STATE OF MICHIGAN
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE
ASSEMBLY of the STATE BAR OF
MICHIGAN

Proceedings had by the Representative Assembly of the State Bar of Michigan at Opal/Garnet Room, Suburban Collection Showplace, Novi, Michigan on Thursday, September 26, 2019, at the hour of 9:00 a.m.

AT HEADTABLE:

   RICHARD L. CUNNINGHAM, Chairperson
   AARON V. BURRELL, Vice-Chairperson
   CHELSEA M. REBECK, Clerk
   JANET K. WELCH, Executive Director
   HON. JOHN CHMURA, Parliamentarian

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CALENDAR ITEMS

Call to order
Certification of quorum
Filling of vacancies
Adoption of proposed calendar
Presentation of the Unsung Hero Award to Clarence M. Dass
Presentation of the Michael Franck Award to Mary Chartier
State Bar of Michigan Financial Update
Remarks by Richard L. Cunningham, Chairperson
Update on State Bar Operation, Structure, and Governance Task Force
Approval of 4-13-19 Summary of Proceedings
Consideration of Proposed Amendment to Rule 6.005 of the Michigan Court Rules
Consideration of Proposed Amendments to Rule 3.206 of the Michigan Court Rules
Consideration of Proposed Amendment to Code of Judicial Conduct Canon 2(F)
Consideration of Proposal on Professionalism Principles
Nomination and Election of Assembly Clerk
Recognition to Assembly members completing their Terms of service and Committee Chairs
Introduction of the Honorable Leo Bowman
Swearing in of Aaron V. Burrell as the 2019-2020 Chairperson of the Representative Assembly
Presentation of Recognition to the Immediate Past Chair
Adjournment
Novi, Michigan
Thursday, September 26, 2019
9:00 a.m.

RECORD

CHAIRPERSON CUNNINGHAM: Good morning. My name is Rick Cunningham, and for the past year I have had the honor of serving as the Chair of Representative Assembly. Before we begin the meeting, I am going to exercise a prerogative of the Chair and introduce to you some of the people here on the dais and out there in the audience that I think you really would like to know. I am going to start at your left, my right.

At the end, our executive director, Ms. Janet Welch, our tremendous executive director.

Next to Janet is the Honorable John Chmura from the Warren District Court. Judge Chmura has served a long time as our parliamentarian and provided a great deal of service to the Representative Assembly. For that, we appreciate it.

To your right, the far right, our Clerk, Ms. Chelsea Rebeck, and next to her, our Vice-Chair and soon to be Chair, Mr. Aaron Burrell.

As I look out in the audience, I see our outgoing State Bar President. We have
Jennifer Grieco. Jennifer, would you mind standing so people can see.

PRESIDENT GRIECO: Good morning.

(Applause.)

CHAIRPERSON CUNNINGHAM: And we will be joined later this morning by our incoming president, Mr. Dennis Barnes.

It is 9:00, so we will call to order the fall 2019 session of the Representative Assembly. Is there a quorum, Madam Clerk?

CLERK REBECK: There is a quorum.

CHAIRPERSON CUNNINGHAM: We will proceed then with the adoption of the calendar. I would like Jennifer Frost to take the microphone, please.

Have you seen Jennifer?

It might be a good time, while we wait for Jennifer, to introduce to you our new general counsel for the State Bar of Michigan. In the back there, Katie Hennessey. You can see her right in the corner.

(Applause.)

CHAIRPERSON CUNNINGHAM: She will be taking over for Mr. Flood and I think is officially now our general counsel.

We are going to move on to filling vacancies, and we will come back and discuss the calendar.
Judge Brown, I see that you are here. Could you please proceed with the Nominating and Awards Committee report.

JUDGE BROWN: Good morning, everyone. You should have received a pink sheet with the slate of nominees for the filling of vacancies. Is there a motion to approve the slate?

VOICE: So moved.

JUDGE BROWN: Is there a second?

VOICE: Second.

JUDGE BROWN: Any discussion?

All in favor?

Opposed?

Motion passes. The nominees can come forward and take their seats. Thank you for joining us.

(Appause.)

CHAIRPERSON CUNNINGHAM: In the materials that you were sent, you were provided with a copy of the calendar, the proposed calendar. One comment that I would make is that we are on a pretty tight time schedule. If we don't finish by noon, we will either come back or table the remaining issues until next April, and that's a decision you are going to have to make, but I hope that it is possible that we can conform with the calendar and actually be out of here
by -- well, over to the Inaugural Luncheon, a very important event, by noon.

So having realized that each of you have already seen the calendar, have had time to review it, I am going to ask now if there is a motion for approval of the calendar.

VOICE: So moved.

CHAIRPERSON CUNNINGHAM: Second?

VOICE: Support.

CHAIRPERSON CUNNINGHAM: It has been moved and seconded. All those in favor of adoption of the calendar.

VOICES: Aye.

CHAIRPERSON CUNNINGHAM: Thank you.

Our next order of business will be the Unsung Hero Award, and the presentation will be made by our president, Jennifer Grieco. And I would note that our incoming president just walked into the room, Dennis Barnes. Dennis, would you stand so everyone can see you.

(Appplause.)

PRESIDENT GRIECO: Good morning, everyone.

Clarence Dass embodies the best of our profession. A former special victims prosecutor, he is what we call a legal first responder, one who jumps at the
opportunity to help those with immediate legal needs. In his case it was Iraqis who were threatened with deportation and victims of human trafficking, to name just a few, but he did this work as an unsung hero.

After being diagnosed with stage four colon cancer in April of 2017 and after starting what would be 12 rounds of chemotherapy treatment, he learned of the Iraqi deportation crisis, and that is when he jumped in as a legal first responder.

Although he was told by his doctor that he may not survive this diagnosis, he kept his cancer quiet and he advocated for his clients, at times staying with families all night at ICE headquarters.

He was running his office from his hospital bed and working on cases within 24 hours of receiving chemotherapy treatment because his clients needed immediate help. Some of these people he was helping on a pro bono basis.

He also advocated for his clients and their issues and their cause on TV, on the radio, and in interviews with the press, sometimes while connected to an IV.

While he says that helping clients during his personal health struggles ultimately helped him to stay sane and to recover, I don't know how many of us
would have put clients first, who would have put pro bono clients first in this situation when dealing with our own health crisis and the knowledge that we may not survive.

But Clarence Dass did. Why? Because, as he stated, "I am a lawyer. My job, actually my life's passion, is to advocate on behalf of those in need."

We are thankful that Clarence is now cancer-free and can continue to do the good work that he does as an advocate, as a leader, and as a volunteer. Clarence makes me proud to be a lawyer. I hope he makes you proud to be a lawyer, and that's why he is this year's unsung hero. Clarence.

(Applause.)

MR. DASS: Well, thank you all so much. I have been joking that there are easier ways to get an award than that, but I will take whatever I can get.

First of all, Jennifer, thank you so much. Jennifer has been a great friend of mine. We were actually at an Oakland County Bar Association event when I was in the middle of chemotherapy, I think it was probably my fifth or sixth round, and she was getting an award, and that's around the time that all this Iraqi deportation stuff was happening, and she has been an amazing role model for me, an amazing role
model for all of us in terms of the service that she
does, so I really appreciate her and everything she
did. And it's also great to see some of my familiar
faces and friends out here.

You know, this is kind of a weird award
because it's like I didn't choose to go through that.
I don't think many people choose to go through that,
but the context of it was, when I left the Oakland
County Prosecutor's Office after five years, I started
this little fledgling law firm, and within two weeks
of starting the law firm I started feeling
stomachaches and feeling fatigued all the time and
sort of losing weight, and I just didn't know why.
Most people choose to lose weight. I wasn't choosing
to lose weight. I just was.

And we went to the hospital, and I had just
met my girlfriend at the time, who is now my wife, who
is in the back, and we had gone out on our first date,
and I hadn't moved into my office yet, and I went to
this colonoscopy, and within a half hour I am finding
out that I have cancer.

So my immediate mind-set was what could we do
right now with all of what I just shared, and I
realized really quickly that the only thing I can do
to get better is to pretend like this isn't going on.
So I got the news, we went on a second date. We went back to the office. I kept working, and then we began chemo and kept going day in and day out, and then things got really crazy. Fox 2 was calling, and I was in the hospital, so I would go into the bathroom, and would I do this interview over the phone from the bathroom, and then I would leave and go to ICE headquarters that night and do an interview with Channel 7, and then I would wake up in the morning and do a radio interview, because there were these needs that were pressing and pressing and pressing, and I was the only attorney that was showing up that spoke Arabic.

I was the only attorney that a lot of these people knew at the time, and there was no one else to help, so we just kept doing it, and my little law firm then gotten 10 clients and 15 clients, and I had no staff, so I was then -- my wife was becoming my paralegal. My mom was filing appearances for me while I was at the hospital. My dad would call courts and ask for adjournments. Really, this became a full-fledged operation. I only say that because the actual unsung heros of this year, in 2017, were those people, those people that let me actually keep doing this.
Like I said, my wife, Renee, is in the back, and she on our second date committed to keep going here through this journey, and I do remember right after my big surgery at the end of the whole year of 2017 where I made her call a client and pretend like she was my bill collector and, say, Hi, this is Renee from the Dass Law Firm. We are calling just to follow up on -- and I was in the hospital bed next door.

And, like I said, my sisters -- none of these people are lawyers. I was teaching them how to go to court and file appearances and file motions and things like that. They kept me alive. The clients kept me alive. This kept me alive.

And I am often asked why I shared it after a year. And I will tell you, the minute I shared it, there hasn't been a week that's gone by where I haven't received a call from someone in our profession or seeing someone at court in our profession who hasn't approached me or told me that their sister, their brother, their father, or they themselves had received the test results that they didn't know the future of, and they have seen what I went through and seen that I came out of it, and for anyone that's ever gotten that kind of news or knows someone who's gotten that kind of news, one percent of hope is more than
enough hope. And if I have been able to give that to anybody in our profession or those clients or anyone out in our community, then it was worth it.

So I am thankful to you. I am going to try a different way to get an award next time, but I really am honored and honored to be in your presence. So thank you.

(Applause.)

CHAIRPERSON CUNNINGHAM: Thank you, Clarence, for your inspirations.

Our next award is the Michael Franck Award, and it will be presented by Bernard Jocuns.

Bernard, could you come forward, please.

MR. JOCUNS: Good morning. I need to do my best to truncate things, because Richard told me I only have 45 minutes.

Anyway, Michael Franck was director of the State Bar of Michigan who strived for improvements in lawyer relations and public interest. There is even a building named after him.

Intellectual honesty, compassion, diligence, intestinal fortitude, and ethical dedication are the foundations of the Michael Franck Award. When I think of these qualities, one person comes to mind at the top of that list, and that's attorney Mary Chartier.
Personally I met Mary after Listserv brought a lot of us defenders together, and I had to make a point of making her acquaintance, because she offered yeoman's work on three cases that went up to the Michigan State Supreme Court and was very successful at it and dedicated her time. I thought that was amazing.

A true leader has the ability to encourage and push others without being overbearing, more often than not being done in such a way that others do not even realize just so you can get that pep talk or moral boost without being devoid of getting on the soap box. Giving back to your community and profession is something that goes hand in hand, especially with this award.

From donating time to saving animals on doggie death row to restoring someone's dignity and civil rights after a wrongful conviction, Mary personifies the spirit of this award.

Adjectives merely do not do justice to someone who is actively giving back and moving forces in a positive direction. Starting a section of the State Bar of Michigan, getting suckerized into contributing to the intelligence and coherent chapters of books or just offering insight on a difficult case
are just some examples of the altruism to colleagues, peers, and the legal profession as a whole that Mary has given back.

A couple of things though real quick. How am I doing? I still have another 43 minutes?

CHAIRPERSON CUNNINGHAM: Well.

MR. JOCUNS: Okay. As my 18-year-old daughter would say -- she actually corrected me in this -- there will be no golf class, and corrected me with the following that, when I say give it up, please give it up, and please, you know, give it up to the queen of Mardi Gras several years running, Mary Chartier.

(Applause.)

MR. JOCUNS: By default, she is also my friend.

(Applause.)

MS. CHARTIER: Thank you so much. Thank you so much to Bernie and for all of you for this award. It means a tremendous amount to me.

I stood before you a couple of years ago because I had nominated Marty Tieber for the Unsung Hero Award. I can't think of anyone more deserving than Marty, or at least I didn't think I could think of anyone more deserving than Marty, until
I heard everything about Clarence today. What an honor to share the stage with him this morning. I think he is just an outstanding individual.

As Bernie said, criminal defense litigation is my passion. We have defended both people and animals on doggie death row. We actually recorded a podcast yesterday about another dog who is on doggie death row.

Doing what I do and being honored for it is, again, a tremendous, tremendous feeling standing in front of you today. I am really overwhelmed by it. And we don't get a lot of honors or awards or applauses, criminal defense lawyers. Anyone in this room who is a criminal defense lawyer knows that. I get far more hate mail than I do congratulatory remarks.

One of the funniest e-mails that I have gotten recently talked about all these horrible things that would happen to me, but then, you know how you have the signature line at the bottom, and it said -- you know, which obviously she didn't delete -- and it said, Please have a calm and productive day. And that was right after hearing about how God would strike me down for defending someone in a high profile case.

So I want to thank all of you for recognizing
me for this, and I know that this means a lot for our law firm, Chartier & Nyamfukudza. This means a lot for everyone in our field, and thanks for all the work that you do.

(Applause.)

MS. CHARTIER: If anyone is a fan of Murder She Wrote, I can use this as a weapon. Thank you.

(Applause.)

CHAIRPERSON CUNNINGHAM: We will now move on to our financial update, all the good news. The presentation will be by our Executive Director, Janet Welch, and James Horsch, the Finance and Administration Director. So Janet and James.

EXECUTIVE DIRECTOR WELCH: Thank you very much. So the agenda says planning for the next, as the agenda says, financial update, but the slide says, Planning for the next SBM fee increase, so I hope that's not a bait and switch that got you here. It's about going from inspiration to talking about a topic that's like going to the dentist or scheduling a dentist appointment.

It's a bit of a comedown, but I think there is very good news that we need to celebrate as we describe what needs to be done, but before I do that, I want to talk just for a minute about the lawsuit
that was filed, Taylor V. State Bar of Michigan, about
a month ago, and I have had people say, So is this
really the worst possible coming, that the Bar is
coming to the end of a fee cycle at the same time that
they are being sued for their very existence as an
integrated bar, and my answer to that is no, because I
think that it's the same question that we need to
answer in both cases, which is what is the value of
the State Bar of Michigan to the public and to the
profession, and we have good answers in both cases.

I really commend you, the amicus brief that
the State Bar of Michigan filed in the 8th Circuit,
and for those of you who haven't been paying as minute
attention to the constitutional challenge to the
integrated bar as we are at the Michael Franck
building, the 8th Circuit came down on the side of the
integrated bar in its decision about a week after
Taylor V. State Bar of Michigan was filed. So I am
confident that we have the right answers, and I am
confident that this body and the State Bar of Michigan
will come to the right conclusions about how to move
forward in the environment that we are in.

That said, we need to talk about where we are
in the fee cycle, and I want to start with the basics,
starting with -- Carrie is moving us forward here --
starting with the very basic question of what the State Bar of Michigan was created to do 85 years ago, because that hasn't changed. We have been chartered to aid in promoting improvements in the administration of justice and the advancements in jurisprudence, aid in improving relations between the legal profession and the public, and aid in promoting the interests of the legal profession in this state.

So the picture of what that looks like as we have developed operations to carry out those missions looks like this, and you can see that the entire picture includes admissions and disciplines, so that's the regulation of the legal profession.

State Bar of Michigan is tasked with the unauthorized practice of law prosecution, practice, and we have also picked up in that context practice management services, ethics, lawyers and judges assistance, client protection, public education, character and fitness, access to justice, advocacy for improvements in the law.

The center of everything we do is the very mundane but really critical function, the database management, and the price tag for that is what you have been asked to consider and what your specific charter is in the governance of the State Bar of
Michigan, which is to recommend to the Supreme Court what it takes to carry out those functions.

So the next basic piece of information is how license fees are set, and those of you who are not brand new lawyers know that this used to be called Bar dues, but we are trying to inculcate the term "license fees" to drive home to lawyers in Michigan who do not necessarily understand that what they are getting when they pay the invoice that they get in September is their license to practice law, and that if there were not a State Bar of Michigan, they would still have to pay a license fee to be in practice in Michigan.

So the process for setting those fees is through the Michigan Supreme Court. They control what that amount is, and the Representative Assembly, you, have exclusive authority on behalf of the State Bar to recommend a fee change in the State Bar portion of the fees.

So we need to talk about the history of the last fee increase, and that takes us all the way back to 2003. Is anyone in the RA now who was in the RA in 2003? All right. Two. I see two hands.

So what the Representative Assembly recommended in 2003 was a $40 increase in the State Bar portion of the active license fee, an
automatic inflation adjustment, which would have taken
us out of the common paradigm for member dues, which
is a cycle where you bring in more money at the
beginning than you need to run the operations and then
dip into those reserves towards the end so that you
extend the amount of time that you can go without
having to go back to ask for an adjustment.

We also asked that the Supreme Court raise
what was then an exemption, complete exemption from
paying a license fee for people over 70, to raise that
to 75. And the Supreme Court instead gave us half of
what we were asking for for the State Bar portion of
the license fee, but gave us $20, and gave another $20
to the disciplinary system. They instituted the $15
Client Protection Fund fee. They eliminated the
over-70 exemption altogether, although that's been
slightly revised to take away the State Bar portion
for people who have been members of the Bar for 50
years subsequently. They instituted a new inactive
fee increase and late fee and reinstatement fee. So
that's what we have been operating on since 2003.

So I would like us to take just a second to
reflect on how long ago 2003 was. So here are some
things that were relevant in 2003, and you can think
about what was happening in your life in 2003. My
favorite one on this list is Mark Zuckerberg was launching FaceMash at Harvard in 2003. We didn't even have Facebook back then, and the last one, of course, which is it was the last time the Tigers were as bad as they are today.

MR. HORSCH: I just want to mention that Chelsea was an undergrad in college in 2003. That's how long ago.

EXECUTIVE DIRECTOR WELCH: So that's when your license fees were last raised.

So let's look at what those fees are today. $180 for the State Bar portion, 120 for disciplinary, and $15 for the Client Protection Fund.

So that takes us to the question of the moment, which is where are we in the fee cycle that we are living within, because we don't have an inflationary increase, and I am going to let Jim Horsch explain the slide that he created, and I am going to offer to you at the end of the presentation the opportunity to tell us whether you want all of these slides. Jim has dozens of these slides, and this is a sample.

MR. HORSCH: This is an illustration that shows that when you start to have expenses that exceed revenues and your fund balance goes way down where you
are going to need more money -- you can see this in
the first part of the, all the way to the left -- and
then there is a fee increase, and that increases your
revenues and covers, more than covers your expenses,
so you are actually putting some away in your net
position fund, and then you get to a point in the fee
cycle where you are spending more than what you are
taking in, and your net position or your fund balance
starts to go down, and then you get to a point where
you are going to need an infusion of money, and that's
typically in the form of a fee increase.

EXECUTIVE DIRECTOR WELCH: Thanks, Jim. He
is up here to answer any difficult questions you might
come up with at the end, and you can see he has all of
the data and answers.

This is what has happened in terms of
cumulative inflation since 2003. If we had had the
inflation adjustment in place, the State Bar portion
of the fee that you now pay would be $250 instead of 180.

So I think we need to reflect on the fact
that we are now in the longest fee cycle in modern
State Bar history. We didn't look back before 1970,
but from 1970 on, this is what the picture looks like,
and until I actually put this slide together with
Jim's data, I didn't realize that -- I knew it was the longest cycle, but I didn't realize that because of the fee cycle the increases are not tiny at the end of each cycle and that the next longest cycle, the one that began in 1977, was preceded by a $90 increase in fees.

So the conclusion that we are bringing you toward is that the current dues cycle is approaching its natural end, assuming business as usual, which means in this case that we continue to perform the operations we are performing the way that we are performing them.

So where do we stand today? The mandatory cost to practice in Michigan is the lowest of all states. I am going to let Jim go through this data, because he collected it.

MR. HORSCH: Thanks, Janet.

We compare ourselves constantly to other integrated bars and other bar associations, and, if you factor in the fact that Michigan does not have mandatory continuing legal education and the fact that compared to other integrated bars we are the 8th cheapest in terms of our required fees or mandatory fees, Michigan is actually the cheapest jurisdiction in which to practice. And so 76 percent of the
integrated bars have higher required dues and fees.

EXECUTIVE DIRECTOR WELCH: The only thing I would add to that is that in 17 voluntary bar states -- that doesn't mean that all 17 voluntary bar states have smaller dues. Some of them have higher dues, but, in general, the voluntary bar states in which you only get the license, you get none of the benefits of being part of an integrated bar. You just get the license. In those states, in general, that average is lower than what we pay, but in some states it's substantially higher, even in the voluntary bar states.

So I am going to give this slide to Jim too, because he will tell you a little bit about our financial margin.

MR. HORSCH: So 2022 is a key date here, because, according to our forecast, and we have had a finance committee of the State Bar, and Chelsea and Joe have actually served on that committee this past year and participated in looking at what our forecast is projecting. We are going to need to have something in place by 2022, and so what happens is we look at our financial capability as a percentage of our, excuse me, our financial capability as a part of our fund balance, and that has to be 33 percent. The fund
balance has to be 33 percent.

So what we do is we forecast this out, and if you go to the next slide here, you can see the line across here is our 33 percent minimum reserve line, and in the 2020 there is a circle around the bar that shows our budget, and we approved, the Board of Commissioners approved a final $1.8 million budget that uses reserves for that 1.8 million, but it actually means that expenses are exceeding our incoming revenues by that amount.

So each one of those red bars projects the expenses greater than revenues, and we continue to use our fund balance, our reserve, until you get out to 2023, and September 2022 is the beginning of fiscal year 2023, and we get below our minimum required reserve, and so the point here is we are going to need something by September of 2022.

EXECUTIVE DIRECTOR WELCH: So we want to give you a sense of what we have been looking at internally, what the preliminary options are. The business as usual option that Jim has projected, which is that if nothing changes based on expected inflation and doing things at the Bar exactly the way we are doing them now would require an $80 increase for us to be where we need to be in terms of the financial
But we are also working on alternatives, and the alternatives under development -- this is just a synopsis, and it's a mix-and-match proposition -- would be, the choices would be to make some of the current services user-pay, sort of a more of a cafeteria element in the license fee, to eliminate some services altogether, to phase in increases of less than $80, and to find even greater efficiencies, which is something that we have been doing all along of course, and which explains why the fee cycle has been as long, extraordinarily long as it has been.

So what are the next steps? I think I have got a minute to tell you what the next steps are. The staff's job is to continue to provide analysis of the finances, to develop the options further, the options that I have laid out, to test market ideas with leaders and stakeholders.

And your job is to ask questions that provide guidance for our efforts, to consult and test market options and ideas with your constituents, to weigh the proposals that come before you, to make the recommendation from the Representative Assembly, and to help sell the final product, whatever that may be.

So to summarize -- on time -- the State Bar
has carried out its mandate within fixed fees, a fixed income, so to speak, for 16 years by operating efficiently and covering inflation, and I want to, while he is standing next to me, give Jim credit for his extraordinary acumen in helping us carry out that mandate.

We are nearing the end of the fee cycle, and we need an increase no later than September 2022 if we don't make changes in our operations.

The State Bar fees are lower than average compared to other jurisdictions, including many voluntary jurisdictions. The State Bar will compare favorably, even with the business-as-usual fee increase, but we are looking at options, and we will be working with your leadership and the leadership of the Board to bring proposals to the RA in FY 2020, which is underway. So I am not sure we have time for questions, but if we don't, Jim and I will be available on an ongoing basis for any of your questions.

CHAIRPERSON CUNNINGHAM: Well, since Bernard didn't use his entire 45 minutes, why don't we take that time for questions. When you ask the question, would you come to the microphone, please, and identify yourself by name and circuit number, please.
MR. BARNES: Good morning. John Barnes, 45th circuit, St. Joe County.

I have a question for you. I saw or heard mention an $80 increase sounds like something you had in mind. Were you kind of building into that enough of a surplus that would take us through somewhat of a fee cycle, or are you also anticipating that there should be a cost of living increase into that that would help to reduce the effect of a lengthy fee cycle?

MR. HORSCH: That's a good question. The $80 actually takes you another five or six years beyond the increase, and the last time that a fee increase was proposed we did look at an inflationary adjustment, and I believe the Representative Assembly approved having an inflationary adjustment to avoid the very phenomena of the fee cycle, so if you have a built-in inflation into your fees, then they keep up with inflation and, effectively, you don't have a fee cycle where you have a dues increase every several years, right.

MR. PERKINS: Dennis Perkins, 44th circuit.

Do you expect to have a survey out for the Bar membership at large with respect to this, and the reason why I ask is that the information that you are
probably going to get from all of our members or our membership could be very enlightening, and you may find that a lot of people are in favor of a raise without having to do a huge sales job.

EXECUTIVE DIRECTOR WELCH: So I used the word test market intentionally, right, and I think part of that test marketing is to figure out how to get useful, maybe essential feedback prior to making the decision. So that would be something that we would be discussing with leadership and including how to frame those questions and what questions to ask.

MR. PERKINS: As you know, timing is everything, and the next time that we meet will be the spring of 2020, and that ain't so far away from 2022, and I am just wondering should we be looking at or is it your intention to proceed by doing something now?

EXECUTIVE DIRECTOR WELCH: Yes, and the dialogue is with you about what to ask, what questions you think would be helpful to get answers to.

MR. PERKINS: I understand. Thank you.

MR. WIRTH: Good morning. Chris Wirth, 20th circuit.

I think, as you are discussing it, there are fee increases with membership at large is a useful metric for that. In addition to the idea of cost of
living or inflation would also be what the fee increase is represented as a percentage of average attorney compensation, because I think, you know, if you are seeing substantial growth in attorney average of compensation, then the licence fee seems like it's not as big a deal, but if average attorney compensation has been stagnant, I think many of the members who are on the lower end of the compensation structure are going to see the license fee increase as a big hit.

EXECUTIVE DIRECTOR WELCH: And you just made the point I was going to make. That's an very sophisticated question because the growth of attorney compensation has not been uniform throughout the practices, and that's a tricky situation. We do need to figure that out. We need to think about what that means.

MR. WIRTH: Which is why I raised the question, because I think attorneys on the lower end of the compensation range, it's going to be a bigger hit.

EXECUTIVE DIRECTOR WELCH: So are you advocating the socialist response to the license fee increase?

MR. WIRTH: It does seem like there is this
growing gap between the upper and lower ends of attorney compensation.

EXECUTIVE DIRECTOR WELCH: Yeah, and just one final comment, that an integrated bar really, in looking out for the interests of the entire profession, does take into account how to help people who are struggling in their practices with practice management.

CHAIRPERSON CUNNINGHAM: Thank you, Janet. James, thank you.

The next item of business is I get my 45 minutes, which I will not use.

When I stood before you last year at this time, I told you that there were two initiatives that were very important to me that I had hoped to make some progress on in my tenure as your chair. One of them was if there is anything that can be done to ensure fair representations among juries, participation of all across the board, and to deal with that I appointed our Special Issues Committee, headed by Dave Gilbert, who is sitting here now, to start the process of exploring what, if any, recommendations can be made in regard to ensure jury fairness, and David reports that they have been working on that. They have been working quite
diligently over the past year, and he has indicated to
Aaron, and Aaron has indicated to us this is something
he would like to continue.

So my report to you is that, yes, we are
making progress and, yes, David has been tackling that
issue, along with his committee, but it's a long
process, and we will continue.

The second priority that I had, and this was
something that came before you in terms of a
resolution, was an examination of the governance of
the State Bar. What really is the Representative
Assembly? What do we really do, and what should we be
doing? What's the Board of Commissioners' role?
What's our relationship between them?

Now, you authorized the creation of a
governance task force, and that task force met. We
have hired a consultant to assist us in our work, and
the next step in this meeting is going to be a report
from that consulting company about the work that is
ongoing, so we have a video. Can we get it queued up
from someone?

(Video being played.)

MR. ENGLE: Hi, I am Mark Engle.

MR. HENRY: And I am Jeff Henry.

MR. ENGLE: We are with Association
Management Center. I might be a familiar face for you. I was with you April 13th at the RA --

(Video interrupted.)

CHAIRPERSON CUNNINGHAM: We all know that technology always works.

While we are waiting for that to get keyed up, at the end of presentation I am going to talk very, very briefly about some of the inquiries that we have developed in the task force, things we are going to examine, things we are going to look at, and we are going to ask you to provide your input on each of those inquiries.

Now, I know you have given or have already received a list of those inquiries. We would like to hear from you. We would like to see what your thoughts are in each of those questions, and they will be mentioned in the video, if we get the video going.

How are we doing back there?

VOICE: Working.

CHAIRPERSON CUNNINGHAM: Okay. Well, naturally, I reviewed it, and I can give it to you, maybe act it out for you, but I don't think --

EXECUTIVE DIRECTOR WELCH: Pantomime.

CHAIRPERSON CUNNINGHAM: Yeah, a little pantomime, or at least maybe we get the sound.
The specific questions really look at our role. I know that -- I can't tell you the number of times I have heard about what is the Representative Assembly and what do they do? And when I make these general statements, like we are the final policy-making authority for the State Bar, I get these looks on people's faces that, okay, but what do you really do? Why do you have it? What's the justification for even existing? What can we do to convince people? Ah, we have a video, so let's watch the video.

(Video being played.)

MR. ENGLE: Hi, I am Mark Engle.

MR. HENRY: And I am Jeff Henry.

MR. ENGLE: We are with Association Management Center. I might be a familiar face for you. I was with you April 13th at the RA meeting in Lansing, so it's good to be back with you, even though we couldn't physically be with you, but our purpose today is to share with you where we are in the process in examining the governance and the opportunities to advance performance for the State Bar of Michigan.

So our agenda for today is to give you an update, but we don't want to assume that you remember where we started from, so we are going to share with...
you some of the objectives and principles of this work
and then some of the preliminary findings and the
journey we have taken along the way.

So the charter that was approved by the RA to
originally begin this work product is on the screen
right now. We are not going to read into it, but the
elements are that you are looking for change because
there has been change in the legal community. There
has been change in the Michigan statutes and the
governance elements that are impacting the
organization. Change is happening in how we examine
the change and the decision-making and the governance
elements around State Bar of Michigan. How do these
relate. So that's the purpose of the project that you
all have approved. We are looking at efficiencies,
some potential hurdles in structure that may be
causing us concern in advancing some of the
performance around the organization, what does that
look like?

So the ultimate goal statement is to advance
the State Bar of Michigan's governance structure and
scope to improve efficiency and effectiveness, enhance
member engagement, and build trust with members and
the public to further SBM's ability to fulfill its
mission.
So we created these objectives for the Task Force at the very beginning, and some of these words should really resonate with you. It's about connection, engagement, and communication with members. It's about building value for members. It's about providing a support system that is timely and has the ability to lead on important short-term and long-term issues.

It's about simplifying the complexity of the structure. It's about using online and communication tools that did not exist when this structure was created and incorporating them into how we make decisions and how we inform strategy as an organization.

It's about incorporating competencies while respecting the balance and diversity elements in the boardroom and amongst the RA. What does the competency and the representational element look like in today's environment versus when the organizational structure was conceived many years and iterations ago?

It's also a matter of coming up with these recommendations that are ultimately adapted or adopted by the RA, the BOC, and ultimately the Supreme Court, your decision authorities.

We are also positioning both the BOC and the
RA such that we are seeking engaged activity and measuring that activity by the engagement of the RA. Are we showing up? Are we actively engaged? Are people seeking to be in these leadership bodies of the RA and the BOC as one of the measures of performance and engagement?

And then clearly we are looking for more clarity around the definition of the roles and functions, particularly between these two leadership bodies, with the BOC and the RA.

Those are the objectives that the Task Force has determined are important, and they have been blessed by the Board.

What are the guiding principles that will guide our work, and those include we need to phase in implementation. We are not going to do this overnight. We are not going to make changes overnight. It's going to be over a period of time.

There is going to be transparency in the process. We were with you in April. We are here again today, and we are engaging you in this process, and asking you to inform what it should look like so that it works for you. That's the elements around transparency in the process.

We need to make sure that there is timely and
decisive action taken throughout. We are not just going through an exercise here. We do expect to arrive at conclusions and ultimately impact the way decisions and authority are pursued within SBM.

We want to make sure that the structure allows us to be proactive in agenda as opposed to necessarily reacting to things that are brought before us. How can we look up and out versus down and in?

We also need to make sure that we are building trust through member inclusiveness and a consensus-based approach, and that can be done well in today's environment in the way we communicate.

And also we need to make sure we are driving efficiency, whether it's reducing cost or impacting the way that we are making decisions, timing and quality levels of decision.

So how is our journey coming along, our methodology? The Task Force has been appointed. In fact, we have had face-to-face two times, and they have been engaged throughout the process and in forming the questionnaires, interviews, and so on. So I would say it's a pretty engaged task force that is coming along in leading this process.

We have been through the discovery phase, which means we have read your literature, we have
looked at the past studies, we have looked at the bylaws and different operation elements within the structure of SBM.

Jeff is going to get into the interviews and the survey in a few minutes, and ultimately we are going to be coming up with our findings. What are we finding along the terms that's going to inform the recommendations that we think are viable to advance your governance structure? So that's where we are going, and then the recommendations are due in March, in time for your April 2020 session.

MR. JEFF: As Mark mentioned, part of our process is to ensure that we engage the voice of the members of the State Bar of Michigan, and we have done that through a number of different channels at this point in time.

We began with the survey of the Board of Commissioners as we assess what is the current state, and we tried to gain initial opinions about the future structure of the State Bar.

I am here to share with you some of the results from the survey from the Board of Commissioners, as well as the survey from the Representative Assembly that hopefully each of you participated in in the recent past.
We began our process of discovery by surveying the Board of Commissioners. Twenty-seven members participated in the survey, and the results were somewhat predictable, but also informative, and I am here to share with you some of the highlights of the findings from that survey.

One of the first questions dealt with, What is the culture within the boardroom? And the responses were very positive. There is a high degree of respect between the board members, board member to board member, board member to staff. There is also a high degree of competence in their fellow board members. So members felt that everyone sitting around the table had the skills and the abilities to guide the State Bar.

When we asked about the effectiveness of the Board itself, again, very positive feedback. Respondents felt that the Board was very effective in managing the resources of the State Bar and in debating and approving policies coming from the State Bar of Michigan.

They also indicated a high degree of satisfaction with their experience on the Board, and most specifically with their respective commissioner committees.
On the opportunity side, there were a couple pieces of feedback. One, the survey respondents indicated that there was a lack of nimbleness within the State Bar, and that they also felt that they would like to spend more time on generative thinking, exploring those issues that are on the horizon that are going to impact the State Bar and profession in the future. How do you prepare for those issues? And then be proactive rather than responsive to the items that fall on our plate.

One other thing that came from the survey that was reflected in the qualitative comments portion of the survey dealt with or indicated that there was a strong belief that geographic representation was a necessary and important component to maintain in the State Bar moving forward.

I am sharing this slide with you just to indicate the response to a question about distinctions between the roles of the Board of Commissioners and the RA itself. We have asked the Board whether or not those roles and functions were clearly defined and people understood what was the appropriate function and role of each body. Sixty-seven percent of the Board of Commissioners did not agree that those roles were clearly defined. There is opportunity there.
They indicated that it causes confusion, and there is often debate about whether or not what items need to go over to the RA for approval and review and those that do not.

So there is opportunity here. Part of our function and this project is to better define those roles and the opportunities moving forward.

So after completing the Board of Commissioners survey, we turned our attention to the Representative Assembly. We sent surveys to 300 current and former members of the Assembly, and we had a fairly healthy response rate. Over 130 members submitted responses.

The survey was conducted in two phases. The initial, talking about the operation and function of the RA, and then phase two we explored opportunities and did a little deeper dive on one or two of the topics from the earlier phase of the survey.

So looking at those results, one of the first questions asked about the RA's effectiveness in developing, reviewing, and debating policy positions. The feedback from the current members was very positive. Each of those items -- drafting policy, reviewing policy proposals, and debating policies -- 82 to 85 percent of the respondents thought the RA was
very effective or moderately effective in performing that function.

An interesting note, however, when looking at the survey, we provided an opportunity for people not only to fill in the quantitative portion of it but to also add their comments, to elaborate on certain portions of the survey, and it was very interesting that the qualitative piece, the comments sections, reflected much bigger diversity of opinion in the RA's effectiveness than the quantitative portion.

We cross-tabbed many of the survey results to look at where certain groups may have differences of opinion, and in total there weren't any that were significantly different with one exception, and that's that longer tenured members of the RA had a less favorable opinion regarding its effectiveness than those members that had served shorter periods of time.

So specifically, if you had served six years or more on the RA, that group tended to have a less favorable opinion regarding the effectiveness, and that's a somewhat unusual response. Typically the longer you serve on a body, the more favorable you believe the group is performing, the more likely you are to have a favorable opinion about its overall performance.
One area that the survey indicated there was an opportunity to improve was in the RA's function and role gathering information and sharing information with the State Bar's constituents or members as a whole.

So 52 to 55 percent of the respondents indicated that the RA was not very effective at soliciting feedback or informing constituents regarding the outcomes and the decisions made by the State Bar, so an opportunity to further reposition the RA, an opportunity to further engage members at the grassroots level.

When it came to the operations of the RA, one of the questions of importance to us was whether or not the RA is spending adequate time considering issues that impact the future of the State Bar or impact the future of the profession itself.

Again, very positive feedback. Seventy-three percent felt that the RA did spend sufficient time. Again, I'll indicate that the qualitative feedback, which would suggest that the response was not quite that favorable and that there was opportunity there, but we will look at those items here in a few moments.

We also asked, similar to the Board of Commissioners, we also asked the RA regarding the
divisions between the RA and the Board of Commissioners, were those roles and functions clearly defined? And, again, echoing what the Board of Commissioners had to say, the majority indicated that they were not. Fifty-eight percent disagreed or strongly disagreed or simply didn't know whether or not the roles and the functions were clear, clearly defined, and were effectively communicated. So, again, opportunity as we move forward.

Along those lines, similarly, when we asked, many of the qualitative comments indicated that there was a high degree of unfamiliarity with the Board of Commissioners among the RA members. Many of them don't see the engagement and the interactions there. There were many comments suggesting opportunities to improve interaction between the Board of Commissioners and the RA. One comment shown here simply indicates there needs to be better understanding, needs to be better education, and there needs to be better engagement between the bodies as they exist today.

There is also considerable divergence regarding the role and, frankly, the need for the RA moving forward. So a couple comments reflected here, one supporting the continuation of the RA and, you know, against centralization of power, and others
questioning the RA's role and the opportunity for revising that role and making the RA more relevant in the future.

When we asked here about the State Bar nimbleness again, the members of the RA reflected similarly to the opinions of the Board of Commissioners more favorable, actually, feedback regarding the nimbleness, but still a high percentage that did not feel that the State Bar as a whole or the RA had the opportunity to act timely and quickly, to respond quickly to issues impacting the profession.

Some as the result of the size. Some felt that having a 150-member body just contributed to ineffectiveness. It's hard to mobilize an entity of that size to respond quick, and the fact that it doesn't meet frequently contributed to a lack of nimbleness as well.

An interesting takeaway from that, however, is that when we asked specifically about whether or not the RA was meeting frequently enough or not, the majority, 57 percent, said yes, that the current schedule of two meetings per year is the right amount.

We also asked about the opportunities to meet more frequently or to engage technology in facilitating the more frequent meetings, and the
feedback there, there was strong support for use of
technology, high degree or high number of written
responses here and comments about the opportunity to
engage technology in facilitating the business of the
RA and to making it more effective and the opportunity
of improving engagement of RA members through the use
of technology, to extend that engagement to the
grassroots level, but I would temper that with they
were also talking about not meeting more frequently
just to meet but meeting more frequently if there is a
need for a meeting.

The membership as a whole is looking at
today's communicative tools and saying how might we
engage those into our operations as we look to improve
in our effectiveness and efficiency in performing our
responsibilities and duties?

Two final topics I would like to touch on.
One just dealt with the opportunity and the process
for recruiting new members and retaining RA members,
the ease or difficulty of that. Forty-eight percent
of respondents felt that recruiting members to serve
was difficult or very difficult. High degree, high
percentage of those didn't know, so it was actually 70
percent of those who an opinion or some understanding
of the process indicated that it was very difficult or
difficult to retain members to the Assembly.

And, finally, we asked questions about the composition and the diversity of the RA itself. We wanted to assure that the Assembly is reflective of the membership as a whole and that we have diversity of thought, diversity of profession, diversity of race and gender, and the responses there suggested that there is work to be done. People didn't feel that it wasn't necessarily reflective, but they -- across the board it was pretty universal that there are opportunities to continue the efforts to build diversity in the body itself.

MR. ENGLE: So what do you do with this intelligence that we gathered, from the surveys, from the interviews we conducted, from the literature review that we did on the organization? So we processed this with the Task Force. We came up with these lines of inquiry. Now these are going to be shared with you, and these are going to be developed as we go along, so I am not going to read each of them individually, but you can see the questions that we are asking, the themes that we are pursuing for both the RA and the BOC. So this is going to be your opportunity to continue to inform our process and where we are going without making ultimate
recommendations here.

So what are the next steps in this process? As we continue, and we have not finished yet the interviews. We have finished the surveying, but we are going to be probing these lines of inquiry, and they will be informing to more of our upcoming interviews so that when we ultimately come up with these findings and these themes that are emerging, we will be able to inform some recommendations that will ultimately come back to the Board of Commissioners and ultimately to the RA to help inform a structure to advance performance for the future. What does that look like?

The timing on this is in March, so we do have ample time in the process to have you inform the process. Some of the key fundamental questions are are we using your time and intellectual capacity to advance performance for the State Bar of Michigan and the practice of law, or not? What does that look like? How do we use large bodies to advance discussions, to do environmental scanning and to advance positions and advocacy so that we are out in front as opposed to reacting to situations that are timely in the decision-making process and, therefore, constrained to a smaller group that make these
decisions.

So these are the questions through the line of inquiry that we will be asking. You have the opportunity to weigh in on these. The time frame of the project is such that the findings are going to be really formalized in March, so we are still on this inquiry line. We are asking you to support this with providing your thoughts and comments, and here is the way to do that. You have got the Rep Assembly at Michbar.org, which goes to staff, and we are processing your comments, your input on these lines of inquiry that will help inform the ultimate recommendation.

There is no ultimate solution. There is no perfect governance structure, but what is it that we can do to advance the way you make decisions and distribute the authority within the State Bar of Michigan to advance organizational performance and to achieve the objectives you have set out to.

So it is a process. We've got till March, and then ultimately for your consideration in the April 2020 RA meeting.

So thank you for this time. We appreciate the project and engaging with the Task Force and with you in advancing performance for the State Bar of
Michigan.

(Video concluded.)

CHAIRPERSON CUNNINGHAM: Just a couple quick comments before we take a break. Thank you.

As you heard in the video, 300 surveys went out. Three hundred people were questioned associated with the RA, the current members and former members. One hundred and thirty responded. That is a phenomenal rate on any type of a survey. So those of you who participated, thank you. Those of you who didn't, watch out. I will come out and take your dog. So next time participate, please.

The point I want you to take from the whole video would be simply that part of this process is going to rely on your comments, on what you see, the direction you would like to see the State Bar governance go. Very important, those inquiry lists, and they should be in your materials, and we will make sure that everybody has a list of those inquiries. Please, give it some time, some thought, and send them to that e-mail address. They will be considered. So we appreciate it very much, and please return at 10:25. Thank you. We will take a short break.

(Break taken 10:11 a.m. - 10:25 a.m.)

CHAIRPERSON CUNNINGHAM: We will get started,
please. As you probably noticed from looking at your
calendars, I missed something. I overlooked it, and I
have got to take responsibility for it and an apology
to you. We have never really approved the summary of
proceedings for the prior, you know, the prior meeting
last April.

VOICE: So moved.

VOICE: Support.

CHAIRPERSON CUNNINGHAM: Well, at this point
I am going to ask Jennifer Frost to give the report of
her committee in regard to the summary of proceedings.

MS. FROST: Thank you. Jennifer Frost from
the 39th circuit. It came to our attention,
thankfully, through Victoria King, who pointed out
that item number 11 of the summary of proceedings, the
last sentence was inaccurate, where, in fact, the last
meeting we did not have a discussion regarding that
proposal. There was a motion to waive the discussion,
and so I would like to propose an amendment to number
11, the last sentence, and you will see it up there on
your screen, that "upon motion made and supported," it
be changed to "upon a motion made and supported to
waive discussion, the proposal passed."

CHAIRPERSON CUNNINGHAM: Is there support?

VOICE: Support.
CHAIRPERSON CUNNINGHAM: Thank you. Motion made and second. All in favor say aye.

VOICE: Aye.

CHAIRPERSON CUNNINGHAM: Any opposed?

(None opposed.)

CHAIRPERSON CUNNINGHAM: Motion passes. Jennifer, we have then a motion to approve them as amended.

MS. FROST: Yes, I so make that motion.

CHAIRPERSON CUNNINGHAM: And is there a second for that motion?

VOICE: Support.

CHAIRPERSON CUNNINGHAM: Any discussion?

All those in favor.

VOICE: Aye.

CHAIRPERSON CUNNINGHAM: Any opposed?

(None opposed.)

CHAIRPERSON CUNNINGHAM: And I had number two in the beginning to introduce a few people to you. We had someone who joined us, and you will be seeing or hearing from him more later. He will be performing the oath of office in regard to incoming chair Aaron Burrell, but I will point out to you that we have the honor of having in our presence the Honorable Leo Bowman, who is, in fact, I learned, a
former Representative Assembly member, I believe
served two terms on this very body. So Judge Bowman
is here, and you will see him later in the program
when he administers the oath to Aaron. He is in the
back. Thank you, Judge.

(Applause.)

CHAIRPERSON CUNNINGHAM: Our next item of
business goes to the proposal, the proposal to amend
Rule 6.005 of the Court Rules, and the presenters will
be Bernard Jocuns and Joshua Blanchard, and if I could
have you come forward, gentlemen, in regard to your
proposals.

When there is debate, I just remind you,
please use the microphone and identify yourself by
name and by circuit, please.

Carrie, this is our technology problem day.
Is there a way for them to use a clicker on their
presentation? Do we have a clicker to use up there or
a way to move this up?

MS. SHARLOW: Just look back at me, and I
will advance the slide, or say, Next slide.

CHAIRPERSON CUNNINGHAM: Thank you.

MR. JOCUNS: All right. Well, hello again.
We are here. We have a proposal in regards to
attorney presence at PSI interviews. I know there are
some defenders out there, judges, prosecutors, past
and present, et cetera, and this is something that I
found important, along with some of my other
colleagues that are defenders and appellate practice
as well, the problems at PSI interviews, and sometimes
people say too much, they don't say enough because
they are too nervous, and, unfortunately, some of our
clients have cognitive disabilities in which they
really don't understand a lot.

So just like they have in federal court where
this is actually a right, we would like the same in
the state court as well, and also in the spirit of the
State Bar's mantra from a few years back in regards to
having an equal access to justice.

So with all that in mind, my colleague,
friend, biking foe is going to explain this in a
little more detail, and I think we have a little
PowerPoint that's going to follow it as well, so I am
going to turn this over to Josh Blanchard.

MR. BLANCHARD: So I know a lot of you.
Those that I don't, I am Josh Blanchard. For another
24 hours I am the chair of the Criminal Law Section.

What we have -- for those that don't practice
criminal law on either side, a pre-sentence interview
is part of an investigation into a convicted
defendant's history and the facts of the case to present the sentencing judge with hopefully a fuller picture of what's going on.

There is a probation officer who interviews the -- can we go back -- interviews the person about the facts of the case and about the person's history. And this interview is, in most cases -- most criminal cases resolve by plea, and so this interview is one of the most important parts of the criminal case, because what's said here can increase the guidelines and can impact, you know, what happens with the sentencing.

For example, OV-12, Offense Variable 12 and 13 deal with other criminal conduct, and someone who is being questioned and makes certain statements or doesn't fully explain what's going on, it can increase their scoring, and so I think having the right to have counsel present is important. I can't think of any other situation where we tell a person you don't have a right to have counsel present. A party in a civil litigation gets their lawyer in everything they want, but for some reason we don't have that right in a criminal case. The next slide.

This is the federal rule. For those of you who practice in federal court at all, you will be familiar with the process. At a pre-sentence
interview in federal court, it's expected that the lawyer show up. I am not aware of any place where it's not the practice that the lawyer shows up, and certainly you are entitled to be there under the rule.

There is some disagreement among the circuits on whether there is a 6th Amendment right, but there is a rule-based right, and so everyone shows up. If we could have the next slide.

The problem is we don't have a similar rule in Michigan right now. There is -- frankly, the Court of Appeals just resolved it as there is not a constitutional right to have counsel there. There is not a prohibition against having counsel, except that in many circuits MDOC takes the position that the lawyer can't be present, and so the way that works in practice is the criminal defendant goes in, meets with the probation officer, is questioned, and we have clients who for lots of different reasons don't -- they either say things that harm them, which, you know, depending on your view, is either good or bad, but also they are nervous and they don't tell the full story, they don't give that full background, and so I think having an advocate there to help explain things and avoid miscommunication is important, because then we end up giving our sentencing judges a fuller
picture of what's going on. If we could have the next slide.

This is the proposed rule. There has been some commentary from the Criminal Jurisprudence and Practice Committee that the language in gray ought to be taken out and just mirror the Federal Rule, and I think that's probably right. That language in gray doesn't add anything of real significance. And so the language in white is really what we are after, that if a defendant is going to be interviewed as part of a pre-sentence investigation and the lawyer requests to be present, he has got to be given notice of when it is so that he can show up and participate so that he can help his client and help the court.

And so that's what we are asking for. We are asking that the Assembly adopt our proposal and ask the Supreme Court to make this a court rule. We have -- if I could have the next slide.

We have got support from the Access to Justice Policy Committee, and then the Criminal Jurisprudence and Practice Committee with the caveat that they didn't like that introductory language, and I think their comment is well taken. So I think we will open it to discussion.

CHAIRPERSON CUNNINGHAM: We would need the
motion from the floor, either you or the
Representative Assembly.

MR. JOCUNS: Is there a motion on the floor
to discuss this matter?

CHAIRPERSON CUNNINGHAM: Read the motion,
please. Not yet. You have to make the motion before
we amend it.

MR. JOCUNS: Okay. Anyway, a motion to
approve the following motion, that all probation
officers who interview defendants as part of a
pre-sentence investigation must, upon request, give
defense attorney notice and reasonable opportunity to
attend the interviews.

VOICE: So moved.

CHAIRPERSON CUNNINGHAM: Is there a second?

VOICE: Second.

CHAIRPERSON CUNNINGHAM: And discussion? If
you have any comments, questions, please line up at
the microphone. Please identify yourself by name and
circuit number.

MR. PERKINS: You just answered the question
that I have. Dennis Perkins, 44th circuit.

Where it says upon request, the question I
have is whose request? The defendant's request, the
attorney's request? I think you just got done telling
me that upon the attorney's request, and that's what your comments were prior to this motion. Why can't we just put upon the attorney's written request?

I mean, I understand what the federal rule says. With all due respect to the federal rules, sometimes I am not a big fan of those, and I don't practice in federal court. I practice criminal law in state court. And so if it's the defendant's attorney who is going to have to give the request, then that's fine. If it's the defendant who has to give the request, then that's fine, but when it says upon request, that can be anybody. Could even be the prosecutor's office, for all I know.

MR. BLANCHARD: I think all it does, if we leave it as is, anybody can say give the defense attorney notice, and then probation just has to give notice. It doesn't require that the defense attorney attend. It requires that he have an opportunity. I can think of scenarios where the defendant might say, I want my lawyer. The lawyer didn't make the request, and that allows the defendant to still trigger the right to have representation.

MR. PERKINS: A request for a family member. I mean, how far do you go down the list?

I mean, let's face it. We have had a ton of
case law on offense variables and PVs and everything else. All we are doing is setting ourselves up for more appeals to go to the Court of Appeals on something like this.

We now have the opportunity to make it clear. Let's just make it clear. Upon request, to me, is way too general, way too vague, because a parent of a young person who is still an adult at 19 or 20 could be making the request. He is not a party. He is not the defendant or he is not part of the proceedings, he or she, but I can see an appeals court saying, well, you know, the parent should have been able to say something to make that request.

Where does it stop? Where does it start? I think you have got to have -- you have got to have some specificity in that language, or we are just creating a brand new situation for appeals all over this state to back the Court of Appeals up more than they are now.

MR. BLANCHARD: Thank you.

MR. WIRTH: Christopher Wirth, 20th circuit. I support the adoption of the rule. I think it does two things. One, as we just mentioned, I think it lends itself to the efficient administration of justice in the sense that it gives the attorney really
an opportunity to work with probation, to correct errors that otherwise might appear in a PSI. There is an opportunity to do that vis-a-vis a sentencing memorandum, there is opportunity to do that at the time of the sentencing, to correct those errors, but I think involving attorneys in the process from the very beginning would help to reduce the number of errors that there are in PSIs that then have to be corrected at the time of sentencing, so I support it from an efficiency standpoint.

It's also my understanding that the PSIs tend to travel with an individual who is remanded to the MDOC and become a part of their MDOC file and stay alive and well in Parole Board reviews and those types of things as well, so I think there is an important aspect to have the attorneys participate in the narratives that are contained in those PSIs as they travel and have a life beyond just the sentencing date. Thank you.

MR. KLAASEN: Terry Klaasen of the 4th circuit. I haven't heard anything about whether or not it's typical that a prosecutor appears at these proceedings and whether that makes any difference. And, also, with regard to criminal defendants who are not indigent and who are paying for their own
attorney, do they typically have that attorney present at the proceeding? Because, obviously, if a defendant is indigent and they are not paying for their attorney, it's easy for them to say I want them to be there, and then the question is who pays for this, because that attorney, if he is going to spend his time there, is going to have to get paid, and who is going to pay the bill for that? So those are the questions that I have.

CHAIRPERSON CUNNINGHAM: At that point, why don't -- if you have a response to some of his specific questions, please do.

MR. BLANCHARD: So I think it's not common that a prosecutor appear at pre-sentence interviews presently. In federal court it's also not common. It would be a little bit difficult, because if the prosecutor is trying to engage in direct questioning of the defendant, you know, that becomes a little bit difficult.

As far as the question about retained counsel, right now there is not a difference between retained or appointed counsel. Neither have a right to be present. I have on many occasions shown up and been on retained cases and been told to take a hike. They won't let me in, because apparently I am not a
valuable part of the criminal justice process. So I think that we need to embrace that the criminal defense attorney has a role even in the pre-sentence investigation.

MR. JOCUNS: Just to add in addition to that, generally the prosecutor is not going to be at a PSI interview, and it's not really their role. And in regards to having the attorney present is so we can avoid some of these things in a higher court, and that way that person is able to assert his or her right and, you know, make sure that everything is accurate and actually makes things easier and more efficient.

CHAIRPERSON CUNNINGHAM: Our next speaker, please.

MR. HAVIS: Thank you. Timothy Havis from the 56th circuit.

I do rise in support of this proposal. As a practicing criminal defense member of the Bar, also as the public defender administrator for my county, I also see the tenor, the tone of a written pre-sentence report being very adversarial in nature from the viewpoint of the probation agent itself, and when you get a report a day or two in advance of the actual sentencing date, you have very little amount of time in order to respond fully when you are standing in
front of the judge as far as how to correct a mistake in what your client says.

I think that, as one of the other speakers said, this will lead to a greater efficiency in the actual proceeding itself. It will make things go a lot more smoothly. Everybody will be prepared.

In our circuit, I know we have gotten where we get pre-sentence reports ahead of time, more so than just a day or two, which is fine, but in district court, invariably, we don't get them that far in advance. I have practiced in many other jurisdictions across the state, and generally there is the lack of opportunity to correct something that is a mistake in the report.

I believe that also I have seen in some cases where, at least in district court cases, there is a set date or a time for the pre-sentence report if you have a client who is actually not in jail, so it's very easy for the clerk's office to just simply put that line on the Notice to Appear, that the attorney is going to get anyway, so what that date is going to be. It's a minor, simple correction or a simple key stroke in that regard.

The only question -- I guess very long here. The upon request language can be simply upon request
of a party. That narrows it into someone who is involved here, not a family member. My only question I have is what is the cure if that opportunity is not presented in a reasonable fashion to the defense attorney. Thank you.

MR. BLANCHARD: We don't -- I suppose we haven't fashioned a remedy. Compliance is an optional, and so I would expect if the rule is adopted we'll have notice.

CHAIRPERSON CUNNINGHAM: Our next speaker.

MS. ZIMBELMAN: Jessica Zimbelman from the 30th circuit. One of the prior speakers mentioned the importance of this document for those individuals who were sentenced to MDOC, and I just want to reiterate that when somebody is remanded to the custody of the DOC, they go with three documents -- the sheriff's questionnaire, judgment of sentence, and the pre-sentence investigation report. So all programming decisions, placement decisions, and parole decisions are based primarily on the pre-sentence investigation report, and it's absolutely essential that it's accurate.

In my day job, I am with the State Appellate Defender's Office, and I spend a lot of time trying to correct pre-sentence reports on appeal, and this rule
would hopefully allow greater efficiency and less time on appeals trying to fix this essential document, so I support this rule fully.

MR. KOROI: Mark Korio, 3rd circuit. I have a couple of comments on this. One thing I am wondering about is the notice. Who gives the notice? How is it given? I think if we do not -- I specify those two instances you would have problems because some probation officer may e-mail something out to an attorney and he never gets it or he faxed it, attorney never gets it, never shows up, if there is a problem down the road that the court's trying to fix, so I think there should be some built-in, as you do in the like court rule giving civil procedure 21-7 where we actually specify what that notice specifically is to the defendant and his attorney to make sure it's enforced.

The second aspect of an event is that if there is a violation, what's going to be the remedy? What if some attorney does not get a notice and he wants to go to court? Does that just simply require that the pre-sentence investigation and conference be held over again? I don't know. That's something that can be probably determined down the road by the court system.
Another thing I want to point out is there is a body of case law that I see of people who have gotten in trouble in other cases because they have made statements during the pre-sentence investigation in order to admit they are involved in other crimes, so those statements are then testified to by the probation officer in a separate criminal proceeding. So that's why, that's one of the main reasons that I believe that the probation officers don't want defense attorneys in there. It's for that very important reason. I have seen it happen before.

Additionally, if we look at like a complex hearing. In a parole hearing many jurisdictions have purposely kept attorneys out of the parole process, because they don't want the defense attorney there to give them the -- the defendant will be coached somehow and will not give accurate answers.

Finally, another reason they would want a policy consideration is because if they are not properly coached, they are less -- usually the people are not articulate people. They are not people that know how to present themselves to other people, and they need the attorney to do it for them. And they are at a disadvantage in parole hearings if they don't have an attorney. Same thing goes in a proceeding
like this. They need somebody to help them present their case, because it's a very critical aspect of the proceedings, criminal proceedings, probably most.

I have seen in cases I have had with -- we had the lifetime probation option in which whether a person goes to prison or not is for that probation officer recommend a lifetime probation versus a prison term.

In certain counties, like Oakland County, if you have one of those on your side, that's good. If not, then the person, they will probably go to prison. So I think it's a very crucial aspect of the criminal process. I think that a criminal defense attorney should have the right to notice and appear at these proceedings. Thank you.

MR. STEINHARDT: Stephen Steinhardt,
16th circuit.

When I first saw this, my response was what a great idea. This is an idea whose time is long overdue. The concern is that overwhelmingly my cases are court appointed. To take the time to properly prepare for this half hour or hour interview, to drive to be there, if it's court appointed, if it's not paid, is this establishing duties and responsibilities on the part of the attorney that could impact the
system to affect our reputation, our license when we
are not there. Is there now unequal justice because
some clients will have it and some can't, and the
bottom line is, the question was asked, Who pays?

I might receive some great job in that
initial stage, but if this is not tied to a forum
where the attorneys are paid, I am more concerned of
the problems that are going to be created as well. So
it's a great idea, but I think it has to be married
into the concept of who pays, and the money should be
there for both.

MR. BLANCHARD: So my response to that would
be, one, this does not create an obligation. It
allows an attorney to appear. My personal view is
that a lawyer ought to be there to attend and lawyers
ought to be paid for their work. MIDC is making great
strides in getting lawyers paid for their work, and
hopefully that will follow when this becomes a
requirement, but right now it doesn't create an
obligation. It just creates a right if a lawyer wants
to be there, and you can make that decision with your
client on whether you need to be there on a particular
case.

MR. STEINHARDT: If we can do both, that
would be a wonderful idea. Thank you.
MR. JOCUNS: And just one more thing in regards to that. The suggestion in regards to this proposal wasn't to add responsibility to defenders on any level without being compensated for the services or volunteering.

MR. KOHLER: I'm Tim Kohler, 16th circuit. I will address that issue. Each one of the units that is now compelled by MIDC to provide scheduling and all that they have, each one of those can get a grant from MIDC for additional cost, so that really that's going to be addressed, that's going to be taken care of.

But I rise in support of this for several reasons. I serve on the Criminal Jurisprudence and Practice Committee. This issue dominated our committee meeting when we last met, and the issues that were addressed were upon request and there was some discussion about who makes the request, and it was targeted that the requester given an opportunity for making a request is the defendant.

The attorney has notice of it because he is given notice of it by the Probation Department, and there is a time scheduling that can be worked out between the attorney, whether it's a retained attorney or a court-appointed attorney, and a place, whether it's in a holding cell or someplace of confinement, or
whether or not it's in the office of the probation 
officer. So those two issues I think really get 
resolved, and I think that the language is good 
language, and I rise in support of that.

MR. GILBERT: Josh, I realize -- Dave Gilbert 
from the 37th circuit.

I realize a lot of us believe, a lot of 
people believe that the pre-sentence interview is a 
critical stage in a criminal prosecution. My issue 
with this is that it's leading up to the discussion of 
the defense attorney whether or not he wants to go to 
the pre-sentence interview. Is this opening the door 
for an ineffective assistance of counsel claim?

MR. BLANCHARD: So could there be litigation 
about that? Yeah. Do I think if there is a right to 
attend lawyers will start attending? Yeah, I think 
so.

MR. GILBERT: Would it be better to make it 
mandatory is what I am asking, because if you are 
leaving it at the discretion of the defense attorney, 
you are opening up the door that they should have 
appeared; therefore, it's ineffective assistance of 
counsel.

MR. BLANCHARD: I think it leaves it to the 
discretion of the defendant and the defense attorney,
and you can waive any right, and so it leaves that
decision up to the parties.

MR. GILBERT: Well, on appeal typically when
we are talking, well, they should have been here, then
you have got a rule that requires or gives them the
opportunity to be there. It's a critical phase. Why
aren't they there when you have got a Court Rule
saying they should be there?

MR. BLANCHARD: The law right now is it is
not a critical phase, so it would not be under the
current law.

MR. GILBERT: Thank you.

MR. JOCUNS: I have one more thing to add to
that.

CHAIRPERSON CUNNINGHAM: No.

MR. JOCUNS: I am not allowed to?

CHAIRPERSON CUNNINGHAM: No, you are not.

MR. JOCUNS: Oh, I am being muted?

CHAIRPERSON CUNNINGHAM: You're being muted.

MR. JOCUNS: Why?

CHAIRPERSON CUNNINGHAM: There has got to be
some sense of order, and to have two speakers go back
and forth just doesn't make sense. We are ten minutes
behind schedule at this point.

Proceed, Mr. Larky.
MR. LARKY: Sheldon Larky, 6th circuit. I am in favor of this. Each of the previous speakers talked about mechanics. This is not mechanics. This is philosophy on behalf of the association. It tells the world and it tells the Supreme Court that we believe from a philosophical standpoint attorneys should be present. Each one of these things about requests or a reasonable notice or stuff like that is really mechanics, and I would say that from a philosophical standpoint I agree with this wholeheartedly, and I would move to end debate in this matter.

VOICE: Second.

CHAIRPERSON CUNNINGHAM: Is there any -- Judge, is there any discussion on a motion to end debate?

JUDGE CHMURA: You make a motion to call the question, which has to be made. Somebody could make the motion to call the question.

CHAIRPERSON CUNNINGHAM: He did.

JUDGE CHMURA: Oh, he made the motion?

CHAIRPERSON CUNNINGHAM: Wasn't that your request, Mr. Larky?

JUDGE CHMURA: Well, there was a motion made to call the question?
CHAIRPERSON CUNNINGHAM: Yes.

JUDGE CHMURA: Is there a second?

VOICE: Second.

CHAIRPERSON CUNNINGHAM: There is no debate on that.

All those in favor of calling the question and proceeding to vote.

Any opposed?

Okay. It passes. Thank you, gentlemen, for your presentation.

The question now is up on the notice, should the Court Rule be amended according to the language now on the board? Is that a correct statement of the motion, Mr. Jocuns?

MR. JOCUNS: Yes.

CHAIRPERSON CUNNINGHAM: All of those -- we are going to do this by your clickers, right? And the Clerk is standing by, and she will let us know when we can start.

CLERK REBECK: You are going to press A for yes and B for no, and the voting is open.

Voting is closed.

Motion passes. 84 yes, 18 no, and zero abstain.

CHAIRPERSON CUNNINGHAM: The motion passes.
Thank you.

On to the next proposal. This is for proposed amendment to Rule 3.206 of the Michigan Court Rules. Mr. Mathew Kobliska is our presenter.

MR. KOBLISKA: Delegates Matt Catchick and Elizabeth Kitchen-Troop will also be presenting with me.

Good morning, friends and colleagues.

Matt Kobliska, 6th circuit delegate. It's our proposal for your consideration this morning to amend MCR 3.206 to change the way we caption family law cases to move away from confrontational or oppositional pleading captions, and to be clear, we are talking about family law cases only.

Now, this is not substantive. Some might think it's inconsequential, except that it's not. The way that we do things in domestic cases, the words we use, the manner of presentation, this matters to litigants. We know that there are certain trigger words. For decades we have used the term "visitation", which is almost guaranteed to elicit an emotional response, but when we instead use "parenting time", it didn't. We have since statutorily stricken the "V" word from our lexicon.

When we talk about "legal custody", attorneys
who practice in this area and mediators will tell you that you can often hit a brick wall, but when you talk about "shared decision-making", quite often you will get cooperation and abidement.

When we talk about "physical custody", again, you are likely to hit a brick wall, but when we talk about how to share parenting time, again, we can often get cooperation. Now, all of these mean the same thing from a legal perspective, but there are vastly different perceptions on the part of parties.

Now, the commencement of a divorce action is not a happy time. It's quite often the parties' first brush with the legal system, and quite often they didn't choose to be there. But research confirms what we know, and that's that the start of a divorce action is a potential flash point for domestic violence. But even short of that, the manner in which a case is presented at the outset can set the trajectory of the case going forward.

The Family Law Section and the ADR Sections of the State Bar drafted the proposal before you in 2014. Coincidentally, at the same time, or about the same time, the Uniform Collaborative Law Act had been enacted by the Michigan legislature. For those of you who don't practice in this area, collaborative law is
a team approach which occurs mostly outside the legal
system. In fact, in many situations a case isn't even
filed until a settlement has been reached.

But there were no procedural rules to
instruct the courts how to deal with this new
avant-garde collaborative case, so the Michigan
Supreme Court convened a special committee to prepare
for post rules, which ultimately swallowed up this
Family Law Section/ADR Section proposal.

The result of this was that the Michigan
Supreme Court adopted new rules, 3.222 and 3.223,
which became effective just this year, just in April.
The final version even took it a step further and
indicated that captions shall be in the following
form, In the matter of Party A and Party B.

Now, this accomplished the goals of the
proposal, but collaborative cases represent a very
small subset of our cases. Safe to say they probably
take up less than five percent of domestic cases, and
I think much less than that. So at least 95 percent
of all cases have oppositional or confrontational
captioning. For those of us handling these difficult
cases, these things matter.

I would like to introduce Matt Catchick, 6th
circuit delegate, to discuss the specifics of the
MR. CATCHICK: Good morning, everyone. My name is Matt Catchick from the 6th circuit. Shout out to all my homies from the 248 circuit.

I am here to discuss the substance of this new Court Rule. You would be changing "plaintiff" to "petitioner" and "defendant" would then become "respondent". All Court Rules outside of MCR 3.200, which is the by the Court Rules governing domestic relations law, any Court Rules outside of 3.200 that apply to domestic relations actions, then we would have, any time there would be a reference to "plaintiff", it would apply to "petitioner", and "defendant" would apply to "respondent".

On now for a caption for an action for divorce. "Separate maintenance", which is kind of a quasi legal separation here in Michigan or annulment, for those, instead of one party versus another, which already sets everyone off for a very combative mode, which is never a good idea in family law, it would now read, "regarding the marriage of petitioner and respondent", or it could also be, "regarding the marriage of joint petitioner", in the event both people equally want to dump the other party.

In captions for other actions, such as child
support/child custody, those would now read, "regarding the child or children of petitioner and respondent", or "regarding the child or children of joint petitioners". Once again, in a scenario where the boyfriend/girlfriend or girlfriend/girlfriend or boyfriend/boyfriend or pan and pan no longer want to be together jointly and they equally agree on that.

I think that at the risk of bringing up a criticism of this Court Rule some might say, This is just another example of touchy feely-ism and, once again, family law asking to be treated differently. I would respectfully submit to all of you that nothing could be farther from the truth. We strive very much, given the sensitivity and the children and families we are dealing with, to minimize acrimony, and I think this goes a long with to bring this up to speed with other states and jurisdictions.

There would be zero fiscal and staffing impact to the Michigan State Bar, and we respectfully request your support. Thank you so much for your time.

MS. KITCHEN-TROOP: Hello. This is very high, and I am very short. Elizabeth Kitchen-Troop. I am from the 22nd circuit.

I am just going to talk through sort of the
survey of the country in terms of how they handle case
captioning, and you did get a supplemental document
that kind of goes through the various states and how
they handle it. As it turns out, actually coming
through procedural rules and codes for the entire
country takes a little bit of time. So I tried to
pick the part of the process here today that would be
the shortest, and I managed to hose myself.

Anyway, you will see in your materials
detailed out sort of what state does what, and please
enjoy those materials, but for those who don't want to
actually dig through it, the crib notes are
essentially 20 states approximately still do
"plaintiff" and "defendant" in domestic relations
cases. There are approximately 26 states that do
"petitioner" and "respondent", and the remaining
states have some blend of those two, some of which
differentiate based on whether or not there is a
consent agreement or whether or not it's a traditional
sort of litigation case.

So an example of that is Alaska. If the
domestic relations matter is up by consent, they refer
to it as "petitioner" and "respondent". If it is not
by consent, then they are still "plaintiff" and
"defendant".
So the trend here is pretty clear. The majority of the states have made the shift and are meeting the shift to a nonconfrontational case captioning, and there is a lot of great reasons for that that the two Matts outlined.

I will share that anecdotally in my practice, which is entirely family law, I do about half mediations and half where I am the counsel for the litigants. I have gotten increasing amounts of feedback from clients that they feel that the process itself really sets people up to fail by pitting parties against each other, and when you have cases, particularly those that involve children, there is really not room for that. There is not a clear winner and loser. You are dividing wealth, you are dividing assets, you are dividing up time with kids.

There are ample studies out there that show how parents go through this process affects kids both short-term and long-term, and I think to the extent that we can try to make the process better for families we should, and that's effectively what we are asking the Rep Assembly to do.

So I am going to move for the adoption of 3.026.

VOICE: Second.
CHAIRPERSON CUNNINGHAM: The motion has been made and support. Discussion? Again, when you go to the microphone, please identify yourself by name and circuit number.

VOICE: Call the question.

VOICE: Support.

CHAIRPERSON CUNNINGHAM: All those in favor of calling the question.

VOICES: Aye.

Any opposed?

(None opposed.)

CHAIRPERSON CUNNINGHAM: On the main motion then, we will proceed by clicker.

CLERK REBECK: Voting is open. Press A for yes or B for no.

Voting is closed.

Motion passes, 97 yes, 9 no, zero abstain.

CHAIRPERSON CUNNINGHAM: Thank you. Thank you.

Using the prerogative of the chair, I would like to just do informally by a show of hands. Time is getting tight. We definitely want to present the consideration of the proposal on professionalism principles. We have another that I am, quite frankly, not sure of how -- whether this will be controversial
or not, whether it will be as the last proposal or be
more like the first proposal where there will be
vigorous debate.

So just by show of hands and without any
binding, how many would think that there is going to
be a discussion as to the amendment of the Court Rules
in regard, or the amendment of the Judicial Conduct
Canon on -- anybody think that's controversial? Is
that something we are going to be discussing?

(Show of hands.)

CHAIRPERSON CUNNINGHAM: From the large
number of hands here, I don't think it's going to be
in the same category as the motion that just passed by
97 votes. I think there is going to be a vigorous
discussion.

Quite candidly, we have time problems, and
for that reason I am going to propose several
solutions, and of course it's up to you by motions to
decide.

I would entertain a motion to postpone the
discussion and debate on the amendment to the judicial
court canon until the April meeting.

VOICE: So moved.

CHAIRPERSON CUNNINGHAM: If somebody wanted
to move. Is there a second for that?
VOICE: Second.

CHAIRPERSON CUNNINGHAM: That being the case, I think this is an important enough issue to not be limited by time and to allow everyone a thorough discussion on it, so with that thought in mind, is there any discussion as to postponing this issue until April? Any discussion on that at all?

VOICE: So moved.

VOICE: Call the question.

JUDGE CHMURA: It's already been moved.

CHAIRPERSON CUNNINGHAM: Already been moved. No discussion.

All those in favor of postponing the issue involving the proposed amendment to the code of judicial conduct -- we can do this by voice vote or hand vote. Raise your hands. If you are in favor of the -- raise your hand.

VOICE: Postponing?

CHAIRPERSON CUNNINGHAM: Yes, in favor of postponing, I'm sorry, postponing until April the debate, discussion, and consideration.

And those against, those who would like to do it today?

I think it's overwhelming. If there is anybody that would challenge it, let me know now, but
as I look up here now, I see an overwhelming to move it, so I am going to say that that motion has passed, and the matter will be postponed, and Judge Chmura told me that's the correct way to phrase it, that that is the motion, and it will be postponed for consideration in April.

I would like to then move on to the, which effectively puts us back on time, to the consideration of the proposal on Professionalism Principles.

Mr. Pappas, Ed Pappas will be our presenter, along with the State Bar President, Jennifer Grieco.

MR. PAPPAS: Thank you, Mr. Chair. My name is Ed Pappas, and I am currently the chair of the State Bar Professionalism Work Group, and I am here to speak to you today to explain why I believe the Professionalism Principles for lawyers and judges in Michigan are important and necessary for our honorable profession. Our current State Bar President, Jennifer Grieco, will follow me and speak briefly as well on this issue.

Last year on October 18 the State Bar of Michigan and the Michigan Supreme Court held what we hope is the first summit on professionalism at the Michigan Supreme Court Hall of Justice. Approximately 80 judges and lawyers attended the summit. The idea
of the summit was to brainstorm about how we can promote and sustain a culture of professionalism and civility in the legal profession, and that's not to say that we have a pervasive problem in our profession, but there are still too many lawyers and judges, experienced and inexperienced, who resort to rude, hostile, insulting and offensive behavior. And with incivility rising to a crisis level in our society, including our dysfunctional government, there is no more important time to address civility in our profession. Lawyers and judges play an important role in society and have responsibility to safeguard our constitution, protect human rights, advance the rule of law and ensure access to justice for everyone.

As former United States Supreme Court Justice Warren Burger suggested, and I quote, The necessity for civility is relevant to lawyers because they are the living exemplars, and thus teachers, every day in every case, and in every court, and their worst conduct will be emulated more readily than their best.

Lawyers and judges have the opportunity to teach the leaders and citizens of our great country that you cannot have the dialogue necessary to resolve important issues without civility and respect.

At the summit, the participants developed a
number of recommendations to bring professionalism and
stability to the forefront of the skills required to
be a truly successful lawyer and judge. One of the
recommendations is to have one set of professionalism
and civility guidelines adopted by the Supreme Court
for all lawyers and judges practicing in the state of
Michigan.

This is the first of many recommendations
that will be coming from the Professionalism Work
Group, but it may be one of the most important. As
the ABA has stated, Civility can be one of the most
important tools available to a lawyer or judge and,
when practiced consistently, can go far to enhance
dispute resolution, improve the image and reputation
of the profession, and improve the quality of life for
practitioners and judges.

Now, nobody believes that they are engaging
in uncivil behavior, and some lawyers and judges do
not recognize the nuts and bolts of what constitutes
professionalism. The professionalism, the principles,
and their commentary provide these nuts and bolts and
give clearer guidance to lawyers and judges on what
constitutes professionalism. And the commentary makes
clear that the Professionalism Principles are not
intended to form the basis for discipline,
professional negligence, or sanctions.

If approved by the Representative Assembly and then the Michigan Supreme Court, these Professionalism Principles can be used in a variety of ways. Principles could be provided to lawyers with scheduling orders or at pro hac vice admissions or in conferences with lawyers or at swearing-in ceremonies for new lawyers or simply as reminders to lawyers who are acting unprofessionally. A lawyer can also provide copies to clients to educate them about the professional integrity required of Michigan lawyers and judges.

As ethics expert David Bernard said, Because incivility runs rampant in society and occurs too often in the legal profession, state bars need rules to change behavior on a large scale.

Many other states have adopted statewide civility guidelines for lawyers and judges, and the many lawyers and judges that I have spoken with welcome the idea of civility guidelines, not just for lawyers, but also for judges.

So the question is not why these professional principles are necessary, but what can the State Bar do to improve and foster civility in our profession and ultimately in our society? So I urge you to vote
in favor of the Professionalism Principles, and now I will ask Jennifer to say a few words.

PRESIDENT GRIECO: Thank you, Ed. I greatly appreciate Ed's work as the chair of the Professionalism Task Force Committee, and he worked on professionalism issues as past president and continued to work on that. He created the professionalism and action program that is at every law school in Michigan now to educate our new lawyers, our new lawyers about professionalism issues, and I have attended those programs and worked this these law students about professionalism issues, and I have always sat there and thought that the people that need to be learning about civility and professionalism are lawyers that have been practicing for 20 years and not these brand new law students.

But I did want to share just a couple things with you, and that is that in my road show when I have gone around the state all year, I talked about the Professionalism and Civility Work Group and the idea of Civility Principles, and it's been really well received throughout the state. I know that some of the smaller jurisdictions where you have a small county bar association and everybody knows everybody, civility may not be as big a problem, but certainly in
the metro Detroit area, certainly in the bigger jurisdictions, the members that I have spoken with have all been very receptive to the idea of Civility Principles, that they are needed, and going through them with like lawyers through the Inns of Court and talking about what we expect from a civil lawyer.

The commentary of what a civil lawyer should do is good. It's instructive, and it gives us all some direction moving forward, so I am at this time going to make a motion that the Civility Principles, which again have been really well received throughout the state, be adopted as amended in the blue sheet that's in front of you and that's on the board. So that's my motion.

CHAIRPERSON CUNNINGHAM: Is there a second?

VOICE: Support.

CHAIRPERSON CUNNINGHAM: Motion has been made and supported. Is there any discussion? Again, if you approach the microphone, identify yourself by name and circuit number, please. Any discussion?

Hearing no discussion, I would ask for a vote. Well, let's see. We are going to go back to the clickers. This would be --

CLERK REBECK: Voting is open. A for yes, B for no.
Voting is closed.

Motion passes. 94 yes, 14 no, zero abstained.

CHAIRPERSON CUNNINGHAM: Our next order of business will be the nomination and election of the clerk, but before proceeding on that, I have got to make a comment in terms of an apology to the presenters on the proposal for the amendment to the Judicial Code of Conduct. I realize how hard you worked on it to have it ready to have it here today. I just think it's too important of a matter to rush through, and, since the body did indicate that there was going to be a need for discussion, and I think it's pretty clear that there was a need for discussion, we will put it -- you have put it over to April. It's done. So that's done. It's been decided. This is just in terms of an apology and a recognition about how hard people worked to present it today, but circumstances are such that we want to give it a full hearing. So thank you to the proposers, the proposed presenters.

We are moving on now to the nomination of the clerk. We had one person express interest. In your materials you got the background and the material for our candidate, and I think he is known for most of us.
He is a long-term member, Nick Ohanesian, a long-term member of the Assembly who has served as a committee chair. His name is accepted into nomination.

At this time I am going to ask for any further nominations from the floor.

VOICE: Move to close nominations.
VOICE: Second.
CHAIRPERSON CUNNINGHAM: All right. All those in favor of closing nominations.

VOICES: Aye.

CHAIRPERSON CUNNINGHAM: As to the election, all those in favor of the election of Nick Ohanesian -- I always have a hard time with his name. Nick, tell us your name, please.

MR. OHANESIAN: My name is Nick Ohanesian.

CHAIRPERSON CUNNINGHAM: And this is the man who is asking for your vote. All those in favor.

Any opposed?

Nick, congratulations. You are now our new clerk.

(Appause.)

CHAIRPERSON CUNNINGHAM: Our next order of business, I believe, is the recognition of the outgoing members. We have a number of members who have completed their terms of service, and if we have
the technical ability, we are going to put this up.

Can I ask each of these persons, please, to stand and be recognized. I see that a number of them are here, a few of them are not here. And, again, if you just go through, give your names.

Why don't you give your names, so these are all retiring members, beginning with Dave Gilbert, and we will just go through to make sure that each of them are recognized, appreciated individually. David.

MR. GILBERT:  Dave Gilbert, 37th circuit.
MR. HOUGABOOM:  Phil Hougaboom, 44th circuit.
MS. KROL:  Kristen Krol, 56th circuit.
MR. JOCUNS:  Bernard Jocuns, 40th circuit, which is Lapeer County.
MS. KASS:  Kristin Kass, 41st circuit.
CHAIRPERSON CUNNINGHAM:  Is there anyone back there? Over here, please.
MR. MOILANEN:  Phil Moilanen, 4th circuit, Jackson.
MR. WEINER:  Jim Weiner, 6th circuit.
MR. ROTENBERG:  Steven Rotenberg, 6th circuit.
MR. GORNBEIN:  Henry Gornbein, 6th circuit.
MR. HOLSONBACK:  Mark Holsomback, 9th circuit.
MS. MEDLEY: Angela Medley.

CHAIRPERSON CUNNINGHAM: Thank you to each and every one of you.

(Applause.)

CHAIRPERSON CUNNINGHAM: One of the great things about this job is you get to share a stage or platform with some giants, some really, really giants in this field that we have all chosen, the profession we have all chosen, and I have the honor now of introducing one of those giants, and I am going to ask Judge Bowman to come forward, because he will be administering the oath to our incoming chair. But I have the honor of being able to introduce to you Oakland County Circuit Judge Leo Bowman.

Judge Bowman was a graduate of Oakland University, went on to the University of Detroit, now Detroit Mercy, but back in the days when he and I were there it was University of Detroit. Graduated in '81. He worked at the Pontiac City Council. He was kind of legal adviser for them, and then he was elected to the bench in 1988 in the Pontiac District Court. He served there for a stint as chief judge. He participated in too many community organizations really to even list or discuss. Early 2007, he was appointed by Governor Granholm to the Oakland County
Circuit Court, where he sits today.

So, again, Judge Bowman, if you will come forward, please, and do the honors.

JUDGE BOWMAN: Thank you, Mr. Chair.

It's still morning, so good morning.

VOICES: Good morning.

JUDGE BOWMAN: Before I proceed with the task at hand, I would just like to say just a couple of words about the incoming chair. I am reminded by the gentleman that spoke earlier, that being Ed Pappas, one person that's older than I am, of the importance as he talked to you about professionalism. It's something that as a judge I have right at the top of the important things for lawyers, as well as myself, and it is that concept, that important principle, that when I think about Aaron, it comes to mind.

I met Aaron so many years ago that I don't want to recall them. Aaron was a student in law school, and it was one of those occasions where I was present at an outing. I think it was a Tiger's game actually. They were winning. It was a year that they were actually winning, and Aaron approached me and introduced himself, told me that he was a student and what he was interested in doing.

I was first impressed that he actually was
interested enough to approach me, and we talked for a period of time, and, as I always do when I am in outings, particularly with lawyers or law students, I gave Aaron a card and told him he was always welcome to come to the courtroom, come to chambers, any time.

Unlike most law students, Aaron took me up on that, and he came to court and he sat and he watched proceedings, and then eventually he came to a circumstance where he wanted to come and intern in chambers, and I agreed, and for a semester Aaron was an intern in my chambers.

I was immediately impressed, first with his intellect. He is much smarter than I am, and he was then, and I am sure certainly that he is now, but it was the way that he approached the law, that he approached working in chambers that I was most impressed with. I think in a word it's what Ed Pappas talked about. It was the professionalism that he brought to the position.

Subsequently he graduated, and it was this firm, little firm in the state of Michigan, Dickinson Wright -- I think you have probably heard of it -- he was hired to come there. And so over the years we have stayed in touch, and the singular thing that I can say about Aaron is that he has this quiet
confidence that he brings to the practice of law. He is professional. When he comes in court, he commands the courtroom, but most importantly it's what Ed Pappas talked about. He represents our profession in the best way.

And so when he asked me would I be make myself available to come and swear him in, I, of course, said yes, because Aaron represents the best about the practice of law. He carries the qualities of our current president, Jennifer Grieco.

Jennifer, you were here. There you are. I have known Jennifer for years as well, back when I had hair, 20 pounds lighter, and she was a relatively new lawyer.

He represents the qualities of Sheldon Larky, also a titan of the profession. And then earlier I had a chance to reacquaint myself with Janet Welch, that again harkens to me to the time when I had hair, I was much -- I didn't weigh as much and we were young lawyers involved with the State Bar.

And so it is my pleasure. I am satisfied that Aaron becoming the chair of this Assembly, that this Assembly is in good hands. He represents the best in the profession. With that, I am going to get to the business at hand.
Could you raise your right hand and just state your full name for the record.

VICE CHAIR BURRELL: Aaron Vaughn Burrell.

JUDGE BOWMAN: Repeat after me. I do solemnly swear --

VICE CHAIR BURRELL: I do solemnly swear --

JUDGE BOWMAN: -- that I will support the Constitution of the United States --

VICE CHAIR BURRELL: -- that I will support the Constitution of the United States --

JUDGE BOWMAN: -- and the Constitution of the State of Michigan --

VICE CHAIR BURRELL: -- and the Constitution of the State of Michigan --

JUDGE BOWMAN: -- and the Supreme Court Rules --

VICE CHAIR BURRELL: -- and the Supreme Court Rules --

JUDGE BOWMAN: -- concerning the State Bar of Michigan --

VICE CHAIR BURRELL: -- concerning the State Bar of Michigan --

JUDGE BOWMAN: -- and that I will faithfully discharge the duties --

VICE CHAIR BURRELL: -- and that I will
faithfully discharge the duties --

JUDGE BOWMAN: -- of chair of the
Representative Assembly --

VICE CHAIR BURRELL: -- of chair of the
Representative Assembly --

JUDGE BOWMAN: -- of the State Bar of
Michigan --

VICE CHAIR BURRELL: -- of the State Bar of
Michigan --

JUDGE BOWMAN: -- according to the best of my
ability.

VICE CHAIR BURRELL: -- according to the best
of my ability.

JUDGE BOWMAN: Congratulations.

(Applause.)

VICE CHAIR BURRELL: Thank you very much.

First, to Judge Bowman, who is not just an
excellent jurist, but I count him as a mentor to me
and a great friend and someone who has demonstrated to
me, not only how to be an excellent lawyer, which is
something I am trying to become, but he also showed
me, again, how to be a great man, a great husband, a
great father.

So to Judge Bowman, to the State Bar family,
to my own family, to Dickinson Wright, represented by
Ed Pappas and Dan Quick, who are in the room, and to all those individuals for whom I would be serving moving forward, I just want to thank you.

At this time I think I have to acknowledge the individual who is going out of this position, Rick Cunningham. I talked a lot about him yesterday at our State Bar Board of Commissioners meeting. Certainly you can check the minutes if you want the full report, but Rick Cunningham is a leader in this profession. He is someone who has set the bar very, very high in this position, but he sets the bar high over his career, and it's going to take a very, very diligent, concerted effort to even be half of what Rick was able to accomplish.

So, with that, I would like to make a presentation to our outgoing chair, Rick Cunningham, with this wonderful plaque. The plaque reads: The State Bar of Michigan honors Richard L. Cunningham, Representative Assembly Chairperson 2018-2019, Vice Chair 2017-2018, and Clerk 2016-2017, in appreciation for distinguished service to the Assembly, the State Bar, and all Michigan lawyers, September 26, 2019.

(Appause.)

CHAIRPERSON CUNNINGHAM: And as my last act
before I ride off into the sunset, I will present the
gavel to our new chair. And with that in mind,
following the lead of our new chair, Denny Barnes, I
will ask is there a motion to --

MR. LARKY: Mr. Chair, you failed to notify
us of the committee chairs and their service.

CHAIRPERSON CUNNINGHAM: I think you are
absolutely right. We have them up there. Can I have
the committee chairs to stand, please. Nick,
Jennifer.

(Applause.)

CHAIRPERSON CUNNINGHAM: Thank you, Sheldon.
In the words of Denny Barnes, is there a
motion to adjourn? All those in favor say aye. All
those opposed, shut up.

(Proceedings concluded at 11:35 a.m.)
STATE OF MICHIGAN )
   )
COUNTY OF CLINTON )

I certify that this transcript, consisting
of 102 pages, is a complete, true, and correct transcript
of the proceedings had by the Representative Assembly on
Thursday, September 26, 2019.

October 4, 2019

Connie S. Coon, CSR-2709