

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 21, 2012, at the hour of 9:30 a.m.

AT HEADTABLE:

STEPHEN J. GOBBO, Chairperson

DANA M. WARNEZ, Vice-Chairperson

KATHLEEN M. ALLEN, Clerk

JANET WELCH, Executive Director

HON. JOHN CHMURA, Parliamentarian

ANNE SMITH, Staff Member

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Lansing, Michigan
Saturday, April 21, 2012
9:31 a.m.

R E C O R D

CHAIRPERSON GOBBO: Good morning to you all. As we get people settled down, I would like to call this meeting of the Representative Assembly to order and welcome you here to Lansing, Michigan at the Lansing Community College.

With respect to the agenda, you should have the agenda in your booklets, and if you don't have your booklet, there should be extra copies available.

At this point in time I am going to call Kathleen Allen as clerk to certify that a quorum is present before we begin.

CLERK ALLEN: We have a quorum.

CHAIRPERSON GOBBO: We have a quorum?

CLERK ALLEN: That's right.

CHAIRPERSON GOBBO: Thank you. I would like to call Vanessa Williams up so that we can adopt the proposed calendar.

MS. WILLIAMS: Good morning, Mr. Chair. I move for the adoption of the calendar for the April 21st, 2012 Representative Assembly as presented in the material mailed to the body on March 19, 2012.

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VOICE: Support.

CHAIRPERSON GOBBO: Hearing a second, any discussion?

All in favor say aye.

Any opposed say nay.

Thank you. Motion carries.

We are now moving down to approval of the September 15, 2011 summary of proceedings. Is there a motion to adopt the summary?

MR. COURTADE: So moved.

CHAIRPERSON GOBBO: Hearing a motion, is there a second?

VOICE: Second.

CHAIRPERSON GOBBO: Hearing a second, any discussion?

Hearing no discussion, I am going to call for an aye vote in the affirmative, please say aye.

Any opposed say nay.

Thank you.

At this point I am going to call Jeff Nellis up -- he is the chair of the Assembly Nominating and Awards Committee -- to deal with that committee filling vacancies.

MR. NELLIS: Good morning, everyone. Hope everyone had a good drive here.

1 I am the chairman of the Nominating and
2 Awards Committee. I am Jeff Nellis, by the way,
3 51st circuit, Ludington, Baldwin. You probably
4 recognize me from meetings past.

5 I have been the chair of this committee for a
6 couple three years now, and we always have the goal of
7 trying to have complete membership in this body, adds
8 to our legitimacy, and I remember years ago when I
9 started on this endeavor, I remember there were lots
10 of vacancies, and over the years we have worked really
11 hard to try and get 100 percent participation, and I
12 am very pleased to report that we again have all of
13 the seats filled this year, and that is certainly
14 because of the fact that I have had great assistance
15 on my committee. Anne Smith does a lot of the heavy
16 lifting for us as far as getting us started, but at
17 this time I would like to just read off the names.

18 VOICE: Can't hear.

19 CHAIRPERSON GOBBO: Starting with the 3rd
20 circuit, Aaron Burrell. Also in the 3rd circuit,
21 Elizabeth Johnson. 3rd circuit, John Clark.
22 3rd circuit, Dan McLean. 3rd circuit, Douglas Kaye.
23 6th circuit Barry Malone. 6th circuit, Ray Littleton.
24 6th circuit, Lawrence Shulman. 6th circuit,
25 Michael Elkins. 6th circuit, Syeda Davidson.

1 9th circuit, Jeffrey Dufon. 12th circuit,
2 Kevin Mackey. 16th circuit, R. Timothy Kohler.
3 19th circuit, Kathryn Glancy. 22nd circuit,
4 Chad Engelhardt. 22nd circuit, Joan Vestrand.
5 24th circuit, Ryan Edberg. 26th circuit,
6 Daniel Florip. 27th circuit, Eric Fox, and
7 54th circuit, John Bishop.

8 And I just want to add, and it's in the
9 materials, this is for today's meeting and for the
10 September 20th meetings only, so have to remember to
11 then thereafter submit and fill out a petition for an
12 election for your next term.

13 So I think we would like to entertain a
14 motion, I believe, to seat these folks.

15 VOICE: So moved.

16 VOICE: Second.

17 CHAIRPERSON GOBBO: Hearing a motion and
18 second, is there any discussion? Hearing no
19 discussion, all in favor say aye.

20 Any opposed say nay.

21 Congratulations to you all.

22 (Applause.)

23 CHAIRPERSON GOBBO: You may now join your
24 assigned circuits.

25 I am going to reserve comments following the

1 agenda from the Chair until later on, but one
2 housekeeping matter that I wanted to bring up is with
3 respect to attendance for today. The attendance
4 sheets will be essentially collected after the
5 official meeting is over, and following the official
6 meeting is going to be a meeting of the Assembly
7 Review Committee, which I will speak more about during
8 my remarks later on.

9 At this time I am pleased to call to the
10 podium Janet Welch, who is the executive director of
11 the State Bar, so that she may provide comments and
12 answer any questions that the membership may have from
13 the Assembly.

14 MS. WELCH: Thank you, Steve. It's my
15 privilege again to address you. This is my
16 responsibility twice a year, to address the
17 Representative Assembly. And I want you to know that
18 what I think about when I think about addressing you
19 is the challenge tell me something I don't know
20 already.

21 I assume that because you represent the most
22 informed and most committed members of the Bar that
23 you already know what the State Bar is providing to
24 you in the E-Journal, our flagship publication, the
25 Bar Journal, the E-newsletter, the public policy

1 newsletter, SBM today, the news line that you get as
2 an insider, and the State Bar of Michigan blog, so you
3 have been inundated with all that, so my challenge is
4 to tell you something that you haven't heard before,
5 and I do actually have three items that have not been
6 discussed in those publications that I think are
7 relevant to understanding the challenges that the
8 practicing Bar faces today as well as the State Bar of
9 Michigan.

10 So the first item is nonlawyer ownership of
11 law firms. You heard me talk about this a few years
12 ago when it had been introduced and adopted as a
13 reform to take place in Great Britain. Australia had
14 adopted a similar reform prior to it being adopted in
15 the United Kingdom.

16 And just a shorthand version of what that
17 means is the proponents of allowing nonlawyers to have
18 some ownership in law firms is that it is believed
19 that that ownership would help deliver low cost legal
20 services to people of moderate means and low income
21 people through the equivalent of Wal-Mart, for
22 example, so that the administrative burdens, the
23 billing burdens, the personnel burdens that solo and
24 small firm lawyers who typically provide those
25 services now absorb individually would be absorbed by

1 a corporation.

2 The jury is still out in England on how those
3 reforms are going. They are following them closely.
4 There are people who think that some of the promise of
5 that change is starting to be delivered. They are a
6 bit more critical, but obviously it's something that
7 has just started, and there is a lot of data yet to be
8 accumulated and analyzed.

9 In this country there are two, there have
10 been two relevant developments. One is that there has
11 been a lawsuit brought against the New York,
12 New Jersey, and Connecticut Bars challenging the rule
13 that prohibits nonlawyer ownership of law firms,
14 partial ownership of law firms, or full ownership of
15 law firms. That lawsuit in New York has failed at the
16 trial court level, but it is still alive in the other
17 two jurisdictions.

18 And I have to tell you that I spoke to a
19 professor at MSU who believes that if that lawsuit
20 does get legs and proceed, she believes that on First
21 Amendment grounds that it has a good chance of
22 prevailing at the U.S. Supreme Court given the current
23 membership of the U.S. Supreme Court, so stay tuned to
24 that issue.

25 Concurrently with that, the item of nonlawyer

1 ownership of law firms has been part of the agenda of
2 the ABA's 2020 Ethics Commission, and it has been
3 something, frankly, they have struggled with, and last
4 week or the week before, I am losing track of time,
5 but this is late breaking, they threw in the towel and
6 they said we are not going to make a recommendation on
7 that we are so divided on that subject.

8 So do not look for the ABA and Ethics 2020 to
9 be making a recommendation on that, but the Ethics
10 2020 package, which we all need to be thinking about,
11 is going to be advancing minus that item to the ABA
12 House of Delegates in August. So you will begin to
13 see some results from that commission moving through
14 the ABA. That's item number one.

15 Item number two that I think we need to be
16 paying attention to is, and I am happy to say that
17 this is not manifest here, turmoil in the state Bars
18 beginning to surface as a result, I think, of the
19 prolonged economic distress of lawyers. In Wisconsin
20 there is an ongoing attempt to convert the Bar from a
21 unified Bar to a voluntary Bar, and that challenge is
22 underway and being examined by the Wisconsin
23 Supreme Court at this moment.

24 And actually I have now heard of two
25 state Bars that have governing structures similar to

1 ours that are looking specifically at how technology
2 can reduce the cost of a dual governing structure and
3 a big governing structure, and I am keeping my eye on
4 what they come up with to see if they have any good
5 ideas about how technology can help deliver the
6 mission of the Representative Assembly more
7 effectively to the membership.

8 But the one I particularly wanted to
9 highlight is the Washington Bar Association, which is
10 a very highly respected Bar association, had a
11 referendum called this year on their dues, and the
12 entire membership was polled on dues and voted by 52
13 percent, which turned out to be about one third of the
14 entire membership, but of the people who voted, 52
15 percent voted to reduce their dues by 25 percent,
16 which is, as you can imagine, a big blow to an
17 organization.

18 One of the reasons I want to tell you this is
19 that the reduction of their dues, what it has been
20 reduced to, is \$20 more than you will pay next
21 September. So I think we can all be pleased at what
22 the State Bar of Michigan is providing to its members.

23 Finally, I wanted to report to you on
24 something that you may have been aware of as an
25 aftermath to that, and that is the anti-trolling Court

1 Rule proposal that this Assembly adopted after
2 prolonged discussion and consideration has been
3 considered by the Michigan Supreme Court.

4 The Assembly's proposal was published for
5 comment at the end of the year, last year in December.
6 An administrative public hearing took place last
7 month, at which the Assembly's view was very robustly
8 represented and was challenged equally robustly by
9 questions from the Court, particularly on the issue
10 that this Assembly focused on in a really, I think,
11 intelligent and sophisticated way, and that was does
12 this proposal meet the burden of the First Amendment
13 or does the First Amendment prohibit this kind of
14 restraint.

15 And the late breaking news is that I received
16 a letter from the Chief Justice of the Supreme Court
17 on Tuesday saying that the Court's decision on the
18 proposal was that they at this point believe that
19 there needs to be a stronger evidentiary basis for why
20 the anti-trolling Court Rule change is necessary to
21 meet the need, and the letter to the Bar challenges
22 the Bar to come up with that evidentiary basis.

23 I actually think this is a really positive
24 response to the Bar rather than just closing the file
25 saying we don't think you met the burden. They are

1 telling us, you know, we understand the rationale for
2 the anti-trolling proposal, and we want you to help us
3 come up with a proposal that will withstand
4 constitutional challenge. So I think that's a step
5 forward in our relationship with the Supreme Court,
6 and it shows a level of respect for the State Bar and
7 the Representative Assembly which I think is a very
8 good sign.

9 So it may be ironic to end on a note saying
10 that the Supreme Court has told us that they are not
11 going to do something we asked them to do, but to say
12 that this is a positive sign, but that is the note I
13 want to leave you on. What you are doing really
14 matters, and to be engaged in this kind of dialogue
15 with the Supreme Court I think is a very good thing,
16 and I hope that encouragement sets the stage for an
17 ambitious agenda today. I thank you for your
18 attention.

19 (Applause.)

20 CHAIRPERSON GOBBO: Moving down the agenda, I
21 am going to welcome Elizabeth Lyon up to the podium.
22 Elizabeth serves, for those of you that don't know
23 her, serves as the director of governmental relations
24 for the State Bar, so please come on up.

25 MS. LYON: Thanks, Steve. Good morning,

1 everyone.

2 Since we last spoke in September there have
3 been a few positive developments that I am happy to
4 share with you today. In September we talked about
5 how the recommendations from the Judicial Project Task
6 Force report would be working its way through the
7 Michigan Supreme Court and Legislature, and we have
8 seen a few big initiatives from that. One, as you are
9 all well aware, is the downsizing of Michigan's
10 judiciary and the elimination through attrition of 36
11 trial court judgeships.

12 We are also seeing those things continue. We
13 have seen legislation introduced by Representative
14 John Walsh to establish business courts in Michigan.
15 I believe that legislation will be moving very quickly
16 here in the spring and likely will at least have
17 hearings before the Legislature breaks in June for
18 their summer recess so that the House of
19 Representatives can go home and campaign for their
20 election in November.

21 We have also seen pilot projects for business
22 courts established through Supreme Court
23 administrative order. So those are some big
24 initiatives. We are seeing other ones, like
25 specialized courts and other matters also working its

1 way through.

2 We have also talked a lot about small claims
3 jurisdictional limits. The State Bar of Michigan has
4 been lobbying this issue ten plus years at this point
5 trying to keep a rational limit increase in play.
6 Just Thursday in the House Judiciary Committee we had
7 been fighting an increase to 10,000 -- it's currently
8 3,000 -- came out of the Senate at 8,000, and now we
9 see it will come out of the House at 5,000, being
10 effective September 1, 2012, and then every three
11 years after that increasing by 500 until you get to
12 7,000 on January 1, 2024. I realize that sounds like
13 a lot of money, but to be perfectly candid, we were
14 surprised given the odds against us that we got this
15 good a deal.

16 The other thing I am happy to report is the
17 State Bar of Michigan just returned this week from its
18 annual trip to Washington, D.C., to meet with each
19 member of our congressional delegation, so that's 15
20 in the House of Representatives and our two U.S.
21 Senators. We had a great team this year --
22 Janet Welch; our president, Julie Fershtman;
23 Bruce Courtade; and Judge Tim Hicks from Muskegon, who
24 is president of the Michigan Judges Association.

25 The most important issue I think that we

1 lobby in D.C. is funding for the Legal Services
2 Corporation. You are all very aware of the great
3 things that our legal aid office is doing in the state
4 and that they are constantly having their funding cut,
5 which means direct client services are being cut,
6 which we know means families are not being assisted in
7 foreclosure matters, parents are not being helped to
8 recruit child support payments and other very
9 important issues of rights, as well as legal aid
10 attorneys informing clients of their responsibilities
11 in those matters as well.

12 The State Bar of Michigan is supporting the
13 president's recommendation of 402 million as a funding
14 request for FY13. As we were in D.C. this week, the
15 Senate subcommittee for the appropriation and the full
16 committee supported that amount, but the House side
17 dropped it down to 328 million. So we will be working
18 very hard to express support and why that's just so
19 important in Michigan.

20 Most importantly, I am going to end talking
21 with you about where we are at with reform of our
22 trial level system of providing public defense
23 services because I think that's probably the most
24 important one for you all having adopted the 11
25 principles.

1 Since you last met in September, and I am
2 certain that probably you are aware through emails and
3 other communications that we have sent that the
4 Governor appointed a commission through executive
5 order to study the issue and make report and
6 recommendations back to him and the State Legislature
7 by July 15.

8 That commission started meeting in October,
9 about a week after the E.O. was issued. They met
10 twice in December and then have been meeting monthly
11 since that time. They just had a meeting yesterday.
12 So if you are keeping track, it's been a really busy
13 week.

14 The commission is really looking at making
15 some important structural recommendations to our
16 system. They are recommending that a permanent
17 commission be established and that commission be
18 housed in the judiciary branch in the Supreme Court
19 Administrative Office. This is very similar to how
20 our State Appellate Defenders Office is already sort
21 of within the judicial branch. We sort of mimic that
22 structure.

23 The commission would be tasked with providing
24 standards and recommendations by which local systems
25 would have to meet the sort of floor of a

1 constitutionally efficient system. The
2 recommendations, because I know a lot of you will want
3 to read them in detail, the Michigan Campaign for
4 Justice has made the recommendations available on
5 their website, www.mijustice.org, and you can get it
6 right from their front page. They have the
7 recommendations that were adopted at the March meeting
8 already posted online. That includes the
9 recommendations for the composition of the commission,
10 what the obligations of that permanent commission
11 would do, and so forth.

12 At the meeting yesterday they wrapped up a
13 few additional recommendations and are starting to
14 hammer out findings that will be included in their
15 final report. They did decide to schedule two
16 additional meetings of the commission, one for
17 May 22nd and one for June 18th. Might have those
18 dates -- it's May 18th and June 22nd, I apologize.

19 Those meetings are open to the public. They
20 are held in Lansing, and you are welcome to attend
21 those. So they will be looking at moving that
22 forward.

23 There will be legislation drafted and
24 introduced, if not this summer, early in the fall to
25 establish that permanent commission. We so far from

1 the recommendations that have been adopted by this
2 temporary commission know that we have support from
3 the four legislators who were appointed to the
4 commission and also support from the administration,
5 so we are very optimistic that these recommendations
6 will indeed be adopted this legislative session by the
7 end of December 2012 and that that commission will be
8 up and running in early 2013, if not earlier. So good
9 news to report on that front.

10 And I saved a bit of time, at least seven
11 minutes, to answer questions if you have them. Or I
12 could keep talking.

13 All right. Well, I will be around for the
14 rest of the day, so if you do have additional
15 questions, please ask, and I will let you guys move
16 through your agenda.

17 (Applause.)

18 CHAIRPERSON GOBBO: Thank you, Elizabeth.
19 And she meant what she said. If you have any
20 questions, feel free to ask her about how it is to
21 deal with the Legislature.

22 We will move down to agenda item number five,
23 which is approval of 2012 award recipients, and I am
24 going to ask Jeff Nellis as the chair of the
25 Nominating and Awards Committee to come back up.

1 I have to say Jeff and his committee are one
2 of the hard working committees of the Assembly because
3 there are certain things that they have to constantly
4 do to fill positions in terms of vacancies on the
5 Assembly and then also to consider the working
6 candidates for the various awards that the Assembly
7 will give out at the annual meeting. So I want to
8 thank you, Jeff, for your hard work.

9 MR. NELLIS: Could I have the committee
10 members to stand real quick and be recognized.

11 (Applause.)

12 MR. NELLIS: Steve is right. I mean, I am
13 the one who always gets to come up here and talk, but
14 they do all the hard work, and between filling the
15 vacancies and picking these award nominees, it
16 involves a lot of phone calls, a lot of conferences,
17 going through paperwork, and they have just done a
18 great job this year, and I really appreciate
19 everything that they have done.

20 With regard to the awards this year, as you
21 know, our body awards two awards, the Michael Franck
22 Award and the Unsung Hero Award. Our nominees, their
23 information is in your packets, but the Michael Franck
24 Award is an award given to an attorney who has made an
25 outstanding contribution to the improvement of the

1 profession.

2 This year's nominee, the person that we
3 ultimately chose, was James Fisher, and, again, you
4 have his information, but just to kind of give you the
5 highlights. He has been a private practitioner
6 working primarily out of Barry County. I know now he
7 is a retired judge, I believe he works for
8 Law Weathers. He was an assistant prosecutor in Barry
9 County. He was a city attorney. He was appointed
10 judge in 1995, circuit judge in Barry County, and
11 served in that capacity until 2011 and then retired,
12 and then just most recently, and I think one of the
13 real feathers in his cap is being appointed to chair
14 the Indigent Defense Advisory Commission, which as any
15 of you who are involved in the practice of criminal
16 law know that that is a huge undertaking, and what
17 that group is really trying to do is take a look at
18 how, in our state how we fund indigent defense and
19 what kind of changes and recommendations can be made
20 to improve that system.

21 So that's a huge undertaking that he has
22 become involved in as a retired judge. So we just
23 felt his entire body of work, kind of like a lifetime
24 achievement award, that he was a very worthy recipient
25 of that award.

1 With regard to the Unsung Hero Award, and we
2 do this sometimes, we actually are nominating two
3 people, and the Unsung Hero Award goes to an attorney
4 who has exhibited the high standards of practice for
5 the commitment and benefit of others, and sort of in
6 laymen's terms this is an attorney who maybe we don't
7 all know about it but has done some outstanding things
8 to help the little guy, so to speak, things that are
9 important but may not get a lot of attention, but
10 these are folks that do these types of things because
11 they know it's the right thing to do, it's their
12 passion, and they are really not interested or worried
13 about the recognition that they may or may not get.
14 So this gives us a the opportunity to recognize some
15 people who have done outstanding things for the less
16 fortunate.

17 This year again we have two people that we
18 are putting before you today. The first is
19 Judy Calton from Honigman, Miller, Schwartz & Cohn in
20 Detroit. Besides being an excellent practitioner,
21 what her claim to fame is that she has created a
22 program called Access to Bankruptcy Court, which helps
23 to partially compensate attorneys who represent
24 indigent folks who are trying to go into bankruptcy
25 court. If you are involved in that area of practice,

1 you know, it's obvious if someone is going to
2 bankruptcy court they don't have a lot of money to
3 invest in an attorney, so this has been a very
4 successful program and, again, it's something that's
5 definitely worthy of recognition.

6 A second person is Jeffrey Kopp from
7 Foley Lardner law firm in Detroit, and his, I guess,
8 what do I want to call it, he has a back toward
9 military affairs. He is a West Point graduate, was in
10 the JAG Corps, and he has created a program called
11 Project Salute, which provides free legal advice to
12 low income veterans.

13 He is also, I believe, the president of
14 The Barristers, is involved in a nonprofit called
15 Arkay, Inc., which trains folks with mental health
16 disabilities. So, again, he is very active in helping
17 folks who are less fortunate, not to mention that he
18 has actually served active duty in Iraq.

19 So, again, we have, for this award we have
20 two very diverse and two very worthy nominees. So I
21 am going to ask that we entertain motions to accept
22 those folks as our award nominees this year.

23 VOICE: So moved.

24 CHAIRPERSON GOBBO: Hearing a motion, is
25 there a second?

1 VOICE: Second.

2 CHAIRPERSON GOBBO: Hearing a second, is
3 there any discussion on the motion?

4 All in favor say aye.

5 Any opposed say nay.

6 Motion carries. Thank you very much, Jeff,
7 and to your committee.

8 (Applause.)

9 CHAIRPERSON GOBBO: It is with great pleasure
10 that I am going to introduce Julie Fershtman, the
11 president of the State Bar. Not only is Julie the
12 president, she was a former chair of this body many
13 years ago when I first became involved with the
14 Assembly as a section chair and bringing a proposal
15 forward to the Assembly, but she is also a good
16 friend, so, Julie, please come on up.

17 (Applause.)

18 PRESIDENT FERSHTMAN: Good morning,
19 everybody. I realize that looking at the agenda I am
20 the only thing that holds you back from the midmorning
21 break, so I recognize that a lot of you are looking to
22 get out, check your cell phones, use the facilities,
23 having something else to eat, so I will try to keep my
24 remarks as brief as I can. I realize too that I am a
25 little ahead of schedule, but I won't take advantage

1 of the opportunity. I have been up here long enough
2 to know that everybody is busy, your time is valuable.

3 Let me first begin by thanking every single
4 one of you for your commitment to the profession and
5 to the State Bar of Michigan by serving on the
6 Representative Assembly and by giving up your Saturday
7 morning, and part of your afternoon for that matter,
8 to be here today.

9 As you know, the work that the Assembly does
10 is meaningful, it's important, and it's, in my
11 opinion, at least worth your time, and I hope you
12 agree. But let me share with you about five points
13 that I would like to pass along to you about what the
14 Bar has been up to.

15 You have already heard from Janet, you have
16 already heard from Elizabeth Lyon, and as Bar leaders
17 yourself you are keeping up very closely with what the
18 Bar has been doing, so what I offer to you may be
19 information that you may already know, but some is
20 information you may not know.

21 First let me begin by talking just briefly
22 about the public policy work that the State Bar has
23 been engaged in. Again, you have heard from
24 Elizabeth, you have heard from Janet about what we
25 have been doing. You have heard about the Indigent

1 Defense Advisory Commission, and you probably know
2 that improvement in the indigent defense system, or
3 lack thereof, has been a very important issue that the
4 Bar has been involved in and has been trying for years
5 to get changes made in.

6 Well, fortunately, as you have heard, changes
7 could be on the way, and we are excited about it, and
8 we are very pleased to have been a part of the
9 Indigent Defense Advisory Commission, not by way of
10 membership but by way of a resource, and thanks to
11 Janet and thanks to Elizabeth, the State Bar has been
12 serving as a valuable resource to the commission and
13 its work.

14 I also want to do something that Janet and
15 Elizabeth are not very willing to do, and that is toot
16 the horn of the State Bar when warranted, and I would
17 like to share with you some good news. As you heard
18 from Elizabeth's remarks, a delegation from the
19 State Bar of Michigan went to Washington this past
20 week, and I was among them. I got to sit in on
21 meetings with legislators. We had 17 legislative
22 meetings over two days in Washington, D.C.

23 But between the two days of meetings was a
24 wonderful ABA reception where the State Bar received a
25 very prestigious award. And they don't like to talk

1 about it because they are modest people, but it was
2 called the ABA Grass Roots Advocacy Award. It is a
3 prestigious award, and it's given to an individual or
4 a Bar association who has demonstrated a very strong
5 commitment to working with constituents, working with
6 the ABA, and working in the legislative arena.

7 And the State Bar earned that award. We
8 didn't quite know why until we got there. We earned
9 it for a couple of things, and one was the work that
10 we have done on legal services funding, and that's
11 through the efforts of Elizabeth Lyon and through
12 Janet and other members of the Bar working with them.

13 The other reason we learned that we earned
14 this award is that the State Bar of Michigan really
15 stood out from Bar associations all over the country
16 by the Judicial Crossroads Task Force that many of you
17 who have served here for a number of years have heard
18 about, and the fact that the State Bar of Michigan
19 joined together members of the Bar and the judiciary
20 to explore the problem of inadequate court funding and
21 problems on the horizon and proactively got together
22 to work on reforms.

23 We were ahead of the curve, because the
24 American Bar Association for Law Day has asked Bar
25 associations from all over the United States to join

1 forces and protest at their state capitols to try to
2 get more funding for the courts. That's a reactive
3 mode, but thanks to the foresight of the State Bar of
4 Michigan and, frankly, our executive director, we were
5 ahead of the curve by working on reforms and helping
6 the Legislature make decisions that were, we believe,
7 in the best interest of the profession.

8 The outcome, as we know, of the Crossroads
9 Task Force is that legislation has been introduced.
10 It's painful legislation, painful because it resulted
11 in a reduction of judgeships, but at least we know
12 that the interests of the Bar, we believe, were well
13 served, because those reductions were attrition based,
14 and instead of cutting off the judgeship midway, these
15 reductions were, we think, reasonable and fair.

16 So before I continue, I would ask for a round
17 of applause to congratulate the State Bar for winning
18 the award.

19 (Applause.)

20 PRESIDENT FERSHTMAN: At the first part of my
21 remarks I promised you five. Let me move ahead to the
22 next one.

23 Improvement of services. When I stood in
24 front of the membership at the September 20 or so
25 meeting of, the 15th I guess it was, meeting of the

1 Bar, that was when the Representative Assembly met
2 previously, one of the initiatives I had which, as you
3 know, can't really be an initiative, because the
4 State Bar president is governed by a strategic plan,
5 but one of the most important areas of attention, I
6 thought, was the improvement of Bar services, in
7 particular the improvement of services benefitting
8 solo and small firm practitioners.

9 By way of background on that, our member
10 statistics have shown that 51 percent of the State Bar
11 membership is composed of private practitioners, but
12 of that 51 percent, 71 percent is made up of solo and
13 small firm practitioners. A large component of our
14 Bar fits in that category clearly, as you know, and
15 thanks to this economy or no thanks to this economy
16 that component of our membership has been in recent
17 years struggling.

18 The economy has hit us very, very hard. We
19 can't as a Bar do anything to help you get business.
20 We can help you learn how to market yourself, which I
21 will get to in a moment. But we can at least do
22 things that will help you run your practice better and
23 help you learn more about the practice of law.

24 So what has the Bar been doing in that area?
25 Well, first we have a practice management resource

1 center. I won't stand here and tell you what it is.
2 You are all Bar leaders, you have probably visited the
3 site and read about it, and if you haven't, because I
4 know we have some newly admitted members to the
5 Assembly here, go to the State Bar website. Visit the
6 Practice Management Resource Center link and take a
7 look at some of the resources that the PMRC offers,
8 but one of the initiatives that I thought would be
9 especially valuable is improving the PMRC, expanding
10 its content, doing more, being more relevant, covering
11 areas that the members really want to benefit from and
12 learn about.

13 So we have an advisory committee that was
14 just convened in September. The advisory committee is
15 about to issue a report. Right now they have a rough
16 draft, and you will be hearing more about it, but here
17 is what it means for all of us.

18 This advisory committee report will help the
19 Bar expand and improve its Practice Management
20 Resource Center, and what we can take away from that
21 then is we will find more resources available for free
22 online about developing a practice, managing a
23 practice. We will find maybe more books in the
24 lending library. You don't want to invest in a book,
25 you can borrow it. We can expand our holdings. We

1 can even expand offerings through the website to
2 include video information or additional, again,
3 additional links on relevant topics.

4 We can offer better services that go out on
5 the road to help members like us, either at local Bar
6 meetings or at specially planned meetings. You can
7 learning more about this when the report comes out and
8 when we work with the State Bar staff to make this
9 center better.

10 So I offer you an opportunity, take a look at
11 the center now by the website, but take a look in the
12 months ahead, and you will see that we will be trying
13 harder to make this PMRC a better product for you.

14 Next is the Member Services Committee of the
15 Bar. One of the things I said back in September was I
16 really would like to see the Member Services Committee
17 leverage the power of our large State Bar membership
18 and offer better, more expanded services, meaning
19 discount programs, for example, that we can use, and I
20 am happy to say that at our Board of Commissioners
21 meeting that was just held yesterday at the State Bar
22 offices, we learned that the committee has been
23 working very hard and taking its charge very
24 seriously. You will learn about new benefits. They
25 are about to be unleashed. We have a few details to

1 work out, but two of the benefits I thought were
2 especially useful. Why? Because I personally am kind
3 of a techy nerd.

4 One is there will be a discount program
5 through Apple Computers, not a huge discount, but,
6 hey, every little bit helps when we are buying
7 iPhones, iPads, whatever. The other discount is
8 through Dell Computers. You will be learning about
9 that. There is a retirement program discount. These
10 are all on the horizon. You will be learning more
11 about it. The committee has been taking its job more
12 seriously.

13 Let me move on a little more with the third
14 of the five points I wanted to cover this morning. I
15 mentioned that as Bar leaders you follow up on what
16 the Bar is doing, but sometimes you don't quite know
17 what is coming up because it's in progress. I am
18 happy to share with you one element of the Bar, and
19 that is its attention to the delivery of pro bono
20 services. We have Candace Crowley sitting in the back
21 row, and she has been working very diligently,
22 probably with Rob Mathis from the State Bar staff, who
23 is involved in pro bono.

24 What are they doing? They are looking at
25 exploring, they are exploring right now, ways to help

1 members of the Bar who want to provide pro bono
2 services get those opportunities better. The Bar is
3 exploring through surveys ways that the legal services
4 providers can tap attorneys like us who want to do
5 some pro bono work and utilize our services better.

6 The Bar, in short, is working with the people
7 who seek out pro bono assistance, mainly the overtaxed
8 legal services providers. They are trying to find
9 ways to get us together with them. I know Candace is
10 smiling there, because it's been a huge effort on her
11 part to get the information and help find meaningful
12 ways to work with it. So you will be hearing more
13 about that. And I think that it will help us more
14 effectively and more efficiently get out there and
15 serve people who are unable to otherwise hire lawyers
16 and maybe even find us.

17 Four, in our member survey that the State Bar
18 took many months ago, we learned that a serious
19 concern of our membership, and I am sure it would be
20 of all of you today, is the unauthorized practice of
21 law. I see it personally in part of my practice that
22 has slowed down, and that's the development of
23 contracts. I do contracts and forms for people in
24 businesses. That area has, in my experience, started
25 to dry up, and I have been trying to figure out why,

1 and I thought that maybe the reason is the invasion of
2 our practice by these providers, like Legal Zoom that
3 offer very low cost forms. The work that I would
4 generally do, they are doing it for a lot less than
5 me.

6 Many people within the Bar are wondering if
7 these types of online programs that people can tap
8 into and get forms at ridiculously low cost sometimes
9 are legitimate and are appropriate. I am not able to
10 answer that right now, but what I can tell you is that
11 all of you here today have a proposal that is on our
12 agenda, and that is to explore the unauthorized
13 practice of law and how we address it by looking at
14 the definition of the practice of law. With the
15 definition of the practice of law, then the State Bar
16 can better mobilize its staff to evaluate complaints
17 and clamp down by way of injunctions or appropriate
18 proceedings on perceived violators of that practice of
19 law.

20 So all of you today at today's meeting, you
21 have the power to take a look at what the definition
22 is, and you have the ability to help the Bar move
23 forward. I am not trying to speak one way or the
24 other. I am not taking advantage of my floor
25 privileges on a proposal that hasn't been moved yet,

1 but the point I offer to all of you as Bar leaders on
2 the Assembly is you have got a tremendous opportunity
3 at today's meeting to help the Bar move forward on an
4 area that is of serious concern to you and to our
5 membership, so please take this opportunity very
6 seriously today, and I look forward to listening to
7 the discussion.

8 Finally, and this is it before you break and
9 get out in the hallway, one of my personal
10 commitments, my personal, I guess, priorities as
11 State Bar president is to be communicative and to be
12 accessible to the State Bar membership, so I have
13 thought about doing things a little differently, and
14 what I started during my presidency, and it's still up
15 now, is my personal presidential blog.

16 What is it? Well, a lot of you know what
17 blogs are, and some of you are probably wondering
18 what's that? And don't worry, if you don't know, you
19 can take advantage of our soon to be Apple discount
20 and get online a little more and start reading up on
21 blogs.

22 My blog is www.sbmpres2012.com, and through
23 that I offer you a chance to join me in some of my
24 travels, because I will talk about places I have been.
25 I have a picture up in my latest blog post of

1 Bruce Courtade and Elizabeth Lyon. They are walking
2 ahead of me, so you see their backsides, but I
3 briefly --

4 MR. COURTADE: Thank you.

5 PRESIDENT FERSHTMAN: Don't worry. I did a
6 little photoshopping on that one. Good thing I didn't
7 put myself in it, but Bruce, hey, you make a good
8 appearance front or back.

9 You will see if you go to the blog though
10 what we did in Washington, not in excruciating detail.
11 It's a blog, and, as you know, blogs are brief. They
12 don't go into great detail, but I share with you what
13 we did. I offer links so you can learn a little bit
14 more about our efforts in Washington, and as I
15 continue traveling my goal is to update the blog and
16 so you can come with me to some of the Bar
17 associations that I visit.

18 So I offer that to you as an opportunity to
19 learn a little bit more about what the Bar is doing,
20 learn more about what I am doing, and my offer stands
21 to remain willing to listen, to be communicative, to
22 be accessible. So please don't hesitate to come and
23 talk to me today if you have questions about the Bar,
24 if you have ideas about what we should be doing or
25 anything else that you think would be important for us

1 to know.

2 I look forward to today's meeting, so thank
3 you for being here. Thank you for listening.

4 (Applause.)

5 CHAIRPERSON GOBBO: Many thanks to Julie,
6 Elizabeth, and Janet.

7 This body had requested some time ago, at
8 least the majority of the body, had requested these
9 type of updates, and to many I am sure it's
10 informative, to others, may not necessarily care for
11 the updates, but the Assembly is going to continue
12 with them unless there are some changes, and we are
13 talking about very devoted people, including
14 yourselves, to be here on a Saturday morning.

15 The good news I have for you right now is
16 that it's break time. So since we are leading by
17 about five minutes, if you feel we need to take a
18 15-minute break, please do so, and I will try to
19 promptly start at 10:35 with my remarks. Thank you.

20 (Break was taken 10:20 a.m. - 10:38 a.m.)

21 CHAIRPERSON GOBBO: If you all could start
22 back to your circuits, please. Thank you. I am going
23 to try to make my remarks as short as possible and try
24 to stay focused, and for those of you that know me
25 well, that might be difficult to do sometimes. But

1 the good thing is I really don't like talking in
2 public. I have gotten maybe a little more comfortable
3 with it over the years and so kind of a balance.

4 A couple opening things. First, you heard
5 from Janet Welch, who is the executive director,
6 Elizabeth Lyon. You know Dana and you know Kathleen.
7 Most of you also know our parliamentarian, Judge John
8 Chmura, who is here, and he usually remains quiet
9 until we really get into a brawl or something. So I
10 just want to also mention a few other people.

11 Anne Smith provides administrative support to
12 the Assembly and to the Assembly leadership, was
13 instrumental in getting here yesterday late in the
14 afternoon and then early this morning to make sure
15 that everything was arranged for the meeting. It's no
16 small chore getting things together.

17 Marge Bossenbery, who is the executive
18 coordinator working with Janet Welch and others in the
19 leadership of the State Bar, is also integral to this,
20 but as we move forward to the proposal for the
21 practice of law, I have to tell you, you have
22 salmon-colored sheets in front of you, salmon-colored
23 sheets, and those sheets were prepared sometime
24 between the hours of maybe 6 p.m. to 2:00 in the
25 morning by some of the dedicated Bar staff, and I

1 would like to personally acknowledge Danon Garland --
2 it's actually Goodrum-Garland -- because she was
3 instrumental in trying to help with the processes and
4 having the Assembly understand the construct of the
5 practice of law definition and annotated the rule.

6 Danon has a supervisor, and Dawn Evans, if
7 you could stand up, is the director of basically the
8 Professional Standards Division for the Bar.

9 Now, there are many others that provide work,
10 but I am not going to go through all the names, but I
11 wanted to point those persons out, because they really
12 do a lot to make sure that a meeting like this moves
13 along expeditiously.

14 We also have in the room with us members of
15 the Assembly either by virtue of the fact that they
16 sit on the Executive Committee of the State Bar,
17 meaning they are an officer or one of the
18 commissioners on the Board that are selected by the
19 president to constitute the Executive Committee.

20 The Executive Committee is the officers,
21 those selected commissioners, as well as the chair and
22 vice-chair of the RA, so Dana and I have a lot of
23 input to what the Board does on an ongoing basis, but
24 for special recognition, and it's very appropriate,
25 Mike Riordan just came into the room late from the

1 break. I want to introduce the Honorable Court of
2 Appeals Judge Mike Riordan, recently appointed to that
3 post.

4 (Applause.)

5 CHAIRPERSON GOBBO: And over the years we
6 have had many members of the judiciary, judges
7 participate with the Assembly, and one of our own
8 sitting regular members elected from the 3rd circuit,
9 Margie VanHouten, was recently appointed a circuit
10 court judge.

11 (Applause.)

12 CHAIRPERSON GOBBO: And Mark Boonstra who
13 retired because of term limits from the Assembly at
14 the end of September's meeting was also appointed a
15 Court of Appeals judge too. He is not here today, but
16 I wanted to point out the fact that sometimes the
17 Assembly may help in terms of -- I am only kidding.

18 One of the things that I wanted to point out
19 during my remarks is that after the official meeting
20 of the Assembly is that the Assembly Review Committee
21 is going to be hosting a session where you are all
22 invited to attend and provide comment concerning the
23 operations of the Assembly, in essence.

24 The Assembly was formed, as I mentioned
25 earlier, 40 years ago essentially, 1972, and has dealt

1 with policy decisions, but as we move into the future,
2 you heard the remarks from Janet Welch about
3 technology, some of the other challenges faced by
4 sister mandatory Bars, particularly Wisconsin, but we
5 are at a point where -- what I am going to maybe do is
6 just read a quote, and it's a from a Scottish lawyer
7 by the name of Hugh Patterson McMillan, an address on
8 the Ethics of Advocacy from 1916. And I don't mean to
9 preach, but it's easier for me to do this than to
10 talk, kind of rambling.

11 The practice of law is more than a mere trade
12 or business, and those who engage in it are guardians
13 of ideals and traditions to which it is right that
14 they should from time to time dedicate themselves
15 anew.

16 Also Roscoe Pound, a pretty well-known early
17 1900s, 20th century dean of Harvard Law School, lived
18 to the nice ripe age of 90-something. Historically
19 there are three ideas involved in a profession --
20 organization, learning, and spirit of public service.
21 These are essential. The remaining idea, that of
22 gaining a livelihood, is incidental.

23 Our own first president of the Bar,
24 Roberts P. Hudson, and this is a quote that is in one
25 of the Bar rooms, meeting rooms, no organization of

1 lawyers can long survive which has not for its primary
2 object the protection of the public.

3 And the reason why I read these quotes is
4 that there are two themes that this meeting is
5 comprised of essentially. One is going to be this
6 practice of law definition. The other, as I
7 mentioned, the Assembly Review Committee meeting after
8 this meeting, and we need to start looking at ways
9 that we can do things more efficiently, more
10 effectively, and most of all more meaningfully in
11 terms of going forward.

12 There are some bylaws that I personally
13 believe constrain us from doing things, and I give you
14 one example, the fact that we have committees, who I
15 am going to recognize in a second, that the way the
16 bylaws are set up, people have to be from different
17 circuits, and there is a finite amount of people on
18 those committees, but there may well be other persons
19 on the Assembly who would want to serve on a
20 particular committee because of expertise, interest,
21 or otherwise, and I think we need to do something with
22 that.

23 I am not suggesting that it should be
24 infinite numbers, but I think ranges for appointments
25 may be possible in terms of a range in numbers, you

1 know, from five to some number that's not unwieldy,
2 and so that's what that charge to that committee is is
3 to really start looking at things, and one of the
4 things that is a concern, and it's a concern of the
5 membership, and that is how meaningful is the
6 Representative Assembly and why do we maybe give
7 speeches and then not deal with substantive matters.

8 Now, you do have one bear of a substantive
9 matter before you today, but it doesn't mean that's
10 the only item that could ever be out on the
11 Representative Assembly agenda, because I think the
12 Board of Commissioners as a whole would like to have
13 more things go to the Assembly if we could deal with
14 it more quickly and promptly, and so this whole thing
15 with the Assembly Review Process is to be kind of
16 geared to seeing what we could do to ensure our
17 relevancy as a body. So that's the one point.

18 The second point is with the practice of law
19 definition. You have before you, literally before me
20 too, is a distinguished panel, and the panel is a
21 small portion of the Ad Hoc Committee that was formed
22 by Tony Jenkins, who appointed me chair of the
23 committee, to essentially review a work product
24 obtained from the Standing Committee on the Unlicensed
25 Practice of Law, and I have to tell you I sat on that

1 Unlicensed Practice of Law Committee for several years
2 and a product was generated which looked like a pretty
3 good product, but when it got to the Ad Hoc Committee
4 with the membership, which I am not going to read all
5 the members because their bios are listed in the
6 agenda booklet, it was amazing how this definition
7 became narrowed.

8 Now, it's not without controversy, and you
9 understand that because you have some correspondence
10 from different people that have weighed in one way or
11 the other, but the panel was asked to essentially
12 present on this so that if the Assembly members have
13 any questions that you could ask those questions, and
14 it is with extreme appreciation and pleasure that I am
15 going to introduce Linda Rexer, who is better known as
16 the executive director of the Michigan Bar Foundation,
17 but also has served on the Committee for Self-Help,
18 which is a separate initiative, but it is very much
19 intertwined with the practice of law issues.

20 The Honorable Elwood Brown, who is a member
21 of the Judicial Conference but also known as the chair
22 of the Judicial Ethics Committee. Chris Hastings, a
23 professor at Thomas Cooley Law School, and the current
24 chair of the Standing Committee on the Unauthorized
25 Practice of Law, and Jim Harrington, III, who is a

1 prolific writer and a member of the Family Law
2 Section, and many of you may know Jim from one of the
3 issues that Janet had updated you on, and that was
4 the, for lack of a better term, the anti-trolling
5 proposal to the Supreme Court.

6 So without further commentary other than I
7 would like to ask Richard Barren and members of the
8 Assembly Review Committee, Michael Blau,
9 John Blakesee, and Kim Brightmeyer just to stand up so
10 the membership know who is on various committees.
11 Thank you.

12 (Applause.)

13 CHAIRPERSON GOBBO: If you stay later on, you
14 will hear from Richard concerning the workshop that's
15 going to take place.

16 We have the Drafting Committee, Josh Ard and
17 Fred Herrmann, Martin Hillard, Erane Washington
18 Kendrick and Lee Hornberger. If you could please
19 stand just so the members of the Assembly know who you
20 are.

21 (Applause.)

22 CHAIRPERSON GOBBO: The Hearings Committee is
23 Eilisia Schwarz is the chair, Francis Hathaway,
24 Marty Krohner, who is not here today, Alisa Parker,
25 Michael Marutiak, Susan Murphy, Michael Delling. If

1 you are here, please stand just so the members --

2 (Applause.)

3 CHAIRPERSON GOBBO: The Nominating and Awards
4 Committee, you have already heard from Mr. Nellis, and
5 his membership had stood up, and I am going to read
6 the names, Pamela Enslin, Anne McNamara, Dan Cherrin,
7 and Margie VanHouton, the Honorable Margie VanHouton.
8 At some point in time she might tire of that, I am not
9 sure.

10 The Rules and Calendar Committee, which does
11 a lot of work in refining what may go on the agenda,
12 is chaired by Vanessa Williams. A former chair of
13 this body is on that committee, Kathy Kakish,
14 Amy Kline, Joshua Smith, Becky Bolles. If you are
15 here, please stand.

16 (Applause.)

17 CHAIRPERSON GOBBO: And one remaining
18 committee that we have, the Special Issues,
19 David Gilbert is the chair of that committee. We have
20 Maureen VanHoven, Krista Haroutunian, Monique Field,
21 James Bartlett, Nathan Edmonds, Michael McClory, and
22 John Mucha is an associate member, and I should say
23 Lauren Rousseau was an associate member of Nominating
24 and Awards, so I apologize for overlooking that. If
25 you are here, please stand so the members -- you

1 already know who you are.

2 (Applause.)

3 CHAIRPERSON GOBBO: Thank you. I didn't do
4 that for the sake of just providing an
5 acknowledgement, but it really means a lot for these
6 people to spend time on the Assembly and then to
7 volunteer for a committee to do extra work. The main
8 reason I did the introductions, besides acknowledging
9 them, is that you should know who all the other
10 persons are in the Assembly, particularly on the
11 committees, in case you have some interest in asking
12 about proposals or information that might help you
13 either with the Assembly or otherwise. They are all
14 good people to know personally.

15 Without further comment, I am going to just
16 open up the panel discussion and moderate from here,
17 and we are going to begin with Chris Hastings, who is
18 going to start with kind of a historical view of UPL
19 in the state of Michigan and some other interesting
20 components to that. Chris.

21 MR. HASTINGS: Thank you Steve. I am just
22 going to sit here if that's okay.

23 CHAIRPERSON GOBBO: That's perfectly fine

24 MR. HASTINGS: I think I got drafted for this
25 role because I have been on the Unauthorized Practice

1 Committee for 12 years, and I know that because I have
2 recently been advised that I am going to be term
3 limited off for the second time.

4 I was involved, I think, in 1999 in drafting
5 the committee's first effort to codify the practice of
6 law, ergo the unauthorized practice of law, and the
7 proposal didn't gain traction. It got tabled, and it
8 sat there over a decade in which a lot of things
9 happened in the unauthorized practice of law, a decade
10 during which the committee felt relatively powerless
11 to meet the challenges that were coming.

12 One was, one of those challenges was the
13 internet and folks like Legal Zoom. Another was the
14 franchised legal/paralegal services providers like
15 We the People. Another was the bad economy, the fact
16 that so many folks were unable to afford lawyers and
17 went running to these folks who offered lower cost
18 alternatives that were supposed to be and advertised
19 to be competent to provide the services that people
20 needed.

21 Another one was a Supreme Court decision,
22 which you may not be fully versed on but which I feel
23 like I read more than any other opinion in the history
24 of my life, Dressel versus Ameribank. And perhaps you
25 have heard a soundbite from Dressel versus Ameribank

1 that I am going to read to you.

2 It reads, We hold that a person engages in
3 the practice of law when he counsels or assists
4 another in matters that require the use of legal
5 discretion and profound legal knowledge.

6 Now, I remember talking with one of my
7 colleagues when that opinion came down, and he said,
8 expletive deleted, I am not sure I have used profound
9 legal knowledge in 20 years of practice.

10 There are two ways to read Dressel. Frankly,
11 there are two ways that I think even some of the
12 people in this group read Dressel. One is, and I
13 think this one is wrong, and that's that that sentence
14 from Dressel from the conclusion reverses five or six
15 Supreme Court opinions that were handed down to that
16 day. The reason why I think that that reading is
17 wrong is because if you read all of Dressel you see
18 Dressel discussing and standing behind opinions that
19 were written before Dressel.

20 But folks who want to engage in what we
21 believe is the unauthorized practice of law hold that
22 language up as a paradigm and they say, We don't
23 pretend that we are exercising profound legal
24 knowledge or legal discretion, we don't claim to have
25 those things; therefore, we can't be practicing law.

1 Now, that stands in stark contrast to the
2 other interpretation of Dressel, which is simply that
3 that sentence describes a sufficient condition for the
4 practice of law but not a necessary condition for the
5 practice of law, and, therefore, the Supreme Court is
6 standing behind older precedent that says that, for
7 instance, the creation of documents affecting legal
8 rights is something that is also the practice of law.
9 That's just by example.

10 The fourth thing that happened is that the
11 State Bar started to get involved in providing
12 alternatives to what I will call charlatans and
13 providing things like, well, Grand Rapids or Kent
14 County Legal Assistance Center, and I will disclose
15 that I am on the board of that organization and have
16 been for two terms. I think that's very important.
17 Those are groups. Another is Linda's self-help group
18 that are creating alternatives to these guys who are
19 out there saying we can give you a trust, you need a
20 trust, here is, you know, just fill in the banks and
21 you have got a great document here, that were
22 sponsored by lawyers, that were sponsored by us that
23 we are behind making sure they are doing it right.

24 All those factors combined to convince the
25 Unauthorized Practice of Law Committee that we needed

1 to take another stab at defining the practice of law.
2 And let me tell you just a little bit about the unique
3 challenges in Michigan of doing that.

4 Here in Michigan we have perhaps, not the
5 weakest, perhaps the second weakest regimen for
6 enforcing the unauthorized practice of law among the
7 50 states and the territories. We have one remedy,
8 and that's an injunction from engaging in the
9 unauthorized practice of law. We have got lots of
10 injunctions against people like We the People,
11 injunctions saying you can't practice law, and they
12 do, and we have to catch them doing it, and then we
13 get another injunction. There is no criminal penalty,
14 there is no other penalty, and there is no enforcement
15 by anyone except the State Bar, and when I talk about
16 resources declining, resources in Michigan are
17 declining, the resources of this Bar association. We
18 don't have unlimited resources to prosecute
19 unauthorized practice of law claims.

20 So our new effort, and here is the other
21 thing that happened over the ten years that not much
22 was happening on this, is the other states started
23 marching on this, so in the ten years between our
24 initial effort and our new effort five states and the
25 District of Columbia codified definitions of the

1 practice of law that are similar -- I mean, the law is
2 different everywhere -- but similar in form at least
3 to the one that we are proposing, so it's something
4 that can be done.

5 It's a trend. It's not something that is
6 long haired, like it might have felt long haired in
7 2000. It's something that states are doing and having
8 success with it. And what our new effort did was
9 basically dust off the model that we had from ten
10 years ago. To my dismay and great pleasure, the
11 states who had enacted unauthorized practice of law,
12 or the practice of law definition for the interim, had
13 pretty much followed the same model we had.

14 So we dusted it off, we adjusted it for
15 Dressel, and you have a definition that essentially
16 has two main sections. Section A, which describes
17 what the practice of law is, and Section B, which
18 carves out what might be exceptions, including an
19 exception for governmental or nonprofit groups who are
20 providing legal information without providing legal
21 advice and giving them a place in our jurisprudence to
22 stand while they don't believe the lawyers provide
23 information and forms that don't constitute the
24 unauthorized practice of law and encourage people to
25 talk to lawyers instead of encouraging them to use

1 them instead of a lawyer.

2 What we hope this proposal will do, and there
3 is a lot more to be done, as Steve said earlier, is be
4 a starting place for additional protection. What it
5 will do for my committee specifically or it won't be
6 my committee soon, because I am term limited off, will
7 be to have something that lay people can understand,
8 that people who are engaging in the unauthorized
9 practice of law can understand that's not a stack of
10 common law opinions.

11 You know, we can't give seven Supreme Court
12 opinions to a lay person who has crossed the line and
13 say, here, read these and you will figure out that
14 what you are doing is wrong. We can provide them a
15 two-page definition of the unauthorized practice of
16 law and point out the provision that says, no, you
17 can't do that, which will be immense help for the
18 standing committee as we move forward marshalling very
19 limited resources to try to stop these folks. That's
20 all I have to say.

21 CHAIRPERSON GOBBO: Thank you, Chris. I am
22 going to ask Linda Rexer to perhaps discuss how the
23 self-help aspect kind of interplays with this to some
24 degree. And once we get through the presentations, I
25 encourage any of the members of the body to ask

1 questions. It would hopefully inform all of the
2 members of the Assembly by any questions that are
3 asked.

4 Linda.

5 MS. REXER: Sure, Steve, thanks. I am going
6 to be talking just briefly about what would be
7 exception number (7), (B)(7), and that is the
8 provision through a government or tax-exempt legal
9 self-help center or program, neutral information and
10 assistance for the public, and you can read the rest
11 there. It ends, Without giving legal advise or legal
12 counsel and without other than a nominal charge.

13 And just say that this is, that the great
14 number of people who go to court without a lawyer is
15 only increasing. Most have no help doing that. It
16 clogs the courts. It is something that other states
17 have been working on. Michigan is by no means first
18 in trying to come up with programs that assist the
19 self-represented, but the way that this relates to the
20 definition of the practice of law is that it must be
21 done appropriately, because it is done through
22 nonlawyers giving neutral information and not advice,
23 and the people who are doing this need to be trained
24 in the unauthorized practice of law, and they need to
25 understand that distinction, and they need to provide

1 those services appropriately.

2 And so, therefore, this definition is very,
3 very helpful to the growing number of providers that
4 are doing this. In Michigan we already have at least
5 five self-help centers. Chris alluded to the one in
6 Grand Rapids, which is actually a national model and
7 has been in existence for more than ten years helping
8 thousands of people, and they are very diligent about
9 training people to know that line between information
10 and advice, and all of those centers and the work
11 that's being done to look at other assistance for
12 self-represented litigant folks will welcome this
13 guidance so that what they do is appropriate and
14 serves the public.

15 And I think one of the things that makes this
16 come alive is to just understand about the scope of
17 the need just a little bit, and that is that in
18 Michigan more than three million of our 10 million
19 population are poor enough to qualify for free legal
20 aid, and you heard Elizabeth say that that's been cut.

21 So this is not going away. There are many
22 people who just cannot afford a lawyer. One of the
23 self-help centers in Barry County did a study of just
24 their divorce cases. Eighty percent of the divorce
25 cases have at least one party in pro per, 50 percent

1 have both parties in pro per. That same center has
2 about 40 percent of its users have a household income
3 of less than \$10,000, which you could parse out and
4 try to figure out whether that's subsistence or not.

5 These are not people who are hiring lawyers.
6 These are not people who can hire lawyers. So getting
7 the appropriate assistance and getting assistance for
8 the things that are appropriate for self-help is
9 important.

10 That brings me to the part of this exception
11 which says that this is for government or tax-exempt
12 legal self-help centers and programs, and that is
13 because the profit motive, if we are talking about
14 these increased numbers, the increased numbers of
15 people who need this help sort of spurs, you know, an
16 increased number of unqualified persons who are
17 economically motivated and willing to prey on those
18 people, and so not everyone who is economically
19 motivated of course would prey on poor folks, but we
20 try to strike a balance to see what would serve the
21 fundamental premise of this definition, which is, one
22 of the moves, protection of the public.

23 And we felt that one way to keep people from
24 being taken advantage of is to say that these services
25 should be without other than a nominal fee and in

1 government or tax-exempt entities because, in addition
2 to the fact that the profit motive might discourage
3 those providers from referring users to lawyers when
4 they need them, and nonprofit folks will refer people
5 to lawyers when they need them, we know that from
6 experience in other states and our experience here.
7 There is also the fact that government and nonprofit
8 entities must serve the public. Nonprofits are
9 overseen by funders. The IRS and the state government
10 entities, including courts, are overseen by entities
11 that are accountable to the public, and so that is why
12 we struck the balance there, and I think that might be
13 enough for now.

14 CHAIRPERSON GOBBO: Thank you, Linda.

15 I am going to call on Judge Brown, because he
16 has some unique perspectives on this. When the Ad Hoc
17 Committee first met, Chris and I, as members of UPL,
18 had been wrestling with language and other issues for
19 years as some predecessors on that committee had
20 wrestled with it. Judge Brown got right to the heart
21 of the matter, probably typically what a judge would
22 do when they have to go through many briefs and many
23 cases, and the construction of this rule, the revised
24 version, from what UPL had originally proposed is
25 really a part of the work that he and Jim Harrington

1 did in terms of providing insight on the Ad Hoc
2 Committee.

3 So, Judge Brown, if you could primarily
4 address that and any other comments that you would
5 like to make.

6 JUDGE BROWN: Thank you, Steve. This was
7 certainly a monumental task when we first approached,
8 at least when I first approached it, because I, unlike
9 Chris, I had not been involved in this before. When I
10 came in, my function was essentially to represent the
11 judiciary on this committee from our perspective.

12 There was bringing to the table from that
13 experience of my own in the courtroom, I knew where
14 Linda was coming from on hers, and there are a number
15 of individuals who appear before me and before every
16 judge in the state who are without counsel who have no
17 idea what they are doing and legitimately cannot
18 afford a lawyer. They just don't have anything.

19 So the idea was when we first approached this
20 and took a look, or at least when I first approached
21 this, is to look at what the possibilities were.
22 Because we had two choices. One is to seek a
23 statutory revision, which is not likely to happen.
24 The other is to seek a rule-based procedure, which I
25 think we have a much better shot at.

1 The rule-based procedure that we have, we
2 have to take into consideration as well the practical
3 effect and how we think the Supreme Court might view
4 this. So in order to do that as lawyers, of course,
5 we look at, when we look at Dressel, we look at maybe
6 the bottom line with the holdings, but when you are
7 dealing with a rule-based definition of something such
8 as what the practice of law is, I think it's important
9 to look at Dressel and the instructive nature of the
10 Supreme Court's decision to us, because they told us
11 that the definition of the practice of law was
12 possible. We were invited essentially by this
13 decision to do something.

14 So if all you do is focus on the holding, you
15 are missing, I think we are missing the point. If you
16 would look at the discussion that they had in arriving
17 at that holding, it's very instructive. And, as Chris
18 said, the Supreme Court mentioned with approval many
19 previous decisions, both from the Court of Appeals and
20 the Supreme Court, and they gave examples throughout
21 that discussion of what did constitute the practice of
22 law and cited other cases to support that.

23 All of this is in this salmon-colored sheet
24 that Danon and staff prepared for your benefit. It's
25 an excellent work product. It explains this very

1 well.

2 The definition that we presented has support
3 in the law. It's support that's discussed in Dressel
4 itself. So when as a group we started putting this
5 together, we had to continually focus on that, because
6 we had representation from every section, basically
7 every section in the State Bar, and we got a lot of
8 comments from people who would take it back to their
9 group and bring it back to the table at meetings, and
10 sometimes it was, you know, there were people saying
11 it's not inclusive enough, and then there were others
12 saying it's overbroad.

13 So what we consistently did was go back to
14 the law, what is it that supports this part of the
15 definition, and is there legal authority for it? And
16 the result is what you have before you.

17 So the process I think was very involved by
18 the Bar. It was very involved by the people who were
19 representing the various sections of the Bar, and the
20 work product you have before you is supported by the
21 law, by Dressel. I agree with Chris, Dressel did not,
22 in my view, reverse anything from the past, and if you
23 look at it, it discusses with approval much of the
24 prior decisions. So I guess that's all I have, Steve.

25 CHAIRPERSON GOBBO: Thank you, Judge. That's

1 very informative.

2 Jim, from the perspective of the major
3 section and from your own professional experience with
4 this, because you were brought into the UPL aspect
5 kind of the same way the judge was, not having served
6 on UPL before and wrestling with issues from the
7 segment of that practice area.

8 MR. HARRINGTON: Thank you very much. I had
9 been a member of the Family Law Council who works on
10 behalf of the section, 2600 members, for six years and
11 also six years chair or co-chair of court rules and
12 ethics for the council, and that was sort of my
13 perspective and my viewpoint when I went to the first
14 meeting up here in Lansing over a year ago regarding
15 the unauthorized practice of law, and when I went to
16 that meeting I had no idea why I was there and what I
17 was doing, and my first question or thought was, well,
18 isn't this well decided what the practice of law is?
19 We know what it is, don't we? And I was actually
20 stunned to realize that there was no definition of the
21 practice of law here in the state of Michigan, and
22 this was, last year was 2011, and for a lay person to
23 attempt to ascertain what is or is not the practice of
24 law, that lay person, I think, would have to invoke
25 profound legal knowledge in order to understand and

1 comprehend Dressel, and I think it's a beautiful
2 statement of Dressel by the judge, is it sufficient or
3 is it necessary? Is everything else okay in the
4 practice of law if it doesn't involve the use of
5 profound legal knowledge? And I think clearly there
6 are many aspects of the practice of law that may not
7 involve profound legal knowledge.

8 So from meeting one through the final
9 meeting, I can tell you that that proposal that sits
10 in front of you was vetted and wordsmithed and comma
11 edited and dashes and possessives, as well as getting
12 to the sentence, the ultimate sentence structure, as
13 carefully as anything that I have ever seen. It was
14 actually a very enlightening practice to work with the
15 various members of the various groups that were
16 present there.

17 I concluded when we finally approved the
18 proposal that's in front of you that this is really a
19 good work product. Is it perfect? Surely not. There
20 will surely be those who would have critiques or
21 suggestions, but to try to encompass and take Michigan
22 law and set it down to seven or eight succinct
23 paragraphs, I think it is a terrific work product, and
24 I am also pleased to report to you that at last
25 Saturday's Family Law Council meeting here in Lansing,

1 as a matter of fact, the Family Law Council approved
2 unanimously 19 to zero this proposed definition of the
3 practice of law.

4 I was also heartened, a little bit off topic,
5 I was heartened to hear from Janet Welch that
6 anti-trolling is not dead, and similar to
7 anti-trolling, because I spoke to you a year or two
8 years ago on anti-trolling and it finally made it up
9 to the Supreme Court level, I think it's pretty clear
10 that what we do here today is not necessarily the
11 final word.

12 We are not passing a law. We are making a
13 recommendation which will be reviewed and vetted at
14 higher levels and above our pay grades, but I think
15 this is a wonderful beginning to the process. It has
16 taken a long time. Everybody has worked hard. So from
17 the Family Law Council and section perspective I have
18 no hesitation to recommend approval and endorsement of
19 this definition and let the process continue.

20 CHAIRPERSON GOBBO: Thank you, Jim. I really
21 want to see the Assembly ask anybody on this panel any
22 question you want, because there is a certain
23 expertise that you are not going to find, other than
24 maybe from the RA itself, in terms of the different
25 areas that weighed in on this. So, Matt, please step

1 up, identify yourself.

2 MR. MATTHEW SMITH: Good morning, Matthew
3 Smith from the 17th circuit, Kent County, Michigan.
4 If I could beg the Chair's permission, I would like to
5 make an observation first rather than a question.

6 This is my first full year on the
7 Representative Assembly, so it's kind of fun to watch
8 how you guys do everything, but I have served the
9 State Bar for 18 years on the Criminal Law Section as
10 one of their officers and chair. Steve serves on it
11 with me. I look around the room here, I see some
12 other members of my group.

13 We are a very unusual group in the State Bar,
14 and that is that we are the only section that has
15 people in it that are widely disparate in the type of
16 practice that we have. In fact, we are opponents. We
17 have prosecutors, we have defense attorneys, and we
18 have judges. We pride ourselves over the last 18
19 years of being a very homogenous group. Almost all of
20 our votes after sometimes long consideration are
21 unanimous. Occasionally we'll have a dissent, rare
22 though that may be.

23 When we came time to sit down and talk about
24 the unauthorized practice of law, and in fact the
25 salmon-colored sheets you have are the same ones that

1 we had at that meeting, we ended up with a 9-6 vote to
2 support it in principle. In my 18 years I have never
3 seen that. And I just wanted to take a minute to
4 point out what happened at our meeting.

5 What happened was is everybody looked at it
6 and said great idea. Unfortunately, they said great
7 idea but, and this was very reminiscent of what
8 happened to this type of proposal about ten years ago.
9 Our group virtually to a person, there were 20 of us,
10 said maybe we should add this little provision here or
11 what about a waiver provision or is this overbroad, is
12 this too narrow. Twenty different opinions. Well,
13 maybe 18. We sat down and argued this, I think well
14 over an hour. It was a long time for our group. We
15 got out of that meeting very late.

16 What we have before us here today is a
17 proposal that these folks have worked on very
18 diligently, that at least it is a good start. Is it a
19 perfect document? No, it's not. Do we all have
20 things that we think should be added to it or that we
21 could look at later down the road or things that we
22 could modify? Yeah, but we can't let this one die the
23 death of a thousand cuts. I would support it.

24 CHAIRPERSON GOBBO: If I could ask you a
25 question, because we don't have actually the proposal

1 before us at this point in time, and what I was hoping
2 is that this would be an opportunity to ask the panel
3 any questions rather than, more or less, comments
4 about the actual proposal, because we are going to
5 have that come up at the appropriate time.

6 MR. MATTHEW SMITH: Mr. Chair, the reason I
7 did that was simply because, as we begin the process
8 of going over this document, we are going to be
9 tempted to do the same thing we did Tuesday night, and
10 that is, yeah, but, what about, how come? And I think
11 we should keep our focus more on whether or not this
12 is the right thing to do and can we modify it later or
13 do whatever as opposed to stand up and oppose it
14 because your yeah but didn't quite get in. I simply
15 bring this up as an observation of what we went
16 through Tuesday, and you were there.

17 CHAIRPERSON GOBBO: It's a good observation.
18 I am just questioning the timing of it.

19 MR. MATTHEW SMITH: I made my observation.
20 Thank you.

21 CHAIRPERSON GOBBO: Thanks, Matt.

22 MR. COURTADE: Bruce Courtade, 17th circuit.
23 The question I have reading through the materials, one
24 of the issues that, one of the letters we received
25 pointed out was that potentially a family member

1 giving family member advice could violate this rule.
2 I would like a response from the panel about whether
3 you considered that, whether you agree with that as a
4 concern or how that would be addressed.

5 CHAIRPERSON GOBBO: Let me add to that
6 context, because the context that I have heard is a
7 son goes to court with the father and the father is
8 standing next to the son before some judge, and the
9 father is whispering in the son's ear as a context
10 perhaps.

11 MR. HASTINGS: I have a unique perspective on
12 that, having sat through 12 years worth of UPL
13 meetings. In that case the father may well cross the
14 line in terms of offering advice that he is not
15 qualified to give. The standing committee on the
16 unauthorized practice of law would never touch that
17 case. I think that falls into a matter of
18 prosecutorial discretion. That's not what we are
19 after. We have standards for litigation. All of our
20 decisions are reviewed by the Board of Commissioners
21 and approved before any action is taken, and one of
22 the standards, the most important standard, is this
23 something that offers the prospect of continuing harm
24 to the public, and a father advising his son doesn't
25 do that.

1 CHAIRPERSON GOBBO: What I should mention is
2 that under the RJA the sole and exclusive prosecution
3 has to be through the State Bar. So it's not a penal
4 statute, which I think some people that I have talked
5 to get kind of confused about a little, that it's a
6 court rule being used for administration and defining
7 the practice of law and not as a punitive methodology.
8 It could turn into that, because the only remedy we
9 have, as Chris mentioned earlier, is injunctive
10 relief. I suppose if somebody violated the injunction
11 they might be subject to criminal intent, so I am just
12 adding that in. Are there any other questions?

13 JUDGE BROWN: I agree with Chris, there are
14 two basic ways of looking at this. Number one, does
15 it violate the letter of the definition, and if it
16 does, what do you do about it? So there is a lot of
17 anecdotal types of situations that you could bring up
18 that say, well, listen, this really doesn't hurt
19 anybody too bad, why shouldn't they be able to do it,
20 and that's different than whether or not it is the
21 practice of law.

22 So we have to define, we have to have the
23 threshold first of what is the practice of law and
24 then make the decision what you do about it, and, as
25 indicated, the State Bar makes that decision with very

1 limited resources, so you have to have practical
2 approach to all of that.

3 CHAIRPERSON GOBBO: Thank you.

4 MR. POULSON: I am sorry. I had to work my
5 way over here. There used to be a microphone over
6 there in the old budget days.

7 I oppose a family member exception to the
8 practice of law. I can just picture it in court with
9 family members getting up with their son at their side
10 trying a case with a life sentence, and I am confident
11 that would happen, so that's my first comment.

12 CHAIRPERSON GOBBO: Again, what I was hoping
13 is that we would have questions to the panel as
14 opposed to discussion on the motion. There is no
15 motion out there at this point, so I appreciate the
16 observations, but I think it would inform the body if
17 questions were being asked of the panel so they could
18 respond. We will take a short break, and then we will
19 get to the actual agenda item.

20 MR. POULSON: My question relates to the
21 preamble on line six where it says, Legal services to
22 others are qualified to do so by education, training,
23 and experience. And I would ask the panel where in
24 the application for the State Bar membership does
25 experience come in? As far as I understand, it does

1 not. You get a B.A., a J.D., you pass the quiz, they
2 look into your background, which is painful for old
3 people, easy for young, but there is nothing on
4 experience, so I would ask the panel why they included
5 that.

6 MR. HASTINGS: I am not sure I have a textual
7 answer. You know, I can't remember exactly who put
8 that word in there. It may well have been me, and I
9 guess my only answer, my best answer is that our
10 ethical rules require us to have a certain modicum of
11 expertise in an area before we walk into that area, so
12 we are not permitted, although we may be licensed to
13 do something, we have to have the ability to practice
14 in that area as a matter of our professional ethics.

15 MR. POULSON: Thank you.

16 MS. KAKISH: Kathy Kakish, 3rd circuit. How
17 comparable is this to the definitions of the practice
18 of law in other states?

19 MR. HASTINGS: Formally it's the same.
20 Practically it differs in the way that our substantive
21 law differs from the law of other states. For
22 instance, the precise holding applying law to fact
23 holding of Dressel is that people who are involved in
24 transactions or interested in transactions, they
25 charge a fee for these legal documents. The state of

1 Washington is exactly the opposite on that key point,
2 but the structure is the same. (A) tells you what
3 lawyers can do and no one else can, and (B), as carved
4 out, trump (A) if they apply.

5 CHAIRPERSON GOBBO: Next.

6 MR. FLESSLAND: My name is Dennis Flessland
7 from the 6th circuit, and I wanted to ask if you
8 considered the debt consolidation companies and how
9 they operate in this context? I mean, they will very
10 often contact debtors. They will say make your
11 monthly payments to us, which is kind of setting up a
12 trust fund, then when the debtor gets sued they give
13 them legal advice of some sort to file an answer or at
14 least move the thing into litigation, but they don't
15 get involved in the negotiation, they don't get
16 involved in litigation, they very often don't get
17 involved in payment, and they are very often out of
18 state. Do you have any -- did you discuss that, or
19 how does that fit in with this rule? Thanks.

20 JUDGE BROWN: I can tell you that we
21 discussed a lot -- I can't say we discussed that one,
22 but we discussed a lot of situations. As I indicated
23 earlier, the members of the committee represent a lot
24 of widespread area of practice, and throughout
25 discussions you brought in a lot, well, what about

1 this or what about something else?

2 What we tried to focus on in establishing a
3 rule or a definition was not so much individual
4 situations that we might be confronted with but with a
5 more definitional approach following the case law
6 that's been presented and then see if those situations
7 fit within that.

8 So the definition that we have, your example
9 may very well fit within that in a given situation and
10 it may not in another. And so what we are trying to
11 do is present a threshold from which we can operate to
12 determine whether or not as situations occur, how does
13 that fit within the definition, is it a violation of
14 the definition, is there an exception for it and, if
15 not, and it is determined to be a violation of the
16 definition, then you go to the next step as to what to
17 do about it.

18 So I think we have to concentrate on that
19 threshold part of it, piece of it before we ever get
20 to the, well, what about this person or what about
21 this activity, because once you have that definition,
22 then you can make those kinds of decisions, and until
23 you have that definition it's pretty hard, and that's
24 the reason that we are proposing the definition to
25 begin with or try to come up with a definition to

1 begin with so that it would give us somewhere to start
2 to make the decision based on a factual scenario as
3 it's occurring.

4 MR. FLESSLAND: I just wanted to follow up.
5 Does the fact that somebody takes money in a trust
6 context to pay to others, does that fall within the
7 definition of the practice of law in some fashion?

8 MR. HASTINGS: I don't think that the
9 specific taking of dollars into trust does. I do
10 think, and I agree with everything that Judge Brown
11 said about trying to take the law as it stands now.
12 We don't have any published opinions on debt
13 consolidators, so we don't have much guidance to
14 include in our definition.

15 I can tell you the standing committee is very
16 concerned about that and we are actively looking for
17 the right case to make some law on that and to have
18 the existing law apply to those facts. We haven't
19 found it yet but hope to.

20 CHAIRPERSON GOBBO: Next.

21 MR. JOSHUA SMITH: Joshua Smith from the 30th
22 circuit. Quick question, hopefully quick question, on
23 exception (B) (2), which is the exception for lay
24 representatives and administrative agencies.

25 Now, obviously this says specifically

1 authorized by statute. Later on there is the
2 exception (B) (9) for activities specifically exempted
3 by the Supreme Court, and I guess my concern is
4 twofold. Now, obviously there are fairly clear-cut
5 cases where the statutes provide that a person can be
6 represented by an authorized rep. These are usually
7 social welfare benefits cases.

8 In many of these administrative cases the
9 State of Michigan -- in full disclosure, I worked for
10 the attorney general's office. When an agency
11 proceeds at a hearing and the other side proceeds in
12 pro per, typically the agency is not going to request
13 representation from my office, for the obvious reasons
14 that they don't feel they need an attorney present.
15 The agency instead will send a representative from the
16 agency to handle the hearing. Needless to say, this
17 is a nonattorney.

18 So my question is, and I am not familiar
19 with -- I know sometimes the statute allows this, but
20 I don't know if it allows it in all cases. Has the
21 committee considered that, A, and, B, do we have any
22 list of statutes and/or activities at an
23 administrative level that are exempted from the
24 practice of law or unauthorized practice of law?

25 CHAIRPERSON GOBBO: If I could take a stab at

1 this. I know that the list was compiled a while ago,
2 and I am familiar, very familiar with the statutory
3 provisions concerning what the rights of an agency.
4 Quite frankly, when I have had the opportunity to
5 comment on legislation, I attempt to ensure that
6 whoever that authorized agent is is also an attorney,
7 but there are many statutes, as you pointed out, that
8 say and authorize a representative of a particular
9 agency, and I know one area in particular that has
10 gone in some complaints actually, UPL, is
11 unemployment, because they have an advocacy program.
12 When I was going to law school, some of the students I
13 was attending with actually formed companies to act as
14 advocates in those proceedings because the statute
15 specifically provided for that.

16 So the application at a hearing, an
17 administrative hearing, we have at least one
18 administrative law judge in the room, is typically
19 that if an administrative law judge under the ethical
20 rules discovers somebody is not an attorney, they are
21 supposed to report that to UPL and then, again, it
22 falls into this threshold evaluation that has to be
23 done by the Bar as to whether there is actually
24 something that should be done about it.

25 So that's my two cents to the matter on that.

1 MR. JOSHUA SMITH: If I could follow up. I
2 understand obviously there is the problem at the
3 petitioner's level, the non-State level with companies
4 like you just mentioned. I guess my main concern is
5 with the State itself, because, of course, if the
6 State were sued under unauthorized practice of law
7 measures and it stuck, it would be enormously
8 expensive for the State of Michigan to get a licensed
9 attorney in all of those cases. I mean, that's the
10 reason they don't get a licensed attorney in many of
11 them, because it's quite pricey, and when you multiply
12 that by the number of hearings, the number of
13 agencies, it gets pricier yet.

14 CHAIRPERSON GOBBO: There is a greater issue
15 there too that I will speak about just so that there
16 is maybe an understanding of how difficult pulling the
17 rule together is. You are dealing with two branches
18 of government, the judiciary and the executive branch,
19 and the legislative branch as the third, actually
20 three branches of government, but the point I wanted
21 to make is the legislature comes out with legislation
22 and statutes, and in this case, although it's the
23 Court, the Supreme Court that has the final say on
24 matters of the judiciary and the practice of law,
25 there had to be some acquiescence in terms of defining

1 certain callbacks.

2 So it's kind of a reverse, rather than
3 defining it, they are providing a callback. There is
4 that delicate balance of an overlap between the
5 branches of government, and then, of course, the
6 executive branch from your end and my end is trying to
7 enforce those laws, and maybe it's not so clear
8 sometimes what it really means.

9 MR. JOSHUA SMITH: It might be better that
10 it's not clear for some of us.

11 JUDGE BROWN: I can tell you that there are a
12 number of, from my perspective, I certainly don't know
13 all of the statutory exceptions that are available, I
14 just don't. I would guess most of us don't. But we
15 know they are there. We know there are some. So we
16 established this as an exception, because we are aware
17 that they exist.

18 When you talk about whether or not it would
19 get enormously expensive to be able to do that, if,
20 for example, if there wasn't an existing exception and
21 it was a concern enough, I would be willing to bet
22 that if dollars are on the table and you find an
23 exception carved out legislatively real quick that
24 says something to the effect of in a situation you
25 don't -- this agency can act without --

1 CHAIRPERSON GOBBO: And it's very -- the
2 narrow exceptions I guess is the way I would define
3 it.

4 MR. MUCHA: John Mucha, 6th circuit, Oakland
5 County. Just a question about Section (C), I believe
6 it's page eight, the nonlawyer assistance. I don't
7 have my copy of the Michigan Rules of Professional
8 Conduct with me, but just wondered whether this
9 exception would allow someone to form a team or
10 organization of nonlawyers, a lawyer format
11 organization, have a group of people providing
12 nonlawyer assistance under the supervision,
13 quote-unquote, of a single lawyer in more name only
14 than in practice, and, you know, is this exception
15 that broad that it might allow something along those
16 lines?

17 MR. HASTINGS: Boy, I sure hope not. It
18 certainly wasn't the intent. Our intent was to call
19 out the (inaudible), which are really quite well
20 developed, look, we are going to cheat the actual
21 rule.

22 The responsibilities regarding nonlawyer
23 assistance is Rule 5.3 of the Rules of Professional
24 Conduct which govern what we have to do when we
25 oversee those folks who are providing services. We

1 are the clearinghouse, and if somebody stepped down in
2 terms of fulfilling the function, it's the grievance
3 folks, the discipline folks that have to handle that.
4 But dealing with the lawyer, not the nonlegal
5 professionals.

6 CHAIRPERSON GOBBO: Next.

7 MR. ARD: Hi, Josh Ard of the 30th. I just
8 wanted to point out, it looks like you forgot to put
9 "for another" in (A) (1) (2), so anybody that fills out
10 a legal form for themselves or selects one for
11 themselves would be engaged in the unauthorized
12 practice of law, which is obviously not what you
13 meant, so you may need to put something like "for
14 another" or something like that in the (A) (1) (2). So
15 just choosing, choosing the form to open probate is
16 selecting a form and filling it out. You obviously
17 don't want to mislead anybody into thinking that's the
18 unauthorized practice of law.

19 JUDGE BROWN: Except for general (A) in the
20 general definition.

21 MR. ARD: Right, general definition, but in
22 (1) and (3) you mention another, so you might as well
23 mention another in (2).

24 CHAIRPERSON GOBBO: Thanks, Josh.

25 Are there any other questions to the panel

1 members at this point in time? Okay.

2 I would like I guess for the Assembly just to
3 recognize our visitors on the panel.

4 (Applause.)

5 CHAIRPERSON GOBBO: We are slightly behind in
6 time on the agenda, and the next item, which is
7 actually the consideration of defining the practice of
8 law. We had Chris Hastings down as the proponent, and
9 from the bylaws, the Assembly would have to recognize
10 on two-thirds vote a section or committee
11 representative chair, and I understand Mr. Tom
12 Rombach, our treasurer, secretary is prepared to make
13 a motion.

14 MR. ROMBACH: Mr. Chair, Tom Rombach. I am a
15 representative of the 16th circuit here.

16 CHAIRPERSON GOBBO: Currently the secretary.

17 MR. ROMBACH: I am moving to adopt the
18 proposed definition of practice of law as State Bar
19 policy and include an annotated version of the
20 supporting materials submitted to the Michigan
21 Supreme Court. I also rise to speak from an
22 institutional standpoint.

23 Obviously our first and foremost duty here is
24 to protect the public. As you have seen from the
25 panel discussion, we need guidelines for enforcement.

1 We need guidelines for compliance. We also need,
2 quite frankly, to protect the profession, and for 15
3 years I have been in and around the Assembly. I was
4 elected then. I was also a former chair, and
5 everybody keeps asking when are we going to do more
6 about unauthorized practice of law. And the
7 profession is yelling for this improvement.

8 We have gone as far as we can, you know,
9 given the Dressel decision and given the fact that
10 right now the public has to, each and every decision
11 that comes down, has to parse it so that they know
12 where to go, and even our membership doesn't seem to
13 be able to agree on where we are at. So the fact,
14 from a practical standpoint, that this isn't a perfect
15 document, I mean, I think that we are missing the
16 point, and I think Mr. Smith made that.

17 So if our membership wants this, we have to
18 do something, and right now the State Bar is the
19 exclusive enforcement agency to do this, and we have a
20 great deal of discretion, so I am not too worried that
21 we are going to go after dad for saying, hey, Junior,
22 I am filling out a form, okay. We also, as
23 Judge Brown said, we have some limited resources, but
24 we are complaint driven. I don't think Junior at 12
25 is going to say, Oh, well, I read the Dressel

1 decision, I have looked at the Supreme Court rule, and
2 now I think I should, you know, I have had an argument
3 with dad and I am going to go to the State Bar and
4 file a complaint, from a practical standpoint.

5 But we need to focus, are we doing the right
6 thing here? Each and every provision of this is
7 supported by the law as you see in the salmon handout
8 here. The special committee is populated by our best
9 and brightest practitioners. They can't be held to an
10 impossible standard, and sometimes we, as all lawyers,
11 hold everything up to perfection, and in this case
12 this is still a work in progress.

13 Because this is a proposed court rule, the
14 Supreme Court still has to weigh in. This is just a
15 suggestion for them. We still have to have public
16 hearings. We still have to go before them and
17 advocate for the final rule, so there is a whole lot
18 of input to be had. This is the starting point for
19 the State Bar of a long and perhaps drawn out process.
20 Just please, you know, at this juncture don't veto
21 this thing, one of the State Bar's highest priorities.

22 The other thing is that what is the
23 institutional cost here of failure? This is just
24 another test of the RA's powers and responsibilities
25 and abilities, quite frankly. Are we able to in one

1 mind set our sights on a particular purpose and
2 accomplish that goal, and if we are all going to die
3 of a thousand cuts, as I think it was put, then we all
4 fail.

5 This initiative was undertaken in 1999
6 through 2001. What happened? We didn't even get to
7 see it at that point because it didn't hit the
8 critical mass that it took to come in front of this
9 body. Now the Supreme Court has invited us to do
10 this, as you heard in the Dressel decision, to produce
11 a rule-based enforcement mechanism, and that's exactly
12 what we have done. Quite frankly, we have reached the
13 end of our rope to where we are at. I am rising as a
14 representative of the Board of Commissioners. We
15 recommended this to the Assembly, but we respect the
16 fact that the Assembly is the final policy-making
17 body.

18 So right now what are we doing to enforce
19 these things? Well, I know a little bit about that.
20 Quite frankly, the moron that's in charge of the
21 enforcement mechanism here needs some direction, and
22 you are looking at him, okay. So when this comes in,
23 you know, I would like some set of guidelines instead
24 of just the staff and the complaints that drive in.
25 What does the Assembly want us to do? And this is our

1 opportunity to speak in one voice to come forward with
2 a work product, and that's what I am asking here to
3 do.

4 So this is a finely woven fabric. I don't
5 want each and every one of us to pull a single thread
6 out or we are going to end up with no work product at
7 all, and we are just going to destroy this.

8 So an overwhelming number of the
9 Representative Assembly members and members of the
10 profession, quite frankly, have come up to me as chair
11 of the Professional Standards Committee and said, What
12 are you doing about this? And so I really feel
13 strongly that we should do something about this.

14 So please don't endanger this entire effort
15 at some quest for perfection. It's an imperfect
16 document, the best we have come up with, and I would
17 like this to go through without a great deal of
18 amendments. We can discuss it to death, I don't mind,
19 but unless there is something that you have to say
20 that has to be in here, because right now this is 95
21 percent right, and the one five percent that I really
22 feel strongly about may be the one five percent that
23 somebody over there can't live without, so I veto the
24 part he likes, she vetoes the part that I like, and
25 then we all end up with nothing, and that's where we

1 have been for the last ten years. I believe that we
2 need to move forward. Thank you, and that's the basis
3 I am supporting this proposal.

4 VOICE: Second the motion.

5 CHAIRPERSON GOBBO: Hearing the motion and
6 second, is there any comments or discussion? If there
7 are, just use the podium, and I guess just form a line
8 right behind Kathy.

9 For the sake of expediency, because we are a
10 little over the allotted time, and I don't have a
11 problem staying late, I live locally, but I know many
12 people might have other commitments, so we are going
13 to ask everybody to kind of adhere to maybe a
14 three-minute time frame, and if somebody pulls out the
15 bylaws, you might find it's a lot longer time, and if
16 I multiply it by everybody in the room, we won't be
17 done until next weekend.

18 MS. KAKISH: Kathy Kakish, 3rd circuit. I am
19 in total support of this proposal, and I am in total
20 support because of this panel discussion today. I
21 have to admit when I first read it in the booklet, I
22 only read what we are voting on, and I did not read
23 the introduction. I was confused. Then I read the
24 introduction and it started to make sense. However, I
25 had a lot of questions. Then there were things that

1 were mentioned in the panel today which put everything
2 into focus.

3 Chris, you talked about the problems and the
4 struggles that we have had. You have talked about the
5 lack of enforcement, injunctions being the only method
6 to counter the problem. Linda, you focused on the
7 (B) (7), the pro bono self-help centers. Judge Brown,
8 I thank you very much for focusing on two items that I
9 had questions about. One of them is I didn't
10 understand that there were two routes to take. One,
11 the statutory provision or the rule based. It
12 clarified a lot of the process for me and, Judge,
13 thank you very much for providing such a succinct
14 overview of Dressel. James, focusing on the
15 definition, or the lack thereof in the state of
16 Michigan, focus on the Family Law Council and perhaps
17 what their thoughts were on this and your focus also
18 pointing out that what we are doing here is making a
19 recommendation.

20 I don't know -- my question, I guess, would
21 be to talk to the proponent. Tom, you mentioned that
22 you were moving to include annotations along with what
23 we are going to vote today. These annotations, would
24 they include the introduction that is in our booklet,
25 and, two, and could they also include the highlights

1 of the panel discussion, because I believe what the
2 panel has discussed today really focused the issue.
3 We know down the road when documents are not attached
4 they get lost, and other people are going to review
5 this, what we are proposing today. The background
6 information, I believe, is so important. So I guess,
7 Tom, my question to you is will we have the
8 introduction in our booklet, will it be rewritten so
9 that what was discussed here today would be included?

10 CHAIRPERSON GOBBO: Kathy, if I could just
11 ask a question of clarity. Are you suggesting the
12 report, as well as the draft rule unannotated plus the
13 annotation, is that what you are suggesting?

14 MS. KAKISH: I really don't know. What I
15 know is that in our booklet we have what is called the
16 introduction report of the special committee. That's
17 what helped me focus --

18 CHAIRPERSON GOBBO: I think Tom's motion
19 probably intended to include the report, because the
20 rule and the report really are kind of one document
21 because of the appendices to it, but I would ask Tom
22 just as a proponent of the motion to clarify that.

23 MR. ROMBACH: I am for incorporating
24 everything that's done here. I mean, that entire
25 presentation by the Representative Assembly, the

1 representative Bar is going to have to be presented to
2 the Supreme Court at some juncture, so basically that
3 document in its entirety.

4 CHAIRPERSON GOBBO: So just for clarity of
5 what the motion was made by the proponent. I know the
6 one thing Kathy asked for is the transcripts
7 presumably to go along with that, because that
8 contains the panel discussion. I don't know if that
9 would be a standard practice. I know that the Court
10 has access to the transcripts anyway.

11 Janet, if you want to address just a problem
12 that's posed by that.

13 MS. WELCH: I am not sure it's a problem, but
14 just a general observation that actions that are taken
15 by the Representative Assembly, policies that you
16 adopt, even if you adopted just the unauthorized
17 practice of law, or the definition of the practice of
18 law, what happens next as we advocate what it is that
19 the Representative Assembly has adopted is that we
20 bring to bear everything that we can in order to
21 persuade four members of the Supreme Court or 56
22 members of the House or 19 members of the Senate and
23 the Governor. So of course we will take everything
24 that has been persuasive to you and use that and
25 probably add to it going forward, what would be

1 persuasive.

2 MS. KAKISH: Janet, thank you very much. I
3 am in total support of this proposal.

4 CHAIRPERSON GOBBO: We have a motion that was
5 moved by Tom Rombach, and you heard kind of the
6 explanation, so I don't hear an amendment to that
7 motion. I am just going to keep that motion as it is.
8 Went over the three minutes, but I think the
9 procedural thing helps to understand what may happen.

10 Go ahead, please, next.

11 MR. POULSON: Despite my objection to line
12 six, word number four, I see this happening in court
13 all the time, parents wanting to get up and advocate
14 for their son or daughter, and even though attorneys
15 are free for the indigent, and they make a complete
16 mess of it based on what they watch on TV, and I think
17 it very important that it actually not occur, and I
18 support this proposal despite my quibbling over the
19 word.

20 I didn't want to leave the impression that I
21 don't support it. I think it's necessary, and I think
22 people are being disserved in numerous ways, many of
23 which are present here. I see debt consolidation
24 agencies not only giving advice, I see them actually
25 keeping the money. So we have got a big problem and

1 the public relies on us. I would just like to mention
2 my support.

3 CHAIRPERSON GOBBO: Thank you very much.

4 Next.

5 MR. COURTADE: Bruce Courtade, 17th circuit.
6 I am one year ahead of Tom in chairs for the
7 State Bar, so since he is the current moron who leads
8 the unauthorized practice of law, I am the preeminent
9 moron.

10 Nonetheless, this is a great proposal. This
11 is absolutely necessary. I commend the committee for
12 its work. Outstanding work product. This is
13 something that you cannot possibly, I don't care how
14 long we as a group would sit down and try and work
15 this thing out, we will never come up with a single
16 definition that everybody will agree with, but we need
17 something in place. We need this proposal to go
18 forward. We need the Supreme Court to look at it and
19 hopefully -- my personal preference is they send this
20 rule out, they adopt this rule, but at a minimum let's
21 keep the conversation going. I fully support this. I
22 thank the committee. I thank staff for the
23 outstanding work on this.

24 CHAIRPERSON GOBBO: Thank you, Bruce. Next.

25 MR. HERRMANN: Fred Herrmann, 3rd circuit.

1 Probably the best thing I learned in law school was a
2 passing comment by one of my favorite professors who
3 said, If we were smart we would call this fact school,
4 and of all the materials we received for analysis of
5 this, the one thing that jumped off the page at me was
6 footnote two of the committee's report which gave a
7 specific example of how things can go wrong when a
8 member of the public engages a form factory instead of
9 an attorney. And that type of example, whether it's
10 either a hypothetical, a detailed hypothetical, or
11 perhaps a real world experience one of us has had in
12 dealing with a client who had something go wrong by a
13 using a form factory, any of those types of details
14 that we can tack on to this proposal I think would be
15 critical to gaining traction, and I think it's
16 particularly important given Executive Director
17 Welch's comments today on the anti-trolling provision
18 and the Supreme Court's reaction to that.

19 Empirical evidence will go a long way, I
20 think, to advancing this proposal. I know we are
21 focused on the language. We are trying to come up
22 with a rule that embraces every possibility, but I
23 would encourage you to include as much detail as you
24 can of either real world or at least hypothetical
25 instances where the public would actually be harmed,

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1 and that footnote two I think is an excellent example
2 of, wow, that jumped off the page with me. You fill
3 out a form and you have made a grave error that has a
4 significant impact on a member of the public.

5 CHAIRPERSON GOBBO: Thank you. Next.

6 MS. ORTNER: Ava Ortner from the 6th circuit.
7 I commend all the hard work that went into this, and I
8 hate to rain on everybody's parade, but I don't think
9 that this is a document that ought to be approved. I
10 have to agree with the Oakland County Bar Association,
11 the letter that was submitted by Mr. Peter Alter, the
12 president of that association.

13 The overbreadth of one particular section to
14 me is terribly troubling. I draw your attention to
15 Subsection (6), and imagine the following conversation
16 between two lay people. You can't park there, you
17 will get a ticket. You can't cut down that tree, it's
18 on your neighbor's property. It's against the law.
19 If you hit her, she can sue you, that's assault. So
20 if you weighed everything on one hand that lay people
21 say that sounds like the giving of legal advice to
22 another against all of the legal advice all of us
23 lawyers give in the state of Michigan, you are
24 including a bigger pile of commentary that is
25 perfectly everyday discussion.

1 Now, I understand that enforcement is an
2 issue and nobody is going to enforce it that way;
3 however, a lot of what we have heard here is that this
4 document is intended to give guidance to lay people.
5 If this isn't a chilling effect on people's first
6 amendment right, I don't know what it is.

7 Maybe there is a first amendment lawyer in
8 here that could say that a lay person would not be the
9 slightest bit inhibited to continue giving their free
10 legal advice that they give to one another every day
11 of the week all over the place. In my opinion it's
12 grossly overbroad.

13 CHAIRPERSON GOBBO: Thank you for the
14 comments. Next

15 MS. VULETICH: Victoria Vuletich, 17th
16 circuit. My understanding, just to respond to the
17 speaker before me, is that there is a provision in the
18 proposal that would not prohibit general discussions
19 among the public about legal matters.

20 In 1999, I had the privilege of coming to the
21 State Bar of Michigan to serve as unauthorized
22 practice of law counsel, and I was there for ten
23 years. I have tried these cases. I have answered the
24 phones of people who have called having something very
25 important to them devastated in their life because

1 they were the victims of an unauthorized practice of
2 law perpetrator. I have seen the harm that companies
3 repeatedly impose on people for profit.

4 I have spent time with State Bar attorneys,
5 the Probate and Estate Planning Council, who for a
6 long time have seen much of their practice come under
7 fire from these unauthorized practitioners, and part
8 of our Achilles heel as lawyers is that we can get so
9 lost in the trees in arguing about language and commas
10 and overbreadth and this and that that we fail to act.
11 Based on ten years of experience, what I have seen,
12 the harm that's going on out there, it's time to act,
13 and I heartily support this proposal.

14 CHAIRPERSON GOBBO: Thank you. Next.

15 MR. LITTLETON: I will be quick. My name is
16 Ray Littleton, and I just got moved in. I am in the
17 6th circuit.

18 You know, I come from a family of doctors,
19 and I think it's really funny, because if you had a
20 roomful of doctors and they had a proposal before them
21 about the unlicensed practice of medicine, they would
22 be in and out of there in five minutes and, you know,
23 approve the proposal and it would be on its way, ready
24 to go, but you get a roomful of attorneys and we want
25 to argue against a proposal for protecting our way of

1 life, our practice.

2 I mean, this is something that's, I mean,
3 it's an honor to be in this practice. We went through
4 a lot to be here, to be in whatever position that you
5 are in at the moment, and it's something we do need to
6 protect, and I just want to respond really quickly to
7 the comments that were stated before about, well, now
8 we are going after citizens when someone talks to
9 someone else and says, well, if you cut down that tree
10 or if you do this or if you park in this, you will get
11 a violation.

12 You know, I want to use the same analogy, the
13 same comparison. I mean, you see people every day who
14 talk about how to treat a bruise or you go on Web M.D.
15 to get a remedy or something of that nature, and
16 that's a lot different than someone who is actually
17 performing a surgery or someone who is going to draft
18 a will or is going to draft a contract for someone
19 actually to use. I mean, these are -- there are two
20 different levels between someone saying, well, I have
21 an opinion about this or I think this is how this is
22 supposed to be and someone who is creating a document,
23 and that's definitely something we need to protect.

24 CHAIRPERSON GOBBO: Anybody else? My one
25 comment is that the rule certainly can be interpreted

1 as trying to protect the profession in some way, but
2 the major focus is on the citizens, the members of the
3 public that are out there that have been injured by
4 this.

5 We as attorneys, and you heard me say those
6 quotes earlier on, we as attorneys also have an
7 obligation to ensure that the public is protected, but
8 I think everybody can come up with some type of
9 response in terms of a question. Have you ever seen
10 an attorney and you asked the question, how, number
11 one, did they pass the bar exam? And number two, how
12 do they survive in practice, because there is
13 something that they had just done unethically or they
14 just are not competent, and this rule doesn't address
15 that, but as a profession it's something that we, and
16 I think as this policy-making body of the Bar, we have
17 to ask that question, how can we better address that
18 going forward? So those are my personal comments with
19 respect to the rule and some other goals that we
20 should have.

21 I have one more person who would he like to
22 come up and speak.

23 MS. ROUSSEAU: I have just a quick comment.
24 Lauren Rousseau, representative of the 6th circuit.

25 In looking at this proposal and listening to

1 all the comments and the panel discussion, there are
2 aspects of the specifics that do seem somewhat
3 overbroad to me, and I was wrestling with that a
4 little bit as you were talking about it, but then I
5 realized that basically what this proposal does, and
6 even its overbreadth, is just put the issue into the
7 hands of the State Bar when you are talking about
8 enforcement, so it gives the State Bar some level of
9 control over trying to prevent the public from being
10 harmed by the people who we really want to prevent
11 from doing things that are harming the public.

12 So there may be some issues about, you know,
13 you could possibly read some of these definitions in
14 terms of family members or neighbors talking back and
15 forth and that being a problem. As a reality, we are
16 really simply saying we are putting this into the
17 hands of the State Bar so that they have some power,
18 some control to take action when the public can be
19 harmed, and I think that that's a good thing.

20 CHAIRPERSON GOBBO: Thank you. Is there
21 anybody else before I call for a vote? I want to make
22 sure everybody has a chance to weigh in on this. It's
23 probably one of the most substantive items that we
24 have dealt with for quite a while.

25 Seeing no more comments, I am just going to

1 call for a vote. All in favor of the proposal as
2 presented, please say aye.

3 Any opposed, please say nay.

4 Are there any abstentions? I see one
5 abstention.

6 It carries on the voice vote. I don't know.
7 There is no need to call for division, but I am just
8 curious as to whether a count might be advisable --
9 never mind. I actually was planning to say that as a
10 joke.

11 Move down the agenda to one old matter of
12 business, and I am going to recognize the original
13 proponent of proposed Court Rule MCR 7.301(B). It was
14 amending that proposed court rule.

15 MR. QUICK: Dan Quick, 6th circuit. Great
16 pleasure of informing you before, since I have the
17 last agenda item, that this item is being withdrawn
18 from consideration of the Representative Assembly at
19 this time and without prejudice. Thank you.

20 CHAIRPERSON GOBBO: If there are no
21 objections, the withdrawal of that item will stand.
22 Thank you, Dan.

23 Now, is there a motion, and I don't know how
24 many people might want to make this motion. It
25 probably should be unanimous. Is there a motion for

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adjournment?

VOICE: So moved.

CHAIRPERSON GOBBO: Hearing a motion and support, all in favor say aye.

Thank you. If there was any nays, talk to me later on.

(Proceedings concluded at 12:11 p.m.)

1 STATE OF MICHIGAN)
2 COUNTY OF CLINTON)

3 I certify that this transcript, consisting
4 of 99 pages, is a complete, true, and correct transcript
5 of the proceedings and testimony taken in this case on
6 Saturday, April 21, 2012.

7
8 May 9, 2012

9 Connie S. Coon, CSR-2709
831 North Washington Avenue
Lansing, Michigan 48906

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