

STATE OF MICHIGAN  
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE  
ASSEMBLY of the STATE BAR OF  
MICHIGAN

---

Proceedings had by the Representative Assembly of the  
State Bar of Michigan at Lansing Community College,  
West Campus, 5708 Cornerstone, Lansing, Michigan, on  
Saturday, April 18, 2009, at the hour of 9:30 a.m.

AT HEADTABLE:

KATHERINE KAKISH, Chairperson

ELIZABETH MOEHLE JOHNSON, Vice-Chairperson

VICTORIA A. RADKE, Clerk

JANET WELCH, Executive Director

HON. JOHN M. CHMURA, Parliamentarian

ANNE SMITH, Staff Member

1	CALENDAR ITEMS	PAGE
2	Call to order	3
3	Certification of quorum	3
4	Adoption of proposed calendar	4
5	Approval of 9-18-08 summary of proceedings	4
6	Address by Chief Justice Marilyn J. Kelly	7
7	Filling of vacancies	22
8	Remarks by Chairperson Katherine Kakish	25
9	Remarks by President Edward H. Pappas	37
10	Remark by Executive Director Janet K. Welch	48
11	Public Defense Update by Elizabeth Lyon	61
12	Approval of 2009 Award Recipients	81
13	Informational Report on Proposed MCR 8.127 - Attorney Solicitation	86
14	Changing Face of the State Bar of Michigan	101
15	Consideration of Proposed Amendment of MCR 8.115 - Cell phone Usage in Court Facilities	110
16	Consideration of MCR 2.516 Instructions to the Jury	123
17	Consideration of Revised Uniform Arbitration Act	153
18	Adjournment	177
19		
20		
21		
22		
23		
24		
25		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Lansing, Michigan  
Saturday, April 18, 2007  
9:30 a.m.

R E C O R D

CHAIRPERSON KAKISH: Good morning, members of the Representative Assembly. If everybody will take their seats.

Once again, good morning. My name is Kathy Kakish, and I am Chair of the Representative Assembly of the State Bar of Michigan, which is the final policy-making body of the State Bar of Michigan, and I call this meeting to order. And I am told that I do need to hit this against -- that hurts.

I now recognize Clerk Radke.

CLERK RADKE: Good morning, Madam Chair. I am pleased to announce that we have a quorum.

CHAIRPERSON KAKISH: Thank you. I now recognize Michael Pope, chair of the Rules and Calendar Committee.

MR. POPE: Good morning, Michael Pope, 32nd circuit. I would move for adoption of the amended calendar as before everyone at their tables. Three changes, item eight was moved to item four, and there are new proponents on items 14 and 16.

CHAIRPERSON KAKISH: Any support?

1 VOICE: Support.

2 CHAIRPERSON KAKISH: Any discussion?

3 Hearing no discussion, all in favor of the  
4 proposal to adopt the amended calendar, say aye.

5 Any opposed, say no.

6 Any abstentions, yes.

7 The ayes have it, and the revised calendar is  
8 approved.

9 At this moment we move on to item 1D on the  
10 calendar, and I would entertain a motion to approve  
11 the September 18, 2008 summary of proceedings.

12 VOICE: So moved.

13 VOICE: Support.

14 CHAIRPERSON KAKISH: Hearing it being moved  
15 and seconded, any discussion?

16 Hearing none, all those in favor say aye.

17 All those opposed, say no.

18 Any abstentions.

19 And the ayes have it. And the motion  
20 carries. The summary of the proceedings of the  
21 September 18, 2008 meeting is adopted.

22 It is with great honor that I introduce to  
23 you our keynote speaker, Chief Justice Marilyn J.  
24 Kelly.

25 Chief Justice Kelly was raised in Detroit and

1 graduated Mackenzie High School. She earned a  
2 bachelor's degree from Eastern Michigan University,  
3 and after a year's graduate study at the Sorbonne  
4 University of Paris, France, she received her master's  
5 degree from Middlebury College in Vermont.

6 She taught French language and literature in  
7 the Grosse Pointe Public Schools, at Albion College,  
8 and Eastern Michigan University. She then attended  
9 law school at Wayne State University and was awarded a  
10 law degrees with honors. She now serves the law  
11 school on its Board of Visitors.

12 Before taking the bench, Chief Justice Kelly  
13 was a courtroom attorney for 17 years. Her practice  
14 was diverse in subject matter and geographic area.

15 In 1988 she was elected to the Michigan Court  
16 of Appeals and re-elected in 1994. She was elected to  
17 the Michigan Supreme Court in 1996 and re-elected in  
18 2004 for a term that expires in January 2013.

19 Chief Justice Kelly is a member of the  
20 Oakland County Bar Association where she has been  
21 active as chair of the Family Law Committee and  
22 co-chair of the President's Task Force on Approved  
23 Dispute Resolution. She was an arbiter for the  
24 American Arbitration Association and a panel member of  
25 the State Attorney Discipline Board. She is editor of

1 the 6th edition of Michigan Family Law that is  
2 published by ICLE.

3 In 2003 Chief Justice Kelly became a fellow  
4 of the Michigan State Bar Foundation. Chief Justice  
5 Kelly served as president of the Women's Bar  
6 Association and president of the Women Lawyers  
7 Association of Michigan.

8 Her community service has included Board  
9 member of Channel 56 public television in Detroit,  
10 Board member of the Women's Survival Center in  
11 Pontiac, vice president of the Board of the Detroit  
12 Institute of Technology, developing committee member  
13 of St. Joseph Mercy Hospital in Pontiac, and member of  
14 the Citizens Advisory Committee of the Detroit Public  
15 Schools, Wayne County Community College, and Oakland  
16 County Community College.

17 Chief Justice Kelly has been awarded honorary  
18 doctor of law degrees by Eastern Michigan University  
19 and Michigan State University College of Law and also  
20 the distinguished service award by the Michigan  
21 Education Association. She has been selected by Court  
22 Magazine as one of Michigan's 95 most powerful women.

23 In 2003 Chief Justice Kelly received the  
24 Eleanor Roosevelt Humanities Award from the State of  
25 Israel Bonds Attorney Division. In 2005 she was

1 honored by Wayne State University as one of the  
2 University's outstanding alumni.

3 Turning to her commitments to the State Bar,  
4 Chief Justice Kelly served as a member of the Family  
5 Law Council. From 1999 through 2003 Justice Kelly was  
6 co-chair of the Open Justice Commission, an  
7 organization of the State Bar that is devoted to  
8 making justice available to all.

9 This Representative Assembly is very, very  
10 proud, and rightfully so, to claim Chief Justice Kelly  
11 as one of its own. Chief justice Kelly has served as  
12 a member of this Representative Assembly, and in 2003  
13 the Assembly presented Chief Justice Kelly with the  
14 Michael Franck Award for her outstanding contribution  
15 to the legal profession.

16 Over the years Justice Kelly returned several  
17 times to address the Assembly on a number of matters  
18 before it, and today is no exception.

19 At this time I would ask that members of the  
20 Representative Assembly join me in welcoming Chief  
21 Justice Marilyn J. Kelly.

22 (Applause.)

23 CHIEF JUSTICE KELLY: Thank you, Ms. Kakish.  
24 What a warm welcome. I certainly appreciate it. Good  
25 morning to you.

1                   I must say standing here I do have a sense of  
2                   deja vu. It was about 20 years ago that I sat where  
3                   you are sitting, and I was practicing law, and I  
4                   remember wondering whether the work we do on the  
5                   Assembly did get noticed or much less appreciated by  
6                   the Michigan Supreme Court.

7                   So I can assure you now on that score that my  
8                   colleagues and I value the work that you do. We  
9                   value, of course, the legal profession that you  
10                  represent.

11                  As someone who has been involved in state and  
12                  local Bar activities for many years, I continue to  
13                  believe that the organized Bar, particularly the  
14                  mandatory Bar, is essential to maintaining the  
15                  integrity of the profession.

16                  Obviously any Bar association must to some  
17                  extent support its members in the practice of law, and  
18                  that includes offering services and opportunities for  
19                  members to improve their skills and find better ways  
20                  to manage their practice, market their services, in  
21                  short to make a living. But the organized Bar does  
22                  more. It serves as a vehicle for each of us to look  
23                  beyond our own interest and the greater needs of the  
24                  justice system.

25                  This morning I will give you an update on

1           some recent developments on the Supreme Court,  
2           including our administrative work and some of my goals  
3           as Chief Justice. It's my hope that you will find  
4           something in my report today that will interest you or  
5           engage you, recognizing that as members of the  
6           profession our ultimate responsibility is to the rule  
7           of law and the justice system that makes it possible.  
8           You can and should, both as individuals and as an  
9           organization, play an advisory role to the  
10          Supreme Court and to our administration of the system  
11          of justice here.

12                         In that regard I would like to recognize a  
13          few of the Representative Assembly's contributions to  
14          the Court's administration.

15                         MCR 8.126, which governs pro hac vice  
16          admissions, went into effect in June 2008. It was a  
17          Representative Assembly proposal. Interestingly, in  
18          the first six months this rule has generated \$27,000  
19          in fees that are allocated to the attorney discipline  
20          system and the client protection fund.

21                         The waiver of dues for State Bar members in  
22          full-time military service adopted by our Court in  
23          October 2008 also originated with the Assembly, as did  
24          rules regarding electronic service and others that  
25          have been adopted by the Court in the same or nearly

1 identical wording as proposed by the Representative  
2 Assembly.

3 So we appreciate the Assembly's work. We  
4 appreciate your continued involvement in the Court's  
5 administrative process, particularly when that process  
6 is now more public than ever.

7 As you know, beginning in January the  
8 Supreme Court started holding its administrative  
9 conferences in public and that they are televised by  
10 Michigan Government TV. This change, in my opinion,  
11 is long overdue and will help bring greater  
12 transparency to the Court's administrative work.

13 Obviously our decision-making process  
14 regarding cases cannot take place in public, but I do  
15 not see that the Supreme Court's administrative work  
16 is really different in function than the work of other  
17 government branches.

18 For example, when I was on the State Board of  
19 Education where I served for 12 years we held our  
20 meetings in public, and throughout those 12 years I  
21 don't recall ever thinking that we were impaired or  
22 hampered in some way because we were working in the  
23 sunshine, in the public's eye.

24 For some years the Michigan Supreme Court has  
25 had a public administrative process in the sense that

1 we publish possible Court Rule changes and other  
2 administrative proposals for comment and that we hold  
3 public hearings. To me it made no sense that we would  
4 hold part of our process in public but keep the  
5 administrative conferences behind closed doors. So I  
6 welcome this change.

7 That's not to say that my six colleagues and  
8 I have perfected the way we are doing it. Inevitably  
9 there is some awkwardness involved in making  
10 significant changes, and, indeed, we are still working  
11 out the rules that will govern these meetings.

12 So the famous saying about not watching  
13 either sausage or legislation being made applies to  
14 our administrative conferences as we adjust to holding  
15 them in public, but I think that anyone watching will  
16 appreciate that the justices bring a great deal of  
17 passion and energy and commitment to their work.

18 When we have gotten past our initial growing  
19 stage, I think that the public, and particularly the  
20 Bar, is going to be much better informed and more  
21 engaged in our administrative process than ever  
22 before.

23 At the risk of telling you what you already  
24 know, I will go quickly over how the Court's  
25 administrative process works.

1                   When the Court receives a proposal for a  
2                   Court Rule change, there is an initial period of study  
3                   and discussion among the justices. At our public  
4                   conference we decide what action to take. For  
5                   example, whether to publish the rule for comment, and,  
6                   if so, whether the proposed rule does then go on our  
7                   website, and it's also distributed to the media and to  
8                   the State Bar.

9                   The State Bar publishes it, as you probably  
10                  know, in the State Bar Journal and electronically via  
11                  the weekly public policy update, which is both  
12                  e-mailed and archived on the State Bar's website.

13                 There is a comment period, it's typically 90  
14                 days, and comments can be submitted to the Clerk of  
15                 the Court either by e-mail or by letter. Now, all  
16                 comments are posted on the website, along with the  
17                 proposed rule change that it addresses. I think this  
18                 is a really good step, because you can see not only  
19                 what you think but what other people think about this  
20                 proposed rule change.

21                 And then, once the period expires, typically  
22                 the matter is brought back to the Court's agenda for a  
23                 public administrative hearing, and these are the ones  
24                 that are open to anyone, and anyone can come to those  
25                 and comment.



1           unwritten rule for a challenged justice to decide him  
2           or herself whether to recuse, and that has been the  
3           final decision that's gone out under an order of the  
4           court, and I think many practicing attorneys have not  
5           known, and I didn't know early, that this was really  
6           not a ruling so much of the Court as of that  
7           individual justice.

8                         It's been unclear also what standards the  
9           justice should apply, so one of my goals as Chief  
10          Justice is that the Court adopt a written recusal  
11          policy that's clear, fair, and workable, at least as  
12          clear, fair, and workable as we can make it, and to  
13          that end last month the Court published three  
14          alternative proposals for public comment. The comment  
15          period runs till August 1st, and I realize that does  
16          not provide the Assembly an opportunity to comment as  
17          a body, but I will encourage you as individuals to  
18          make your views heard.

19                        Now, obviously I am only one of the seven,  
20          and so what I say about this really only reflects my  
21          view and not necessarily the opinion of many of my  
22          colleagues, although I would hope that it does.

23                        Speaking for myself then, I strongly favor a  
24          written recusal rule that provides some review of a  
25          justice's recusal decision based on an impartial

1 review standard.

2 You may be familiar with the Caperton case  
3 that's now before the United States Supreme Court.  
4 That case is quite dramatic in its facts, and the  
5 decision is supposed to come down in June. We are all  
6 watching it eagerly. It's a reminder that we can't  
7 allow a challenged justice to be the last word on a  
8 recusal motion.

9 I also think that we can't have a recusal  
10 standard that allows an attorney or a party to create  
11 grounds for recusal through personal attacks on a  
12 justice. It doesn't make much sense for us to have a  
13 rule that allows Janet here to punch me and then to  
14 say, okay, now you are offended, you can't rule on any  
15 of my cases. Not that, of course, Janet would do  
16 that.

17 So this is just an example of how complicated  
18 this becomes. But that, I believe, is no reason why  
19 the Court shouldn't adopt the recusal rule, why it  
20 should shrink from formulating a good procedure, and,  
21 as I have said, we hope to have much input from you,  
22 from the Bar membership.

23 So if you go to the Supreme Court's website  
24 and look under the resources tab, you will find a link  
25 which will take you to the proposed Court Rule, and it

1 will take you to ADM 2009-4, which is the rule with  
2 instructions on how to submit comments.

3 One particularly valuable part of this  
4 process, at least for me, is that comments on this and  
5 other published administrative matters are on our  
6 website and that they generate more comments by others  
7 who have reacted to the postings. So you may find it  
8 helpful, I am sure you will, to view these comments on  
9 the pages, in case you haven't already, and to submit  
10 your own.

11 One of my responsibilities as Chief Justice  
12 is to appear before the Legislature and budget  
13 hearings, and I will be appearing before a House  
14 subcommittee next week. That is a harrowing task  
15 because, despite the great respect that the  
16 Legislature gives to the Court, the legislators are  
17 under great pressures these days to cut the budget,  
18 ours included.

19 So on the other hand, I get to present some  
20 of the most exciting work that the judicial branch  
21 does to further the administration of justice,  
22 including a new pilot project for mental health courts  
23 and many technological initiatives that we are  
24 undertaking.

25 Earlier this year the Pew Center on the

1 States released a report entitled One in 31: The Long  
2 Reach of American Corrections that underscores the  
3 dire need we have for alternatives to incarceration.  
4 The report's conclusion was that we have reached the  
5 point where the skyrocketing rate of imprisonment is  
6 not having the desired effect, and we are not gaining  
7 better public safety and certainly not preventing  
8 recidivism.

9 In Michigan, \$2.18 million was spent on  
10 corrections in fiscal year 2008, and as of the end of  
11 2007 one in 27 adults was under some form of  
12 correctional control -- prison, jail, probation,  
13 parole.

14 Now, were we not prodded by the worst fiscal  
15 crisis in a generation, we might be paying less  
16 attention to this problem, but corrections spending,  
17 formerly off limits, has become a prime target for  
18 cuts in Michigan and in our sister states, and we are  
19 forced to look for better ways to deal with offenders.

20 Common sense says that it would be far better  
21 and far less costly to make available to nonviolent,  
22 low risk offenders services that would help them avoid  
23 landing in trouble again. And one very promising  
24 answer to this problem is the problem solving or  
25 therapeutic court movement.

1                   In Michigan the therapeutic court's approach,  
2                   this approach is most evident in the 89 drug and  
3                   sobriety courts that we have instituted throughout the  
4                   state. Some focus, you may know, some focus on  
5                   adults, others on juveniles, and still others on drunk  
6                   driving offenders or parents whose substance abuse  
7                   leads to child abuse and neglect.

8                   Recent studies by the Supreme Court  
9                   Administrative Office and the Federal Governmental  
10                  Accountability Office indicate that drug courts reduce  
11                  recidivism and save taxpayer money.

12                  The 2008 study by the Urban Institute found  
13                  that for 55,000 people in adult drug courts about half  
14                  a billion dollars was spent on supervision and  
15                  treatment, but those programs reaped a savings of over  
16                  a billion dollars in reduced law enforcement, prison  
17                  time, and victim cost.

18                  One of the challenges we now face is to  
19                  continue funding for these programs. The judicial  
20                  branch faces a two percent reduction in general fund  
21                  and a loss of \$550,000 for the Mental Health Court  
22                  Pilot Project, and we may lose federal funding for our  
23                  drug and sobriety courts, so I have asked the  
24                  Legislature for federal stimulus money for our drug  
25                  and mental health courts in the event of budgetary

1       shortfall, and I believe that any investment we make  
2       in these courts will be well rewarded for the  
3       offenders whose lives are turned around, for the  
4       public's greater safety, and for the taxpayers.

5               On the technological front, also the Court is  
6       doing its best to keep pace with the times, and  
7       certainly, as in the law generally, the times tend to  
8       outstrip the law. So keeping up is a constant  
9       challenge.

10              In recent years the Judicial Information  
11       Systems, this is a division of our State Court  
12       Administrative Office, took the lead in the Judicial  
13       Network Project through which over 95 percent of all  
14       felony and misdemeanor dispositions are now reported  
15       electronically on a daily basis and often immediately  
16       from state courts to the Michigan State Police and the  
17       Secretary of State.

18              This is a big improvement over years past. I  
19       had a relative who worked for corrections, and she  
20       would tell me, and she was in technology, and she  
21       would tell me not too many years ago how far behind  
22       the system was, and it was appalling, and trial judges  
23       know this in particular.

24              Other projects include online payment of  
25       traffic tickets, a statewide system for trial court

1 case management, video conferencing for prisoners, and  
2 electronic filing of court documents. And we are  
3 particularly excited about the judicial data  
4 warehouse, well on its way to becoming a statewide  
5 repository for court data for both pending and closed  
6 cases.

7 As of the end of 2008, the warehouse  
8 contained over 34 million documents and was  
9 implemented in 219 courts. When I began practicing  
10 law many years ago, more than I wish to tell you, we  
11 were still using Selectric typewriters. The idea of  
12 being able -- maybe some of you can remember back that  
13 far. The idea of being able to collect and retain and  
14 retrieve that kind of information is just astounding.

15 The warehouse has many potential  
16 applications, ranging from law enforcement to child  
17 welfare, and this truly is a brave new world for the  
18 administration of justice, but, here again, we find  
19 ourselves challenged by budgetary constraints. We  
20 hope that the Legislature will allocate some stimulus  
21 funding to allow judicial data warehouse to be  
22 implemented in the 25 remaining courts where it isn't  
23 now, and some of them are some of our biggest courts,  
24 allowing us to complete the project more quickly and  
25 freeing up money for other initiatives to benefit the

1 public, such as online ticket payment.

2 I do have a wish list for my tenure as Chief  
3 Justice, and topping off the list of projects, to  
4 improve access to justice, and let me say here how  
5 much I commend the Bar for its work in this area. I  
6 hope the Court can get in line and do as much in years  
7 to come.

8 We have enough legal aid funding in a better  
9 world to accommodate everyone who could not afford to  
10 pay for an attorney, and legal aid lawyers would be  
11 compensated at the level that would not compel them to  
12 take on huge caseloads, in a better world, just to  
13 make ends meet. Legal self-help centers, such as that  
14 in Washtenaw County, offer valuable assistance to  
15 those who must navigate the legal system by themselves  
16 in basic matters, but they are no substitute for a  
17 good lawyer for those, for example, charged with  
18 serious crimes or facing termination of their parental  
19 rights.

20 Recently with the closing of the Detroit  
21 Police Crime Lab we have had to confront the very real  
22 possibility that there may be innocent people, more  
23 than in the past, serving prison terms as the result  
24 of faulty evidence. And reviewing these cases has a  
25 price tag, and I have asked for stimulus money for



1 vacancies for today's meeting. Jeff Nellis, chair of  
2 the Assembly's Nominating and Awards Committee is  
3 recognized.

4 MR. NELLIS: Good morning, everyone. I am  
5 Jeff Nellis from the 51st circuit, and it's been a  
6 real privilege to serve as the chair of the Nominating  
7 and Awards Committee, and before I get started filling  
8 vacancies, I would briefly like to thank and recognize  
9 the folks on the committee who have helped us do our  
10 work. We have been quite busy and have had some  
11 interesting issues to deal with, so if you could  
12 stand, Tom Evans 5th circuit, Rick Paul from Oakland  
13 County, Eilsia Schwartz from Missaukee and Wexford  
14 County, and we also have associate members Kevin  
15 Lesperance from Kent and Andrea Monnett from  
16 Marquette.

17 Again I really appreciate all the help.

18 (Applause.)

19 MR. NELLIS: Our goal always is to have a  
20 hundred percent participation, and sometimes that's  
21 more challenge than people realize. So with that, I  
22 will first indicate and recognize the folks that have  
23 been nominated, and when I am done listing everybody I  
24 would like to have you stand, then I will make a  
25 formal motion to have these folks seated as

1 representatives of their circuit.

2 First of all, from the 3rd circuit Sean  
3 McNally, 3rd circuit Lauren Rousseau, 3rd circuit Lisa  
4 Screen, 3rd circuit Dustin Lane, 3rd circuit Patrick  
5 McLain, 6th circuit Scott Wolfson, 7th circuit Richard  
6 Morley Barron, 10th circuit Jeff Scott, 24th circuit  
7 Ryan Edberg, 29th circuit Rhonda Clark-Kreuer, 30th  
8 circuit Catherine McClure, 33rd circuit John Jarema,  
9 35th circuit Susan Thorman, 43rd circuit Victor Fitz,  
10 44th circuit Dennis Brewer, 47th circuit Anne  
11 McNamara, 49th circuit Pete Mekas, and 52nd circuit  
12 Tami Salens. If you could give them a warm round of  
13 applause.

14 (Applause.)

15 MR. NELLIS: With those introductions, I  
16 would again make a formal motion that these  
17 individuals be seated and become members of this body.

18 VOICE: Support.

19 CHAIRPERSON KAKISH: Hearing support, any  
20 discussion? Yes.

21 MR. KRIEGER: Nick Krieger from 3rd circuit,  
22 Wayne circuit. I appreciate everything Jeff did, and  
23 I am sure all these people are great. I would just  
24 note for the record that insofar as the 3rd circuit  
25 nominees are concerned, the State Bar bylaws were not

1 followed with respect to their nominations, and I  
2 realize I didn't object within 20 days, as required by  
3 the bylaws, but maybe we could amend our rules so that  
4 in the future we do things consistently with the rules  
5 concerning the State Bar and the State Bar bylaws.

6 Thanks.

7 CHAIRPERSON KAKISH: Thank you. We do  
8 welcome perhaps your participation on our committee  
9 that deals with the rules of the State Bar, and we  
10 would welcome your input concerning that.

11 No further discussion, we now move to the  
12 motion to approve the vacancies, to fill the  
13 vacancies. All those in favor say aye.

14 Any opposition?

15 Any abstentions?

16 The ayes have it, and the motion to fill the  
17 vacancies carries and is adopted.

18 (Applause.)

19 CHAIRPERSON KAKISH: Welcome to each and  
20 every one of you. You may now approach your circuit  
21 tables and take your seats with the Assembly. Thank  
22 you.

23 The next item on the calendar is item number  
24 five, and that happens to be the remarks from the  
25 Chair, and there is quite a lot to report on since we

1 last met in September, and you will hear more about  
2 the developments that have occurred since the  
3 September meeting later on through the number of  
4 presentations that are scheduled for this morning.

5 This really has been a very, very busy time  
6 at the State Bar, and that's due to three very  
7 important challenges which impact the legal  
8 profession. And I would like to talk a little bit  
9 about these three challenges.

10 The first challenge is faced not only by  
11 lawyers but by the entire state of Michigan, and  
12 that's the economic situation of the state. The  
13 State Bar on its part is working on a number of things  
14 to help lawyers, and especially those small firms and  
15 solo practitioners, to adapt to these rough economic  
16 times and to continue meanwhile to provide the quality  
17 of work that we experience in our profession.

18 Now, leading these activities is the  
19 President of the State Bar of Michigan, Ed Pappas, who  
20 will soon speak to you about what the State Bar of  
21 Michigan is doing in this respect to help our  
22 membership.

23 The second challenge goes to the heart of our  
24 profession, and it goes to the heart of the  
25 constitutional rights of a segment of the population

1 of Michigan, and that is the constitutional violations  
2 to the due process rights of indigent criminal  
3 defendants.

4 For those of us who attended last September's  
5 meeting, we heard a detailed presentation on a study  
6 that the State Bar had sponsored. The results of the  
7 study did not present a pretty picture. For those of  
8 us who were not at the September meeting, the  
9 transcript of that meeting is found online at the  
10 Assembly's archive of meetings and proposals on the  
11 State Bar's web page. Please take a moment if you can  
12 to review that transcript.

13 Developments with respect to the  
14 constitutional crisis are taking place in Michigan,  
15 but not only in Michigan but throughout the United  
16 States, to address the problem, and the State Bar is  
17 certainly there with its director of governmental  
18 relations, Elizabeth Lyon. She will inform you of the  
19 latest developments later on this morning.

20 Now, these first two challenges, that of  
21 Michigan's economy and the constitutional due process  
22 crisis, will require this Assembly's attention in the  
23 near future. The third challenge may also require the  
24 attention as well.

25 Here this body, the final policy-making body

1 of the State Bar of Michigan, may have to take a  
2 closer look at what policies should be taken for the  
3 Bar in light of the expected changes within the makeup  
4 of the Bar's membership. In other words, the makeup  
5 of who the attorneys in the state of Michigan are.  
6 Anne Vrooman, who is the director of research and  
7 development, will be giving a presentation later this  
8 morning on the changing face of the State Bar's  
9 membership.

10 This has also been a very busy time for the  
11 State Bar in other respects, and I would like to  
12 highlight with two of those.

13 First, the Board of Commissioners and the  
14 staff reviewed the State Bar Strategic Plan, and if  
15 you may recall, the Strategic Plan was adopted by this  
16 body three years ago at its April 2006 meeting. And  
17 the Board of Commissioners and the staff took a look  
18 at the Strategic Plan recently to see how well it's  
19 working for us, and I am delighted to report that it  
20 is working very well and is being implemented  
21 according to plan. Executive director Janet Welch  
22 will give you more information on that this morning as  
23 well.

24 The second item I would like to tell you  
25 about is that I am very honored to announce that a

1 project which was initiated by Ed Haroutunian during  
2 his chairmanship of the Assembly back in 2006-2007 and  
3 which was carried on by the immediate past chair, Bob  
4 Gardella, has now come to completion.

5 It was Ed Haroutunian's strong belief, and  
6 it's a belief that I am sure most of us here, if not  
7 every single person here, shares, that the history of  
8 this Assembly should be commemorated. As a small  
9 token, this is being done at the State Bar building,  
10 and it's being done through a pictorial display of  
11 past Assembly chairs.

12 Now, it took us some time to gather the  
13 pictures of some of the earlier chairs, but we got all  
14 pictures but one, and now the display is up at the  
15 Michael Franck building. Whenever you are in town in  
16 Lansing during business hours, please take a moment to  
17 pass by the State Bar building. Visit the staff  
18 there. State Bar building is our building, belongs to  
19 all attorneys, and, please, you know, take a look at  
20 the pictorial display.

21 To officially commemorate the pictorial  
22 display we are going to have a reception to which all  
23 the past chairs will be invited to, and that will take  
24 place at the State Bar on July 24, the afternoon of  
25 July 24, which will be a Friday. Stay tuned. You are

1 going to receive more information about that.

2 Some 37 years ago, in 1972, long before,  
3 looking at this room, some of you were even born, the  
4 Supreme Court established the Representative Assembly,  
5 this body, as the final policy-making body of the  
6 State Bar, thus making the leadership of the  
7 State Bar, which is a mandatory Bar, more responsive  
8 to practitioners all over the state.

9 Today we stand on the shoulders of the giant  
10 of past Assembly members, and we kind of now take for  
11 granted many of the policies that the Assembly adopted  
12 and many of the resolutions and proposals that it  
13 submitted to the Supreme Court and to the State  
14 Legislature, who in turn adopted them.

15 Chief Justice Kelly was kind enough to  
16 mention a couple of the past proposals that this  
17 Assembly had passed and which are doing well and have  
18 served the state very well.

19 We continue to carry on in this mission, and  
20 that mission is actually carried on in many different  
21 levels. One of these levels involves the officers of  
22 the Assembly. To my left is Vice Chair Elizabeth  
23 Johnson, and next to her is Clerk Victoria Radke, and  
24 I have to say that these two remarkable lawyers are a  
25 credit to this Assembly, and since the September

1 meeting they have contributed far more than their  
2 duties call in helping with the day-to-day work that  
3 actually led us to today's meeting and has laid the  
4 ground for upcoming future meetings.

5 And with respect to today's meeting, to my  
6 right is someone who is very brand new to the  
7 Assembly. Judge John Chmura of the 37th District  
8 Court of Warren is helping us make sure that today's  
9 meeting runs smoothly. Over the last several months  
10 Judge Chmura has been working with the Assembly  
11 officers in all those aspects to the orderly conduct  
12 of today's and future meetings. We are honored that  
13 Judge Chmura has agreed to serve as our  
14 parliamentarian, and we look forward to many more  
15 meetings to come. Thank you, Judge Chmura.

16 JUDGE CHMURA: Thank you.

17 (Applause.)

18 CHAIRPERSON KAKISH: And, of course, another  
19 level that the Representative Assembly works, without  
20 doubt, is through the State Bar leadership, and  
21 sitting next to Judge Chmura is the Executive Director  
22 of the State Bar, Janet Welch, and I can't begin to  
23 tell you how much she really is relied upon in making  
24 sure that the interests of the Assembly are being met.  
25 I thank you, Janet, for everything that you do. Thank

1           you.

2                       The Assembly also relies on the hard work of  
3           the Bar staff. We have several Bar staff members  
4           around the room, and hopefully you will get to meet  
5           each and every one of them. One of them is sitting  
6           right next to Janet here, and we wouldn't be able to  
7           operate from day to day without the hard work and the  
8           expertise and the dedication of Anne Smith, who is the  
9           administrative assistant.

10                      For those of you who know Anne, who have  
11           worked with Anne certainly will agree with me that she  
12           is a great person to work with. She is very  
13           dedicated, very hard working, and we are so lucky to  
14           have her working with us on the Representative  
15           Assembly.

16                      So as to maintain -- and I move on to a  
17           different level of how this Representative Assembly  
18           works. So as to maintain the vital coordination  
19           between the State Bar itself and the Representative  
20           Assembly, the Supreme Court Rules concerning the  
21           State Bar call for eight Board of Commissioners to  
22           serve as Assembly members, and at this point I would  
23           like all those commissioners to stand and let the  
24           members know who you are. Can you please stand.  
25           Don't be shy. Charles Toy, Tom Rombach, Julie

1 Fershtman, and our president, Ed Pappas. Thank you so  
2 much for all the work you do.

3 (Applause.)

4 CHAIRPERSON KAKISH: The Board of  
5 Commissioners meets roughly once a month, and a lot of  
6 work is involved in that, and I must say the Board of  
7 Commissioners, especially those who serve the  
8 Representative Assembly, have been very good in  
9 promoting the purpose of the Representative Assembly.

10 However, most single important people through  
11 whom this Assembly works and counts on for its success  
12 is actually you. Every single person sitting here in  
13 the room, whether you are elected, or those of you who  
14 have just been appointed today and will run for  
15 election, your work is so important on this  
16 Representative Assembly.

17 At the Bar Leadership Forum last summer, I  
18 had the great opportunity to address a group of future  
19 leaders in the profession, and the focus of my  
20 presentation actually was called the Wow Factor, wow  
21 as being w-o-w, I actually called it that, and the  
22 reason I called it that was because of my own personal  
23 experience sitting within the 3rd circuit.

24 A member can easily come into this room  
25 knowing exactly how he or she is going to vote on one

1 of the action items, no doubt about it. The member  
2 has done his or her homework, has contacted their  
3 constituents, know exactly what the constituents may  
4 or may not think about the proposal and has decided  
5 that, okay, once this action item comes in I am going  
6 to vote this way or that way on this proposal.

7 And it never fails to happen that when a  
8 member comes in to this room and the proposal is  
9 offered for discussion that fellow members will get up  
10 and stand in line behind these two microphones and  
11 start giving their comments about what they believe  
12 the vote should go on each particular proposal. Just  
13 listening to the experience, to the expertise, to the  
14 professionalism, to the keen intellect of fellow  
15 members, it happens over and over again. There are  
16 many times when I personally, and I know that many  
17 others in this room have totally changed their vote  
18 based on the expertise and the experience of the  
19 collective body here sitting in this room. It really  
20 is a wow factor.

21 I have always left this room, left these  
22 meetings as a result with a sense of great, great  
23 pride to be a lawyer. And a great, great pride and a  
24 feel of honor to be a part of this membership of  
25 highly dedicated, highly committed, highly

1 professional, and highly courteous members of the  
2 Representative Assembly.

3 The three Assembly members attend the Bar  
4 leadership forum every year, and we, we meaning  
5 myself, Liz and Victoria, will be there next month,  
6 and I assure you that the three of us will be up there  
7 promoting the Assembly, promoting the purposes of the  
8 Assembly, and letting the future leaders of the Bar  
9 know who you are.

10 I want to extend my sincere thanks and  
11 appreciation to you for being out there in the legal  
12 community promoting the work of the Assembly and  
13 serving as the State Bar's voice. My many thanks and  
14 appreciation to you for serving as the vital link  
15 between the Assembly and the lawyers in your circuit  
16 and with the State Bar sections, local Bar  
17 associations and affinity groups and all of you who  
18 are currently serving as Assembly liaisons. Your work  
19 is so important. I can't even begin to emphasize how  
20 important your work is in representing the Assembly  
21 and being the voice of the State Bar of Michigan  
22 within your constituents, and many thanks and  
23 appreciation to you for taking the time out of your  
24 very busy schedules and time out of your personal  
25 lives on Saturday and for your generous gift of time

1 and talent to our profession by serving the Assembly  
2 as a member. Thank you very much.

3 (Applause.)

4 CHAIRPERSON KAKISH: Well, moving on to the  
5 next item on the calendar, and that's remarks from the  
6 president, Ed Pappas. As you know, Ed is the 74th  
7 president of the State Bar of Michigan. He is a  
8 partner at Dickinson Wright. He has been with the  
9 firm of Dickinson Wright for the last 35 years and has  
10 significant litigation, trial, and appellate  
11 experience in all types of commercial litigation.

12 As you also may know, Ed has devoted much  
13 time and energy to the State Bar. He has been on the  
14 Board of Commissioners since 1999. He served as chair  
15 of the Access to Justice Campaign, and that's  
16 something you will be hearing about later as well  
17 today, which is a partnership of the State Bar and the  
18 Michigan State Bar Foundation and the civil and legal  
19 aid programs in Michigan.

20 However, all of the above information that I  
21 have read to you it is found in Ed's bio. That can be  
22 found on the State Bar's web page. What his bio does  
23 not say is his energy, dedication, and leadership  
24 skills as State Bar President, how he leads the Board  
25 of Commissioners with both vision and practical common

1 sense and a little bit of humor thrown in, and how he  
2 conveys his pride in the profession and spreads the  
3 message of the State Bar's good work all over  
4 Michigan. It was indeed an honor to witness Ed's work  
5 during the Upper Peninsula tour and to see how he  
6 related to the media up there and how he related with  
7 the membership in promoting everything good about the  
8 State Bar of Michigan. Ed.

9 (Applause.)

10 PRESIDENT PAPPAS: Well, thank you. This is  
11 the first time I have spoken to the Representative  
12 Assembly as a whole, but I know a lot of you, and many  
13 of you have come to meetings and dinners and lunches  
14 that I have spoken at, and I really do appreciate all  
15 members of the Representative Assembly who have done  
16 that. I try to acknowledge you when you are there.  
17 It's a privilege to talk to you today as a group. I  
18 am a little surprised that the cameras were taken away  
19 before this point, but what can I say.

20 And I did read the calendar and it looks like  
21 I have one minute left under the calendar, so I will  
22 have to ask the parliamentarian -- I had two and a  
23 half hours planned, but I assume that because I am  
24 President of the State Bar that's okay.

25 JUDGE CHMURA: You need a two-thirds

1 majority.

2 PRESIDENT PAPPAS: I think I am going to pass  
3 on that and stick with my ten minutes.

4 And I also appreciate Kathy. Kathy has done  
5 a great job here as Chair of the Representative  
6 Assembly, and she has traveled with me, she has come  
7 to a lot of meetings, and what I like about Kathy the  
8 most at these meetings is if I make a joke, she has  
9 the loudest laugh and really gets everybody else  
10 going.

11 What I would like to talk to you about today  
12 is a number of things that the State Bar is working  
13 on, and I want to say this, the Representative  
14 Assembly is an important part of the State Bar of  
15 Michigan. You heard the Chief Justice say that, and I  
16 believe that the Court does believe that. The Board  
17 of Commissioners believes that, and we have been  
18 working on increasing our communication with the  
19 officers of the Representative Assembly and the  
20 officers of the State Bar of Michigan and the  
21 State Bar staff, and that's because we together, it's  
22 important to advance the interests of the lawyers in  
23 the state of Michigan, it's important to advance the  
24 interests of the citizens of the state of Michigan and  
25 our justice system, and we can all do that together.

1                   And I see Ed Haroutunian just came to hear me  
2                   speak. I always say when I work with Ed is that two  
3                   Eds are better than one.

4                   In any event, I want to tell you about some  
5                   of the things we are doing, and I think this year the  
6                   State Bar is probably, more than any other year that I  
7                   have been involved on the Board, concentrated on what  
8                   the ABA President calls core values, and that is  
9                   access to justice, the independence of the judiciary  
10                  and the rule of law, diversity and law-related  
11                  education, among others. And we have projects in all  
12                  of those areas, and I am going to talk about a few of  
13                  them, and then others will be speaking about some of  
14                  the other things that we are talking about.

15                  But I really do appreciate if anybody has an  
16                  interest in getting involved in anything that we are  
17                  doing on an individual basis in addition to your work  
18                  on the Representative Assembly, please let anybody at  
19                  the State Bar know, because we love to get people  
20                  involved.

21                  And I want to start with Access to Justice.  
22                  You heard Chief Justice Kelly mention that the Court  
23                  is very interested in that. Matter of fact we had a  
24                  meeting with her and others about some of the things  
25                  we can do together, the Court and the lawyers. But

1 Access to Justice has been a top priority of the  
2 State Bar for many years, and it still is a top  
3 priority today, and our goal is to continue to  
4 establish a permanent endowment that will fund legal  
5 services for those who can't afford legal services in  
6 civil cases well into the future. And today, as of  
7 today, together with our partners, the State Bar, the  
8 State Bar Foundation and legal aid organizations  
9 throughout the state, have raised more than \$9 million  
10 for Access to Justice.

11 Last year lawyers devoted more than 42,000  
12 hours of pro bono services, and I want to congratulate  
13 all lawyers who devote time and money to Access to  
14 Justice and pro bono services, and I encourage  
15 everybody to increase our efforts in this campaign,  
16 because in tough economic times it is a really, really  
17 important campaign.

18 I also want to talk a little bit about  
19 law-related education. Informed citizens are crucial  
20 to the independence of our judiciary, and it's, I  
21 believe, our responsibility as lawyers to educate  
22 nonlawyers about the importance, not only of their  
23 legal rights under the law, but the importance of the  
24 judicial branch of government itself, which is the  
25 only branch of government which includes lawyers and

1 judges that protects individual rights and individual  
2 liberties, and we have many, many great programs  
3 throughout the state by local Bar associations and  
4 local courts that mainly present these programs on Law  
5 Day and Constitution Day, and we thought why not bring  
6 all these programs together so everybody can learn  
7 from each other to see what great things people are  
8 doing throughout the state and expand law-related  
9 education throughout the state.

10 And for that purpose we had, I believe, the  
11 first law-related education summit the end of last  
12 month where we invited educators, professionals, and  
13 lawyers who are interested in law-related education to  
14 come and develop a plan, and we are going to have a  
15 plan developed in the next month or so that will  
16 expand, promote, and deepen law-related education  
17 throughout the state, and if you are interested in  
18 law-related education or your local Bar associations  
19 are interested, we are going to get a lot of people  
20 involved in this project, because it's a very, very  
21 important project.

22 The other area I want to talk about before I  
23 get into what we are doing on the tough economic times  
24 that Kathy had mentioned is professionalism, because  
25 in tough economic times lawyers and law practices by

1           necessity have to treat their practices as a business,  
2           and it is a business, but we always have to remember  
3           that it's a profession first and a business second.

4                        So we want to promote professionalism  
5           throughout the state, and we started a project with  
6           the law schools, because I think it's really important  
7           for lawyers to connect with future lawyers, and we  
8           started a professionalism orientation program. We are  
9           going to start it at Cooley Law School, on May 8th is  
10          going to be the first one, and this is going to  
11          involve lawyers and judges to come out and work with  
12          new law students about the importance of  
13          professionalism in the practice of law.

14                       I have talked with all of the deans of the  
15          law schools, and we are going to be expanding this  
16          program throughout the state in coming years. These  
17          are long-term projects. So if you are interested in  
18          getting involved in the orientation programs, please  
19          let us know, and then we hope to expand this  
20          professionalism program. As some people say, don't  
21          start at the bottom, start at the top. So we are  
22          going to move all the way up to the top, and hopefully  
23          this will work. Professionalism programs are for  
24          lawyers and for judges.

25                       And, lastly, let me just talk about the tough

1 economic times, and Kathy mentioned this. We are  
2 undergoing probably the toughest economic times that  
3 any of us have faced in our own lives, and lawyers are  
4 not an exception to the hardships. There are many  
5 lawyers I have talked to around the state that are  
6 struggling. They either don't have enough work or  
7 they are actually out of a job and they are looking  
8 for work, and the State Bar has been looking at this  
9 issue since I have become president, and we have some  
10 long-term programs that we put into place.

11 The short-term with the job market, there is  
12 not a lot you can do with the short-term, but  
13 everybody has to look at it from the long-term.  
14 Michigan is a great place to practice. We are an  
15 international border state. We have great businesses  
16 in Michigan, but here are some of the things that we  
17 are doing to try to help lawyers plan for the future.

18 And one, state of Michigan is diversifying  
19 its business base. We all know that, and they are  
20 starting to do a pretty good job of it. Lawyers also  
21 need to diversify their own practices, and in order to  
22 do that we have been working with ICLE to develop  
23 seminars on new and emerging areas of the law.

24 For example, in Michigan we are bringing a  
25 lot of energy companies into the state, alternative

1 fuel technology, and energy law and environmental law  
2 are going to be hot areas of the practice of law in  
3 Michigan. Lawyers who educate themselves and become  
4 experts in that area can develop an additional  
5 practice to what they are doing, and that's the type  
6 of thing we are going to be working on with ICLE. In  
7 our September annual meeting you will be seeing that  
8 ICLE has a whole program developed for lawyers to help  
9 them in tough economic times, and we are going to be  
10 working with them on other seminars in that area.

11 The second area that is very important is  
12 technology. You can practice anywhere in the world  
13 now using technology. Technology is a crucial tool  
14 for all lawyers.

15 Luckily I am with a firm that helps me with  
16 technology, because technology has already passed me  
17 by, but if I didn't, if I did not have my firm, I  
18 would use the State Bar's Practice Management Resource  
19 Center.

20 They have a center with 12 computers where  
21 lawyers and staff can come in and learn about new  
22 technology. They can learn about the management  
23 practices. We have not only at the center, we have  
24 expert staff that will go out, they do seminars  
25 throughout the state, they do private consultations.

1           And I have told this story before, but I want to tell  
2           the story about how important technology is, because I  
3           had a case against a lawyer from Traverse City, has a  
4           small firm, and I asked him how often he came down and  
5           practiced in southeast Michigan, and he says he  
6           practices all over the state and all over the country  
7           because he developed a blog site where he writes  
8           articles on current issues in his field of expertise,  
9           and he has companies and individuals from all over the  
10          country looking at his blog site. They consider him  
11          the expert in this area in the state of Michigan and  
12          maybe in the country, and he has got business more  
13          than he can handle. And, interestingly, his expertise  
14          was sort of my expertise, so I am just trying to look  
15          at what he is doing for the future. But technology is  
16          very, very important.

17                         One of the other things we are doing at the  
18          State Bar is we are trying, we already started  
19          developing a centralized job bank for lawyers who are  
20          looking for work and for employers who are looking for  
21          lawyers to hire, and it's really through linking to  
22          other job banks, and I think we have highlighted that  
23          now on our website, and we are still expanding that  
24          area.

25                         And, lastly, and I am going to leave a lot of

1           this part to Janet to talk about, but it's our new, I  
2           will call it program. It's A Lawyer Helps program,  
3           and what we are doing there Janet will explain more,  
4           but the reason I think that's important to lawyers in  
5           the tough economy is that we are promoting the good  
6           work that lawyers do throughout the state of Michigan,  
7           and we have a logo A Lawyer Helps with T-shirts, caps,  
8           buttons, and you will see this, and the importance of  
9           this is that lawyers do so many great things, not only  
10          the pro bono work that they do, Access to Justice, but  
11          if you go into our community or any charitable  
12          organization, lawyers are leaders in every activity  
13          that you would want to find.

14                        We want to promote that so that the citizens  
15          of our state, the nonlawyers, know all the good things  
16          that lawyers do, and I think that's going to help  
17          lawyers in the long run, because this is a statewide  
18          program that we will be working with local Bar  
19          associations and courts and anybody else. In fact, I  
20          have handed a ton of T-shirts out to people when I  
21          have spoken, and I have told them to wear it to court,  
22          and I had meetings with the Chief Justice, the Chief  
23          Justice the other day, and I told her, I said I have  
24          been telling lawyers to do that, and I have been  
25          telling them that the Chief Justice of the

1 Supreme Court says that you can wear that T-shirt into  
2 court, and she did not say no, she smiled. I  
3 appreciate all the work you do, and thank you. Thank  
4 you very much.

5 (Applause.)

6 CHAIRPERSON KAKISH: Thank you very much, Ed.

7 Next are the remarks from the Executive  
8 Director, Janet Welch. We do have quite a few new  
9 members on the Representative Assembly, and I would  
10 like to let you know a little bit about who Janet  
11 Welch is and what she does here.

12 Janet oversees the day-to-day operations of  
13 the State Bar. She implements the policies that are  
14 set by the Representative Assembly and the Board of  
15 Commissioners, and she directs the efforts of the  
16 State Bar staff.

17 Now, Janet's background in state government  
18 is extremely valuable to the Representative Assembly  
19 and to the State Bar. This is particularly true when  
20 it comes to the issues that this Assembly votes on.  
21 She has a good working relationship with the  
22 Supreme Court and with the Legislature and with key  
23 figures in the Lansing government, and she does have a  
24 deep understanding of how the government works. And  
25 that is very, very vital to the work of the

1 Representative Assembly here to make sure that our  
2 proposals and resolutions reach maturation.

3 Janet's career in state government started as  
4 a legislative analyst for the Michigan House of  
5 Representatives. In 1980 she was chosen to create a  
6 nonpartisan legislative analysis office for the  
7 Michigan Senate, and she served as its director for  
8 about five years before she decided to attend law  
9 school at the University of Michigan.

10 After a clerkship with Michigan Supreme Court  
11 Justice Robert Griffin, Janet became executive analyst  
12 in the Office of the Chief Justice of the Michigan  
13 Supreme Court, and her work included, among other  
14 things, analysis of legislative issues affecting the  
15 judicial system. She then served as the  
16 Supreme Court's counsel for a period of four years.

17 In the year 2000 she left the Supreme Court  
18 to become general counsel for the State Bar. She  
19 served in that capacity until about a couple of years  
20 ago when the Board of Commissioners hired her as  
21 Executive Director. And since then she has served the  
22 Representative Assembly, the Board of Commissioners,  
23 and the State Bar with dedication and commitment and  
24 with great wisdom as it relates to working with the  
25 Supreme Court and the government. Janet.

1 (Applause.)

2 MS. WELCH: Thank you very much, Kathy.

3 I need to say that listening to that  
4 rendition of everything I have done makes me feel very  
5 old. Of all the work that I have done, and I have  
6 enjoyed almost all the jobs I have ever had, except  
7 for when I was a UPS truck loader, being Executive  
8 Director of the State Bar is by far the most  
9 challenging and the most inspiring work I have ever  
10 done. And it is a privilege to stand before the  
11 Representative Assembly today.

12 The last time I stood before you, literally I  
13 think as I was talking to you, we now know that the  
14 global financial system was on the verge of perhaps  
15 having its plug pulled out of the socket. That didn't  
16 happen, but the world has changed in dramatic ways  
17 from that morning in September, not in good ways  
18 financially. Economically we know there have been  
19 many references to that.

20 Because of that it's not surprising that I am  
21 asked on a regular basis how is the State Bar doing  
22 financially, and I am pleased to be able to tell you  
23 that we are doing just fine. I am telling you so I  
24 don't have to have 150 individual conversations with  
25 all of you, and because I can affirm the same thing

1           that I told you in September, which is that we are on  
2           target with our budget projections, and there is no  
3           reason to expect that we will be coming back to you  
4           any time soon to ask for a dues increase.

5                         Like every other organization, we have taken  
6           some hits with our investments, and if we hadn't, we  
7           probably would have the SEC on our backs saying who  
8           have you invested with. But we have been able to  
9           manage those hits, and we are doing just fine.

10                        I want to elaborate on what Kathy told you  
11           about the Strategic Plan, which the Board of  
12           Commissioners yesterday adopted in an updated version.  
13           I want to talk to three new goals that were added to  
14           the Strategic Plan, and they really flesh out what you  
15           heard both from Kathy and from Ed.

16                        One of the new strategic goals is to assist  
17           Michigan lawyers in adapting to changing economic  
18           conditions, technology, regulatory change which we  
19           anticipate in the next five to ten years at least, and  
20           globalization. And the end part of the goal is that  
21           we will do these things to position Michigan as a  
22           leader in providing legal services to emerging global  
23           markets.

24                        The second new goal that's been added to the  
25           Strategic Plan I want to call to your attention is

1           that we have committed to taking positions on and  
2           advocating concerning public policy issues at the  
3           national level to the extent that the positions  
4           promote the interest of the legal profession and the  
5           public in Michigan.

6                         We have on a regular basis been part of  
7           national advocacy for increasing legal aid in the  
8           national appropriations to the Legal Services  
9           Corporation, but we understand that in the world we  
10          live in today it's important also to pay attention to  
11          other ways in which the national government impacts  
12          Michigan lawyers and can help Michigan lawyers in the  
13          way they help the public, and the chief justice's  
14          several references to the stimulus package certainly  
15          underscore the importance of that new goal.

16                        And, finally, the last new goal of some  
17          magnitude is that the Strategic Plan now requires us  
18          to adopt and promote practices that are  
19          environmentally sustainable. This is not an issue  
20          that really was on the radar screen when the Strategic  
21          Plan was developed several years ago, but it is front  
22          and center now and in our thinking about the ways in  
23          which we provide all services, and you are about to  
24          get an example of that in the mail when you receive  
25          your new member directory.

1                   It is smaller, because as a result of a very  
2                   comprehensive member survey, user survey, we were told  
3                   that there were portions of the bound version of the  
4                   member directory that were not used very much and it  
5                   costs a lot of money to print, costs a lot of money to  
6                   mail, so you have a smaller version. The paper it's  
7                   printed on is more environmentally friendly than what  
8                   you have gotten before, and at the same time that we  
9                   are doing that we are also updating the member  
10                  directory, so it is a more useful resource online, and  
11                  for those of you who use the online directory you are  
12                  obviously getting much more up-to-date information  
13                  than when you use the bound directory.

14                  So those are the changes to the Strategic  
15                  Plan, and I hope to reassure you that we are on top of  
16                  what we need to do and keeping the Bar modern with the  
17                  needs of the profession and the public.

18                  It's my privilege to share with you details  
19                  about the A Lawyer Helps program, which was sort of  
20                  conceived last year out of a provision of the  
21                  Strategic Plan that called on the State Bar to help  
22                  publicize and promote the good deeds of lawyers, and  
23                  it really was initially sort of a public relations  
24                  campaign.

25                  I hope this looks a little bit familiar. We

1 did a soft lunch at the annual meeting. We hadn't  
2 really figured out all the details of the campaign,  
3 but we had this wonderful phrase A Lawyer Helps, and  
4 that covers a lot of ground, because it is the essence  
5 of what we want the public to understand about  
6 lawyers, not just believe but understand this is who  
7 we are, and that, in fact, you may be in some jeopardy  
8 if you attempt to undertake legal matters without the  
9 help of a lawyer. So that's the underlying message  
10 that we want to promote.

11 We have some unbelievably talented artists  
12 on the staff of the State Bar. What you see in front  
13 of you is the sort of look and program that companies  
14 pay millions of dollars for advertising agencies to  
15 develop, and we did all of this inhouse. I think it's  
16 a really spectacular and ingenious program.

17 There are two ways that we are delivering the  
18 message. One is through the gear that Ed talked  
19 about, the T-shirts and the caps and actually aprons  
20 that say A Lawyer Helps that we give to lawyers who  
21 are doing projects in group kitchens, for example.

22 The other way is we have a website which is  
23 going to be unveiled at the same time that the May Bar  
24 Journal comes out, so you are getting a sneak preview  
25 of this, and I am going to take you through a formal

1 presentation that will be available on the website and  
2 that we hope that you will take advantage of in  
3 helping to be ambassadors for the program.

4 We are ready for the first slide. There are  
5 two goals with A Lawyer Helps program. One is to  
6 celebrate lawyers who do make a difference in the  
7 community, and many, many of our Bar members already  
8 do that in major ways, and also to provide tools to  
9 all of our members so it's easy for them to be helpful  
10 in the community and in pro bono.

11 I said that this started out as an image  
12 campaign, but we are beyond that now. We understand  
13 that the importance of what we are doing is to help  
14 lawyers be helpful in the community and to do both  
15 pro bono. It isn't just for us to look good, because  
16 we will look good if we do what we are doing. It's  
17 also to recognize that we do good and to help us do  
18 that.

19 The phrase A Lawyer Helps we chose because it  
20 really does get to the heart of what lawyering is, to  
21 solve legal problems, to provide free legal help to  
22 the poor, which is part of our ethical obligation as  
23 lawyers, and also to give time to other community  
24 efforts beyond legal help.

25 The program promotes lawyers doing good works

1 in two ways, by inspiring other lawyers who may not  
2 have begun that work by the good role models that are  
3 already out there and providing the tools to help them  
4 do it more easily.

5 The center of the program will be our  
6 website, and the website is [alawyerhelps.org](http://alawyerhelps.org). You can  
7 also stumble on it through [alawyerhelps.net](http://alawyerhelps.net) and  
8 [alawyerhelps.com](http://alawyerhelps.com). We purchased the whole universe of  
9 A Lawyer Helps, but there are other tools as well.

10 The State Bar staff will be assisting local  
11 Bars and anyone who wants to participate in the  
12 program by helping prepare news releases. We will be  
13 doing articles about the ways in which lawyers can  
14 help and do help, public service announcements.  
15 Again, and tying this into law-related education,  
16 because a lot of ways in which lawyers help is by  
17 going into the community and educating about the legal  
18 system and through special events and meetings.

19 The website is a portal for all the ways in  
20 which lawyers can help, including giving pro bono  
21 services, the Access to Justice fund, and through  
22 community service.

23 When you go on to the website, it will tell  
24 you as a lawyer how to connect to providing meaningful  
25 pro bono help, what assistance there is out there for

1           you to do pro bono, how to donate to the Access to  
2           Justice fund, how to get the gear which will help  
3           advertise the good works that you are doing, and we  
4           also want this website to be a repository of stories  
5           about the good things that lawyers are doing out in  
6           the community so that we can help push those back out  
7           and show the world what good guys we are.

8                         The website will also have frequently asked  
9           questions, question and answer, and we have that  
10          brochure also ready to go in print, and you will find  
11          those available for you today. We are really  
12          indoctrinating you today. You are going to be the  
13          first, the shock troops out there to get this thing  
14          going.

15                        The program is really intended to work  
16          through a variety of partners whom we have consulted  
17          with in developing the program over the last several  
18          months. It's one way in which the State Bar can help  
19          the whole legal community work together and be more  
20          effective in spreading our messages.

21                        The benefits of participating in A Lawyer  
22          Helps, obviously there is the satisfaction of doing  
23          good, but the A Lawyer Helps program will also give  
24          participants the products that will promote the  
25          message and that will give marketing assistance and

1           publicity, and all this is available through a  
2           resource and tool kit on the website.

3                         In exchange for the help that the State Bar  
4           is giving to lawyers to help, we are asking for just a  
5           few things, that the slogan, that our phrase be  
6           intact, not be messed with at all, that the logo  
7           itself not be changed as people use the program,  
8           although we do encourage local Bars, affinity Bars who  
9           want to use this program to help publicize their  
10          events and the pro bono that they do, we are  
11          encouraging them to add their own logo to our logo.  
12          Just as long as they don't change the basic message  
13          and the logo and graphic, they can add to it.

14                        We are also asking them to promote A Lawyer  
15          Helps goals, and if they are part of our program and  
16          they use our gear, then we want to hear. We want them  
17          to tell us what they have done and provide us with  
18          pictures and help us promote them in that way.

19                        So we have boilerplate language that we need  
20          to have tagged to the use of the program in order to  
21          preserve its integrity and coherence so there will be  
22          consistent messages, and I think the next slide has  
23          the cobranding language that we are asking everyone to  
24          use. Lawyers make a difference for people and  
25          society. They solve legal problems, provide free

1 legal help to the poor, and give time to many other  
2 community efforts.

3 So we are hoping that when this program has  
4 been up and running for a while, and we see it as a  
5 permanent program, not a one-time image campaign, we  
6 are hoping that once it gets up and running the phrase  
7 A Lawyer Helps will have this meaning behind it for  
8 everyone who hears it.

9 Why does A Lawyer Helps prioritize pro bono  
10 services and ATJ fund donations? Well, the formal  
11 answer on the website and in this presentation is  
12 because of the Bar's historical commitment and because  
13 our own ethical guidelines prioritize pro bono  
14 services and financial help.

15 But the insider story is that we really had  
16 to work out a way in which pro bono, which is at the  
17 heart of what we do, not get lost by the community  
18 service stuff that lawyers do that is, frankly, more  
19 photogenic for the program. If you are out in the  
20 community and you have a baseball cap and are on the  
21 sidelines coaching a soccer team that says A Lawyer  
22 Helps, that's more photogenic than when you are in  
23 your office doing a pro bono case, because in your  
24 office doing a pro bono case it's like not a pro bono  
25 case.

1                   So that's the inside story. We are very,  
2                   very careful that as we promote the program that  
3                   pro bono and financial contributions stay front and  
4                   center.

5                   I am driving Nancy crazy by ad libbing here.

6                   So part of the program and part of what we  
7                   are asking you to do if you use this presentation to  
8                   promote the program is to educate everyone about what  
9                   pro bono is and, of course, elements of pro bono is  
10                  that it's free or reduced fee legal services for low  
11                  income individuals and groups. It isn't, as some  
12                  lawyers would hope it would be, a program that  
13                  includes clients who don't pay their bills.

14                  We want to remind lawyers that the  
15                  Representative Assembly has adopted an explanation of  
16                  what in Michigan the voluntary pro bono standard  
17                  means, and you have said that it, in 1990 you said  
18                  that it means three cases a year, 30 hours of pro bono  
19                  service or a \$300 contribution minimum to the Access  
20                  to Justice fund.

21                  We want to remind lawyers that financial  
22                  donations are a part of the pro bono obligation, and  
23                  it is a way that lawyers like me who probably would be  
24                  a hazard in the courtroom doing pro bono can fulfill  
25                  the ethical standard.

1                   And because Access to Justice fund is our  
2                   vehicle for lawyers and others to donate to support  
3                   legal aid, the A Lawyer Helps site will also have a  
4                   link to contributions to the Access to Justice fund.  
5                   So there are going to be two ways online that people  
6                   can contribute to the Access to Justice fund, the  
7                   Access to Justice fund site and the A Lawyer Helps  
8                   site. But this will look familiar to those of you who  
9                   have contributed online through the current page.

10                   Finally, we want to recognize the distinction  
11                   between pro bono service and community service and say  
12                   that in addition to this basic ethical obligation that  
13                   lawyers have and to carry out pro bono that lawyers  
14                   also assist in other community efforts outside the  
15                   community, and we want to make sure that that is also  
16                   recognized on this website.

17                   A key function of this website is going to  
18                   be, as I said, making it easier for lawyers to provide  
19                   help, so on the website there is information about how  
20                   to volunteer for a pro bono case and options for  
21                   supporting and for making ATJ contributions.

22                   And we are going to make it easy for you to  
23                   tell your stories to us and through us to the whole  
24                   state about what you are doing and what others in your  
25                   community are doing, what other lawyers in your

1 community are doing to help support the program.

2 We also will make it easy for lawyers to get  
3 the gear which will help them be walking billboards  
4 for the message that we are putting out there, and  
5 this shows the way in which the website will promote  
6 all three ways in which lawyers help, legal services  
7 by giving money, and by giving time for the community.

8 That is the program, and I hope that by  
9 formally presenting it to you that I have turned you  
10 all into ambassadors for the program. I really look  
11 forward to standing in front of you in September and  
12 telling you what we have done from our part and having  
13 you tell us your stories about how A Lawyer Helps in  
14 your community, so thank you very much.

15 (Applause.)

16 CHAIRPERSON KAKISH: Thank you, Janet. Now  
17 the lights will be turned on.

18 The next item on the agenda relates to an  
19 overview of the public criminal defense crisis in  
20 Michigan. I believe that's number eight. And giving  
21 the presentation is Elizabeth Lyon, who is the  
22 State Bar's director of governmental relations.  
23 Elizabeth.

24 MS. LYON: Good morning. It's a pleasure to  
25 be with you all this morning and to provide you with

1 an update of some significant steps that have been  
2 taken since your September gathering in our efforts to  
3 reform how legal services are provided to indigent  
4 persons for criminal proceedings in our state.

5           You know, I have sat through David Carroll,  
6 who is with the National Legal Aid and Defender  
7 Association, who was the main author and researcher of  
8 the Michigan Report, I sat through his Power Point  
9 many times, and I sort of in the audience thought,  
10 wow, if I were seeing this for the first time and not  
11 living it day to day I would just sort of take a step  
12 back and say, oh, wow, how are we going to do that?

13           Because certainly the problem that's  
14 illustrated through the presentation, you all received  
15 signals that we need a wholesale systemic reform in  
16 our criminal courts, and probably associated with that  
17 effort is a rather hefty price tag, and how do we do  
18 that in our state today? So I am pleased that I can  
19 show you some positive movement towards how we are  
20 going to accomplish that in our state.

21           Back on February 18th a new group in  
22 Michigan, Michigan Campaign for Justice, who many of  
23 you have had an opportunity to interact with, and they  
24 have been on the ground working for well over a year  
25 now, but they had their official media launch back on

1 February 18th.

2 That is a group that is a new nonprofit in  
3 Michigan whose sole purpose is to reform our indigent  
4 criminal defense system. They are really motivated,  
5 tremendous people. They have full-time staff members,  
6 they have various consultants, and what they have done  
7 is gone out throughout the state into courts, into  
8 various state poller organizations and presented them  
9 with the problem that we are all facing, and they have  
10 motivated people to sign on to this campaign. They  
11 have an impressive list of stakeholders that goes all  
12 along the political spectrum and includes social  
13 justice representatives, investigators, lawyers, local  
14 Bar associations, and other folks, and they will be  
15 working as a partner with the State Bar of Michigan in  
16 addressing this problem.

17 Another very significant step that was taken  
18 in March, the speaker of the House, Andrew Dillon, and  
19 chair of the House Judiciary Committee, Representative  
20 Mark Meadows, appointed a special committee on  
21 indigent defense. Two members of the House were  
22 appointed to that group. Representative Bob Constan,  
23 who is an attorney from Dearborn Heights, was  
24 appointed to chair that group, and then Representative  
25 Justin Amash, who is a republican from Kentwood, also

1 an attorney, who was appointed to work with  
2 Representative Constan in this effort.

3 They were tasked with pooling together  
4 stakeholders, reviewing the problems, and drafting  
5 legislation to produce effects in Michigan. I am  
6 really happy to report that we have been able to have  
7 an informative meeting with both of those  
8 representatives where David Carroll provided  
9 information about the Michigan Report. We have Robin  
10 Dahlberg from the ACLU provide information about the  
11 current litigation that is pending in our court  
12 system, and other sort of a look at what other states  
13 are doing and other issues so that folks have an  
14 opportunity to really get a firm grasp of what it is  
15 they are tackling and then to start moving forward  
16 with, okay, so how are we going to fix it. There have  
17 been numerous events along the way as well that sort  
18 of pool together and let folks know what's happening.

19 On March 19th the State Bar of Michigan  
20 cosponsored a forum with Michigan State University  
21 Institute for Public Policies and Social Research and  
22 did a forum on public defense over at the Capitol. We  
23 had over 70 legislators, staff, and policy  
24 professionals attend that event and engage in a  
25 dialogue about what we are going to do to pull

1 together and fix this.

2 Another really significant step that was  
3 taken that actually was borne out of a symposium held  
4 at Wayne State University Law School on public defense  
5 back in November was a congressional hearing on public  
6 defense.

7 Chairman of the U.S. House Judiciary  
8 Committee, Chairman John Conyers from Detroit,  
9 obviously was at the Wayne State University symposium  
10 back in November. He stayed for over four hours  
11 listening to the various panelists present the  
12 problems.

13 After he listened to all of the information,  
14 he stayed after and sat and talked with David Carroll  
15 and I and said, you know, it's time that we do  
16 something to address this on the federal level, and I  
17 think that Michigan provides an opportunity to have  
18 that discussion nationally. So since November David  
19 Carroll and myself and others worked to shape sort of  
20 what a congressional hearing might look like that  
21 really illustrated this problem and motivated a  
22 federal response.

23 That hearing took place on March 26. It was  
24 a hearing before the House Judiciary Staff Committee  
25 on Crime, Terrorism, and Homeland Security chaired by

1           Congressman Bob Scott. The title of the hearing was  
2           Representation of Indigent Defendants in Criminal  
3           Cases, a Constitutional Crisis in Michigan and Other  
4           States. So the title certainly implies that Michigan  
5           was used as a poster child of what is really occurring  
6           on a national level as a constitutional crisis.

7                         Now, I got a couple of reactions on that.  
8           Really, do we need more negative attention on  
9           Michigan? And my response to that is, you know, if I  
10          didn't have a firm belief and commitment that  
11          providing Michigan in this way on a national scale  
12          would motivate something really positive in response,  
13          then, no, I wouldn't want Michigan to be highlighted  
14          in that way either. But from that hearing I am  
15          hopeful that all of my confidence was well placed,  
16          because we had -- the hearing was significant in that  
17          everybody recognizes and identifies that what is  
18          happening in Michigan is also happening nationally,  
19          and it's imperative that we do something to make sure  
20          that that constitutional right to an attorney is  
21          upheld.

22                         The hearing then focused on sort of what can  
23          we do about it. We know that it's a crisis, what can  
24          we do about it? There were five witnesses at that  
25          hearing. The State Bar of Michigan was represented by

1 two of our past presidents, Mr. Dennis Archer and  
2 Ms. Nancy Diehl. Mr. Archer also represented the  
3 American Bar Association and Ms. Diehl the Wayne  
4 County Prosecutor's Office.

5 The panel also learned about the Michigan  
6 experience of representing juveniles, which is often  
7 thought as some of the most egregious problems in our  
8 system, because juveniles, as David Carroll said, is  
9 the afterthought to the afterthought, and they are  
10 perhaps the most vulnerable to collateral consequences  
11 of ineffective representation.

12 So Regina Daniels Thomas, who is the chief  
13 legal counsel for juveniles at the Detroit Legal Aid  
14 and Defender Association, presented the perspective of  
15 what happens in the cases of juvenile representation.  
16 She really has an effective and compelling story, and  
17 it is just -- when people listen to Regina talking  
18 about what's happening with the kids in our court  
19 system, they really sign on to try to make a change.

20 From that hearing we now anticipate that  
21 there be federal action. I can tell you there is a  
22 huge range of options that are being talked about that  
23 are on the table. We anticipate that there will be  
24 another hearing in either May or in June that will  
25 actually mark up federal legislation to start

1 addressing this issue.

2 Certainly on the table is appropriations and  
3 also some sort of a regulatory scheme to make sure  
4 that states are complying to standards. Some of the  
5 appropriations pieces could especially be helpful here  
6 in Michigan. If the federal government was able to  
7 provide matching dollars to state dollars to help  
8 build our system would certainly be helpful and help  
9 us to motivate the discussion here in this state.

10 A couple other things that are being talked  
11 about. I know all of you are aware that there was, on  
12 the congressional level, an act passed that would do  
13 loan forgiveness for law school for attorneys who  
14 entered into public service, and that funding of that  
15 act is on the table is something that I know a lot of  
16 you are interested in, and that's being discussed  
17 about now too on that level.

18 I know there are certain things that have  
19 been proposed by the American Bar Association,  
20 American Civil Liberties Union, and the National  
21 Council of Criminal Defense Attorneys and other folks  
22 also looking for perhaps opportunities under JAG and  
23 Byrne grants on the federal level. There are  
24 prosecutorial resources provided to the state, and we  
25 are looking at perhaps being able to match what

1 resources are being provided to the states for  
2 prosecutors but also public defenders, so lots of  
3 interesting things happening there.

4 I am happy to say that when we talk about  
5 standards, I don't throw that term around loosely.  
6 The American Bar Association did an intense effort to  
7 come up with ten standards of an effective public  
8 defense system, and this Representative Assembly in  
9 February of 2002 only waited two months to adopt the  
10 American Bar Association's standard, and you, in fact,  
11 went a step further and adopted an 11th principle,  
12 which we sort of refer to as the Michigan principle,  
13 which talks about a collaborative approach to the  
14 delivery of public defense services. It identifies a  
15 public defense attorney as somebody who can  
16 appropriately coordinate perhaps social services for  
17 individuals and other things.

18 We heard the Chief Justice this morning talk  
19 about treatment courts and that perhaps defense  
20 attorneys when trained well are in the best position  
21 to identify those opportunities and referring their  
22 clients appropriately.

23 There are a couple other events, if you want  
24 to get involved and I can entice you to join us in  
25 this important effort as individuals, certainly to

1 further the actions you have taken as a Representative  
2 Assembly. There is on May 21st a three-day long  
3 conference in Lansing on public defense that the  
4 State Bar of Michigan is cosponsoring. The theme this  
5 year is Reforming Michigan's Public Defense System:  
6 The Economic, Social and Human Benefits. Again, it's  
7 a really great program. We are bringing national  
8 speakers to look at this. There is going to be panel  
9 discussions.

10 If you would like to learn more about it, I  
11 really encourage you to attend. You can register for  
12 this event and find out more about the Michigan  
13 Campaign for Justice at [mijustice.org](http://mijustice.org). I encourage to  
14 you take a look. They also have sort of a mailing  
15 list where you can get all the information on a  
16 regular basis about events that are happening, and I  
17 have saved some time, because I am hoping that you  
18 will have questions that I can answer and tell you  
19 more about what we are doing for this important  
20 effort. If there are questions.

21 CHAIRPERSON KAKISH: Any questions. To ask a  
22 question you have to go to the microphones and state  
23 your name and circuit.

24 MS. HAITH: Good morning, everyone. My name  
25 LaNita Haith. I am from the Oakland County 6th

1 circuit. I am the immediate past chair of the  
2 Criminal Law Committee in Oakland County.

3 One of the discouraging factors for those of  
4 us who do appointments of indigent persons is that  
5 there seems to be an emphasis in this Campaign for  
6 Justice, and we have had two presentations in Oakland  
7 County, on us, the attorneys being ineffective, and it  
8 pits us against the very people we are there to  
9 represent.

10 In Oakland County we have to have extensive  
11 continuing legal education to represent indigent  
12 persons. We have our own individual law firms that we  
13 must maintain, and I really would ask the Campaign for  
14 Justice to shift that emphasis away from the attorneys  
15 and talk a little bit more about systemic problems.

16 It has been quite a challenge, to say the  
17 least, and we are not very enamored with the Michigan  
18 Campaign for Justice as a result of that.

19 MS. LYON: I am more than happy to carry that  
20 message and will do so, and I think that you very  
21 appropriately pointed out that this is not the fault  
22 of criminal defense attorneys, and, in fact, when I  
23 talk with criminal defense attorneys, I am so  
24 respectful and enamored with them and the work that  
25 they do and how they try so hard to work to represent



1 Association of Michigan is on board with us. We talk  
2 regularly with that association, and I appreciate very  
3 much your passion and your looking at this issue, and  
4 certainly we know that we need to look to other states  
5 and other national experts in addressing this problem,  
6 and those folks are coming to the table, and they are  
7 ready to help Michigan look at what would be the best  
8 solution for our state that's state specific that  
9 addresses our specific needs.

10 CHAIRPERSON KAKISH: Yes.

11 MS. POHLY: Barry Poulson, first circuit. I  
12 am a contract county defense attorney, solo law firm,  
13 and I believe that my reading of the press releases  
14 and forum traffic that I read imply that that type of  
15 situation is, per se, ineffective. In other words,  
16 that the only way, at least for a large part of this  
17 movement that supposedly is effective, is to have a  
18 defenders office.

19 I am not saying that defenders offices are  
20 not a good solution. Don Johnson in Wayne County, how  
21 could it be solved any differently. It's a huge  
22 operation with huge number of cases, but in the  
23 situation of a county defender, I am reminded most  
24 recently of an arraignment Judge Smith had in our  
25 county asked a young defendant if he had had an

1 attorney for his conviction in another county, and he  
2 said, oh, no, Your Honor, only a public defender. And  
3 the judge assured him that perhaps this person was  
4 also an attorney. I am not faulting the judge here.

5 But there is a perception in this movement  
6 that county defender offices or defender offices is  
7 the only solution. For my office, I pay for my  
8 WestLaw by taking money out of my retirement program.  
9 I pay \$1,078 per month out of my retirement program  
10 for health insurance. All these things are, you know,  
11 it's my own plight, because I wanted to get into this  
12 profession, but at the same time it's a very difficult  
13 thing to have to hear that the only solution, and we  
14 do hear this, is the defenders office.

15 There are other possible models, and some  
16 evening of the Bar would simply say that the  
17 Legislature pass that the prosecutor, defense is on  
18 parity and that the pay or benefits or mechanisms be  
19 equal. One line, two line piece of legislation would  
20 set the standard. Thank you.

21 MS. LYON: I think that -- a couple of  
22 comments. I think that when we look -- there has been  
23 no fix for Michigan that has been really set in stone  
24 yet. I think it's still in the discussion forum. A  
25 couple of thoughts.

1                   I agree with you based on the research that I  
2                   have seen that a public defenders office will not make  
3                   sense for all of Michigan. That certainly when we  
4                   look at the geographic expanse of our state, looking  
5                   at the U.P. and other things, it doesn't make sense to  
6                   have staffed public defense offices in all areas of  
7                   our state. I think when we move forward with the fix  
8                   it will be with a mixed system. So I think that in  
9                   larger areas like Detroit where it's shown  
10                  economically to make sense to have a staffed public  
11                  defense office that we will consider that an option.  
12                  I think when we look to other areas of the state where  
13                  it makes sense to continue with contract public  
14                  defenders, we need to have something that isn't a low  
15                  bid contract system so that your contract includes  
16                  things like the resources that you need, includes  
17                  caseload standards, includes adequate pay and other  
18                  things.

19                  When people go out and they build a school,  
20                  they don't decide it solely based on a low bid  
21                  contract. They look at how the school is going to be  
22                  built and it is going to be done with standards and  
23                  it's going to meet code, and it's about time that  
24                  public defenders had the same type of contracts that  
25                  other people in our society do. So I think that's

1 important.

2 And one of those ten principles is parity.  
3 We look at what prosecutors get, and we look at what  
4 defense attorneys get. Investigators, expert  
5 witnesses, all of these things, they have to be on  
6 par. But I want to say prosecutors have resources  
7 that are dwindling too. They also have needs that are  
8 not being met in this state. When we look at  
9 wholesale reform, we have to make sure that all of the  
10 resources that are required to make our criminal  
11 justice system work are there.

12 CHAIRPERSON KAKISH: We will take two more  
13 questions for persons who are standing here. Ma'am.

14 MS. CLARK-KREUER: Rhonda Clark-Kreuer from  
15 the 29th Circuit, and I would just like to touch on  
16 the comments of the two other Assembly members.

17 I happen to come from, while I represent both  
18 Clinton and Gratiot County, my practice is in Gratiot  
19 County, which is one of the smallest counties and  
20 number of attorneys in the state. We have a very  
21 small number of attorneys who practice. You might say  
22 that there are 30 members that are practicing there,  
23 but if you look at the attorneys who are doing this  
24 work, I can count on my two hands, actually less than  
25 two hands, who do the criminal court-appointed work.

1                   We are not doing it to make money. We are  
2 not doing it out of necessity for our own purse, we  
3 are doing it because if we don't do it there is  
4 absolutely nobody in our county who is doing it. And  
5 we are paying. There are a number of us who do pay  
6 the WestLaw and the ICLE partnership to get access to  
7 those tools.

8                   Unlike the madam from the 6th circuit, we do  
9 not have the money and the resource for the extensive  
10 training that those people have. We do it on our own.  
11 And what I can see from practicing for 15 years ICLE  
12 is doing great at coming into other areas. Primarily  
13 what I have seen is focused on drunk driving, which  
14 is, yes, only a small myriad of what is going on  
15 there.

16                   I utilize the State Bar now, who is doing  
17 more on the children's law, which I find is very much  
18 needed, but is more weighted towards the abuse and  
19 neglect and not doing that, and I understand in this  
20 state of economy and people are asking for some of the  
21 monies that are coming to the states, is there going  
22 to be any way to fund counties such as ours that do  
23 not have those resources to provide even further  
24 training?

25                   You know, I work extremely hard, and I don't

1           like it when my indigent clients, you know, oh, you  
2           are just a court appointed. I go as much and  
3           sometimes far above and beyond because I am concerned  
4           about representing them and also concerned when you  
5           are doing D.O.C. cases that your I's are dotted and  
6           your T's crossed.

7                        MS. LYON: First let me thank you for your  
8           dedication to representing indigent clients. And I  
9           think that it's that, you know, dedication for  
10          upholding that constitutional right that compels  
11          attorneys to take money from their private resources  
12          to make sure that they are effectively representing  
13          their clients.

14                       I think you also demonstrate well that we  
15          have no uniformity in the state, and when we can  
16          implement standards and accountability, that's when we  
17          have more uniformity. That's why part of the  
18          standards is having training, so that you have the  
19          ability to use those resources, just like the folks in  
20          Oakland County do, and take a look at those things.

21                       I think we have seen now, you know, Michigan  
22          is only one of seven states nationally that does not  
23          provide state funding for trial level indigent  
24          defense, and certainly we see the national experience  
25          compel us to know that there has to be some state

1 level of preparations, because the counties cannot  
2 fund it on their own. So we are definitely moving in  
3 that direction so that you can have the resources that  
4 you need so that you are not paying for WestLaw out of  
5 your pocket, those type of things.

6 CHAIRPERSON KAKISH: We will take one last  
7 question, and for those who do have any further  
8 questions, Elizabeth is attending the Representative  
9 Assembly meeting today, and you can ask her questions  
10 one-on-one later on. Yes.

11 MR. EVANS: Good morning, Tom Evans from the  
12 5th circuit and, alas, I think it's a difficult  
13 proposition when we have folks who are providing  
14 services for indigent individuals when they also are  
15 indigent both psychologically and in real terms of  
16 dollars and cents. So my question is this, as far as  
17 the John R. Justice bill, you touched on it for just a  
18 second there, what would you say are the odds of there  
19 being appropriations granted to fund that bill or what  
20 sort of take can you give on this?

21 Also, our college from the 6th circuit would  
22 like to comment that, just as any other circuit, they  
23 pay for many of their training funds and things like  
24 that themselves. Thank you.

25 MS. HAITH: All of them. We don't have the

1 funds.

2 MS. LYON: And I think another thing you  
3 point out is how do we even define indigency. There  
4 is no uniform statewide definition of indigency in our  
5 state. So depending on where you are convicted of a  
6 crime determines whether or not you meet the  
7 definition of indigency in that particular county.

8 I am not a betting person --

9 MR. EVANS: If I may interject, the point end  
10 of my question is how do you think the legislation, is  
11 it going to be funded or not, what is your take on  
12 that?

13 MS. LYON: And I was going to say I am not a  
14 betting woman, so I would hesitate to give you odds.  
15 I think right now we are seeing that there are so many  
16 different options on the table, and a lot of them deal  
17 with appropriations from the federal government. Some  
18 of it's that matching state dollars that I talked  
19 about. Some of it is increasing the grant program,  
20 and some folks are pushing for the John R. Justice Act  
21 to be funded.

22 I don't have a sense of what the specific  
23 thing is at this point that will go forward. I do  
24 know that there is an interest to do something. We  
25 have already had meetings on the U.S. Senate side as

1 well to make sure that once we have reached that  
2 chamber we are in the right direction.

3 I know that there are a lot of folks talking  
4 about funding the John R. Justice Act, but I think  
5 that we can be hopeful that the, you know, the last  
6 congress passed it, and we are hopeful that the  
7 current congress will fund it, and I will -- when I  
8 know, I will let you know.

9 MR. EVANS: Thank you very much.

10 CHAIRPERSON KAKISH: Thank you. As I  
11 indicated, Elizabeth Lyon, she will be available to  
12 answer any of your questions.

13 We are running behind schedule, so I would  
14 like now to bring up item number nine, which is  
15 approval of the 2009 award recipients.  
16 Mr. Jeff Nellis.

17 MR. NELLIS: Good morning again. The  
18 Nominating and Awards Committee, we have essentially  
19 two functions. As you saw earlier, that first  
20 function is to fill our vacancies, and the second  
21 function is to go through the process of nominating,  
22 coming up with candidates for the awards that the  
23 Representative Assembly gives out every year, and I  
24 would just like to thank so much Kathy Kakish, Liz  
25 Johnson, Victoria Radke and also Anne Smith, who has

1 really been a big help to our committee and helping us  
2 in fulfilling our functions.

3           Being involved in this is really interesting,  
4 because a lot of us we are involved in the day-to-day  
5 grind of our jobs and maybe we don't always take the  
6 time to think about some of the really outstanding  
7 things that attorneys do for other people, not only in  
8 the course of their employment, but also with the  
9 community and helping the poor, things that we talked  
10 about the A Lawyer Helps program, and the nominees  
11 that we have put forward, that we are going to put  
12 forward today, as I was listening to the presentation,  
13 these are kind of poster children for the A Lawyer  
14 Helps program. These are people who help others.  
15 They are excellent at what they do, but they go out in  
16 the community, and they do some really outstanding  
17 things, so it's kind of a nice transition and tie-in,  
18 so to speak.

19           The first award is the Michael Franck award.  
20 It's given annually to an attorney who has made an  
21 outstanding contribution to the improvement of the  
22 profession. This year's nominee is an attorney, Dan  
23 Bonner from Muskegon. If you are not from the west  
24 side of Michigan, you may not recognize this  
25 individual, but if you look in the materials that we

1 have provided, this is a gentleman who is almost,  
2 shall we say, universally recognized, not only for his  
3 competence, but also for his civility. He is the  
4 managing attorney for the Muskegon office of Legal  
5 Aid. He is what we might call a poverty attorney.

6 He not only does his job incredibly well, but  
7 with great civility, and maybe more importantly in  
8 some respects he is also incredibly involved in  
9 various types of community service. He has been a  
10 teacher in the past at the community college level,  
11 and, again, I was really and the committee was really  
12 struck by sort of the wide range of people who  
13 commented on this individual, judges, lawyers,  
14 referees, and it was a unanimous vote on this, and so  
15 Dan Bonner, again, from Muskegon is our award nominee  
16 for the Michael Franck Award.

17 With respect to the Unsung Hero Award, and  
18 the standards for that are an attorney who exhibits  
19 the highest standards of practice and commitment to  
20 the benefit of others. And our recipients, we have  
21 actually picked two this year, because we really felt  
22 that that was appropriate after we looked through the  
23 supporting documentation.

24 The first individual is an attorney from  
25 Ann Arbor named Kelly Burriss. She is an accomplished

1 patent attorney, but she does something very unique  
2 and something that very few of us are able to do, and  
3 that is she donates her time, her money, and her  
4 airplane to be involved in a nonprofit project called  
5 Angel Flight, and what they do is they essentially  
6 donate air flights to hospitals out of state and that  
7 type of thing for people who obviously could not  
8 otherwise afford to do that to take them to  
9 specialized hospitals, and that's just, you know, a  
10 really neat accomplishment and something that very few  
11 people are in a position to be able to do.

12 Our second nominee Brian Barkey from Flint,  
13 and he, also from the practice side, is a very  
14 accomplished mediator and case evaluator, and he has  
15 been recognized for his accomplishments in those  
16 areas, but he also is very involved with the community  
17 service and has essentially been the driving force  
18 behind the community holiday dinner, which has served  
19 literally thousands of free holiday dinners to  
20 underprivileged people. He has also been involved in  
21 donating countless hours to the Bobby Crim fitness  
22 program, which if any of you live around Flint, the  
23 Bobby Crim race is a real big deal, and it has turned  
24 into more than just a race now. He mentors people.  
25 He provides hours and hours to these folks.

1                   So today I am really proud and honored to ask  
2                   this body, and I am moving that this body accept these  
3                   individuals for the respective awards. I think when  
4                   you think about it, these attorneys exemplify the type  
5                   of attorney that we would all like to be, and I think  
6                   we all try to hold ourselves to that standard, and  
7                   they are also, you know, they are the type of people  
8                   who really make a great impression to the general  
9                   public. We can always -- our public reception could  
10                  always use a boost, so to speak, and these people are  
11                  wonderful ambassadors for our profession. So I make  
12                  that motion at this time.

13                  VOICE: Support.

14                  CHAIRPERSON KAKISH: Hearing a second, we  
15                  will --

16                  VOICE: Second.

17                  CHAIRPERSON KAKISH: It was seconded,  
18                  correct?

19                  VOICE: Yes.

20                  CHAIRPERSON KAKISH: Hearing a second, is  
21                  there any discussion?

22                  Hearing none, all those in favor say aye.

23                  All those opposed say no.

24                  And any of those abstaining.

25                  The ayes have it. The motion carries, and it

1 is adopted.

2 We are running a little bit behind time. If  
3 you look at the calendar, and I would like to draw  
4 your attention to item number 12. This is an  
5 informational report. One of the presenters for item  
6 number 12 does have to leave, and they are making a  
7 request that their item be moved up to now before the  
8 break, and I would entertain a motion if that is  
9 acceptable to this group.

10 VOICE: So moved.

11 VOICE: Second.

12 CHAIRPERSON KAKISH: Any discussion? All  
13 those in favor say aye.

14 All those against.

15 Hearing none, and so that motion carries,  
16 and, therefore, we will now go to item number 12, and  
17 that's the informational report on attorney  
18 solicitation, and its proponent is Elizabeth Sadowski  
19 from the 6th circuit.

20 MS. SADOWSKI: Hello, good morning. I am  
21 Elizabeth Sadowski. I am a new member of this body;  
22 however, I am an old member of the Family Law Section,  
23 and I am old enough to remember Selectric typewriters.  
24 I am a past chair of the Family Law Section too.

25 Our family law council members have asked me

1 to come and present to you something of a dilemma that  
2 we have. You know, of course, that old story about  
3 how a family law attorney, a criminal law attorney has  
4 a bad person acting his best and a family law attorney  
5 has a good person acting his level worst. It's really  
6 true.

7 In our profession we see parents kidnapping  
8 their children, we see domestic violence, we see  
9 profound financial abuse, and all these people will  
10 tell you that they do these things in the best  
11 interest of their children and to protect their own  
12 rights.

13 Well, right now we have a problem, and it's  
14 getting worse because of the financial problems that  
15 even lawyers are having in our community. Some  
16 lawyers are trolling the filings, court filings, and  
17 they are sending out letters to defendants who have  
18 not been served yet, and the letters are saying things  
19 like, Take warning, you are being sued, your legal  
20 rights are in jeopardy, and these go to households  
21 where there well may be a domestic violence impact,  
22 where there are ex parte orders that are pending and  
23 not yet served.

24 We fear that this is going, that this type of  
25 conduct is going to promote more violence, more

1           kidnappings, more financial abuse, but we have a  
2           dilemma, and in the words of Princess Leia, Help us,  
3           Obi-Wan Kenobi.

4                       We have this case from the United States  
5           Supreme Court, the Shapiro case versus the Kentucky  
6           Bar Association, that said, you know, there is a First  
7           Amendment protective right for attorney advertising  
8           and solicitation.

9                       Now, you can't promote false or deceptive  
10          practices, but that's not what we have here. It's not  
11          false or deceptive to tell someone they are being  
12          sued. However, there is a real state interest, we  
13          think, in protecting people from having warnings,  
14          early warnings, about there being a filing because of  
15          the risk of harm that these early warnings can  
16          promote.

17                      You heard today your State Bar president talk  
18          about professionalism and how we are first a  
19          profession and then a business later, and you heard  
20          Janet Welch's wonderful presentation on the  
21          contributions A Lawyer Helps makes. This stuff is not  
22          helping. It is not professional, but this practice as  
23          we stand here today is probably legal, unless we take  
24          steps to do something about it.

25                      That is why in the fall you are going to be

1 asked to wrestle with this problem. This is a prelude  
2 to what will happen soon.

3 You have a proposal for a possible resolution  
4 to the Court Rules. It is proposed that a courtroom,  
5 I would say, notwithstanding the provisions of  
6 Michigan Rules of Professional Conduct 7.3, no  
7 attorney shall contact any person known to the  
8 attorney to be a defendant in any action filed in any  
9 trial court in the state for the purpose of soliciting  
10 that person as a client unless the prospective client  
11 has been served with process in that action.

12 Now, there have been commentary to that,  
13 saying, well, but how does -- is this really feasible,  
14 because such a lawyer who is doing this trolling is  
15 not even, has not even filed an appearance in the  
16 case. How can the Court Rule control somebody who  
17 hasn't even yet filed an appearance?

18 The other solution that this Representative  
19 Assembly has considered is a Rule 7.3, which you will  
20 find under in your materials, of course. This is all  
21 page 12. So you can please read that and say, well,  
22 give this your consideration.

23 We know that we need to do something to stop  
24 this problem. We are pretty sure it's going to get  
25 worse, not better, and once somebody is injured or

1 killed or a child kidnapped because they have been  
2 alerted prior to being able to be served with process  
3 or restrictive order, when that happens the question  
4 is going to be, as our chair of our section Carlo  
5 Martina has said, there is going to be a hue and cry,  
6 why didn't somebody do something about this? Where  
7 was the law? Where was the State Bar? How can people  
8 get away with this? What can we do to protect  
9 ourselves from this type of misconduct happening  
10 again?

11                   It's a dilemma, and we need your help. We  
12 need to fix this, and we need to do it within the  
13 confines of the constitutionally protected rights of  
14 speech and advertising that the Shapiro case tells us  
15 about. We ask you to give this a lot of  
16 consideration. I know there is a lot of people here  
17 who practice family law, and you probably have had  
18 familiarity with this problem too. If you don't, if  
19 it hasn't come to a neighborhood near you, it will,  
20 because this is too easy to do. It's just too  
21 inviting to be able, with the electronic age in which  
22 cases are filed online, it's too easy to troll them,  
23 and it's just too easy -- and it's hard to resist the  
24 inclination to do more business, to put business above  
25 professionalism these days in these hard times.

1 I thank you very much for your time. I hope  
2 you will give this matter your profound consideration,  
3 and I know, because with all the smart people here, we  
4 will figure something out. Thank you.

5 (Applause.)

6 MS. SADOWSKI: William Dunn is our next  
7 speaker. Is Mr. Dunn here? Forgive me. I am a  
8 little new at this stuff. I will catch on. I am the  
9 proponent of this proposal, and you will be asked to  
10 come up with a solution next September.

11 Did I do that right?

12 CHAIRPERSON KAKISH: Yeah.

13 MS. SADOWSKI: All right.

14 MR. DUNN: Good morning. I am Bill Dunn.  
15 Chair Kakish reached out to me as chair of the  
16 Professional Ethics Committee of the State Bar to get  
17 the views of the committee on this proposal which came  
18 to us in alternatives as Court Rule or as a change of  
19 Rule 7.3.

20 I cannot speak for the Ethics Committee,  
21 because the Ethics Committee meets on this coming  
22 Friday and will consider this for the first time  
23 formally at that point, but I can provide a little  
24 background from the perspective that I believe is  
25 fair.

1                   First, this rule comes to you as a Court Rule  
2 today in its proposed form. As I have said, I have  
3 seen it in alternative forms, Court Rules or a change  
4 of Rule of Professional Conduct.

5                   I think that the case can be made that  
6 because of its broad application as a Court Rule that  
7 we should consider it as a change to the Rules of  
8 Professional Conduct, and the committee will look at  
9 it on that basis.

10                  We will, and I assume you would like us to  
11 report back to the Assembly on our deliberations and  
12 conclusions about this and our recommendations as you  
13 will consider this in September.

14                  Rule 7.3, as you have heard, allows written  
15 solicitation of persons known to meet the services you  
16 offer to the extent required by the Shapiro versus  
17 Kentucky Bar case, a 1988 case. That case holds that  
18 commercial speech is constitutionally protected if it  
19 concerns lawful activities and is not misleading, but  
20 that could be subject to regulation by laws that  
21 directly advance a substantial government interest and  
22 are appropriately tailored to that purpose. That's  
23 the rule of Shapiro we'll have to live with.

24                  This proposal has two purposes. One is to  
25 restrain lawyer solicitation, trolling for clients,

1 and the other is to somehow in that manner prevent  
2 spousal abuse.

3 You will note that the rule as presented to  
4 you does not pertain to any types of cases. It  
5 pertains to all litigation in any trial court. So it  
6 goes well beyond spousal abuse into matters of every  
7 nature that may be before a trial court.

8 If it's regulation that we are concerned  
9 about, we have to look to see what Shapiro requires to  
10 be allowed and what can be regulated. The proposal  
11 does not apply simply to solicitation itself but only  
12 solicitation prior to the service of process. And we  
13 need to understand how that time issue or that fact of  
14 service of process fits within the Shapiro mandates.

15 Unlike Ohio's Rule 7.3, which has a similar  
16 waiting period, this proposal does not accept  
17 assisting or prior client relationships, personal  
18 friendships, business relationships of the past or  
19 other persons with whom the lawyer may already have a  
20 relationship.

21 If the trolling is the target, why would it  
22 be permitted once process is served? What is key in  
23 the service of the process that satisfies the  
24 substantial state interest that then allows trolling  
25 to occur? Those are questions that we will need to

1 look at.

2 If spousal abuse is the target issue, the  
3 proposition would be that the lawyer solicitation of  
4 business is a likely cause of spousal abuse and, of  
5 course, we should inquire as to how that connects.

6 Of course, the proposal does not forbid a  
7 lawyer or anyone else passing along the information of  
8 the filing of the action unless the lawyer is  
9 solicited. So it's really only solicitation that's  
10 the focus of the cause of this problem.

11 But, as noted, the information is public, and  
12 anyone can convey the information about the existence  
13 of the suit. It may appear in the newspapers, friends  
14 may pass it along, and it seems in analysis that if  
15 there is a substantial governmental interest in not  
16 informing a party that's named as a defendant in a  
17 lawsuit until there has been service of process, then  
18 that should be legislated to prevent anyone from  
19 conveying that same information and thus causing the  
20 same effect.

21 That to us kind of summarizes the questions  
22 that will have to be faced as we look at this proposal  
23 and make our recommendation and as you look at it  
24 also. Thank you very much.

25 (Applause.)

1                   CHAIRPERSON KAKISH: I understand there are  
2 two more speakers who are coming to address this  
3 informational report. The next one is Kristen  
4 Robinson.

5                   MS. ROBINSON: I will be brief. I know we  
6 are running over. My name is Kristen Robinson. My  
7 office is in Troy, and I practice family law. I am a  
8 family law council member, and I am the vice chair of  
9 the Oakland County Family Court Committee.

10                   I am here today because two years ago I was  
11 approached by the current chair of the Oakland County  
12 Family Court to write an article about this issue  
13 because it was such a problem that the Oakland County  
14 Bar wanted to make sure that practitioners knew this  
15 was going on. So I researched it and found exactly  
16 what Mr. Dunn was talking about. We have some  
17 constitutional concerns, and, as a family law section,  
18 we fully recognize that. And we are here today in an  
19 informational presentation to let you know this is a  
20 problem, and we are going to construct a rule, whether  
21 it's a Court Rule or amendment to the Michigan Rules  
22 of Professional Conduct, so that we can prevent this  
23 problem from happening, and it is happening, and this  
24 is the truth.

25                   Yesterday in my office my partner came to my

1 office and said, Kristen, you have to come in my  
2 office. She was meeting with a new client, a new  
3 divorce client, and she said to her client, tell my  
4 partner what you just told me. And she said, well, I  
5 was complaining because I received a packet in the  
6 mail from an attorney telling me that I had been sued  
7 for divorce, and I thought, I mean, I am coming here  
8 today to talk about this. So it's happening  
9 regularly, and in that particular case no harm done.  
10 This woman knew that her husband was filing for  
11 divorce.

12 But there are cases, and family law cases are  
13 different. I mean, we have children involved, we have  
14 domestic violence, we have people trying to hide  
15 assets and move funds and irreparable harm can happen.

16 We already have a Court Rule in place, so we  
17 know the court and the state recognizes that there is  
18 a need for ex parte relief, so if we can show the  
19 court that, in fact, we are concerned about  
20 irreparable harm being precipitated by the notice  
21 itself, then, in fact, we can petition the court and  
22 get ex parte orders, and that's what we are trying to  
23 prevent here is an end run around getting that  
24 ex parte relief. Because the fact of the matter is it  
25 sometimes takes days, sometimes weeks to get that

1 ex parte order granted. So in that window of time  
2 this defendant is served before we can get our  
3 ex parte order entered this irreparable harm that we  
4 are trying to prevent is going to happen.

5 So we are asking for you to contemplate this  
6 and recognize that we as the Family Law Council are  
7 flexible in drafting some kind of rule or amendment to  
8 the Michigan Rules of Professional Conduct so that we  
9 can prevent the harm that's happening. Thank you for  
10 your time.

11 (Applause.)

12 CHAIRPERSON KAKISH: Victoria Kremski from  
13 Thomas Cooley Law School.

14 MS. KREMSKI: Thank you. Victoria asked me  
15 to keep my remarks as brief as possible. I know we  
16 are behind schedule, so let's see how well I can do.

17 First of all, a rule is needed. It's a good  
18 idea. There is clearly a significant interest here.

19 Second point, the rule should be a Rule of  
20 Professional Conduct. It should be an ethics rule.

21 Third point, the proposal as written is  
22 overbroad. It wouldn't withstand constitutional  
23 scrutiny. The rule should be narrowly tailored to  
24 encompass the specific situations that are of concern,  
25 allegations in cases where there are allegations of

1 domestic violence, allegations where perhaps one of  
2 the potential defendants is mentally or emotionally  
3 unstable and could do harm to themselves or others.

4 Last point, I will be glad to help you draft  
5 something that would withstand constitutional muster  
6 and meet your needs, offer my services.

7 (Applause.)

8 CHAIRPERSON KAKISH: We do provide a period  
9 of questions and answers. I would take one question,  
10 because you are already there, but please know that  
11 the proponent is available. You have the names and  
12 numbers of the people who have spoken today, and you  
13 can always contact them from now until the meetings,  
14 but if you have a question.

15 MR. HAUGABOOK: Yes, my name is Terrence  
16 Haugabook from the 3rd circuit. As a prosecutor at  
17 the state level and not the federal level, back at the  
18 state level our past president, and I worked under  
19 her, Nancy Diehl, handling issues of domestic violence  
20 and prosecuting those cases, so I think those concerns  
21 are very paramount, because I saw firsthand what would  
22 happen to victims of domestic violence under these  
23 circumstances.

24 What I am here to say though is, as I read  
25 this proposal over, I thought it had some overbreadth

1 to it, and I think domestic violence is a paramount  
2 issue that should be addressed. I invite anyone to  
3 talk to me, because one of the things I would like to  
4 know, has anybody explored the issue of trying to get  
5 a way in which you can file a domestic or a divorce  
6 action under seal with the court in order to avoid  
7 these concerns and then unseal it after the person is  
8 served. So some sort of fashion where if there is an  
9 issue of you are going to be abused or child is going  
10 to be taken or assets are going to be hidden, if there  
11 is a way to do this under seal until the person is  
12 served to prevent all this harm, and then you don't  
13 have to get into the overbreadth that I saw when I  
14 read this. So I would like anybody to talk to me  
15 about that, and I wonder if anybody has ever explored  
16 that.

17 CHAIRPERSON KAKISH: And your name and  
18 circuit once again, sir.

19 MR HAUGABOOK: Yes, Terrence Haugabook, 3rd  
20 circuit.

21 CHAIRPERSON KAKISH: Thank you. As indicated  
22 in the calendar item, the names and the telephone  
23 numbers of the people who spoke now are available, and  
24 you are most welcome to contact them at any time.

25 We are way behind schedule. It is almost ten

1 minutes past 12, and according to the calendar we  
2 should be starting lunch. I would entertain a motion,  
3 one, to eliminate our break, ten-minute break that was  
4 scheduled previously, and I also would entertain a  
5 motion that the presentation by Anne Vrooman be  
6 postponed to after lunch and that we do take lunch at  
7 this point.

8 VOICE: So moved.

9 VOICE: Support.

10 CHAIRPERSON KAKISH: Motion was made, and I  
11 heard support. Is there any discussion?

12 All those in -- no discussion. All those in  
13 favor say aye.

14 All those opposed say no.

15 Any abstentions?

16 Hearing none, the motion carries. We will  
17 come back. We will now have lunch and return at  
18 exactly 1 p.m. Thank you.

19 (Lunch break taken 12:06 p.m. - 1:02 p.m.)

20 CHAIRPERSON KAKISH: Good afternoon. We can  
21 now resume the meeting, and the Assembly is back in  
22 session.

23 The next item on the calendar is a  
24 presentation on the changing face of the State Bar of  
25 Michigan, and that is item number 11 on the calendar.

1 This presentation will be given by Anne Vrooman  
2 State Bar director of research and development. Anne.

3 MS. VROOMAN: Good afternoon. I can say that  
4 this is actually a lot more fun to do on a full  
5 stomach I think for all of us. I know that given the  
6 agenda and backup, I am going to do my very best to  
7 move pretty quickly through this. I don't think I can  
8 be quite as boiled down and succinct as Victoria was  
9 when she came up and gave it to you in about 30  
10 seconds, but I will do my best.

11 The changing face of the State Bar, it's a  
12 look at the demographics of the membership of the  
13 State Bar and how it's changing in many ways.  
14 Dr. David Foote, a renowned demographer from the  
15 University of Toronto, said that about two-thirds of  
16 everything can be explained in demographics, that when  
17 you know salient facts about people, their education  
18 and age, and in our case practice areas, occupational  
19 areas, you really can tell an awful lot about their  
20 interests, and it's from that that we really have  
21 built the foundation of information that we have at  
22 the State Bar about who our members are, what the  
23 demographics look like.

24 It has helped us to take what we learn from  
25 this and use that to link it to target strategies for

1 target populations identifying the large number of  
2 baby boomers that we have that you will see as they  
3 are nearing retirement, as well as what the  
4 demographics look like for new lawyers coming in. So  
5 with that we can start with the first slide.

6 This is the overall composition of the  
7 membership of the State Bar, and sometimes you hear  
8 different numbers thrown around about how many members  
9 the State Bar has, and probably some of you have heard  
10 over 50,000, and sometimes it talks about over 30,000,  
11 and I will explain why sometimes that gets a little  
12 bit confusing.

13 But this is the overall picture, and once you  
14 become a member of the State Bar and are in the  
15 system, you are in this pie chart somewhere forever.  
16 We will be focusing today mainly on the active  
17 membership, but you can see all the other categories.

18 So taking that active piece then, we can boil  
19 it down into active Michigan residents and then active  
20 non-Michigan residents, and for most of our discussion  
21 today we will be talking about the active Michigan  
22 resident Bar members, but we need to pay attention to  
23 that non-Michigan members, and with a lot of things  
24 you heard about in the economy, that's a number that  
25 we really want to keep an eye on. Are there members

1 moving out of Michigan for other opportunities, law  
2 school graduates, things like that. Actually that is  
3 a number that grew this year by about one percent.

4 We ask our members to self identify their  
5 occupational area on their dues form each year, and we  
6 have had these categories for quite a period of time.  
7 From this you can see that about 50 percent, a little  
8 better than 50 percent of our active Michigan resident  
9 members designate themselves to be in private  
10 practice. The other 50 percent are something else.

11 You can see that the nonreported category is  
12 a pretty significant number there, and what that is  
13 are people that we don't know what they do. What we  
14 assume is that they have -- (chuckling) -- that they  
15 don't know what they do, that's true. That we don't  
16 know what they do. They do not see themselves as  
17 being able to fit into any of the categories that we  
18 have designated. So we have actually added some  
19 categories to the last dues statement, and next year  
20 should have at least a little bit more of that  
21 picture, and hopefully we will know more about what  
22 they do, even if they don't.

23 Focusing in then on that private practice  
24 area and what we know about firm size, which again is  
25 self-identified and broken into the solo, small,

1 medium, and large in there, it's pretty interesting,  
2 because when you look at the solos and the smalls and  
3 you add those together, it makes up to pretty close to  
4 70 percent of what private practice attorneys are.

5 This is just a picture now of what the  
6 non-Michigan resident occupational areas look like,  
7 and I showed you this just so you can see a little bit  
8 of the difference here. Large number of corp counsel,  
9 a higher number, even though the proportions come out  
10 the same, the corp counsel is much higher, private  
11 practice smaller. But you can see that it's the large  
12 firms rather than the small or solos that make up that  
13 population at a higher percentage.

14 This is one of the ways that I wanted to show  
15 you this data and to look at how it's changing is to  
16 take the overall picture and then pull out the new  
17 join. So in this case these would be attorneys that  
18 joined the Bar in the year of 2007, and show you the  
19 difference.

20 This particular slide I would caution about  
21 in terms of too much weight, because you can see the  
22 no response, again, either not fitting in or people  
23 still looking for jobs at the time that this was done.

24 The gender, overall gender composition of the  
25 membership of the State Bar is about 70/30, so about

1           70 percent male and 30 percent female, but you can see  
2           how this is changing. So when you look at the members  
3           that joined in 2007, it's getting much closer to a  
4           50/50 split. So, again, you can see that in the  
5           coming years the gender, the leadership, what it will  
6           look like in law firms and all throughout the  
7           professions is getting much closer to that.

8                         This is an overall picture of the members  
9           just split by generation, and you can see, as I  
10          mentioned already, the significant number of baby  
11          boomers and traditionalists, and when you look at that  
12          portion of the membership, you can understand them,  
13          why there is a lot of concern about, you know, what to  
14          do in terms of target services for that particular  
15          group of members.

16                        And this is the picture by generation of who  
17          joined the Bar. In 2007, obviously a lot of  
18          Gen-X'ers, but milleniums coming into the profession  
19          at a pretty good rate.

20                        And then this is the gender split by  
21          generation that we have, and, again, you can see the  
22          progression and the increase in the number of women in  
23          the profession. And then this is the gender in terms  
24          of actual numbers of the 2007 joins.

25                        I am moving through this pretty quickly. I

1 hope you can spend more time later when you have more  
2 time to look at this.

3 In terms of gender, this is just a trend  
4 line, and you can see, when you go back to the earlier  
5 years here, the pretty big gap, but how it's gotten  
6 pretty close together. It's almost equal.

7 This is the ethnicity of the active members.  
8 I want to do some clarification here. We ask on --  
9 there are actually two source documents that drive the  
10 underlying data that we keep. The first is when the  
11 membership application, when a person joins, and on  
12 that we voluntarily ask for race and ethnic  
13 information, and people self-identify into those  
14 categories. We have that information for about 75  
15 percent of our members, and we use that information to  
16 produce this data. We make the assumption that what  
17 we don't know distributes in about the same way as  
18 what we do know.

19 So overall -- actually, maybe, Nancy, back up  
20 to that last one -- overall you can see that, you can  
21 see that European dissent in the overall composition  
22 is about 85 percent with other race and ethnic  
23 categories making up the pretty small remainder, but  
24 when you move to the joins in 2007 you can see that  
25 that number has shifted pretty significantly with

1 European dissent making up only about 61 percent and  
2 significant increases in the other racial and ethnic  
3 categories, and I might point out that actually the  
4 Asian Pacific Islander category has been the category  
5 that has grown pretty significantly in the past couple  
6 of years, and I think yesterday an action on the Board  
7 was to recognize the new local Bar association or  
8 special Bar association of South Asian members.

9 This is a comparison then in terms of these  
10 ethnic categories of the, stacking the new joins in  
11 2007 with the overall composition, again, just so that  
12 you can see the trends that are changing in each of  
13 those categories.

14 This is the information of race and ethnicity  
15 broken down by generations, and, again, generations is  
16 an interesting way to split things. It really sort of  
17 marks in time, but in big gaps of time, and when you  
18 look at it that way, you can see pretty significant  
19 trends.

20 And this is really a snapshot in five-year  
21 intervals, so what this means when you are looking at  
22 it, this would be the number of people who joined in  
23 these target years, so 1980, 1985 and so on in each of  
24 these ethnic categories and, again, just taking  
25 snapshots through those years.

1                   This is information that we keep that we know  
2                   about law schools and where our members went to law  
3                   school, graduated from law school, and, again, this is  
4                   the overall picture. You can see that Wayne State  
5                   actually has the largest number of members, and  
6                   University of Michigan the smallest number of members  
7                   as part of our database. You can see that others, so  
8                   people who didn't go to Michigan law schools, comprise  
9                   a pretty significant portion of the Bar.

10                   And this is the picture of the people by law  
11                   school of the 2007 joins, so a slightly different  
12                   picture. This is in real numbers rather than  
13                   percentages, but you can see significant number of  
14                   Cooley grads and then other law schools and what you  
15                   might infer from that perhaps, you know, people coming  
16                   home after having gone to other law schools.

17                   This information is about sections, and  
18                   overall we wanted to know what percentage of members  
19                   belong to any section, so this is just a picture of no  
20                   section versus being in one or more section, and  
21                   remember that this is the overall active Michigan  
22                   residents. So thinking back to that pie chart where  
23                   only 50 percent or about 50 percent are in private  
24                   practice and the other 50 percent are in other things,  
25                   so occupations that, you know, sections may not be of

1 interest to them in their professional life. The  
2 split for them is a bit -- almost 60 percent, so 58.4  
3 percent belong to one or more sections and then 41  
4 percent belong to no section.

5 This is broken down by the occupational  
6 areas, and, again, I would point here to sort of where  
7 we have been zeroing in so that those that identify  
8 themselves in private practice, and what you can see  
9 is for those in private practice about 68 percent  
10 belong to one or more sections, 32 percent, almost 33  
11 percent, don't belong to any section, and what becomes  
12 interesting though is when you look at the next slide,  
13 which is by firm size, and you can see that when you  
14 break that down the pretty significant number of solo  
15 practitioners that don't belong to any section, and  
16 then on the other end of the spectrum those in large  
17 firms, about 90 percent, belong to one or more  
18 sections.

19 And this is a list of the sections themselves  
20 and what their membership is just for your  
21 information.

22 I would point you to the black and white  
23 handout that you received, and the very last page of  
24 that is actually an update for you. It's a snapshot  
25 of 2008, again, just boiled down so that you could get

1 a sense of the numbers using the racial and ethnic  
2 categories and gender categories for the new joins of  
3 2008.

4 We will be doing another snapshot, sort of  
5 big pull of this information, beginning in June, so we  
6 will update this data, and what we will do, we are a  
7 couple years into this project now, so we can begin to  
8 do some trending and so what shifts there are on a  
9 year-to-year basis.

10 I know that I have been pretty brief, but I  
11 will be here, and I am happy to answer any questions  
12 that you have either during the breaks, or I invite  
13 you to call me at my office, and if I can ever help  
14 you in how you connect with your constituents with  
15 this information, I am happy to do that as well.  
16 Thank you.

17 (Applause.)

18 CHAIRPERSON KAKISH: The next item on the  
19 calendar is item number 14, and that is consideration  
20 of proposed amendment of MCR 8.115, cell phone usage  
21 in court facilities.

22 This is not an action item that we as an  
23 Assembly typically see. Here the Civil Procedures and  
24 Courts Committee is asking the Assembly for permission  
25 to advocate its own position on a proposal that the

1 Assembly voted on last year at last year's April  
2 meeting. The proponent is Dan Quick from the 6th  
3 circuit.

4 MR. QUICK: Thank you. I am here on behalf  
5 of the Civil Procedure Committee. The history of this  
6 is pretty straightforward. The Representative  
7 Assembly last April passed a proposal which the State  
8 Court, or the Supreme Court took -- (Cell phone  
9 ringing) -- excuse me, for a moment there. No, the  
10 Representative Assembly has no rule, no, no.

11 So last April we passed a rule. The  
12 Supreme Court twisted it around a little bit and put  
13 out two proposals for consideration. Proposal A  
14 closely echoes that of the Representative Assembly but  
15 used some different phraseology. When it came back  
16 for consideration for the Court's Committee, we  
17 suggested two changes be made to this, which we think  
18 both make sense.

19 The first is the underlying language in the  
20 first sentence which clarifies that phones which  
21 include photographic, video, or audio recording  
22 capabilities be permitted. That's been included,  
23 because in practice sometimes the sheriffs don't  
24 understand that all means all, and so making this  
25 expressed in our opinion would be helpful.

1                   The second substantive change appears near  
2                   the bottom of the rule, and this is the sentence  
3                   starting with nothing in the subrule limits the  
4                   court's authority to impose other reasonable  
5                   limitations.

6                   This really was just to make clear that, of  
7                   course, if the court decides that 30 people tapping  
8                   away on their blackberries in court is disruptive, the  
9                   court retains the ability to impose reasonable  
10                  restraints upon courtroom decorum. We think that's in  
11                  keeping of the spirit of the rule, and we think it's a  
12                  little bit of what may have been behind proposal B,  
13                  which is a little bit more of a draconian measure in  
14                  terms of banning use of electronic devices in the  
15                  courtroom.

16                  So with that, happy to field any questions on  
17                  behalf of the committee. Do we need a motion first?  
18                  Motion.

19                  VOICE: So moved.

20                  VOICE: Support.

21                  CHAIRPERSON KAKISH: The motion was made and  
22                  there was support. Now we are open to discussion.  
23                  Yes.

24                  MR. LINDEN: Jeff Linden, 6th circuit. In  
25                  the proposal, the last substantive comment that you

1           made, the nothing shall limit the court's authority to  
2           impose other restrictions, how do you propose that  
3           that doesn't necessarily gut the earlier change? For  
4           example, if a judge were to say audio, video, or other  
5           recording capable cell phones defacto aren't allowed,  
6           and you have established that they are, then they  
7           basically undo the other portion of the rule. Why do  
8           you have what I see as a conflict in there?

9                         And this comes out, basically there is one  
10           particular court that's a district court where the  
11           chief judge, and I am not going to name which one, you  
12           know, or which court, but has, contrary to the other,  
13           has still maintained that recording capability, even  
14           for lawyers who are officers of the court and have  
15           other ways of sanctioning them if they disrupt or do  
16           things that are inappropriate, wouldn't allow phones  
17           that have that in there. And I understand and I  
18           appreciate the committee's attempt, because it's  
19           difficult to acquire a cell phone these days that  
20           doesn't have those capabilities that would be allowed  
21           in the court, and I would like to see how you see that  
22           as an internal conflict in the proposal.

23                         MR. QUICK: In just two comments, briefly.  
24           The first is, of course, there are two levels of  
25           problem here. One is at the courthouse doors

1 generally, and we think the uniform rule that has  
2 these provisions in it will be helpful at that level,  
3 but then within specific courtrooms I guess it's my  
4 hope that by virtue of the word other reasonable  
5 limitations, that that is construed to not permit  
6 somebody to completely vitiate the rule by banning  
7 everything. At least our sense is that the vast  
8 majority of courts recognize the modern technology  
9 that the attorneys carry around and access on a  
10 regular basis. I am not sure I necessarily see it as  
11 an internal conflict.

12 CHAIRPERSON KAKISH: Thank you. Next.

13 MR. BARTON: Bruce Barton, 4th circuit.  
14 Knowing how nitpicky some lawyers can be, I move an  
15 amendment, and I think it's within our limits, that  
16 the underlying language, beginning with including,  
17 read as follows: Including, but not limited to, those  
18 with photographic, video, or audio recording  
19 capabilities. I think the intent is obvious.

20 CHAIRPERSON KAKISH: Do you accept that as a  
21 friendly amendment?

22 MR. QUICK: Sure.

23 MR. RAINE: Paul Raine, 6th circuit.

24 CHAIRPERSON KAKISH: Excuse me. It was  
25 accepted as a friendly amendment to add the words "but

1 not limited to." Is there a second?

2 VOICE: Second.

3 CHAIRPERSON KAKISH: Thank you. So now the  
4 discussion is open for what is on the board here with  
5 the addition of those three words, or four words.

6 MR. RAINE: Paul Raine, 6th circuit. I rise  
7 in support of this, but I have an issue with the  
8 fourth sentence, which starts with "if silenced." It  
9 seems to me that it's going to be difficult --

10 MR. KRIEGER: Point of order.

11 CHAIRPERSON KAKISH: Yes.

12 MR. KRIEGER: Isn't the discussion right now  
13 on the motion to amend? I am sorry.

14 JUDGE CHMURA: The motion has already been  
15 amended by way of a friendly amendment, so the  
16 discussion now is on the motion as amended with the  
17 extra words added. That's where we are at in the  
18 proceeding.

19 MR. RAINE: May I proceed?

20 CHAIRPERSON KAKISH: Yes.

21 MR. RAINE: The sentence that begins with "if  
22 silenced," seems to me it's going to be difficult for  
23 any counsel to make certain that any transmission do  
24 not interfere with any court recordings unless we can  
25 encapsulated the phone somehow to prevent any kind of

1           electronic or electromagnetic radiation from  
2           interfering with the court recording devices. It  
3           seems like you would have to just shut cell phones off  
4           completely. I would suggest maybe striking that  
5           sentence.

6                   MR. QUICK: I think the concern is that in  
7           some circumstances, and I am not smart enough to know  
8           why or when those would occur, that there could be  
9           transmissions which might interfere, but in the normal  
10          course they don't, because we all carry our phones  
11          around in court.

12                   MR. RAINE: I guess the difficulty I am  
13          having is with how counsel can make certain that that  
14          doesn't happen.

15                   MR. QUICK: This is the language under the  
16          Supreme Court rule, so I guess you would have to move  
17          for an amendment of the language.

18                   MR. RAINE: My motion to amend that would  
19          then be to strike the sentence.

20                   VOICE: Second.

21                   CHAIRPERSON KAKISH: This is not accepted as  
22          a friendly amendment.

23                   VOICE: There is a motion on the floor.

24                   CHAIRPERSON KAKISH: There was a second.

25                   Now we open the debate to this amendment.

1                   JUDGE CHMURA: Just so you understand, the  
2 discussion has to be on whether the motion should be  
3 amended, not under the underlying merits of the motion  
4 as amended and passed, only on whether the motion  
5 should be as amended and seconded by this gentleman  
6 here. It's a narrow question that you are debating  
7 right now.

8                   MR. BARTON: Point of parliamentary inquiry.  
9 Are we trying to amend something that we passed at the  
10 last meeting, in which case it's going to take some  
11 sort of motion to -- we can't amend in a subsequent  
12 proceeding, I think the parliamentarian will agree,  
13 something we passed last time. In other words, we are  
14 actually trying to change what happened at a previous  
15 meeting without the proper motion.

16                   CHAIRPERSON KAKISH: We are not looking at  
17 what we voted last year. What we voted stands. What  
18 we are doing here is the determination or the decision  
19 to grant the committee, which is the Civil Procedure  
20 and Courts Committee, permission to advocate its own  
21 stances. What we are doing here is just to give them  
22 permission for them to go ahead and say that this is  
23 their viewpoint, because the cell phone issue was  
24 already before the Supreme Court, it was published for  
25 a public comment, and the Civil Procedure and Courts

1 Committee now took a look at it and realized that it  
2 wanted to expand on it, but in doing so it needs our  
3 permission to do that. Does that answer your  
4 question?

5 MR. BARTON: Are we changing something not  
6 underlined in this proposal which was passed last  
7 time?

8 MR. STEMPIEN: Madam Chair, point of order.  
9 Eric Stempien, 3rd circuit. If we are only voting as  
10 to give permission to a particular committee to take a  
11 position, we are not here to amend anything. All we  
12 are here is they are to tell what they want to  
13 present, and I would think we would take an up or down  
14 vote as to what they want to present. We are making  
15 amendments to something that's been presented by a  
16 committee. It's not our presentment.

17 CHAIRPERSON KAKISH: Correct, but we do have  
18 the authority to make sure that we agree with what  
19 they are proposing or not, but you are correct.

20 MR. BARTON: May I have a parliamentary  
21 ruling by the parliamentarian. Are we talking  
22 about -- if we are talking about language in this  
23 proposal not underlined, are we talking about a motion  
24 to reconsider, because we passed the language that we  
25 are now trying to amend at a previous meeting.

1                   JUDGE CHMURA: That's right, and,  
2                   unfortunately, I don't know, because I wasn't at the  
3                   previous meeting, so I don't really know what was  
4                   passed. If there was a question that was passed at  
5                   the previous meeting which you are attempting to do by  
6                   motion that's in the agenda is to change what was  
7                   passed at the previous meeting, yes, it's a motion to  
8                   reconsider, but I don't know that that's the case, not  
9                   having been here the previous motion. It's not the  
10                  case. I am told that's not the case. The Chair has  
11                  to make that ruling since she would be in a better  
12                  position right now. So it's a main motion  
13                  essentially, as amended.

14                  MR. RAINE: May I suggest that since my  
15                  amendment proposal to strike that sentence was not  
16                  taken as a friendly amendment that I withdraw my  
17                  motion and that the section just simply take that  
18                  under consideration for what they propose in  
19                  September.

20                  CHAIRPERSON KAKISH: They are not proposing  
21                  this in September. The comment period -- that's fine  
22                  with respect to the withdrawal of the motion.

23                  VICE CHAIR JOHNSON: Who was the second?

24                  VOICE: I withdraw my second.

25                  MS. VANHOUTEN: Madam Chair, I just want

1 to -- Margaret VanHouten from the 3rd circuit. The  
2 friendly amendment that was accepted too, we can't  
3 even offer a friendly amendment, because it's what  
4 their committee has already passed, so we are giving  
5 up or down approval to what their committee has  
6 passed. So I think even that friendly amendment of  
7 "but not limited to" needs to be removed, because he  
8 is not the committee, and he can't accept on behalf of  
9 the committee without the committee voting on that.

10 JUDGE CHMURA: She is speaking against  
11 passing the amendment, or the motion.

12 MS. VANHOUTEN: No, I am actually, a point of  
13 parliamentary procedure, if we are approving their  
14 position or allowing them to state their position or  
15 not, how can we amend what their position is? Their  
16 committee would be the one that's approving or  
17 approved that language. The gentleman can't speak on  
18 behalf of his entire committee. That friendly  
19 amendment was not approved by his committee. It's a  
20 point of parliamentary procedure that I am offering.

21 JUDGE CHMURA: I don't think it's a point of  
22 parliamentary procedure. I think you are speaking  
23 against passage of the motion. I don't think this is  
24 a question of parliamentary procedure at all.

25 MS. VANHOUTEN: I am not against allowing

1           them to state their position. I am just saying I  
2           don't think our committee can change what their  
3           position is.

4                     JUDGE CHMURA: Then vote no.

5                     MR. KRIEGER: I have a point of information.  
6           Could the clerk restate the main motion. Nick Krieger  
7           from the 3rd circuit. I am sorry. Could the clerk  
8           restate the main motion. My understanding is that the  
9           main motion is to allow this committee to propose this  
10          and not for us to amend it, is that correct?

11                    CHAIRPERSON KAKISH: What is before the  
12          Assembly is the last page of the proposal, page number  
13          two of item number 14, and it is the question should  
14          the Representative Assembly grant permission to the  
15          Civil Procedures and Courts Committee to submit its  
16          comments that advocate revisions to the Assembly's  
17          position on the usage of electronic devices in  
18          courthouses. There has been a friendly amendment that  
19          was accepted to add those four words, so the question  
20          before us now -- am I correct, Victoria?

21                    CLERK RADKE: Yes.

22                    CHAIRPERSON KAKISH: The question before us  
23          now is do we allow the Civil Procedures and Courts  
24          Committee to advocate its position as amended with a  
25          friendly amendment, that is the question.

1 VOICE: Call for the question.

2 MR. MEKAS: 49th Circuit, Peter Mekas. When  
3 we are talking about its position, are we talking  
4 about the position of the Assembly or the Court and  
5 Civil Procedures Committee?

6 CHAIRPERSON KAKISH: We are talking about the  
7 committee. The committee wants to advocate -- this  
8 really is a different proposal than what we are used  
9 to seeing, and that's where the confusion is coming.

10 What they have done is they made their  
11 changes, and because we already ruled on the matter  
12 last year, in order for them to advocate their own  
13 position, the committee's position, they need our  
14 permission, they need our blessing, and they are  
15 asking for our blessing. That's all that they are  
16 asking for.

17 MR. MEKAS: However our comments changed the  
18 Civil Procedures and Court Committee's position, and  
19 are we asking that that committee submit their  
20 proposal without additional comments for passage?

21 CHAIRPERSON KAKISH: Dan Quick is the  
22 proponent for that committee, and he did have the  
23 authority to accept that friendly amendment.

24 MR. MEKAS: And he did accept it?

25 CHAIRPERSON KAKISH: And he did accept it,

1           yes.

2                   CLERK RADKE:  You had a request to call the  
3           question.

4                   CHAIRPERSON KAKISH:  There was a call to  
5           question, and all those in favor say aye.

6                   All those opposed.

7                   The debate now has ended, and now we move to  
8           vote on the issue before us as to whether or not to  
9           grant the Civil Court and Procedures Committee  
10          permission to advocate its position as you can see on  
11          the board.

12                   All those in favor say aye.

13                   All those opposed say no.

14                   Those abstaining say yes.

15                   The ayes have it.  The motion carries and is  
16          adopted.

17                   Next item on the calendar is item number 15,  
18          which is consideration of MCR 2.516, instructions to  
19          the jury.  The proponent is John Riser from the 22nd  
20          circuit court.

21                   MR. REISER:  Unfortunately for me this is one  
22          you folks do have the authority to amend.  Hopefully  
23          you will be too tired after lunch to do much of it,  
24          but good afternoon, my name is John Reiser.  I am an  
25          assistant prosecuting attorney in Ann Arbor,

1 22nd circuit, Washtenaw County. Prior to that I was  
2 an assistant prosecuting attorney in Oakland County,  
3 6th circuit, so hello to many of my friends and hello  
4 to Matt Abel as well, who is my good friend. That's  
5 why he gets a separate call out.

6 Two and a half years ago we adopted a  
7 unanimous proposal which took a position against  
8 allowing jurors to discuss the case before the  
9 deliberations. Now, I know that there is some  
10 movement in courts around this -- courts who do things  
11 differently with respect to jury deliberations, but  
12 for the good old fashioned, so to speak, jury  
13 deliberations, this is what we are talking about.

14 Now, the modifications proposed are a part of  
15 the Prosecuting Attorneys Association of Michigan's  
16 proposal, and as an assistant prosecutor, I would ask  
17 that you keep in mind that my job is on the line were  
18 this not to pass. I am only kidding about that,  
19 because prosecutors care about justice, about the  
20 prosecution's rights, about the defendant's rights as  
21 well. We have to. The Court Rules direct to us do  
22 that. The Michigan Rules of Professional Conduct  
23 direct us to do that, and these modifications are an  
24 extension of that policy pronouncement, and it hopes  
25 to maintain the integrity of the adversary process.

1                   We are talking about the right to confront  
2                   your witnesses. When a juror is using a blackberry, a  
3                   trio, an I-phone, a 3G network, when the juror is  
4                   going to Google, when the juror is looking up stuff  
5                   online, that's your client's, you defendant attorneys'  
6                   right to confront the witness. That is your client's  
7                   right to have 403, you know, whether it's relevant,  
8                   404(B), 609, improper impeachment. So that's really  
9                   what we are talking about. Some of these things that  
10                  they are doing violate the constitution and violate  
11                  the party's rights.

12                  I mentioned some of the things that jurors  
13                  have. There was a recent article in the New York  
14                  Times published on March 17th, 2009, after Pam had put  
15                  this proposal together, and I don't know if you folks  
16                  get the New York Times either in paper or online and  
17                  read it. Did anyone here read that article? You  
18                  folks know a little bit about what I am talking about.

19                  They talked about an eight-week federal drug  
20                  trial in Florida where one of the jurors, it was found  
21                  out that that juror had gone and looked at something  
22                  that was specifically excluded by the judge, and one  
23                  of the other jurors brought it to the court's  
24                  attention, and when the judge made inquiry, the judge  
25                  found out that, oh, yeah, eight of us other jurors

1 have been doing that too, and then that eight-week  
2 trial, which you can imagine, rightfully so, was  
3 mistried, the jurors researched evidence specifically  
4 excluded.

5 They did searches on the attorneys. I don't  
6 mind me being researched so much. They did searches  
7 on the defendant. You might if you are a criminal  
8 defendant. They read news articles about the case.  
9 Well, hopefully you have a good media that covers both  
10 sides, and since the prosecution usually goes first,  
11 they might just be covering my side.

12 They went to Wikipedia. You don't need  
13 Britannica anymore. They go to Wikipedia for  
14 definitions. Can you imagine going to Wikipedia,  
15 typing in probable cause, reasonable doubt, things  
16 like that. Woe unto us when jurors get to use those  
17 outside influences.

18 So what we are trying to do is limit that,  
19 and we are trying to tell jurors that they can't do  
20 it. I don't think they do it out of malice. They do  
21 it because that's what people do.

22 How many people here when you have a case  
23 come up where you have got a witness you don't know  
24 anything about, what do you do? You Google them. I  
25 am not going to ask whether you have Googled yourself,

1 but I know you have Googled witnesses. And now what  
2 you are doing is you are going to Facebook to find out  
3 who are their friends, what are they saying, is this a  
4 person of substance, and now you are going to Linked  
5 In, and you are going to names and you are going to  
6 My Space, and you are going to -- I don't know who you  
7 will go to next year, but you are going somewhere. So  
8 what we are trying to do is prevent the juries from  
9 doing some of the things they might be doing.

10 This proposal, I read all the comments, and  
11 some of them are good. I suspect this will get  
12 amended some, because some of the points are good, but  
13 I think there is a tension between the judiciary that  
14 wants to oversee a trial and have it go smoothly and  
15 quickly versus the parties who want to have it fairly  
16 and the consequences that the parties suffer when  
17 outside influences are there. So one of the things  
18 that we will probably talk about is whether this  
19 should be mandatory or whether it should be  
20 discretionary. I think it should be mandatory so that  
21 the judges have to do it and jurors know from the  
22 outset that they can't do this kind of stuff.

23 Summarizing some of the comments, Barry Gates  
24 who is a practitioner in my county, I have got his  
25 notes here, thanks. He is an orange. He is wearing

1 orange today, orange paper. He says that there are  
2 useful suggestions. He says we should include other  
3 jurors. One of the comments by Allen Lanstra, he says  
4 that we should include anyone. So I suspect that that  
5 will be subject to some modification or discussion.

6 He also adds, as does one of the other people  
7 who commented on it, research on the attorneys. And  
8 that's kind of important too, because when I have a  
9 case, a jury trial especially, against a defense  
10 attorney, I will go to his website or her website and  
11 I will find out if that person has a blog and what  
12 that person feels about the introduction of gas  
13 chromatography or how they suppress traffic stops,  
14 stuff like that, and it could be dangerous to a  
15 litigant if you are going there and finding out  
16 things, because on a lot of your websites you talk  
17 about the criminal justice system. So you might not  
18 want the jury to know that there was a preliminary  
19 examination or there was probable cause to find that  
20 your guy probably did it.

21 So going to attorney websites, attorney blogs  
22 can be dangerous for the adversary for the sanctity  
23 of, the integrity rather, of the system.

24 So with that I don't know if I move or if I  
25 ask someone to move for it or is there any discussion

1 first? I am being told -- I am getting a little help  
2 here, but on procedure. Is there a -- I guess do we  
3 need to have it on the floor, the motion, and then we  
4 can ask me questions?

5 VOICE: You make the motion.

6 MR. REISER: I would move that we adopt this.

7 VOICE: Support.

8 CHAIRPERSON KAKISH: The motion was moved and  
9 I heard a second.

10 VOICE: Support.

11 CHAIRPERSON KAKISH: And support. Now we are  
12 up to discussion.

13 MR. REISER: I don't have any modifications  
14 right now myself. I am sure that this august group  
15 will come up with some.

16 MR. IDDINGS: Greg Iddings, 39th circuit.  
17 Rather than doing this piecemeal, I would just at this  
18 point make a motion for a friendly amendment to  
19 include the two Barry Gates' amendments both to add  
20 the language including others or to make it more clear  
21 to refrain from speaking to anyone, and also the  
22 language, the section five, research the attorneys  
23 involved in the case or access the attorneys'  
24 websites.

25 CHAIRPERSON KAKISH: Can you give us a

1 second.

2 MR. REISER: Under B(1)(a) becomes "anyone"  
3 rather than "others"?

4 MR. IDDINGS: Others, comma, including other  
5 jurors. With others, a comma right there, and then  
6 including other jurors.

7 MR. REISER: I would accept that friendly  
8 amendment.

9 VOICE: Put a second comma.

10 MR. IDDINGS: Then the second part was  
11 B(1)(d).

12 MR. REISER: In the body or the one before  
13 it?

14 MR. IDDINGS: To include a (v) after (iv),  
15 Roman numeral five, correct, small Roman numeral five,  
16 research the attorneys involved in the case or access  
17 the attorneys' websites. How about researching.

18 MR. REISER: I would suggest a way we can do  
19 that is under d(i) there is a comment that says  
20 seeking information about the criminal history of a  
21 party or a witness. That suggests that someone has a  
22 criminal history. We could say personal history of a  
23 party or witness or attorney.

24 We don't want them looking at us, our  
25 witnesses or our defendants, our clients, correct, and

1           there might be a way to capture that sentiment in just  
2           one of these items.

3                   MR. IDDINGS: I think that's correct. I  
4           think with Roman numeral I where it says "seeking  
5           information about the history or criminal record of a  
6           party witness" --

7                   MR. REISER: As a prosecutor, I don't think  
8           it's fair to a defendant to say a criminal record,  
9           because it suggests he has one. I would add the word  
10          lengthy in front of it if you are going to do that.

11                   (Laughter.)

12                   MR. REISER: See, what I would propose is  
13          that, I would move then that we say about the personal  
14          history of a party, witness, or attorney. Would  
15          that --

16                   MR. WEINER: Why don't we leave it a little  
17          bit more general and say "seeking information about a  
18          party, witness, or attorney involved in the case."

19                   James T. Weiner from the 6th circuit. I was  
20          doodling as we were talking, and I rewrote it to --

21                   CHAIRPERSON KAKISH: Excuse me, sir, can you  
22          repeat your name.

23                   MR. WEINER: James T. Weiner from the 6th  
24          circuit. I was doodling as we were talking and  
25          MCR 2.516 (B)(1)(d)(i), seeking information about a

1 party, or witness or attorney involved in the case.  
2 It's a very general statement, so they just -- and  
3 nothing about the personal interests, just seeking  
4 information.

5 MR. REISER: I would accept that as a  
6 friendly amendment.

7 CHAIRPERSON KAKISH: Has Nancy gotten the  
8 language correct, Mr. Reiser?

9 The friendly amendment then to accept the  
10 correction, the changes to B(1)(a) and B(1)(d)(i) have  
11 been accepted. Is there a second?

12 VOICE: Second.

13 CHAIRPERSON KAKISH: Support?

14 VOICE: Support.

15 CHAIRPERSON KAKISH: Now we are open to  
16 discussion to the proposal as it now stands. Judge.

17 JUDGE KENT: Wally Kent, 54th judicial  
18 circuit. Allen Lanstra in his letter, quite  
19 appropriately I think, commented that (d) as  
20 introduced seems to suggest that only electronic  
21 research outside court would be prohibited, and I  
22 would like to offer a friendly amendment that should  
23 not -- I am going to need a little help, because I  
24 didn't write it down -- attempt by any means to obtain  
25 information about the case.

1                   So strike the words use a computer, cellular  
2                   phone, and so forth, and simply substitute the phrase  
3                   "attempt by any means to obtain information about the  
4                   case when they are not in court."

5                   MR. REISER: Could we say, rather than get  
6                   rid of the "or" in front of "other electronic device,"  
7                   "or any other means"? Can we do that?

8                   JUDGE KENT: I would go along with that. I  
9                   was just trying to keep it as brief and concise as  
10                  possible.

11                  MR. REISER: We want them to know you can't  
12                  use your blackberries, your cell phones, or things  
13                  like that, so that's the import.

14                  JUDGE KENT: If that would make you friendly  
15                  to the amendment, I have no problem with that.

16                  VOICE: That doesn't do it.

17                  MR. REISER: Get rid of the word "any" before  
18                  "device," and get rid of the "or" right there.

19                  JUDGE KENT: Or any other electronic device  
20                  or any other means.

21                  MR. REISER: I think the word capability.

22                  JUDGE KENT: Or any other means.

23                  MR. REISER: That's right, or any other  
24                  means.

25                  JUDGE KENT: No comma. I don't think we need

1 a comma.

2 MR. REISER: I accept that friendly  
3 amendment, and it sounds like the body does too, but  
4 do we need it for (c) to be consistent, sir.

5 JUDGE KENT: I did not look at that. I would  
6 have to see (c) on the screen again.

7 MR. WEINER: It's not likely that they are  
8 going to be able to use any other means in trial, so  
9 probably not necessary for (c).

10 JUDGE KENT: That's covered also under (b)  
11 and discussion. I don't feel that it's necessary.

12 MR. HAUGABOOK: Terrence Haugabook, 3rd  
13 circuit.

14 CHAIRPERSON KAKISH: Excuse me, sir. Another  
15 friendly amendment was made to introduce the latest  
16 item to subsection (B)(1)(d). Mr. Reiser, it has been  
17 accepted?

18 MR. REISER: Yes, ma'am.

19 CHAIRPERSON KAKISH: Is it supported?

20 VOICE: Support.

21 CHAIRPERSON KAKISH: Second, okay. Now the  
22 discussion is open for the proposal as it now stands.

23 MR. HAUGABOOK: Terrence Haugabook, 3rd  
24 circuit. Looking at B(1)(a), if we could, I agree  
25 with everything that's been done thus far, but with

1 B(1)(a), instead of having discussed the case with  
2 others, including other jurors, how about just that  
3 they shall not discuss the case until deliberation  
4 begins? I think that's plain and simple, don't  
5 discuss it until deliberation begins. What's not  
6 clear about that, that you can't discuss the case  
7 before deliberation?

8 MR. REISER: Here is my concern, the New York  
9 Times article talked about a Pennsylvania case, about  
10 an Arkansas case where jurors were adding this stuff  
11 on their Twitter and their Facebook, and people who  
12 don't use Twitter and Facebook might not know about  
13 it, but it's what are you doing right now. Witness  
14 just testified. Didn't seem credible. In the  
15 New York Times, here is what it said in the New York  
16 Times. Juror just said I am giving away 12.5 million  
17 of somebody else's money. Jurors are covering these.  
18 So I don't know how we capture --

19 MR. HAUGABOOK: What you are talking about is  
20 what's just been done in (d). That's using electronic  
21 means to find out things. That part --

22 VOICE: No.

23 MR. HAUGABOOK: What I am hearing, you are  
24 saying jurors are going on Facebook, they are going on  
25 Twitter, they are getting information from those

1 sources --

2 MR. REISER: No, they are telling. You don't  
3 have to read about how a trial is doing in the paper,  
4 you can go to a juror's Twitter page or his Facebook.

5 VOICE: The juror is reporting.

6 MR. HAUGABOOK: Oh, I got it. Okay. I  
7 understand.

8 MR. REISER: We are trying to let them know  
9 you can't -- we can't spell out Facebook, because next  
10 year there will be many of us on it and it will be  
11 old, and there will be something new.

12 MR. HAUGABOOK: I withdraw that offer for a  
13 friendly amendment.

14 CHAIRPERSON KAKISH: Thank you. Is there any  
15 further discussion?

16 MR. STEMPIEN: Madam Chair, Eric Stempien,  
17 3rd circuit. I would like to offer a friendly  
18 amendment with regard to Section (B)(1)(d)(iv), which  
19 is the catch-all, but it's not really a catch-all,  
20 because it says catch-all, then it has limitations to  
21 it. I would suggest to strike the words "such as an  
22 aerial map of the scene" for two reasons, one being  
23 that I think it's a catch-all and should just be a  
24 catch-all. Secondly, I think that actually might  
25 suggest something to the jurors.

1                   MR. REISER: I would accept that. Helpful,  
2 period, strike the balance?

3                   MR. STEMPIEN: Correct.

4                   MR. REISER: Accepted.

5                   CHAIRPERSON KAKISH: There was a friendly  
6 amendment to delete from (B)(1)(d)(iv) the words after  
7 the comma, "such as an aerial map of the scene." Is  
8 it supported?

9                   VOICE: Support.

10                  CHAIRPERSON KAKISH: Seconded.

11                  VOICE: Second.

12                  CHAIRPERSON KAKISH: This particular proposal  
13 as amended and accepted is now under discussion.

14                  Yes, ma'am.

15                  MS. WASHINGTON: Good afternoon, everybody.  
16 Erane Washington, 22nd circuit. John, this is very  
17 friendly. I haven't come up with the language for it  
18 yet, but as you were speaking about Facebook and  
19 Twitter, you are using the term discuss, and I am  
20 trying to remember where that was. When Twitter and  
21 Facebook, what they are doing is actually  
22 disseminating the information, so I don't know if  
23 discuss covers what you are trying to protect against,  
24 which is putting a status post that says I am  
25 listening to a juror who is not credible. So maybe we

1 need some language in here that deals with the  
2 dissemination of information about the case as well.

3 MR. REISER: Discuss or disseminate, is that  
4 your proposal?

5 MS. WASHINGTON: If we go to (B)(1)(d), and  
6 where we go to, after "capabilities to obtain," we  
7 would say "disseminate or obtain."

8 MR. REISER: I would accept that as friendly.  
9 It's (B)(1)(d), second line currently, to obtain or  
10 disseminate.

11 MS. WASHINGTON: Yes, disseminate or obtain  
12 either way. Or any other means to obtain or  
13 disseminate, either one works.

14 CHAIRPERSON KAKISH: A friendly amendment was  
15 made to add the words "or disseminate" to, as  
16 Mr. Reiser indicated, subsection (B)(1)(d).  
17 Mr. Reiser accepted it as a friendly amendment. Is  
18 there support?

19 VOICE: Support.

20 CHAIRPERSON KAKISH: Second?

21 VOICE: Second.

22 CHAIRPERSON KAKISH: Okay. Now, this  
23 proposal as it now stands is open for discussion.  
24 Yes, sir.

25 MR. KRIEGER: Thank you, Madam Chair. Nick

1 Krieger from the 3rd circuit. I think I already made  
2 some enemies this morning, but I will try not to do  
3 anymore. I do have a nitpicky sort of a thing though,  
4 and I was wondering if as a friendly amendment in (d),  
5 in the body of (d) before we go to the Roman small  
6 letters we could add a Harvard comma after  
7 "capabilities," because I really think it is a little  
8 bit confusing from a rule construction standpoint to  
9 say other electronic device with communication  
10 capabilities or any other means. I mean, that kind of  
11 doesn't make sense, so I think it should be  
12 capabilities, comma, or any other means, and I know  
13 it's petty, but I think it's important. Thanks.

14 MR. REISER: I don't know if that's a Harvard  
15 comma or Strunk and White, but I don't have a problem  
16 with it.

17 CHAIRPERSON KAKISH: With respect to that  
18 friendly amendment, is that supported, seconded?

19 VOICE: Second.

20 CHAIRPERSON KAKISH: Support, second. I  
21 heard that. We are now open to discussion for the  
22 amendment as it now stands.

23 JUDGE KENT: Wally Kent, 54th circuit. I  
24 share the concerns that the gentleman from the 6th  
25 circuit had regarding (B)(1)(a), discuss the case with

1 others. I would like to offer a friendly amendment,  
2 with other jurors or any other persons. I think  
3 that -- I would like to include the other jurors, just  
4 so they know they cannot do it when they, for  
5 instance, are waiting in the jury room or something  
6 going on during recess, but I would like to have  
7 something in there that makes it clear they can't  
8 discuss it among themselves or with anyone else. I am  
9 open to any suggested language, but I think "with  
10 other jurors" is not inclusive enough?

11 MR. REISER: I don't know what color we go to  
12 if we go to use red. Other jurors or any other  
13 person, is that what you are proposing?

14 VOICE: Discuss the case with anyone.

15 JUDGE KENT: With any persons, including  
16 other jurors.

17 CHAIRPERSON KAKISH: Judge, that was  
18 already --

19 JUDGE KENT: Was it there?

20 CHAIRPERSON KAKISH: Yes, one of the very  
21 first friendly amendments that were taken in this  
22 proposal was others, comma.

23 JUDGE KENT: Thank you. I defer to the body.

24 CHAIRPERSON KAKISH: Thank you, Your Honor.

25 MR. PAUL: Rick Paul from the 6th circuit.

1           Could you scroll to (B)(1)(d). I have a proposed  
2           friendly amendment to that section. Where it says use  
3           a computer or cellular phone, et cetera, to  
4           disseminate or obtain information about the case when  
5           they are not in court, I would propose deleting the  
6           phrase "when they are not in court," because, as I  
7           understand it, there are concerns about jurors sitting  
8           in a jury room, at lunch, in a courtroom, wherever  
9           they may be in court, disseminating that kind of  
10          information. Therefore, I would propose that that  
11          phrase be stricken.

12                       MR. REISER: I would accept, if there is a  
13          second.

14                       VOICE: I second.

15                       CHAIRPERSON KAKISH: There was a friendly  
16          amendment to delete from (B)(1)(d), the very first  
17          sentence, the words "when they are not in court" so,  
18          therefore, there should be a period after the word  
19          "case." This friendly amendment was accepted. Is it  
20          seconded?

21                       VOICE: Second.

22                       CHAIRPERSON KAKISH: Support?

23                       VOICE: Support.

24                       CHAIRPERSON KAKISH: Discussion on the  
25          proposal as it now stands?



1 Discussion?

2 MS. POHLY: Linda Pohly from the 7th circuit.  
3 I rise to offer a friendly amendment to subparagraph  
4 B, which appears to limit the reporting requirement to  
5 a case where a juror has observed the use of an  
6 electronic device. Since now we are amending this to  
7 include other discussions, my amendment would remove  
8 the words "has used an electronic device in violation"  
9 and insert the words "has violated."

10 VOICE: Support.

11 MS. POHLY: Has violated this rule, correct.  
12 I would take out "rule" as well.

13 MR. REISER: I would accept that as a  
14 friendly amendment.

15 VOICE: Second.

16 CHAIRPERSON KAKISH: I heard a second.

17 VOICE: Support.

18 CHAIRPERSON KAKISH: Okay. Thank you, Linda.

19 MR. HAUGABOOK: Terrence Haugabook, 3rd  
20 circuit. Like my brother here from the 3rd circuit,  
21 hope I am not making any enemies here today.

22 If we could just go back to (a). If your  
23 concern is that people are going to be blogging,  
24 tweeting, or what have you while the case is going on,  
25 I am concerned then about the part "until deliberation

1 begins." Because, let's say they are deliberating  
2 over three days and one guy wants to go home and reach  
3 out every night and talk about the idiot that's  
4 holding up, you know, they are holding off 11 to 1 or  
5 something like that. So I have a concern right there  
6 about the section of "until deliberation begins."  
7 Maybe we could come up with something where until the  
8 case is over or until you your duties are concluded in  
9 this case, or something like that.

10 But I think, you know, until deliberation  
11 begins, and I think that that would allow a person to  
12 say, now I am deliberating, so I can go home, I can  
13 tweet, I can Facebook, I can network, I can whatever.  
14 So I think we need to explore that part there and come  
15 up with a solution.

16 MR. REISER: Isn't there a standard jury  
17 instruction, sir, that tells them they can't do that  
18 already?

19 MR. HAUGABOOK: Apparently we don't feel this  
20 is enough.

21 VOICE: This is pre.

22 MR. REISER: There is a jury instruction that  
23 they get once deliberations start in the state system.

24 MR. HAUGABOOK: What about the person who is  
25 sitting there waiting to be impaneled and hasn't been

1           sworn and they start doing these things beforehand  
2           because they are sitting there and they don't get  
3           picked that day, jury deliberations go over until the  
4           next day. You are talking about this rule here that  
5           it only comes into effect after the jury is sworn and  
6           before evidence.

7                       MR. REISER: In a state system, they are not  
8           going to know what the case is about or anything like  
9           that. I can't speak for all counties, only a couple  
10          of them.

11                      MR. HAUGABOOK: If it's a murder case, the  
12          judge will tell you the charges in this case are  
13          murder.

14                      MR. REISER: You mean after the impaneling  
15          has started but before they are sworn?

16                      MR. HAUGABOOK: Well, my concern is you said  
17          the jurors were going out and they were tweeting, they  
18          were Facebooking, they were doing things. These were  
19          the people who were deciding the case, correct?

20                      MR. REISER: Yes, sir.

21                      MR. HAUGABOOK: I didn't read the article, so  
22          I am taking what you read, okay. These are people who  
23          have already been impaneled, and they are tweeting and  
24          doing whatever while they are serving on the jury, am  
25          I correct?

1                   MR. REISER: That's correct.

2                   MR. HAUGABOOK: My thing is if that's your  
3 concern, all right, then even if there is an  
4 instruction that's going to tell them that, it's going  
5 to tell them that at the end of the case. What I am  
6 saying is day one, you have heard three witnesses, you  
7 go home. Boy, I am writing to my friends on Facebook.  
8 Let me tell you just what went on in court. Okay.  
9 Deliberations have not begun. It's day one of trial,  
10 the conclusion of day one. You go home, you tweet to  
11 everybody, you reaching out to everybody. If this is  
12 a rule that you want to tell the jurors about, as long  
13 as they are going to be sitting on the case and  
14 serving until conclusion of the case, you just told  
15 them you can't discuss this until deliberations begin.

16                   My thing is how do we know people won't go  
17 in, and, like I said, they are getting mad because  
18 somebody is holding out. They are ready to convict or  
19 they are ready to acquit, somebody is holding out. We  
20 need to say something here about -- well, no, this is  
21 impaneling. I am sorry. I am mixing apples and  
22 oranges.

23                   MR. REISER: Are you suggesting we delete the  
24 phrase "until deliberations begin"?

25                   MR. HAUGABOOK: Delete it, yes.

1 MR. REISER: Is that your friendly amendment?

2 MR. HAUGABOOK: Yes. Except otherwise  
3 authorized by the court. Yeah, don't discuss it with  
4 others, including other jurors, except as otherwise --  
5 here we go, discuss the case with any other juror  
6 until deliberation begins or with any other  
7 non-juror -- no, I don't like that.

8 I think we got it good right there, discuss  
9 the case with others, including other jurors, except  
10 as otherwise authorized by the court, and then the  
11 court would tell them at that point --

12 MR. REISER: They could deliberate.

13 MR. HAUGABOOK: Right.

14 MR. REISER: Do I need to accept and they  
15 support? I accept.

16 CHAIRPERSON KAKISH: Support?

17 VOICE: Support.

18 VOICE: Second.

19 CHAIRPERSON KAKISH: Thank you. Open for  
20 discussion. Yes, sir.

21 MR. HILLARD: Martin Hillard, 17th circuit.  
22 I was just going to point out, instead of getting rid  
23 of "until deliberation begins" you needed to get rid  
24 of the comma after "jurors," because the phrase "until  
25 deliberation begins" modifies jurors, not others. So

1           it would be discuss the case with others, comma,  
2           including other jurors until deliberation begins.  
3           Thus implying they can discuss with other jurors after  
4           deliberation begins but still they can't discuss it  
5           with others at any time during the trial.

6                     MR. REISER: But hasn't the previous  
7           amendment modified --

8                     MR. HILLARD: Well, technically what you are  
9           left with then is they can't discuss the case with  
10          other jurors.

11                    MR. REISER: Sure they can.

12                    MR. HILLARD: Well, okay, authorized by the  
13          court.

14                    MR. REISER: I think that's what this body is  
15          thinking.

16                    MS. LARSEN: Suzanne Larsen, 25th circuit. I  
17          just want to make a comment about what the gentleman  
18          over there was taking about a minute ago when he was  
19          talking about jurors before they are sworn in or going  
20          to jury selection. I mean, anything that goes on in  
21          jury selection, I could go in the courtroom and  
22          listen, even as someone who is not potentially going  
23          to be a juror and I could share that information.  
24          That's all public information. It's only when you get  
25          into the witnesses that you are concerned with the

1 evidence as to what's going on and what they are  
2 finding out on their own. So I guess I wouldn't see  
3 that as a concern.

4 MR. REISER: About jurors?

5 MS. LARSEN: During jury selection. What  
6 goes on during jury selection is generally open to the  
7 public. Someone who is not -- for example, I could go  
8 in and listen. I could share what I found during the  
9 jury selection process. Anyone could share that.  
10 That's public information.

11 MR. REISER: Except this --

12 MS. LARSEN: I would not make changes. He  
13 was concerned about that, but, as I am reading this,  
14 you know, this is only for a jury who has been sworn.  
15 Prior to that time what goes on isn't really part of  
16 the deliberation process.

17 So I am in support of this. I just was  
18 trying to respond to something he had said.

19 MR. ARD: Josh Ard, 30th circuit. One of the  
20 things that is little bit of a problem here, and,  
21 John, I don't have a good solution to it, is that if  
22 you have a potential juror who is sitting there and  
23 doing this, that there ought to be some way of  
24 catching that and say, fella, you are not on the jury.  
25 And I don't know if anybody is asking, by the way,

1 have you been tweeting about your experience here,  
2 have you been researching the people, the attorneys  
3 who are involved in this case, because that would seem  
4 to contaminate them as jurors, and they haven't gotten  
5 any instructions that they are not supposed to do  
6 that.

7 MR. REISER: And I would say this kind of  
8 stuff comes up. You run into jurors in the hallway,  
9 you have a cigarette, and it's inadvertant, with a  
10 juror. So I am saying there is a process already in  
11 place that deals with intentional or unintentional  
12 violations of the privacy.

13 MR. ARD: I am not talking about after they  
14 are a juror, but I am in the panel, I hear who the  
15 attorneys are, I start looking them up, finding out  
16 all this information about the attorneys. You don't  
17 want me doing that. How do I know I am not supposed  
18 to do that, because I am not told that until I am  
19 picked as a juror.

20 VOICE: Voir dire.

21 MR. ARD: Well, I mean, maybe not change the  
22 Court Rule, but just give some instruction to, guys,  
23 if you are going to be picked, you are not going to be  
24 able to do this, and if you do, we find out about it,  
25 you are not getting on the jury.

1 MR. REISER: Josh, I think what you are  
2 talking about is under (B)(1), the main part. Right?

3 MR. ARD: All of this is talking about after  
4 the jury is impaneled.

5 MR. REISER: I think I would direct you to --

6 MR. ARD: After the jury is sworn.

7 MR. REISER: So you have some point, some  
8 questions, but nothing specific about how to --

9 MR. ARD: No, I don't have a good solution,  
10 but I am just saying it would be nice for people to  
11 know that if they are a potential juror, we shouldn't  
12 be doing this kind of stuff.

13 VOICE: Call the question.

14 CHAIRPERSON KAKISH: Somebody called the  
15 question.

16 VOICE: Support.

17 CHAIRPERSON KAKISH: Question is called,  
18 support.

19 Those in favor say aye.

20 Those opposed.

21 Any abstentions?

22 Therefore, the ayes carry. Therefore, the  
23 question is called, and now we are to vote on whether  
24 or not to adopt this proposal as it now stands with  
25 the various friendly amendments.

1 All those in favor say aye.

2 All those opposed say no.

3 Any abstentions.

4 Sorry, the ayes have it, and the motion  
5 carries. Thank you.

6 (Applause.)

7 CHAIRPERSON KAKISH: Before we move on to the  
8 last item, I would like Judge Chmura to take the  
9 microphone and respond to one of the questions that  
10 were raised.

11 JUDGE CHMURA: There was a question raised by  
12 the gentleman sitting over to my left. I am sorry, I  
13 don't know your name, sir, but you wanted a  
14 parliamentary ruling on whether the previous item,  
15 number 14, was a motion for consideration. The answer  
16 is no.

17 The reason why is because that was brought  
18 up -- in order to have a motion for reconsideration,  
19 it's got to be brought up at the same meeting. So  
20 whatever item was passed at the previous meeting, it  
21 was obviously not at this meeting. So you can't have  
22 a motion to reconsider that's brought up the next  
23 time, only during the same meeting or at a different  
24 session of the same meeting. That would be a motion  
25 to reconsider. So the answer is no, and that's why.

1 It was not a motion to reconsider.

2 I don't know if what we did was undoing what  
3 was done at the previous meeting. Kathy said we  
4 didn't. It doesn't matter, because even if it is,  
5 this body can always undo at a subsequent meeting what  
6 it voted previously to do. You are not bound for what  
7 you have done previously forever and ever and ever.  
8 You can always decide to do something different and  
9 undo it by bringing separate agenda items, which is  
10 what happened here today. That's just treated as a  
11 main motion, not as a motion to reconsider.

12 If you want to change this. I hope not, but  
13 if you wanted to, that would be a motion to  
14 reconsider. Thank you.

15 CHAIRPERSON KAKISH: Thank you. Our last  
16 item on the agenda before adjournment is item number  
17 16, consideration of the revised Uniform Arbitration  
18 Act, and the proponent is Richard Morley Barron from  
19 the 7th circuit.

20 MR. BARRON: Good afternoon. I am last. I  
21 intend to be concise, and I hopefully am addressing a  
22 non-controversial issue. I am here as a  
23 representative of the Alternate Dispute Resolution  
24 Section of the State Bar of Michigan and, in  
25 particular, on behalf of two lawyers from Oakland

1 County, Bill Weber, who is the chair of the Effective  
2 Practices and Procedure Section of the ADR Section,  
3 and Marty Weisman, who was the ad hoc chair of the  
4 RUAA Evaluation Subcommittee.

5 Both of these bodies reviewed and discussed  
6 the document which is before you as the last item, the  
7 RUAA, the Revised Uniform Arbitration Act. They  
8 recommended its support and adoption to the ADR  
9 Section Council. The council recently and unanimously  
10 supported and endorsed the proposed act and urged the  
11 adoption of the act by our Legislature. They have  
12 also asked this body, prior to that happening, to  
13 endorse the act and recommend its adoption by the  
14 Legislature.

15 The ADR Section did make one small proposed  
16 amendment to the act, which begins in your materials,  
17 item 16 to Section 21(a) and (e), which made small  
18 changes regarding clarifying the limits of arbitral  
19 awards of punitive or exemplary damages in Michigan.  
20 Those proposed amendments have been acquiesced in by  
21 the commission, by the commissioners.

22 So what is the RUAA? Basically it is a  
23 successor uniform act to the Uniform Arbitration Act,  
24 which is, I think, approximately 50 years old and is  
25 essentially the basis for the Michigan arbitration

1 provisions found in the RJA of this state, Judicature  
2 Act.

3 Basically the amendment attempts to clarify  
4 certain details and to bring the act into conformity  
5 with evolving jurisprudence in the field of  
6 arbitration. It doesn't force anyone to arbitrate, it  
7 doesn't make any radical or substantive changes in the  
8 way arbitration is currently practiced in this state.  
9 The intent of the act is to clarify some details which  
10 were previously not clear or, as I say, conform them  
11 with cases that have come down.

12 This is, again, a product of the National  
13 Conference of Commissioners on Uniform State Laws. It  
14 was adopted after substantial discussion, discussion  
15 and debate by people who are knowledgeable in the  
16 field of arbitration, and it's been adopted entirely  
17 or in substantial part in 13 states, currently pending  
18 in two other legislatures around the country, and we  
19 are hoping to do it here.

20 Since my knowledge of the act is limited,  
21 Attorney Kieran Marion from the commission in Chicago  
22 is here today to summarize the changes that are made  
23 in the act and answer any questions that the body may  
24 have for him. After that I will be moving the  
25 endorsement of the act.

1                   MR. MARION: Thank you, Richard, and thank  
2 you all for the opportunity to be with you this  
3 afternoon. I am actually from Michigan, and it's  
4 always good to get back and see home.

5                   As Richard mentioned, my name is Kieran  
6 Marion, legislative counsel on staff with the Uniform  
7 Law Commission in Chicago, Illinois, and our role on  
8 staff is to assist our commissioners in the various  
9 states with passage of uniform laws that are drafted  
10 by the Uniform Law Commission as a whole.

11                   The ULC promulgated the original arbitration  
12 act in 1955. The act, as was mentioned, has been  
13 either uniformly or substantially similarly adopted in  
14 49 jurisdictions. The only state that has not, I  
15 believe, is Alabama.

16                   The original act, the intent of it was to  
17 revise the common law rule, denying enforcement of  
18 contract provisions that require arbitration before  
19 disputes arise. It was also to provide the basic  
20 procedures for conducting arbitration in the states.  
21 It was very much in line with the Federal Arbitration  
22 Act. It worked in a very coordinated fashion with  
23 federal law in arbitration.

24                   As was mentioned, Michigan's version is found  
25 at the Revised Judicature Act and that's 600.5001

1 through 5025, if anyone wants to take a look at that.

2 The Uniform Law Commission promulgated the  
3 Revised Uniform Arbitration Act in 2000 after nearly  
4 five years of extending the dates. For those of you  
5 that are unfamiliar with the Uniform Law Commission's  
6 drafting process for all of our uniform acts, there is  
7 usually a minimum of a year of study before, study of  
8 the issue before it's even put into a drafting  
9 committee.

10 Once a particular act, such as this one, is  
11 put into the drafting stage, then it goes through at  
12 least a minimum of two years of drafting, of the  
13 drafting process. It has to go through several  
14 committee sessions, drafting committee sessions,  
15 during the year, and then it has to be placed before  
16 the entire body of the Uniform Law Commission from  
17 around the country, very similar to this gathering  
18 today, to be debated and discussed in front of the  
19 entire body at least twice. At the end of that  
20 process when it's completed, the Uniform Act is then  
21 put by a vote to the states, several commissioners  
22 from the various states for approval.

23 This particular act actually took nearly five  
24 years for study and drafting to be completed. It was  
25 very carefully weighed and deliberated, discussed many

1 of the issues, and to make sure that the product that  
2 was produced was a very balanced and well crafted  
3 product.

4 Like all of the committees that work on our  
5 various acts, the committee consisted of  
6 commissioners, as well as an expert, who was appointed  
7 as the reporter, which the reporter for the ULC is the  
8 person that actually puts pen to paper and drafts the  
9 act in conjunction with the committee.

10 We also had advisors appointed by American  
11 Bar Association and from the various sections from the  
12 ABA, as well as stakeholders who are interested in the  
13 act and the operation of the act. So for all of our  
14 products, including this one, we try to get a balanced  
15 and very thoughtful process with lots of input from  
16 those across the board.

17 The goal of this particular product was to,  
18 as I mentioned, to develop a balanced update of the  
19 older law. It was still going to be faithful to the  
20 premises of the old law and faithful to the premises  
21 of the federal law and not going to conflict with  
22 either of those.

23 The intent, as Richard mentioned, is  
24 to clarify the application, to clarify arbitration  
25 procedures in light of 50 years of case law and

1 various developments in the field of arbitration that  
2 have come up in the intervening years.

3           Following completion of the act by the ULC,  
4 it was approved by the American Bar Association's  
5 House of Delegates. It's also been endorsed by the  
6 American Arbitration Association and the National  
7 Academy of Arbitrators. So it's got some fairly  
8 strong national support, and a body such as the ADR  
9 section here and the various states have been  
10 considering the act and reviewing the act. Now we are  
11 starting to see more introduction and more active  
12 processes beginning in the states, and, as was  
13 mentioned, we are currently at 13 enactments with  
14 several more pending in the states.

15           Some of the key updates that the act does,  
16 and, again, as was mentioned by Richard, it tries to  
17 stay within the scope and not expand the scope of what  
18 the current act and what the federal law are doing,  
19 but it does try to clarify it and provide guidance for  
20 folks that are actually engaging in the arbitration  
21 process that the old act and federal act didn't  
22 necessarily provide.

23           Questions of arbitrability, whether or not a  
24 matter is arbitrable, are clarified in the act.  
25 Substantive questions as to arbitrability are

1 designated for the courts, while procedural  
2 arbitrability is for the arbitrator, such as whether  
3 or not a condition for arbitration has been met.  
4 Those questions are decided by the arbitrator.

5 Provisional remedies and whether or not the  
6 arbitrator has the authority to issue them to make  
7 sure that the premise of the arbitration is actually  
8 preserved throughout the arbitration process. The act  
9 clarifies that the arbitrator can, in fact, take  
10 action and issue provisional remedies in those cases,  
11 and if the arbitrator hasn't been appointed yet, or it  
12 needs to be done in a timely manner, then the court  
13 can actually do that as well.

14 Deals with the issue of consolidation,  
15 whether or not arbitration is to be consolidated. The  
16 answer is yes. However, the arbitration agreement, as  
17 the predecessor statute, this one is also a default  
18 statute in many respects. If the arbitration  
19 agreement prohibits consolidation of claims, then the  
20 law is going to honor that agreement and to allow the  
21 consolidation to be prohibited.

22 But in its discretion those actions can be  
23 consolidated. In the court's discretion, in the  
24 arbitrator's discretion the claims can be consolidated  
25 if they arise from the same transaction, common

1 issues, create the possibility of conflicting  
2 decisions, and if there is a risk -- the risk of undue  
3 delay essential for the process doesn't outweigh the  
4 prejudice of not actually consolidating those actions.

5 Other updates in the act, the arbitrator must  
6 disclose known facts that may actually affect his  
7 impartiality. The statute actually expressly requires  
8 arbitrators to expose any conflicts that they may  
9 have. It provides that the arbitrator themselves enjoys  
10 immunity similar to a judge in that particular action  
11 for serving in the role of the arbitrator related to  
12 the rule there. It gives the arbitrator, it clarifies  
13 that the arbitrator has the ability to engage with  
14 dispositive motions, prehearing conferences and in  
15 general dealings with the conduct of the arbitration.

16 It gives the arbitrator discretion to allow  
17 for limited discovery while keeping in mind that the  
18 goal of arbitration is to have a faster and more cost  
19 effective alternative to litigation. It does allow  
20 for limited form of discovery at the discretion of the  
21 arbitrators to make sure that all the evidence that  
22 needs to be found and discussed is found and  
23 discussed.

24 It gives the arbitrator the authority -- it  
25 clarifies they have the authority to issue subpoenas

1 for witnesses and production of records if necessary,  
2 to issue protective orders of disclosure of  
3 confidential information, so it gives them leeway to  
4 act to get the necessary information but to also  
5 preserve the confidential nature, if necessary.

6 It clarifies, as we mentioned, the statute is  
7 a default statute but there are certain things within  
8 the arbitration statute that cannot be waived prior to  
9 a dispute arising, and also in general it cannot be  
10 waived in the statute itself. Before a dispute  
11 arises, parties may not waive the arbitrator's ability  
12 to grant procedural or provisional remedies. They may  
13 not waive the right to counsel that folks enjoy under  
14 the act and whatnot, and you can also not waive the  
15 right to make a motion to confirm or vacate or modify  
16 arbitration awards.

17 So, again, the Uniform Act, it's fairly  
18 comprehensive, we feel it's really comprehensive.  
19 It's an update that's trying to take into account the  
20 50 years of case law and arbitration practice that  
21 developed. We feel it's a good product. It's  
22 received support nationally, and I would thank folks  
23 in the ADR section in Michigan for their work and for  
24 their support.

25 If there are questions, we will be happy to

1 do our best to answer.

2 MR. BARRON: I would move the Assembly  
3 recommend or adopt the act --

4 VOICE: Second.

5 MR. BARRON: -- as set forth in the last  
6 pages of the materials.

7 CHAIRPERSON KAKISH: Thank you very much.  
8 It's seconded. Is there any support?

9 VOICE: Support.

10 CHAIRPERSON KAKISH: Good. The matter is now  
11 open for discussion. Yes, sir.

12 MR. PHILLO: Yes, John Phillo from the 3rd  
13 circuit. I say this with due respect to these people  
14 of good faith. I don't see this as noncontroversial,  
15 and I oppose it in the strongest possible terms. Most  
16 notably, I think we see, and I have just looked this  
17 over today, but we take first the punitive damages  
18 provision. It reveals a certain bias of the drafters  
19 of this where we are asking if punitive damages or  
20 exemplary relief are awarded, the arbitrator shall  
21 specify the award, the amount of statutory, or the  
22 award, the statutory factual basis justifying the  
23 authorizing of the award. It states separately.

24 I don't have any problem with stating  
25 separately, but if we are going to seek balance in

1           this, then if the arbitrator denies punitive damages  
2           or exemplary relief in cases where punitive damages  
3           are available under the claims alleged, we should be  
4           asking for the same justification.

5                       Moving on to the next section, the idea of  
6           being able to arbitrate or contractually through a  
7           clause agree to waive your right to go into court in  
8           advance of the dispute. While that sounds neutral on  
9           its face, in practice it has been proven out, at least  
10          for the folks that I represent, which is individuals  
11          in employment matters or consumer matters or tort  
12          matters, that it is not an equal bargaining at the  
13          beginning.

14                      I have no problem in the commercial context  
15          or between individuals on an equal footing, but these  
16          are essentially contracts of adhesion. You can get a  
17          job and sign that arbitration agreement or not work,  
18          and that's not a choice for them. They are  
19          automatically put in there, and they have no  
20          contemplation, they are not aware of their rights  
21          under half the laws until something egregious happens  
22          to them. They did not anticipate that at the outset.

23                      Next, going down further -- so I don't think  
24          they should be allowed, consumer claims, employment  
25          claims, tort claims, civil rights claims, in any

1 instance despite it being allowed in 1955.

2 Next, the immunity for the arbitrators, I see  
3 no reason whatsoever to give immunity to the  
4 arbitrators. That's a change of our common law. The  
5 boilerplate in this document suggests that it's for  
6 fair and impartial hearings. Liability is not about  
7 padding the pocketbooks of the attorney. It is about  
8 getting accountability from somebody who has done  
9 wrong to the injured person.

10 Here we are saying that these arbitrators,  
11 private arbitrators, are the same as judges who are  
12 appointed through a democratic process. Judges are  
13 susceptible to criminal liability. Arbitrators are  
14 not. Myself, I would say judges should be subject to  
15 civil liability. Effectively they are not, but they  
16 are subject to criminal liability. Here we are not  
17 giving that criminal liability, but we are waiving  
18 their civil liability.

19 The last thing I would like to ask is if we  
20 were seeking balance -- I guess on two levels.  
21 Nationally when this model act was developed, you said  
22 you sought balance in the drafting, and you said the  
23 ABA had commented on it. I have respect for the ABA.  
24 I am a member of the ABA, but as a plaintiff's lawyer,  
25 it does not represent me. It doesn't. That's just

1 reality from the plaintiff's side of the bench.

2 Did you consult with the American Association  
3 of Justice, the National Employment Lawyers  
4 Association, or the labor attorneys through the  
5 AFL-CIO's LCC, which is the only body that generally  
6 represents labor side, labor attorneys?

7 At the state level I know we have the  
8 recommendation of the Alternative Dispute Resolution  
9 Section, but has it gone before the Negligence  
10 Section, the Environment Law Section, or any of  
11 those -- or the Labor Employment Section, and what  
12 were their -- did they approve it? Did they also  
13 recommend it? That's all.

14 MR. MARION: With regard to, I believe the  
15 last question was whether or not the other sections  
16 actually reviewed it, I believe the text of the act  
17 was sent generally to all sections, as were several  
18 others. The ADR section was the one that responded.

19 As far whether or not they were specifically  
20 at the table for the drafting, I would have to check.  
21 I could probably do that for you before I leave today.

22 CHAIRPERSON KAKISH: Mr. Ard.

23 MR. ARD: Yes, Josh Ard of the 30th circuit.  
24 I second what the previous speaker said. Arbitration  
25 is just fine when both parties give informed consent

1 to it, but what we have now is arbitration, even when  
2 one party to a contract had no idea that there was a  
3 compulsory arbitration clause buried in the  
4 boilerplate, and what happened was the Renquist court  
5 for the first time read a 1925 federal statute that  
6 mandated that. At the time when the original  
7 arbitration act was passed, the assumption was that  
8 people actually had to agree to arbitration, and when  
9 you look at what's happening now, even the card, the  
10 credit card that's offered by the State Bar has a  
11 compulsory arbitration provision in it.

12           There is talk on the federal level that the  
13 Federal Arbitration Act may be modified during the  
14 Obama administration. If so, then what we have here  
15 in the state is going to make a difference, and we  
16 ought to make sure we get it right. I haven't read  
17 this act yet. I apologize for that, but I have had  
18 experience with other uniform acts. For example, the  
19 probate council spent years and committees literally  
20 spent hundreds of hours looking over the Uniform Trust  
21 Code, and they proposed numerous modifications for it  
22 to make sense in Michigan. Those modifications just  
23 passed our State Senate unanimously, but it took some  
24 work.

25           I have had the same experience in looking

1 over other uniform laws. It takes a lot of work to  
2 look at them and see what makes sense for Michigan.  
3 And I certainly want to hear from attorneys whose  
4 clients are most harmed by compulsory arbitration,  
5 employment law, consumer law, and see what they say  
6 before I would agree to supporting this as is.

7 I know that the Consumer Law Section has not  
8 discussed this. It was submitted to them, but  
9 probably one of the things that happens is they are  
10 more likely to discuss something that's actually been  
11 introduced than something that's just potential.  
12 Nothing has been introduced here.

13 It hardly promotes access to justice to deny  
14 people access to courts without their freely informed  
15 consent. The changes we heard today seem reasonable,  
16 but what about the rest of the language? We just  
17 don't know what it says. Voting in favor of a uniform  
18 law that makes -- and we are asked to create some kind  
19 of policy position for the Bar. If we do that, it's  
20 going to be more difficult for a section that may see  
21 something in the particulars they want to oppose.

22 I would suggest that we defer voting on this  
23 until an actual bill is introduced and more sections  
24 have an opportunity to weigh in. If we have to make a  
25 vote today, I am not willing to buy a pig in a poke,

1 and I would have to vote no.

2 MR. BARRON: Let me respond to the remarks on  
3 both sides at this point with a couple of observations  
4 that may be helpful. I think my section is aware of  
5 the fact that arbitration, like any other legal  
6 procedure, can be abused and sometimes is used in a  
7 way that lawyers representing clients don't think is  
8 appropriate and maybe is not appropriate.

9 I think the conception that the section has  
10 in putting the matter before the Representative  
11 Assembly at this time is that this is a final product  
12 as far as the Commission of the Uniform State Laws are  
13 concerned. They took a long time and cooked it and  
14 this is what came out of the oven. This is  
15 essentially what's been adopted, but not identical in  
16 states that we have talked about so far.

17 If this body is to endorse the Revised  
18 Uniform Arbitration Act, what would happen, of course,  
19 is someone would introduce this in the Michigan  
20 Legislature. Most of you, I think, understand how  
21 that works. It goes in the front door and something  
22 that looks like it, maybe, comes out the back door.  
23 They are not only obligated to adopt it as to the  
24 extent that we are asking the Assembly to do it today.

25 I suggest that it's difficult to take a long,

1 involved statute and this afternoon try to work to  
2 improve on the product people who have been working on  
3 it for five years on the commission have done. We  
4 don't maintain, and I don't think the commission  
5 maintains, that this is perfect, applies in all  
6 situations, or that arbitration ought to apply to  
7 lawyers who want a credit card for the State Bar of  
8 Michigan or other people necessarily.

9 What I think the section is saying,  
10 arbitration is a dispute resolution procedure that a  
11 lot of people think works well, they put it in their  
12 contracts on both sides, they are represented by  
13 counsel, and they feel that this is a substantial  
14 enhancement to the practice, and there is nothing in  
15 the act suggesting it ought to be shoved on down  
16 people's throats. So there are some additional  
17 questions.

18 CHAIRPERSON KAKISH: Yes, sir.

19 MR. LARKY: Madam Chair, my name is Sheldon  
20 Larky. I am with the 6th circuit. I am going to vote  
21 in favor of this resolution. As everyone in this room  
22 probably knows, Michigan became a state in 1837, and  
23 in 1838 we enacted our first arbitration statute. We  
24 have had arbitration in this country well over -- well  
25 every since our state has been involved as a state.

1                   The reason I am in favor of this is two-fold.  
2                   I am a full-time ADR provider. I like the idea that  
3                   there is going to be uniformity in those jurisdictions  
4                   where I may be arbitrating and have the ability to  
5                   know that I have the proper authority to do it.

6                   In addition to that, from the standpoint of  
7                   people who may be challenging or trying to affirm an  
8                   arbitration award, I like the idea of the uniform act,  
9                   because then Michigan will be able to look at other  
10                  states' appellate decisions for guidance in making  
11                  decisions within this state.

12                  So for those two main reasons, one, so I know  
13                  my authority and, two, to gain insight from other  
14                  states, I am voting yes.

15                  CHAIRPERSON KAKISH: Thank you. Yes, sir.

16                  MR. ROTENBERG: Hello. My name is Steven  
17                  Rotenberg with the 6th circuit, and I am generally in  
18                  favor of ADR, but this slavish adoption of uniform law  
19                  reminds me of other instances where I have seen the  
20                  state, let's say, through evidence rules, et cetera,  
21                  slavishly adopt the rules of other jurisdictions that  
22                  include terminology or things that just don't exist in  
23                  Michigan, and I hope I am not wrong on this, but I  
24                  don't think that punitive damages actually exist here,  
25                  they are all exemplary damages. So that just makes me

1 wonder if we should adopt it with that or if we should  
2 actually see if the punitive damages do exist.

3 MR. BARRON: Let me respond briefly to the  
4 question. The RUAA simply provides that where the  
5 sub -- by the state is where the substantive law of  
6 the jurisdiction provides for this, the arbitrator can  
7 set forth and makes the requirements, and that doesn't  
8 change the laws of some state by adopting the  
9 procedural act.

10 MR. MARION: Let me just add to you. When  
11 the actual uniform act is submitted to the Legislative  
12 Service Bureau for drafting, they will go through and  
13 make sure that the provisions of the act are actually  
14 made consistent or tweaked for the local. If there  
15 are issues, such as things that are specific to  
16 Michigan that are different in the act, that will be  
17 changed in the drafting process to conform with  
18 Michigan form.

19 CHAIRPERSON KAKISH: Yes, Judge.

20 JUDGE KENT: Wally Kent, 54th circuit. I am  
21 not sure I see any merit for being consistent with  
22 everybody else. Why should we be the followers? Why  
23 can't we be the leaders and table this motion as  
24 suggested by Mr. Ard until we have a chance to pick it  
25 apart. We can be in the forefront of defending the

1 rights of the people whose rights would be trampled if  
2 we were to adopt this resolution.

3 CHAIRPERSON KAKISH: Is that a motion, Judge?

4 JUDGE KENT: I will state it as a motion to  
5 table, yes, ma'am.

6 VOICE: Second.

7 VOICE: Support.

8 JUDGE CHMURA: Let me make a point of  
9 clarification.

10 MR. KRIEGER: Point of order, Madam Chair.

11 JUDGE CHMURA: No, wait.

12 MR. KRIEGER: A motion to table is only in  
13 order if there is an urgent necessity of setting the  
14 matter aside momentarily.

15 JUDGE CHMURA: I am going to say that. I  
16 know that. I am going do make that point.

17 Motion to table, as the gentlemen correctly  
18 said, is only made when there is another motion or  
19 there is some matter of urgent necessity that has to  
20 take precedence over the matter at hand. You don't  
21 have that here.

22 What you can do, if you want to put this off  
23 to another time, is to make a motion to table to a  
24 definite time. But there is a problem with that,  
25 because under Robert's Rules of Order, you can only do

1           that if we meet quarterly. We don't meet quarterly.  
2           We only meet twice a year.

3                       So the only other way to get around that  
4           under Robert's Rules is to make a motion to refer to a  
5           committee, then have the committee discharge it  
6           possibly at the next meeting.

7                       That motion would be in order if you want to  
8           do, which I think you want to do, at least what the  
9           judge wants to do, which is to put this off. It can't  
10          be a motion to lay on the table, because that's not in  
11          order. It would have to be a motion to refer to  
12          committee, which is debatable, requires a second,  
13          requires a simple majority to pass, and is open to  
14          amendment as well.

15                      JUDGE KENT: I will move that we refer to the  
16          appropriate committee.

17                      VOICE: Support.

18                      CHAIRPERSON KAKISH: May I suggest the  
19          Special Issues Committee of the Representative  
20          Assembly, and they will assign it to the proper  
21          sections and/or committees.

22                      JUDGE KENT: Thank you. I accept that  
23          suggestion.

24                      CHAIRPERSON KAKISH: The motion has been made  
25          to defer it to the Special Issues Committee.

1 VOICE: Second.

2 CHAIRPERSON KAKISH: Support?

3 VOICE: Support.

4 CHAIRPERSON KAKISH: Any discussion?

5 MR. BARRON: Obviously what the will of the  
6 Assembly is is what's going to happen here, but I want  
7 to make sure that the members understand we have got a  
8 uniform statute, it's 103 pages long with comments.  
9 It's a fairly complex and comprehensive thing which  
10 will, if adopted in Michigan, will look somewhat  
11 different than the version being submitted here today,  
12 I think there was general consensus. So it's my  
13 judgment that or my recommendation that the body adopt  
14 the thing as presented today. If the majority of the  
15 Assembly feels differently, that will not happen.

16 CHAIRPERSON KAKISH: The motion before you is  
17 to refer the matter to the Special Issues Committee of  
18 the Representative Assembly. Is there a discussion?

19 VOICE: Call the question.

20 CHAIRPERSON KAKISH: Pardon?

21 VOICE: Question is called.

22 VOICE: Question.

23 CHAIRPERSON KAKISH: Question, you may.

24 VOICE: The question has been called.

25 VOICE: Is there a second?

1 VOICE: Second.

2 CHAIRPERSON KAKISH: Okay. I am sorry. I  
3 cannot hear. I didn't hear the question being called.  
4 There was a question called?

5 VOICE: Yes.

6 CHAIRPERSON KAKISH: I need a second for  
7 that.

8 VOICES: Second.

9 CHAIRPERSON KAKISH: That's calling the  
10 question. Any discussion with respect to calling the  
11 question?

12 All those in favor say aye.

13 All those opposed.

14 The ayes have it. Therefore, the question is  
15 called, and now we are going to vote on the matter of  
16 whether to refer this issue to the Special Issues  
17 Committee of the Representative Assembly.

18 All those in favor say aye.

19 All those opposed.

20 Any abstentions?

21 And the ayes have it. Therefore, it will be  
22 referred to the Special Issues Committee. Thank you  
23 very much.

24 The last item on the agenda is the  
25 adjournment, but before we go, there are three

1 housekeeping matters. One, the attendance slips that  
2 you need to sign in should be distributed to you, and  
3 a reminder for those who need to fill out their  
4 expense vouchers as well. Anne Smith will be  
5 providing that for you.

6 A reminder to all those who need to fill out  
7 their petitions to run for election and those who  
8 concluding their first term and would like to run for  
9 re-election.

10 The third housekeeping matter is to enjoy the  
11 day and drive safely back home. The Representative  
12 Assembly meeting is now adjourned.

13 (Proceedings concluded at 2:45 p.m.)

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF MICHIGAN )

2 )

3 COUNTY OF CLINTON )

4 I certify that this transcript, consisting  
5 of 177 pages, is a complete, true, and correct transcript  
6 of the proceedings had of the Representative Assembly on  
7 Saturday, April 18, 2009.

8  
9 May 12, 2009

\_\_\_\_\_  
10 Connie S. Coon, CSR-2709  
831 North Washington Avenue  
Lansing, Michigan 48906

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

