Proceedings had by the Representative Assembly of the State Bar of Michigan at DeVos Place, 303 Monroe Avenue, N.W., Grand Rapids, Michigan, on Thursday, September 27, 2007, at the hour of 10:00 a.m.

AT HEADTABLE:

EDWARD L. HAROUTUNIAN, Chairperson
ROBERT C. GARDELLA, Vice-Chairperson
KATHERINE A. KAKISH, Clerk
JANET WELCH, Executive Director
HON. CYNTHIA D. STEPHENS, Parliamentarian
ANNE SMITH, Staff Member

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CHAIRPERSON HAROUTUNIAN: Ladies and gentlemen, my name is Ed Haroutunian. I am the chair of the Representative Assembly of the State Bar of Michigan, the final policy-making body of the Bar.

(Applause.)

CHAIRPERSON HAROUTUNIAN: And I hereby call
this meeting to order.

Madam Clerk, do we have a quorum?

CLERK KAKISH: I am pleased to announce,

Mr. Chair, that we do have a quorum with over 50
members present.

CHAIRPERSON HAROUTUNIAN: Thank you, Clerk
Kathy Kakish.

Do I see a motion to be made? Oh, yes, I see
someone coming to the microphone.

MS. KRISTA HAROUTUNIAN: Mr. Chair.

CHAIRPERSON HAROUTUNIAN: Please give your
name and your district.

MS. HAROUTUNIAN: Krista Licata Haroutunian,
6th circuit. Mr. Chair, I would move at this time for
the adoption of the proposed calendar as handed out
here today.

CHAIRPERSON HAROUTUNIAN: Is there support?

VOICE: Support.

CHAIRPERSON HAROUTUNIAN: Any discussion?

All those in favor say aye.

Opposed no.

Any abstentions say yes.

The ayes have it.

By the way, I may very well have some
additional remarks after lunch at about 2:00. Could I
have a motion to that effect? Is it so moved?

VOICE: So moved.

CHAIRPERSON HAROUTUNIAN: Support?

VOICE: Support.

CHAIRPERSON HAROUTUNIAN: Any discussion?
All those in favor say aye.
Opposed no.
The ayes have it.
Could I have -- let's see, do I see -- is Victoria Radke in the room?

MS. RADKE:  Right here.

CHAIRPERSON HAROUTUNIAN:  Victoria, do you have a motion with regard to the approval of the April 21, 2006 summary of proceedings?

MS. RADKE:  So moved.

CHAIRPERSON HAROUTUNIAN:  Could you give us your name and your judicial district, please.

MS. RADKE:  Victoria Radke, 47th judicial circuit, and I would support the adoption of the minutes.

CHAIRPERSON HAROUTUNIAN:  Is there support?

VOICE:  Support.

CHAIRPERSON HAROUTUNIAN:  Any discussion?

All those in favor say aye.
Opposed no.
Any abstentions say yes.
The ayes have it.  Thank you.

As a housekeeping matter, by the way, your program indicates that Judge Cynthia Stephens of the Wayne Circuit Court will be acting as parliamentarian. She is unable to be here this morning. She will be here after lunch at 2:00, and I have asked Tom Rombach to act as parliamentarian between now and then, until Judge Stephens comes back, so I say that for your
information as temporary parliamentarian.

Let me call upon Elizabeth Moehle Johnson, chairperson of the Assembly Nominating and Awards Committee, for purposes of filling vacancies. Elizabeth.

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MS. JOHNSON: Thank you very much, Ed. Elizabeth Johnson, 3rd circuit. This morning we have four vacancies to fill in the 24th, 28th, and 30th and 37th judicial circuits. The following lawyers have been nominated to fill those vacancies. Ryan M. Edberg of Sandusky for the 24th judicial circuit. Eilisia G. Schwarz of Cadillac, 28th judicial circuit. Josh Ard of Williamston for the 30th judicial circuit, and Darling A. Garcia of Grand Rapids for the 37th circuit.

At this time I would move that the individuals be appointed to fill the vacancies in their respective judicial circuits.

VOICE: Support.

CHAIRPERSON HAROUTUNIAN: It's been moved. Is there support?

VOICE: Support.

CHAIRPERSON HAROUTUNIAN: Any discussion?

All those in favor say aye.

Opposed no.

MR. ABEL: Mr. Chair, Matt Abel, 3rd judicial circuit. I just have a question. Are any of those people present or are they all present? If they are present, then I support them. Thank you.

CHAIRPERSON HAROUTUNIAN: I think it's fair
to ask who are the folks that are here, Elizabeth.

MS. JOHNSON: I believe we have Ms. Garcia
here with the 37th, and we have Eilisia Schwarz of the
28th, they are both in the back. Could you raise your
hands, please, and Josh Ard is here from the 30th
circuit. Will you raise your hand. And I believe
Mr. Edberg is in the building somewhere and will be
arriving shortly.

CHAIRPERSON HAROUTUNIAN: Any other
discussion?

All those if favor say aye.

Opposed no.

Any abstentions?

The ayes have it. Congratulations.

(Applause.)

MS. JOHNSON: I am pleased to announce with
the filling of those vacancies we now have 100 percent
participation from all circuits, and so I thank you
all.

Furthermore, today the Representative
Assembly awards will be presented at the luncheon. At
the April meeting the Representative Assembly approved
the awarding of the Michael Franck award to William P.
Hampton and Allyn D. Kantor and the Unsung Hero Award
to the late Norris J. Thomas, Jr.
Additionally, this body voted a special resolution in tribute to the late President Gerald R. Ford, which will also be presented today.

We are very fortunate there will be a special presentation regarding the President and his work as a lawyer in the State Bar of Michigan, and I am so grateful for the committee that assisted in these awards, and I would again like to recognize them and say thanks to John Mills, Dana Warnez, Jeff Nellis, Suzanne Larsen, Krista Haroutunian, David Kortering, and Michael Olson. Thank you very much for your hard work on all those awards.

And then a special thanks to Anne Smith of the State Bar, her invaluable assistance in getting the plaques for the special Gerald R. Ford award. I think you will find it's a lovely award, and there will be people here today at the luncheon from the Ford Foundation.

And lastly, a special thanks to our officers, to Kathy, to Barb, to Bob, and to Ed Haroutunian. They have been especially helpful to me and to the committee. So thank you very much.

I have just been informed that Edberg from the, Mr. Edberg from the 24th circuit is now here, if you could raise your hand and be recognized. Thank you very much. And to be seated. Yes, you may be seated in your circuit. Thank you.

CHAIRPERSON HAROUTUNIAN: Liz, thank you very much for that report. Appreciate it.
Okay. The next item on the agenda is the Chair's report. I must tell you that Liz said a good number of the things that I was going to say, but she said them well, and it's true that at lunchtime today the Rep Assembly is going to be awarding the Michael Franck award, and this year it's going to be going to two recipients, Allyn Kantor out of Washtenaw County and Bill Hampton out of Oakland County.

Also, the Unsung Hero Award will be awarded posthumously to Norris Thomas. Mr. Thomas' daughter will end up accepting the award.

We will have that special tribute, resolution tribute to President Ford, and there will be a video that will come from -- really, it's through Marty Allen, who is the chair emeritus of the Ford Foundation, and he will be -- that video is maybe about a four-minute video with regard to Jerry Ford. Mr. Allen will end up being the individual who will accept the award on behalf of the Ford family.

Immediately following our meeting today in the hallway, right outside that overlooks the

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Grand River, and also if you look across it is the Gerald Ford Museum, we are going to be celebrating our 35th anniversary of the Representative Assembly.

Now, as most of you know, the Representative Assembly was formed back in 1972 and was formed by the Supreme Court upon recommendation of the then Board of Commissioners to the court. Now, the lawyer population of Michigan in 1972 was about 12,000.

The Board of Commissioners then and the
Supreme Court believed there was a need to have a greater amount of input from a broader body of folks that was really a more diverse group than the 20-something members of the then Board of Commissioners.

Today there are 38,000 lawyers in the state of Michigan. In my opinion that need for responsible input is still there and perhaps more so today than in the past.

Part of the goal this year with regard to what we all have been doing has been to raise the profile of the Representative Assembly through the pamphlets that are there on your desks in front of you, and we have had input in that obviously from the staff and the officers, articles in the Bar Journal from various chairs, past chairs of the Rep Assembly, and e-mail blasts, not only you folks but others, and our 35th anniversary of the Rep Assembly and our reception activities.

Why? The idea has been to be able to let the members of the Bar know that there is a Representative Assembly. Many really just don't know that.

And, in addition, in an effort to raise that profile within the Bar itself and with the assistance of Kim Cahill, the president of the State Bar, the Representative Assembly will have space at the Bar building in Lansing for pictures of the past chairs of the Rep Assembly to be set forth somewhat similar to the pictures of the past presidents of the State Bar.

I think that's an important aspect so that if
someone walks into the Bar building somebody knows that there existed a Representative Assembly. Because if you walk into the Bar building today, you will not know that. And so the point is that I believe that that's something that's extremely important for this organization. First you have to know that you exist and then to move forward.

Finally, as Elizabeth Johnson said, we have 100 percent participation for this meeting. The vacancies have been filled. Maybe everybody is not here, but the vacancies have all been filled, and that

credit goes to Elizabeth Moehle Johnson, Bob Gardella, Kathy Kakish, and Anne Smith, our staff person at the State Bar who puts up with the chair, the vice chair, and the clerk and all their idiosyncrasies. So thanks to Bob, Anne, Kathy, and Liz for all their hard work.

Well, as I indicated, I will have some additional remarks later, but do I see -- there you are, okay. I am ahead of schedule. I want you to know that.

(Appause.)

PRESIDENT CAHILL: It doesn't mean they don't love you when they do that.

CHAIRPERSON HAROUTUNIAN: I understand that, and I saw the person who led the applause was Don Morgan out of the 3rd, and I thank you, Don. I appreciate that.

Let me introduce to you an individual who has led the Bar over the last year, and most of the time one sees the president of the Bar in meetings, unless
you are attending one of the Bar associations, many, many bar associations that the president goes out and talks to those bars, but the point is I would see the president, talk to the president primarily during Board of Commissioners meetings, Executive Committee meetings, and I want you to know that in my judgment she has done this past year as president of the State Bar a wonderful, wonderful job, and I am very proud and privileged to be able to introduce to you the president of the State Bar of Michigan, Kim Cahill.

(Applause.)

PRESIDENT CAHILL: Good morning, everybody. It's a real honor and a pleasure to be here for what I assure you will be some very brief remarks. I have two hours left. Make sure Ron doesn't get hurt between now and then.

It's been a wonderful and a productive year, and it's a year that I wouldn't trade for anything in the world, but it's a year that I am very, very happy is coming to an end. Both my law partners, who happen to be my family, are here today also, and they are telling me they will also be very, very happy when I come back to work on a full-time basis and actually look at the money that's coming in and did come in last year.

So I think that really for the Bar as a whole and for the Assembly in particular this has really been a productive year. On the administrative side we have hired, as we discussed at the last meeting in
Janet Welch who will be speaking to you shortly, and one of the things I am really proud that we have been able to do this year is to form and continue to form partnerships and alliances with other Bars, with civic groups, and even to work with some of our sections on substantive law issues. And I really think that that is the future for how this organization is going to become as productive as it can and move our agenda forward.

We need to form partnerships with other entities. We need to form partnerships and work very closely with our own internal groups so that we have the most, the best, the most inclusive information that we can as we go forward and work with the public, work with the legislature so that we can make sure that our agenda is going to be addressed, we can make sure that our members are going to be taken care of, and we can make sure that what we talk about continually, access to justice, is a reality and not just something that we talk about. So I am very proud about that.

One of the great things that I have seen this year is that the Bar has often been asked by the court, the Supreme Court, to submit amicus briefs in particular cases, and our sections are asked to submit
on a regular basis. So I think that's a great improvement. It happens much more often than it used to when I started nine years ago or ten years ago with the Bar work, and I think that's a real, real important factor.

We have done a lot of work in the legislature this year. I will leave it to Janet to tell you whether or not she thinks it's been effective. I didn't listen to the news this morning. And one of the things that I am happiest about is that we took time this year to update our strategic plan, and I hope that all of you will have an opportunity to go onto the website, take a look at the strategic plan, and look at the direction that we have cooperatively set for the organization going forward.

You are a big part of that strategic plan. You approved our previous strategic plans, and what we have done now is just kind of tightened it up, updated it. These are the things we are doing well on, these are the things we haven't started yet, these are the things over here that we now need to go forward on. So I hope you will all take a look at that and really take it to heart.

I really do appreciate all the work that the R.A. does, and as I heard Ed talking about sometimes it's unappreciated. I think I have a little different perspective than a lot of presidents because a long time ago, far, far, far away I stood up here and ran
this organization, this Representative Assembly.

I hope really that you will continue the hard
work that you have done, and one of the most important
functions that you have for the Bar as a whole is
being a body that can take the time to gather
information and be a very broad-based sounding board.
The 150 of you come from far more places than the five
officers do or the 30 commissioners do, and we need
your input, we need your broad-based input on the
challenges that face the Bar.

And I think you are going to do a couple of
those things today. We are talking about UPL, and you
are also getting a report from the Attorney-Client
Task Force, and those are the issues that are going to
be facing us in the upcoming year, those are the
issues that we need broad-based feedback from the
membership on, and short of calling all 39,000 of us,
which would be ineffective and annoying, you are our
best shot at that, the 150 of you.

The last thing I want to do is to thank your
leadership for their active leadership role, not only
here which you see, but for all of their work on the

Board of Commissioners. All three of your officers
serve on the Board of Commissioners. They are very
active and vocal. They provide a lot of input. They
provide your viewpoint always, and I think you should
be very, very appreciative of them for that. I know I
am.

And with that I will tell you thank you and
hope that we have a continued good meeting, and am I
supposed to actually let them ask me questions? I never did that when I was chair. If there are questions, I would be happy to answer them now, or I will be here for the rest of the meeting. You can pose them to me individually. All right. And nobody is rushing to the microphones, so thank you, have a great morning.

(Appause.)

CHAIRPERSON HAROUTUNIAN: Thank you, Kim. Let me now introduce our executive director. Generally in the life of a bar association one does not necessarily have the opportunity to select the executive director, the executive director is already there, but during this past year that opportunity came along, and I think really from the Board of Commissioners' point of view, from the officers of this organization's point of view also it was really unanimous, that the selection of Janet Welch as the executive director of the State Bar of Michigan was absolutely the finest choice we could make, and I will add something, and that is that what I said in the Board of Commissioners meeting yesterday afternoon, which is that Janet's great knowledge of the subject matter that we all deal with allows her and results in her being able to bring to the table great judgment, great judgment, and in my opinion judgment is perhaps the single most important thing in the Bar association that anybody can bring to the table.

Ladies and gentlemen, let me introduce to you the executive director of the State Bar of Michigan,
Janet Welch.

(Appraise.)

MS. WELCH: Good morning. When I last spoke to you in April I was a rank novice at the job of executive director of the State Bar of Michigan, and I am pleased that I am facing you now as a veteran, not quite a gristled veteran yet, but a veteran.

I have two stories to tell you today. The first story I have to tell you is about the State Bar of Michigan and the fact that we are operationally strong and fiscally sound.

Yesterday the Board of Commissioners passed a $10 million operational budget, and at the end of this fiscal year in a few days we will declare a surplus of $900,000. We will have, in addition to that -- I have to get the right fund balance -- approximately a year's worth of operating expenses. That's really an extraordinarily sound and wonderful position for a State Bar to be in.

And I want to give credit where credit is due. The credit, first and foremost, belongs to the leadership of the State Bar of Michigan, the officers, the Board of Commissioners who have made tremendously wise choices, have held our feet to the fire in terms of our budgeting, and that's the officers both of the Board of Commissioners and the Representative Assembly.

I also have to credit the staff of the State Bar of Michigan. The budget that we adopted this year actually is down 3.5 FTEs, and we are able
to not only maintain the services that we are providing to the State Bar of Michigan, but we expanded them and deepened them.

As Kim noted, the services that we are providing to sections and to committees is stronger than it has ever been before. Our relationship is better. At the same time we are very consciously devoting resources to local and affinity bars and cultivating those relationships in order to expand the service that we bring to members.

We are putting resources into technology, which is increasing our productivity. We are putting resources into research, so we have a better idea where we are headed and how we can help members in the future. Our Practice Management Resource Center has hit the ground running and is providing tremendous service to particularly solo and small practice lawyers throughout the state.

And, finally, I have to note that we have also made some very prudent investments with our dollars, which also helps our bottom line tremendously.

So I am telling you this because I think we can all take pride in that accomplishment. It's not something that the general membership knows about. I think we all know as a mandatory bar that most members take for granted or maybe even begrudge the fact that there is a State Bar of Michigan, so you can help tell the story of expanded services and a very, very sound fiscal position of the Bar.
At the same time, the second story I want to tell is the story that Kim alluded to, which is what is going on in Lansing. When we met in April I think we all knew that the state was facing an unprecedented crisis of the biggest budget crisis in my long lifetime. That includes payless paydays in the '50s, because I think that was not -- the shift in the economic position of the state was not as substantial as what's occurred in Michigan lately.

But we also expected that when we met now that the budget one way or another would be fixed, and of course it hasn't been fixed. Today is the day in which they have to fix it. I won't bore you with the details which you already know about the options that are on the table.

The conference committee that has been assigned the income tax bill, which is one of the pieces of the puzzle that they have to put together, is meeting this morning, and my phone hasn't gone off, and they wouldn't call me and tell me what the outcome is immediately anyway, but today is the day that we will know whether there will be a partial shutdown of the State or a complete shutdown and maybe can even project for how long that's going to go.

The pieces are familiar. We know that the income tax increase is being considered from between 4.3 to 4.6 percent from 3.9 as one piece of the
solution, but that doesn't close the gap. Budget cuts from serious to monumental are on the table, and also still on the table is a tax on services, possibly a tax on legal services.

The only thing I can tell you is that I have confidence that we have done the best job that is possible to do to explain why a tax on legal services is bad for the public, and if a tax on services ends up including being adopted and including a tax on legal services, I can tell you that we have done really the best possible job that we could do.

I would say what I have been saying for about a week is that I think we were sort of at yellow alert on a tax on legal services, that's down from sort of an orange alert at the beginning of the year, but depending on how negotiations go today we are still in alert status, and we are watching it very, very closely. And you can find out what happens on the State Bar website. We update the budget crisis news on a daily basis. If you are not close to radio or a television, you can find out on our website what's going on.

The State Bar of Michigan made a big deal at the beginning of the year that for the first time in modern history, probably for the first time in the entire history of the State Bar of the State of Michigan, the Governor, the Speaker of the House, the
majority, the Senate Majority Leader, the House Majority Leader, and the Senate Majority Floor Leader were all lawyers, and I have to tell you there have been times in the last few months where I wished we hadn't made quite a big deal out of that.

But I think one thing that we all need to bear in mind is that all of those people are very talented people, very smart people, and people of goodwill. That's why they are where they are, and you have seen them at their best, and the reason that this budget hasn't been solved I think really underscores how difficult the work of politics is.

And I wanted to mention that to you today because there are 148 legislators, almost exactly the number of members as in this Representative Assembly, and what you do, the issues that you tackle, particularly, for an example, the attorney-client privilege issues this afternoon, they are difficult issues, they are issues of incredible importance to the public and to the profession, and I want to salute you for the way that you go about the very difficult business of resolving those issues.

I look forward to your debate this afternoon.
privilege what a pleasure it has been to work with
Ed Haroutunian this year. I have come to know him as
a wise man and even more importantly as a kind man.
And I hope he doesn't take this the wrong way, but he
is a real sweetheart, and I will miss him
tremendously.

I look forward to working with Bob. It's
going to be a very interesting year ahead, and I look
forward to getting to know you in the same way that I
have gotten to know Ed, and I look forward also to
saluting your honorees at the lunch today, and I will
be standing by. I don't know whether you want to take
any questions, but I will be here all day. Thank you
very much.

(Appause.)

CHAIRPERSON HAROUTUNIAN: By the way, let me
add that before we, just a moment before we ask the
folks on the Unauthorized Practice of Law, the

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informational panel, before they come up, those who
will be members for the April 2008 meeting, we are
trying to be able to get pictures taken of those folks
who will be in the Assembly for April of 2008. We are
not going to be able to get everybody, because some of
those folks are not here today, but we are going to
try to do our best so sometime -- Marge Bossenbery,
who is in the back, and if you will turn around you
will see Marge, she has got her hand up. Of course
she has got a bottle. Did that come across the way it
was intended? Anyway --

MS. BOSSENBERY: I knew what you meant.
CHAIRPERSON HAROUTUNIAN: She will be taking pictures, but when is that going to happen?
Throughout the day, throughout the morning.

MS. BOSSENBERY: I don't want to take away, but if you want to slip out, it only takes a few seconds. Between 2 and 4 I will be out in front.

CHAIRPERSON HAROUTUNIAN: So if there is an opportunity, see Marge, and you just go outside and have a picture taken, and you will move on. And so I share that with everybody, so that during the day you will do that if you are going to be a member in April of '08. And we will end up ultimately, for those folks that are going to be in the April Rep

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Assembly -- I think I am losing my voice, I am sorry -- sending out informational sheets with regard -- oh, the informational sheets with regard to practice areas and that kind of thing.

By the way, let me make one other comment, and that is for those folks who have not listed their committee preferences for the future, I believe that information is at each of your desks, and so let's make sure that that gets filled out so that Bob and Kathy will have that information so that they can then determine who the members of the various six committees of our Representative Assembly, so they can fill those positions.

Okay. If you have any questions in that regard, by the way, you can either talk to me, Bob, Kathy during the day.

Okay. Let me call upon our next item of
business, and I point out that it's now 10:39 and the
item is supposed to start at 10:45, so, again, Don, I
am ahead of schedule.

MR. MORGAN: Excellent.

CHAIRPERSON HAROUTUNIAN: And that is the
unauthorized practice of law. It's an informational
panel, and it's presented as considered by the Special
Issues Committee. Steve Gobbo is the chair of the

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Special Issues Committee. He is going to also be a
panelist, as well as John Anding, who is out of the
Drew, Cooper & Anding firm out of Grand Rapids, as
well as Kim Eddie. Is Kim here? Kim, okay, well,
come on forward. Kim is a prosecuting attorney and
out of Lansing, and he is on the Prosecuting Attorney
Coordinating Council, and as well as Josh Ard, and
Josh Ard is the chair of the Unauthorized Practice of
Law Committee, and please come forward here.

Just to let you know, the intent of the panel
discussion is to be able to, in effect, give
information without taking any action today. It may
very well be that, depending on how things go, that
there will be from the Unauthorized Practice of Law
Committee in April, could even be September of next
year, but it could be April of '08, issues to be
discussed and then ultimately voted upon. But that's
not the goal of this for this morning.

Having said that, Josh, let me, or Steve, to
be able to turn it over to one or both of you with
regard to beginning the presentation of the
unauthorized practice of law, and I know that, Josh,
you have been doing a great deal with regard to the committee yourself as the chair.

MR. ARD: Thank you. Is this working?

VOICE: No.

CHAIRPERSON HAROUTUNIAN: It's right at the very top, Josh, right at the very top.

MR. ARD: Okay. What we are going to do is run through some brief presentations, and we want to save a lot of time at the end for questions, because we thought there might well be some.

The basic order in which we are going to present things is John is going to talk about the historical situation. I am going to give a little bit of an overview of the current law, a bit about what is and what is not the unauthorized practice of law.

Steve is going to talk a lot about what goes on with regard to other professions, and he is going to begin a discussion of some other remedies that might be available besides what the Bar itself can do.

Kim is here to talk a lot about the criminal side of things, because we find that that's often a question of why aren't these people in jail or something like that, and we will also talk a little bit about some other things that possibly -- well, some of the things that you can do now that you might get others in your community to do now, and, without making any specific proposals, we will give just a few suggestions perhaps of some things, of some changes.
that might be feasible that would really help the
problem out.

So as to not slow things down too much, I am
going to turn the program over to John Anding, who is
going to give us an overview of the historical
situation.

MR. ANDING: Good morning. The unauthorized
practice of law issue has been one that has really
transformed itself over the last ten years, and more
specifically over the last four or five years,
primarily through the decision by the Supreme Court
here in the state in the Dressel versus Ameribank
case.

I think I was asked to be on this panel
because all of the bad things that have happened in
this arena happened during my charge as the chairman
of the committee, and I was actually the lawyer, the
lead lawyer, in the Dressel versus Ameribank case that
has now given rise to a definition of the unauthorized
practice of law that is quite unwieldy and
unmanageable, but I don't see anybody throwing
anything at this point, so I think we are safe.

I thought we might start with an historical
perspective on UPL, because I think where we have come
from, as is always the case, in most discussions of
something about both where we are at and where we
might need to go going forward.

        I would like to start, just very briefly, by
talking about what our statutes in the state of
Michigan look like. We have two statutes, one that
governs individuals and one that governs corporations.

        The statute that governs individuals, which
is 916, essentially says in the very first clause, A
person shall not practice law or engage in the law
business, and I emphasize engage in the law business,
because that was really the hot button in the Dressel
decision by our Michigan Supreme Court, and I believe
it might be an area that it continues to be a hot
button as we talk about remedies that we might
formulate to move us away from the rather difficult
position that we are in today.

        The difference between practicing law and
engaging in law business, as you might suspect, is
that in one you actually make money, you take a fee
for what you do. And we will talk a little bit about
the implications of that as we go forward.

        The corporate statute is quite lengthy and
quite wordy. Surprise, surprise. It, in short,
states that it does not apply where corporations

otherwise lawfully engaged in the business authorized
by statute. A perfect example of that is a specific
carve-out for title companies. So it's not terribly
meaningful to the discussion, but I think it's
important to know that it's out there.

        Let's talk about the trend up till 2003 when
the Dressel decision came down. There were a number
of Michigan Supreme Court decisions over the hundred
years that preceded the Dressel decision, all of which
took a rather circumspect and responsible approach to
the unauthorized practice of law issue. What emerged
from those decisions, and I have not given you the
cases here because for the most part the Dressel
decision has rendered them meaningless, but by name
they are the Denkema decision, the Kupris decision,
the Neller decision, and these decisions by our
Supreme Court, as I said, were quite circumspect and
dealt specifically with the facts before them, but a
couple of things emerged.

One was that a universal definition of the
practice of law is difficult, if not impossible, at
least for every supreme court of this state, except
for the current one.

Secondly, that there is an important
distinction between filling out forms that might be

The impact of the Dressel decision is --
first of all, the facts in that case were, these were
general forms, essentially deed type information that
was being prepared by financial institutions for which
they were collecting a $250 fee, basically filling out
mortgages and filling out deeds, and the question was,
well, are they engaged in the law business? Are they
engaged in the practice of law by virtue of filling
out these rather critical pieces of documentation, at
least for most ordinary citizens.

The circuit court found that it was not the
unauthorized practice of law. The Court of Appeals,
with a very balanced bench that included what you
would consider to be conservative, moderate, and
liberal influences, all found that it was the

unauthorized practice of law, so it was granted in a
7-0 opinion, surprisingly enough, in an opinion
drafted by Marilyn Kelly we have what we have today,
which is the new definition, universal definition, of
the unauthorized practice of law.

And that definition is that a person engages
in the practice of law when he counsels or assists
another in matters that require the use of legal
discretion and profound legal knowledge.

Now, how is that for a hair ball? Pretty
difficult for I think most lawyers, especially, as I
will point out later on, solo practitioners, to choke
that one down, because there is a lot of solo
practitioners in small communities across the state
that do the kind of work that has traditionally been
considered the law practice but who are now being
told, well, you don't do anything that's terribly profound and can be done by just about anybody.

And I think that's an important piece for us to get our arms around. The definition I think on its face has problems. Judge Weaver in her concurring opinion I think makes the point. She says, Legal discretion and profound legal knowledge are amorphous concepts that, like the practice of law, do not lend themselves to a single interpretation. And there you have it.

What it has really done is it has, the fallout from this decision, is that we have seen an increasing number of document preparation companies invading the state because they see this as a get-out-of-jail-free card.

Trust kit companies that were already here and who were subject to the diligent efforts of our staff at the State Bar, UPL staff in terms of prosecuting claims have been emboldened by this decision, and then the noninstitutional small-time offenders really hide behind the amorphous definition, saying, well, I thought this didn't constitute profound legal knowledge, I thought I could do it, and I think we all can sympathize with that argument.

And so it has put the Bar in a very difficult position. During my tenure, and Josh was on our committee for many years while I was chairman, our response was, what do we do? That was our first response, hanging our heads a little bit, and the first thing that we concluded was that prosecuting
enforcement was becoming ever more complex in light of
this definition, and that, coupled with the lack of
funding, made it very difficult, for example, to take
on the larger institutional type document preparation

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companies that come in well-heeled and ready to fight.
And that's a problem. At least it was a problem when
I was chairman. I think it's still a problem today.
I think that's probably why we are talking to you.

The efforts that we took, in addition to
augment the enforcement actions, was we began some
educational initiatives, but, again, those cost money,
and we were able to put together a few that were, I
thought, very, very effective. It's television and
radio spots and hotlines for people to call. We have
lawyers running OpEd pieces. We began making
presentations to local and State Bar meetings,
including the judges meetings, so we could alert the
judges to this issue, because they are the ones on the
front lines who can often run interference on these
sort of issues and bring them to our attention.

We also began interfacing with target groups,
likes AARP. The trust kit arena is one that is very
well-monied and have a substantial presence, and they
do a fair amount of victimization of elderly people,
if you can imagine approaching someone in their 60s or
so and telling them they need a trust and most
often -- I am not a trust person, but Josh can speak
to that -- these plans are inappropriate, if not
totally unnecessary for these folks, and they are
paying out 11, 12 hundred, two grand for these trusts by people who don't know the first thing about putting trust plans together.

So we began work with those groups, making presentations with those groups, and we developed UPL pamphlets that we began to distribute, but without that sort of educational initiative being an enduring, ongoing process, we are not going to get where we need to be, and where we need to be is a place where we can educate the public and our lawyers about what UPL is and what the price of the unauthorized practice of law is measured in terms of victimization of people in the public.

In that regard I think we have to say that those kind of continuing efforts are absolutely essential. This problem is an enduring problem and will continue to be a problem, apart from what solutions we may be able to formulate in whatever realm, whether it's legislative or judicial or otherwise. We as a Bar association have an obligation, at least it's my view, it was my view while I was chairman of this committee, and I hope to marshal some support for this view, it's our view to protect the public from the unauthorized practice of law.
I mean, I understand that this is part of the Bar that first and foremost is interested in its membership, but we have a higher duty, and that duty is to protect the public, and victimization of the public is real. Josh can speak to some examples and illustrations where people have lost thousands and thousands, tens of thousands of dollars, especially older seniors who are being victimized in the trust arena. That's the one that jumps to mind most often, but there are other situations where people have had deeds prepared that were inappropriate, cost people substantial portions of their real estate interest because they were inappropriately prepared. This is a real problem, and there are people out there in the public who are being harmed.

Now, as it relates to our charge in terms of our membership, no question but that this problem disproportionately impacts the solo practitioners in the small communities around this state, and while I know they do not have a substantial voice in this group, I have always advocated that it is our job, at least in the UPL area, to take steps to protect the interest of these solo practitioners whose livelihoods are being undermined by the ability of these companies, aside from the victimization, which I think is where you start, their livelihood is being undermined by the ability of these people to come in and engage in essentially the practice of law or what has been traditionally understood to be the practice of law up until 2003.
Those are my remarks in terms of historical background.

MR. ARD: Thank you, John. You covered actually a fair amount of some of the current law in Michigan. I would like to give you a little bit of perspective, in case you are not aware of this. This is certainly not a Michigan problem. This is a national problem. There had been some Bar associations, some states who have developed a fairly expansive reading of what the practice of law is, and often those have run into trouble with the federal government. In particular the Federal Trade Commission and the Department of Justice have argued that this is some sort of constraint on trade, a restraint on trade that should not be allowed.

Legislatures have not always been friendly. The legislature in Utah was asked to come up with a definition of the practice of law, and they decided that the practice of law was defending criminals in court. They since changed that statute, but that was what they came up with when asked to define what only attorneys can do.

In Texas the Bar committee was very aggressive. They went after Nolo Press, an organization I am sure many of you know, saying, well, you shouldn't be able to put out all those self-help books, and they claim that was the practice of law, and what happened was that the legislature in Texas immediately afterwards changed their law to say that that was just fine. So this is certainly not a unique
Michigan problem.

Now, a lot of things that John talked about are still going on. Some of them have changed. In particular, most of the will and trust organizations have subtly changed, that what we see now is, and I am sure they are operating in your communities, and there are a lot of these free lunch financial planning seminars, and if you go and you buy their wonderful product, which usually are inappropriate annuities, they will give you a free estate plan, and what they have done is they have gotten some attorneys to sign up to get maybe $300 a pop to have their names on the documents.

Generally these attorneys don't do anything with them, but of course the problem would be proving that the attorney was not involved in preparing the document. It's not as obvious as where you have a company that says we can do it, we don't need any stinking lawyers, that type of thing. So that's been one of the major changes.

Actually that's probably more harmful for the profession of law than the will and trust companies that were at least putting a value on the product. If they are telling you what you are offering is a free service, then how valuable are you?

We have seen -- the things that have come to the committee and the Bar where there has been probably the most stuff going on, besides those areas, estate planning and Medicaid planning, areas like that, are things like immigration, family law,
criminal law, and some sort of ongoing issues of
perhaps title companies going too far.

One of the things in the current law that is
fairly clear is that people can act as scriveners, as
amanuenses in filling out forms, but the question is,
well, when do they go beyond just filling out the
forms and giving advice as to what to do?

There was a relatively recent settlement the
Bar reached with the We the People franchise. I
believe it was the one in Grand Rapids, wasn't it,

Catherine?

MS. O'CONNELL: Yes.

MR. ARD: Yeah, and some people say, well,
why didn't you just completely shut them down?
Actually Catherine arranged a very good settlement
with them, but one of the reasons we can't shut them
down is that the current courts would not say that if
they really did what they are supposed to be doing of
just filling out forms that's the practice of law, and
obviously it requires more work to see what they were
really doing.

In this case they decided that they could
write a special needs trust, and I don't know how many
of you know about public benefits, but, you know,
that's not the kind of thing you should do if you
don't know what you are doing, and fortunately that
was stopped before there was any damage.

We are going to talk about some of the other
things that we can look at. The statutes that have
been mentioned so far are the particular statutes
having to do with the unauthorized practice of law,
but when we really get down to it, when we see the
unauthorized practice of law, it's almost always some
sort of unfair and deceptive marketing practice.
These people aren't saying, I am no good, I

But one of the things that we wanted to talk
some about is that in many of the instances of the
unauthorized practice of law we have other people who
are licensed professionals who may be involved in
that. So a lot of these free lunch seminars that we
are talking about, there are insurance agents, perhaps
CPAs, other people who are involved in setting this
up. So we need to look at some of the enforcement
mechanisms with regard to other professions and also
to try to put this into some sort of context as to how
does regulation work for other licensed professionals,
what's going on, and that's the kind of topic that
Steve is going to give us some more information about
now.

MR. GOBBO: Thank you, Josh. First I have to
make a small disclaimer. My comments will be
personal, not related to my employment with the State
of Michigan and the Department of Labor and Economic
Growth.

What I do for a day-to-day living, at least until maybe tomorrow, is enforce various statutes related to occupations and professions within the jurisdiction of the Department of Labor and Economic Growth and a bureau called the Bureau of Commercial Services. We regulate all of the commercial and related type endeavors in the state, including we have a division that incorporates all the different companies that you would form throughout the state, all the business entities.

It's pretty far reaching. There is about 30 different occupations. Most of these occupations are regulated under the Michigan Occupational Code, which is PA 299, 1980. It's broken up into several articles that addresses each of the varying professions, occupations that will range from public accountants to funeral home directors. In the past we regulated boxing under that act, although that's been moved to a separate act. Real estate professionals, real estate appraisers, and a number of other ones I am not going to get into at this point.

For an example, for the purposes of making this discussion as short as possible so we can open it up to questions from you, I am going to use public
accountants as an example, because they have had some recent activity in the legislature amending Article 7 of the Occupational Code.

Article 7 encompasses CPA's. CPA's are kind of unique in a sense, and actually most of these professions are unique in the sense that they all define in the statute what is prohibited and what is allowed under their professions.

I am going to just throw out another set of professionals that are under Article 20 of the Occupational Code, and that's typically termed design boards. We have land surveyors, architects, and professional engineers, and it's kind of an interesting interplay among those professionals because the way the definitions apply they are overlapped in terms of what those professions could do, and oftentimes there is some argument that one profession has intruded upon the other in terms of the type of work that they have done, and then you have them looking to the department to try to do something about the activities of the other.

So I bring that up because it's an interesting interplay, and I think the analogy could be made to a lot of the things that John and Josh had pointed out to you in terms of the issues with the definition in terms of the practice of law from the Dressel decision and just some of the types of activities that you as a group or the profession as a group may think is intrusive upon the practice of law.
Within the Occupational Code there are certain penalty provisions. There is a provision for injunctive relief that not only can the department or the Department of Attorney utilize to prevent somebody from doing something that's prohibited under the code, but also an association can use the injunctive relief, and very similar to, I think, what the Bar has done in many instances when UPL has been raised.

There are also criminal provisions, and fairly recently most of the provisions were misdemeanor, although certain professions, CPA's which I am going to use as an example, have gone to the legislature and gotten the legislature to up the penalty provisions criminally to a felony.

Now the problem you still have with that is that the agency I work for is not a criminal enforcement agency, so we would have to rely on a local county prosecutor or the Department of Attorney General to enforce the criminal provisions, and, as you all know, probably from your own practices, whether the civil, criminal, administrative, trying to get a county prosecutor to do something when you have kind of a regulatory violation versus murder, rape, and all those other glorified crimes, it's pretty hard to do. It's a matter of resources.

So that's the first thing you are going to be facing in terms of this debate is to my knowledge there is one staff member with the State Bar, Catherine is the person assigned to UPL, and to expand any type of enforcement activity, it could be pretty
overwhelming for just one person, I can tell you that much.

The other aspect that you have, and I am going to try to get back on course with talking about CPA's. I mentioned that they are in Article 7 of the code. There is a definition in Section 720, then there is another definition in 723 that allows certain people to use the title of CPA, very much like using attorney or counselor at law, it's pretty well-defined in the Court Rules, but there is a registration provision where you do not have to actively practice but if you register you are allowed to use the title, usually it's college professors who want to use that title while they are teaching but they are not going to be doing public accounting in terms of attestation reports, certifying financial statements and the like.

But occasionally you have somebody who is registered and then decides to make some extra money on the side and does an attestation report. Is that unlicensed practice when there is a statute that allows you to do this? Now, this body right here at the last meeting had to deal with a similar issue when you looked at emeritus status.

The Article 7 goes on to 724 and talks about those type of acts that are prohibited, and there is a laundry list. With our profession, as attorneys, there is no real definition of what's prohibited, and when you get into the amorphous description of the practice of law, profound legal knowledge, I mean, you are treading into some deep, muddy waters.
In Section 734, there is a host of violations, very much like our ethical provisions in our profession.

Section 735 talks about criminal sanctions, and this is the section that was recently amended, calls for a $25,000 fine for using the title or practicing unlicensed public accounting, along with the felony provisions. To date there has been no prosecution under that provision, and the amendments to the law occurred approximately two years ago.

What you have, I think, is a series of land mines that this body will have to make some decisions on avoiding, because there is some I guess what you call political issues where if decisions are made to pursue a certain line, course of action, it may cause some problems with some of these other professions, and I am going to throw out real estate brokers, real estate professionals as an example.

A very strong lobby in the legislature, they fought very hard to carve out certain exceptions to the practice in terms of real estate, and if you go in one direction, unfortunately the legal profession may not have the same persuasiveness with the legislature as some of the other lobbyists, for various reasons, they don't like attorneys. I don't know what to tell you.

But as we get further into what may be done, these are the things that are going to have to be weighed and the land mines avoided, because, as John has already pointed out, and Josh, I think with a
court, the Supreme Court that may be less than sympathetic in some areas, we might end up with the Utah situation where the practice of law is confined to a definition that is very limited. So this is what you are kind of facing at this point in time, and I hope that kind of gives you a quick overview. I know

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at the end of the presentation we are going to open it up to questions, and I would save further comment until then if you have questions.

MR. ARD: Kim is going to talk now some about the criminal, and that tends to be an area that a lot of legislatures look to to solve everything by making it a crime. There is a bill in Texas -- I don't think it passed -- that decided to solve the problem of parents not showing up for parent/teacher conferences to make that a crime. And a few years back our legislature decided that they would solve the problem with deceptive mortgages by making that a crime. Well, it didn't work, and Kim is going to talk to us more about what's involved in criminalization.

MR. EDDIE: I would like to speak on behalf of all 800 prosecutors in your state. All of us, we are getting together and we are going to fight everything. No.

Last year we pumped out roughly 60,000 felony cases, those 800 people, about another half a million misdemeanors. Now, what you have in the unauthorized practice of law are two different misdemeanors. The cases will generally break down as those people who were never authorized to practice law, they are not
licensed, they never went to law school, they want to

We also see the cases of the person who may
get an attorney who is either disbarred or suspended
that comes in to practice. We see those people who
completed law school but never quite got past the Bar
exam engage in the practice. A little bit tricky are
those who are licensed in other states. There is a
real question is that the unauthorized practice of law
if they have not been admitted pro hac vice.

And finally we see those who engage in
otherwise valid practice, i.e., the preparation
otherwise of forms who sort of gradually wander across
the line. Those are the type of criminal cases we
would see to prosecute under the two statutes which
were referenced, the 45621 and 600916.

Now, you also note those carry massive
penalties. For an individual, 93 days in the county
jail and/or $750 fine. I can't get people put in jail
for armed robbery anymore because, guess what, they
are full. The county jails are full, the sheriffs are
letting people out. The prisons are full. The
governor is telling us we have to let these people
out.

Well, we have let them out. We just let one
out in my county, in Ingham County. He murdered six
women. We were really successful then.

So that is a huge problem for us in dealing with this as a criminal problem. Oftentimes when this comes to us as a criminal problem it is not looked at as the unauthorized practice of law. It clearly is, but there are other crimes that are committed by these individuals which carry far greater crimes -- fraud, embezzlement, obtaining by false pretenses. All of these carry greater potential penalties.

So while it may be the unauthorized practice of law, as a prosecutor I am looking at it and saying, that's great, but if I have a five or 10-year felony versus a 6-month misdemeanor or 90-day misdemeanor, I am not going to call it that. I am not going to engage in what is defined as the unauthorized practice of law because the bang is not there for the buck.

The other difficulty with prosecution is -- Josh is right. If the legislature can't figure out what to do with it, they make it a crime, and oftentimes they make it a crime with a disproportionate felony attached to it.

I am going to go after a CPA on a four-year felony. I'd rather go after the CPA for the fraud he committed or something else. I may throw it in, because you can always do that terrible thing we all practice as prosecutors, we plea bargain. I always wish I could go to the legislature and say eliminate plea bargain. I would like to be a judge too, I might
not have to work as hard, whatever. Because that would kick the system. It would die in a day, we all know that. We all live under that myth.

But in terms of the unauthorized practice of law, the reality is the statutes have no sufficient penalty as a prosecutor to really attack it as that particular crime. I will attack it as other means, other crimes which are viable.

And for an example, we had an attorney who was a guardian, and he clearly breached his duty as an attorney, he clearly was engaging in improper activity. We didn't prosecute any of that. It was there. It was left to go. We prosecuted the fraud and embezzlement, and because he did it at the state court level, we prosecuted in federal court, and ultimately he was sentenced to federal prison for those violations.

As a prosecutor I look at what is the bang for the buck. Unauthorized practice of law as a 90-day misdemeanor or a 6-month misdemeanor, makes no sense when I have a far greater crime. Will I prosecute it? I have two prosecutors in the audience.

One of them serves on my board of directors, the other one I have known for many years.

They have to evaluate what they are going to do, evaluate staff, evaluate time, and that's a critical part of this problem. You can make it a law, you can make it a violation, but if you don't give us resources to prosecute against it, it's just not going to happen. And these statutes are not realistic to
prosecute. That doesn't get into the whole Dressel
issue of this profound legal knowledge.

Now, in the civil, which many of you do,
there is a different standard. As a prosecutor, proof
beyond a reasonable doubt as to what's profound legal
knowledge. I think I could take everybody in this
room and not get a good definition for that, and I
have to explain that to 6 or 12 jurors and have them
come out with an answer.

So I don't think criminal prosecution is even
viable. Unauthorized practice of law, I like a
definition, but it's not viable based upon the
potential penalty, the number of cases we carry. It's
viable only from the other crime.

One of the other difficulties we have as
prosecutors too is you people grade these, I want to
say you people pick them, and the worst offenders are

Those on the bench. They fix things for people to
come in and do them wrong. They want to move that
case along, I understand that. You know, if I move
the divorce along, it's off my docket. If I don't
offend my brother attorney, I am a good guy.

I say don't do that. If you have a case,
bring it to us. We may elect a prosecutor tonight,
but too many times we do not know what that case is or
what the potential for that case is, and neither does
Catherine. Catherine gets many calls, this is
terrible, this is awful. Want to make a complaint?
Well, no, but this is terrible, this is awful.

So I offer to you from the prosecutor's
standpoint, if you bring it to us, we will look at it. I won't guarantee we will prosecute. I know Chris over there sits alone by himself up in the U.P. I just found a case the other day that he is taking on for somebody else.

We will take it on. We will take a look at it, but understand we may not prosecute unauthorized practice of law. It's going to be something else, something more viable.

Mr. Ard: I have got just a few other remarks, and then we are going to throw it open to questions.

There are some other potential remedies that could be used that don't necessarily have to be used by the Bar. They could be used by private attorneys. One example is that, as I said, it's almost always an unfair, unconscionable, or deceptive practice, and so presumably this would come under the Consumer Protection Act which somebody could bring, and if they win, this could get attorney fees paid for them by the losing defendant.

Some of you may be aware that the Consumer Protection Act is virtually dead now in Michigan, but the unauthorized practice of law would seem to be an area where it's open, because it doesn't apply to anybody who is specifically authorized to do what they are doing. In almost every business claim, well, gosh, I am specifically authorized to do what I am doing, so go away. If it's the unauthorized practice, how did you say you are specifically authorized to do
There is also a possibility, one reading of the act, is that if you as an attorney are harmed by unfair competition that you have standing to bring the case and to seek attorney fees for that. It would help if the legislature clarified that a bit, but that seems to be a possibility.

Another one is that when these people are engaged in the practice of law, they are really engaged in the malpractice of law. They are not doing a good job. We are not complaining that these people out there are doing a great job and how come they are doing a great job and we are not. So the way the malpractice statute is written, that may potentially apply. It's a little vague though. It talks about people holding themselves out as a member of a licensed profession.

If you are engaged in the unauthorized practice of law, are you holding yourself out as a member of that profession? You know, I would say so, but I have found that the courts don't always listen to me. I don't know why. But that, again, could be something that would be clarified to say either somebody who engages in the practice or holds themselves out to be a member, and that would be a potential remedy, and, of course, that puts a lot more of a threat on people.

You know, we are probably not going to put some of these people in jail, but if they could lose a lot of money, that could be a problem. And one of the
things that really galls me is that if you want to come play on my field, I want you to play by my rules, and in particular the idea of these waivers of liability is a terrible problem. You can go into the title company that would give you terrible advice about what to do with your deed, but they will have you sign a statement saying, well, we are going to waive any liability claims that we are going to make. That shouldn't be allowed. If you are going to do something that's close to the practice of law, you should have to stand behind it in case you lead somebody astray.

Now, one of the things we wanted to get into as well is, well, what can you do, and Kim gave one good example is you can and you should be reporting. Cathreine gets very few fully articulated complaints. She gets a lot of people calling and saying why aren't you doing anything, but she gets very little information.

We need to get the information to her. We also need to get better information to the public, that prevention is always cheaper than remediation. Why should people go to qualified attorneys to get legal service? Why should people listen to you rather than listen to their brother-in-law? You know, what is the value to them of doing that, and there clearly is a value to them doing that. A lot of this causes
considerable harm, but people don't realize that. People don't realize why they shouldn't just download a form from the internet. They don't really realize why should I get an attorney involved if I am going to be in a real estate transaction. Why should I get -- if I think I am going to be going into a nursing home for two years, why should I get somebody to look over this contract before I sign it? People just don't think about those kinds of things. That's one of the things that we can do.

And I would say also working with other people in your community. I can certainly appreciate what Kim is saying about how prosecutors and police aren't likely to do, you know, want to prosecute these matters, but if you know, for example, that there is going to be some sort of a fraudulent free lunch seminar in your community and you have some contacts with the local law enforcement, if a police officer stops by and says, you know, I am interested to see if there might be some false pretenses going on in this seminar, I have got some concerns here, you know, that could have an effect.

So we need to think about various kinds of prevention things. We need to get the word out to people and also to people in law enforcement, people
can be doing above and beyond some of the limitations that are placed on the actual enforcement by Bar itself.

With that being said, we are going to open this up to questions. I don't know how you want to handle the questions.

CHAIRPERSON HAROUTUNIAN: Sure.

MR. ARD: It's up to you.

CHAIRPERSON HAROUTUNIAN: Well, my suggestion would be that if someone has a question, we have got a couple of microphones over here, and please come up to the microphone, identify yourself and ask your question.

MR. GREEN: Good morning. My name is Roderick Green from the 3rd circuit. I know three young men who dress fairly nice and they carry briefcases. They never hold themselves out to be an attorney, but because of the way they carry themselves, if someone approaches them and asks them to get involved in some type of transaction, they will never deny that they are, and then they will get involved in some type of paper dealings.

What about the situation with someone who doesn't actually hold themselves out as an attorney but acts under the apparent guise of being an attorney, what's your answer to that?

MR. ARD: Catherine, do you want to say how you would handle that if you heard that.

MS. O'CONNELL: That's something that I would consider to be a problem. You don't have to be
holding yourself out as an attorney to be violating
the statute. By giving legal advice you are violating
the statute, so that's definitely a problem.

MR. ARD: Yeah, I mean we -- I think all of
us here are in agreement that you can step over the
line simply by giving legal advice. There is not any
case law in Michigan that expressly says that. I
mean, you know, it runs into some issues with the
First Amendment, obviously, that, you know, somebody,
somebody can stand up and say taxes are illegal, taxes
are unconstitutional, and they have got a First
Amendment right to do that.

If they sit down with you and say, I have
looked over your situation and have decided that you
don't have to pay any taxes, then that might be an
area where I think they stepped over the line, and we
would certainly be interested in looking at something
along those lines, but there isn't any case law that

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actually says that.

MR. ANDING: If I might just add a comment.
It's a simple example, although you didn't give us a
lot of facts about what the nature of the transaction
is, but take that simple example and now superimpose
over it the definition profound legal knowledge. You
can see the difficulty it creates just as a threshold
issue and the complexity that it introduces for the
UPL staff who have to prosecute those claims that
become less clear and, therefore, more complicated and
more expensive to prosecute.

I will make this pitch again and again, I
really believe that our best way around this problem is the education of the public at large, and what comes to mind, we did a few of these spots, is public service spots that target particular victim groups, that identifies, as Josh talked about earlier, why what we do in our profession is a good thing. It's good for people. It protects them from harm, and we don't do enough of that, period, flat out. For some reason we are afraid of taking shots because we are lawyers, and I think it's -- we really need to stop being defensive about that and go on the offensive and talk about why what we do helps people.

MR. GOBBO: If I could maybe just make one comment. The scenario that you kind of presented to me is kind of like the case where we see somebody who is a citizen, they have a roof repair, they see the discount roof service, they like the price, so they go with that person, but then when there is a problem, they come back and they say, why did you let that unlicensed person get up on my roof?

So it's kind of what John is saying in terms of an education process. There has got to be some reason why those three gentlemen carrying those briefcases are attracting customers, and if you could get through that, it might resolve some of the problem anyway.

MR. CHADWICK: Thank you. My name is Tom Chadwick from the 8th circuit. I would like to talk about the advertising and ask you to respond. This seems to be an area where we could have some progress
and perhaps has been discussed by the committee. I would like to identify two advertisements that I have observed and heard in the past. One is a newsprint add that says your will is worthless and then some information below that. It could be a false claim. There are other claims that are even more outrageous than that one.

Another ad I have heard on radio is that our documents are not prepared -- we are not attorneys but our documents are prepared by top attorneys. For the first ad where perhaps there was a false claim, perhaps we should be requiring that those claims are cleaned up. Certainly in our profession attorneys are not allowed to make false claims in our advertising, we are not allowed to hold ourselves out as experts except in very extreme circumstances. We have strict rules about our advertising. Perhaps we could require the same restrictions for advertising from these companies that are the trust mills.

Secondly, I have also heard disclaimers from financial institutions that past performance is not a guarantee of future results. We have heard that many times. Perhaps by requiring a disclaimer for these advertising in their radio ads when they say they are not drafted by top attorneys, also a warning to the consumer that if they engage in, if they receive these services that they could be subjecting themselves to certain types of mistakes and that that would be identified right in the radio and a requirement that that be done.
The second idea that I have is somewhat
tongue in teach, but it is win, win, win. Since these
companies have indicated that they are selling a

MR. ARD: With regard to the current law, and
we will certainly take -- you know, your suggestions
are always welcome. With respect to the current law,
attempting the unauthorized practice of law is not
actionable. It has to go through. So we would have
to find somebody who actually fell victim to that
advertisement and then go after them for that.

Now, probably the advertisements could be --
I mean, false advertising is the type of thing the
Consumer Protection Act was designed to attack, so
that might be a possibility there. Another thing is a
problem that you may or may not be aware of is that
the Bar staff itself can't do a sting operation based
on the way the ethical rules have been written. They
are supposed to be, you know, forthcoming to
everybody, so they can't be involved in a situation
where somebody says, well, you know, I am just some
naive consumer. Well, tell me more about this.

They are not supposed to be involved in that
kind of thing, and without any opportunity of a sting
operation, we have to rely on people themselves to,
who have fallen victim, to step forward, and that's a
problem with a lot of this false advertising that's going on, and if you folks will forgive me to allow more people to answer questions, maybe we shouldn't all give our opinions on every question, but we will take another question.

JUDGE KENT: Wally Kent, 54th circuit. It appears to me a very strong analogy to the medical field where this issue has been resolved, I think in large part, by drawing very bright lines. My veterinary can treat my dog, my horse, but not me. My wife is a registered nurse. She can change dressings, but she can't suture wounds. She could probably in the ordinary case figure out what kind of medication should be prescribed for routine situations, but she is not allowed to because she does not have credentials. I think the bright line has been drawn in that area because our physical safety, our very lives are at risk.

In our profession we deal with people's lives in a different way because we deal with their property, their belongings or their liberty. The damage, the harm that can be done is every bit as terrible to the consumer and to their heirs, if you will. Since I sit as a probate judge, I see some of these things after the fact. But my question is very
be, and, if it has, obviously they haven't listened very well, what response have they made in rejecting the argument.

MR. ANDING: Our Supreme Court heard that argument as it related to Dressel to the transactions that concerned typically for most people the largest and more so important asset of their lives, their homes, and rejected it as sufficiently important area to require the sort of increased scrutiny that you are talking about. Interestingly enough, from the bench the Court of Appeals expressed alarm that this sort of transaction would allow, could be accomplished by a nonlawyer when that very reason, that it concerned an asset that is perhaps the most important for most people in their entire lives.

But you are on the right track. The whole notion of harm, and I thought your comments were very poignant, what we do is every bit as important and in a material way sometimes more important when we are protecting property and the liberty of those who are in good health. And that's part of my pitch, that we really, that education of the public about these issues needs to be targeted, and we are not going to be able to solve every problem, but we can certainly target those areas where victimization is rampant, and with public service announcements, with enlisting groups who represent those groups who are typically targeted, AARP is a perfect example, but it takes money, but it takes money.

MR. EDDIE: Also, this body has looked at
trying to form some kind of bright line definition, and we have looked at putting that through the legislature, but, quite frankly, the thought of that terrifies us because it is often said it's like sausage being made. One of my favorite quotes is that's an insult to sausage makers.

So we do not think if we went to a legislative situation we would get anything other than perhaps what they got in Utah, which is criminal defense work is the practice of law. Beyond that we don't know what it is.

MS. POHLY: Linda Pohly, 7th circuit. It seems clear the preparation of real estate documents is not the practice of law by a title company, but they are doing it. As Mr. Ard pointed out, they are also preparing what look very much like adhesion contracts. Those waivers of liability, you know, some of them are even putting the seller's name on the document as the drafter, so they are covering themselves every which way, leaving families who are unwise enough to have them prepare deeds creating joint interests to go to probate the worst of all possible worlds.

The legislature apparently is not interested in that. The court is not interested in that. Is the Consumer Protection statute any possible remedy to that situation?

MR. ARD: It could be. Of course, the trouble with the Consumer Protect -- unless the Consumer Protection Act is fixed, and there is a big
battle in the legislature to try to, well, to correct some of the problems going on. The argument right now would have to say that they are not specifically authorized to do that. And in your case it's not so much that they are specifically prohibited from doing that, but we might be in a vague area, and I guess you could argue that it would have to be, that it would be their burden to prove that they are specifically authorized to do this under some things like the, under something, and so it may be a viable approach.

In some of these instances, of course, when we are talking about the bucks with the Consumer Protection Act, if you can show the, if you can get the actual harm, if you can show what it is, otherwise it's going to be $250, and of course if it were something that could possibly be construed as malpractice, that's going to be putting a lot more fear into people, because there is a lot more money involved. Certainly a plausible argument could be made that the Consumer Protection Act would apply to that.

MS. POHLY: If I could follow up though. The Supreme Court says that they are not specifically prohibited from doing it, but they may not be specifically allowed under the Consumer Protection Act?

MR. ARD: Well, the exemption is a transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the
United States. That was the definition the
Supreme Court used to exempt a lot of people.

Now, if this is an affirmative defense and so
the question would be could the title companies
convince our court that this is specifically
authorized under our laws, that would be their burden
to show.

MS. POHLY: If such a case were brought,
could the State Bar of Michigan provide support,

MR. GOBBO: If I could maybe just interject
something. I agree with Josh on one point, but not
necessarily on the second point under the MCPA. There
is a recent series of cases that the Supreme Court
decided, and the ruling was pretty broad. And,
basically, using these other professions that I am
involved with, let's say you take somebody who is
unlicensed in this state to do building, residential
building, and somebody were to bring an MCPA case
against them, because it fits within the regulatory
scope, i.e., building, the MCPA would not apply.

So you have a quandary, where even though you
would think that the person would have to be licensed
to be exempted from an action under the MCPA, that's
not what the Supreme Court in this state has said in
these recent series of rulings.

MR. ARD: It would be a tough fight, but it's
a potential.

MS. FIELD: Hi, my name is Monique Field from
the 30th circuit. I work with the legislature,
whether that's fortunate or not, especially now, I would say I would probably prefer watching sausage being made, and I apologize for my lateness, and maybe this has been covered at some point in time, but I

One of the things that I have noticed over the several years that I have worked with the legislature is the lack of presence of the State Bar. There are numerous people in the legislature, 138 in both chambers. You have two members of this body who represent leadership in both chambers on both sides of the aisle. It seems to me that a responsible move would be to start educating the legislature, because you have people who are not attorneys making decisions that impact attorneys, and you do not have legal voices that are making a presence to basically educate those individuals on the impact that they are having on the state.

And so while I agree that educating the public is probably paramount, I would also say that getting into the legislative body, having meetings with those individuals, telling them that this body is important and has something to say, the impacts that they are making are egregious at times is definitely something we should consider.

(Applause.)
MR. EDDIE: Hard to pick up on that, because in my previous life I served nine years as a commissioner, and I continue to serve on the public policy board.

To some degree we are limited by case law where we can get involved with the legislature, but I will tell you this body is daily, the State Bar is daily involved with the legislature. We have lobbyists. We have Janet Welch, who is well-known to everybody in the house. We bring in those attorney members of the legislature before they ever serve, educate them about our issues and problems. A vast amount of your resources are spent dealing with the legislature, because we understand that issue.

We don't always win. There are a lot of other lobbyists there. One of my favorites is anybody have an idea when the last time the tax was changed on a can of beer? 1960, it was two cents. Do you know where most of the fundraisers are held for the legislature? The Beer and Wine Wholesalers. I am not saying there is a connection, and I don't mean to, but what I am saying is there are a lot of other lobbyists there that are seeking things as well.

But I think the State Bar does an exceptional job in lobbying. Our lobbyist is an extremely gifted
woman who knows everybody over there, and we are there
every place we can be under the law. And that's not
an advertisement for the Bar. I apologize. I know
they are there.

CHAIRPERSON HAROUTUNIAN: Any other
questions? Let me just add one point, and that is
what Kim Eddie said with regard to the Bar's
involvement. I can tell you the last three years the
Bar has been pretty well involved with all of the
issues that we can be involved in given the
restrictions of the Keller decision of the United
States Supreme Court. Given those restrictions and
within those confines, the State Bar of Michigan has
been extremely active through the Board of
Commissioners and it's policy committee, and I will
tell you I have served on that policy committee for
two or three years now, and it's been pretty doggone
active.

And so when the issue comes up as to whether
or not to oppose, whether or not to go forward and
affirm a position, the State Bar is there, and we have
the opportunity of saying whether it should be
affirmed in principle, which is simply say yes and nod
your head, or whether to take an active position,
which means we are going to spend some money and have

our lobbyist go and do their thing with the
legislature.

Regardless of whether it's the active role or
the nonactive role, the State Bar personnel, and that
generally has been Janet Welch and Elizabeth Lyons
have really done quite a job in my experience the last three years with dealing with the issues and going to the legislature.

I think, I don't know where Elizabeth is, but the answer is that as of yesterday she had it right up to the minute in terms of what the heck the legislature was doing in terms of the tax issue. So she is very much on top of these things.

I appreciate the comment, because it's a good comment, because that's a legitimate question to raise, but I just want to make sure that at least from my experience I have responded to same.

MR. ARD: I wanted to add one other thing to this as well is that in addition to looking at the sort of big picture things, one of the things that we could do is to look a little more at some of the smaller picture things. So, for example, if there is a bill in the legislature that has something to do with the Occupational Code, you know, perhaps there would be something to say, well, maybe we ought to extend this to attorneys as well if we think that's an important, some sort of important protection.

I am on a committee for the Probate and Estate Planning Section looking over the proposed Uniform Power of Attorney Act, and one of the things that I have argued in the committee is that third parties ought to have sort of different rules about when they can reject an instrument that is given to them. That if it's drafted by a licensed Michigan attorney they ought to have some sort of higher
standard than if it's just, you know, gotten off the
internet or something like that.

So if there are some things like that that we
can do, that might well help as well. It's not always
the big things. Sometimes it's the little things.

And, in closing, we want to stress again that
we need you to help individually and in your
communities and in your local bar associations. You
know, we need to get information to Catherine at the
Bar, possibly to law enforcement, but we also need to
get the word out to people and to other professionals,
and I suppose one of the things I would like to say is
that we need to think about this too, is that we need
to make sure that we are not going too far about sort
of stepping on somebody else's turf.

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So if somebody is coming to us, we don't want
to be giving them investment advise. You know, we
ought to say, Go see a professional. If we are
telling everybody else that when you need something
done in the law you need to seek professionals, we
need to have the same kind of attitude ourselves in
dealing with other people in our community.

CHAIRPERSON HAROUTUNIAN: Josh, a question,
and that is if anybody has an opportunity to, let's
say a bar association or a specialty bar, et cetera,
who would like to be able to have either yourself or
any of the panel members or you all come and speak to
them, would that be something that you would
entertain?

MR. ARD: I think we would as a committee.

You know, personally I would prefer not Ironwood in February, but, you know.

MS. O'CONNELL: We have extended the offer in the past, and we have actually appeared at several organizations.

CHAIRPERSON HAROUTUNIAN: Catherine O'Connell from the State Bar has indicated that this has been done in the past and that invitations to the local bars have been extended, but I want to make sure that I say here to the Representative Assembly that if there are opportunities or if you would like to take up the committee, the Unauthorized Practice of Law Committee, to come into the bar association and talk.

MR. ARD: Also things like public access television or OpEd cases in some of the local publications.

CHAIRMAN HAROUTUNIAN: Okay. I just want to make sure that that opportunity is there, so if somebody says, I really would like to have a few people come over and talk to us about this, and for other, you know, not for people here, but I mean other groups of people, that I think that that opportunity should be there.

I want to take this opportunity to thank Steve Gobbo, who is the chair of the Special Issues Committee that really kind of pushed this forward. Steve, thank you very much, as well as Josh Ard, the chair of the Unauthorized Practice of Law Committee, and John Anding, as well as Kim Eddie, and also Catherine O'Connell.
Catherine, you may have not been on the panel, per se, but your presence here and background information, et cetera, is invaluable in that sense, and so I want to thank all of you for being here, and we have a small token of appreciation for each of you that Bob Gardella is going to pass along.

Prior to leaving -- and, by the way, before I do that, let's give these panelists our appreciation. (Applause.)

CHAIRPERSON HAROUTUNIAN: Prior to leaving for lunch, let me ask, if I may, a show of hands of those members who plan on or are intending to be on the Assembly in April of 2008 and who have not had their photos taken for the pictorial directory. Shows of hands, please. Make sure you all see Marge Bossenbery and recognize that the directory will be published on the State Bar website, and, you know, that way you can put names and faces and use it to not only contact your fellow R.A. members but to refer cases and to seek advice.

And, by the way, let me make sure I say this. This is something that Bob Gardella, vice chair for the next four hours, is moving forward with, and so I share that with you, and I happen to agree, but Bob is, like everything else in this life, you can only do one thing many times at a time, and someone else has to pick up the ball to run with it. Well, Bob is picking up the ball on this, and I just want to make sure I have said that, because that's the thing that's important, and it is an important thing. You may say
it's kind of fundamental, but, you know, sometimes
fundamental things don't get done unless somebody is
pushing it to make it happen.

And so I share that with you and in order to
make it happen what we need is to have those who are
going to be April 2008 members see Marge Bossenbery
and somebody will take your mug shot, and so all
right.

So with that, I think, unless somebody has
something else, we are ready to be recessed for lunch.
Lunch is immediately next door, so you walk out the
doors, make a left, and you are pretty much there. So
we will stand in recess until 2:00 this afternoon.

(Lunch recess taken.)

CHAIRPERSON HAROUTUNIAN: Ladies and
gentlemen, if you could take your seats, please. We
are ready to rock and roll.

We are honored -- if you were in the lunch
room, you heard Chief Justice Clifford Taylor of the
Michigan Supreme Court make some remarks, and he and
his wife, Lucille, who is also a Michigan attorney,
are here now. They are close to being on their way to
leaving to the airport to leave the area, but before
they left we are honored to be able to have Chief
Justice Clifford Taylor to be able to address the
Representative Assembly. Chief Justice Taylor.

(Appplause.)

CHIEF JUSTICE TAYLOR: This will not be lengthy. I just learned that you were meeting a couple days ago, and Ed asked me to drop in and say hello, and I wanted to do that. I particularly wanted to comment on the 35 years that the Representative Assembly has been in existence and to congratulate you on the serious work that you do.

I wanted to also give you -- I mentioned in the previous set of remarks that I think most of you were there for the current financial situation of the judiciary in Michigan, and I wanted to just briefly touch a little bit on that as I think this group, in particular this group, needs to be aware of this.

We are in a very, very precarious situation in Lansing. As you know, the budget is not approved, and the State government will indeed shut down on Monday should something not eventuate that prevents that. And it appears from the intelligence that we can get, which is not all that much advanced over what the media would inform the general public, that there probably will not be a resolution. But I wanted to talk to you about the status of judicial funding from the State.

First of all a little bit of background information. Some of this may be well known to all of you, but when I was a lawyer I don't know that I really paid much attention to this, but you are
leaders of the Bar, and so I would like to try to inform you of this.

In Michigan all of the judges of the state's salaries are paid by the State, so this is the probates, districts, circuits, Court of Appeals and Supreme Court. Salaries are all pay. For the Court of Appeals and the Supreme Court, the State pays for everything else too, fringe benefits, their offices, their staff, so forth.

However, for the circuits, district, and probate judges across the state, of which there are roughly 600, those fringe benefits, their offices and their staff are all paid by the local governments. There are some variations in how much the local government pays. Sometimes they have pension plans and whatnot that are supplemental to the State, but what you need to understand is that the salary of the judges are a State item.

Every judge's pay in Michigan, and they are a bit different because of the different levels of pay for the various types of judges, but it's a fair understanding to think of a judge as costing the state taxpayers $150,000 a year. It probably is a little more than that, but this is a certainly conservative figure.

Our budget has been year by year by year coming down. The requirements, the out-go, if you will, has year by year by year been going up. Over the years in a process that is, I think, pretty highly defensible inasmuch as it came from the trial court
assessment commission, which was a very well received
group, a method was worked out to try to determine
where judges are needed and where judges aren't
needed, and they have been making these reports for
quite a while. They are rather scientific. They have
statisticians and regressions and all that sort of
thing that no lawyer understands.

But, in any event, the upshot is they make
these findings, and over the years these findings have
been the basis for adding judges in this state, and I
must say that, generally speaking, the reports have
been assailed mightly if they ever come forward with a
proposal to reduce judgeships. So you have that which
is good for adding is not good for subtracting.

So in any event, into that circumstance,
recommendations were made by the State Court

Administrator and then endorsed by the Court, and,
indeed, my court by a 4/3 vote endorsed more dramatic
reductions in the number of judgeships, again based on
the numerical derivations of case loads, which I
hasten to add again are done in a way which is
sophisticated, and generally the methodology is not
attacked. If it is attacked it's just attacked by
people that say I don't understand it, which really
isn't much of an attack.

So we at the Court recommended the reduction
of 20 trial court judgeships, and we have recommended
the reduction of four Court of Appeals judgeships.

I think these are pretty highly defensible in
the trial court claim, but I would like to talk
briefly about why we would have recommended something like this with regard to the Court of Appeals.

Over the last 15 years, the Court of Appeals caseload has dropped 40 percent, 4-0. The last time -- this puts us roughly about 7,000 filings a year in the Court of Appeals. When we elected 23 judges we were about 13,000. There has been a fall-off in filings. The fall-off continues this year, the expectation is that there will be about five to 700 fewer cases filed in the Court of Appeals this year than last year.

The reasons for the fall-off are, of course, complicated and not fully understood by anyone, but the truth of the matter is that it's gone on for a long while. The last time we had filings at the level that we have them now, namely around 7,000, we had 18 Court of Appeals judges. We now have 28, and the court has proposed it be reduced to 24. This has been a controversial proposal. It's been assailed for any of a number of reasons, but I would like to talk to you a little bit about why I would like you as leaders of the Bar to take seriously these recommendations and to, insofar as you are capable of contributing to the discussion, be knowledgeable about it.

Every indication we get is that the amount of money that's going to come into the judicial appellate branch is going to go down. I say this again, there is no indication that anything else is going to happen.

In the past three or four years even the
budgeted amount gets cut midstream because of the
reduction in tax revenues. The proposed tax increases
in the state that are, of course, very debatable and
controversial in Lansing, even if they are announced,
even if the $500 million proposal for the House is
passed, there will be no additional money into the

judicial branch.

What you have in judicial funding is an
interesting example of how you have an absolutely
fixed nut that cannot be reduced. That's trial court
judgeships and appellate judgeship salaries. As you
all know, those cannot be reduced. So when these
numbers start heading down, we have nowhere to take it
but staff, nowhere. We don't own buildings, we don't
have programs, you know, we just have nowhere to
reduce except in the staff.

These courts are very staff dependent by the
nature of how they function. Every court like this in
the other 49 states is staff dependent, and the reason
is the immense volume that comes through an appellate
court in a state the size of Michigan.

Now, my concern is that at some point we are
going to hit the wall unless we can gender some
enthusiasm somewhere to reduce judgeships so that the
funds which are currently being used for judges can be
used for the other important needs in the judiciary
without which the judiciary cannot function.

Now, it is the tendency of all lawyers and
certainly all judges to resist any kind of reduction
in judicial budgets, and I understand that and have
those same instincts myself, but in the post I am in

as the chief officer of the judiciary, it is to me
that falls the duty to attempt to be a good steward
and to attempt to keep this branch functioning.

Now, the proposal which has come out of the
House and is being batted around would eventuate in 59
posts being reduced in the Supreme Court. This is a
huge cut, even more in the Court of Appeals. And it
is, thus, that it is my view, and I think it's a
modest view actually, that we need to very seriously
consider reducing judgeships by attrition. This might
be incentivised retirements, whatever it is, but we
need to get the money properly appropriated in the
judicial branch, point one.

Point two, our judges are malproportioned.
That is to say we have judges, more judges where we
don't need them and fewer judges where we do need
them. Michigan has a flat population. It is in
general moving west. Out of the southeastern corner
the population is shifting to Oakland, Macomb,
Livingston and so on, and over in this area where you
currently are, you have a huge increase in population
in Holland and Grand Rapids and this area.

And because we have a flat population, it
seems only sensible that at the very least we wouldn't
add judges, we would simply shift them. There is
immense local resistance to this for a lot of reasons. Again, these are all going to be by attrition, but there is immense resistance, and I must say many judges are really capable of scaring the county board of commissioners into thinking that all that's going to go on here if you eliminate a judgeship is an increase in cost for the county.

The story runs as follows: If you take the judge out of county X here or one of the judges out of county X, you will have to hire a magistrate. Now, guess who pays the magistrate, the county does, and those clever guys at the State are busy in the process of trying to lay off on you these judicial costs. And the quick and very complete answer to that, I believe, is that that is not the case, that what will happen is that there is no need to hire a magistrate, that all you need is a concurrent jurisdiction resolution passed within the county so that judges within the county can be moved around and used where they are needed.

Some of our counties have a great need for this. Genesee is such a place. We have frantically busy circuit judges and not as busy district judges and such.

So it falls to us who do the testifying and so on in front of the legislature to try to convince them of this, and normally this is just sort of an exercise in good governance, but my concern is that we
have a little bit of additional component this year. I just don't know if we can keep the circuits going if we don't have some of these changes introduced, because nobody, and I do mean nobody, is talking about giving us any additional money.

That's sort of a somber and almost disagreeable message, and I apologize for that, but I would like to conclude by saying that lest anyone be confused, I am not at all suggesting that Michigan has a judiciary which is suspect in any way, other than there are too many of them. We are blessed in this state to have a very fine state court judiciary, and I make no criticism for them, and I defend them adamantly when that is called for. We are lucky in this regard. We have been very blessed to have a state where capable and serious and intelligent people have been called into the judiciary, and I am pleased about that. And my daily life is to review lower court files, and I am always taken with the really truly wonderful folks that we have serving as judges in this state.

So we have a little bit of a difficult time now. Any help from the leadership of the organized Bar and Representative Assembly would be appreciated. I wanted to alert you to this and just let you know what we are up to.

And, again, I want to close by congratulating you on 35 years of existence and on attempting to address the policy issues that confront the Bar of this state and in a serious and thoughtful fashion.
Thank you very much, ladies and gentlemen.

(Appause.)

CHAIRMAN HAROUTUNIAN: I know the Chief Justice has to get on that plane, so as they say, God speed.

Let's move on to item eight on the agenda, the consideration of the proposed amendments to the Michigan Court Rule 2.107. The proponent is Daniel Quick, a member of the Representative Assembly, but also a member of the Civil Procedure and Courts Committee, and you will find that in your booklets, and this is essentially a revisit or an amendment to an existing position that the Representative Assembly took in 2005. Mr. Quick.

MR. QUICK: Thank you. My name is Dan Quick. Let me try to live up to that as I present this.

A brief status update. In 2005 the Representative Assembly endorsed a change to MCR 2.107 that would permit, upon stipulation of the parties, service by e-mail. That was taken up by the Supreme Court, slightly edited, and set up for public hearing yesterday.

In the meantime, the Civil Procedure and Court Committee went back to this in light of our increased experience with e-mail issues and thought that a number of refinements and additions would make a lot of sense and help clarify the landscape.

In the meantime, yesterday it came up for public hearing at the Supreme Court. I had talked to Anne Boomer this morning from the Supreme Court and
was told that it, in fact, passed. So if you look at
the language that's in the second page of the tab
that's underlined, this was the previously approved
language under MCR 2.107(C)(4). That language, even
though the order has not issued, has been adopted by
the Supreme Court and will become effective.

Now, what Ms. Boomer has told me is that they
will quickly and immediately consider the
Representative Assembly's suggestion should we endorse
this proposal, and the Supreme Court will look at the
proposed tweaks in lieu of what they adopted, or so I
understand it.

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Briefly, a lot of these changes are
self-evident, a few points just to point out for you.
Section (4)(b) is a good example of other things we
thought people should consider, such as how exhibits
should be attached and whether a paper copy should go
along. Subsection (C) specifies that the format ought
to be one in which the document being transmitted
cannot be altered by the recipient, for example if it
is sent in a PDF format.

One major clarification is existence of
subsections (F) and (H) where we specify that service
by e-mail under the rule is treated as service by
delivery as opposed to service by mailing under
2.107(C), and that service by e-mail is complete upon
transmission, not upon receipt, which some people
raised as kind of an academic question when you send
things via e-mail.

Overall I do not think that any of these
changes are in any way inconsistent with the spirit of the proposal that was previously adopted by the Representative Assembly, simply brings a little bit more experience to bear on the matter, and I would ask on behalf of the committee that you endorse this and we can send it on to the Supreme Court for their consideration.

CHAIRPERSON HAROUTUNIAN: Mr. Quick, I take it you are moving that the MCR 2.107(C)(4) that modifies a previous amendment supported by the Representative Assembly be adopted at this time, is that correct?

MR. QUICK: So moved.

CHAIRPERSON HAROUTUNIAN: Is there support?

VOICE: Support.

CHAIRPERSON HAROUTUNIAN: Discussion? Please give your name and judicial circuit.

MR. ARD: Josh Ard with the 30th just joining you this morning. Sorry to mention this now, but there is one problem that has occurred in other courts, and that is with e-mail being blocked by a spam blocker, and in the court where that happened the judge said, That's your fault. If you didn't have your spam blocker system to put these people on the white list, you can't get away with saying you didn't receive it, and that's something that doesn't seem to be addressed in this proposal, but I can bet you it's going to come up.

MR. QUICK: I submit that it was anticipated. If you look in Section (4)(a), this is a new
provision. It requires that the e-mail address is the
same one which is currently on file with the State Bar

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of Michigan, the rationale there being that those
e-mails are used customarily and shouldn't in the
normal course hopefully hit people's spam blockers.

MR. ARD: Well, it's probably going to
happen. There should be an affirmative duty maybe
that you put the court and the other litigants on your
white list.

CHAIRPERSON HAROUTUNIAN: I think what
Mr. Quick was indicating, that in fact the e-mail
that's given to the State Bar is the e-mail that is
required under this, I will say amendment to what we
have previously adopted, and that may help. Now, on
the other hand, it may not be perfect, and I don't
disagree with that.

Any other discussion with regard to
2.107(C)(4), the amendments set forth there to the
prior position taken by the Representative Assembly?

MR. OLSON: Michael Olson of the 44th.

Mr. Quick, if you could indicate the reason for the
selection of the 4:30 p.m. time in section (4)(f).

MR. QUICK: The general rationale is that
there was a desire, unlike the federal ECF system,
which runs 24/7, to avoid a situation where somebody
drops something on somebody via e-mail at 11:59 p.m.
and that constitutes service as of that day. Since
service via e-mail is service by delivery, we thought
a 4:30 time was as good as any, and people might
reasonably pick 4:45 or 5:00 or some other time, but
we picked 4:30 as a cutoff time so if you send an
e-mail later in the evening, then that's going to
count as delivery the following day.

MR. LOOMIS: Daniel Loomis, 35th circuit.
Chief Justice Taylor in his comments, page E6, brought
up the fact that Dickinson, Gogebic, Iron, and
Menominee Counties are in a different time zone. He
suggested that the time be local court time. Was that
considered? Why was that not adopted?

MR. QUICK: I don't know the answer to that
question in terms of what happened yesterday. I know
that the proposed rule, Section (4)(c), includes a
4:00 eastern time provision, so I don't know what, if
any, change may have been made to that yesterday at
the public hearing. My brief conversation with
Ms. Boomer suggested that it was passed as submitted,
and there was no opposition, but I can't say that for
certainty, so I am unclear how that was treated
yesterday during the public hearing.

CHAIRPERSON HAROUTUNIAN: Yes.

MR. KOENIG: Alan Koenig from the 9th
circuit. Mr. Quick, I noticed in the subpart (G)
this way is by stipulation of the opposing party or by filing motion with the court. It would seem to me that in certain circumstances a party ought to be able to withdraw on their own accord with proper notice. It may arise in the case of a sole practitioner who for one reason or another moves offices or an ISP is changed or something to the effect that you need a hard copy, and if you have an obstreperous opposing counsel that would not stipulate in that circumstance, why should you have to go file a motion to get a hard copy?

MR. QUICK: Well, in your scenario I would hope that such obstreperous counsel gets heartily sanctioned by the court. I do think the reason it was set up this way is it avoid potential gamesmanship with somebody withdrawing from the acceptance of e-mail service as some sort of tactic within litigation, and so it was set up to permit it either by stipulation of the courts. I am sharing with you the rationale. I guess I can understand the scenario that you lay out, the committee looked the other way and took that other consideration as I think more paramount.

MR. KOENIG: I indicate my opposition on that basis. I would suggest a third alternative with timely notice either by mail or personal, be it seven days, nine days, the normal notice that you could opt out without having to get a stipulation or go to court and file another motion.

CHAIRPERSON HAROUTUNIAN: Are you proposing
an amendment?

MR. KOENIG: I am. If we could do it in six words.

CHAIRPERSON HAROUTUNIAN: Six words, yes.

MR. KOENIG: I would indicate that we add to subpart (G) "or by timely personal or mail service."
That may be seven words.

CHAIRPERSON HAROUTUNIAN: How about "or by time/mail service." "Personal/mail service." That would be by either party, correct?

MR. KOENIG: By either party, and the suggestion is made that it may need to say first class.

CHAIRPERSON HAROUTUNIAN: I don't know if you can do that in six words, which means you have to write it out.

MR. KOENIG: I will do that. Thank you.

JUDGE KENT: Wally Kent, 54th circuit. I am technologically impaired, so I am not sure that I can comment as knowingly as I should, but I am concerned about the spam blocker. I run into that periodically. I don't think that the address the recipient has on file with the Bar is going to make any difference, because it's the address of the sender, not the sendee, if I have got that correct, whose transmission is being blocked. Is there any reason -- furthermore, there is a problem, I think, that hasn't been addressed. When the litigant who is sending the mail is pro per, they are not going to be registered with the Bar, and so it's going to be difficult, if not
impossible, to know whether or not their mail will be
blocked until it's been blocked.

Is there any reason why we shouldn't require
a follow-up hard copy, not certified or anything of
the nature, but simply a courtesy follow-up hard copy,
in order to ensure that there has not been an
ignorance resulting from failure of the e-mail to get
through?

MR. QUICK: I mean, I think the committee --
you are talking about ongoing to have an obligation,
to have an obligation to mail things in addition to
e-mailing them, which I think avoids one of the
perceived benefits of serving by e-mail, which is to

kill less trees and to permit people to have things
stored electronically and receive them that way. So I
am not sure that that's -- I think from the
committee's view that would undermine a little bit of
the spirit.

I do note that under Section (4)(b) there is
a general proviso that the parties shall set forth in
the stipulation all limitations and conditions
concerning e-mail service, including, but not limited
to, and as already two members of the Assembly pointed
out this issue of spam blocker. Perhaps that's one
that could easily be considered by the parties under
that provision with the existing language given that
it's including, but not limited to. That's just one
idea.

Yeah, thank you, Judge. And that was the
reason you raised the issue of in pro per parties.
The language is phrased in Section (4) in the first sentence there that it's some or all of the parties represented by attorneys, so it was specifically designed to avoid any additional complications presented by in pro se litigants.

MS. RADKE: Victoria Radke, 47th judicial circuit. Go back to sub (g). The gentleman that spoke a little while ago was having a problem with the

six-word limit. I believe that that can be responded to by saying or by, whatever we started with, by mail, if you just put under the Court Rule, and then cite the Court Rule that deals with first class mail, I think you will get in under the six-word limit. I don't have my Court Rules with me today, so I can't give you the cite for that particular service of process rule, but that might get us in under the six-word limit to offer a friendly amendment to (g).

CHAIRPERSON HAROUTUNIAN: And that would be, Victoria, that would be in effect the words "or by mail under MCR 2." -- is it 105 or is it 107? I don't know. 2.107(C), "or by mail under 2.107(C)." I think that's a capital C. It's a capital C, Nancy.

Is there support for the amendment?

VOICE: Support.

VOICE: You should add MCR before that.

CHAIRPERSON HAROUTUNIAN: Yeah, agreed.

Okay. It's been supported. Discussion on the amendment.

MR. QUICK: Maybe the moving party would accept a friendly amendment. For me to do it would
probably be beyond six words. I am a little concerned by that language. I am not sure it is entirely clear. Maybe we could just say "or by any party by providing seven days written notice." Is that more clear?

CHAIRPERSON HAROUTUNIAN: Any other comments on the amendment?

MR. BUCHANAN: Rob Buchanan from the 17th circuit. I agree with Mr. Quick's last adjustment of the language, because I think this provision, this particular paragraph, deals with time of the withdrawal. It's not really with the manner in which it's being withdrawn, so I think it's important that we avoid words like timely or something that there is discretion as to what it means. In this textual-less age I think we have to have actual numbers as to how many days before.

VOICE: Seven days or six.

MS. BROWN: You want seven?

CHAIRPERSON HAROUTUNIAN: Seven.

Let's go back. Two things. Number one, Victoria, I think you moved that, and my question is do you accept that as a friendly amendment?

MS. RADKE: I guess it would be a friendly amendment to the friendly amendment. We are still over then the six-word limit, and that still creates a problem.

CHAIRPERSON HAROUTUNIAN: So let's address the six-word limit. Now, do I have a motion to
suspend the rules with regard to this amendment so that we can move past it? Is there a motion?

VOICE: So moved.

CHAIRPERSON HAROUTUNIAN: Is there support?

VOICE: Support.

CHAIRPERSON HAROUTUNIAN: Any discussion?

All those in favor say aye.

MS. MURPHY: I can do that in less than six words. Discussion, I can do that in less than six words.

CHAIRPERSON HAROUTUNIAN: I understand, but wait. The motion is on the floor, it's been seconded. I have just called for a vote. All those in favor of the motion to suspend the rules to allow discussion on this point so we can get past this six-word rule, say aye.

Opposed no.

The ayes have it.

Now let's go back to the issue of what we have there, and is that acceptable to you, Victoria?

MS. RADKE: That will work --

CHAIRPERSON HAROUTUNIAN: Who supported that particular motion that you made?

MS. RADKE: It was a friendly amendment to the previous party's request for the change.
here. You said that you could do this in six words.

Come back and tell us who you are.

MS. MURPHY: I am Susan Murphy from the 6th circuit. You insert after "e-mail service," comma, "by seven-day first-class written notice, or leave."

I have got it typed one, two, three, four, five, six. First-class is hyphenated, so if it counts as two it's not. By seven-day first-class written notice.

CHAIRPERSON HAROUTUNIAN: Let me come back and let me indicate that I want to rule that out of order and for this reason, we already suspended the rules to be able to go beyond six words, so my suggestion is we work with what we have, and that is in effect an amendment on the floor at this point. Do we have any discussion on that amendment?

MS. RADKE: If the e-mail is only between the attorneys, then the use of the word party, I believe, is out of line. If this whole, the stipulation is between counsel, then using the word "party" here is not appropriate. If it's "parties," that's fine. I would accept that.

MR. QUICK: The rule is written currently with the word "parties," so I thought we should be consistent.

MS. RADKE: Okay.

CHAIRMAN HAROUTUNIAN: Any other discussion on the amendment?

MR. BARTON: Bruce Barton, 4th circuit. I wonder if we have a definition of written notice. Is
notice by e-mail sufficient or must it be by mail?

CHAIRPERSON HAROUTUNIAN: Are you suggesting that the words "by mail" be added?

MR. QUICK: Or to take the other suggestion of insert the word "first class."

MR. BARTON: To clarify, I think we have to say postal mail, or something of that nature.

First-class mail, fine.

CHAIRPERSON HAROUTUNIAN: Victoria.

MS. RADKE: I am reading as fast as I can.

Thank you, Mr. Chairman. That's acceptable.

CHAIRPERSON HAROUTUNIAN: Any other discussion on the amendment? Yes.

MR CROSS: Cecil Cross, 6th district. As I read (g), and we have had a lot of discussion, the purpose of (g) is to allow withdrawal of either party from the stipulation. It occurs to me as I read this that that can be accomplished by saying "a party may withdraw from a stipulation for service by providing seven days written notice by first-class mail to the other party." Why do we need to have all the rest of that in there if the purpose is to allow a way to withdraw? Why do we need the rest, all the rest of that that's in there. We have changed the entire purpose of (g) or we have allowed three or four different ways of doing it.

It appears to me that the most logical, simple, direct way is to say "either party can withdraw with seven days notice."

MR. QUICK: I think there was a desire to
have the party be able to do it immediately upon stipulation or at least to provide for a scenario under which judicial blessing is required, and so to have approval of the court in there is an option as well.

MR. CROSS: That's defeated with the "or."

MR. QUICK: I always like to give judges the potential role in the decision.

MR. CROSS: It's still defeated with the "or."

CHAIRPERSON HAROUTUNIAN: The question is, I think the first issue is whether or not the motion passes. If it passes, you can then come back and --

MR. CROSS: I understand. I am stating my position that this should be defeated because it defeats the purpose of (g), if that is the purpose, to have judicial review, and if the purpose is to just allow withdrawal, you don't need all that verbiage. You can just go with the statement that's been added as a friendly amendment.

MR. QUICK: And this gets back to why the committee did not include this as an option originally, because there again, I think, was a concern of a scenario under which parties trying to, you know, conducting service by e-mail over a long period of time then wants to withdraw. If all parties agree, as they should 99.9 percent of the time, great, so maybe there is some legitimate issue there about now the switch from e-mail to mail service and somebody trying to gamesmanship out of that, which is
why the other option was to deal with the court on
terms and conditions the court deemed proper. So I
think that's why this whole unilateral withdrawal
option was not included by the committee in the first
place.

MR. NEUMARK: Frederick A. Neumark, 6th
circuit. I agree with the past speaker. It just
seems to me that if a party wishes to withdraw from
this service agreement by e-mail, that party should

have the absolute right to withdraw upon proper
notice. I don't see why in the case where you do have
a scrupulous, or an unscrupulous I mean, attorney
sending e-mails at 4:59 or 4:29 or whatever the time
limit may be all the time or doing things that
shouldn't be done, why the person who is the recipient
of those kinds of things shouldn't say, hey, you have
messed up, you have ruined our agreement, and I am
going to give you seven days notice and let's forget
it. I don't see why stipulating means that you have
to go to court to unstipulate. And I would propose an
amendment that --

CHAIRPERSON HAROUTUNIAN: We can't take an
amendment now.

MR. NEUMARK: Okay. I will get back.

CHAIRPERSON HAROUTUNIAN: No problem.

Any other discussion on this amendment?

Seeing none, we are voting on the amendment

that's sitting in red on the screen.

All those in favor of the amendment say aye.

Those opposed say no.
All those abstaining say yes.
The noes have it. The motion is defeated.
The amendment is defeated.
Any other discussion? Yes.
CHAIRPERSON HAROUTUNIAN: It's not mine, it's the parliamentarian.

MR. NEUMARK: I agree with that 7-day.

Changing notice --

CHAIRPERSON HAROUTUNIAN: E-mail notice.

MR. NEUMARK: Seven-day written or e-mail notice, period.

CHAIRPERSON HAROUTUNIAN: Is there support?

VOICE: Support.

CHAIRPERSON HAROUTUNIAN: Any discussion?

JUDGE KENT: Wally Kent, 54th circuit. I would still like, and I am not speaking for the bench, but I would like to have a chance for parties to come before the court if they feel aggrieved by this and let the court rule on it. Can we put that in there, or is that in violation of the spirit?

CHAIRPERSON HAROUTUNIAN: I think it goes against the amendment because --

JUDGE KENT: I am not offering an amendment, I truly am not, but I am just curious if it violates the spirit to let the court rule on if one party or the other feels aggrieved by the act of withdrawing from e-mail service.

CHAIRPERSON HAROUTUNIAN: I think part of the motion on the floor is to add the words, but to delete
the words "or leave of court on terms and conditions
the court deems proper," and, I mean, that's part of
the motion that's on the floor. So I think to --
JUDGE KENT: I am out of order.
CHAIRPERSON HAROUTUNIAN: Yes, that's what I
am trying to say, you are out of order.
MR. POULSON: Barry Poulson, 1st circuit. I
think the maker of the motion said "upon 7 days,"
which hasn't yet appeared on the screen, so I offer as
a friendly amendment "upon" to the by 7.
MR. NEUMARK: I said "upon."
CHAIRPERSON HAROUTUNIAN: Any other
discussion?
MS. STANGL: Terry Stangl from the 10th
circuit. I was thinking about the overall context of
this motion, which is a stipulation that the parties
are entering at the beginning of the case when they
want to do this, and after listening to the idea that
in some circumstances you might want to have the court
there as a backup, one way of doing that would be to
add the phrase "or other circumstances agreed by the
parties" so that at the time people are agreeing to
the entire framework, this is the minimum that they
have to include, but you are not foreclosed from
agreeing to some other way, such as a faster time
the parties," something to that effect, or stipulated by the parties.

So that if they wanted, for example, say we have to take it to the court under some circumstances or if we want to allow ourselves to stipulate to less than seven days, we can do that, because this is the required language the way it's written.

CHAIRPERSON HAROUTUNIAN: So it's "or by other means stipulated by the parties."

MS. STANGL: Yes.

CHAIRPERSON HAROUTUNIAN: Fred, is that acceptable to you?

MR. NEUMARK: I think the parties can agree to anything they want to. I don't know if that's necessary, but I will accept it. That's fine.

CHAIRPERSON HAROUTUNIAN: Okay. Any other discussion on the amendment?

MR. BUCHANAN: Robert Buchanan from the 17th circuit. I would move to table this and let the Drafting Committee work out the language and at the end of the meeting we can maybe bring it up again, but I think there is other important things to get on the agenda, that instead of spending this time drafting, it's probably better for the Drafting Committee to work something out.

VOICE: Support.

CHAIRPERSON HAROUTUNIAN: It's been moved to table. Is there a support?

VOICE: Support.

CHAIRPERSON HAROUTUNIAN: No discussion on
the motion to table. Takes a two-thirds vote to
table.

All those in favor of the motion to table to
have the Drafting Committee -- tabling it to another
time of today's meeting, is that, Rob, what you had in
mind, or tabling it completely?

MR. BUCHANAN: No, tabling it so the Drafting
Committee can now take it and draft language so we can
move forward and at the end of the meeting take it up.

CHAIRPERSON HAROUTUNIAN: All those in favor
of the motion say aye.

Those opposed say no.

The motion does not pass.

We are back with the amendment. Yes,

Mr. Morgan.

---

MR. MORGAN: John Morgan, 3rd circuit. There
is another motion that could be brought, and that's to
refer to the Drafting Committee. That is not what was
proposed. There was a motion to table without date
specified. Consequently, if what they want, whoever
it is, I would remind the chairperson and the
parliamentarian that it would be affected, I believe,
by a motion to refer to committee and to designate the
Drafting Committee in the motion.

CHAIRPERSON HAROUTUNIAN: Are you so moving,
or no?

MR. MORGAN: No, I don't care what they do.

CHAIRPERSON HAROUTUNIAN: Accepted. Any
other discussion on the amendment? Hearing none --

Mr. Barton.
MR. BARTON: Just a general comment.

CHAIRPERSON HAROUTUNIAN: Please identify yourself for the record.

MR. BARTON: I am sorry, Bruce Barton, 4th circuit. General comment on the area we are in. If we make it too difficult to get out of a stipulation for e-mail service, nobody is going to do it anyway. It seems to me that as an attorney I want the opportunity to back off a stipulation for e-mail service if, in fact, I have problems in a particular case and particularly with that service and take that in the context of the discussion earlier that some of this for some of us inadvertently is going to come in spam, and we won't get that notice. If that's a possibility at all, we certainly should have the right to back off a stipulation.

CHAIRPERSON HAROUTUNIAN: Okay. Yes.

MS. KRISTA HAROUTUNIAN: Krista Haroutunian, 6th circuit. I didn't know if it would be in any way helpful to say, instead of "upon 7-day written" to say "upon 7-day mail" or 7-day -- I mean, written could be -- is that bad? I am just saying is it a point that needs to be shifted or is it okay the way it is for basic understanding? That was my comment.

MR. NEUMARK: I accept by mail --

CHAIRPERSON HAROUTUNIAN: On 7-day --

MR. NEUMARK: -- instead of written. That doesn't change the nature of it.

CHAIRPERSON HAROUTUNIAN: Mail or e-mail notice.
MR. NEUMARK: Yeah, that's fine.

CHAIRPERSON HAROUTUNIAN: Accepted. Any other comments?

MR. CHADWICK: Tom Chadwick from the 8th circuit. I would move the previous question and ask

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for a vote to immediately vote on this amendment.

CHAIRPERSON HAROUTUNIAN: The question has been called. Is there support?

VOICE: Support.

CHAIRPERSON HAROUTUNIAN: All those in favor of the motion, which is the question to be called, that is that debate end, all those in favor say aye.

Opposed no.

The ayes have it. We are now on the main question, which is the amendment itself.

All those in favor of the amendment say aye.

Though opposed no.

Those abstaining say yes.

The ayes have it. The motion is adopted.

Now we are on to the initial issue, which is the Representative Assembly adopts the alternative version of the amendment to MCR 2.107(C)(4) as proposed by the Civil Procedure and Courts Committee. That's the issue. Any other discussion?

MR. HERRMANN: Fred Herrmann, 3rd circuit.

With respect to (f) and (h), my concern, particularly with (h), is if the person making service has a due date on the day of which service is made via e-mail and it is later learned that there was a problem with the recipient's e-mail under (h), I want to ensure
that service is still deemed to have been timely made
by the person who made the service despite a problem
with the recipient's e-mail, and I don't think that's
addressed elsewhere, but I would pose that question,
and I do have a proposed written amendment because it
exceeds six words.

MR. QUICK: I think the concern is what was
intended by subsection (h), which is that it's
completed upon transmission unless you have actual
knowledge that the other side, that it didn't get
through to the other side. So it's upon transmission,
meaning when you press the send button.

MR. HERRMANN: My concern remains. It's
still unclear if I effect service by e-mail and leave
my office and at midnight get a kickback and learn
that it didn't go through, was my service, which was
otherwise due on that date, now untimely because I got
such a kickback from the recipient's e-mail, and I
don't think as drafted it addresses that concern
fully.

CHAIRPERSON HAROUTUNIAN: What's your
amendment?

MR. HERRMANN: I have it written out here.

CHAIRPERSON HAROUTUNIAN: Come on down.

So where are the changes?
MR. HERRMANN: The changes would be to take
the existing first clause of (h) and move it up to the
beginning of (f) to keep the intention that service is
complete upon transmission, except with the 4:30
exception, and then to have (h) read as proposed,
which basically keeps service by e-mail intact, and
the only additional obligation is to on the next
business day also effect service by mail if you are
having problems with the recipient's e-mail and to
strike "attempted," because that suggests that service
is not complete if there is a kickback from the
recipient's e-mail. "Nest" should be "next."

CHAIRPERSON HAROUTUNIAN: Is that your
motion?

MR. HERRMANN: That's my motion, my proposed
amendment.

CHAIRMAN HAROUTUNIAN: And let's just make
sure what it is. Let's go back to (f), please, Nancy,
just to see what it is so everybody understands what
it is.

The "A" is not stricken, right?

That's your motion?

MR. HERRMANN: That's my motion.

CHAIRPERSON HAROUTUNIAN: Is there support?

VOICE: Support.

CHAIRPERSON HAROUTUNIAN: Discussion.

MR. POULSON: Barry Poulson, 1st circuit, and
relying on my colleagues, if the effect service by
mail could possibly accept a friendly amendment,
effect service by quickest way, it would allow you to carry the notice over, fax it, send it, mail it, dog team, and would allow you that option.

Obviously you have got a burden because you learned that it didn't get there, you have to solve that, but there is lots of ways to solve those things besides only mail, which is going to take one or two days. So if they will accept perhaps an amendment, shall also effect service by mail or other fast way or quickest way. I would leave it to the Drafting Committee. By mail or other quick way. That's not very precise. But there is a hole there even so.

CHAIRPERSON HAROUTUNIAN: Understood, but I am going to rule the friendly amendment out of order unless somebody has more specific words. Victoria.

MS. RADKE: Victoria Radke, 47th judicial circuit. Back to (f), please, Nancy.

I still believe that my colleague who earlier commented about eastern time is correct. I think the Court Rule should say local court time, because we do have counties in Michigan -- yes, I know they are the

Upper Peninsula and some of you don't think we are in Michigan -- but it should say local court time. So if I am in Escanaba but I have a central time zone case, then we should be using court time.

CHAIRPERSON HAROUTUNIAN: Motion was made by -- yes, Fred. Do you accept that as a friendly amendment, local court time?

MR. HERRMANN: I have no objection to that.

I guess only as a point of order, I don't think it
relates to my proposed amendment, because my alteration in (f) merely consisted of inserting "service by mail is complete upon transmission" from the original page. I really wasn't changing (f).

CHAIRPERSON HAROUTUNIAN: I agree with you, I don't think it's germane, although you can certainly amend it later.

CHAIRPERSON HAROUTUNIAN: I agree with you, I don't think it's germane, although you can certainly amend it later.

MR. BUCHANAN: Rob Buchanan, 17th circuit. I guess the only concern I have with the amendment is it now shifts the burden so that the sender who has ineffective service has the benefit of service being effective upon transmission, whereas the recipient who doesn't get it until it arrives some later date by mail is deemed to have received it earlier, so that's my only concern with it is the one that gets bounced has the benefit of having it effective on the day, whereas the recipient who may not see it for a day or week later is deemed to have received it earlier.

That's the concern.


MR. HILLARD: Marty Hillard, 17th circuit. I understand Mr. Herrmann's concern and share it. I am not sure if this fixes it though, because if you are requiring that service be made on the next day, there is situations where you may not learn until after the next day that it didn't go through but your time is already past. Similarly, I don't know how to fix it,
because upon learning it didn't go through, 
potentially games could be played there too, so I 
think it's a problem. I am not sure this fixes it, 
but I don't have a fix.

CHAIRPERSON HAROUTUNIAN: Any other 
discussion? Yes, Steve.

MR. GOBBO: Stephen Gobbo from the 30th 
circuit. This is probably more informational than 
anything else and has nothing to do with the current 
proposed revisions. You have the Michigan Freedom of 
Information Act which has certain language in it, and 
that's in Public Act 1976 P.A. 442, and it provides 
for the ability to send something electronically or by 
fax, but it's not deemed to have been received until 
the following business day regardless of the time that 
it's sent. So I don't know if that helps in terms of 
looking at an alternative to some of this, because it 
certainly would provide some additional time, put some 
pressures on people filing electronically to file it a 
day before, but it would certainly allow for some type 
of, you know, recovery if you have got a bounce back 
E-message that it didn't go through or if the server 
is down or what have you so that you could still 
effectuate service through some other means in a 
timely fashion on the following day. So I just offer 
that as information.

CHAIRPERSON HAROUTUNIAN: Thank you, Steve. 

MR. RAIN: I don't have comments on this 
particular amendment either. I have just a general 
comment. This original amendment to the Court Rule as
it was proposed two years ago, the spirit of the intent of this amendment, which my understanding was already passed yesterday, correct, was that there was no prior Court Rule that would allow attorneys, even if they want to, to exchange things via e-mail because they still had a Court Rule requirement to have

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service of process by paper.

It seems to me that the one that was passed yesterday is adequate as it was passed and there is no need for this amendment because any of the parties that are stipulating are free to stipulate to whatever they want. They can wordsmith it all they want like we are trying to do here and include changes to the eastern time zone or local court time or anything they want, so I would oppose the amendment overall.

CHAIRPERSON HAROUTUNIAN: Any other discussion? Ready for the vote?

All those in favor of the amendment say aye.

Those opposed say no.

Defeated.

Any other amendments on this or comments, discussion with regard to 2.107(C)(4)? Yes.

MR. OLSON: Michael Olson, 44th circuit. I would echo the comments of the last speaker, in the alternative would offer a written amendment to (4)(f), which would say "an e-mail transmission sent after 4:30 p.m. local time," removing "eastern time," and then adding the language, "or another time agreed to by the parties or ordered by the court shall be deemed to be served," and I will submit that.
CHAIRPERSON HAROUTUNIAN: Okay. Is that the
language that is acceptable?

MR. OLSON: Thank you.

CHAIRPERSON HAROUTUNIAN: Is there support?

VOICE: Support.

CHAIRPERSON HAROUTUNIAN: Okay. Any
discussion?

Seeing none, all those in favor of the
amendment say aye.

Opposed no.

The noes have it. The amendment fails.

Main motion. Any other discussion? All
those in favor say aye.

Opposed no.

The ayes have it. The motion passes.

Mr. Quick.

MR. QUICK: On the following page you will
see in 2005 a one-sentence amendment to 2.107(g) which
this body adopted. It deals with a scenario under
which a judge accepts filings in lieu of the court
clerk office. This is already in the Court Rule. The
added sentence reads, "the date the pleadings are
filed, which includes receipt by mail, shall be noted
on the docketing statement if different from the date
the pleadings are docketed."

The proposed language in the sentence below
simply tries to clarify. There is no such thing as a
docketing statement in the circuit courts of this
state. There is a register of actions is the
appropriate terminology, and then there was a little
word slipping that went on there, but that's really
the function of that change, and so we suggested that
modification to what we did two years ago be adopted,
and I so move the Representative Assembly.

CHAIRPERSON HAROUTUNIAN: Is there a support?
VOICE: Support.
CHAIRPERSON HAROUTUNIAN: Any discussion?
Seeing none, all those in favor of the motion
say aye.

Opposed no.
The ayes have it. Mr. Quick, thank you.

(Applause.)

CHAIRPERSON HAROUTUNIAN: We are at a point
in the agenda when we would consider the final report
on the State Bar of Michigan Task Force on the
Attorney-Client Privilege. Let me call upon Diane
Akers and John Allen, who are the co-chairs of the
State Bar of Michigan Task Force on the
Attorney-Client Privilege, and also let me call upon
Barbara McQuade, who is a member of the Representative
Assembly and also here on behalf of Steve Hiyama, a

United States attorney, for purposes of any -- there
was a minority report that was filed with regard to
this in the materials, and Barb is here to comment in
that regard.

Why don't we do this. The question is
whether to have the -- and this is a little bit
different, John, than I had mentioned to you earlier,
which was let's perhaps have a conversation with
regard to all the proposals and then let's take them
one at a time, there are five, and to go through them
at that time. But let's have the conversation now,
and I am going to turn it over to John, Diane, and
Barbara.

MS. AKERS: Thanks very much. We have put in
our --

VOICE: Turn on the microphone.

CHAIRPERSON HAROUTUNIAN: You have to flip
the switch. There you go. That's it.

MS. AKERS: Thanks. We put in our written
report a summary of what the task force has been doing
over the last year and a half, and to begin our
discussion I would just like to emphasize a few
points.

One is we were very surprised and in a way
gratified at the interest in this issue that we found
among the Bar. John and I did a lot of speaking to
local and special interest Bar groups around the state
over the last year and a half, and I can tell you
that, first of all, everywhere we went many, many,
many lawyers were extremely surprised to learn that
for a number of years the Department of Justice policy
has been to request that organizations waive their
attorney-client privilege in order to avoid criminal
indictment themselves, and I could tell you that personally as someone who represents businesses in litigation the risk of criminal indictment isn't really a choice for the business and a business will feel compelled to waive its privilege. And everywhere that John and I went the feedback that we got from the lawyers that we talked to was this was a matter of great concern.

Another point I would like to stress is that this occurred among a wide range of lawyers, not just people like me who represent businesses, and so, for example, I can see when a bank is part of, for example, an investigation, a potential wrongdoing, and prepares a report of what it has asked its attorney to look into and report back on potential problem areas.

That kind of a report being turned over to a prosecutor in order to gain more favorable treatment would constitute a waiver of the privilege for all purposes, and for a large business the result may well be that that business will not do a thorough investigation or if they do an investigation they may not put it into writing so they don't create evidence that in the future may come back it bite them and in the end will have the effect of deterring law enforcement, not enhancing law enforcement, and that sort of is the perspective I had when we started, but what we found is no matter what the area of practice was of the lawyers, this policy had an effect on them.

And so, for example, the probate Bar was extremely interested because they frequently represent
fiduciaries and trustees and other people who have to look out for third parties and investigate wrongdoing, and, of course, as trustees they may be involved in banks and other financial institutions.

The Family Law Section was extremely interested because in a situation where you don't anymore have a large business, you have perhaps a business owned by a married couple and they have to split it up when they are going to divide their assets in the divorce, and they want to call their lawyer and just plain ask a question about the business that the two of them were running. People believe that talking to your lawyer might mean that the information you convey is available to virtually anyone because you have waived the privilege if it is turned over to a prosecutor or that your lawyer might be compelled to give that information to somebody else. In the end people won't talk to their lawyers, and that is the concern that we found.

So that you are clear, the presentations that we made, the articles that were published did not specifically refer to the recommendations that we have included and presented to you today, but certainly the concepts that we put into our report and that underlie the recommendations were the subject of our discussions and the articles and many activities that we undertook.

I would also like to say we were very pleased at the participation from the United States Attorney's Office, and both in the Eastern and Western districts
the U.S. attorneys have met with us and have also
taken a very thoughtful, we think, approach to this
issue, and so we are very grateful to them for their
contributions and for Ms. McQuade's participation
today.

John, if you want to make any other comments.

MR. ALLEN: First of all, I want to say thank

you to Diane, who certainly pulled the heaviest oar on
this project. Our task force was appointed now almost
two years ago by then State Bar President Tom Cranmer,
who asked me to assist. Tom and I were fraternity
brothers at Michigan, but the statute of limitations
has run on most of that. Kim Cahill also has been an
enthusiastic supporter of this project, and all those
listed as members of the task force made very
significant contributions.

I also want to thank you folks today for
taking the time to do this. You spend a lot of time
here in very detailed matters, as you have just been
through the last many minutes, and it's an important
part of your time, and we really appreciate the
attention you have given it.

To us it is not so much the privilege as a
privilege as something exceptional in the law of
evidence sense. In fact, in going through this and
serving on the ABA task force of the same model for
about two and a half years now, I wish we could change
the name of it. Privilege is not a very good name. I
wish it were confidentiality or some other word that
more correctly identifies its purpose of being our
greatest engine of law enforcement. That's one thing
where the U.S. Attorney's Office and the federal

 agencies, we all agree we are looking for the greatest
degree of law enforcement, a respect for the rule of
law.

 And I would ask you to remember back for some
of us a long time ago when we first started to
practice law and you had that first meeting with the
person who came in to see you as a client or a
prospective client and they sat down and told you
things that they would share with nobody else on the
planet, and after they got done telling you those
extraordinary secrets, they would ask your advice on
how the law might apply, and you would give them that
advice, and in 99.9 percent of the time they would go
out and they would obey the law, even though it was to
their disadvantage, even though it cost them money,
even though it wasn't what they wanted to do.

 That is the function of the privilege in a
free society, and that is why free societies allow an
attorney-client privilege. All societies don't, but
our society knows and has recognized since the age of
Elizabeth I, if the people are allowed to go in
secret, in confidence, and give information to a
lawyer and receive advice from a lawyer, they will
almost always go out and take that advice, they will
do their best to obey the law without the U.S.
Attorney's Office involved, without the prosecutor, without the government, and because of that extraordinary value that is placed on society by that confidentiality, it is given a privilege in the law of evidence.

But there are ways in which that can be invaded and assaulted, and that is the focus that we had with our group, and I hope it's the focus that you will have in going through the recommendations.

Very briefly, the recommendations are really not all that complicated. Numbers one and two are virtual replications of the ABA positions already accepted by the ABA House of Delegates, and I think all of which were probably voted on favorably by your ABA delegates as ABA policy. We would like them to be the policy of the State Bar of Michigan too.

Recommendation three concerns issues regarding subpoenas to lawyers and law firms from nonclients but about client representations and engagements, essentially when a third party comes in and wants your client file, and certainly not prohibiting that but putting it under the same rules that we now use under the judicial rubric of Hickman versus Taylor for discovery of work product.

Recommendation four has to do with the issue of inadvertent waiver and is modeled on Federal Rule of Evidence 502(B), which is now going through a
process of approval, although it does have some variations which we will explain in detail.

Recommendation five has to do with an opposition to the concept of selective waiver that is waiving under a written agreement, usually with a governmental agency, which is, I think, looked upon by many folks, and I think you will hear the U.S. Attorney tell you in a minute has a very beneficial policy, but after careful consideration the task force concluded that it was not a good idea. We recommend against it and asked this State Bar to take a position opposed to it. Thank you.

MS. MCQUADE: And I just wanted to give the other perspective. You know, when I was asked by Steve Hiyama, who served on the task force from the U.S. Attorney's Office, to come and speak in opposition to the majority defending the attorney-client privilege, I asked if I couldn't instead speak maybe against apple pie, motherhood, something less controversial.

I do want to thank Tom Cranmer for including federal prosecutors in this process, because we do have a different perspective, and everybody thinks that the attorney-client privilege is a very important and valuable doctrine. Nobody disagrees with that, but that's not what this is about.

This is a very narrow issue, and, of course, the law has always recognized that there are other countervailing interests, like the crime fraud exception, and our concern with three of these five
recommendations is that they do not at all take into consideration those countervailing interests. And I think that we as lawyers have a duty not only to our profession but also to the public to do all we can to protect the public from corporate crime, environmental crimes, corporate fraud and the like, and, as our first president, Roberts P. Hudson, of course, said famously that no organization of lawyers can long survive which has not for its primary object the protection of the public, which is what we are seeking to do here. And so we are opposed to recommendations one, two and five.

I think it's important to understand what it is we are talking about. The Department of Justice policy at issue is something called the McNulty memo. If you have read your materials, there is a discussion of it. The McNulty memo recognized, quote, that the attorney-client privilege is one of the oldest and most sacrosanct privileges under U.S. law. It's important to understand that we are not talking about individual client's privilege. This is privilege of a corporation, and because it's an artificial construct, it makes it difficult to address the issue and to separate it, I think, from individuals.

The issue arises in a very narrow context and, in fact, has never arisen in the state of Michigan. The majority report notes, quote, it was aware of no instances in Michigan in which a federal prosecutor had stated or even implied that a business should or must waive its privilege to avoid
The issue is whether a corporation can receive favorable consideration during a criminal investigation by voluntarily providing investigators with the factual information resulting from an internal investigation, which may include some information that would ordinarily be protected by the attorney-client privilege. Because these investigations are typically conducted by lawyers, the memos, the conclusions, the witness statements that they generate are privileged. When an individual comes to the investigators and says I want to cooperate, they are required to sit down and provide all the information they know, and you must, if you want to receive favorable consideration, you should provide all the information that you know. And just because that stuff is privileged because it was conducted by a lawyer shouldn't give you a different standard than we hold individuals to.

Corporations will on their own, because they are good corporate citizens or because it makes good business sense, when they learn that some of their officers, directors, or employees are engaged in misconduct will typically conduct their own internal investigations and will come to the U.S. Attorney's Office and say, we would like to share with you the results of our internal investigation, and we hope you will consider that favorably when you are making any
charging decisions, and we are usually very thankful
to do that. And it is not the case that the
prosecutor is just too lazy to go do the work
themselves. These investigations are massive.

Corporate accounting scandals, Enron, Arthur
Andersen, Exxon Valdez, investigating these kinds of
cases can take years, and with the statute of
limitations that could bar prosecution forever without

receiving some of this information, it's extremely
good. It's not the case that the
prosecutor is just too lazy to go do the work
themselves. These investigations are massive.

And even this, under the McNulty memo, is
only one of nine factors that prosecutors ought to
consider when deciding whether to bring criminal
charges against a corporation, but the majority
position would say that this can never be a factor to
be considered.

It's not a prerequisite. There is not a
demand made but a request or sometimes voluntary
receipt of this information which the U.S. Attorney's
Office believes is necessary to protect the
shareholders, employees, and public.

It's our perspective that corporations kind
of want to have it both ways. They want to receive
some benefit, but at the same time not provide the
same cooperation that individuals would be expected to
do. If you don't want to turn over your stuff, that's
fine, you don't have to waive the privilege, but you
don't get some sort of benefit by refraining from
doing so, so that's what this is about.

The three recommendations that we would
oppose then are one, two and five. Three and four we
have no problem with. One, which speaks sort of
generally in favor of protecting the attorney-client
privilege, again, our opposition only is that it is
categorical. It says that this should never be done,
and it fails to recognize that there may sometimes be
a legitimate countervailing interest in investigating
culpable corporate directors and officers in
protecting the public.

We oppose recommendation number two. There
is part of it there I want to clarify that the McNulty
memo does say that prosecutors may not take into
account whether corporations are paying legal fees for
employees under investigation. That may be done, and
that is perfectly permissible, but it fails to
consider whether corporate officers and directors are
seeking to impede an investigation by sharing
information with those who are under investigation.
For that reason we oppose recommendation two.
And then finally would oppose recommendation
five, which is the concept selective waiver. One of
the concerns I have heard from the majority is that,
sure, you know, we want to tell you what we have done,
but we just don't want to disclose our privileged
information to the world, and it would seem to me that
selective waiver would be the way to alleviate that
concern.

You can waive it with respect to sharing it
with criminal investigators, but you are protecting
your privileged communication from other disclosure.
It would seem to me that if corporations generally
want to cooperate but are concerned about protecting
their privileged information from the world that
selective waiver is the way to do that, and so,
therefore, we would ask you to reject recommendation
five as well.

CHAIRPERSON HAROUTUNIAN: I think the way we
should approach this is, number one, to ask if any
members of the Assembly have any questions for any of
the panelists, and then the next step in my judgment
would be to go ahead and take, there are five
positions, to take each of the five and to deal with
each of them. Any questions? John.

MR. ALLEN: Can I just offer one
clarification in the description by the Assistant U.S.
would bar or ban the seeking of waivers or for that matter the giving of them, and I would just call the Assembly's attention to the final paragraph which says it would oppose a routine practice by government officials of obtaining those waivers. So it's not the intent of the task force, nor do I think it was ever our intent, to ban entirely the practice of waivers taking place, it was more the matter of them becoming coercive implicitly by being asked for on a routine basis.

And the Assistant U.S. Attorney is correct that both in the Eastern District and the Western District of Michigan, our best research and inquiry, including a lot of cooperation from the U.S. Attorney's offices, confirms that these are not routine practices here, but they are elsewhere, and no lawyer is an island. When our clients read about other lawyers testifying against their clients of other client files being turned over or other clients waiving their privilege, we believe it affects that culture of waiver and the way clients regard privilege here also.

MS. AKERS: I would like to clarify just one other point as well. The underlying information, of
confidential communication or the attorney work
product.

MS. MCQUADE: To further clarify, however, if
the attorneys conducted the investigation, then the
reports, witness statements, et cetera, generated from
that investigation would be considered attorney work
product and I would submit would be included.

CHAIRMAN HAROUTUNIAN: Any questions from
members of the Representative Assembly to the
panelists? Okay.

Seeing none, the proposed resolution number
one, preservation of the attorney-client privilege and
work product. I presume John Allen, Diane Akers -- is
there a motion that proposed resolution number one be
adopted by Representative Assembly?

VOICE: So moved.

CHAIRPERSON HAROUTUNIAN: Is there support?

VOICE: Support.

CHAIRPERSON HAROUTUNIAN: Any discussion?

MR. MILLS: John Mills, 6th circuit. I would
like to propose a friendly amendment to the first
paragraph, first line of the first resolution, and the
amendment would be to eliminate the word "strongly."
That's the only place it appears in all five
resolutions. First of all, it's not needed, but
secondly, it implies strong support for that part of
the resolution but only regular support for any other
part of the resolution and gives less emphasis to the
other parts which we would support or oppose.

CHAIRPERSON HAROUTUNIAN: You would move to
delete the word "strongly"?

MR. MILLS: Correct.

CHAIRPERSON HAROUTUNIAN: Is there support?

VOICE: Support.

CHAIRPERSON HAROUTUNIAN: On the motion to delete the word "strongly" is there any discussion?

All those in favor of the motion say aye.

Opposed no.

Abstentions say yes.

The ayes have it. Motion carries.

Yes, Wally.

JUDGE KENT: Wally Kent, 54th judicial circuit. My comments would apply not only to this but to the other resolutions as well. Be on my soap box for just a moment.

Underlying all of this is an attempt to coerce information which is privileged. It may not be incorporated in the Constitution, per se, but our Fifth Amendment privilege against self-incrimination at root is protected by the lawyer-client privilege, and make no mistake about it, to the extent that people are coerced into giving up that privilege, they are coerced into testifying against themselves.

We may be looking at corporations being compelled to get information, but it's people that serve time. The invasion of the privilege, I think, constitutes every bit as much of a constitutional violation as warrantless searches under the auspices of the Homeland Security Act, and to the extent that either these compulsions and coercions are allowed or
those searches are allowed, the blanket of the
protection that we are offered by our Constitution is
being moth-eaten. I violently oppose either effort
and am in absolute support of every one of these
resolutions.

CHAIRPERSON HAROUTUNIAN: Thank you. Any
other discussion with regard to resolution number one?

Seeing none, all those in favor of resolution
number one say aye.

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1 Opposed no.
2 Any abstentions say yes.
3 The ayes have it, the resolution carries.
4 Resolution number two, the attorney-client
5 privilege/governmental investigation and prosecution,
6 is there a motion from the floor to adopt?
7 VOICE: So moved.
8 CHAIRPERSON HAROUTUNIAN: Is there support?
9 VOICE: Support.
10 CHAIRPERSON HAROUTUNIAN: Motion is on the
11 floor. Any discussion?
12 Seeing none, all those in favor of the motion
13 say aye.
14 Opposed no.
15 Abstentions say yes.
16 The ayes have it. Motion carries.
17 Proposed resolution number three, discovery
18 in client representation and MCR 2.302(B). Is there a
19 motion from the floor that the Representative Assembly
20 adopt?
21 VOICE: So moved.
CHAIRPERSON HAROUTUNIAN: Support?
VOICE: Support.
CHAIRPERSON HAROUTUNIAN: It's on the floor.
Any discussion?

Seeing none, all those in favor say aye.
Opposed no.
Any abstentions say yes.
The ayes have it. It carries.
Proposed resolution number four, inadvertent waiver of the attorney-client privilege. Is there a motion from the floor to adopt?
VOICE: So moved.
CHAIRPERSON HAROUTUNIAN: Support.
VOICE: Support.
CHAIRPERSON HAROUTUNIAN: It's on the floor.
Any discussion?
All those in favor of the motion say aye.
Opposed no.
Abstentions say yes.
Motion carries.
Proposed resolution number five, selective waiver of the attorney-client privilege. Is there a motion from the floor to adopt?
VOICE: So moved.
CHAIRPERSON HAROUTUNIAN: Support?
VOICE: Support.
CHAIRPERSON HAROUTUNIAN: It's on the floor.
Any discussion?
MR. LARKY: Mr. Chair.
CHAIRPERSON HAROUTUNIAN: Mr. Larky.

MR. LARKY: Sheldon Larky, 6th circuit. I would like to basically read a couple paragraphs that I sent to our chairs a couple weeks ago. I am going to vote yes in favor of this motion, but I want the Assembly to know how I felt after I read these five proposals, and I wrote to Diane and John, I said this.

If there was a Nobel Prize for the protection of rights, you and your task force should receive it. I further wrote that every attorney in Michigan and, frankly, every client owes you two as chairpersons an immense debt of gratitude for your work, time, efforts, and talent in producing your report and recommendations. Because of you two and your task force members, I am proud to say that I am an attorney who wants to protect client confidences to the day I am dead.

CHAIRMAN HAROUTUNIAN: Thank you, Mr. Larky.

Yes.

MR. LOOMIS: Daniel Loomis, 35th circuit. I believe we allow selective waivers in other areas. I work as a domestic relations referee and I look at counselors' reports, and there are waivers so that those can come to my attention.

I think if these are narrowly drawn waivers,
I think we ought to honor those, because we can see that there are legitimate purposes where this information ought to be shared, but it ought to go no further. I don't understand why we can't allow for selective waivers.

CHAIRMAN HAROUTUNIAN: John.

MR. ALLEN: Mr. Loomis, a little bit over two years ago when I began work on the ABA's national task force on attorney-client privilege, I felt exactly the same way you do. I thought selective waiver looks like a neat solution to all these problems. Let's just let people enter into a little, narrow, topical waiver and let them turn over to the government what they want on a voluntary basis but not let it be used elsewhere and that would solve all our problems.

Well, it didn't solve all the problems or at least two that came up immediately. One is a case called In Re: Columbia HCA Health Care, in the 6th circuit at least, which says once you waive the attorney-client privilege for one person for one purpose you waive it to all persons for all purposes, so you can't single out to whom you are going to do it or who is going to receive it, at least under the law of the 6th circuit, and I do believe there is probably some consistent Michigan law also, at least as to attorney-client privilege. I can't speak to counselors or the dozens of other privileges that exist. That was one problem. Maybe we could change that with a statute or another Court Rule.

The more important problem, though, came, a
representative from the Department of Justice sits in all of the ABA task force meetings, just as DOJ representatives were at our meetings too, and we -- in fact, Larry Thompson also, who drafted the predecessor of the McNulty memorandum, was called the Thompson memorandum, he sits in our meetings too, except Mr. Thompson is now the general counsel of Pepsico, and he doesn't feel the same way about these corporate investigations as he did back when he was the second man in charge at DOJ.

But our DOJ representative was there, and one thoughtful lawyer had the presence of mind to ask this person if selective waiver is adopted as a federal policy and a matter of law, in what instances would you demand one in your investigations? And his response was, Every single time. Why wouldn't we? If there were no danger, it was a no-brainer to do it.

And although we haven't seen a blanket or ubiquitous type waiver request by federal agents in the state of Michigan, I can tell you that we have very consistent and numerous reports of state agencies coming in, the typical Medicaid fraud investigation, to the attorneys representing, it may be more or comparatively a mom and pop shop, all right, who is providing services and being reimbursed by Medicaid for health care, home care, whatever, and starting out the first meeting by saying we want an attorney-client privilege waiver, we want to interview your lawyer, and we want to see all his or her files, and if you aren't willing to do that, then we are going to issue
a bar order today, because we don't have enough money
to investigate these things anymore, and we would like
to have the advantage of what your lawyer knows.

That is the problem with selective waiver, is
that once it is endorsed as a policy it would become
the standard everyday rule, and that is the danger
that I think the task force sees that it presents and
the reason that they took the position they did in
this recommendation.

But we quickly tell you this is a very
controversial topic. You can find many, many interest
groups. Bankers, for instance, do selective waiver by
federal statute with federal bank regulators, but, of
course, bank regulators can come in and look at all
their lawyer's files anyhow by the particular

regulations that they live under.

Ours was more geared to not making it a
general policy applicable to everybody all the time.

MS. MCQUADE: If I may respond, all this is
saying is that we oppose the whole concept. I submit
that it's a great concept and that there is federal
evidence 502(C) there has been discussion on, which
would give authority that would overrule the Columbia
case, because in Columbia there was no legal authority
to base a selective waiver on. If there were some
sort of court rule, federal rule of evidence, et
cetera, then there would be a basis for doing so.

And this idea that, you know, we would demand
it in every case, it's never been demanded before ever
in Michigan, so I think that's sort of one of those
parade of horrible ideas. To me this seems like the perfect solution. You want credit for cooperation, you have got to give something in exchange, just as individuals do. If you don't give it, that doesn't mean an automatic indictment, but it's something helpful that goes into that nine-factor list of things that prosecutors ought to consider when deciding whether to bring charges, and to me it seems like a perfect solution.

MS. AKERS: One other point that I would make about Federal Rule 502 rule of evidence and other types of rules of evidence is that it would only pertain to admissibility of evidence and it would not pertain to discoverability, and so as a litigator I am far more concerned about the fact that if my client turned something over to the prosecutor, and even as in the health sup case, even if the prosecutor and the client say we agree this is only being given for law enforcement purposes and it's only this selective waiver, nevertheless that doesn't work under health sup, and so even if that information would not be admissible at trial, it still would be discoverable, which means the privilege is destroyed.

MR. ALLEN: About the Federal Rule of Evidence 502, there is a proposal to amend it. It's been before the Federal Conference. At the Federal Conference the selective waiver submission of that rule is struck out for the very same reasons that Diane and I have just talked about.

So the Federal Rule will not have it, but
Diane is correct, even if it did, it wouldn't help you any in a state court prosecution or in different nonfederal jurisdiction.

CHAIRPERSON HAROUTUNIAN: Any other discussion?

Seeing none, all those in favor of the motion say aye.

Opposed no.

Those abstaining say yes.

The ayes have it, the motion carries.

Mr. Allen, Mr. Akers, Ms. McQuade, I want to thank you very much for your --

(Applause.)

MR. ALLEN: Ed, I didn't think this was going to be shorter than the one on electronic service.

CHAIRPERSON HAROUTUNIAN: You know, that's the thing with regard to the Representative Assembly, you just never know, you just never know. And that's the beauty of it.

And we have some small token of appreciation. Bob will pass it out to you and get them over to you.

Our next order of business is the election of the clerk of the Representative Assembly and, Victoria Radke, do I see your hand up?

MS. RADKE: You certainly do, Mr. Chair. I am Victoria Radke from 47th judicial circuit. It's my privilege and great honor to put forth the name of Elizabeth Johnson of the 3rd circuit for the position of clerk of the Representative Assembly for 2007/2008.

CHAIRMAN HAROUTUNIAN: And, Susan Licata
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Haroutunian, did I see that you raised your hand ready to support that?

MS. SUSAN HAROUTUNIAN: Support.

CHAIRPERSON HAROUTUNIAN: Any other nominations?

If not, all those in favor of the nomination of Elizabeth Moehle Johnson for clerk of the Representative Assembly please say aye.

Opposed no.

The ayes have it, congratulations.

(Applause.).

CHAIRMAN HAROUTUNIAN: We are getting close, team.

I would like to ask our vice chair, Bob Gardella, to come forward for purposes of an introduction, and I will have in a couple minutes, shortly, some additional comments, but nevertheless, here is Bob Gardella, the vice chair, soon to be chair of the Representative Assembly.

VICE CHAIR GARDELLA: Thank you, Mr. Chairman.

(Applause.)

VICE CHAIR GARDELLA: It's a pleasure today to introduce Justice Michael Cavanagh. He has been here waiting patiently for us as we debated the
issues, and hopefully some of our arguments were enlightening and very interesting I am sure for him. We appreciate him being here to both speak to us today and also to administer the oath of office to myself.

Justice Cavanagh, I think everybody in the room knows him. You may not know all of his background, and I wanted to go over some of the highlights of his background.

Justice Cavanagh received his bachelor's degree from the University of Detroit and his law degree from the University of Detroit. He began his career as a law clerk for the Michigan Court of Appeals in 1967. He eventually worked his way to Lansing from where he was raised in the Detroit area, and he began working for the city of attorney for the City of Lansing. He thereafter was appointed the city attorney, the top dog in the office there, and he served there until 1969.

He then became a partner in the law firm of Farhat, Burns & Story, P.C. in Lansing, and after that he was elected as a Lansing district court judge. After that he was elected to the Michigan Court of Appeals, and he served there from 1975 to 1982. He then ran for election to the Michigan Supreme Court, and thereafter has been elected, reelected in 1990, 1998, and last year in 2006. He is the most senior member of the Michigan Supreme Court, but I also want to add that at one time he was the youngest member of the Michigan Court of Appeals.
Appeals, I wanted to get that in, and he also has served as Chief Justice of the Michigan Supreme Court for two two-year terms.

I wanted to also point out that Justice Cavanagh is the son of a factory worker and a teacher who moved to Detroit from Canada. Justice Cavanagh in years past worked on one of the Great Lakes freighters during the summers to help pay his tuition at the University of Detroit, and during his years in law school he was employed as an insurance claims adjuster and also worked for the Wayne County Friend of the Court as an investigator. So you can see the wide variety of occupations he has had within the legal system and also the business sector.

It's also noteworthy to point out that Justice Cavanagh also was instrumental in making sure that the Hall of Justice for the State of Michigan in Lansing became a reality. Without him it probably would not be there. Many other people helped, but he helped guide it and make it the wonderful place that it is to show the distinction for our branch of government.

And when the Board of Commissioners had a luncheon with the Supreme Court members earlier this year, he graciously guided us on a tour of the building, and it is a wonderful place, and it's a very educational place, and you should all know that if any of your family members, your children, grandchildren want to go on an educational experience, I think it would be very moving for them even to take a half an
hour to show them the court and show them how your
occupation is linked to them, because some of the
displays and exhibits they have there are very
meaningful, they are interactive, and I think that
your family members would get a lot out of it to maybe
understand your profession much more.

Justice Cavanagh and his wife, they are
parents of three children and have two grandsons and
they currently reside in East Lansing, and I would
also add that Justice Cavanagh has known my mother's
family for quite a number of years going back I think
to his childhood, and so it's a pleasure for me to
welcome Justice Cavanagh to the Representative
Assembly, and I would invite him to approach here.

(Applause.)

JUSTICE CAVANAGH: Thank you, Bob. That was

a great intro. It must have been an outdated resume,
because I have got three grandchildren now. I have
got a granddaughter Georgia Grace, who our youngest
daughter Megan, also a lawyer, gave birth to about 13
months ago.

And Bob mentioned my connection with his
family, and he is right. I went to grade school in
Detroit with his mother and spent many a long summer
night on their back porch pitching woo to her younger
sister, Bob's late Aunt Julie, and I would keep
looking for faces at the window to see exactly what we
were doing on that swing on that back porch.

But it's a pleasure to be here on the
occasion of the 35th anniversary of the Representative
Assembly. I would extend congratulations to all of you for devoting your valuable time, effort, and intellect to the important work of this body. Your collective actions over years have helped to position the State Bar as a crucial voice in matters of significance to our justice system. I am also pleased that two members of the judiciary find the time to contribute their perspective to this important work, Judge Wally Kent and Roy Mienk.

The 1971 State Bar Study Committee that recommended the creation of the Representative Assembly commented that they hoped the Representative Assembly would be a highly visible form in which meaningful debate and consideration of important policy issues will be readily communicated to and noted by both the members of the Bar and the general public.

And I believe that the Assembly has lived up to those expectations. I know, because you transcribe your meetings and transcriptions are available to all members online, that vigorous debate does take place and recommendations are pondered and carefully considered. Your transcripts also reveal the personalities of some of your most engaged members. Is Matt Abel here today? Shel Larky. Veronique Liem. But reading the transcripts doesn't give you a full flavor of the Representative Assembly experience. Who would know, for example, about Ed Haroutunian's ponytail?

But the work you do can greatly simplify the
work we on the Supreme Court have to do when we consider the issues you raise, and you can understand that we appreciate all the help you can give us given the size and complexity of our administrative responsibilities, not to mention our primary job deciding cases.

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Reading our decisions, I am sure you can see that the path to a final decision is not always an easy one, but you may wonder what takes us so long on the administrative side of our agenda. Specifically why it takes so long to get to some of your recommendations. I guess the short answer is simply this, the magnitude of our workload and the need for the most careful consideration of the important proposals that you send to us.

As those of you know who were involved in the Assembly's consideration of the ethics 2000 rewrite of the Model Code of Professional Conduct, which is still before us now four years since you sent your first recommendation our way, there are literally dozens of important and complex decision points in the ethics package, and the Court is working diligently to digest the Assembly's and the ABA's work in bite-sized chunks.

Similarly, the Assembly's very substantial work on the Supreme Court's publication of proposed jury reforms has provided us with very important input as we deliberate next steps, input that can only come from the practicing Bar. Whatever the subject you address, please be assured that your work is accorded
serious attention as it represents the collective
judgment of a very diverse cross-section of the legal profession.

The Court has acted on nearly all the proposals submitted by the State Bar, and we are continuing to weigh the merits in several of them. You should know that there is a very good working relationship between the court's administrative counsel's office and the State Bar, and I am very sure that will continue.

But I thought you might be interested in the status of several of the proposals that the court is considering.

Administrative file 2004-08. This file was open when the State Bar submitted a request to the court to consider a major rule regarding multi-jurisdictional practice, including the issue of pro hac vice admissions. The proposal was published for comment and was on the May 2007 public hearing. The court decided to pursue at this time only the concept of pro hac vice admission, and the file is still scheduled to be reconsidered by the court in the near future.

Admin 2005-31. This file relates to updates and clarification of MCR 3.602, which is the arbitration court rule. This proposal has been
published for comment, and as a matter of fact was an 
item before us on yesterday's public hearing agenda.

Admin 2005-38, the State Bar asked us to open 
this file which would allow emeritus members of the 
bar to practice in the limited way in which law 
students and recent law graduates are allowed to 
practice, with supervision by an experienced attorney. 
When this was first brought before the court earlier 
this year several members expressed concerns based on 
whether the attorney discipline system would have 
jurisdiction over them if they violated the rules. 
The court invited Janet Welch to submit a memorandum 
on some specific issues, and she did so earlier this 
summer. So this will be reconsidered by the court I 
am sure before the end of this year.

Admin file number 2005-41. The bar asked the 
court to open this file to codify that certain records 
of the Bar are considered confidential. This proposal 
was published for comment, and the day before the 
public hearing held in January of 2007 the Bar asked 
the court to refrain from taking action because it was 
negotiating some alternate language with the attorney 
for the Michigan Press Association. This matter will 
also be reconsidered before the end of the year.

Admin 2007-12. This file allows parties in a 

traditional case to exchange pleading electronically. 
This matter was also heard at yesterday's public 
hearing. After this proposal was published for
comment, however, the Bar submitted a more elaborate comprehensive set of rules known as E-discovery, which is yet another admin file 2007-24, and we will move on this secondary proposal once we have resolved that initial one.

So today you have been grappling with another important comprehensive set of recommendations concerning the protection of the attorney-client privilege against recent challenges. You know, we live in a world where public understanding of the underpinnings of the privilege is very low and the confidentiality that the attorney-client relationship protects is constantly under threat. The Representative Assembly plays a very critical role in helping us assess the appropriate balance between law enforcement objectives and the necessity for confidentiality to protect the quality of the service that you lawyers provide to your clients.

So, again, thank you for allowing me to play a role in this milestone. I almost said millstone. Happy anniversary to the Representative Assembly, and I wish you many more returns. Thank you.

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(Appause.)

CHAIRPERSON HAROUTUNIAN: I think we are ready for the swearing in of Bob Gardella by Justice Mike Cavanagh. Maybe. Gina Gardella, would you come forward, please.

JUSTICE CAVANAGH: Bob wanted me to suit up for this. Photo ops.

Raise your right hand. Bob, do you solemnly
swear that you will support the Constitution of the
United States and the Constitution of the State of
Michigan and that you will faithfully discharge the
duties and responsibilities of the office of Chair of
the Representative Assembly of the State Bar of
Michigan to the best of your ability, so help you God?

VICE CLERK GARDELLA: I do, so help me God.
JUSTICE CAVANAGH: Congratulations.

JUSTICE CAVANAGH: It's your very own gavel.
CHAIRPERSON GARDELLA: Thank you very much.

Thank you so much for being here.
JUSTICE CAVANAGH: My pleasure.

(Applause.)
CHAIRPERSON GARDELLA: Well, now as the new
Chair of the Assembly, and it is a great honor to
serve as the Chair of the Assembly. I have been

working on this great body since 1999, and it has
truly been a pleasure. The people that I have been
able to meet and work with and develop friendships
with will last a lifetime, and I thank you for all of
your hard work.

Even though I am becoming the officer and the
chair of this great body, the officers can't do what's
required. All of you have to do your part. We are	ruely a team here, and we are going to have various
committee chairs, we are going to have committee
member positions, liaisons to various other Bar
sections and standing committees, and I encourage you
to get involved. We need you, and the power of the
Assembly is based on your involvement and your volunteer work.

So when we send you the preference sheet as to which part of the organization you would like to be involved in, what liaison positions, I would highly, highly urge you to get those back to me. If you have any with you, please drop them off here at the front table before you leave or before you leave the 35th anniversary reception, because we want to start working and get things rolling and keep our good program going here.

I would also add that it's a pleasure to announce that for the upcoming 2008 year we have 100 percent commitment. We have no vacancies, and we have worked hard at that.

(Applause.)

CHAIRPERSON GARDELLA: We have worked hard at that, and I think that is a testimony to all of the hard work that you have done. We have some positions where people are competing for the positions, and that's healthy for our organization, and the people who don't get the positions, hopefully they will want to come back when vacancies do occur. So that's a good sign and shows that we are very, very healthy.

It will be very difficult to fill the shoes of Ed Haroutunian. He has done a wonderful job, and it has been a pleasure to work with him. His insight, his energy and good judgment has really, really, really helped us advance in a lot of different ways, and I will try to carry on, but I know I will be...
calling him for advice here and there. So he has been
a great person to work with and a great friend. So I
would applaud Ed for all his work.

(Applause.)

CHAIRPERSON GARDELLA: I know this has been
especially difficult for Ed this past year. His
mother passed away right when his duties were

starting, and he was putting a lot of time in to help
his mother, and I know that was difficult for him,
and despite that he still put in a hundred percent
effort and kept things rolling, and I commend him for
that. It was very difficult for him to get through
that.

I would also like to state the officers that
we have, Kathy Kakish and Elizabeth Johnson, they are
wonderful people. They have been so involved, and we
should have a great team. It will be a lot of fun to
work with them, and also Janet Welch and Anne Smith
and the staff at the Bar, they have done a wonderful
job.

I would also like to commend and applaud
Judge Cynthia Stephens. I was just in her court on
Monday, and the air conditioner wasn't working there
either like it was at the attorney discipline meetings
today, and I am thinking maybe they are starting the
cutbacks already.

She has not only been a member of our
Assembly, she has been a former Board of Commissioner
member. She still serves on the Board of
Commissioners Policy Committee and is totally
committed to the Bar, and we would be lost without her insight, and as our parliamentarian this year she has just done a wonderful job, and she is always there for us whenever we need her help, and so I would applaud Judge Stephens. (Applause.)

CHAIRPERSON GARDELLA: There are some other people that I would like to acknowledge that are here, my family and friends, and I am very, very appreciative of them for coming here. My wife was previously introduced, but I would also like to point out my parents, Bob, Sr. and Maryann Gardella. They are in the back row, (Applause.)

CHAIRPERSON GARDELLA: And also my Grand Rapids family, my father-in-law Tom Roney, if you could stand Tom. (Applause.)

CHAIRPERSON GARDELLA: And then also Tom Roney, Jr. and Kari Roney, my brother-in-law and sister-in-law. They are also seated in the back there. (Applause.)

CHAIRPERSON GARDELLA: And then some other people, my Brighton people, Judge Burress. I used to be his law clerk, and he has been a friend for many, many years. If you could stand, Judge, and he is a
former member of the Assembly.

(Applause.)

CHAIRPERSON GARDELLA: Mike Panny, I don't know if Mike is back there. Mike -- I don't have a brother, but Mike is my real in life brother. He has been a friend, best man at my wedding, and he is always there for me, and I am honored that he is here to share in this swearing in today.

And then also I would point out one other person, Nkrumah Johnson-Wynn. She is a former chair of the Assembly and one of my neighbors in Brighton. I see her husband in the back. There she is right there.

(Applause.)

CHAIRPERSON GARDELLA: Our kids play soccer together, so we usually see each other at the soccer field.

I want to stress to you that this will be an active year, and it will be a positive, positive year, but the proposals that we have, of course, we don't know what those will be, but the Supreme Court may ask us to consider various resolutions. We may have other proposals, and I ask that you keep working hard, just like you did this year, and we will be able to keep our good reputation going.
make a few more comments. I want to publicly thank the State Bar staff for all of their help over this past year. Marge Bossenbery, Naseem Stecker, Nancy Brown, Kari Brandel, most especially Anne Smith, who has done yeoman duty to be able to deal with Bob, Kathy, and myself, and all the people who worked on the projects who I had not named. It was most appreciated.

Special thanks to Janet Welch for all of her good judgment which she brings to the table for the Representative Assembly officers, all of our R.A. committees who were involved this year, some more than others, based upon the work that was before us. However, everyone, everyone demonstrated a willingness to participate.

Liz Johnson, chair of the Nominations and Awards Committee; John Reiser, chair of Drafting; Sheila Garin, chair of the Calendar Committee; Steve Gobbo, chair of the Special Issues; Rob Buchanan, chair of the Hearings Committee; and Victoria Radke, chair of the Assembly Review. I want to thank all these chairs for not only the work they have done but their willingness to be a part even when a particular committee might not be too terribly involved at any given moment.

A big thank you to Bob Gardella and Kathy Kakish for all of their hard work. I could not have asked for a better vice chair and a better clerk. As Bob indicated I thank our parliamentarian, Judge Cynthia Stephens of the Wayne circuit bench, for
allowing me to proceed even though friendly amendments
are not her cup of tea.

And I want to thank our court reporter,
Connie Coon, for all of her attempts at and successes in getting all of our words in that transcript.

Thank you to two other members of the Representative Assembly without whom I would not have been able to handle the past 12 months, my wife Susan out of the Wayne judicial circuit and my daughter Krista out of the 6th. So I thank the two of you who are sitting back over there.

(Applause.)

PAST CHAIRPERSON HAROUTUNIAN: Finally, as I mentioned to the Board of Commissioners meeting yesterday, and I want to share this with all of you, thank you for allowing me to be a part of this great adventure, and it has been an adventure over the last three years from clerk, vice chair, to chair. I have

very much enjoyed it, and the people -- you know, sometimes people say, well, what are you going to miss? You are not going to miss the time spent. You are going to miss the time you are with people and the interaction with people. And, as I have said to Susan many times, we have been very, very fortunate. We have been fortunate to be able to know people in the legal profession who are just great people, and to me that means an awful lot, and, folks, you are that great people.

So I want to thank you all, and I wish Bob all of the very, very best, as well as Kathy.
CHAIRPERSON GARDELLA: We have something for you. You can't leave the stand here without having something presented to you.

As I said before, it's time to say good-bye to Ed, and it's time to say a big, big thank you, and he is ready to run I will tell you. He was smiling earlier today knowing I don't have to do all these conference calls anymore and everything else that goes with it.

But Ed has done a fabulous job promoting the mission of the Representative Assembly and in its final policy-making function and to be the real pulse on the reading of all of the 38,000 lawyers throughout the state of Michigan. He has been a gentleman, he has been a very hard worker and very energetic and enthusiastic about our work, which he has passed on to the other officers and to the other staff at the State Bar too, knowing that we enjoy what we are doing, and also handling all of these cutting edge issues that we debate on and analyze. He has done a wonderful job as our traffic cop, if you will, getting everything through and keeping us as a very vibrant organization.

As a token of our appreciation we have two things for Ed. We have this wonderful wall plaque. It says, State Bar of Michigan honors Edward L. Haroutunian, Representative Assembly Chairperson 2006 to 2007. Also previously serving as Vice Chair and Clerk. In appreciation for distinguished service to the Assembly of the State Bar and all Michigan...
lawyers, September 27th, 2007, and I hope you will
proudly hang it on your office wall.

PAST CHAIRPERSON HAROUTUNIAN: I will. Thank
you.

(Applause.)

CHAIRPERSON GARDELLA: One more thing that we
have. Kathy and myself -- Kathy, come on over here.
Kathy and I wanted to get something for Ed. There are
so many different things we could have gotten for him,
so what we did, we decided to get him gift
certificates to a number of his favorite, favorite
stores instead of just one so he can enjoy a lot of
different things all at once. Now that he is going to
have all this free time on his hands, he will be able
to do all kinds of shopping. So, Ed, I hope you enjoy
the gift, and thank you.

PAST CHAIRPERSON HAROUTUNIAN: Thank you.

(Applause.)

PAST CHAIRPERSON HAROUTUNIAN: Oh, my
goodness. This is -- I don't know if you will all
appreciate this. This is a gift certificate to the
Shirt Box, which is over on Northwestern Highway in
the other side of the state, and the other one is
to -- oh, my goodness -- to Scott Colburn. Scott
Colburn is also on the other side of the state, but it
deals with cowboy kinds of things, hats, boots, that
kind of thing, which some have said that I have worn
on occasion, and so I thank you very much. This will
be great. This will be great. Thank you.

(Applause.)
CHAIRPERSON GARDELLA: The last thing that we have to do is to distribute our certificates or plaques of recognition to our chairs.

PAST CHAIRPERSON HAROUTUNIAN: If you read them, I will give them out.

CHAIRPERSON GARDELLA: The first one Rob Buchanan. Is Rob back? I know he had to leave, and he said he was coming back, so I don't see him. This is in appreciation to Robert J. Buchanan, who has been our chairperson of the Hearings Committee for this past year, and we will make sure that Rob gets that. I think he is coming back for the reception here.

And our second person, Steve Gobbo, he also had to leave, and he has been our Special Issues Committee chair, so we will get that to him. But I think we still have some people that are left here.

Victoria Radke. Victoria, come on up.

(Applause.)

CHAIRPERSON GARDELLA: Victoria has been a long-time member of the Assembly. She has done a wonderful job this year. Thank you for serving as a committee chair and all your years of service.

Our next person is, who is your 2006/2007 chairperson of the Rules and Calendar Committee, Sheila Garin. Come on up, Sheila.

(Applause.)

CHAIRPERSON GARDELLA: Sheila, thank you for keeping everything so well run.
MS. GARIN: Thanks for having me.

CHAIRPERSON GARDELLA: Our next chairperson is the chairperson of the Drafting Committee, John Reiser. John kept everything going and kept everything rolling.

(Applause.)

CHAIRPERSON GARDELLA: Next, our 2006/2007 chairperson of the Nominating and Awards Committee, Elizabeth Johnson, our new clerk. Thank you.

(Applause.)

CHAIRPERSON GARDELLA: And we also have outgoing certificates for our members who are termed out and they will not be returning. We wish they would be able to, but maybe they can return after a few years down the road when allowed. Gerard Andre, is he here? I think he might have left. I think he might have left earlier. We will get that to him.

Sheila Garin, thank you.

(Applause.)

CHAIRPERSON GARDELLA: Our next member, Scott Garrison. Thank you for your years of service.

(Applause.)

CHAIRPERSON GARDELLA: Our next member, Randall Miller. Thank you, Randall.

(Applause.)
Piatt. Thank you, Paul. Are you still here? We will get that to Paul.

Our next member, Teresa Bingman. We will get that to her.

Next is Matthew Serra. Thank you, Matthew. Are you still here? No, we will get that to Matt.

And last but not least, Richard Trost, and I know Richard couldn't be here today, so we will get that to Richard.

Again for all of you, thank you for the years of service and your commitment to the Assembly.

If any of you parked at the DeVos Place, see Anne Smith. She has parking passes. Also, make sure you do not leave until you have signed an attendance sheet or you will not get credit for all this time that you have put in today.

And then also I would ask if you have the forms relating to the preferences for the committees, bring those up, and the liaison positions, bring those up, put them on the table over on this side of the lectern here.

And then lastly, as it relates to your photograph, if you are going to be a member of the Assembly for the April 2008 meeting, I would like to have you have your picture taken. Marge Bossenbery is right back there. She will take your photograph outside. We would like to get those done, and that way we have less work to do at the April meeting so we can get our directory up and running, so make sure you take the time to see Marge, and it will just take
about 30 seconds to do it.
And also please enjoy the 35th anniversary reception. It's just right outside the doors. In fact, I think you can go through the glass doors and enjoy the river outside and come back in. And I would entertain a motion to adjourn.

VOICE: So moved.
CHAIRPERSON GARDELLA: Do I hear support?
VOICE: Support.
CHAIRPERSON GARDELLA: Any discussion?
All in favor.
Any opposed
Proceedings adjourned at 4:50 p.m.)

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STATE OF MICHIGAN  
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I certify that this transcript, consisting of 175 pages, is a complete, true, and correct transcript of the proceedings held by the Representative Assembly on Thursday, September 27, 2007.
October 16, 2007
Connie S. Coon, CSR-2709
831 North Washington Avenue
Lansing, Michigan 48906