Proceedings had by the Representative Assembly of the State Bar of Michigan at Lansing Center, 333 East Michigan Avenue, Exhibit Hall B, Lansing, Michigan, on Thursday, September 19, 2013, at the hour of 9:00 a.m.

AT HEADTABLE:

DANA M. WARNEZ, Chairperson
KATHLEEN ALLEN, Vice-Chairperson
JANET WELCH, Executive Director
HON. JOHN CHMURA, Parliamentarian
ANNE SMITH, Staff Member
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Lansing, Michigan
Thursday, September 19, 2013
9:15 a.m.

R E C O R D

CHAIRPERSON WARNEZ: I am going at call this meeting at order.

Absent any objection from the floor, due to the absence of Vanessa Williams, Vice Chair, I am going at appoint Kathleen Allen as a clerk who will serve temporarily just for this meeting. Hearing no objections from the floor, so appointed. Kathleen will serve as your temporary clerk for today.

Ms. Temporary Clerk, do we have a quorum for our meeting?

VICE CHAIR ALLEN: We do have a quorum, Madam Chair.

CHAIRPERSON WARNEZ: He have a certified quorum from Ms. Allen, and I would seek to have Chair Kathy Kakish of our Rules and Calendar Committee make a motion regarding our calendar.

MS. KAKISH: Good morning, I am Kathy Kakish from the 3rd circuit. As the chair, I move to adopt the full calendar of meetings that was mailed to the Assembly members on August 20th with the following two amendments. First, in paragraph number 1(B), as what
just took place a second ago, that the appointment of
Vice Chair Kathleen Allen be made on this calendar to
serve as clerk today instead of Vanessa Williams, and
the second amendment is in paragraph number 4, the
presenter of the Unsung Hero Award, Barbara McQuade,
unfortunately won't with us today. In her stead,
Federal Judge Victoria A. Roberts will serve as the
presenter of the award. With these two amendments in
mind, I move to adopt the proposed calendar.

CHAIRPERSON WARNEZ: Thank you. I hear a
motion. Is there a second?

VOICE: Second.

CHAIRPERSON WARNEZ: Is there any discussion?
All in favor of the motion, please signify by
saying aye.

Any noes?

Any abstentions?

Motion carries. Thank you.

Next item of business is approval of the
April 27, 2013 summary of proceedings. Do I have a
motion to approve that summary?

VOICE: So moved.

CHAIRPERSON WARNEZ: I hear a motion. Do I
have a second?

VOICE: Second.
CHAIRPERSON WARNEZ: Is there any discussion?

All in favor of approving the summary, please signify by saying aye.

Any noes?

Any abstentions?

That motion carries. Thank you.

If I may have Mr. Dan Quick come forward, please. As you recall, he is chair of our Nominating and Awards Committee. He will address the subject of vacancies first.

MR. QUICK: Good morning. It's been my great honor this year to chair the Nominating and Awards Committee. In a moment I will move for the admission of five new members of the Representative Assembly. The following agenda item deals with the awards handed out by this body, and let me say in advance of that, it's a tremendous group of individuals who are deserving. It was fantastic to have the opportunity at nominate them.

Let me also thank the members of the committee. Elizabeth Jolliffe, Honorable Judge Nellis, Shenique Moss, Jim Bartlett and Anne McNamara for their fine work this year.

I move for the admission of five members of the Representative Assembly, and I would ask them to
stand, assuming they are within the room this morning. Jim Fisher from the 5th judicial circuit; Carl Collins, III from the 6th judicial circuit; David Eisenberg from the 6th judicial circuit; Thomas Fancher from the 10th judicial circuit; and Adam Tavlik from the 54th judicial circuit. I hereby move for their admission to the Representative Assembly.

CHAIRPERSON WARNEZ: You heard the motion from Chair Quick. Do we have a second on the floor? VOICE: Second.

CHAIRPERSON WARNEZ: Any discussions? All in favor of the motion, please signify by saying aye.

Any noes? Any abstentions? Thank you so much. Welcome to the new members of the Assembly.

(Appause.)

CHAIRPERSON WARNEZ: I am appreciative of Dan and his -- he has graciously allowed me as Chair to take some privilege and to have the honor to introduce the presenters of the awards today.

Our first award that will be given is the Unsung Hero Award. They will be presented by
Elizabeth Jolliffe. I would ask Elizabeth to come forward. As she does, I just want to remind you Elizabeth has been a longstanding member of the Representative Assembly. She has served from 2009 to the present. She has had many years of experience as a commercial litigator and owns her own business now Benchmark Coach, and she is very active, and I admire her energy and I welcome her to present the award here today.

MS. JOLLIFFE: Thank you, Dana. Good morning, everybody.

VOICE: Good morning.

MS. JOLLIFFE: The formal description of the Unsung Hero Award reads as follows: This award will be presented to a lawyer who has exhibited the highest standards of practice and commitment for the benefit of others, and personally I think this award could be presented to hundreds, probably thousands of people locally in our profession here in the state of Michigan. But it's called the Unsung Hero Award.

What's an unsung hero? I looked it up in the dictionary, because I wanted some trendy new definition, but it turns out an unsung hero is someone who does great deed but with little or no recognition. Kind of reminds me of the lion from the Wizard of Oz,
Back where I come from there are people who do nothing but good deeds all day long and they are called good deed doers.

My former partner, Jim Brenner, at Clark Hill is the quintessential unsung hero. He has been an excellent corporate defense lawyer and appellate lawyer for more than 40 years. He has been representing his clients successfully, steadily and quietly for that time since he graduated from University of Michigan Law School in 1972. Because I worked with him and with so many people who worked with Jim, I know the way that he practiced and his professionalism, and the results he obtained quietly for his clients. That's not why I nominated Jim Brenner for the Unsung Hero Award. It's because I think his greatest accomplishment is what he has been doing since 1989.

He has been representing criminal defendants on death row in the final processes of their appeals, and he has been doing this pro bono, and Jim hasn't been one of those pro bono lawyers that's always on the pro bono soap box and saying do pro bono work, do more of it, you can get more clients, it's great for your career. Jim has been doing that quietly and steadily because he believes that these defendants
deserve the effective assistance of counsel, in fact they were denied, and that's what he argues in these cases, the effective assistance of counsel in their trials, and they were ultimately sentenced with the death penalty.

Jim since 1989 has actually only handled three of these cases, but he has been successful in all three of those. The first one was out of Tennessee, and it took 17 years and he reversed the death penalty. Unfortunately, I believe, and Jim can correct me if I am wrong, his client died before they were able at get a result on the overturning on the underlying conviction.

His second case from Texas he was also successful in overturning the death penalty. And in his third case, which he received in, I think, 2007 he was also successful in reversing the death penalty, and right now they are working on overturning the underlying conviction, and in that case, and Jim may talk a little bit more about this, they are fighting the prosecutors, somebody hid or suppressed a videotape that would have been very compelling, and for 16 years I think it is in that case.

Jim has been doing this work very quietly. The firm, and I know this personally, was not the kind
of firm that trumpeted Jim's success in these cases. He didn't get tons of press. The firm didn't try to get a lot of press out of Jim's work. We didn't always say to new summer associates, people we were recruiting, Go see Jim Brenner, he is an excellent example of the kind of pro bono work we do here at the firm.

Jim has just been doing it steadily and quietly with the assistance of a few other people in the firm all these years because he believes in it. He is an excellent lawyer. He believes in the pro bono work. He believes in these cases. He has also been the chair of the Wayne County Neighborhood Legal Services for more than ten years. He continues to be that chair. He does that quietly as well. I know he is very proud of that work and that that work is very significant to him, and I know that makes a difference for a lot of us in the Wayne County area.

A hero as we think in the movies or on TV, there is a lot of fanfare, there is a lot of glory, oh, he is our hero, but an unsung hero, we don't know that that hero is here amongst our midsts. I am just so proud to be able to have nominated him and for him to receive this award and to ask him to come up and receive this award, Jim Brenner.
(Applause.)

CHAIRPERSON WARNEZ: Representative Assembly presents the Unsung Hero Award to you, and we congratulate you and celebrate you. Thank you for being with us today. Thank you very much.

(Applause.)

MR. BRENNER: Let me begin by thanking you for the kindness and generosity you have shown in giving me this award. I accept it, I deeply appreciate it, and will hold it in a high spot in my heart the rest of my life.

Let me quickly add, however, echoing what Elizabeth said, that I understand that I really accept it in a representative capacity, because in this room, in the corridors of this building at this moment, in the streets of Lansing, in the courthouses and the law firms and the offices throughout the state there are many lawyers in this state who are more deserving than I am of this award. So, again, I accept it in a representative capacity.

Let me next note that death penalty defense work is something around which we can all rally, even if we are opposed to the abolition of the death penalty. Whether you are for or against the death penalty, I think we can come together and agree that
an individual facing that ultimate penalty is entitled to good legal representation, and that is what is lacking in this country, unfortunately.

Pro bono death penalty defense lawyers come in at the stage of post-conviction relief, after the trial, after direct appeals have been exhausted, and that is because in all the states I am aware of, including Tennessee and Texas where I have had cases, there is no provision for appointed counsel in the post-conviction phase. So either the defendant has to find resources at retain and pay counsel or pro bono volunteers have to step forward to provide that representation.

As Elizabeth indicated, the American Bar Association runs a project called the Death Penalty Representation Project, and in that project it looks for pro bono counsel to come in, and that's how I got involved in this work in the first place.

I won't go into the details of the cases, but obviously, since the three cases have had the death penalty reversed, there was something seriously wrong in the representation of those cases at the trial and the direct appeal level, and if volunteer lawyers do not step forward and undertake this work, then there are going to be individuals on death row who may go to
their death because they didn't get representation
that at least would overturn the death penalty, if not
the conviction itself.

So this is important work that we can all
share in and it's work that I think we can all support
whether we are for or against the death penalty
because we are all, as lawyers, for proper
representation of anyone accused of a crime, and
that's what this is all about.

So I thank you again for your conferring on
me this high honor, which again I accept in a
representational capacity, and I wish you all a good
day. Thank you.

(Applause.)

CHAIRPERSON WARNEZ: You Awards Committee
also has prepared and allowed us to give a second
Unsung Hero Award, so to introduce the presenter, at
this time I would ask Judge Victoria A. Roberts to
come forward. And as she does so, I will tell you a
little bit about her. She was born, native person
born in Detroit, undergraduate of the University of
Michigan. She received her jurist doctorate from
Northeastern University. She has had a wealth of
experience both in private practice as a research
attorney and she was appointed by Bill Clinton to the
federal bench in 1997 and confirmed unanimously in 1998. She was our 62nd president of the State Bar of Michigan, the first African American woman to receive that honor. She has been honored from Michigan Lawyers Weekly as a Lawyer of the Year. She has received the highest awards from the State Bar of Michigan, the Roberts P. Hudson Award and the Champion of Justice Award.

She is committed to service every day, whether it's with the local neighborhood club needs understanding of our judicial system or at ceremonial high functions like this. So we are honored and privileged to have you here today. Thank you for being here.

(Applause.)

JUDGE ROBERTS: Good morning everyone. I am so pleased that Barbara McQuade couldn't be here. I really am.

So if you read definitions of hero, they often include the word man. I was really startled by this. One such definition is a man admired or idealized for courage or for noble qualities or for brave deeds. Such definitions are a known throwback to the days of mythological or legendary figures or warrior chieftains with tremendous strength or
abilities, since the first usage of hero dates back to the 14th Century.

The definition has certainly expanded since then to capture women who have distinguished themselves by exceptional courage and fortitude. Still, we sometimes limit our view of a hero to someone who rushes in to fiery buildings to make heroic rescues or someone who will swim against the tide to rescue a child who is drowning. We think that these are the only moments of glory that can survive into the memories of our descendents. That is why the decision of the State Bar of Michigan to honor unsung heros is such a service to the Bar and to our community.

We need not look as far back as battlefields and raging fires to see the heros in our midsts. Anyone who acts courageously, sometimes in the face of danger, but not always, to accomplish good can be a hero. And their good works and their good deeds are worthy of a place in history.

Elizabeth Stafford is such a person. She is a woman of courage, of strength, not just in her line of duty as an Assistant United States Attorney, but beyond.

I have had the privilege of knowing Elizabeth
since she was in law school in the early '90s. She was hired by my law firm Goodman, Eden, Millender & Bedrosian to be an intern, and we didn't hire many interns. It was a very small boutique firm, and we were very selective in the people that we hired, but Elizabeth was one of them. And she distinguished herself there and became one of our associate attorneys. Again, we didn't make that many hires, but an offer was extended to Elizabeth, and she accepted it.

I was so impressed by Elizabeth's work as an associate that I hired her to be one of my first law clerks when I became a federal judge in 1998. It was sort of the blind leading the blind, so to speak, because I had never been a judge, and I can remember we had a trial maybe within a week of when I went on the bench and did not know what to do as a judge. But Elizabeth and I sort of faked the punt. We sat with those lawyers and pretended like we knew what we were going to do, and when they left at 5:00, we looked at each other just totally bewildered. Being on the other side of the bench was just a little different.

But I came to depend heavily on Elizabeth, on her intellect, on her drive, on her organization skills and dedication to excellence and to service.
She was an integral part of the rapid development of an effective and efficient docket in my chambers, and it was my loss when she decided to join the United States Attorney's Office in 2003, where she again has provided outstanding service and dedication to the United States.

I can attest to that superior service.

Ironically in the ten years that Elizabeth has been at the U.S. Attorney's Office she has tried more cases in front of me than she has in front of any other judge in the bench and no single lawyer has tried as many cases before me as Elizabeth has. So it seems like we are just sort of bound at the hip forever.

In her letter nominating Elizabeth for the award United States Attorney Barbara McQuade mentions that Elizabeth was in trial when she broke her shoulder on the way to court one morning. That trial happened to be in front of me. And in pain Elizabeth insisted that we go forward. It was the last day of trial. There were witnesses who needed to be cross-examined. She was delivering a closing argument, and she stayed. She continued that trial.

Dedication, commitment, excellence, perseverance, those are all qualities that Elizabeth possesses.
Elizabeth has not been content to work 9 to 5 and to go home to her family. She has managed to raise two lovely, accomplished and impressive children, and in so doing she has given them a bird's eye view of what it means to be a selfless hero.

Elizabeth has worked passionately on behalf of young people who are not her own and fighting for the rights of those who have been discriminated against, and yet you might say that Elizabeth has made it, but she understands completely that until all of us are free from the burden of discrimination none of us is completely free.

She has worked passionately on issues of diversity through the auspices of the Federal Bar Association. She has participated in programs through the National Association of Federal Judges of Color Just the Beginnings Foundation to educate high school students about the law and to open up to them the possibilities of becoming lawyers and maybe even judges. She has now spearheaded a pipeline effort to open the legal profession to persons of color at all levels.

She is a mentor, she has approved mentors, she is a teacher, she is an exceptional lawyer and an exceptional person. She develops and provides
opportunities for others.

Elizabeth has certainly done great deeds for little recognition. I believe that that will change. The door needs to open to allow in more than the cast of usual suspects for the awards that honor principled leadership and unselfish and extraordinary service performed in a spirit of self-sacrifice.

Elizabeth will walk through that door wearing her badges of service, integrity and adherence to the highest principles and traditions of the legal profession. I have no doubt that in the not too distant future the State Bar will honor her with its highest awards, the Champion of Justice and the Roberts P. Hudson, never more to be an unsung hero. Congratulations, Elizabeth.

(Applause.)

CHAIRPERSON WARNEZ: It's my privilege to give you this. Thank you so much. Welcome, congratulations.

MS. STAFFORD: Thank you.

I want to begin by thanking the Representative Assembly. I really appreciate this award. It was not something that I was expecting, but it does mean a great deal to me. I want to also introduce and thank my unsung heros. Many people came
today to witness this honor. Of course, starting with my mother, Shirley McIntyre, who holds a master's in social work and was not only a loving and outstanding mother, but in the 1980s, at the height of the scare, AIDS scare, my mother moved in to assist people who suffered from HIV and AIDS infection.

My sister, Linda Givens, is a nurse for Blue Cross. That is because she is a nurturing person. You might have heard of her, some of you in the Eastern District of Michigan. There was a commercial that was on the radio and a customer for Blue Cross described Linda as her angel. She is an angel for all of us in the family.

My sister, Donna Williams, is here with her husband, Walter Williams. They have raised four wonderful, outstanding children. Today is Donna's birthday, so please everybody say happy birthday.

Donna taught me the spirit of giving when I was a little girl when she took my toys and gave them to the family across the street, and when I confronted her about it, she explained to me that they were really poor and they really were needy. And years later she said, Well, I never explained to you why I didn't give my toys away.

But Donna has been a leader in the nonprofit
community building area for many years, and she is now
president of the Youth Development Commission -- I
hope I am saying it correctly.

My husband, Carl Stafford, with whom we have
raised two wonderful children, is here. I met him in
August of '91, and I will explain later why 1991
really did change my life. After I graduated from law
school in 1993, my beloved grandmother,
Mother Cheaber, said, for reasons that none of us
really understood, Thank God for Carl, thank God for
Carl. And we are all like, Why is she saying it like
this? But in truth, my grandmother knew what she was
talking about. Thank God for Carl Stafford. He has
truly been my best friend, the love of my life, and
just the most outstanding husband, father, and family
member to my other family members.

I so appreciate Stephanie Davis, the
Executive Assistant U.S. Attorney who is in the back
there who came to support me. I gave her a title, but
in truth she is one of my dearest friends. She is
someone who I turn to when I need to check my
conscience, to see whether what I am doing is the
right thing to do. She is highly intelligent, but
even more so just a very, very good person and a dear
friend to me.
I feel so blessed to work in an office where the U.S. Attorney values my work so much that she thought of me to nominate for this award, and I think that not only receiving the award, but the people who nominated me for this award mean so much to me. Such high caliber people. Barb was, I think, officially the nominator, but I know that Judge Roberts was also supporting it, and I have to tell you, as I said, 1991 was quite a year. I walked into a job interview with an attorney named Victoria Roberts, because I needed a job. I had an apartment, I had a car, I had to figure out how I was going to pay for that, and little did I know that, as Ms. Roberts said, we would be basically joined at the hip for the rest of my career, and it just has, that one interview just changed my life forever. I have learned so much from her, both as a person, as a lawyer, as an activist, and as someone who I want to live the image of.

It was so funny that trial that we had. We were sitting there and court was supposed to start, and I was just sitting, you know, and Judge Roberts said, I think you are supposed to say, All rise. And I hadn't been on that side before. I was waiting for someone else to do that. We really were Keystone Cops, but it really did work out.
The older I get, the more I do realize how much I am a product of my family. The sound track of my youth is voices talking over one another, usually at raised volume, debating and dissecting every issue under the sun. I have a snapshot in my head of holiday dinners with my grandmother, my mother, my aunts and uncles, sisters and cousins. Everyone is animated, everyone is fighting to make his or her point. And as a result of growing up in this type of family where debate was always lively, all of my sisters and cousins and I share a rich foundation and language in debate. It was fed to us at the kitchen table, or the dinner table. Unfortunately, too many children do not grow up with that type of foundation, and that's one of the barriers that prevents children of color from becoming lawyers.

Nationally, although the country is about 63 percent Caucasian if you exclude the Hispanic whites, the legal profession remains 90 percent Caucasian. It's worse than other professions, including doctors, engineers, and Michigan is no better. African-Americans in Michigan comprise about 14 percent of the state's population, but only about five percent of the lawyers in the Eastern District of Michigan and about three percent in the Western
District of Michigan. The situation is even worse for Hispanics. Hispanics comprise about five percent of the state's residents but only one percent of the attorneys in both the Eastern District of Michigan and Western District of Michigan.

The projections are that trend will continue or even worsen, although the country is becoming more and more diverse, and that is a problem. I will quote from the 2010 ABA Commission on Diversity report, which states, Without a diverse bench and bar, the rule of law is weakened as the people see and come to distrust their exclusion from the mechanisms of justice.

The steering committee members of the newly formed Metropolitan Detroit Pipeline Coordinating Council hope to reduce the language and analytical skills deficits of children of color within the Detroit metropolitan area with programs focusing on skill building, mentoring and guidance. I encourage each of you to do your part to help strengthen the diversity of the mechanisms of justice.

I also want to acknowledge three people here today who I worked with very closely and have been dedicated to bringing diversity to the bar. One is Dan Quick, who was the co-chair of the Diversity
Committee with me for three years, the Federal Bar Association Diversity Committee. Marcy Rosen, who is currently a co-chair with me and has been for the last three years I believe, and Greg Conyers, who you all probably know as the Director of Diversity and, of course, that's what he is, but I also think of him as my friend from the 8th grade and high school and college as well. We have blackmail stories.

We lost Mother Cheaber in 2006. In honor of what would have been her 101st birthday, I posted a photo and tribute of her on my Facebook page on Tuesday, and a friend wrote the following. She said, I just love the way you honor the wonderful women in your family, especially by the way you live. You are doing her life and memory great justice. I am sorry.

I cannot receive a greater compliment. Thank you all.

(Applause.)

CHAIRPERSON WARNEZ: We are now moving on to the Michael Franck Award. I'd ask presenters Stephen Gobbo and Valerie Newman to come forward, and as they do I would like to just feature a little bit about our presenters. Stephen Gobbo is, as you know, our past chair of the Representative Assembly. He has been very active with the State Bar in the Prison and Correction Section and the Criminal Law Section.
Through his leadership, as you know, he has successfully guided the proposal to defining the unauthorized practice of law and he is currently serving on our Board of Commissioners. Steve, please come forward.

Ms. Newman, for those of you who don't know, Valerie, worked at the State Appellate Defenders Office. She is a long-time friend of mine. I met her first as a very young lawyer through the Woman Lawyers Association of Michigan. Val was honored last evening with the Champion Of Justice Award for her work in advocacy, especially her representation in the Lafler case at the Supreme Court in which the New York Times reported that the decision that Valerie successfully advocated for was the most important criminal justice decision since Gideon versus Wainwright. We are very, very privileged to have both presenters here to present the Michael Franck Award.

(Applause.).

MR. GOBBO: Good morning to you all. It's a pleasure coming back to the Representative Assembly for this particular award presentation. You have materials in front of you, so I am not going to go back and reread what's there, but I would like to begin by telling you all about what the award, Michael
Franck Award, stands for.

   Michael Franck is a past executive director of the State Bar of Michigan, but, like Marty, Martin P. Krohner, who is being honored today, he was much more than that in terms of a person. He and I probably share something in common, and that is the New York City roots.

   Michael Frank was essentially a chief litigator for the New York City Bar Association's Grievance Committee before he left his mark with the ABA, as well as the State Bar of Michigan.

   Upon Michael Frank's, actually prior to Michael Frank's death in 1994, the ABA bestowed upon him an award for professionalism and ethics, and that's an award that the ABA still presents to this day. In naming that award, they described the award as someone who practiced law as a higher calling of justice as a defendable right, and public service as a beacon of a life's work.

   Marty certainly exhibited that. Associate Supreme Court Justice Oliver Wendall Holmes in a 1913 speech to the Harvard Alumni Association, Class of 1961 said, Life is painting a picture, not doing the sum. And you will find in the reading material that supports the award that Marty certainly did not just
add up what he did throughout his life. It's others that are kind of doing the accounting, but Marty was actually painting the picture for going forward, and some of the projects that he had worked on through the State Bar of Michigan will continue to go forward, including the Indigent Defense Project.

I would like to take this opportunity to have Val Newman come up, because she and others had worked with Marty very closely.

MS. NEWMAN: Thank you, Steve, and thank you, Dana, and I neglected to thank Dana last night for nominating me for the Champion of Justice Award, so I take a point of privilege and thank her now. Very, very great honor.

Marty's wife, Linda, is sitting in the back, and we were chatting a little bit before we came up here.

How many knew Marty? He was in the Representative Assembly for a long time. Just by a sort of show of hands. Not that many.

So Marty really had a very, very rich and interesting history, both as a person and with the State Bar, and one thing Linda said to me when we were chatting was, when Marty and I first met each other, we weren't sure what to make of each other, and Marty
felt the same way and I felt the same way, because he was a lifelong prosecutor, had worked for the sheriff's department after he left the prosecutor's office, had been very active with Mother's Against Drunk Driving, and I was a lifetime defender, and we sort of had maybe a little bit divergent views on the criminal justice system.

And we spent many, many car rides together. Marty loved to drive, and so I was very fortunate, because we lived near each other, and he became my chauffer for many, many years at the State Bar activities and meetings that we drove up together, and we really formed an incredible friendship. I loved Marty and miss him. I knew I would do this. Sorry.

He was always so proud of everything that I accomplished, and I learned so much from him. He had an incredible perspective on the justice system. He was a prosecutor's prosecutor. He understood the importance of fairness and justice in the criminal justice system. He knew that prosecutors, and understood and believed to his soul, that prosecutors had a special duty to ensure justice in the criminal justice system, and he was just, he was integrity through and through, every morsel of his body, and committed to making the criminal justice system a much
better place.

He worked hard. We co-chaired the Criminal Issues Initiative. He sat with me on Defender Systems and Services. We were on criminal issues initiatives together. We championed the custodial interrogations bill together, which the governor signed into law last year which mandates recording of custodial interrogations in serious felony cases. It was a huge, huge, I say victory for the system, because it's transparency and fairness to the system.

And Marty made the transition. Some people say, Well, you know, prosecutors and defense attorneys, not always the smoothest of transitions. Marty made that transition like he had been a defense attorney his entire life. We would talk cases all the way up to Lansing and all the way back home. He would run through my brain everything he was working on looking for ideas, looking for suggestions, how he could do things better.

You know, most defense attorneys might visit a client once or twice if they are in jail. Marty would go repeatedly. He had clients, he just cared so deeply about everybody he represented and did his very best and would get so mad at the system now that he was on the other side of it. You know, how can they,
how can these things happen? Just didn't understand
it. I said, Suck it up, Marty. I have been living it
for 20 years.

We just had to work to make things better.
It required working together to make things better and
make an impact. This is a very high honor, and I want
to thank the Representative Assembly, and I know
Linda, I think Linda wants to say a few words, so you
can come up any time. Because, you know, he really
deserves this honor. I wish he was here to receive
this honor in person. He was really a great man and a
great friend. So thank you. Linda will come up.

(Applause.)

MRS. KROHNER: Well, how do I follow that? I
am in a roomful of lawyers, and I am not nearly as
articulate and well spoken as any of you, but I can
tell you that Marty was so proud to be an attorney.
He was so proud of the profession and, as Valerie
said, when he started defending indigent people, I
would question him and say, Mart, you know, they are
paying you for two jail visits, and you can imagine
what they were paying him, and he said, It's not about
that. Everybody deserves a good defense. He said, I
treat people the way I want to be treated.

And I remember one Thanksgiving he had a
client who was in jail, and he was going on his fourth or fifth visit, and he said, I wouldn't like to be sitting in jail without my attorney coming to see me during the holidays.

Marty loved all of you. And I know that he is watching, that he is really proud and he is really delighted. We all miss him every day.

Every now and then he would give me the privilege of -- I was an English major -- editing some of his briefs, and I would say, Well, why are you saying this again and again? He would say, I am trying to make a point to the judge.

So of course I was so proud of him, and I am so proud of this award, and I am so proud that all of you gave this to him, and I just hope that he knows, because he would be beyond thrilled. Marty was the kind of man if you offered him millions of dollars or being honored by his peers he would have taken the award. Thank you all very much.

(Applause.)

CHAIRPERSON WARNEZ: It's time for a break. I think it's appropriate that we take -- I know we are running a little bit behind, but I do think we deserve probably a ten-minute break, so I expect everyone back at 10 after 10. Thank you.
(Break taken from 10:03 a.m. to 10:19 a.m.)

CHAIRPERSON WARNEZ: I will call the meeting back to order.

On your agenda, this is my opportunity to make some remarks, and while I don't believe I need ten minutes, I do really want to take a chance to say a few things, make sure nothing goes unsaid from my heart to you and to the people who made this year so special for me.

First of all, I want to just once again just point out the fact I was so moved by the awards today. Wasn't that wonderful this morning? Everyone give them a round of applause, and maybe give them a standing ovation at this point in time, which they deserve. So let's stand up and thank all the award recipients.

(Standing applause.)

CHAIRPERSON WARNEZ: Thank you. Those award recipients today certainly reminded me about what the opportunities each of us have by virtue of our training and profession to make a difference in the world, a difference to our clients, whether they are popular or unpopular, a difference to those in need who truly need someone to have a voice for them, a difference to each other, if you think about the
mentorship that is available in providing a service, that's a key, key part of why we are here, and a difference collectively, this body collectively makes a difference. So I hope that you feel the same way, and I just want to tell you that's certainly how I feel after watching the awards ceremony.

I encourage you when you go home a month from now and get back to the grind and you may find yourself in one of those bad days, frustrated and tired and just what the heck am I practicing law for, which I am sure we all have a few of those, just think about James Brenner or Elizabeth Stafford or Marty Krohner. Our days are limited, and we should make the most of them, and even on those bad days, you make a difference. Just sitting in those seats today, by participating, you really do make a huge difference.

I am grateful to have been your Chair this year. I want to thank some people. I promise it won't be like an Academy Award speech, but I just want to be sure to put out some thank yous in the world.

To all the R.A. leaders, past and present, who currently serve, have served, who are in the room, who are not in the room but in our hearts, I am so grateful to have watched this, people leave this
Assembly. It's helped me as I faced each and every phone call, meeting, challenge, fear, so I am grateful for every person who stood here before me. We stand on each other's shoulders as we do this work.

I also want to look back to those people who are in office with me. You are going to be in excellent hands when Kathleen Allen is sworn in today and takes over the chairship. She has been by my side for everything, and a most ardent supporter, and I am so appreciative of everything she has done throughout the year.

Vanessa Williams, unfortunately with her work obligations couldn't be here, but likewise she will also do an excellent job on your behalf.

I want at thank the staff of the State Bar of Michigan. You are tremendous people. Caring, diligent, professional people who are ready to serve and help at the asking. All any of you have to do if there is a question or concern, pick up the phone, call Anne Smith. You will have assistance at the ready in a moment's time.

I specifically thank Anne Smith for all your hard work, not just this year, but for the past 11 years in serving the Assembly. Without Anne we would be lost, and I just want to thank her for everything
she does.

I want at thank Dawn Evans for her hard work on the Inventory Rule last year and this year and, despite this body not adopting the rule as proposed, I think the end results made all of us aware of the issues and concerns that we might not have been otherwise aware of. I do think the need for those issues to be addressed will continue in the future. I don't know when, but I am certain they will raise their heads again in some shape or form.

I want to thank Anne Vrooman and Gregory Conyers for helping the Assembly as they constructed the Diversity Inclusion Survey to help us to include questions to you as members of the Assembly so we can have feedback about how to keep this experience meaningful.

Of course there are other people in the State Bar as well that are always at the ready, our Executive Director Janet Welch, Candace Crowley, Marge Bossenberry. They provided additional guidance and support that I am very grateful for.

I am sorry. This has been a tremendous, tremendous experience. I recommend it to everybody who cares about what they do and cares about the State Bar. You will exponentially increase your
understanding and knowledge and passion for law should you choose at come up and serve in a leadership position.

I extend my personal thanks out to my family and to my partner, Mary Vogel, who have made this year possible for me while I am here and away each of those people. Florence Schoenherr-Warnez has worked very hard, harder than she should have to keep professional life going, and Mary has kept me sane. So all I can do is just tell you my honest and heartfelt thank you. I've been an honor and a privilege.

Going forward, there is a housekeeping matter I have been reminded of. If you haven't registered at the registration desk, you should. When you do, you will receive your passport with the vendors. If you visit the vendors, they can stamp your passport, and by the way, I will tell you, the Macomb County Bar Association last year, of which I was president last year, 16th circuit, I don't know how this happened or how it came about, but we did a passport at our county bar last year, so if you made it to our events you could get your passport stamped. So I do feel perhaps I forged another part of your life today in some way, shape, or form. Get your registration, get your passport, please visit the vendors. You may be
qualified for prizes and things.

I believe that's all for housekeeping. I just want to double check with Anne. Is there anything else you need me to make anyone aware of? Nope. Okay.

With that being said, I just want at welcome our next speaker and welcome the outgoing president, Bruce Courtade, to the podium to make his remarks.

(Applause.)

PRESIDENT COURTADE: Good morning, everyone, and Janet has learned to fear this moment, because this is when I go off script. I want to follow up on something Dana just said, and that was the awards ceremony, the recipients who were here, and I do this out of love and out of respect, so please take it that way.

I don't know how many of you have read To Kill a Mockingbird. One of the most poignant scenes in To Kill a Mockingbird was after the trial was over, and you know how the verdict came down, and Aticus Finch is putting together his briefcase and his daughter is up in the gallery with all the African-American citizens who could not be on the main floor, and she remained seated and everybody else stood as Aticus walked out. And the pastor who was
next at her said, Stand up, Ms. Jean Louise, your father is passing. He imparted on her that she had to show the respect that her father deserved.

And when I was sitting in the back hearing about the amazing things that these award recipients had done, knowing two of them, I was a little disappointed in the Assembly, because when these people who you chose to honor and you said they had done such amazing things that they deserved to be recognized, when they were recognized, nobody stood. If these people are worthy of your honor, they are worthy of standing up when they are honored, so please keep that in mind.

That was just something that -- you know, I know we belatedly stood, but they are not here to receive the respect, so please keep that in mind.

Now on to something lighter. I do want to thank you for the honor of serving as your State Bar President for the last year. It has been an amazing experience, one that until you walk in these shoes you cannot understand. I know Dana just mentioned how much you learn about the Bar and how much you feel you are more involved, and I can tell you that my respect for lawyers and the legal profession was heightened ten fold the last 12 months.
I encourage you all. You are already involved with the Assembly. Become more involved, become more engaged. If possible, consider going for the Board of Commissioners and then maybe some day getting into the chairs, because I can promise you there is nothing more enjoyable that you will do involving your profession. It's a way of giving back and a way of learning so much more about not necessarily what's going on in your practice but our profession. I want to thank you for your hard work on the Assembly this year and in years past. I want to thank you for your service to our profession in general.

It has been a crazy year. I have traveled extensively, talking to lawyers and judges from around the state. When the year started, one of the first things that hit, I don't know if you remember this, was the Bar exam results, and dealing with the blowback from all quarters/corridors on that. The law school deans were upset with the Bar exam, the Board of Law Examiners taking heat saying that they had not done anything wrong, the law students who were upset because they had failed after becoming $120,000 average in debt, so that's how my year as the president started out.
It was something that forced me to get up on my feet quickly, learn about an area, frankly, that I knew nothing about. The State Bar was not actively involved in the examination process, was not actively involved in anything, other than calling together the parties, getting them to talk, and most of all insisting that there be transparency in the system.

That's the one thing I heard as I went around the state from the lawyers, that they didn't necessarily care about the results, they just wanted to make sure that the process was open and fair. So that's why your State Bar is advocating for that position, and I am glad to say that is one that has been adopted by the parties. There is still not unanimity of thought among the law schools and among the BLE, but they have at least professed at this point it will be a lot more transparent than it has in the past.

We also heard shortly after I took office about a hue and cry coming out of mainly Oakland County regarding the dark money in judicial campaigns. For those of you who aren't familiar with it, in that campaign there was a total of $2.8 million spent on the campaign, roughly $700,000 of which was raised by the incumbent candidates, the slate of five judges who
were running for reelection, and just over $2 million
that was donated by an anonymous individual to run
issue ads opposing the incumbent.

We heard loudly and clearly that the
profession did not like the presence of dark money in
judicial campaigns, so I appointed a work group that
was bipartisan, that was as diverse as possible among
the board -- young, old, women, men, litigators,
nonlitigators, republicans, democrats, far left, far
right -- and I asked them to look at it. By the way,
Tom Rombach is here, and Tom was gracious enough to
chair that work group. They came back with a report
to the Board.

I don't think it went as far as some people
wanted it to go. Some people, frankly, wanted sort of
a truth squad where if anybody ran an ad the State Bar
would be jumping in saying whether it was true or
false. We did not go down that road, and I am glad we
didn't, but what that work group did, it came back and
said that the State Bar feels that it is important to
have clarity and disclosure in judicial campaigns.
And I mention that specifically to you, because this
body played an integral part in that, because this
body in September of 2010 voted unanimously to support
full disclosure in judicial election campaigns. So
relying in large part on the work of this body, that work group came back and said it ought to be a top priority for the Bar.

Without a doubt a highlight to my presidential year was in July, when on July 2nd I actually was on vacation, drove down from Walloon Lake, made a stop at the Mt. Pleasant Meijer, or the Cadillac Meijer's, to buy some of undershirts, because I hadn't packed any, and appeared at the Indigent Defense bill signing. So Governor Snyder, after the State Bar had been working for more than ten years to have improvements made to our indigent defense system, Governor Snyder signed the bill on that day which authorized the creation of the Indigent Defense Commission. And this is a huge first step for assuring that the promise of Gideon versus Wainwright becomes reality and that every person who is charged with a crime who is facing jail time will have the right to adequate counsel, and not only will they have the right, but it will be a reality in the state of Michigan where it has not been. So that was definitely a highlight of the year.

And then the last, you know, the old philosophy with going out with a bang and not a whimper relates back to what I mentioned earlier about
the Oakland County Circuit race. On September 11th, the State Bar, Janet Welch and I cosigned a letter submitted to the Secretary of State asking her to revisit a 2004 letter issued by one of her predecessors which allow dark money to be used in issue advocacy ads in judicial election campaigns.

Our position is that the prior letter which was written in 2004 may have been correct given the state of the law at that time but that since that time there have been three United States Supreme Court cases, including Citizens versus United and the Caperton decision, which clearly indicate that there is no place for anonymous issue ads in judicial election campaigns.

So we have initiated the formal process asking the Secretary of State to revisit that and hopefully change that ruling so that hopefully in the next election cycle we will not face the specter of the ever-increasing dark money going into judicial election campaigns. It's too important that the public knows that justice is not for sale in Michigan. It's too important that as litigants going into court you have the right to know whether the other side has donated millions of dollars in dark money to get that judge elected so that you as a lawyer would know
whether or not to seek recusal of that judge. I think it's common sense. I think that it's overwhelmingly supported by the public. The most recent polls were that 96 percent, maybe it was 94 percent, of the public support full disclosure of judicial campaigns. Seems to me the only people who are opposing it are those who benefit from the dark money.

I am aware that there was a letter in the Detroit News today taking a contrary view and accusing the State Bar of wading into political waters. I can assure you this is not a political issue. This is a policy issue. It is a justice issue.

As I mentioned in one of the radio spots that I was interviewed, I am a Kent County republican. I do not look at this as an "R" issue or a "D" issue. I look at this as a capital "J" for justice issue.

So the public comment period is now open. You can comment to the Secretary of State's website. If we don't have it yet, I am hoping that we can get a link on the State Bar website so you can go to the State Bar website, click on that and leave your public comment with the Secretary of State. I encourage you to do that. This is an issue that I think will make a significant difference in the way that we choose our judges -- fairly, openly, and honestly.
I want to thank your Assembly leaders. It has been a true pleasure working with Dana. Dana and I go back to when I was a young lawyer, I think, so she was probably rolling around on a tricycle, but she has been an outstanding leader, an outstanding advocate, and it was a combination of serendipity and just great good fortune that I had the opportunity of being State Bar President when she was Assembly clerk.

Kathleen Allen and I are both from Grand Rapids, but one of the benefits of being involved in State Bar activities, until we were on the Assembly together, I never knew Kathleen Allen. I now count her as a close friend, and she is a close friend to the Assembly, a great advocate for the Assembly and will do a wonderful job as your leader next year.

And I have just gotten to know Vanessa this year, and, again, I can't speak highly enough of her. She is going to do wonderful things.

But your leaders are only as good as the support they get from you. So I encourage you to help them out, give them ideas. Remember, judicial campaign disclosure was an idea that started in this body. Come up with ideas like that. Come up with ways to make our practice better, our profession better. That is the vital role that this body fits no
better than any -- it is the best role for this body. Nobody can do it any better than this body.

I covered my watershed. I don't know if I have used my full ten minutes. If anybody has any questions, I would be happy to answer them either now if we have time or I will be around, so look for me. Thank you very much for the honor of being your president.

(Applause.)

CHAIRPERSON WARNEZ: Thank you, Bruce.

Next up is our esteemed executive director, Janet Welch. I welcome her to the stage and to the podium to make her remarks.

(Applause.)

EXECUTIVE DIRECTOR WELCH: Good morning. I want at say a word or two about the immediate past president of the State Bar of Michigan. He has been an extraordinary president. I would say almost perfect, but he has two flaws, one of which is very pertinent right now. The first flaw is that -- and these really are personal to me. They relate to the world of the executive director and the president. First one is that he often made me laugh inappropriately. That's not relevant right now, but what is relevant is that the other habit that he had
is that he would speak so eloquently and so on point about matters that he would leave me nothing to say, and that's what he has done right now. But he has also used up most of my time, so that's fine. So I can be brief.

But I do want to underscore the point that Bruce made about the relevance of this body to really critical issues, and the fact that this body in 2010 said that it is wrong for there to be it dark money, undisclosed sources of judicial campaign expenditures, was critical. It's critical for changing that problem in our system. It's not a silver bullet for correcting everything. We know that we have had a problem that has grown over the last ten years to the point where now 75 percent of the money in the Supreme Court races is from sources that we don't know where they came from.

The pushback that the Bar's position is getting is coming not from one party or the other, it's coming from the political establishment of both parties. And that's a formidable obstacle, but the public believes that they should know who is behind these ads, and I want to personally thank the Assembly in 2010 for overcoming the sense of cynicism and powerlessness that I think many people, including me,
felt about the way in which judicial campaigns were being conducted and the acts that we were seeing. You stepped up and said, no, it's wrong and the State Bar should do something about it. That was even before the phenomenon spread into the trial courts in last year's election.

That was a wakeup call, and the State Bar is now doing something and the pushback is going to be, we are already seeing it coming, that the State Bar is doing this for a political reason and you are the recognition for that, the fact that this body consisting of people from all political stripes agreed unanimously that this was a problem in the system. That's the rebuttal, and we need that in order to be effective to address this growing problem.

So I won't belabor that. You do have on a green sheet in front of you information about how to respond if you want to make a comment to the Secretary of State. Do read the letter. Basically it says something that I think is fairly obvious that Bruce mentioned, that the 2004 letter that describes what is covered as an expenditure under the Michigan Campaign Finance Act was obviously based on case law up to 2004, and a lot has happened since then, and the three cases that we cite in the letter I think need to be
addressed and I think lead to the conclusion that judicial campaign expenditures need to be disclosed.

So the final thing I want at say is to say something about Dana. Dana came into her position I think with extraordinarily high expectation from those of us who knew her and who knew her sister, and she has done the impossible and managed to meet and exceed those expectations. You see her up here and you see what a gracious and capable leader she is, but you don't see everything that goes on behind the scenes among all the leaders, and I can tell you that, you know, Bruce made me laugh inappropriately, but Dana's flaw was she often made me tear up by her competent and sheer goodness, and I will miss her personally in this role, but Bruce, again, has said it, you are in very good hands, and Kathleen will do a magnificent job, but please join me again in thanking Dana for her wonderful leadership.

(Standing applause.)

CHAIRPERSON WARNEZ: Thank you for that.

Thank you.

Now we are almost on time, I am welcoming and inviting our Assembly Review Chair, Carl Chioini, to come forward to the stage and make some comments about his work this year.
MR. CHIOINI: Good morning. This is a tough act to follow between the past president, Dana, and our executive director, so I am going to try to be brief and keep us on time.

About a year ago, just before Dana became chair, I met her for breakfast because she asked me to take on a task with the Assembly Review Committee, and we had breakfast together and set a focus in terms of what she would like to see the Review Committee do, and basically it's some of the same things we talked about today, and that is to keep this Assembly meaningful, to make sure that we keep on track, and to encourage people to participate in the Assembly. And I can see we have done that with the dark money. We have taken the forefront on that, and we are addressing some of the concerns that all of us need to address.

But when I first started, and I am going to introduce the committee members, because I would like you to talk to them afterwards if you have any ideas that we could use, that we could implement over the year, that would be fantastic, but the concept was to make this Assembly, the final policy-making body, make it meaningful.

My predecessor, Richard Barron, did a lot of
work on that. We focused on that, and ultimately we decided that we were going at do a survey, and that survey is at your places today. We really haven't had a chance as a committee to look at it and digest it, but I am pretty pleased with it. We were able to do this by dovetailing onto one the Diversity Committee had already started and was in place, and we were able to sort of ride the coattails.

I didn't realize how much difficulty there was with the survey, some of the things you had to look at, some of the things you had at do. With the help of the State Bar, with Anne Vrooman, Anne Smith, Candace Crowley, they got us focused and they kept us on task with what we wanted to do, and they assisted us in getting it out to all of the members of the Assembly, including the State Board of Commissioners. The results are very impressive. I would like you to take a look at them when you have time.

The people that participated in this committee stand for just a moment and wave so we know who you are, so if you have any ideas that will continue us on the track that we are on, please tell us. We want to serve you. Richard Barron, former chair; Mike Blau; Kim Breitmeyer, John Blakeslee. Candace, let us know where you are at so we can see
you. Thank you.

But take a look at the report, the survey. It's a very extensive survey. I think we came up real good. I think we did very well on it. I think we are on the right track, but the group as a whole now needs to have a meeting and we are going to sort of address our concerns and address that report. A lot of effort went into that report, and it provides a lot of information that we hope to utilize over the next year. Talk to us afterwards. If you have any questions or concerns, let us know so we can continue to do what you asked us to do.

I was going to spend some time and look at it and review it with you, but I don't believe that was part of the job today. Take a look at it. Thank you.

(Applause.).

CHAIRPERSON WARNEZ: Thank you, Carl.

I would like to, again, reinvite Dan Quick to come forward as we begin our business for the day and our consideration of the proposed new Rule 2.602(B)(5) and (6) of the Michigan Court Rules.

MR. QUICK: Good morning again. I stand before you as the representative of the State Bar Civil Procedure and Courts Committee which has adopted and proposed this modification to MCR 2.602 by adding
provisions (B)(5) and (6). A brief word of background and supplemental to the materials you already have.

Michigan law provides both by common law and eventually by statute for a beast called the cognovit, which is a form of consent judgment designed to be entered, agreed to between the parties and then once a trigger event occurs entered expeditiously by the court, perhaps even without notice to the judgment debtor. This is memorialized currently at MCL 600.2906. It has been recognized repeatedly by the U.S. Supreme Court and Michigan Supreme Court as a well-honored device in common law. In fact, the Michigan Court of Appeals in the U.S.A. Airlines case noted that the Michigan Supreme Court noted over 120 years ago that the use of these was a very common practice and has been repeatedly upheld by courts in this state and across the country.

All judgments are a matter of contract under Michigan law to be negotiated between the parties and enforced by the courts subject to those terms on most occasions, yet whether it's cognovit or some other form of consent judgment, the Michigan Court Rules do not currently have a procedure for submission and entry of such a thing by the court. So the effort here was to not create any substantive rights in any
way, shape, or form but simply to provide the procedural mechanism for a right the legislature and the courts have long granted to the parties to manage their affairs.

So the rule contemplates two scenarios. In Subrule (D)(5) the context is where there is already impending action between the parties or there has been a former action between the parties. It provides that when you have a judgment signed and approved by both the debtor and the creditor that it will be expeditiously entered by the court. It provides that if notice is not specifically addressed in the consent judgment signed by the parties that due process is required and notice is required. It also requires a sworn affidavit by the submitting party testing that the trigger event has occurred such that entry of the consent judgment is appropriate. And, finally, once the judgment is entered, there is yet another opportunity for an aggrieved party to raise challenge to the court and object to its entry.

Somewhat similarly under Subrule (6), which contemplates that there has been no prior action, the Michigan Court Rules require a civil action sort of as the front door, if you will, to the court. Has to be civil action on file, so it requires such a thing to
be filed. It requires service of that, along with a motion for the entry of the judgment and, obviously, an opportunity to be heard by the opposing party. It does accelerate the time by which the matter can be brought to a head and hopefully the judgment can either be entered or otherwise addressed by the court.

I do wish to reiterate that the intent here is not to create any rights. There may be some context where a consent judgment may not be enforceable. The Drafting Committee of the Representative Assembly -- we have a drafting committee which reviews these proposals, Mr. Herrmann chairs that. They made some very fine suggestions. Most of the text changes were adopted in what you have before you, and in response to one of their concerns we added some additional language, and so you will see this in the loose-leaf, which you should have in front of you, and all we did there was to add the phrase "otherwise lawful," which is shown in all caps in Subrule 5 and 6, really a belt and suspenders mechanism to communicate that obviously we are not in a rule of civil procedure saying that, creating a substantive right, but simply the procedure to enter something which is otherwise lawful and enforceable. And, of course, parties always have rights under 2.612
to challenge a judgment after its entry.

So on behalf of the Civil Procedure and Courts Committee, I would move for the adoption of this proposal. As most of you know, the procedure, of course, is that even once and if adopted by the Representative Assembly, it's simply submitted to the Supreme Court. The Supreme Court can elect to do any number of things, including nothing. They can open an ADM file on it and obtain additional public comment, so this is simply a first step in a longer process.

CHAIRPERSON WARNEZ: So we have a motion from Mr. Quick, should the Representative Assembly adopt the above resolution regarding Michigan Court Rule 2.602 (B)(5) and (6). Do I have a second from the floor?

VOICE: Support.

CHAIRPERSON WARNEZ: Second. Is there any discussion to be had?

MR. ARD: I am Josh Ard of the 30th circuit, and I am speaking in opposition.

VOICE: Can't hear.

MR. ARD: I have no idea how to turn this on. I guess it's working, sorry.

First of all, I would like to compliment the proponents for making a change after the Drafting
Committee, but what does that mean, otherwise lawful? Any of you know what otherwise lawful is? Anybody want to volunteer their hand? Experts are going to know, but how many plaintiffs are going at know, how many attorneys are going at know, how many defendants are going at know? Some of the examples, the defendant's military, it's illegal. But more important than that is if it's a consumer debt, this is illegal.

Now, there are consequences to that, but who is to check? Are we expecting the courts to check all of these to see, well, are they otherwise legal? And if you read the rule for (6)(B), even if the court does check, if the defendant shows up, the requirement is they have to enter an order that's illegal, given no discretion, but they have to enter it.

Now, what are the risks? Well, an attorney who creates one of these, files the affidavit, presumably could get in trouble for making a false statement if they are saying this is a legal thing to do, but more important than that, at least I know the consumer defendant of an attorney who files one of these things has arguably violated the Fair Debt Collection Practice Act, is subject to sanctions of a thousand dollars plus attorney fees.
Now, how many attorneys are going to know helping out their friends entering one of these things in court could get them sued in federal court for those kinds of damages? What about a court here? Well, arguably any court that would enter an order that's illegal could be sued under Section 1982 and get some sanctions there.

So there definitely are some risks in having this go through with this just "otherwise lawful" if people don't know what that means except the experts.

And, finally, I guess I would want to say is this the direction we really want to go? Do we want, as lawyers do we want to say, well, let's make it easier for there to be less process and less reason for people to go to court. And I know what the law is, and we can't change the law, but the Federal Trade Commission decided that these cognovits were unfair for consumers and made them illegal.

Now, small businesses, I think, are just as unsophisticated as consumers. There is no law out there that protects them. We can't do anything really about the Michigan law, but do these things really make sense for small business? You sign something, you don't know what you are doing, and you have no idea that you have given up your right to complain to
the court? So I would urge you to vote against this proposed rule. Thank you.

CHAIRPERSON WARNEZ: Thank you. Please come forward.

MR. TAVLIK: Hello, Adam Tavlik, 54th circuit. My remarks are, unfortunately, not directly responsive to the last speaker's, and I don't mean to suggest that I disagree with him as such, but I was going to say -- this is no offense to the Courts and Civil Procedures Committee or the Drafting Committee -- aspects of the proposal strike me as being a bit characterized by lawyerease, something that I think we are all trying at move away from. A good rule of thumb for me is anything that has language like "thereto," or "so provided," certain terms or phrases like that are the kind of thing that I think we as a profession are hopefully trying at move away from.

So I intended to move that we refer this proposal to the planning and subcommittee to be restyled in a fashion that is easier to understand, less wordy, and less dense.

CHAIRPERSON WARNEZ: I am sorry, could you verify which, as a part your motion, which committee you want the --
MR. TAVLIK: The planning and subcommittee that's responsible for putting together a column in the Bar Journal for Mr. Kimball at Cooley Cares or is otherwise involved with that. He handles -- he does work with restyling federal rules, civil procedure and evidence.

CHAIRPERSON WARNEZ: I do believe that the authority to refer it would have to be limited to the committees that comprise the Representative Assembly, and that committee is not part of this body, so I don't believe we are able at refer it in that manner.

MR. TAVLIK: Just a thought, I think maybe the body is being set -- I recommend -- If I am not mistaken, it's a subcommittee of the Publications and Website Advisory Committee, and so to the extent that that's a committee of the State Bar, I thought that we could reach out to them in the same fashion.

CHAIRPERSON WARNEZ: I am just, from a procedural standpoint, confirming what's possible. With respect to the motion, we are not able to refer it to a committee outside of this body, so I would consider your motion out of order at this time.

MR. RIGGLE: James Riggle from the 50th judicial circuit in Sault Ste. Marie. I worry about the context of a giant credit card company and an
individual debtor and having some clause in your credit card agreement that says by signing this credit card agreement I agree to entry of a consent judgment any time J. P. Morgan Chase declares my VISA account to be delinquent.

I don't think it's a good idea to streamline the entry of these judgments. I have represented many debtors who have defenses and need a day in court, and I would oppose this rule change.

MR. QUICK: Without engaging directly some of the comments, let me just share with you some of the deliberations of the Civil Procedure and Courts Committee on these issues. On that committee, as you likely know, it's a significant sized committee of representatives, judges, plaintiff bar and defense bar of all sizes, shapes and geographics in this state.

There certainly was awareness of sensitivity on consumer issues as well as a public policy matter and also awareness of the, in some instances, statute for laws, in the federal context in particular, which would suggest that something that was just described by the speaker may not be enforceable in certain contexts.

I think the unanimous position of the committee was that, again, this is a rule of civil
procedure. These things are used and are legal in a broad number of contexts, and so the fact that they are perhaps impermissible in some limited context is not a good reason to not have a rule which permits their implementation in any other number of contexts. So I guess it's the let's not through the baby out with the bath water logic, so I tender that again, not by way of argument but simply to share some of the thinking that had taken place.

MS. HOWARD: Donna Howard, 2nd circuit. Mine is more of a question. Both of the proposed sections refer to creditors and debtors yet it does not specify this is only going to apply to collection cases, and it's in the section without that specification, so I am confused whether it would be the intent of the proponents to limit it to collection cases only, for instance, implied on the second line after otherwise lawful signed and approved by the creditors and debtors. There are consent judgments obviously in civil cases that have nothing at do with creditors and debtors and the parties are coming together in a civil capacity to settle something other than that, so that is my question.

MR. QUICK: All I can share is that the intent there was to capture all scenarios and to use
creditor and debtor in that context, not in a narrow fashion, but simply in, if it's a consent judgment, somebody is paying and somebody is receiving, and so that was the intent there as opposed at some broader language about I guess it could be proposed tentative judgment payor, payee, et cetera. I believe that was the intent.

MS. HOWARD: Why wouldn't we just use the parties? There are -- a plat modification case has nothing to do with necessarily the exchange of money and two parties being in a position of a creditor or debtor.

CHAIRPERSON WARNEZ: Are there any further comments?

MR. ENGELHARDT: Because I can't let an open microphone pass by, Chad Engelhardt from the 22nd circuit. I just want to echo the sentiments of brother counsel that while this proposed rule change may be appropriate in the context of sophisticated corporate litigants entering into a contract for copy judgments or for security otherwise, I can see that it's ripe for abuse in the consumer context and, in fact, may be illegal in the consumer context, yet with the judgment in hand, those consumers may be pursued without access to the very court that they are
supposed to. So I would ask that we vote in
opposition and express my opposition.

MR. FLESSLAND: Dennis Flessland, 6th
circuit. I did a lot of collection law at one time in
my career, and I would like to -- I mean, I see a
tremendous distinction between Section 5 where you are
already in a litigation context and the parties agree
they are going at make some installment payments and
if they default the judgment can be entered and the
situation -- I mean, that's totally different than the
situation where there is no litigation and the matter
just comes in, you know, with the old-fashioned
cognovit confession of judgment, and then the
defendant never has his day in court. As was pointed
out, I think that's why special issues started that
Collection Practices Act, and I don't think we want to
go down that road.

So my suggestion would be that we pass alone
Section 5, which is the consent judgment, enter the
consent judgment in the litigation context, let that
go to the Supreme Court or recommend that be
considered by the Supreme Court, and just delete
Section 6, because I think, as has been pointed out
here, there are way too many messy, sticky issues
involved in Section 6, and we are just poking a stick
into a hornet's nest there, but Section 5, I think, makes some sense and should be considered by the court. So I would move that, if it's appropriate at this the point, Madam Chairman, that Section 6 be deleted from the proposal.

PARLIAMENTARIAN CHMURA: I guess as the parliamentarian I am a little confused about what you want at do. This is a proposed court rule. It's not drafted by the Assembly. I don't know what authority the Assembly has to change a proposed court rule, since that's not something the Assembly drafts to begin with, and it's not -- I guess do you want to amend the motion to say that you support only part of the court rule but not all of it?

MR. FLESSLAND: Maybe I misunderstood, Judge, but it is my thought that the Drafting Committee of the Representative Assembly had proposed this as a draft court rule and is moving that it be adopted by the Representative Assembly and forwarded on. If that's incorrect, then my motion would be out of order.

CHAIRPERSON WARNEZ: Just as we sort through this issue, what came to my mind would be perhaps to have the motion -- specifically this motion doesn't fit within the rules that permit amendments from the
floor if there are more than six words, so with
respect to the conceptual motion that you are making,
it may be best to refer it back at the Drafting
Committee or Special Issues.

MR. FLESSLAND: If that's out of order, then
I withdraw that motion, but my point is I think 5 is
good, 6 is bad.

CHAIRPERSON WARNEZ: Thank you.

MR. TAVLIK: I was having a conversation with
another member and did not hear what it was that the
member had moved that was out of order. I just wanted
to make sure I was clear on that.

CHAIRPERSON WARNEZ: I am sorry, could you
repeat that comment.

MR. TAVLIK: I was in conversation with
another member and did not hear the motion that was
made that was just ruled out of order, so I wanted to
be clear on what had happened.

CHAIRPERSON WARNEZ: I had provided feedback
to Dennis who had made that motion. His motion, as I
understood it, was to delete a whole section of the
proposed court rule, and, as such, that would
technically modify that more than six words, and so
there is a -- rules permit modification of proposals
from the floor under six words verbally unless they
can be submitted in writing. So if they are over six words, they have to be submitted in writing, so from a point of order, I just don't believe his approach would be, you know, possible under the circumstances.

PARLIAMENTARIAN CHMURA: I don't think the motion technically was ruled out of order. I think there was a question raised as at what the motion was, and, as Dana said, the question was brought up about whether or not you can properly amend this given the fact that you can only amend six words or less. I think the maker of the motion just simply kind of changed his position so I support 5, I think, but not 6, and that's his position on the main motion.

MR. TAVLIK: Is the six-word rule an aspect of our bylaws?

PARLIAMENTARIAN CHMURA: Yes.

MR. TAVLIK: Thank you.

MR. QUICK: I just want to briefly say one thing to the previous speaker and maybe the language, I heard it wrong, but even under the proposed Subrule 6, there is due process required. Civil action must be filed, if there is a motion for entry of the consent judgment, it must be filed, it must be served, and it calls for a notice of hearing.

MR. LEBRE: If I understand it correctly --
Robert LeBre, 43rd circuit -- there is no motion pending because it's out of order to amend the actual court rule, but we can move to commit this rule back to committee for drafting?

CHAIRPERSON WARNEZ: Correct.

MR. LEBRE: To accept, with the specific instructions to accept 5, delete 6. I so move.

CHAIRPERSON WARNEZ: I think that's appropriate. We have a motion from the floor to amend -- excuse me, to refer this back to Drafting. I have to ask is there a second on the floor?

VOICE: Second.

CHAIRPERSON WARNEZ: Any further discussion, only on the motion to refer it back to drafting? Any comments are limited at this moment to whether it should be referred to Drafting.

Hearing none, all in favor of the motion, please signify by saying aye.

All not in favor, please signify by saying no.

Any abstentions?

The ayes have it. It's been referred to Drafting currently. Thank you.

Okay. This brings us to -- it's 11:15. We are a little bit ahead of schedule. If I may
1 encourage everybody currently, we will adjourn, but
2 prior to, please see the vendors. If you have an
3 opportunity, you do have a few minutes now to perhaps
4 go see our vendors, participate in passport if there
5 is anything that you need.

6 Also, if I may also request that if you have
7 been selected as a teller -- we previously identified
8 you. If you are a teller, would you please come
9 forward prior to departing the room for lunch.

10 So thank you everyone for your attention and
11 your work so far. We will adjourn for lunch and
12 hopefully we will see you back after lunch. We are
13 scheduled to reconvene at 2:00. We will see you back
14 at 2.

15 (Lunch break from 11:16 a.m. - 2:12 p.m.)

16 CHAIRPERSON WARNEZ: I am going to call the
17 meeting to order. The rules do provide for me to make
18 some comment with respect to the last vote we took,
19 and for all of our benefit I would like to just make a
20 comment with respect to that referral. We did vote or
21 we did refer that proposal to the Drafting Committee.
22 I just want to specify for the record that it is with
23 the instructions and the request that they consider or
24 help advocate for the removal of subpart 6. So for
25 the record, everybody knows it's going with
instructions.

With that in mind and that completed, we are now resuming our business, and it's time again to have Dan Quick come forward as a proponent for the consideration of the amendment to MRPC 7.1.

MR. QUICK: Thank you, and good afternoon. On behalf of the Civil Procedure and Courts Committee we will be moving to have you endorse the proposed amendment to Model Rule of Professional Conduct 7.2. Those of you who were here at the last session will recall that a version of this proposal came before you that had been modified, relatively speaking, at the last minute which caused some confusion, and rightfully so. So we pulled it and have represented it to you here today.

Rule 7.2 puts limits on advertising for attorneys and must be read in tandem with Rule 7.1, which specifies that a lawyer may on his own behalf or on behalf of a partner or associate communicate with the public so long as it's not false, fraudulent, misleading, deceptive, and numerous other number of ways that the communication is appropriate or inappropriate, and that rule only refers to a lawyer, lawyers, of course, in our mandatory Bar registered with the state with an official name and address, and
so the proposal, the form that comes before you in 7.2(d) is to specify that communication made pursuant to this rule shall prominently include the name of an active member in good standing with the State Bar of Michigan who is responsible for its content, using the name provided to the State Bar of Michigan.

Within your materials are a number of photos which have been taken primarily by Commissioner Olsman, who was the original moving force behind this proposal in our committee, and these are not intended to pick on anybody or to suggest anything untoward other than to point out the obvious, that these advertisements do not contain the name of an attorney, do not contain clearly identifiable information as to who could be held responsible if, in fact, there was a violation of either Rule 7.1, 7.2, or perhaps some other technical violation.

We have provided in the materials to you in short form version some cross reference to other versions other states have adopted to deal with attorney advertising.

In summary, Michigan, which has almost nothing outside of the court rules, pales by comparison. Many states have multi-page, complex and detailed requirements as to what is permitted and not
permitted, minimal information which must be included
and the manner in which it must be included, the font
size, et cetera, et cetera. One might take the
position that the State Bar or the court should more
holistically review the manner in which attorney
communication takes place and whether adoption of some
broader set of principles ought to happen, but that is
not what's before you today. The theory is that this
is a modest suggestion which adds an important piece
of information to the public when they are evaluating
and receiving attorney advertising.

So the motion before you, should the
Representative Assembly recommend adoption of the
following amendment to Rule 7.2 of the Michigan Rules
of Professional Conduct and hereby move that you do
so.

CHAIRPERSON WARNEZ: With Mr. Quick's motion,
I am entertaining a second on the floor. I see that
support. Is there any further discussion on this
proposal? If so, I would ask that you come forward
please to the microphones.

MR FERGAN: Hello, Robert Fergan from the
22nd circuit. I oppose this as currently written. It
requires the individual attorney name, which would be
okay for a sole practitioner, but the problem is for
like a large firm, requiring the attorney name is somewhat problematic and that actually requiring the attorney name rather than, say, a firm name is problematic for, you know, large law firms and much more restrictive than any of the examples of the rules given, for example New York or ABA, which includes either the name of the attorney or the firm name.

The problem that you could run into with this is if you have an advertisement that goes into a national publication, it's going to 49 other states, and you would only have to have, for example, the Michigan lawyer listed because it would be, of course, going to Michigan, and then not only would you have to necessarily have to put his name, you would to say he is only licensed in Michigan, so you could see where that gets problematic for a large firm.

What I would propose is that we would do a friendly amendment to (d) and put in that, where it says, This rule shall prominently include the name of, and after "of" I put, The sponsoring law form or an active member in good standing is what I would suggest.

MR. QUICK: Can I have the language again, please.

MR. FERGAN: After "the name of," the
sponsoring law firm or an active member in good standing.

VOICE: I second that.

MR. QUICK: Oh, the pressure. I mean, there is a desire, I think, to tie to the language in 7.1, which makes lawyers responsible, not law firms, and, secondly, I am aware that there are law firms who have actually registered with the State of Michigan as an 800 number, for example. So I am not a hundred percent sure that it quite has the same punch with that amendment, although I am understanding your point and am sympathetic to it. I don't know how many law firms do sort of national advertising that you mentioned.

MR. FERGAN: Quite a few.

MR. QUICK: I guess I would be interested in hearing commentary from other members of the Assembly. I think that that's a prudent suggestion. I think that would be preferable to otherwise not adopting some additional protocol.

MR. FERGAN: That's my proposed amendment, so there should be discussion on my proposed amendment.

VOICE: Second.

CHAIRPERSON WARNEZ: We would entertain that you desire a motion to amend the proposal to add the
language that you have requested.

MR. FERGAN: Yes, I make the motion to add
the language that I proposed.

CHAIRPERSON WARNEZ: Is there a second to
that motion?

VOICE: Second.

CHAIRPERSON WARNEZ: Is there any further
discussion just on the addition of this language? If
so, I would invite parties to come forward to the
microphone to express just the amendment.

MS. KAKISH: Kathy Kakish, 3rd circuit. I
can understand where the angle was coming from, but as
the discussion was going on I looked at the
advertisements themselves on the first page of the
pictures. The bottom one, look at it, harassed at
work. We got a law firm name, Gold Star Law. We are
back to where we were where still we don't know
exactly where this is coming from. If you go to the
second page at the bottom, AdamDivorceLaw.com. I
assume that's the name of a law firm, but, again,
without the name of a member in good standing with the
State Bar of Michigan, I don't think these
advertisements provide information to the general
public, so I would be in opposition to the amendment.

MR. WEINER: Jim Wiener, 6th circuit. I
agree that I am in opposition. I happen to know ADAM, and that is d/b/a, assumed name of a law firm, and so you could easily set up multiple assumed names and the only way you would be able to figure out who it was was to go to, not the State Bar, but to the State website or LARA and look at the Corporations and Security Bureau and start taking a look at it.

It's very difficult sometimes for someone that is not an attorney to find those things, and so someone that is -- I believe that it's a good idea to include a member of the State Bar, and so I would be in opposition.

CHAIRPERSON WARNEZ: Mr. Romano.

MR. ROMANO: Vic Romano, 3rd circuit. I rise to speak in opposition of this proposal in general. I have spent 25 years --

CHAIRPERSON WARNEZ: I hate to interrupt you, but comments need to be directed at whether we add the language or not.

MR. ROMANO: Sorry.

CHAIRPERSON WARNEZ: Any further commentary about that language, please come forward.

MS. ORTNER: Ava Ortner from the 6th circuit. I am from one of the large firms in the area, and I am involved in law firm marketing, and the problem is
that the definition of law firm marketing includes anything that is put out for (inaudible) for clients, is pretty broad, so if we are doing a seminar that spans a number of states, we have to include the name of a lawyer licensed in Michigan who may have absolutely nothing to do with that subject matter.

We haven't thought through all of the ramifications. It's certainly going to be large administrative task. It's a big change in the way that we market. And I guess I am torn, because we also are very much in favor of the purpose of the change in the rule. And I think that we are focusing on billboards and things of that type, but we need to keep in mind that the definition of advertisement is broader, much broader than that.

MS. JOLLIFFE: Elizabeth Jolliffe, 22nd circuit. Having been a lawyer in a large firm for nearly 20 years, I understand the concerns in the proposed amendment and I speak in favor of it, but I also am completely in support of the purpose of Mr. Quick proposing this and his committee, but it strikes me, as some previous speaker said, it would be like Dickinson Wright having to put Daniel Quick's name on the billboard or one of your partners or something like that. I don't really think that's what
we are trying to do, and, yes, we are looking at things like Gold Star, whatever that is, and the American Association of Divorce for Men, whatever. I think we are concerned about things like that, but I don't know that the rule as proposed adequately deals with that, and I think puts some burdens on some of the firms that we, a burden that we don't really want to put on. Thank you.

CHAIRPERSON WARNEZ: Is there any further discussion on the addition of the language?

MS. VESTRAND: Joan Vestrand from the 22nd circuit. I spent many years at the Attorney Grievance Commission and years doing disciplinary work, and I am in favor of this amendment. The purpose, I believe, for the ABA Model Rule and the rules around the country are so that we can determine who put this ad up there so that we can vet it for truthfulness, whether it's false or misleading, and we need to be able to get to the source of that ad. Having the word law firm should be sufficient, because that allows the disciplinary agency with any concerns about the content of the ad to go back and know who created it. They can then also vet the ad content itself, for example, any trade names that the firm has adopted as to whether or not it's misleading to the public.
So the purpose is so that we know who put the ad out so we can investigate it if we need to and take action, and that's all this is. And so there shouldn't be the need to require only a lawyer's name. A law firm name should be sufficient to help us get that investigation conducted and then they make decisions on whether the ad itself is misleading, so I support it.

MR. FERGAN: The only thing --

CHAIRPERSON WARNEZ: State your name and circuit.

MR. FERGAN: Robert Fergan. I actually proposed the amendment. Do I get a chance to speak?

CHAIRPERSON WARNEZ: Yes.

MR. FERGAN: So briefly, I accept what other people had said. Generally you are trying to identify the law firm, and obviously partners of the law firm are responsible for what the law firm does.

You know, the last thing I would say on that, on this point as well, I think this moves the ball forward in the right direction and tries to accomplish what we are trying to accomplish. There is probably language that we could probably throw in there more specific, that you have got to register the law firm with the State Bar, or there may be some compromise
that's better, but I think this language really kind
of moves things in the right direction and is better
than the alternative, which I think would get a lot of
pushback from a lot of attorneys that work for large
firms. Thank you.

CHAIRPERSON WARNEZ: Any further comment with
respect to the addition, the language? I invite last
call for comment.

Hearing none, all in favor for adding the
amended language in this proposal, please signify by
saying aye.

Any noes?
Any abstentions?

The ayes have it. The language is added into
the proposal. I also continue now to invite comments
on the proposal with the amendment. Please come
forward.

MR. TAVLIK: I confess that I am quite rather
concerned about the fact that the proposal requires
that the communications made pursuant to this rule be
made by an active member in good standing with the
State Bar of Michigan. I am not sure whether that's
intended to require that only Michigan attorneys may
advertise in Michigan, but I have to say that I don't
think that would be appropriate, and if I were an
attorney in Toledo, for example, that practices horse
law or slip-and-fall law or something to that effect,
it seems fairly appropriate to me that an attorney in
that circumstance should be able to place billboards,
cell phones on 75, advertise to potential clients who
work in Monroe, live in Toledo.

Conversely, if the rule is required to place
requirements on Michigan attorneys for advertising
outside the state of Michigan, I also don't know that
I am particularly enthused about that. It strikes me
that Michigan attorneys, that for some reason a
Michigan attorney wants to run an advertisement in
Indiana or Ohio or Illinois that that attorney should
follow the advertising rules that are pertinent to
Ohio or Indiana or Illinois.

I am not quite sure what the best solution to
that would be given the six-word rule in our bylaws
other than perhaps the rule to refer this matter back
to the Drafting Committee to rewrite the rule without
references to membership in the State Bar of Michigan
as such.

CHAIRPERSON WARNEZ: Mr. Romano.

MR. ROMANO: Vince Romano, 3rd circuit. I
rise to oppose this proposal. I had a 25-year career
in legal marketing, so I have dealt with these issues
across a broad range of circumstances, but what strikes me most about this particular approach is that a prohibitive ruling should only follow some kind of demonstrative harm to the public. Remember that charge we have is to look after the well-being of the public, okay. Well, where is the harm here? No one has suggested, no one has shown any harm of any kind.

Look at the photos. They are in the book. Where is the harm with those photos? There is also talk about how would you identify the attorney? Call the number. I am sure you will get a lot of information about who that attorney is when they answer the phone number.

You remember that we have had some other recent prohibitions. Part of what concerns me here with this individual one is I remember when my honorable colleague from Oakland County, Sam Bernstein, going all the way back to George Googasian's Professionalism Committee. We had a stream of individual lawyers coming before us offering this very same kind of individual proposal, and we listened to them all until they all just collapsed of their own weight, and we found that the regulatory statement that we had was working just fine.
And I think that that's the risk that we run here. This is a very slippery slope. If we start serving the proclivities of individual lawyers and how they feel about lawyer advertising, we are headed down a very slippery slope, because, believe me, there are dozens of people right behind this that would want further restrictions on the right of lawyers to advertise.

So on those two bases, no harm to public and restriction to lawyer advertising, I ask you to reject the proposal. Thank you.

MR. QUICK: Let me partially respond to that and share with you, not by way of arguments but in terms of deliberations of the committee, that there was belief that there was harm to the public, finding specific information provided in the attorney advertising, in that while you and I are probably well versed in looking up even the name of a law firm in the state of Michigan or going on the internet, that on some basic identification of the attorney who is making representations or putting themselves out there was deemed to be informant, basic level of information for the public, so there was that concern.

CHAIRPERSON WARNEZ: Anymore comments? I invite them and if there are none.
Seeing none, the motion is should the Representative Assembly adopt the above resolution as amended regarding MRPC 7.2.

All in favor of the motion, please signify by saying aye.

All noes, please signify by saying no.

Any abstentions?

I think the ayes have it.

VOICE: Division of the Assembly.

CHAIRPERSON WARNEZ: With the request for division, we would ask for everybody who voted yes to please stand.

Thank you. I would ask you to be seated.

All parties who voted no, I would ask you now to please stand.

Thank you. I would ask you to be seated.

If there is any abstentions, I would ask you to stand.

Upon division, it's clear that there is a majority of votes in favor of the motion. Thank you very much for that.

We are going to move on to the next --

MR. QUICK: Thanks to the Assembly for that discussion.

CHAIRPERSON WARNEZ: With that business
completed, we are now going to move to the election, nomination and the election of the Assembly Clerk, but prior to beginning that process, I want to make sure that everybody who may be in this room who is entitled to vote, I need you to be seated in your circuit. So if you are for some reason in the back, you need to come forward. It's imperative that you come forward now and sit down in your circuit.

With everyone seated, the chair will now entertain nominations from the floor for Assembly Clerk. I think we were going to approach this alphabetically, so I would ask for a motion with respect to Mr. Herrmann. His nominator can come forward.

MR. CLARK: John Clark from the 3rd circuit nominating Fred Herrmann for clerk.

CHAIRPERSON WARNEZ: Thank you. Likewise, I would entertain -- I know Mr. Quick has submitted his letter. I would ask for a nominator of Mr. Quick to come forward.

MR. LARKY: Members of the Assembly, my name is Sheldon Larky from the 6th circuit. Before I make the nomination, I want to indicate that Albert Einstein one day decided to pave his driveway, but a bunch of kids messed it up completely, so he started
running after the children, and his neighbor grabbed
him and said, Albert, what are you doing? I thought
you loved your children. And Albert Einstein said --
he said, Do you love children? And Albert Einstein
said, Yes, I love children in the abstract, but not in
the concrete.

So in the concrete I am nominating my friend
and good attorney, Dan Quick.

Madam Chair, do you want us to go through the
background of these gentlemen?

CHAIRPERSON WARNEZ: To the best of my
understanding, the candidates have waived formal
speeches. We were seeking just nominations at the
candidates' request.

MR. LARKY: Thank you.

CHAIRPERSON WARNEZ: Thank you. I would
request at this time that the tellers come forward
that have been selected. We are going to distribute
ballots as to each of you at your seats. I would ask
that you complete them and return them to the tellers
once you cast your ballot.

MS. JOHNSON: Madam Chairperson,
Elizabeth Johnson from the 3rd circuit. Point of
order. I believe the Chair needs to call for
nominations from the floor.
CHAIRPERSON WARNEZ: Oh, thank you. Thank you for your keen insight and help in that regard.

Is there a motion to close nominations at this time?

VOICE: So moved.

CHAIRPERSON WARNEZ: Is there a second?

VOICE: Support.

CHAIRPERSON WARNEZ: Any discussion? Hearing none, all in favor for closing nominations, please signify by saying aye.

Any noes?

Any abstentions?

That carries. Thank you very much.

With that being closed, I would ask the tellers to distribute the ballots.

(Ballots being distributed.)

CHAIRPERSON WARNEZ: To the extent that there is any question, once you complete your ballot, please stick it back in the envelope that you received it in and seal the envelope.

(Assembly members voting.)

CHAIRPERSON WARNEZ: How is everybody doing? Show of hands, who is having fun? I am. We are adjusting a little bit at the request of our almost Chair, incoming Chair Kathleen Allen. Without
objection, I would ask that we move up in the calendar to the swearing in of Kathleen to accommodate everybody who she would like to be here during that process. So if there is a problem with that, please speak now or forever hold your peace.

Hearing no objections, we are going to move up to our swearing in, and that leaves me with the distinct honor to welcome an old friend here on behalf of Kathleen and introduce all of you to the Honorable Cylenthia LaToye Miller.

Judge Miller was appointed to the 36th District Court in 2006, elected in November of 2006 and again in November of 2011. She presides over cases in that court's criminal and traffic division. Judge Miller is the founding and presiding judge over the Street Outreach Court Detroit, SOCD, Program that serves the homeless population in the city of Detroit.

Judge Miller is also the former director of the Detroit Workforce Development Department, which is a Michigan Works agency. She received her Bachelor's of Arts in the degree of sociology from Wayne State University in 1988, her jurist doctorate cum laude from Michigan State University, Detroit College of Law in 1996. She was admitted to the Bar in 1996 and the State Bar of Arkansas in 1997. She also was an
adjunct professor at Baker College in Allen Park and a
member of the Michigan District Judges Association
Board of Directors.

She has so many distinctions and honors, but
I would like to at this point welcome her to the
Assembly. Give her a big round of applause.

(Applause.).

JUDGE MILLER: Well, good afternoon everyone.
I am delighted and thrilled to be here. I was so very
honored when my very dear friend of many, many years
asked me to come and swear her in before this esteemed
body this afternoon.

Kathleen and I go back quite a ways. She is
like a sister to me, and we don't get to see each
other as much as we would like, but we keep in touch
through heart and text and calls and emails, and you
know how it goes, right? We go all the way back to
the Women Lawyers Association of Michigan when I was
on the board and she was on the board, and I started
rising up through the ranks, became president, and I
wanted to have more women of color coming behind me.
I was the second woman of color to lead the Women
Lawyers Association of Michigan, and there was a
30-year gap between myself and the first.

So Kathleen was such a shining star on our
board, as I am certain you know she is here, that I said you have got to come on and get in these chairs, and she went on to become president of Women Lawyers Association of Michigan, among the first of many of her accomplishments with Bar associations, and she gives me way more credit than I am due, but she is a star.

I am honored to be here with her, for her. I am also honored to be in front of you. And I just had to take that point of privilege to just say that, and I do apologize if I am out of order, but please forgive me and we are going to proceed with swearing her in at this time.

If would you be so kind as to raise your right hand. State after me, repeat after me, I do solemnly swear.

VICE CHAIR ALLEN: I do solemnly swear.
JUDGE MILLER: That I will support the Constitution of the United States.
VICE CHAIR ALLEN: That I will support the Constitution of the United States.
JUDGE MILLER: And the Constitution of this state.
VICE CHAIR ALLEN: And the Constitution of this state.
JUDGE MILLER: And the Supreme Court Rules concerning the State Bar of Michigan.

VICE CHAIR ALLEN: And the Supreme Court Rules concerning the State Bar of Michigan.

JUDGE MILLER: And that I will faithfully discharge.

VICE CHAIR ALLEN: And that I will faithfully discharge.

JUDGE MILLER: The duties as Chairperson.

VICE CHAIR ALLEN: The duties as Chairperson.

JUDGE MILLER: Of the Representative Assembly.

VICE CHAIR ALLEN: Of the Representative Assembly.

JUDGE MILLER: Of the State Bar of Michigan according to the best of my ability?

VICE CHAIR ALLEN: Of the State Bar of Michigan according to the best of my ability.

JUDGE MILLER: Congratulations.

(Standing applause.)

VICE CHAIR ALLEN: Thank you very much. Due to the time constraints, there are a couple people that I want to say thank you for being part of this event and part of my life, and so I am going to start with the thank yous first.
Thank you so much Honorable Cylenthia Miller. You administered my oath today. You made me so happy. You have helped me through my journey that has led me to be here today, and I thank you very, very much.

JUDGE MILLER: You are very welcome.

VICE CHAIR ALLEN: I also want to thank the outgoing State Bar President, Bruce courtade, and your incoming president, Brian Einhorn.

Bruce nominated me for Assembly Clerk two years ago. He gave me the opportunity to work with the Assembly in the State Bar. Thank you, Bruce. You are a true leader, and I will fondly remember everything you say, and you made your meetings enjoyable, but you also moved very quickly, and I appreciated that.

I also want to thank the 17th circuit. That's my circuit. None of this could have happened without the circuit support. The circuit is very important to me. Rob Buchanan and other circuit R.A. members encouraged me to run. Without the encouragement, I would not be standing here today.

And I would also like to thank my colleagues at Legal Aid. I have got a couple in the back, my legal assistant, Laney Cook, and our Deputy Director, Mary Ellen Drolet. Their encouragement in the work we do is a motivating factor for me to involved in the
Assembly of the State Bar.

Finally, I would like to thank my dear family and friends. Your encouragement and support mean so much to me, more than you will ever know. I especially want to thank my mother, Josephine Allen. My mom is here today, and she will be 90 in December, and I am so grateful that she is here today to see me accept this position. She lost her sister this week, and she is the last of the family, and I am so, so grateful that she is able to be here today to see this happen. Thank you.

(Applause.)

VICE CHAIR ALLEN: I just wanted to say that I am greatly honored to serve as the chairperson of the Representative Assembly. The Assembly is the State Bar's great final-policy making body, and it has a proud history. It is now our obligation to help the Assembly to continue its important contribution of both the law and the practice of law in the state. We, the current members of the Assembly, are now charged to assure the Assembly remains important and relevant.

As Chairperson, I humbly ask for your help in working towards this goal. We have had some discussions today with regard to some of the policies
that were here before. Bruce mentioned that, as well as Janet, and these were important policies we do. We do important work. The Assembly's strength is broad, participation, diversity. Please become involved. It's important to each and every circuit to talk with their committee people who are in the circuit with regard to the State Bar or to their local Bars as well as the liaisons.

There are many opportunities to become involved, and it's important. We need to have this dialogue. We need to have ideas. The power of the Assembly is collective. It lies with each one of you and all of you, your voices, your thoughts, your proposals individually and jointly, and these are what makes the Assembly relevant and effective. So get to the people you know. We need policies before us. We need to remain on the board and we need to be important and relevant. Thank you.

CHAIRPERSON WARNEZ: Returning to your next order of business, I am happy -- it's a bittersweet time when you have to leave, but there are some of us, as you know, that as the rules work or provide that you can only be here for so long, so there are certain members in our body who are term limited and we have to say good-bye to after this meeting. So we have
certificates honoring their service, and I am going to read the names of each party who will be terminating their services, terminating as of this meeting, and ask for them to come forward and let us congratulate you and present you with your certificate.

So first person we would like to applaud and recognize is Bruce A. Barton. Bruce, would you come forward.

(Applause.)

CHAIRPERSON WARNEZ: John R. Blakeslee.
Julia A. Close. Susan L. Haroutunian, James T. Hogan. Adrienne L. Iddings. Michael J. McClory. The Honorable Christopher Ninomiya, Kathleen M. Oemke. Jennifer J. Schafer, Stephen Taratuta, Maureen VanHoven, Robert H. Witkop. We thank each and every one of them for their service over the years. Thank you very much.

I would now like to ask the -- excuse me just one sec. We have, as you know, several committees that are part of the R.A., and each chaired by a very fine individual, and we have gifts for each of them for all their service, and I am going to ask that each chair when your name is read to come forward and accept a parting gift, a celebratory gift for your service for this year.
First I would like to ask for John Clark, who is chair of Special Issues, to come forward.

Next I would like to have Eilsia Schwarz to come forward. She was chair of Hearings Committee this year. Round of applause.

(Applause.)

Next chair of Rules and Calendar, Kathleen Kakish, please come forward. Thank you for all your hard work.

Chair of Drafting, Fred Herrmann, to come forward. Thank you, Fred, for all your hard work.

Chair of the Nominating and Awards Committee, Dan Quick, please come forward for your gift.

Last but not least, Carl Chioini, who is chair of the Assembly Review Committee. Please come forward.

While I have the chance, I would like to thank each and every member of the committee who served. The chairs were the excellent leaders and forged ahead with the work, but the calls and the meetings and conversations that were required, I want to make sure I reach out to each of you and thank you for your service.

I am in possession of the election results, and I would like to announce that for the group. With
the majority vote, we have Assembly Member Quick as
the newly elected clerk of the Assembly. Congratulate
him.

(Applause.)

CHAIRPERSON WARNEZ: As a point of procedure,
if I may ask for a motion also that, per the custom of
the Representative Assembly, the results of the voting
be announced and recorded as to the winner only
without the vote total and that the vote total would
be known only through tellers as to any candidate who
requests it. May I request that motion from the
floor?

VOICE: So moved.

CHAIRPERSON WARNEZ: I hear a motion and a
second?

VOICE: Second.

CHAIRPERSON WARNEZ: Any discussion?

All in favor, please signify by saying aye.

Any noes?

Any abstentions?

That vote carries. So with the announcement
of the winner, we have concluded the election process,
which leaves us, I believe, to the conclusion of our
business.

VICE CHAIR ALLEN: Almost. There is one more
thing. I want to thank Dana Warnez as our outgoing chairperson. She has served with dedication, enthusiasm, and a total commitment to the legal profession and to the Representative Assembly. I am going to miss her greatly. She is a dear friend, is also a true leader, and she has been compassionate and understanding and quite the mentor in this whole process. And so she has given me everything she has learned from her sister down passed, and I want to thank you, and I want to give you this award today.

The State Bar of Michigan honors Dana Warnez, Representative Assembly Chairperson 2012-2013, Vice Chairperson 2011-2012, Clerk 2010-2011, in appreciation for distinguished service to the Assembly, to the State Bar, and all Michigan lawyers, dated September 19th, 2013. Thank you, Dana.

(Standing applause.)

CHAIRPERSON WARNEZ: Thank you so much. It's been a great honor. With that I can wave my gavel to conclude the meeting, but not so quick as to not pass it on to Kathleen, so a ceremony to give her the gavel, and I conclude that this meeting is over

(Proceedings concluded at 3:09 p.m.)
STATE OF MICHIGAN  
COUNTY OF CLINTON  

I certify that this transcript, consisting of 99 pages, is a complete, true, and correct transcript of the proceedings had by the Representative Assembly on Thursday, September 19, 2013.

October 14, 2013

Connie S. Coon, CSR-2709  
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