the kind of quality job that his client
expects and deserves, and, number two, also to be able
to maintain a practice and maintain, frankly, a good
quality of life in the practice.

The proposals as they are adopted, as they
are proposed by the Court of Appeals, if they are
adopted I have no question will greatly, greatly
affect the ability of an appellate practitioner to,
number one, do an excellent job for his client and,
number two, to be able to actually practice the
practice of law in a sensible and economical way.

Again, as I said, I won't go over the details
that were in the report. You have that. I would
suggest that there are two particular problems that we
see with the Court of Appeals proposal.

Number one is that the primary problem with
the delay is in the warehouse of the Court of Appeals,
and if the warehouse is not addressed, then there will
be very little point in hurrying up briefing so cases
can stick in the warehouse.

It should be noted with regard to this,
although we are obviously on opposite sides with Judge Whitbeck in support, in our opposition to the Court of Appeals plan, the Court of Appeals does deserve a great deal of credit for what they have done to attack the delay that does occur in judicial chambers, and they are trying to address the delay that will happen in the warehouse. But if you eliminate the warehouse, you eliminate most of the problem.

And we also believe that a huge part of the delay is a delay in record production, and there is currently a record production task force of the State Bar which is working to address those issues.

So for those reasons, the reasons that were set forth in the report, we would request that the Representative Assembly adopt the recommendation that is in your packet and that the proposal to reduce the briefing time and to eliminate the stipulations to extend time, that you adopt the proposal which would oppose those particular recommendations.

CHAIRPERSON ROMBACH: Thank you very much, Tim.

Before we get into the debate, we also probably should have a motion on the floor, and I know the Appellate Practice Section has expressed some very strong concerns about these initiatives, and if I may,
Don Fulkerson, their chair, is here to speak and advocate on behalf of a proposal for Assembly consideration.

Don, if you want to step forward, and that microphone would be fine too. You are a taller guy and everybody will see you.

MR. FULKERSON: I am Don Fulkerson. For probably about another 75 minutes I am chair of the Appellate Practice Section, and then I get to go to someplace called ex officio land, which I am looking forward to. I hear they have got little umbrellas in the drinks and palm trees. I hear it's a wonderful place.

Before I propose this motion, let me just supplement Tim's remarks.

Last spring Chief Judge Whitbeck came to a meeting of our section counsel and proposed the Court of Appeals delay reduction plan. The proposal is that the court was going to spearhead some efforts to reduce the warehouse, which at the time was approximately 271 days, I believe. And that meant from the time cases were, the record was completed and cases were briefed and ready for consideration by the court, they would sit in a room unaddressed by the court for 271 days, and we are talking nine months,
and then go to prehearing, and then go to a judge, go to a panel of the court for consideration.

Aside from internal efforts from the court, there was also a series of Court Rule amendments, many of which I want the Assembly to understand neither the State Bar nor the Appellate Practice Section oppose. There is a proposal to reduce the time for filing docketing statements, which is a time that comes out of lawyer times. We supported that amendment.

There is a proposal to reduce the time for producing transcripts in summary disposition cases. I mean, currently there is a 91-day rule that applies in all civil cases, whether it's just one hearing or a two-week trial, and the proposal would bifurcate consideration and reduce the time for filing transcripts in summary disposition appeals. We think that's reasonable. We have supported that.

There is also a proposal to -- there is also a proposal -- let me check my notes. There is also a proposal to reduce the time for filing the circuit court record. We have considered that reasonable. We have supported that.

What we are here today to contend with with Chief Judge Whitbeck is a proposal to reduce the time for filing briefs in civil cases from 56 to 42 days
for the Appellant. Now, the Chief Judge has modified the original proposal and has taken criminal cases out of the proposal, but it still relates to civil cases.

The proposal also would cut the time for filing reply briefs from 21 to 14 days, would eliminate the current 21-28 day possible stipulated extensions in both civil and criminal cases, and we also understand that the proposal would substantially tighten up the standard for showing good cause for extensions.

The Section, Past President Neckers' report, and the Board of Commissioners have all opposed the proposed amendments to MCR 7.212, and let me just briefly state why we not only believe the proposals are unwise and contrary to quality briefly and decision making, but I believe perhaps even most importantly that they are premature.

The Court of Appeals still has over 230 days of an average warehouse time, even though it's made significant and laudable efforts to reduce the time in the warehouse. There is still a 232 day wait on average in the warehouse. The court does not project eliminating the warehouse until September of 2004, even with additional funding, which the section supported, to hire a new prehearing staff.
Over the summer the Delayed Intake Management Committee, which Tim McMorrow and I both served on, along with Chief Judge Whitbeck and Scott Brinkmeyer, we have looked at this issue and we determined that record production and transcript production issues make up a substantial portion of intake problems.

Give you a couple examples. In one third, approximately, of cases records are transmitted late from circuit courts. In 50 percent of cases where there is a lengthy time for getting a decision out, half the cases there is a delay in transcript, and we are talking some substantial delays, and so, because of that, the Chief Judge and the Chief Justice formed a new record production work group, which I serve on and which Judge Mike Smolenski, the Court of Appeals, currently chairs.

That committee has just started its work this month. We have not yet issued any findings or recommendations yet, and my position is why are we putting the cart before the horse. What is the rush to take time out of briefing when we haven't even yet evaluated all of the issues of intake. I mean, we may learn that it isn't necessary to cut briefing time any further to reach the court's goal, and the goal is to dispose of 95 percent of its cases within 18 months.
We have already determined that if the court eliminates its warehouse, it's going to be within six percent of reaching its goal, so all of this hullabaloo is over six percent of its cases, and that's not considering issues of record and transcript production. So to me I don't understand why we are rushing to cut briefing time before we have at least evaluated all the issues of delay reduction, and that's why the section has asked the Supreme Court not to take this matter up. The Supreme Court is still going to do something at its September 25th open meeting, although the Chief Justice indicated to me the court is at least respective to an argument that further study is necessary before a cut in briefing is implemented. That's why I think everybody who has looked at this from the Bar side believes it's just premature and why is there a rush to cut briefing when it may either be unnecessary or substantially unnecessary.

I would also just agree with the comments of Tim and the findings of the Neckers' report that there is a serious consideration here and a serious issue that if you substantially cut briefing time and cut the flexibility of lawyers to agree to stipulate extensions you are going to be dramatically limiting
their practices, affecting their quality of life, cutting into their briefing time, reducing the quality of briefs, and, therefore, reducing the quality of appellate decision making. This is especially critical at a time when the Court of Appeals is deciding more and more cases by summary panel in order to reduce their delay.

Now, for all of these reasons we would ask this Assembly to oppose the proposed amendments of MCR 7.212, and I will read now for consideration the motion. I am sorry, Tom, do I need to read this into the record or just refer?

CHAIRPERSON ROMBACH: If you can, I believe -- Nancy, is this, the proposal that you have, is that consistent with the one Don is going to make?

MR. FULKERSON: I know there were a couple of modifications.

CHAIRPERSON ROMBACH: Go ahead.

MR. FULKERSON: Hopefully I can read this quickly without too many verbal errors here.

It is recommended that the following be adopted. Be it resolved that the State Bar of Michigan commends the Court of Appeals for attacking delay and supports such efforts to the extent that
they are in the interest of litigants and the public.

Be it further resolved that the State Bar of Michigan believes that time necessarily spent preparing a case, drafting a pleading, or otherwise devoted to the interest of a client is not, quote-unquote, delay, and that the time for activities essential to the preparation of the case should not be curtailed in an effort to achieve an arbitrarily set time goal.

It is recommended that the following be adopted. Be it resolved that the State Bar of Michigan opposes amendments to MCR 7.212 that would shorten the time allowed for the preparation of briefs and eliminate extensions by stipulation at the intake phase of the appellate process, for the following reasons: The proposed changes would impose additional costs on clients and taxpayers; the proposed changes would increase the likelihood of delays later in the appellate process; the proposed changes would threaten the ability of practitioners to specialize in appellate law, and of solo and small firm practices to handle appellate matters, thereby diminishing client choice and the quality of professional service; and the true causes of appellate delay are those phases of the process in which no productive activity occurs,
i.e., backlogs in the research division of the Court of Appeals and in case file and transcript preparation at the trial level. Arbitrary time constraints in the intake phase will not appreciably advance the goal of reducing appellate delay.

Be it further resolved that the State Bar of Michigan continues to support efforts to obtain adequate funding for the Court of Appeals to eliminate delays in case processing within the court caused by inadequate staff or technological resources.

The State Bar supports the efforts of the Supreme Court work group on record production to investigate the causes of transcript production delay and propose solutions, and the Bar supports the continuation of cooperation with the Court of Appeals to develop alternatives that will reduce delay without impairing the quality of appellate work.

VOICE: Second.

MR. FULKERSON: Thank you for your consideration.

CHAIRPERSON ROMBACH: It's been moved and seconded. Now that the issue is before the Assembly, what I would ask I guess -- we could have portioned this off, but because this seems to be a package deal, I would like to now acknowledge entering the colosseum
is Chief Judge Whitbeck. He has been gracious enough
to come forward yet again. We had gotten his time
before in April to preview this debate, and I know
that he has some very strong feelings on this
regarding, in his endeavor to get forward so he can
address this issue personally.

I would like to also direct your attention to
a packet of materials that is in front of each and
everyone of you at your desk, which includes a letter
from Scott Brinkmeyer acting on behalf of the Board of
Commissioners to Corbin Davis, the Michigan Supreme
Court clerk, letter from Mr. Brinkmeyer to the Chief
Judge Whitbeck outlining, again, part of that
position. Also a letter from Don Fulkerson to Corbin
Davis outlining position officially taken by the
Appellate Practice Section.

It also includes, I believe, an editorial in
support, from the Detroit News recently, in support of
Judge Whitbeck's proposal, which for any of you who
don't remember the specific details has been in front
of the Assembly since the mailing of the packets, is
under the tab appropriately so labeled, and at this
juncture I see Judge Whitbeck has some comments that
he would like to make to the Assembly.

Judge Whitbeck.
And through this process he has been every bit a gentleman. He has engaged this debate. He has initiated the debate, and he has allowed us a seat at the table each and every step of the way, so if you can acknowledge his presence here today.

(Appause.)

JUDGE WHITBECK: Thank you Tom and Tim and Don.

First let me say that there is some disagreement here, obviously, between some sections of the State Bar, the Board of Commissioners, and our Court. I will say, however, and I will emphasize at the outset that disagreement has been cordial throughout. We have approached this, I think, in a spirit of cooperation and a spirit of goodwill and, in particular, both Don, and I think Tim McMorrow, mentioned the State Bar's point, and something I will come back to. The Appellate Practice Section specifically wrote a letter supporting our request for increased funding for our research division, and I think that was critical and what transpired after that. So with that disclaimer ahead of time.

I think it well to start with the proposition that you are not all appellate lawyers, and so when we are throwing around these terms that I deal with
every day and appellate practitioners deal with
every day, maybe I should take two minutes to define
what those terms mean.

We talk about four phases in processing the
Court of Appeals. At the beginning is the intake
phase. That's when we're getting the lower court
record, the briefs are being filed.

The next phase is the phase that we will
eliminate or substantially, dramatically reduce. That
is a phase that, for lack of a better term, and I
don't like it particularly, it's sort of cutesy, we
call the warehouse.

The warehouse is literally that, and I am
tempted to take a picture at the new hall of justice
of this big room with all these files sitting in
these rooms, because that's exactly what they are
doing, they are sitting and gathering dust because we
can't move them out of that holding pattern into our
research division because we didn't have enough
lawyers in our research division to handle them as
they came in. So they sit, and as Don pointed out,
when we first began looking at this they sat for 271
days. That's an awfully long time.

After that, it goes to our research division.
As you all know, we have a centralized staff of
research attorneys. For that we can thank a genius. T. John Lisinski (sp) and Olistat Willard (sp) came up with the concept of the centralized research division, which has been widely copied in other appellate courts in the country, although not all of them use it.

And then we have the time when the case is submitted to the judges. It enters our chambers, it's submitted and the case called for oral argument or for decision if it's a summary panel case and goes out the door. So those are the four phases.

When we began looking at this, and we began looking at this after the Supreme Court had announced that they were going to appoint me as chief judge, but before I became chief judge, then Chief Judge Bandstra and I began looking at the question of how long it takes to get a case through our process.

What's a case you may ask. Good question because we have several kinds. We have opinion cases, and I think that's what everyone generally thinks of. Cases that result in an opinion, sort of a circular definition. We also have older cases, cases that come up to us on motions or order. Those are decided by order. Interestingly enough, of about 7,500 cases, it's roughly split between opinions and orders.

We do fine on orders. We get orders out
reasonably promptly. It's in the opinion cases where we have problems, and when we began looking at this, and there is a little handout that's at the head of each table, I didn't make enough unfortunately, it shows what the situation was in our base year, which was 2001. 653 days to get an opinion case out of our court.

Now, I defy anybody to say that's timely. That is not timely. I just think that's inarguable. So the judges of our court set about trying to do something about that, and we envisioned a whole gamut of activities.

So far I think we have done pretty well, and the right-hand side of this shows you where we stand in the first six months of 2003. We have cut the total time to 559 cases, 559 days, so 94-day reduction, almost 15 percent. We did that without one more staff person, without one more judge. We did that by a whole variety of things, including moving cases around the warehouse and around the research division right to the judicial chambers, essentially making our judges work harder, and we are reasonably proud of that.

Let me emphasis point one, however. Point one was in March and April and May of 2001 when I
began to discuss this, among other places, with the Appellate Practice Section. I said then, and I hope clearly, that it made no sense to cut the time at intake, and we would not propose to do so, until we had dealt with the problem in the warehouse, until we had dealt with that holding pattern. And how do we propose to do it? We propose to do it in the toughest budget year in 50 years by increasing the funding for the court.

Now, that wasn't an easy sell, and members of our court, and particularly our professional staff, spent a lot of time on that, and, fortunately -- maybe the luck is with us on this. I am not Irish, thank God. If Chief Justice Corrigan were here, did you hear that? We got very lucky in the sense that the Chief Justice recognized our problem.

She also recognized a larger problem with respect to funding for the whole judicial system, trial courts as well as courts of appeal, and came forward with a unified fee proposal package that the Department of Management and Budget, both the old governor and the new governor, bought, as did the Legislature, and that fee increase package passed. It passed virtually unanimously.

Our piece of that, and in a $28 billion
budget this doesn't sound like much, but our piece of that increase was about $525,000 that we will recover, that we will obtain, that we do not currently obtain, commencing October 1. We are expecting sort of a spike in filings, by the way, because these are motion fees and entry fees, in September. You all should be aware the fees are going up on October 1. That gets us most, not all, but most of what we asked for in terms of increased resources.

So I guess point one is, I think we have delivered what we said we were going to do. The governor, the Legislature, the Supreme Court has delivered on the funding side. We have hired those attorneys. They are currently on board, we are wrapping them up. The paychecks will now occur in October, and we believe that we can, with these additional resources -- again I am hedging this a bit because we didn't get all we asked for. Maybe I should have asked for more than I thought we needed, but I just don't see playing the game that way. It doesn't work in the long run -- we believe we can substantially reduce, if not reduce, the warehouse.

So the argument, the primary argument that I have heard now for 17 months is that you shouldn't do this until you get rid of the warehouse. I think that
argument falls. I think it falls because we now have
the resources to do just that, or 90 percent of that.
Therefore, those cases, if they go through the intake
faster will not sit in the warehouse gathering dust,
they will go to our research division, then they will
go to the judicial chambers. I guess that's point
one.

Point two gets into the more subjective side
of the equation. I like this quote so much I am going
to use it. There is nothing like getting in your
opponent's brief and citing it back to him.

The task force that worked for the President
Neckers appointment in its report recommends, and I
quote, that we change the culture of delay that
afflicts every aspect of the appellate system. Until
now, judges haven't really recognized the effect delay
has on litigants.

I submit to you that that statement is
absolutely right, that there is culture of delay and
that it afflicts literally -- it sounds like the
bubonic plague, and to some extent it is -- that it
afflicts the appellate system. I submit to you that
it may have been so in previous years that perhaps the
judges on our court did not recognize the effect, but
we certainly have now.
On March 18, 2001 every judge on my court voted to implement this delay reduction program. We have in the interim between then and now cut the time a case takes in our judicial chambers in half, from 61 days to 30 days.

I don't think it's tenable to suggest that the judges haven't realized this problem. We certainly have. I think the time now comes to ask whether you all are willing to recognize it. In that regard, what is it that we are asking for?

On the second page of this little handout I tried graphically -- I am not good with numbers, even though I spot them all the time. I have to see things graphically to express what we were proposing.

It really falls into two categories. We propose not, with all due respect, a drastic reduction in briefing time for the appellants. We propose a reduction from 56 days to 42 days. That's 14 days.

Fifty-six days in my opinion is not what you would call an accelerated schedule to prepare a brief, particularly when one recognizes that you have in front of that -- a point that I will come back to -- this process in which the record is being developed or gathered below and the transcripts have been prepared. Particularly if you tried the case, it strikes me,
although you don't yet have the transcript references, you are pretty darn familiar with what went on at the trial, and the prospect of roughing out a brief, getting started on it before your clock is even ticking strikes me as a prospect that's fairly attractive.

I know when I was in practice I used to do that. I didn't wait until I got the transcripts in order to start working on my brief. That just was not our culture and that was not the way we practiced.

So we propose for civil cases, as we have amended our proposal, to reduce the time for filing the appellant's brief by 14 days.

I don't really think that's the issue. I really think the issue comes with stipulated extensions. That's where the Appellate Practice Section and the State Bar and our Court are butting heads.

What we are talking about here is a provision of the Court Rules that allows the appellant and the appellee, by stipulation, without the court order, to extend -- that they both agree they both want additional time -- to extend on each side of the process by 28 days. That's a total of 56 days total. I underline without approval of the court, because we
have no say in this. If the stipulation is filed, the extension is automatic.

I know of no court in the state of Michigan, other than the Court of Appeals, where that's the case. Now, it certainly doesn't happen in the Supreme Court, and to my knowledge, unless there are local rules of which I am not familiar, it doesn't happen in trial courts. You have got to have an order before you extend time.

Now, often the trial judge will sign it if you get a stipulation, and often we will sign it. We do now matters for additional time. Motions come before us, and we rather routinely grant them.

As a matter of fact, I called the National Center for State Courts to ask them whether any other courts in the country have had such a practice. To my knowledge there are none. Now, there may be one out there, or two or three, but there aren't any that I know of, and, frankly, were I not before you arguing about delay reduction, I would probably still be arguing on this one, because I think it's fundamentally a bad court administration.

Every book you read on court administration, every treatise, every article that you ever read says to the courts do not lose control of your docket, do
not abdicate the control of your docket. And by this
court rule, that's exactly what happens. We have no
control over 56 days of that intake process. It's
automatic.

The argument is, well, it may be automatic,
but it's needed. Is it? If it's needed, then why
isn't it used more frequently, because it is certainly
not a universal practice. It is used frequently in
civil cases -- I am sorry, criminal cases -- very much
less frequently in civil cases, and in total about 55
percent of the time.

So there are 45 percent of the cases that are
coming to us that we see stipulations are not used at
all. Does that mean that the ones, that the 55
percent where they were used they were needed? I
think that's an open question.

I know of some firms and some practitioners
who automatically request the automatic extension,
whether they need it or not. Others may well -- I
don't know how we get far enough into the data to
ascertain the motivation, and, frankly, I just say I
think that's an open question as to what the
motivations are for using these automatic
stipulations. I can tell you that data show that they
are only used about 55 percent of the time.
So that's where we are. I think the issue is joint on the automatic stipulations. I think that's where the rubber meets the rubber.

The question then is is there other -- are there other reasons for delay in implementing delay reduction? Pardon the slight sarcasm there. One should never attempt to be humorous when arguing a serious subject.

One that Don Fulkerson pointed to is the recently appointed task force or work group that Chief Justice Corrigan and I appointed to look at the delay that occurs in record production. There is a work group that's meeting under the chairmanship of the Chief Judge Pro Temp of our court, Mike Smolenski. They have had their first meeting or is scheduled.

The guts of what's going on here though, when you get down to it, is the following: The page rate for court stenographers is set by statute. In return for an increase in the page rate some time ago the time for filing transcripts was lengthened out to, I believe, 90 days.

To cut that time back down is going to, I think, involve an economic trade-off. The court reporters are going to insist, and perhaps rightly so, that the page rate be revisited. In cases where
indigents are involved, then it has an impact on the county, so the county is going to be worried about that.

So the question is if we cut back the time for filing transcripts, if we make real progress here, we are going to have to do something about the page rate, and we are going to have to do something about how we fund a deficiency on the county side.

What you are talking about there, quite obviously, is legislation. You are talking about going to the State Legislature this fall or winter and attempting to persuade them to act on this.

Legislation is a chance again. I hope we are successful, but there are certainly no guarantees in that process. There aren't a lot of advocates on our side on this one. This is good government, and good government usually doesn't get the peasants with pitchforks storming the capitol, to misquote that again.

So I do not think that's a sure thing. Not being a sure thing, should we, therefore, further delay what has been a 17-month process already? I submit to you that you shouldn't.

Those are the specifics. I would leave you with this thought, I don't have a vote on this resolution. Obviously one can see where the wind is
blowing, but I ask you to think about the following two ideas.

First, I got a C+ in undergraduate school at logic, which some of my critics might say was well deserved, but I still remember it. I remember the dilemma of the commons. A dilemma of the commons dealt with the common areas in English law before the enclosure acts were passed in late 1700s, early 1800s, that allowed or permitted farmers and cattle raisers, sheep raisers, to graze a common yard. They didn't own it, but they had the use of it.

Now, the dilemma of the commons is that for each individual farmer -- let's say he is a cattle farmer -- it is to his or her, then it was his, maximum benefit to graze his cattle as much as possible in the commons. That would maximize that farmer's economic situation. He would have fatter, more salable cows, more poundage to sell, more milk perhaps provided.

But, in general, if every farmer did that the commons would become overgrazed and all cattle will die. That is the dilemma of the commons. It's the individual good versus the collective good.

To some extent the State Bar in this one is faced with a dilemma of the commons. It is to each
lawyer in this room's advantage individually that you have as much time as possible to do your work. That's to your individual advantage, but if all of you use all that time and if this process goes on for two, two and a half years, then no one benefits, because the entire boat sinks under the weight of accumulated delay.

And so I suggest to you that the Bar is in a difficult situation on this. They are faced with a dilemma of the commons, but where do you want to end up on it? Is it, when all is said and done, can you go before the public and your clients and say, We are in favor of delay, that we propose not to sacrifice one day in this whole process of our time.

Is that a defensible position for the State Bar? Candidly, I don't think so. I told Scott, You all are doing a good job on this of arguing for delay, but that's a very difficult proposition to argue publicly, and I just suggest to you that as a matter of public policy, as a matter of representing the lawyers in the state, and, more importantly, representing the clients that those lawyers represent, goes after all the litigants who are suffering under this system. That is not the best posture for the State Bar.
So I would ask you to vote no on this, and I
don't know if you are going to have a question or not.
If there are any questions you have got, I am sure Don
and Tim McMorrow and others will.

CHAIRPERSON ROMBACH: Very eloquent
presentation. I tell you how I would like to proceed.
I know that Judge Whitbeck is more than willing to
take questions. I know that Don Fulkerson is more
than willing to take questions. I know that Tim
McMorrow is more than willing to take questions, and I
know we have some questions. So what I ask is that
you can advocate, you can question, you can do
whatever you want. I may even give everyone another
go-around on the people that have spoken to summarize
their positions, but whatever Assembly member wants to
speak needs to go to the microphone and be heard at
this time. So if anybody has anything on their mind.

I guess the race goes to the fleetest, and
that's Mr. Abel. Go ahead.

MR. ABEL: Good afternoon, Mr. Chairman,
thank you. I am Matthew Abel from the 3rd circuit.

I don't do appellate work, or I seriously try
to avoid it, so I don't have a particular
self-interest in this issue, but I am concerned in
regards to the issue of the automatic stipulation.
I was looking for some information. I was wondering if a lot of those were criminal cases, and isn't it true that many of the criminal appeals in this state are done by the State Appellate Defenders Office or have court-appointed counsel, and my concern is that shortening this time is going to put additional pressure on these other public resources, which is the State Appellate Defenders Office and the money that's paid for court-appointed counsel, on people who are already underpaid and squeezed quite a bit. That's my concern. Thanks.

CHAIRPERSON ROMBACH: That sounded more like a viewpoint, so I won't have anyone particularly respond to that. If you have a specific question, go ahead, Matt.

MR. ABEL: My question, is that going to cause a need for increased funding of the criminal defense portion of the appellate system?

CHAIRPERSON ROMBACH: Who would you like to address that?

MR. ABEL: Probably Judge Whitbeck.

CHAIRPERSON ROMBACH: Okay. That would be great. Again, as long as we are specific, then I am not guessing. Judge Whitbeck.

MR. ABEL: And if so, would you support
additional funds for that purpose?

JUDGE WHITBECK: It's the latter one that's the good one. I can give you the data. Over the years, over 2001, 2002, 2003, on the criminal side we had in 2001 1432 opinion cases, 2002 1540, and so far in 2003 445. And in those years there were motions, I am sorry, there were stipps to extend in 2001 in 63 percent, in 2002 63 percent and so far in 2003 63 percent. So whereas overall the percentages were respectively 52, 52, and 52. So, as I said, the stipps to extend are used more frequently in criminal cases.

Will this place additional pressure on the criminal defense Bar, whether it's publicly appointed through SADO or privately through MAACS. The answer is yes. What do you do about that? There are two things.

The first thing you do on the private side is, I have said this publicly, I have said this to Chief Justice Corrigan, I said it even after she wrote her concurrence on a recent case, I think the system that we have for compensating private lawyers who take on appellate criminal defense is abysmal. It varies all over the map from county to county. There is no uniformity, except one thing, one thing is that those lawyers aren't paid enough.
I mean, I don't know how someone can defend a criminal case on appeal for $300. I just don't know how that can be done. I mean, that's just ridiculous. There is no other way to describe it. Something has got to be done about this.

On the public side, of course these folks are salaried. Do they have enough resources? No, I don't think they do. Can they manage their operation better, smarter? We all can. We can all make, including me, we can all make improvements in operations.

Over the longer term are there enough resources there to adequately represent the body of cases that they have? No. And, yes, I would support increasing both of those and have.

MR. ABEL: Thank you.

CHAIRPERSON ROMBACH: I know that Mr. McMorrow wants to make a point on that same issue. Tim.

MR. McMORROW: I would concur with what Chief Judge Whitbeck said. This may seem funny coming from a prosecutor, but it has struck me as bizarre and reprehensible how poorly criminal defense attorneys are compensated for representing indigent defendants.

I would say one thing that will happen
eliminating stipulations to extend time from the prosecution standpoint, that will affect the cost to government entities. We don't get the fees waived for motions even if the defendant is indigent. If the defendant is indigent, the fees for the defendant are waived, but they are not waived for us even if the defendant is indigent. That's a fairly recent change of policy.

So that means is effective -- is October 1st when the motion fees go up to a hundred dollars apiece? Every motion that we file requires us to pay a fee of a hundred dollars. The net result will be we will stop filing motions.

MR. FULKERSON: I just wanted to briefly add that I know from my affiliation with several prosecutors as chair of the sections that some prosecutors offices, Oakland County for one example, have instructed their prosecutors that they may no longer file motions for extension because the prosecutors office will not allocate the funds, and I know that it has substantially jammed up a lot of prosecutors who have been scrambling unable to get motions, to file motions for extension, and this is only going to exacerbate that problem.

CHAIRPERSON ROMBACH: I am sure that Mr. Abel
would add the lawyer's fees on criminal defense are capped no matter how much work you are doing, so the more work that's being done, the more uncompensated time.

MR. ABEL: Some of us can't even afford a suit.

CHAIRPERSON ROMBACH: I guess we will go next over to Ms. Radke from Escanaba.

MS. RADKE: Thank you. Victoria Radke from the 47th judicial circuit.

I guess I have a question on behalf of some people who are at the very beginning of this process, and that's the court reporters who don't get to set their court dockets. That's done by their circuit court judge.

When do -- first of all, was there a survey done in the Michigan Association of Court Reporters of their membership to see how they felt about shortening the time for record production for transcripts? And, if so, what was the result, and, if not, why hasn't it been done?

Because from personal experience and working for the county, I have a close relationship with the court reporter, and I asked her specifically about how she felt about that, and our court reporter is in
court approximately 45 hours a week right now because
of the docket strain in our county. So that leaves
the rest of that time for her to prepare transcript on
appeals, sleep, see her family, whatever.

So was a survey done? What was the result,
and, if not, why not?

JUDGE WHITBECK: The work group that the
Chief Justice and I appointed contains two
representatives from the two court reporters
associations, so they are represented on that work
group.

I presume that they would not be terribly
happy with us surveying their members. If there is
going to be a survey of their members it should come
from their organization, and so to my knowledge
certainly we have not done a survey, and, frankly, I
think it probably would be inappropriate for us to do
so since we are looking to them.

To my knowledge -- well, I don't have any
knowledge. I don't know whether they have done it or
not, and I wasn't at the first meeting --
unfortunately I was on the bench -- of that work
group, but I think we can presume that the two court
reporter associations are going to represent the
interests of their members. I hope we can.
MR. FULKERSON: Can I just briefly add a point?

CHAIRPERSON ROMBACH: Go ahead, Mr. Fulkerson.

MR. FULKERSON: I have been working in the area of record production for about a decade, and let me say this: There is going to be legislation. It's already pending in the Legislature. It's being supported by Senator Switalski and Mr. Cropsey, among others.

The sole opposition, it's my understanding, to this legislation -- court reporters haven't had a rate increase since 1986. Federal court reporters make double now what Michigan official court reporters make. It's a crisis. It's a horrible problem. MAPCR and Official Court Reporters support implementation of reasonable fine schedules to improve efficiency and time for transcript production provided they get the rate increase they deserve.

It's my understanding the sole opposition to this legislation is the Michigan Association of Counties who respond we don't want this legislation, not because we don't believe that court reporters do a good job, not because we don't believe that the legislation is necessary and long overdue, but we don't want to pay for it, because in indigent
defendant cases we have to pay for the transcripts, and we are not going to do it, and that's the answer.

I mean, the sole opposition to this legislation, in my opinion, is the Michigan Association of Counties. And it's got to get passed, and if we have new legislation changing the fee schedule or the page rates, we are going to get better quality court reporters, we are going to have a reform of the outdated show cause system, which is supported by the Chief Justice, supported, I believe, by the Chief Judge supported by the Appellate Practice Section, supported by everybody who has really looked at this issue seriously, and so I would recommend that if anybody who has an opportunity to lobby on this issue and to lobby reasonably and to try to find alternatives to the arguments of the Association of Counties to do so, because this is a huge issue that we need to have done.

CHAIRPERSON ROMBACH: Thank you. I would just note that that issue is before the Public Policy and Identity Committee of the State Bar Board of Commissioners, so it's on the radar screen. Our Bar is going to respond to that issue, and if individuals want to do the same, they do have our new public policy accessible website to do just that. Thank you
very much.

I am going to try to go in the order of the people that stepped up, so I am not going to alternate. Mr. Haroutunian.

MR. HAROUTUNIAN: Ed Haroutunian,

Mr. Chairman, from the 6th district.

Judge Whitbeck, you mentioned the fact that in touching base with some other organizations that deal with nationwide appellate groups that no other appellate courts allow for stip by attorneys to extend without orders of the court, just on stipulation of the attorneys. Can you tell us or let me know or any of the other folks know what do other courts do with respect to the time for the appellant to file; that is, from the 56, as an example, today and the approach of bringing it down to 42, are there any stats with regard to other states in terms of what their time limitations are?

MR. WHITBECK: I think, Mr. Haroutunian, that there are through the National Center for State Courts.

I have to tell you that 17 months ago in starting to look at this problem that's the first question I asked, not necessarily with respect to brief times, but what is the situation out there in
other states, and the answers are all over the map. What obtains in California does not obtain in Texas and certainly doesn't obtain in Pennsylvania.

We selected, for purposes of just looking at the overall picture, not finetuning with respect to extensions, for example, we selected as comparable states sort of Great Lakes basin states, Illinois, Indiana, Ohio, and Wisconsin. Pennsylvania is not a good one. Their system is so different that it just doesn't line up.

So in the overall those are the data we looked at in other states. We found a remarkable thing, by the way, something that was not terribly related to this, but it's fascinating. As you all know, we had a fall-off in filings with our court, significant fall-off, from the early '90s through about 2002, from something like 7,500 -- or 13,000 cases in the early '90s to 7,500. That fall-off has not occurred in other states. You don't see that slope.

Now, the other side of that, interestingly enough, is that even with our decline we are still higher than most of our comparable states. We still have more cases per capita per judge than any of the Great Lakes basin states.
CHAIRPERSON ROMBACH: Tim, did you want to comment?

MR. MCMORROW: Well, very quickly. It's also one of the first things we did was to take a look and survey what other states did, and you find this is comparing apples and oranges. In fact, it's comparing incredibly exotic fruits to things that just don't make any sense at all.

I can tell you this, in some states it will be 30 days to file the brief, but in those states you find that the motions to extend time would be liberally granted, then usually two or three would be granted without question before the court would say no more. Other states have longer periods of time, tend not to be so liberal in granting extensions.

No state that I know of allows stipulations to extend time, but I think it's also fair to say that, maybe I am wrong and correct me on this, but I don't think any other state charges a hundred dollars to file a motion fee for an extension time either.

CHAIRPERSON ROMBACH: Again the order we are still going to proceed at. Mr. Gillary, then Mr. Levy, then Mr. Hogan.

MR. GILLARY: Randy Gillary from the 6th circuit.
I speak in support of the State Bar's position on this, and I will say that in my practice primarily we operate on contingent fee. We don't get paid by the hour, so typically it's to my incentive to get a case over with early. But the 28 days on the automatic extension I think is important.

In our office we try the case, generally I try it. I have an associate who does the appellate briefs. We do all of our own briefs, argue all of our own cases in the Court of Appeals and the Supreme Court, and that is important in order to do a good job. I am more focused in putting out a quality work product than in trying to get something done quickly, and I think that time is important with the writing, the rewriting, trying to make sure that the job is done right. I think that is important for us as practicing attorneys.

The delay in the system I don't believe is in the work time. It's in the down time. And we have had cases in the Court of Appeals over the years sometimes three or four years, and I think the delay that we have talked about is not because people are spending too much time working on the case, but it's just been sitting there, and that's the reason why I think it's important that we have the ability that if
we need that extra 28 days to use it.

Most attorneys who will be filing briefs, it's not the only case they are working on, and in order to effectively and economically operate a law practice you have to be doing a lot of things at the same time, and that time I think is important for practicing attorneys, and I definitely support the State Bar's position.

CHAIRPERSON ROMBACH: That was a comment, so I will not have anyone comment back. Mr. Levy.

VICE CHAIRPERSON LEVY: I do support the proposals before the Assembly today.

CHAIRPERSON ROMBACH: Where are you from, sir?

VICE CHAIRPERSON LEVY: I am sorry, Dan Levy, 3rd circuit. But I rise more to object to the terms and the framework that the argument is being set in. We are talking about meeting two, not one but two, arbitrarily set numbers, 95 percent of cases and 180 days, like there is some magic to them, and when we are talking about time, every day adds delay, 180 days delay. Somehow or other the Bar is in favor of delay because it says it needs time to work on the case.

Every day of delay is a bad thing, but time spent in the interests of a litigant of a case is not
delay, and the question should be whether or not this is in the interest of clients and not whether or not we can get to an arbitrary delay.

So I am equally bothered by the portion of the Bar's response that says it's not our turn to be concerned about delay, because the court hasn't taken all its responsibilities. It's always our turn, and as individual attorneys if there is a brief that's sitting on our desk unresponded to and the only reason is because it's not, the response is not due, then we are not representing our clients. Our client's interest is to get that brief done in their name as quickly as possible.

But if the adjournment, if the stipulation is in those clients' interests, we shouldn't cut the time if it's going to cut the quality of advocacy, and for that reason I favor not trying to reach this goal because it interferes with that quality of advocacy.

CHAIRPERSON ROMBACH: Thank you, Dan. Jim.

MR. HOGAN: James Hogan, 16th circuit. I rise in support of the motion that's currently before the Assembly. I do, I have a small firm in Macomb County. I handle a number of appeals and not appeals primarily from my own cases but for other attorneys as well. A substantial portion of my practice is
dedicated to that.

In my case most of my appeals, 90 percent I would say to be civil, and most of those cases it's very rare that the parties actually stipulate to need the extension in my personal experience. And the time that I spend on a particular matter is time, quality time that I have got to spend with the intricacies of the appellate system, and understanding that, unlike at the trial court level, you are supposed to give more time and more careful consideration. This matter is potentially for publication. It's something that can be read and followed by other courts. So there is a more careful process, a more cautious process, and by its own terms a slower process.

Also, it was mentioned here before that, you know, you really don't need to get the transcripts in order to get rolling on the brief. Well, when I pick up appeals from other attorneys, a lot of times I don't know exactly what it was that they said until I get those transcripts, and then I have actually got to sit down and go through those transcripts and make sure that they haven't said anything that I have to be aware of before filing the appeal.

Sure, I can do a little preliminary research on the issue involved, but I have got to check with my
facts and make sure that those facts are correct.

So I do commend the Court of Appeals for a number of the recommendations. I was at the court, I won't say which branch, and filing a docket statement not that long ago and I asked, well, why do we need to file two docket statements, and the clerk, I think she was joking, said, well, it's in case we lose one. But she smiled after that, so I think she was joking.

But I just rise in support. We should not be delaying justice unnecessarily, but I don't see this as any sort of unnecessary delay. The time I spend is quality time.

CHAIRPERSON ROMBACH: Thank you, Jim. Jerry.

MR. ANDREE: Thank you. Gerard Andree from the 6th circuit.

I don't do appellate work. I do mainly trial work, but I think what we are talking about this afternoon is really a discussion that crosses over and is applicable to both trial and appellate work.

I would like you to consider for a moment that we are in an adversarial system and the court rules that we have are intended to govern adversaries. You know, whether it's how many days you get for interrogatories, you put a time limit on it, because if you don't you would never get the answers type of
thing.

That being the case, I find it interesting that, Judge Whitbeck, you would indicate that the biggest problem you have is in a situation, in this adversarial situation, the biggest problem you have is when the parties agree on something and that they are not adversaries any longer. I mean, this is the same thing that I encounter in trial work. I mean, frankly, you can't have it both ways. You can't say that I have got so much work to do that we are taking in so much work we can't even get to it, we are storing it in the warehouse, but you can't agree among yourselves to delay filing a brief.

That's the same thing I run into with trial courts. You know, they say we have got so many trials we can't try them all, but when you come up and both parties agree, well, we are not ready to go to trial. Oh, no, you got to go to trial, and really it gets down to the philosophy of who do the courts exist for, and that's really the basic problem that we have here.

And the question is, that's what really is masking all this, what do the courts exist for? Do they exist for a goal to have something done in a certain amount of time, or do they exist for the parties? And it just seems to me that, you know, that
if the parties agree that they don't want to file something within a certain period of time and they want to step back and say, listen, you have got so many appeals you can handle, I will step out of line here, somebody else can take my place, somebody can go ahead of me. I mean, to quote my mother, who was not a legal scholar, who was pretty smart, her favorite saying was, What skin is it off of your nose? And that's what I think the real debate is there.

CHAIRPERSON ROMBACH: I tell you what I am going to continue to do -- again, I am going take that as a comment. I know everyone is anxious to state an opinion on these matters, but I do want to get to every Assembly member that has a question. And I recognize the next gentleman, since Mr. Brinkmeyer yielded his place in line, go ahead.

MR. BIRD: Joe Bird, 6th circuit. I will yield my opinion, which is in support of the proposal, but ask the question, if we don't find ourselves having 53 percent of the cases requiring the stipulations that we are now accustom to, then we abandon stipulations, what will the court do now with 50 percent of the appellate cases all requiring disposition by motions being requested by people? How will you process those cases, how will you deal with
the volume of those cases, how will access be granted for quick decision making so that on day 40 if someone recognizes they need one and they find out, when, a week later, that they are not going to be granted it, so how will you deal with that practical situation?

JUDGE WHITBECK: First examine the predicate that in 54 percent of the cases the automatic stipulations are needed. As I say, I think that's an open question. I don't know whether they are needed or not. It may be that some are automatically requested. Now, again, I can't get into the motivation of why parties stipulate, I am not a mind reader, but I don't know that the predicate is established.

To answer your question, we will deal with them, as we have suggested in our rule changes, as motions for extensions, as we currently do, and we will deal with them on the basis of good cause, which is defined in our internal operating procedures, which I think you are all familiar. We will deal with them on the admodo, a lingo of our court, the administrative motion docket. That administrative motion docket is now decentralized to our four districts, so we have one judge in each district, and when I was doing them all for all the districts they
would land on my desk on a Monday morning and I would have them out on Monday afternoon. So in terms of action in the chambers.

Now, getting to the chambers takes longer than that obviously, but this is not, to be honest with you, rocket science. I mean, either the litigant, the lawyer has stated good cause or he or she hasn't. We don't need a lot of research on that point. That's something that an experienced judge or even a novice judge, I think, and all four of them are not novices, they are experienced judges, can determine rather quickly.

I have got to answer the question who do the courts exist for. They exist for the litigants and for the benefit of the larger society. They do not exist for the lawyers nor do they exist for the judges. They are there to decide matters that come in front of them promptly and correctly based on the record fairly for the litigants, and in the process they serve the larger society through a civil dispute resolution process. Strikes me that's 101. We are not there for the lawyers. We are there for the parties and for the society.

You have entered into a system, your clients have, in which you said, yep, we are going to submit
this to a tribunal, and that tribunal is going to
proceed according to rules. These are the rules. I
suggest that this particular rule does not make a lot
of sense, and we should change it.

CHAIRPERSON ROMBACH: Again, what I will do
is I will let us move on with the debate. I will go
to this microphone next.

MR. LOOMIS: Daniel Loomis, 35th judicial
circuit. I am new here, but I am wondering would you
entertain a motion to amend the --

CHAIRPERSON ROMBACH: That would certainly be
in order. If you have something that can be amended,
that would be great.

MR. LOOMIS: It seems to me that we criticize
the Court of Appeals for delay, and now they are
dealing with that situation, and then to not allow
them to control their own docket does not seem right
at all, and so what I would propose is that we amend
the third paragraph that says be it resolved that the
State Bar of Michigan opposes, and in that second line
eliminate the following words: And eliminate
extensions by stipulation at the intake phase of the
appellate process.

My proposal is that we let the Court of
Appeals determine whether there should be delays for
good cause, but at the same time keep the time at the
greater, at the greater level of 56 so that we make
sure that we have time to do the briefing that is
needed, and that would be my proposal.

CHAIRPERSON ROMBACH: Is there a second for the amendment? I tell you what, first I am going to offer it to Mr. Fulkerson. Of course intuitively I believe that defeats the purpose of why you are stepping forward here, but, again, if you would take that on as a friendly amendment we could do it that way.

MR. FULKERSON: Well, I would not.

CHAIRPERSON ROMBACH: I didn't mean to presume your position on that. So I would need a second for us to consider that as amended.

VOICE: Second.

CHAIRPERSON ROMBACH: So we have a motion and a second here, so right now we are basically on to the debate as far as the amendment. Go ahead. I do recognize our State Bar President, Scott Brinkmeyer, from the 17th circuit.

PRESIDENT BRINKMEYER: I might add that after today's lunch I may be the immediate past president pretty soon. Be that as it may, while I do still hold that office, I feel compelled to speak, and I will
speak with regard to the proposed amendment, but I think this also goes to the entire discussion.

There was a key word that was used by Don early in his presentation that comes home to me about any of this consideration at this point, and that word was premature. I speak against the amendment for the reason that I don't think that the Supreme Court should be doing anything at this point to reduce the time for briefing or to remove the stipulations until we have, indeed, heard from all the corners, from all of the vested parties, and we have all the information we need to properly analyze this.

One of the biggest problems we have found in this committee that Don and Tim and I and Judge Whitbeck, to his credit, have worked on is that we are kind of learning backwards, and the more that we have learned -- we have got two statisticians. The court shared with us a lot of data on their cases over the past couple of years. We finally got two statisticians to look at this, and we began to learn some of the things that are outlined in your booklet.

We still don't feel we have our hands really on the pulse of it, but part of the problem is, of course, that it did identify that there are these problematic delays with the record and the transcripts
that are the key element of this.

I have got kind of a rhetorical question that applies to the whole thing. If the Supreme Court were to grant this request and then we find out at the end of the day, after all of the sifting has been done and a recommendation is made on transcript delay and record delay and some of the recommendations of the task force are implemented and we find out that nothing had to be done with the intake briefing time or the stipulations or that much less had to be done, how do we get that changed? And when you consider that, and I agree with Judge Whitbeck about what he just said, that the system is for the litigants and the public at large, but let's face it, I mean, we are the ones representing them, and we are the ones that have to do the job to make sure the best result accrues.

And so I focus on that word premature. I think it's premature that we would have this amendment, so I speak against it, and I would think it's premature that the Supreme Court would consider this at this time.

The final question rhetorically would be, What harm? What harm in waiting? No one is hurt. If the warehouse is eliminated and proposals are made
through this new work force group and the task force recommendation, some of them, all of them are implemented, and our committee keeps on doing its work and finds out other ways to propose, for example, what we were trying to look at initially, some sort of differentiated case management system that might be employed, we might find at the end of the day there is really not a controversy at all and that nothing whatsoever has to be done, but we would be in a better position perhaps to find out where we should compromise if we should compromise.

CHAIRPERSON ROMBACH: And I take it, Mr. Brinkmeyer, that's a personal opinion and also to the degree it supports the Neckers report, it speaks on behalf of the Board of Commissioners as well?

PRESIDENT BRINKMEYER: It does. That's our position.

CHAIRPERSON ROMBACH: Thank you.

Mr. Hogan, you are speaking towards the amendment, so you have another shot.

MR. HOGAN: That's correct. James Hogan, 16th circuit. I rise in opposition to the proposed amendment. In my experience on working on appeals briefs, requests for extension between the parties are usually far and few between, and I cannot remember
anyone that I felt was unjustified that the parties
couldn't agree on in order to -- additional time to
work on it.

I am working, for example, on one appeal now
that also is tied in to another appeal that's before
the Court of Appeals and that may end up going to the
Supreme Court. We may be doing an extension by
stipulation of the parties, but the reason why that is
is because the one case may be moving up to the
Supreme Court shortly, and it's that particular type
of instance that arises, and it also, quite frankly,
just the complications with the case sometimes going
on proceeding forward down below that you need that
opportunity to have by stipulation, and it's something
that the court itself can, as I think Judge Whitbeck
indicated, is something that, you know, if there was a
very good reason, the extension would be granted.

Well, I don't stipulate to extensions unless there is
a good reason.

I would also say this: At some point or
another when they first designed MCR 7.212 they had in
those provisions for the 56 days for the filing of the
appellant's brief, the 35 days for filing of
appellee's brief, and the 21 days for the opportunity
to file a reply brief, plus with these extensions in
it. At that point I am certain that there was a lot of discussion and thought that went into those time tables.

As far as I am aware nothing in the law has changed substantially since MCR 7.212 was adopted, and I believe it was in the late '70s, if I am not mistaken, that would make our job as appellate attorneys any easier or quicker. Certainly we have internet, but we have still got to read everything, and there ain't no way to quicken that up.

So these were good time tables set forth back then. There was a lot of thought and consideration given to that, and I speak in opposition to the proposed amendment. I am not going to stipulate unless there is a good reason. You have to trust my word on that one.

CHAIRPERSON ROMBACH: Thank you very much, Jim.

VOICE: Call the question.

CHAIRPERSON ROMBACH: Okay. I have a request to call the question. Unless there is somebody else that's going to oppose this, I am calling the question. I will acknowledge that we should move, and it is without objection, I will move this to a vote. This is only on the proposed amendment about striking
the language and eliminate extensions by stipulation of the intake phase of the appellate process, to take out language as made by the gentleman in the back.

And at this juncture, all those in favor of the proposed amendment being added to the main bill, please indicate by saying yes.

All those opposed indicate by saying no.

That's a, distinctly in the opinion of the chair, the noes have that. We return to the main motion. Are there any other comments?

VOICE: Call the question.

CHAIRPERSON ROMBACH: I am sorry?

VOICE: Call the question.

CHAIRPERSON ROMBACH: That's Mr. Perkins, and, again, Ms. Johnson seconds that, although we don't need a second. It's nondebateable.

At this juncture, again, without objection, we could take a vote on calling the question, but I don't see any objection. The Chair believes we can move to a vote on the main motion. I would by rule, by Representative Assembly rule, I have to acknowledge that Mr. Fulkerson, as proponent, could make a final comment before I conduct a vote.

MR. FULKERSON: The only final comment I have is just a correction of the way I read. Actually it's
not -- in the first sentence it would just be be it
resolved that the State Bar of Michigan commends
courts, not just specifically the Court of Appeals.

CHAIRPERSON ROMBACH: I believe that
Ms. Brown had made that as an amendment, and we can
consider that clerical in nature in the opinion of the
Chair. I believe my parliamentarian is going to
support that. Tremendous. Thank you very much,
Mr. Barr.

We will move this for a vote now, and I
believe that's your final comment then.

MR. FULKERSON: It is. Thank you very much
to everyone.

CHAIRPERSON ROMBACH: As I believe it may --
there is no amendments to this thing, right?

MR. FULKERSON: No.

CHAIRPERSON ROMBACH: Nancy, were any
amendments made as far as the reading of this?

As presented to the Representative Assembly
on the entire package as proposed by Mr. Fulkerson on
behalf of the Appellate Law Section and seconded by an
Assembly member, I would now entertain a vote.

All those in favor please indicate by saying
yes.

All those opposed indicate by saying no.
In the opinion of the Chair the yeses have it. This will become official State Bar policy and we will advocate in front of the Supreme Court on behalf of the Assembly's position and on behalf of the State Bar. Thank you very much to all of the very learned advocates that came today to wage this fight, Mr. McMorrow, Mr. Fulkerson on behalf of the section of the State Bar, and of course Judge Whitbeck on behalf of the Court of Appeals.

(Applause.)

CHAIRPERSON ROMBACH: Next we have consideration of a proposal to amend the Michigan Rules of Professional Conduct referred to previously as the main event. We have Elaine Fieldman I have seen on behalf of the State Bar of Michigan Ethics Committee, the proponent for this proposal, co-chair, as well as co-chair Elwood Brown from the St. Clair County Circuit Court bench. Actually I think it's probate family division. Those co-chairs, if they can step forward and address this to the Assembly.

I believe that Mr. Kantor, who is on the docket, as well as Mr. Haroutunian, are both in support as our the committees of the proposal as amended before the Assembly today, so not to give them short shrift, but I do believe. Is that right,
Mr. Haroutunian?

MR. HAROUTUNIAN: That's correct,

Mr. Chairman. Short of any member wanting to change any of the places where any of the rules should be slotted.

CHAIRPERSON ROMBACH: Okay. So right now the committee, Hearings Committee, supports how this has been delineated for debate. The adoption of the resolution regarding the proposed Michigan Rules and the procedural rule, I believe the committee had addressed as well and had helped apportion which items were to flow through for debate, which items were on the bubble, so to speak, in that middle category, and, thirdly, which items that we felt that there was significant concurrence that we could pass them through, and, again, not to speak on behalf of Mr. Kantor and his Special Issues Committee that had also helped in this determination, is that accurate as well, Allyn?

MR KANTOR: That's correct.

CHAIRPERSON ROMBACH: I would want to make mention before we get into the discussion on this topic that we have confirmed, I believe informally, a time line just so that the speakers here in the Assembly know what is the Michigan Supreme Court
contemplating on doing in this matter. I think that they were pleased that we took this issue up today and that we have scheduled a special hearing on this on November 14th at Thomas M. Cooley Law School.

So they have informally informed us that the publication of their draft of the Michigan Rules of Professional Conduct should come out and be published in December, and the comment period would then be allowed until February 1st, or approximately there, of 2004, and there would be a public hearing conducted in April 2004.

I would note that that, again, is consistent with the time line that I had advocated earlier. Basically they want to see a work product before they publish, and that work product then would have to be arrived at at our November meeting, and if we can get that to them in advance then would very well perhaps influence what they publish for public comment, but it wouldn't have to be set in stone. In fact, because they are publishing and that, for instance, we haven't perhaps concluded our final deliberation, that we could revisit this issue. If harmful initiatives have been taken in haste, we could revisit this in January and, again, get back to the court within the comment period, and then our impression is that as advocates
either Mr. Levy or Ms. Jamieson or any other of interested parties could come forward with the Assembly's position.

Actually I said in April. Their hearing is going to be in May, I believe.

VOICE: That's what they think.

CHAIRPERSON ROMBACH: Right, I misspoke. I was thinking ahead that our next then meeting would be in April, and we could again perhaps amend our position.

It's a great necessity that we consider very seriously the issues before us. I will try to limit those for debate and come up with a final product in November, and then we can forwarded that to the court before they have an opportunity to publish, and that way our opinion perhaps could have a maximum impact in the process. But, again, we are not having to finalize anything. If we reconsider or we want to revisit this issue, it is not set in stone.

With those final words, I will now recognize -- Elaine and Judge Brown, would you like to come forward.

We will entertain a moment of silence. Our court reporter is changing her paper.

This is, I believe, probate judge, Family
Division of the 31st Circuit Court, Judge Elwood Brown, co-chair of the committee.

JUDGE BROWN: Ladies and gentlemen, myself, along with my colleague, Elaine Fieldman, are co-chairs of the Committee on Judicial Professional Ethics, and the Chair, Tom here, has asked me basically to give you just an overview of the process that we had.

Now, I know that Elaine was present at your April meeting, and you had members of the American Bar Association there as well that did do that, but for those of you who may not have been there, this is a project that we began about two years ago. The process involved, and I want you to know, in case you don't, the committee that we chair is made up of a very diverse practice group. Many of those, some of those members are on the Assembly, I see them in the audience. So we have had input from persons, from sole practitioners to huge law firms, from the government lawyers and so forth on these matters.

Our first assignment was to give, was to assign each rule, proposed rule, from the ABA along with the Michigan Rule to an individual member of the committee to evaluate as to what the distinctions were, what the differences were between the current
Michigan rule and the proposed rule from the ABA. After that was accomplished we developed a subcommittee of our committee to get into the meat of it.

That subcommittee met for about nine months, periodically for about nine months, and developed a working format to bring back to the full committee. That was about last November.

So since about last November the full committee has taken that work, taken that work product, and on an individual rule-by-rule basis debated it, discussed it, and the ultimate end product that we have is that which is before you. So, with that, that is the, that's the basic process that we went through.

CHAIRPERSON ROMBACH: Thank you very much, Judge Brown. Elaine, did you have any comments that you would like to make? I know you previously graced us with your presence in April.

MS. FIELDMAN: I went through that process last April explaining to you. Members of the ABA were also present. They reviewed our rules. The ABA spent an enormous amount of time going through the rules.

We started the process with a view to try to come as close as we thought was feasible to adopting
the ABA rules so there would be consistency among the various jurisdictions, and we think we did a good job, and the ABA thought we did a good job.

I just want to comment on the resolution, I believe that's in front of you, and I commend whoever put this together, because I think it is important to try to narrow down our discussion, your discussion, to the real issues of concern in November.

The court is anxious to get the product in front of it so that it can go out to the profession and have hearings, et cetera, and I think that that's doable if you limit the real issues of concern, and I think whoever put this together did a great job of coming up with the dozen or so rules that deserve and require some discussion.

And so I would urge you to adopt this resolution so that we can move forward, focus our attention. There is a process in place under this resolution to get written commentary. Hopefully our committee will then have some time to look at, and we are scheduling our meeting, to look at the written commentary so we can respond, so we can have a meaningful answer to the concerns at your November meeting, but if you are going to debate all 60-something rules, I just think it's, at that time, a
very undoable task. Thank you very much.

CHAIRPERSON ROMBACH: Thank you, Elaine. The compliment for the drafting of the proposed rule would have to fall upon Elizabeth Jamieson and Dan Levy as well as with the help of Janet Welch who helped put that together.

I would note too, in anticipation of this meeting there is a number of committees that have stepped forward and submitted written recommendations as we have solicited. In fact, the first four in the door were actually the Pro Bono Involvement Committee, the Open Justice Task Force, actually the Open Justice Commission, I would call them, the Legal Aid Committee, as well as the Access to Justice Task Force, and they put together a consolidated opinion on the pro bono involvement that is required, MRPC 6.1, so that is going to be obviously docketed for discussion, and that would be disseminated to the Assembly in advance of the next meeting.

The ACES Section had previously come to the Assembly, if people remember last fall, and asked for an increase in the amount of voluntary pro bono service, an increase from 30 to 40 hours, and various other and sundry changes based on the ABA's Ethics 2000 report, and, again, that would be docketed as
well. So they are going to be called upon to speak to that.

John Allen, who I believe today is here as well, in his chairmanship role at the Grievance Committee had supported written comments regarding 1.5 of the Michigan Rules of Professional Conduct as proposed by the Ethics Committee. Again, that's going to move forward.

The Legal Aid Committee had submitted a written proposal with regards to Michigan Rules of Professional Conduct. For those of you that are of a salacious nature, the 1.8, sex with clients, and, again, I know the Family Law Section had a distinct viewpoint on that.

Additionally, I think in front of you today Jeff Collins, the Eastern District of Michigan Federal District Attorney, speaking on behalf of his federal prosecutors has a letter in front of you contending, I believe both Michigan Rules of Professional Conduct, as proposed, 4.2 and 3.8. So, again, afforded those comments as well, and I believe the Prosecuting Association of Michigan has spoken quite forcefully that they are going to enter the fray with regards to 4.2 as well.

And there are various other individuals that
had submitted written comments that will be taken into consideration. So, again, if I have left out anybody, I apologize, but that's what we received in writing for today's debate.

At this juncture I would turn to Elizabeth Jamieson, who is going to explain a bit of the underpinning of the proposal for the procedural steps that we are going to take in November, and then I know that Dan Levy is interested in making a motion to that effect.

Elizabeth.

CLERK JAMIESON: Good afternoon. In deference to Connie Coon, I am going to try to speak really slowly.

This is definitely a work in progress. It's changed from last night to this morning, and it's changed again from this morning to now. And I think the intent is, rather than move for approval of the entire proposal as has been distributed to everybody, that we are really only today going to deal with part A having to do with the procedural rules for the November 14th special meeting, and the reasoning behind that is that we continue to make great strides in trying to pare down what it is that we need to discuss and debate at the November meeting, and we
have extremely wide open doors now between the Ethics Committee and the Grievance Committee trying to work together.

And it's my understanding that our plan is now to take what we have submitted to you with regard to part B, C, and D having to do with the categorization of the proposed rules, and rather than have you make a definitive decision now as to how we are going to progress that you let us continue working on that so that we can further hone it in for the November meeting.

So with regard to part A alone, which is the procedural rules, basically we are providing the opportunity at our special meeting to focus on two things, the proposed Michigan Rules of Professional Conduct and the proposed Attorney Sanction Rules.

And with regard to the Attorney Sanctions, the Supreme Court commentary period ends in November, and they have given us opportunity to discuss this at our special meeting, and we need to do that so that we can have a say in the Supreme Court. And so we are going to devote a portion of our time at the November 14th meeting to that issue.

With regard to the Michigan Rules of Professional Conduct, even today we learned that we
are now going to have a commentary period. This morning we didn't even know that.

So with regard to our November meeting, what we would like to do procedurally is follow what we have set forth in part A, 1 through 7, and with regard to number 7, we are pretty much saying that we have a lot of different ways that we can handle these rules. We can have alternative proposals submitted in writing, we can have majority reports, no majority reports, minority reports. We are setting forth time limits and how we are going to handle that. Rather than going into detail, you have all seen it and had an opportunity to review it, and at this point our intent is to not deal with parts B, C, and D, and just deal with part A.

And we do have one amendment with regard to number 7 under part A for no majority, and this was a friendly amendment that we are going to adopt, something that was submitted from the 6th circuit under 7 (B), no majority, the language would be changed to read: The Assembly shall be deemed to have rejected a proposed rule which received support from more, sorry, from less than 50 percent of the Assembly members present, and then minority report shall be attached as noted in 6 (B) above. That's the only adjustment that
we have made to part A.

CHAIRPERSON ROMBACH: I would just mention that the amendment is actually, for the record, coming from Gerard Andree, member of the 6th circuit. He proposed that action over lunch, and I believe that the powers that be are accepting that as a friendly amendment.

CLERK JAMIESON: Correct.

CHAIRPERSON ROMBACH: Mr. Levy.

VICE CHAIRPERSON LEVY: I just want to stress that this will work, but it will only work if people really start thinking about this and start thinking about November tomorrow. We got a lot of last minute calls for lunch in the last three days. We got people who got here today and didn't know that they were supposed to have called for lunch. That was printed in pretty no uncertain terms at the point of the calendar. I won't accuse, but I suspect that many of those people had not looked at the agenda until yesterday or the day before or this morning, and that's a scary thought if we are going to debate these 61 rules with any type of information.

People need to look at them between now and November if we are going to have an intelligent debate, an informed debate, but with that I would move
the procedural rules be adopted so that we can, in fact, conduct that debate effectively and so that minority positions are reflected to the court when all is said and down.

VOICE: Support.

CHAIRPERSON ROMBACH: It's been moved and supported that the procedural rules in front of the Assembly in part A, 1 through 7, that would be A through D inclusive, as far as under 7, stopping before point part B is now before the Assembly. Is there any discussion on that? Mr. Haroutunian.

MR. HAROUTUNIAN: Ed Haroutunian, the 6th district. I just want to be real clear for myself and for the members that if, in fact, at least as I read this from under the alternative proposals under 7, if someone wants to discuss a specific rule at the November meeting, then they apparently must present in writing and in sufficient quantity to be circulated to all other Assembly members and present a brief summary of the reasons why some alternative should be used instead of the proposed rule, is that correct?

CHAIRPERSON ROMBACH: I tell you what, actually it's not quite that broad. I believe that if you have or are advocating an alternative to the position that is outlined in the package of materials
as submitted by the Ethics Committee, then you need to submit that alternative in writing. However, if you want to be a member of the Assembly, as we all are, and want to come forward and discuss any of the items and say I am against this or I am for this or I have heard Mr. Haroutunian's suggestion as an alternative or amendment and I think Mr. Haroutunian is out to lunch or he is the greatest thing since sliced bread, anyone can discuss it. All I believe the proposal goes to is we don't want to be drafting onsite as far as the alternatives.

Now, if the discussion leads to some other result, then I think that the Chair-Elect and the soon to be elected Clerk would have to take that into consideration, and I am sure that, again, as Ms. Jamieson has stated for the record, this is a work in progress, it's been evolving, as everything in the packet, as you notice we have substituted in for almost everything. That would be the intent, I believe.

MR. HAROUTUNIAN: So that any rule, any rule in November will conceivably, could conceivably be discussed?

CHAIRPERSON ROMBACH: Absolutely. And I guess that's what the intent is of this, but I would
make special mention that the items that have already been submitted to comply with this proposal, the ones that I outlined previously where we have received written comment, alternative suggestions and support, as outlined, the ones I have already outlined for you here today are clearly going to be docketed and apportioned time because these sections and committees have already complied with the rule, and I just want to make sure, because the ACES section has been waiting for a year for us to get back to them. So their proposal already complies with Representative Assembly nomenclature for consideration. So that will be a live issue. That is, again, the ones that I outlined previously. Again, I believe we are in discussion. Go ahead.

MR. HERRINGTON: David Herrington, 52nd Circuit. So I am clear, if we want to submit a letter or a memo regarding any particular proposed rule, can you tell us if there is a deadline or is it too late to do that? For instance, to respond to Mr. Collins' letter, the U.S. Attorney for the Eastern District, if I or another group or someone else would want to discuss a particular rule and have it disseminated in writing, this is not an alternative.

CHAIRPERSON ROMBACH: Right, the alternative
is the key word here. If you want an alternative, then you should do this in advance, and I will let the maker of the motion explain what the procedure would be.

VICE CHAIRPERSON LEVY: If it's an alternative, we are going to have to have it in writing so it can be passed out, even at the meeting. Anything else that you would like to have people have in their hands before the meeting starts so that they can consider it we will circulate. Sooner is better than later. I will get together with Bar staff, determine what that means in terms of an actual deadline, and we will e-mail that out. And if you haven't heard from us by the end of next week, call, because if you didn't get on the e-mail list, we'll have sent it by then as to what we will include in the mailed out packet.

CHAIRPERSON ROMBACH: You may give him more than one week. I think he is being pretty optimistic. At the same time, again, we have gotten a lot of these written submissions, and we are going to have to have all those in front of you, and the ones we have already received, I think the week deadline would be good, but, again, he is full of ambition.

VICE CHAIRPERSON LEVY: I am not suggesting
the deadline is going to be a week. I am saying what the deadline is.

CHAIRPERSON ROMBACH: We may have the deadline, but that's probably subject to change and subject to input from the various committees. Go ahead.

MS. ASSENDELF: Barbara Assendelft, 13th circuit. I just have a question for Elizabeth and maybe Dan too, but part A(7)(C) where it says speakers, they shall identify one of the following positions on a proposed rule. Should you add rejection of a proposed rule? Should that be an option or -- because in B, no majority, we added the Assembly shall be deemed to have rejected a proposed rule. So should rejection be under speakers as well?

VICE CHAIRPERSON LEVY: I think maybe we should change the shall to a should, because we don't mean that to be exclusive, but at the same time we would rather not be presenting to the Supreme Court that the position of the Assembly is that we don't like anything and we have no proposed alternative, so that we would prefer where possible that speakers should be supporting something. But, yeah, if it's a friendly amendment, I would certainly agree to change the shall to a should, because it's not meant to be
exclusive.

MS. ASSENDELFT: Thank you.

CHAIRPERSON ROMBACH: Again, Barb, I think that's going to be accepted as a friendly amendment to the proposal, and I am sure that Nancy will do that on her overhead.

Any other comments? Go ahead, our distinguished member from Lansing.

MS. THOMAS: Laurin' Roberts Thomas, 30th circuit. I think this is another friendly amendment. Under B, no majority, last line be attached as noted in 6 (B) above. I think that's supposed to be 7 (A).

CHAIRPERSON ROMBACH: I will let Mr. Levy and Ms. Jamieson speak to that.

VICE CHAIRPERSON LEVY: I think that's what happens when you make changes late at night. Thank you.

CHAIRPERSON ROMBACH: Thank you very much for your proofreading abilities here.

Again, that's going to be accepted and corrected as a friendly amendment.

Anybody else have any input or discussion on this procedural rule for the special meeting on November 14.

VOICE: Call the question.
MR. PERKINS: Good afternoon, David Perkins from the 3rd circuit.

It's not really to the amendment but just maybe to help, and I don't know if we have the mechanism to put it up on the website, and maybe you can put the comments that come in on the website so other people can see what, you know, some other folks are writing in terms of their comments, and that might help facilitate this meeting on the 14th, because then people won't be coming in blind, and for people who are truly interested they can go to the website, maybe designate a specific area of the website. I don't know how to do all that stuff, but do it that way.

VICE CHAIRPERSON LEVY: The lady who does know how to do all of that stuff is nodding her head that she can. So we will get it done.

CHAIRPERSON ROMBACH: That's an excellent idea, David, and, again, I think that presupposes that we will put it on the website probably first and then try to get it to you in an e-mail fashion and then make sure it's published with the official calendar once the Rules and Calendar Committee have devised that for the special meeting.

Anybody else have any insights to share with the entire group here?
VOICE: Call the question.

CHAIRPERSON ROMBACH: We are calling the question, and is there any objection then at this moment? Hearing none, we won't conduct a separate vote on calling the question. We will move to a vote.

As amended, as far as the proposal that you have in front of you with regards to the special rule of procedure in effect for the November 14th meeting, part A, 1 through 7, all those in favor please signify by saying yes.

Are there any opposed, indicate by saying no.

Hearing none, that passes unanimously. I appreciate your time and attention to detail on that particular matter.

Next we will consider the election of the 2003-2004 clerk of the Assembly. I would like to thank Judge Brown and Ms. Fieldman for coming forward, and I anticipate we will see you yet again November 14th.

(Applause.)

CHAIRPERSON ROMBACH: In your package you have been able to review the credentials of the one nominee who had submitted her name to the Nominating Committee. The committee is forwarding her application. I guess I will have Ms. Lori Buiteweg
stand, and she can turn around for everyone to review a potential leader in the waiting.

Lori, I am not going to go to your nominating speeches. I am sure they would be quite eloquent, unless there is a challenger amongst the Assembly today, because we can take nominations from the floor. Is there anyone that would like to nominate themselves, a loved one, or perhaps a fellow in the Assembly for identification as clerk? Going once, I probably have to do this three times, secondly and third.

Hearing none, I would entertain a motion with regards to Ms. Buiteweg's candidacy.

VOICE: So moved.

CHAIRPERSON ROMBACH: We are supporting, perhaps Mr. Garrison, and seconded that we support unanimously Ms. Buiteweg's candidacy for the opportunity of being the next clerk of the Representative Assembly. If there is no objection, we will move to a vote on the unanimous acceptance of her elevation to that position.

All those in favor please indicate by saying yes.

Any opposed say no.

Hearing none, congratulations, Lori.
(Applause.)

CHAIRPERSON ROMBACH: We would like to present the plaques for the participation of the chairs during this year. Dan, do you want to go over and grab those, and, not having a list in front of me but in no particular order, what I would do at this moment, I would probably acknowledge first Christopher Ninomiya, who is term limited and unable, as I said, to be here today. On behalf of Mr. Ninomiya, I would like to think the academy for the recognition, and I will make sure that the plaque gets forwarded to him.

Next I will probably go with another graduate. Mr. Kantor, if you would step forward and see our able bodied Vice Chair. Again, Allyn spent countless hours of time with regards to special issues. We had a lot of special issues this year, and I know on short notice he convened a very distinguished committee to help him. He is now moving on to the Board of Commissioners.

(Applause.)

CHAIRPERSON ROMBACH: Our next honoree I guess will be Edward Haroutunian. Ed is still going to be with us, but I know he, for the first time in recent memory, having served on the Hearings Committee and probably been our only member still yet alive that
had done so, chaired the committee now this time and
had resuscitated its role to the Assembly contributing
mildly and meeting around the state in pursuit of our
proposal for a dues increase. Ed, thank you very
much.

(Appause.)

CHAIRPERSON ROMBACH: Next we will recognize
William Knight from Lake Shore Legal Services in
Macomb County's 16th circuit for his leadership on the
Assembly Review Committee. He is following in the
footsteps of Elizabeth Jamieson, a very difficult act
to follow. Thank you, Bill.

(Appause.)

CHAIRPERSON ROMBACH: I will go to Lori
Buiteweg. She graduated from the Rules and Calendar
Committee, but you are still entitled to recognition
in that capacity. If you would step forward as well
and see our Vice Chair for your plaque. I know she
has gone done a great job in setting the agenda in
some very difficult times.

(Appause.)

CHAIRPERSON ROMBACH: And finally our final
graduate, somebody that spent more years here than
number of us combined in the Drafting Committee, and I
am not quite sure how we could replace her, but we
have an entire committee to take that opportunity we
have from Genesee County the distinguished Francine
Cullari.

(Appause.)

CHAIRPERSON ROMBACH: Normally we would
recognize people individually, but in light of the
hour and that we had promised to get people out of
here by a time far past, I would just recognize as a
group those outgoing Assembly members whose terms of
service expire at the end of this meeting. Again, I
hope that you forgive me for not mentioning you
individually. It's not that our thoughts and prayers
aren't with you in your future endeavors; however, I
know that I don't want to cast you in disrepute by
mentioning your names for further delaying the
meeting. So thank you very much for your
participation.

(Appause.)

CHAIRPERSON ROMBACH: And, finally, I had
told you that I would allow Dan to seize power. This
is the gavel that has been inscribed to commemorate
his rise to Chair of the Representative Assembly, and
I would like to, on behalf of each on every member
here, commiserate with him for his upcoming year of
service and congratulate him on his achievement. Dan.
(Applause.)

CHAIRPERSON ROMBACH: The man will do an outstanding job for you in the upcoming year.

VICE CHAIRPERSON LEVY: You are out of order.

Is Glenna nearby or somebody else with the attendance slips? We will find the attendance slips and get them out.

VOICE: I think she walked out with them.

VICE CHAIRPERSON LEVY: We will get them to you. Please find them.

Not only is it important that we get the attendance slip, as it always is, so that we can mark you present, but equally important on the attendance slips for this meeting is a list of all of the committees of the Assembly, as well as all of the sections and committees of the State Bar to which we have liaisons. We would like you to go through that and indicate if you have any and wherever you do have interest in a particular area of law, because we do want to have people who are appointed to those committees who are interested in the subject matter. They are the green sheets that are just now coming out and being passed out, so please take that.

In addition to that, my only official responsibility, and it is more a pleasure than a
responsibility as the new Chair, is to say thank you and job well done to the old Chair. I am not going to make that a lengthy process. I gave him the more lengthy version yesterday before the Board of Commissioners.

But the thought that's going through my mind at the moment is I work for the Attorney Generals office, for people who don't know that. I worked under Frank Kelly, the eternal general, and when Frank Kelly stepped down and Jennifer Granholm took over she showed up at the first meeting of the entire staff of the Attorney Generals office as this newly elected, newly appointed by the people Attorney General, and what she did is she brought in this really huge pair of shoes, she dropped them on stage, and she stood in them and says, This is what it feels like. I thought it was funny then. I understand it now, and it's much less funny.

I really thank Tom for the work he has done for the Assembly. I am not quite so sure I thank him for the height at which he set the bar for us for the next year, but I do have from the Bar a plaque acknowledging his service as Assembly Chairperson 2002-2003, Vice Chairperson for the 2001-2002 year, and Clerk for the 2000-2001 year, and it really is
with pleasure that I present it to him.

(Applause.)

VICE CHAIRPERSON LEVY: And do I hear a motion to adjourn?

VOICE: So moved.

VICE CHAIRPERSON LEVY: I hear motion to support. Any objection? Hearing none, we are adjourned.

(Proceedings concluded at 4:32 p.m.)
STATE OF MICHIGAN

COUNTY OF CLINTON

I certify that this transcript, consisting of 175 pages, is a complete, true, and correct transcript of the proceedings had in this case on Friday, September 12, 2003.

October 10, 2003

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