

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 M-TEC Center, 5708 Cornerstone, Lansing, Michigan, on Saturday, April 29, 2006, at the hour of 10:00 a.m.

AT HEADTABLE:

LORI A. BUIREWEG, Chairperson
EDWARD L. HAROUTUNIAN, Vice-Chairperson
ROBERT C. GARDELLA, Clerk
JOHN T. BERRY, Executive Director
JOHN M. BARR, Parliamentarian
ANNE SMITH, Staff Member

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1 Lansing, Michigan
2 Saturday, April 29, 2006
3 10:02 a.m.

4 R E C O R D

5 CHAIRPERSON BUITEWEG: The April 29, 2006
6 meeting of the Representative Assembly is called to
7 order.

8 Mr. Clerk, is there a quorum present?

9 CLERK GARDELLA: Yes, I do confirm there is a
10 quorum this morning.

11 CHAIRPERSON BUITEWEG: Thank you, sir.

12 At your desk you will see a revised calendar
13 for today's proceedings. May I have the chairperson
14 of Rules and Calendar come forward and move for the
15 adoption of the revised calendar.

16 MR. LARKY: My name is Sheldon Larky from the
17 6th circuit. I move that the calendar be amended and
18 we reduce all the times in half and that we try to get
19 out of here by 1:00.

20 CHAIRPERSON BUIREWEG: Is there a second to
21 the motion?

22 VOICE: Second.

23 CHAIRPERSON BUIREWEG: All those in favor.

24 The motion passes.

25 May I also have a motion to approve for floor

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1 privileges as speakers in front of us today those
2 individuals who do not automatically have floor
3 privileges by way of the Permanent Rules of Procedure.

4 VOICE: So moved.

5 CHAIRPERSON BUIREWEG: Is there a second to
6 the motion?

7 VOICE: Second.

8 CHAIRPERSON BUIREWEG: Okay. And all
9 those -- is there any discussion? All those in favor
10 of the motion to grant floor privileges to the people
11 who are on the agenda and do not automatically have
12 privileges, please say aye.

13 Any opposed.

14 Motion carries. That will save us time
15 later. Mr. Larky, I am headed in your direction.

16 I would like to call forward the chair of the

17 Nominating and Awards Committee, Mr. Carl Chioini, to
18 move for the adoption of the proposed members, interim
19 members.

20 MR. CHIOINI: Madam Chair, we have three
21 vacancies, the 6th judicial circuit, and the committee
22 has nominated Daniel Quick. Daniel Quick,
23 unfortunately, is not here this morning. He is in
24 Hawaii. Given the choice.

25 we have another vacancy in the 44th -- that's

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1 a good excuse -- 44th circuit would be Michael J.
2 Olson of Howell. Michael had some obligations, and he
3 could not be here, but he does want to participate.

4 we have a vacancy for the 57th circuit,
5 Ms. Jennifer J. Schafer of Petoskey. I don't know if
6 Jennifer is here this morning or not.

7 I would move for the nomination of these
8 three individuals.

9 VOICE: So moved.

10 CHAIRPERSON BUIREWEG: Is there a second?

11 VOICE: Second.

12 CHAIRPERSON BUIREWEG: It's been moved and
13 seconded to nominate Dan Quick from the 6th circuit,
14 Michael Olson from the 44th circuit, and Jennifer
15 Schafer from the 57th circuit for the task described
16 in the memorandum attached to the materials. Is there
17 any discussion?

18 All those in favor.

19 Any opposed.

20 Motion carries.

21 Moving right along. I would like to take a

22 moment to introduce the folks who are up at the front
23 table here just so that you will know who they are if
24 you are a newer member. We have a number of new
25 members with us this morning, and I was pleased to do

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1 an orientation for them earlier, and we would like to
2 welcome them to their first meeting.

3 Anne Smith is the assistant, executive
4 director's assistant, and has put all of the materials
5 together for us today and was here very early this
6 morning putting everything at your seats and has been
7 putting forth a lot of labor to make this thing
8 happen, so thank you, Anne.

9 John Berry, executive director of the Bar,
10 who is going to speak to you shortly.

11 John Barr, who is sitting in for Cynthia
12 Stephens today as parliamentarian on very short
13 notice. Mr. Barr is a principal in the law firm of
14 Barr, Anhut & Associates and has practiced law in
15 Washtenaw County for many years. He is a former
16 member of the Representative Assembly and the Board of
17 Commissioners. He has served as parliamentarian for
18 both of those bodies.

19 Presently John is on the State Bar of
20 Michigan Awards Committee and serves as a hearing
21 panelist for the Attorney Discipline Board. He
22 represents a number of municipalities and nonprofit
23 organizations and is called on frequently to give
24 legal opinions on parliamentary procedure. Thank you
25 very much, Mr. Barr, for filling in for us as

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1 parliamentarian today.

2 And we have Ed Haroutunian, Vice Chair of the
3 Assembly, and Bob Gardella, Clerk of the Assembly, and
4 Connie, our stenographer.

5 Moving right along on the agenda. If you
6 could please turn to item three. Really rather than
7 provide you with lengthy remarks, I wanted to take my
8 opportunity for the chair's remarks to call your
9 attention to this chart which the leadership had asked
10 the Governmental Relations Department to publish for
11 us so that the leadership of the Assembly and the
12 Assembly members could better track what's going on
13 with the proposals that we have taken up in the past,
14 and we think that this chart is going to be very
15 helpful to all of us in recalling what positions we
16 have taken and what the status of those positions is.

17 And in conjunction with that you will see
18 three proposals at your desk, at your seat, that
19 pertain to proposals that -- two of them pertain to
20 proposals that were recently adopted by the Assembly,
21 and it's our understanding that the Supreme Court may
22 move before the September meeting on the adoption of
23 those proposals in some form or another.

24 The proponents of those proposals see a need
25 to amend them, and we would like to be responsive to

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1 those needs and do that prior to the Supreme Court
2 taking action, and so that is why those two items are
3 on the calendar at this particular time, because they
4 pertain to the status of past proposals. As does the
5 proposed amendment to Permanent Rule 4.8, also
6 pertains to the status of past proposals. And so
7 that's just an explanation of why they are where they
8 are on your agenda.

9 Lastly, I would just like to ask for your
10 future feedback on the way the meeting feels to you
11 today. We took information and suggestions from the
12 Assembly Review Committee and also from things that we
13 learned from the Bar Leadership Forum up on
14 Mackinac Island last year about making meetings more
15 meaningful for the people who attend them. And so we
16 took those suggestions to heart, and we have been
17 providing this morning the Practice Management
18 Resource Center.

19 I hope you have had a chance to go back there
20 and look at the software and learn about the center,
21 and we are going to have JoAnn Hathaway talk about it
22 a little bit more later on in the agenda, and you will
23 have two more opportunities to go back there if you
24 haven't already, at lunch and after the meeting.

25 We have also asked for an educational

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1 presentation during the lunch hour. The Law and Media
2 folks are going to be here for a very interesting
3 presentation during lunch, and Kathy Kakish, the
4 liaison, will tell us a little more about that later
5 as well.

6 So we are trying to make your time worthwhile
7 by cramming as much as we possibly can into this
8 agenda and still give you time to enjoy some sunshine.
9 So please send me by e-mail or phone your comments
10 about how you like this or don't like this, these
11 changes to our meeting, because our goal as leadership
12 is to be responsive to your requests and your needs.

13 So that concludes my remarks. I would like
14 to invite Terri Stangl to the podium to present the
15 Justice Initiatives' proposed revisions to
16 MCR 2.402(C).

17 MS. STANGL: Thank you, Lori. Good morning
18 everyone. Terri Stangl from the 10th judicial
19 circuit. I am here today as a member actually, not on
20 behalf of Justice Initiatives, but this does relate to
21 a proposal that was brought originally to this body by
22 the Legal Aid Committee in 2004, and it was adopted by
23 the Representative Assembly, and it concerned two
24 Court Rules that were intended to ensure that the
25 parents of minor children received actual and timely

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1 notice in guardianship proceedings, particularly
2 temporary guardianship proceedings. This body
3 proposed language to the Supreme Court which was
4 published this year for comment.

5 when those rules were originally adopted by
6 this body and prior to that time they were circulated
7 by Legal Aid Committee to about five or six different
8 Bar entities and sections and judicial conference for
9 comments, and at that time there were no comments that
10 were raised.

11 Since the time that the rule has been
12 published, however, State Bar has received some
13 comments and suggestions from individual judges and
14 from other members of the Bar.

15 Because the Bar wishes to ensure that the
16 proposal that is considered by the court has the
17 benefit of some of these ideas but without taking any
18 action to rescind what is there, because in terms of
19 our credibility with the court I believe it's very
20 important that if we put a proposal forward that we
21 can engage in discussion but we not pull it back.

22 My proposal -- two things. The first one is
23 that the State Bar be authorized to have discussions
24 with these interested stakeholders to find out what
25 their approaches and concerns are, and if there is a

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1 consensus position about how to improve the rule, that
2 the State Bar should be authorized to communicate that
3 to the court so that there can be a discussion, we can
4 hear the ideas, if we agree that there is a better way
5 do something, that can be communicated. That's the
6 first proposed resolution.

7 The second one is a technical change that the
8 probate and estate council and a couple of judges have
9 mentioned, which we completely agree with, it was our
10 original intention, and what it does is it makes sure
11 that children age 14 and older continue to receive
12 notice of the proceedings affecting them, which is the
13 current law, the current rule, and just by the
14 wording, inadvertently it looks like it could be the
15 parent or the child, and that was not the intention.

16 So I would like to handle these matters
17 separately, and initially I would move for the
18 adoption of the first resolution on the handout that
19 you received today. The language of that resolution
20 starts on page two and continues onto page three.

21 CHAIRPERSON BUIREWEG: Is there a second to
22 the motion?

23 VOICE: Support.

24 CHAIRPERSON BUIREWEG: Is there any
25 discussion? It's been moved and seconded to adopt the

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1 first revision to the proposed changes to
2 MCR 2.402(C).

3 All those in favor please say aye.

4 Any opposed.

5 Motion carries.

6 MS. STANGL: My second motion is adoption of
7 the second resolution concerning the wording change to
8 the proposed Court Rule. That is on page three of the
9 resolution I have provided.

10 VOICE: Support.

11 CHAIRPERSON BUIREWEG: I have heard a second
12 to the motion. Is there any discussion? All right.

13 All those in favor say aye.

14 Opposed.

15 Motion carries.

16 Thank you, Terri.

17 I would next like to invite to the podium
18 Mike Blau, who is the spokesperson for the Justice
19 Initiatives Committee, to discuss the proposed
20 revisions to the proposed changes to MRPC 6.1?

21 MR. BLAU: Good morning Michael Blau, 22nd
22 circuit. This is the rule, Michigan Rule of
23 Professional Conduct 6.1. It's a voluntary standard
24 for pro bono service.
25 Back in November of 2003 the Assembly adopted

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1 two proposals, one that would basically set the
2 voluntary standard in Michigan for pro bono service at
3 30 hours of service or three cases of pro bono service
4 per year.

5 VOICE: Can you speak up a little bit? Back
6 here we can't hear you.

7 MR. BLAU: Sure. This rule basically, in
8 November 2003 the Assembly supported a voluntary
9 standard which called for 30 hours of pro bono service
10 or three cases per year or a contribution of \$300 for
11 pro bono service on an annual basis, also broadened
12 the scope of what would be looked at as pro bono
13 service recognized by the Bar.

14 The proposal that is being brought to you
15 this morning is basically to amend that standard of
16 the contribution of \$300 to add two words, or more,
17 and that derives out of basically the Southeast
18 Michigan Access to Justice Corporate Committee had
19 suggested that minimum contribution of \$500 for
20 lawyers who are in a position financially to be able
21 to do that would be appropriate.

22 So the only change that is being asked to be
23 made in the proposal is to add the language "or more,"
24 and if you look on the second page of the handout, the
25 suggested resolution is that we are asking that State

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1 Bar of Michigan support Justice Policy Initiatives'
2 request to further recommend that change in MRPC 6.1
3 to allow credit for pro bono service to be based on
4 a two-tier system of either a contribution of time or
5 a financial contribution.

6 So I would ask that there be a motion that in
7 effect this change be allowed.

8 VOICE: So moved.

9 VOICE: Support.

10 CHAIRPERSON BUIREWEG: It has been moved and
11 seconded that the State Bar of Michigan should support
12 the Justice Policy Initiatives' request to further
13 recommend changes to MRPC 6.1 to allow credit for
14 pro bono service to be given based upon a two-tier
15 time and money system.

16 All those in favor.

17 Opposed.

18 The motion carries.

19 MR. BLAU: Thank you.

20 CHAIRPERSON BUIREWEG: Thank you. Thank you,
21 Mike.

22 Next I would like to call to the podium
23 Michael Pope, the chairperson of the Rules and
24 Calendar Committee, who will present to you the
25 proposed revisions to the Representative Assembly

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1 Permanent Rules of Procedure 4.8.

2 MR. POPE: With the 9th overall pick, the
3 Detroit Lions select. I just always wanted to do
4 that.

5 Michael Pope, 32nd circuit, chair of the
6 Rules and Calendar Committee. You have before you a
7 proposal to change or amend the permanent rules of the
8 Assembly, Rule 4.8. What we are attempting to
9 accomplish with this is two things.

10 The first paragraph addresses timing as far
11 as follow-up procedures concerning our proposals to
12 the Supreme Court. Second part is adopting, the
13 second paragraph is adopting a procedure where our
14 future officers and chairs will have some means to
15 know what the Assembly has done in the past and what's
16 out there still pending.

17 The Rules and Calendar Committee felt this
18 was appropriate as it would provide a reliable system
19 for follow-up with the Supreme Court and a system that
20 would assist future chairs and officers.

21 With that, I guess I would ask for a motion
22 to adopt the amendments to Permanent Rule 4.8?

23 VOICE: Second.

24 CHAIRPERSON BUIREWEG: It has been moved and
25 seconded to make the proposed changes to Rule 4.8. Is

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1 there any discussion?

2 MS. FERSHTMAN: Thank you. Julie Fershtman,
3 6th circuit, past chair of the Assembly.

4 I speak out in opposition to the proposal,

5 and I could take bits and pieces of it and tell you
6 why some would be good, some would be bad. Given the
7 time constraints today, I think it makes the most
8 sense to just take this proposal and commend the
9 people who brought it forth but drop it, and the
10 reason is this.

11 On the positive side, what the Assembly is
12 trying to do here is very commendable, if not
13 essential. It's important that everything that we do
14 with these meetings gets followed up upon and action
15 gets taken, but the problem is, in practice, I think
16 this could be dangerous, if not suicidal, to the
17 continued existence of the Assembly. And the reason
18 is that discretion really is the key when we are
19 talking about the actions of the Assembly and the
20 following up that takes place from the time the
21 meeting occurs into the future.

22 And take a look at what we have already got.
23 If you look you can see that Lori and her good
24 leadership has put together a grid, and we can see the
25 grid at all of our meetings. The Board of

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1 Commissioners can see the grid, the staff can see it,
2 and that grid includes what we have already made
3 decisions on and what's happened.

4 And as we continue to see voids in the area
5 of future follow-up action, the message is very, very
6 clear, we need to do more, but the other point is that
7 the State Bar already has a very, very good staff, a
8 growing staff. We have got Janet Welch, and we have
9 got her new assistant, Cliff Flood. We have got

10 people within the Bar who can use their discretion,
11 use their contacts, know how the system works, and
12 with the prodding, if needed, from the Assembly
13 leadership, they can come forth, they can try to get
14 action taken on these proposals, as can everybody
15 sitting here today.

16 Institutionalizing how we act, requiring that
17 there be meetings, being in the face of the Michigan
18 Supreme Court, I submit to you, is a mistake, and we
19 should not let this be part of the way the Assembly
20 works. Thanks.

21 CHAIRPERSON BUIREWEG: Other discussion?

22 Mr. Haroutunian.

23 VICE CHAIR HAROUTUNIAN: Madam Chair,
24 Ed Haroutunian from the 6th judicial district.

25 I think Julie's comment is well taken,

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1 particularly with regard to the issue of discretion.
2 And, therefore, I would move that two words be changed
3 in this proposal, and it's the 8th line down from the
4 top, the word is "will" and to change the word "will"
5 to "may" and also the 10th line down, toward the end
6 of that line, the word "will" to be changed to the
7 word "may," and by doing that I believe that Julie
8 Fershtman's comment in effect becomes implemented in
9 this proposal, which I think is certainly very
10 important for this organization, and, therefore, I
11 would so move that the proposal be amended in that
12 fashion.

13 CHAIRPERSON BUIREWEG: Does the proponent
14 accept the friendly amendment?

15 MR. POPE: Yes, I would.

16 CHAIRPERSON BUIREWEG: Is there further
17 discussion?

18 MR. ROMANO: Point of clarification. Could
19 you identify again, please, the location of the
20 changed words.

21 CHAIRPERSON BUIREWEG: Yes, certainly.
22 Beginning with the sentence that reads, If no response
23 is received after six months, the governmental
24 relations department of the State Bar of Michigan,
25 instead of "will," it says "may" send a letter to the

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1 clerk of the Michigan Supreme Court, et cetera,
2 et cetera.

3 The next change is beginning with the
4 sentence, If no response is received after two months,
5 the governmental relations department, rather than
6 "will" would say "may".

7 MR. ROMANO: Thank you.

8 CHAIRPERSON BUIREWEG: Further discussion?
9 Can you go to the microphone, please, and identify
10 your name and circuit. Thank you.

11 MR. GOBBO: Steve Gobbo from the 30th
12 district.

13 I think this will be an easy one. I think
14 there is a word missing in the first sentence,
15 prepared no later than ten business days.

16 CHAIRPERSON BUIREWEG: Do you accept that
17 modification, Mr. Pope?

18 MR. POPE: Yes.

19 CHAIRPERSON BUIREWEG: Thank you for pointing

20 that out.

21 Is there any further discussion?

22 MS. FERSHTMAN: I get to speak; it's a new
23 motion. I leave it to our parliamentarian, but it's
24 a different motion because it's been amended. I don't
25 know if I have privileges, but I believe I do.

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1 CHAIRPERSON BUIREWEG: You may speak a second
2 time.

3 MS. FERSHTMAN: I will be brief. The
4 amendment is commendable, because it does allow that
5 discretion on the part of the Bar and the Assembly,
6 but the point still is discretion, and why
7 institutionalize this mechanism for follow-up when we
8 can leave it to the Representative Assembly with the
9 grid, with the point being made of what's being acted
10 on and what isn't. Why don't we leave it with the
11 Assembly to simply do what it believes is necessary
12 and the Bar staff to do what it believes is necessary
13 to make sure that our proposals receive proper
14 follow-up.

15 You are still forcing yourself to follow or
16 at least try to follow a certain mechanism. Why do
17 it? I say we drop the whole proposal, commend
18 everybody for their interest in getting things to move
19 ahead, but work in different ways, use your discretion
20 and let this go.

21 CHAIRPERSON BUIREWEG: Further discussion?

22 JUDGE KENT: Wally Kent, 54th judicial
23 circuit. I agree with Ms. Fershtman. Guidelines have
24 a way of becoming mandates whether so rephrased or

25 not. We have seen it time after time, guidelines are

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1 expected to be followed or we are disciplined for or
2 criticized for failing to follow them. Let's not put
3 it down in black and white. If it works, let's do it,
4 but let's not require it. Thank you.

5 CHAIRPERSON BUIREWEG: Further discussion,
6 Mr. Rombach.

7 MR. ROMBACH: Yes, Tom Rombach, 16th circuit.
8 I am speaking against the proposal, and, again, I
9 think it's made with the best of intentions. I like
10 the amendment language too, but Julie Fershtman, our
11 previous Representative Assembly chair, and a number
12 of other folks have worked pretty closely with the
13 Supreme Court to get them to listen to us, and it's a
14 pretty tenuous relationship.

15 I am not sure if I would put it in as stark
16 terms as Julie did that this could rise to the effect
17 of eliminating the Assembly. At the same time,
18 anybody that reads the Court Rules can indicate that
19 the State Bar is not the final arbiter of what goes on
20 in our profession in the state. It's the Michigan
21 Supreme Court. And if I were in charge of something
22 and somebody else dictates to me, well, look, if you
23 don't respond appropriately, we are going to take
24 action, and we don't have any of the cards in our
25 favor and all the cards are face up, I don't think

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1 it's a real smart strategy to adopt if we are trying
2 to kiss up to them to get something adopted.

3 Now, I would, you know, point our attention
4 to things that first started when I was Representative
5 Assembly Chair, such as the ethics revision, known as
6 ABA ethics 2000. Last time I checked it's 2006. We
7 were first taking this up in 2003. I was told, hey,
8 we can back off. We have got a little bit of time.
9 Then we took up in a very deliberative process in a
10 number of our meetings to do an exceptional job and
11 put that before the Michigan Supreme Court.

12 Again, I checked their docket, and they
13 published three proposed different standards that we
14 have all debated again, but they haven't acted on that
15 yet either.

16 Now, I am not quite sure we are in a position
17 to walk in there two months later and say, hey,
18 Supreme Court, what's happening with this? Then a
19 couple months later walk in and say, hey, we are going
20 to insist on a meeting with your staff because you
21 haven't enacted something that's taken six years to
22 put into effect.

23 So, again, I would defer to the strategies as
24 adopted by our elected leadership, our Board of
25 Commissioners, our elected leadership on the

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1 Representative Assembly, and whatever other folks that
2 we have here that have sound strategies to try to move
3 our agenda forward, but I certainly wouldn't mandate

4 and I wouldn't even suggest how we should do that on a
5 case-by-case basis. Some things we should move faster
6 on, and other things we need to be more deliberate, so
7 I speak forcefully against this proposal. The best of
8 intentions; it's just not what we should do. Thank
9 you.

10 CHAIRPERSON BUIREWEG: Thank you,
11 Mr. Rombach.

12 Further discussion? Mr. Romano.

13 MR. ROMANO: Vince Romano, 3rd circuit.

14 The Supreme Court may take its time paying
15 attention to what we do, but they certainly pay
16 attention. I speak against the proposal along the
17 same lines that Julie and Tom just did, two
18 distinguished leaders of this group.

19 The Supreme Court will be aware of it. They
20 will become aware of this rule, and I just think it
21 casts us in an unfavorable light for them to look at
22 this rule as creating a mechanism whereby we can lean
23 on them. They will only be leaned on when they
24 consent to being leaned on. I think this proposal is
25 poor choice.

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1 CHAIRPERSON BUIREWEG: Is there any further
2 discussion?

3 Mr. Pope, you have the right under the rules
4 to close the debate if you have anything further to
5 say.

6 MR. POPE: No.

7 CHAIRPERSON BUIREWEG: It's been moved and
8 seconded to adopt the changes to Rule 4.8 with the

9 typographical error of the "than" inserted between
10 "later" and "ten" and the two words "will" changed to
11 "may".

12 All those in favor of the proposal, please
13 say aye.

14 All those opposed.

15 Motion fails.

16 Thank you, Mr. Pope.

17 Our next speaker is Mr. Tom Cranmer, the
18 president of the State Bar of Michigan. Mr. Cranmer
19 is, because we have so many new members, going to give
20 us a little overview of some of the State Bar
21 structure and introduce those members of the Board of
22 Commissioners who are here today as from the Executive
23 Committee and also give us an update on the Custodial
24 Interrogation Task Force, which is in keeping with our
25 monitoring of past proposals. This was something that

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1 was passed by the Assembly at our previous meeting.

2 Mr. Cranmer, thank you for coming.

3 MR. CRANMER: Good morning to everyone. I am
4 going to talk a little bit about the things that Lori
5 has asked me to talk about, but I am going to probably
6 throw her a bit of a curve and spend a little more
7 time talking about something else I think you all
8 ought to be aware of.

9 Let me talk first with what's officially on
10 my agenda, which is update on Custodial Interrogation
11 Task Force. As this body will remember, one of the, I
12 think, important things that we adopted last year was
13 support for the principle that with regard to

14 custodial interrogations that they ought to be
15 recorded, either in an audio sense or a video sense,
16 and what you directed that we do is to appoint a task
17 force to take a look at this very important issue, and
18 that's exactly what we have done.

19 If you look around to the various screens
20 situated around the room, you will see the members of
21 the task force. I am not going to go through and list
22 each of the individuals, but it will take you just a
23 moment in glancing at the list to see that it's a very
24 distinguished list of individuals, chaired by our
25 immediate past president, Nancy Diehl, prosecutor with

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1 the Wayne County Prosecutors Office, and Valerie
2 Newman, who is with the State Appellate Defenders
3 Office.

4 In addition to both Nancy and Val there are a
5 number of individuals, both judges, police chiefs,
6 representatives of various committees, and I think it
7 will be an excellent task force, and I am looking
8 forward to their fine work.

9 Let me next shift to talking just a little
10 bit about the structure of the State Bar. I have to
11 tell you, when I looked at the slide I said, wow.
12 It's got all the information. It's not as confusing
13 as it might seem. Let's start at the top, and, again,
14 I am not going to spend a lot of time on this, but I
15 want to talk a little bit about it, because we have
16 made some reference to it earlier today.

17 The State Bar is an interesting organization
18 for a whole host of reasons, but not the least of

19 which is that we were created, in the upper right-hand
20 corner, by the Legislature, but we are actually
21 supervised by the Michigan Supreme Court. And that
22 creates for some interesting dynamics, to be sure.

23 As many of you know who are veterans, I
24 think, of the Assembly we a number of years ago did
25 not have the best of relationships with the Michigan

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1 Supreme Court. I think that's changed substantially
2 over time as a result of a number of things. I think
3 it's changed as a result of the good work done by this
4 body, the Representative Assembly, in taking on issues
5 of substance and providing cogent comments to the
6 court for their consideration, and all you have to do
7 is look at something that we mentioned just a few
8 moments ago, the ethics 2000 project and the work that
9 this body did with regard to attorney discipline
10 issues.

11 I think it's also been a product of the hard
12 work of John Berry and staff who have significantly
13 improved the relationship with the Supreme Court. I
14 can tell you that I have had a number of interactions
15 with the court, and the fact that the staff is being
16 led by John Berry is something that's repeatedly
17 brought to my attention. They have great confidence
18 in John.

19 And then also I think the work of the Board
20 of Commissioners has helped in terms of solidifying
21 the relationship with the Supreme Court. We now meet
22 on a regular basis with the Supreme Court. I meet
23 about once a month with the court, along with our

24 president-elect, Kim Cahill, and the discussions are
25 always interesting, I can tell you that.

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1 But one of the things I do want to assure you
2 about is the court is aware of what we are doing, both
3 at the Board level and the Representative Assembly
4 level, so have confidence that the things that are of
5 importance to you do get communicated to the Court,
6 and the Court is aware of those items.

7 Being mindful of Sheldon Larky's proposal
8 earlier, I am not going to spend a lot of time on the
9 internal structure of the State Bar, but what I am
10 going to do is talk just a little bit about some of my
11 observations as the president, since I am about
12 halfway through, because I think they impact all of us
13 in this room.

14 It has been a tremendous honor to serve as
15 the president of this organization, but I want to tell
16 you that it is one that presents continuing
17 challenges, I think not only to me but to you people
18 as well, and I think one of the biggest challenges
19 that we have -- I kind of had a sense of this coming
20 in, but it's been reinforced since I have gone out and
21 spoken with some of the different Bar associations --
22 is letting people know what we do as an organization.

23 We continue to be a great mystery to our
24 members out in the field, and I think that's true for
25 probably three reasons. The first is that there is a

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1 certain degree, candidly, of just disinterest and
2 apathy, and I think that's perhaps as a result of the
3 difficulties of the practice, the fact that many of
4 our members I think want to spend more time, devote
5 more time and energy to things at home, their home
6 life, and perhaps just disinterest in general. And
7 there is a certain portion, I think, of our membership
8 that we are always going to have difficulty in
9 reaching.

10 The second reason I think is that we as an
11 organization are not great self promoters. John Berry
12 has certainly said this before, and I think he cringes
13 a little every time I say it, but it's absolutely
14 true. We are great inventors, we have wonderful
15 programs, and we are terrible marketers. We do a
16 terrible job, I think, of getting the word out to the
17 folks, our members, as to what we do.

18 Candidly, that's true with this body, it's
19 true with the Board of Commissioners, it's true with
20 the State Bar as a whole. We have to do a better job.
21 It's been one of my goals this year, and I think with
22 more effort we can do a better job.

23 And then lastly, I think that we have to do a
24 better job individually in terms of getting the word
25 out. One person, the president, can't possibly

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1 deliver the message all by himself or herself. You
2 are the elected leaders of the Bar. We as a group

3 have to do a better job of communicating to our
4 members what we are about and what we are doing.

5 And the good news in that, as far as I am
6 concerned, is that we have great news to communicate.
7 The Bar, I think, is doing a wonderful job in terms of
8 serving its members. We have terrific programs, but
9 we have got to get people to understand what it is
10 that we have.

11 One of the things I find most discouraging as
12 I am out there talking to people, people are still
13 amazed that we have something called the e-journal,
14 and that's been out four, five, or six years. It's an
15 award winning program that was literally copied by the
16 American Bar Association, and for some folks that's
17 still a mystery, that's something brand new. And I
18 kind of smile to myself when I talk about that.

19 But the latest thing that we have, which I
20 hope you have already seen, and if you haven't you
21 take the opportunity to see it, is our Practice
22 Management Resource Center. The Practice Management
23 Resource Center is something we talked about for many
24 years and is a wonderful, wonderful tool that should
25 help the vast majority of our members.

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1 If you look demographically, we have got a
2 membership that is largely composed of solo
3 practitioners or people in small firms, and there is
4 no reason that individuals who go out and practice
5 should have to reinvent the wheel for things like time
6 management, how I should handle my files, how I should
7 capture my time, how I should bill my clients. All of

8 those things are things that we should be able to
9 share with each other to be that much more efficient,
10 that much more productive, and to make a better use of
11 our time, and that's what the Practice Management
12 Resource Center is all about.

13 But I can tell you from my own experience
14 it's going to be months, if not years, before we get
15 that word out unless we all kind of work together.

16 One of the great suggestions I saw in our
17 materials that Lori put together was the idea about
18 taking notes from the meeting and writing an article
19 for your local Bar association. That's one of the
20 ways, but another way I think is just talking it up.
21 Again, as elected leaders, I think communication goes
22 two ways. Hopefully you are getting information from
23 your membership to bring to the meeting as far as your
24 positions are concerned, but we also have to be
25 communicators ourself and let our members know what it

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1 is that we are doing.

2 Again, it should be a task not only that we
3 have because we are the elected leaders, but it's a
4 task we should welcome because we have an awful lot of
5 good things going on at this Bar association, both in
6 terms of programs and the various positions that we
7 have adopted and the policies that we are trying to
8 seek to have implemented by the Supreme Court.

9 So I urge you to do that. I urge you to be a
10 communicator with me, and I think if we can all work
11 together to do that we will do a better job of
12 communicating with our members. Lori, thanks.

13 CHAIRPERSON BUIREWEG: Thank you, Tom.
14 (Applause.)
15 CHAIRPERSON BUIREWEG: Thank you, Tom. And I
16 have a question for you. No, not for you, Tom, for
17 the Assembly. If I were to try to put together a
18 synopsis of what happened in today's meeting in a
19 narrative format and sent it to all of you by one of
20 the e-mail blasts, hopefully you have been getting
21 those, how many of you do you think would take that
22 and edit it however you wanted and pass it along to
23 your local Bar publication? Okay. I will do that,
24 and I would ask you to follow up then on that.
25 Now next on the agenda we have John Berry who

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1 is going to speak to us about our new strategic plan
2 and give us the financial update on behalf of
3 Jim Horsch, who is unable to be with us today.

4 MR. BERRY: Good morning, and I did listen to
5 that first vote you had about time, so I will be as
6 quick as I can on this.

7 It is a privilege to follow our president,
8 Tom Cranmer, and a privilege to represent a staff that
9 works extremely hard and to know that he is looking
10 for the very best in this organization. Tom, I don't
11 cringe when you say we need to market more. I am
12 right with it. In fact, it's a great lead-in to my
13 presentation. I couldn't agree more that we need to
14 continually strive to be better at what we do and also
15 to sell that.

16 I will have a short presentation by slides on
17 two topics that obviously tie together. One is a

18 modification of our strategic plan, and the other is
19 the finances and the fuel that drives that engine.
20 So, Nancy, the next slide, if you could.

21 Our strategic plan, your strategic plan that
22 you approved and is proposed today for slight
23 modifications has various components to it, and, very
24 quickly, the first one is the programs and services
25 goal, and I want to report just quickly a couple items

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1 on each one these areas about where we are at with it
2 and what it means, but the bottom line is we are going
3 to provide programs and services, advance its mission,
4 respond to member needs, and exceed members
5 expectations.

6 The first example to report back to you is
7 that your issues committee presented to the Bar that
8 UPL was an important issue to you, and I don't know
9 how much information you got, but I have been involved
10 in UPL effort for over 20 years in this country and
11 actually supervised the largest effort in Florida
12 ever, and I want to tell you proudly that we received
13 a jail time for one of our UPL folks recently, and not
14 only was it jail time, it was 220 days of jail time.

15 This may actually be the longest jail time, I
16 haven't researched it yet, but it may be the longest
17 jail time in the United States for UPL. It was
18 someone which we had gotten an injunction, continued
19 to rip off folks, and we got him put in jail, got
20 restitution and got a fine.

21 And I want to tell you we are listening to
22 you. We can't prosecute everybody that's engaged in

23 this area, but when you have a prosecution like this,
24 the word gets out we are serious. And we continue to
25 try to educate people about why you don't go to them.

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1 Also, under programs and services we have
2 been working very much with ICLE and others to try to
3 help in the educational effort, to try to be able to
4 with your solo -- how many people have been to the
5 Solo Practice Institute, by the way, here?

6 Many of you have reported back that that's a
7 good program, and we are joining together with them in
8 our and actual meeting to work on that as well.

9 Next, public policy goal, will aggressively
10 advocate for issues that support its statement of
11 purpose, minimize divisiveness and are achievable. As
12 you know, the Bar has focused much more now on helping
13 lawyers at their desk, but we also pick some battles,
14 and when it's Keller permissible and when we are
15 united as a Bar, we are effective at going to the
16 Legislature.

17 Tom Cranmer also recently went to represent
18 all of us in an educational effort. We are trying to
19 bill the fact that we are not just there to hand out
20 to get what we want, but we are also there to help the
21 Legislature and our society understand very complex
22 legal issues that are out there.

23 In reference to the next slide, Nancy, human
24 resources goal, we are continuing to try to improve
25 the staff that we have. We are continuing to try to

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1 improve the diversity that we have within the Board
2 and the Rep Assembly, working together in those areas.
3 I am going to talk briefly in a minute about our
4 fiscal resources and where we are at and where we are
5 headed.

6 The structure and governance goal on the
7 strategic plan, there has been incredible progress
8 that you have already heard from our president in this
9 body itself over the last several years on the work
10 that you have done and also in the effort to
11 coordinate between the Board and the Rep Assembly.
12 There is much more discussions back and forth over the
13 agendas and on how we can make sure we are not
14 redundant and that we are engaged in the most
15 effective way to be able to help in the Bar.

16 Now, the next thing I would like to quickly
17 talk to you about which are in your materials is the
18 revisions to the strategic plan. The strategic plan
19 really has kept its core issues to it, and there has
20 not been a major change to it, but there has been some
21 tweaking and some emphasis.

22 The first one is the Practice Management
23 Resource Center, which is an effort to help lawyers at
24 their desk, and you have heard from Tom about that,
25 you have heard from me about it. JoAnn is going to be

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1 able to describe it, and please, please, even if it's

2 five minutes, when you get a break, go back to the
3 back and take a look. We worked with the Law Practice
4 Section to help us, the Management Section to help us
5 with that, coordinate. We continue to work with them
6 on it.

7 Another emphasis of the strategic plan is to
8 strengthen the character and fitness program, to take
9 a look at all ways, both in a procedural way, to make
10 sure -- it's been a long time since we have looked at
11 the procedures of that process, and are we doing it in
12 the most up-to-date way, and are we getting the right
13 decisions out of it. So we are going to be
14 emphasizing that.

15 The other, you will hear something about
16 this, is continue to participate in the discussions of
17 e-filing and educate, not only educate our members
18 about it, but listen to our members' needs concerning
19 it.

20 One of the areas we need to talk to our
21 members about, and we are not exactly all of one mind
22 on this, is certification and designation. There is a
23 lot of positives to certification/designation, but
24 there is also some who feel that's not the best way to
25 go, and so we will be seeking input from you, and we

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1 will be seeking input from our members as to what to
2 do concerning that.

3 And then, finally, establishing the ability
4 of the Bar to be known by the media, the public, and
5 members as a source of reliable information on legal
6 issues. Again, the effort that we had, both in the

7 Legislature, but in many other areas, one of the
8 programs we started fairly recently was our Public
9 Policy Resource Center, which is a spinoff of the
10 e-journal, which is not just top down legislative
11 information and issues, but it's educating our members
12 and our sections and our committees and the individual
13 to say what's going on and what might be important to
14 you and how can you best be able to react to those
15 issues.

16 Final set of slides on this particular issue
17 is the recent accomplishments. I have mentioned
18 already the UPL and ethics, Practice Management
19 Resource Center, and I find it a little humorous as
20 well, as Tom mentioned, and I won't mention the folks
21 that this occurred to, but many of the leaders of our
22 profession in this state still are under the thought
23 processes that we actually reduced our lawyers and
24 judges assistance program. Well, that is correct,
25 five years ago. When we were in financial difficulty

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1 we moved back off of one person from lawyers and
2 judges assistance. When we did, I kept the promise to
3 Bill Livingston that not only would we come back and
4 replace that position, but I felt that the
5 Representative Assembly and the Board felt like we
6 should do even more, and we are doing more.

7 So we not only have replaced what we lost,
8 but we now have additional resources to help judges,
9 to help lawyers that are in trouble dealing with
10 drugs, alcohol, stress, gambling or whatever else, and
11 both help the lawyer and help our profession and

12 protect the public.

13 Two areas that I think directly go to the
14 issues that Tom raised that the Board has approved
15 under our strategic plan, that you approved, that this
16 is sort of the implementation of it, is that we have
17 an outreach and external affairs manager and a
18 research and development director. What's that mean?

19 We think it's vitally important to share with
20 our membership and every constituent group and member
21 of the Bar what we are doing. Candace Crowley is back
22 here. Candace is our new leader of that effort. Most
23 of you know her from her tremendous efforts in Justice
24 Initiatives, and we needed a bright lawyer. We got
25 one. We needed somebody who is known by everybody in

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1 the world. If you don't know Candace, you are
2 probably the only person in the state that doesn't
3 know Candace, and she will be going out to share what
4 we are doing, to talk about these issues.

5 And Charles Toy and I were talking a little
6 while earlier, just as Tom was, probably four years
7 from now we are still going to be trying to get to
8 more people to tell about the Practice Management
9 Resource Center. With Candace's help, I think we will
10 have fewer people that we will have to go out and tell
11 than we would have before.

12 Connected with that is a new research and
13 development director. Ann Borman is back here. Ann,
14 I would just like to introduce you as well. Ann comes
15 to us from tremendous experience, both educationally
16 and working with the court and many agencies,

17 envisioning and taking information from our membership
18 and nationally and looking at what are the big picture
19 issues that are affecting you and then providing
20 options to this body, options to the Board, options to
21 our membership of how we can deal with it.

22 So instead of constantly being like a goalie
23 in the playoffs trying to fend off hockey pucks, we
24 are going to take the offensive, and we are going to
25 see what areas need to be worked on, and between those

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1 two areas I am very hopeful that it may be less than a
2 year, but in two or three years Tom can come back and
3 say they listened and that we have really gotten more
4 active in this area.

5 Final comments I want to give you and then
6 turn it over to the body is where we are at
7 financially. Now, the good news is -- how many people
8 here love Power Point presentations, raise your hands.
9 Are you nuts? If Jim Horsch was here we would have 62
10 Power Points. This is what an accountant and CPA
11 loves is Power Point presentations. I have reduced it
12 down to, I believe, three, and it was a good thing,
13 because I wouldn't be able to get through my
14 presentation.

15 First one, when I first came here we were in
16 a situation in which we were in heavy deficits. Now,
17 this is not to paint John Berry as a great person and
18 the previous people as bad people, because there are
19 cycles, and I came in a situation where you hadn't had
20 dues. There were other reasons as well, and I think
21 we became much more efficient and we made some tough

22 choices through our Board and this Rep Assembly and
23 others, but we started building upon surpluses, and
24 over the last number of years, based upon cuts, but
25 also based upon some very efficient work, we were able

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1 to build surpluses in the Bar. And so, as you see,
2 that has built over the last number of years.

3 Now, I will say that in the upcoming years we
4 are going to start getting closer to balanced budgets,
5 and then ultimately you are going to get into a
6 situation where you have deficits. Even if you cut
7 programs, there is a point in time in which the
8 accumulation of inflation and the accumulation of what
9 happens in organizations eventually catch up to you.

10 I want to point out something to you under
11 the strategic plan that you approved -- it hasn't been
12 changed in this new modification -- is the statement
13 that says we will seek a dues increase when necessary
14 and we will seek every other method first to avoid a
15 dues increase.

16 I want to remind you, and also I want to
17 thank you, I want to remind you that by the time --
18 and let's show the next chart, Nancy. Two other
19 charts, then I will finish that thought.

20 Our administrative fund also has gone up
21 during this entire time period, which gives us good,
22 not only a good surplus year to year, not only a good
23 program programmatically, but our resources, the
24 amount of money that we have available for rainy days
25 has improved as well.

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1 Final one. This is what I want to talk to
2 you about. This projection says by the year 2009 and
3 2010 we'll have reached the point where we will be
4 getting dangerously close to having less than a 33 and
5 a third percent minimum reserve line, in other words
6 money in the bank, savings. When we hit that point is
7 when you normally are going to need a dues increase.

8 Now, I wanted to give you some perspective on
9 this. All of the programs you have heard about, all
10 of the continuation of the e-journal, the Practice
11 Management Resource Center, the Public Policy Resource
12 Center, all of the efforts we have made have been done
13 with one \$20 increase, and by this year over almost 17
14 years.

15 When we came to you before you approved a \$40
16 dues increase and a cost of living increase, we got
17 \$20 of that and basically covers inflation. So I am
18 here to tell you, first of all, in celebration that we
19 have been good stewards of the money that we have had
20 over this time period. I am also here to tell you the
21 good news is for both Tom's term and Kim's term of
22 president they don't have to worry about a dues
23 increase. As it gets a little further down the line,
24 that thought will come up, and I won't name names.
25 Some people maybe even in this body may be listening

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1 to me closely.

2 But as we go through the process we have
3 projected out so that we can make decisions as we go
4 to try to look at programs and see where we can cut
5 and deal with the issues, but I do want to give you
6 both the short-term, the past history, where we are at
7 now and where we are headed.

8 Bottom line conclusion, you have an excellent
9 strategic plan that you approved, and I thank you.
10 It's being acted upon in strong ways. We need to sell
11 it, as Tom says, and I believe financially we are very
12 secure now. We intend to stay that way.

13 So I thank you again for the opportunity to
14 serve you as your executive director on behalf of the
15 entire staff, and I leave it to you for your decision
16 making from here on out. Thank you very much.

17 (Applause.)

18 CHAIRPERSON BUITEWEG: Thank you very much,
19 John. And just to sort of expand on what Tom Cranmer
20 and John Berry have said, you are all probably leaders
21 in your local Bar and in your communities, and there
22 may be things that your local Bar would like to do or
23 could use a little help with, and I just encourage you
24 to get to know who the staff is at the State Bar, who
25 they are, what their responsibilities are, because

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1 they can and will be incredibly helpful to you in your
2 efforts to promote various projects at the local Bar
3 level. I think you will be very pleasantly surprised
4 at how welcoming they will be to your requests for
5 input and for assistance. So I hope I am not speaking

6 for them, but I think that's the case. We have got a
7 great Bar staff.

8 Next I would like to introduce Tom Rombach,
9 who is going to present a proposed adoption of the
10 revisions to the strategic plan. Mr. Rombach.

11 MR. ROMBACH: I am Tom Rombach from the 16th
12 circuit. I would like to thank the members of the
13 Special Issues Committee on whose behest I am standing
14 before you today. In contrast to Sheldon's remarks,
15 I would like to name them. John Reiser from
16 Washtenaw, Victoria Valentine from Oakland, Barbara
17 McQuade and Susan Haroutunian from the 3rd circuit,
18 Wayne County, Christian Horkey from Monroe, Adrienne
19 Iddings from Lenawee, Dan Harris from Emmet, and Ron
20 Foster from Ottawa where we had not been represented a
21 significant portion of time.

22 John Berry has outlined the strategic plan as
23 a critical blueprint to the State Bar's future
24 direction. It describes the policy and management
25 goals of our organization. As a management document,

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1 the strategic plan was drafted by the State Bar's
2 Board of Commissioners with input from the
3 Representative Assembly. As a policy vision the
4 strategic plan must be approved in the Representative
5 Assembly.

6 In 2003 the State Bar's first strategic plan
7 was approved unanimously by this body. It may not
8 have been perfect, but it's pretty much a vision that
9 all of us could agree upon.

10 Since that time some of the goals of the

11 strategic plan have been achieved, others have been
12 discarded.

13 Last year the strategic plan was revisited
14 and revamped by the State Bar Board of Commissioners
15 with input from the Representative Assembly.

16 The Representative Assembly committee that I
17 chair, the Special Issues Committee, now believes it's
18 the appropriate time to consider the revised State Bar
19 strategic plan.

20 I believe that the revisions of the State Bar
21 strategic plan must be approved. Just as in 2003 the
22 strategic plan may not yet be perfect, but I believe
23 it's a vision that we could all pretty much agree
24 upon.

25 On that basis I would like to move that the

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1 provisions of the strategic plan for the State Bar of
2 Michigan arising from the March 10, 2005 strategic
3 plan Retreat from the Board of Commissioners be
4 adopted.

5 CHAIRPERSON BUIREWEG: Is there a second?

6 VOICE: Support.

7 CHAIRPERSON BUIREWEG: Is there discussion?

8 It's been moved and seconded to adopt the amendments
9 to the strategic plan for the State Bar of Michigan.
10 All those in favor say yes.

11 Opposed

12 Motion carries. Thank you, Mr. Rombach.

13 Is Mr. Erwin here? A moment, please.

14 I would just like to take this opportunity to
15 have you notice we are 40 minutes ahead of schedule.

16 At this time I am going to introduce Mr. Dan
17 Dalton who is going to introduce the proponent of
18 this -- or this is not a proposal. I am sorry, this
19 is an informational presentation on the trust account
20 overdraft rule. So, Mr. Dalton, welcome, and the
21 podium is all yours.

22 MR. DALTON: Thank you very much. Good
23 morning, everybody. My name is Dan Dalton. I am with
24 the Client Protection Fund. What the Client
25 Protection Fund does is we are a part of the State

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1 Bar, and we review clients' inquiries and complaints
2 where attorneys take money from the clients and very
3 essentially looking at those claims to determine
4 whether they should be reimbursed from the Client
5 Protection Fund. It's a great agency within the State
6 Bar.

7 By way of background, I am an attorney with
8 the law firm of Tomkiw Dalton in Royal Oak. Today I
9 will be introducing a number of speakers to talk about
10 this proposal. Joe Garin of the law firm of Lipson,
11 Neilson is here. He will do a presentation. Fallasha
12 Erwin will be answering questions. He is the chair of
13 our committee, and Roshunda Price, who I just saw,
14 will also be answering questions as well.

15 Why are we here today? We are here for a
16 very important reason and that is the consideration of
17 a rule that will be introduced at the next meeting in
18 September in conjunction with the State Bar
19 Foundation, the Attorney Discipline Board, and the
20 Attorney Grievance Commission for trust overdraft

21 notification in the state of Michigan.

22 why is this needed? In the last four years
23 the Client Protection Fund has paid over \$1,028,414 to
24 clients whose funds were taken by attorneys, not that
25 many attorneys. It's probably a handful or so of

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1 attorneys altogether.

2 what we have noticed through analyzing these
3 claims is typically attorneys start real small where
4 they will take just a couple dollars out of client
5 trust accounts and then they return those dollars, and
6 they notice that nothing is taken and there is no
7 adverse action, and then they go larger and go larger
8 and go larger until a point where they just can't
9 repay. And at that point in time the client suffers.

10 So what we are doing is we are looking at how
11 can we resolve that problem, and we have looked at
12 what other states have done, and this proposal that we
13 are going to talk about today we would like to have
14 some comment on before it's introduced next September
15 is to note whereby financial institutions would notify
16 the State Bar agencies on these issues when the
17 overdrafts start to occur on these IOLTA accounts.

18 Again, the idea is to maintain
19 self-regulation of our profession, to protect our
20 clients, the lawyers within the State Bar and the
21 State Bar itself.

22 With that, I will turn the podium over to Joe
23 Garin.

24 MR. GARIN: Good morning. I have been on the
25 Client Protection Fund for about three years, and my

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1 law practice is focused primarily on representing
2 lawyers in malpractice cases, ethics disputes, and
3 then business disputes, so I have seen a lot of bad
4 lawyers in my career, and a lot of times it's a matter
5 of risk management issues that lawyers get tripped up
6 on things, and the rest of us as honest, hard working
7 practicing lawyers get sucked up into the problems
8 that they cause. That's why the Client Protection
9 Fund was established, so that we can try and repay
10 some of the clients who have experienced bad
11 attorneys.

12 One of the ideas, the primary idea that we
13 want to talk about today is the trust account
14 overdraft notification requirement, which basically,
15 if you look up at the map here on slide one, you can
16 see it's been established and enacted in 36 states,
17 including most recently in Louisiana, so in the wake
18 of Katrina they were able to pass this.

19 Michigan, we have outlined in red, is one of
20 the remaining states, 14 remaining states, that does
21 not have any trust account overdraft protection, along
22 with states like West Virginia, Mississippi, and
23 Texas. The time has come for this kind of rule to be
24 adopted in Michigan. If you can go to the second
25 slide for me, please.

1 We talk about self-regulation of our practice
2 or of our business as attorneys, and if you go to the
3 State Bar's website, they have got the quote from
4 Robert Hudson which we have added and we want to put
5 up in front of you today, No organization of lawyers
6 can long survive which has not for its primary object
7 the protection of the public. That's very prominently
8 displayed on the first page of the State Bar's
9 website. As a self-regulating, self-policing
10 profession, we have to be cognizant of that all the
11 time so we can keep clients happy and try and maintain
12 our esteem in the public's perception.

13 Again, if you notice, 36 states have enacted
14 this type of rule. Michigan, the time has come for
15 Michigan.

16 Since 2002, Dan mentioned this, the State Bar
17 of Michigan through the Client Protection Fund has
18 paid out in excess of a million dollars. Sixty-nine
19 percent of these claims have come from nine lawyers in
20 nine different counties. You go to our next slide,
21 please.

22 We have identified the geography of these
23 claims. It's not just Detroit, it's not Grand
24 Rapids, it's not Lansing, it's not Flint. These
25 claims are all over the state. You can see, for

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1 example, with Mark Light there were 32 claims in
2 Ingham County for a hundred thousand dollars. The
3 Jacks claim was a class action where there was a
4 hundred thousand dollars paid out in Wayne County.

5 Collison in Saginaw, 86,000, 13 different claims.

6 what we see with a lot of these really bad
7 actors are they are high frequency of claims, where
8 the claims are coming in and they have had problems
9 with their finances and they are borrowing money, and
10 it results in ultimately these people lose their
11 licenses and they leave many clients disappointed and
12 upset with the legal system because they have not been
13 compensated for what it is they went to see the lawyer
14 for originally; the lawyer has stolen their money.

15 we have put some headlines up from some of
16 the new stories you will see like in the national law
17 journals, like the lawyer in New Jersey who was
18 suspended amid a gambling probe, and Dan touched on
19 this. what will happen is the lawyer wants to go to
20 the casino, he doesn't have the money, so he is going
21 to hit his client trust account for maybe \$500, maybe
22 he wins that time and pays it back, but it's the time
23 after that or the time after that when they are not
24 able to pay it back and they start bouncing checks
25 that the Overdraft Protection Rule will come into

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1 play.

2 The next one we talk about in the next slide,
3 the states report where it's working. In New York,
4 where they have had it for many years, from February
5 of '93 to February of '06 they have had 145 lawyers
6 who have been disciplined for misusing client funds,
7 and these are a result of trust account overdraft
8 notification to the State Bar.

9 New Jersey there have been 85 attorneys that

10 have been discovered and disciplined for their
11 overdraft protection, or their overdraft on client
12 trust accounts. Pennsylvania 26.

13 The states record that it's working. We were
14 able to get this from the state of Minnesota, and what
15 they point out is that since the beginning of their
16 trust account overdraft notification requirement, that
17 amendment to the rules, the number of files and
18 referrals coming in for lawyers who are bouncing
19 checks on their trust accounts has gone way down. The
20 number of investigations that they have to do for a
21 trust account overdraft has gone way down.

22 They talk about the most common cause of an
23 overdraft problem, and that's the late deposit, and
24 typically there is no sanction to the attorney for a
25 mere timing in making the deposit.

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1 There is a firm that I represent in Colorado,
2 and they have a high volume practice, and they had
3 this incident come up where they paid a client a check
4 on Monday for funds that were deposited the same day
5 and they asked the client to hold the check. The
6 client ran it over to the bank and cashed it and of
7 course it bounced, because the funds weren't ready.

8 And so the notification went out to the State
9 Bar and also to the law firm, and it was a matter of
10 writing a letter saying, well, look at, we deposited
11 the check. We asked the client to hold it. They ran
12 over and deposited it. The funds were there. They
13 just weren't ready.

14 It was immediately dismissed. That's not the

15 kind of thing this rule is intended to get at. The
16 typical way that most states handle it is that they
17 would dismiss something like that. It's the lawyer
18 who is abusing and using their client's funds and not
19 able to play clients currently that the rule would go
20 after.

21 So actually what's next, how it works,
22 basically real simple. There is an overdraft on the
23 account. The bank would send out a notice to the
24 lawyer and to some police agency at the State Bar or
25 the Attorney Grievance Commission. The lawyer is then

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1 given an opportunity to explain why the overdraft
2 occurred, and based on that explanation there is
3 either going to be a file opened or it's going to be
4 closed out.

5 Most states, what we have heard is if it's
6 closed out, it's not a record they maintain throughout
7 the lawyer's career except it might be kept for 12
8 months or a little beyond that just to see if there is
9 a pattern, whether the lawyer needs to be educated how
10 to run their trust account.

11 Again, we don't have firm language for a rule
12 modification that we are presenting to you. We just
13 want to bring this to your attention, because in
14 September we do plan to come back with a rule and ask
15 for your endorsement of that rule so that we can get
16 it enacted in Michigan. And basically what's going to
17 happen now is we will be working with the Attorney
18 Discipline Board, the Attorney Grievance Commission,
19 and the State Bar of Michigan Foundation to draft a

20 rule based on -- there is a model rule and then the 36
21 states that have it have a variation, and then we
22 would present that and ask for your endorsement in
23 September.

24 So if you have questions, we can answer some
25 of those for you. It's not that scary. It's

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1 something we really need.

2 CHAIRPERSON BUITEWEG: Please state your name
3 and circuit.

4 MR. GEAR: John Gear with the 30th circuit.
5 I am very pleased to see this proposal. Ears perked
6 up when I heard you say we are not going to keep
7 history for -- you sounded like your intent was, well,
8 these will disappear. So if they are careful and they
9 do a few hits and then get the warning, then you will
10 lose the history, and so five years later when they go
11 for the big bucks, you won't have that record.

12 I really encourage you to do this proposal.
13 I think it's an absolute necessity. When you look at
14 the slides from John Berry about the image of the Bar
15 and the public esteem, I think it's crucial that we
16 make not only this step but every step to lead to a
17 hundred percent recovery for all victims of lawyer
18 theft.

19 I mean, you know, your program is just a
20 start. There is such a low cap on what people can
21 recover from your fund that I think you need to then
22 go on and keep raising that cap funded by a
23 proportional fee for the amount of money that lawyers
24 handle, because we need -- if we are going to get the

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1 aggressive about recovery for people who are victims
2 of attorney theft.

3 MR. GARIN: Those are all great points, and
4 while we are working on language for the rule, if you
5 have ideas for something you would like to see or any
6 of the policing mechanisms for that, contact our
7 committee and we would be happy to try and work with
8 those ideas and suggestions.

9 The idea that this is not a way to go out and
10 witch hunt against lawyers who are bouncing checks.
11 It's not what they are intending to do. What we want
12 to do is get the bad lawyers who are using their
13 client's money, and they shouldn't be using their
14 client's money. That's what we want to promote.

15 CHAIRPERSON BUIREWEG: Mr. Gardella.

16 MR GARDELLA: One comment. Robert Gardella
17 from the 44th circuit.

18 I would stand in favor of the concept and
19 proposal that you have. Unbeknownst to many of you, I
20 was the attorney for the State Bar on behalf of the
21 Client Protection Fund over the last five, six, seven
22 years. I can't remember exactly how many years. It's
23 gone by quickly, but I was the person who sued the
24 disbarred attorneys or the disciplined attorneys all
25 over the state of Michigan. Went to a lot of

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1 different courts, and it was one of the hardest jobs
2 in the world. These are sophisticated people. Many
3 of them don't want to pay. Many of them don't care
4 about our profession, but we are in this to show the
5 general public that we do care.

6 This rule is basically already in effect in
7 our state, practically speaking, not officially or
8 technically. But what happens is many other states,
9 they have this rule in effect, so banks in Ohio or
10 Indiana or New York, whatever the state may be, if
11 they have branches in Michigan and an attorney bounces
12 a check out of the trust account, the State Bar is
13 going to get notified from those banks who are
14 headquartered in other states. So it's Chase Bank or
15 other banks, we are already getting notified at the
16 State Bar that these bounce.

17 So we are not really changing the course of
18 history here. We are basically just codifying and
19 accepting what already exists and staying consistent
20 with all the other states. So I think it would be
21 necessary, and it's a rarity for this to happen, but I
22 think practically speaking we should stay up with what
23 other states are doing, and I think this is good for
24 our profession, and I think we will get to vote on
25 this in September, but I would ask you all to keep

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1 that in mind for when we are here in September because
2 I think it is a good thing for us to have us to stay
3 up to date.

4 MR. GARIN: That's actually a great point.
5 We are not trying to make new rules or make any
6 conduct, make any new conduct unethical. What we are
7 doing is just providing another method of notification
8 so that other people besides the bad lawyer who is
9 bouncing the checks, other people can discover and
10 investigate why checks are being bounced. That's the
11 only thing.

12 CHAIRPERSON BUIREWEG: Are there any other
13 questions or comments? And I would encourage you to
14 come forward if you have any, because I think the main
15 reason why these folks are here to talk to us about
16 this today is to find out if there are questions or
17 concerns about this that can be addressed at the
18 September meeting. So if you have anything on your
19 mind, step forward and speak now, otherwise we will
20 thank you for your time and your patience.

21 (Applause.)

22 CHAIRPERSON BUIREWEG: Next I would like to
23 call forward JoAnn Hathaway who is going to tell us a
24 little more about the Practice Management Resource
25 Center, and I again encourage you to take some notes

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1 about this and communicate with your constituents
2 about this great new service that the Bar has to
3 offer. JoAnn.

4 MS. HATHAWAY: It will be my pleasure today
5 to talk about the newest membership benefit at the
6 State Bar of Michigan, the Practice Management
7 Resource Center. After much planning and a lot of
8 hard work the center did launch on February 11th of

9 this year, and we are very pleased to provide this to
10 you.

11 Today I will be giving you a guided tour
12 through the various modules of the center and also
13 talk to you just a bit about our goals and vision for
14 the future.

15 As you open into the home page of the State
16 Bar of Michigan website you will find a dedicated link
17 to the PMRC.

18 As you enter the site you will see that we
19 actually have four modules at the current time. We
20 have what we refer to as our practice management help
21 line, our resources link. We have a lending library
22 and also our educational center.

23 What I would like to do today is to begin
24 with a discussion of our help line. As with our
25 ethics hot line, as I indicated, now we have a

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1 practice management help line. We have a dedicated
2 800 number or questions can actually be submitted to
3 us right online through a dedicated folder.

4 We do ask for a P number when you call in
5 just so we ensure that we are providing information to
6 our members only, and I would like to stress that this
7 is not just for our membership. It is also for your
8 support staff. So we encourage you to suggest to your
9 secretaries, legal assistants, and legal
10 administrators that they utilize this service.

11 We are available for just about any practice
12 management question you might have. Please don't
13 limit your docket control, conflict checking,

14 calendaring, and some of the regular things you might
15 think of. We have had a lot of calls about quality of
16 life, marketing. Just we like challenges, and if we
17 don't have the information readily available, what we
18 will do is we will find out. We will do some research
19 and we will call you back.

20 It was interesting, I was telling John Berry
21 just the other day when we were in the strategic
22 planning meeting, I had a member call me, and she had
23 been in practice for several years, had a very
24 successful practice. She had a few associates working
25 for her. She had some legal assistants, a

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1 receptionist, a secretary, and she had a thriving
2 practice. And we were on the phone for approximately
3 45 minutes, and she was actually referred to us by
4 ELJAP, and she couldn't identify what her needs were.

5 She said I am so stressed out. You know, I
6 can't -- trying to run the business and trying to
7 practice law at the same time, it's just kind of a
8 slippery slope, and she knew she needed help but she
9 didn't know where that was. So we were able to
10 actually help her with that after long discussion and
11 several questions.

12 We realize that many times people don't know
13 where they need help, but we invite you to call and
14 ask us so we can help explore that with you.

15 On our website we do have a dedicated page to
16 resources, and on this resources page we have
17 approximately at this time, it's ever changing, but we
18 have forms, guidelines, checklists, how-to kits,

19 articles of interest and links. And we have various
20 topics, as you can see, and you can telescope through
21 this page and you can see the varying forms and
22 documentation that's available to you.

23 We want this to be a page that's ever
24 changing. We don't want you to go in six months from
25 now and see the same forms, guidelines, checklists,

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1 et cetera. So what we have been doing is we have been
2 adding to this, and to enable you to identify new
3 forms, et cetera, we do flag them as new and they are
4 flagged for a month. And so we do want to add to this
5 monthly.

6 what we are doing at this time too, and we
7 give credit to Nancy Brown and her team for this, what
8 they have been able to do is we have been heavily
9 tracking the hits on our website, and I was amazed at
10 how indepth this tracking system is. We can track the
11 visits. We can track the hits, but all the way down
12 to each page that's visited. So what we are doing in
13 this resources section is we are looking at, you know,
14 what's the most widely viewed document here, and those
15 areas that we find that you are going to and visiting
16 often, then we want to continue to provide more areas
17 or I should say more documentation in those areas. In
18 those areas of little interest we may replace with
19 something else.

20 Interestingly, just in case you are wondering
21 what's viewed right now, marketing plans, those tend
22 to be big. Business plans, a lot about client
23 communication, and also fee setting and client

24 billing. Those seem to be the hot areas at this time.
25 Our educational center, we are very pleased

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1 to provide this, and, in fact, it was interesting. I
2 was at the ABA tech show, and I will tell you a little
3 bit about that in just a moment. But in talking with
4 several other practice management advisers across the
5 United States, they were very impressed with what we
6 were offering.

7 We currently have 12 state-of-the-art PC's in
8 our educational center, and we are continuing to
9 obtain new software, practice management and other
10 software, so that you can come in, you and your staff
11 can come in and demo the software for as long or as
12 little a period of time as you would like. And we
13 will be there to help you and to provide information
14 for you.

15 And that can be available to you either by
16 signing up online or if you would like to call in and
17 talk to one of us, we will be happy to personally
18 arrange a convenient time for you to come in.

19 As most of you know, we do have five of our
20 PC's available and some of the software in the room
21 just behind the sign-in table, so we invite you again
22 to join us over the lunch hour. We will be available
23 after adjournment today, so we are going to be here.

24 The next link. Just from our educational
25 page, we have a link to a legal software directory,

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1 and we have the software categorized by type. And as
2 you link further into the software category list, you
3 will see that we do provide an actual link to the
4 software vendor, a brief description of the type of
5 software, what capabilities it has, and the name of
6 the vendor.

7 And we have quite a few listed. We are not
8 really endorsing any of these software products at
9 this time, but we have done extensive research to
10 ensure that those that we do have listed are tried and
11 true vendor programs, and we feel comfortable on
12 having them on our list. Also this list will be
13 changing.

14 Before we get into the library, even though
15 the library is up right now, I would like to say one
16 other thing about our educational center because I
17 think it's very important to bring this out. We do
18 have the brief questionnaire for you that you have at
19 your table, and if you would take a few moments to
20 fill out the questionnaire as far as the programs and
21 what areas you would like additional training in and
22 programs you might like to see in the center, we would
23 very much appreciate your feedback. We want this to
24 be a busy place. We want to have a lot of programs in
25 our educational center and we plan to do that.

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1 I mentioned a few moments ago that I had the
2 opportunity to attend the ABA tech show. This was my

3 first experience, and I don't know how many of you
4 have ever had the opportunity, but it was a wonderful
5 event, and it's kind of mind boggling, everything
6 that's available out there, but it's wonderful.

7 I did have the opportunity to speak to
8 several vendors and kind of toss around a few ideas
9 with them about training sessions, demonstrations in
10 our educational center, and there were some people
11 that definitely had an interest, and, of course, why
12 wouldn't they. I mean, they have an opportunity to
13 talk to you about their products, but also it's a
14 win-win situation for everyone.

15 So we do plan to use the educational center,
16 not just for demos, for training sessions, for
17 seminars, for your staff to come in if you want
18 personalized training, so it is going to be a heavily
19 used center, but we do really encourage your feedback
20 because we want to provide a benefit that's meaningful
21 to you and programs that you really want us to have.
22 So please feel free to call us at any time with your
23 thoughts. We would really appreciate that.

24 I just thought I would mention, I am not up
25 here to give a plug about the new Amicus VII, but in

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1 case anyone is using Amicus and looking to upgrade,
2 the folks from Gavel and Gowan (sp) gave the 13
3 practice management advisers that were there a
4 training session, an hour long training session on
5 Amicus, and we do have that in our demo center if
6 anyone is interested in coming in and taking a look at
7 that. It has a lot of new features. I think people

8 will be very pleased.

9 Now, moving on to the lending library. It's
10 coming soon and it's coming very soon. We just got
11 several boxes of new publications in, and we hope to
12 have that launched. We have a few procedural areas to
13 address, and we are going to be launching our lending
14 library. We have several different practice
15 management publications, CD's. They will be housed in
16 the educational center. So if you were to come into
17 the educational center, not only could you or would
18 you have the benefit of test driving several different
19 software programs, but also you could peruse our
20 shelves and maybe take some texts back to your home or
21 office. This is going to be available for your staff
22 as well.

23 Right now I would like to move on to the goal
24 and the vision for the future Practice Management
25 Resource Center. We are still in the strategic

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1 planning phase of this. This is not all inclusive.
2 But as of right now, and in no particular order, we do
3 want to ensure that we have seminars that we are
4 providing across the state, so we are bringing
5 programs to your geographic region. In fact we are
6 pleased to announce that our first seminar is going to
7 be May 23rd up in Marquette, so we are starting from
8 the top on down, and we are happy to bring those to
9 the folks up in the UP.

10 we also will be doing onsite assessments in
11 your law practices, at your request of course, and
12 these can be as indepth or as streamlined as you

13 prefer. Risk management or practice management or,
14 again, even though they are so closely intertwined, so
15 these would be at your request.

16 Also, we really want to work closely with the
17 law schools, and we are exploring that avenue so we
18 can assist the law students with areas of practice
19 management.

20 And again in the strategic planning meeting
21 with John Berry this week he again stressed I really
22 would like you to focus on partnering with businesses
23 to ensure that we can get some cost saving benefits
24 for our membership, just as we recently did with
25 Staples, or I say we, it was not the PMRC, it was our

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1 Member Services Division, Kathleen Fox's, group, and I
2 think that is such a wonderful benefit that her group
3 was able to provide to the members. So we hope to
4 continue to partner with folks to give you discounts
5 on products.

6 Last but not least, we are very excited about
7 partnering with the Law Practice Management Section.
8 We are going to be working with Vince's group and
9 meeting with them on May 13th to have some strategic
10 planning. There is just such a wealth of information
11 that we can tap into there and partner together to
12 provide practice management aids. That's something
13 that we want to do and we are definitely working on at
14 this time.

15 So at this time before I close I would like
16 to invite any questions, if anyone has any questions
17 from the floor.

18 MS. RADKE: JoAnn, where is it going to be in
19 Marquette?
20 MS. HATHAWAY: We are going to be at the
21 Landmark Inn
22 Anything else?
23 Thank you for allowing me to share about the
24 PMRC. It was a pleasure.
25 (Applause.)

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1 CHAIRPERSON BUITEWEG: Mr. Berry.
2 MR. BERRY: I just wanted to make two very
3 brief comments. One is I want to recognize two people
4 seated in the audience, Joan Vestrand and Vince
5 Romano, for the personal work they have done. We have
6 made reference to the committee and the work they have
7 done and also the work the committee will be doing in
8 the future to make sure we can connect, but I want to
9 personally thank you.
10 And the final thought is, consistent with our
11 strategic plan, Dadie Perlov is the one that helped us
12 with our original plan. She made a comment about the
13 fact that there is no problem having a bunch of
14 information to lawyers about various things, there is
15 no problem with dumping you with tons of information
16 about technology, but her emphasis was it's up to Bar
17 associations to filter that information in a way that
18 makes it useful to you and help you, and I think
19 that's the main goal of this is that we go to the tech
20 shows, we get the information, and if you call up with
21 the simplest of questions, like it's out of control,
22 what do I do, then we are there to help you. So we

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1 So I will do whatever you want. My suggestion is that
2 we break now and then reconvene at 1.

3 MR. LARKY: Madam Chair, point of order. Our
4 agenda that was approved by the membership was to
5 continue on till 1:00. That was approved by the
6 membership, so let's just keep going.

7 CHAIRPERSON BUIREWEG: Is there a second?

8 MR. LARKY: It wasn't a second. You have
9 already approved it. Let's just keep going.

10 CHAIRPERSON BUIREWEG: So you are making a
11 point of order. My understanding of the motion was
12 that we would continue with the agenda by reducing the
13 time in half but not necessarily that we would wait
14 until 1 to eat. I didn't understand it that way.

15 Let me just get a show --

16 JUDGE KENT: Madam Chair, I would agree with
17 you and think we have a consensus that we have reached
18 the time in half for the agenda items, but we did not
19 accelerate the agenda in the sense that we would
20 continue on ad infinitum. I agree with your
21 suggestion that we break now, take our lunch break and
22 that we resume at 1:00.

23 VOICE: I second that.

24 CHAIRPERSON BUIREWEG: Raise your hand if
25 that's okay with you. Just do it informally.

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1 we will break now. we will reconvene at 1.

2 Take ten minutes to use the facilities.

3 I am sorry, just a moment. I promised Kathy
4 Kakish that she could just tell you very briefly about
5 the Law Media presentation.

6 MS. KAKISH: Just your attention for one
7 little second. I do have a teaser, because we do have
8 an celebrity from Southeast Michigan on the panel of
9 the Law Media Committee, but that's a teaser. I will
10 tell you just in a second.

11 This is Kathy Kakish, 3rd District Court, 3rd
12 judicial court, 3rd circuit court. I am from Wayne
13 County. I am trying to hurry here, and that's what
14 happens.

15 I have served as the liaison for the Law and
16 the Media Committee for the last two years, and I have
17 attended a couple of their sessions. What they did is
18 they developed a special program where they go into
19 the media outlets, whether radio, television, or the
20 printed media, and they educate these journalists and
21 media people as to how to access the law in terms of
22 information, in terms of working the court systems.
23 It's a wonderful, energetic program that they have,
24 and I thought to bring them here to the Representative
25 Assembly and to give one of their presentations.

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1 On the flip side, they also have a different
2 type of presentation which is designed for you and me.
3 It's designed for lawyers as to how to work
4 effectively with the media and what to do and not do
5 when they are dealing with the media.

6 The committee comprises about 13, 14 lawyers

7 who before becoming lawyers were members of the media,
8 they were journalists, whether in the print or
9 electronic media. It's a group of very energetic,
10 engaging, enjoyable people who really know what they
11 are doing and make the process so wonderful.

12 So what's happening today is that we are
13 going to break for lunch. And in about ten minutes,
14 once people, you know, the first of the people can get
15 their lunch, bring them over to the lunch area, and
16 this presentation will give, this group will give
17 their presentation as to how we lawyers should
18 interact with the media and how we can use the media
19 effectively.

20 And two panelists, two of the panelists will
21 be, of course, our State Bar president, Mr. Cranmer,
22 but also Brian Dickerson. For those who are familiar
23 with him, he is a columnist with the Free Press, well
24 known with the Southeast Michigan area. He is going
25 to be also a member of that panel.

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1 And I personally extend an invitation to you
2 to attend this. This group is great, energetic -- the
3 three E's -- energetic, engaging, and enjoyable. I
4 look forward to seeing you over lunch. Thank you very
5 much.

6 (Lunch break taken from 11:36 a.m.-1:10 p.m.)

7 CHAIRPERSON BUITEWEG: I am going to
8 reconvene the meeting at this time, and I hope that
9 you all enjoyed the presentation by the Law and Media
10 Section. They certainly had many good tips for us as
11 we try to negotiate the media in our daily practices.

12 So I know that I certainly enjoyed it.

13 We have a number of dignified people with us
14 today that we were going to introduce earlier and were
15 remiss in failing to do so. One of the persons is
16 here to discuss with us the next item on the agenda,
17 and that's Mr. Robert Webster, past president of the
18 State Bar of Michigan and a Michigan Uniform Law
19 Commissioner. And we also have a number of members
20 from the Board of Commissioners Executive Committee.
21 Kim Cahill. Kim, you want to sort of raise your hand
22 so people know who you are. Ron Keefe, all the way
23 from Marquette over here; Ed Pappas, Oakland County in
24 the back; Charles Toy over here from Lansing; Richard
25 McClellan over here from Lansing; Julie Fershtman from

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1 Farmington Hills in the back. I hope I haven't missed
2 anybody. Thanks for indulging me on that.

3 I am now going to ask to come to the podium
4 Richard McClellan, who is the proponent of the next
5 proposal regarding the Michigan Law Revision
6 Commission, and Richard is a member of the Michigan
7 State Bar, State Bar of Michigan Board of
8 Commissioners, as well as I want to get this title
9 right for you, Chairperson of the Michigan Law
10 Revision Commission. Podium is all yours, Richard,
11 and also Mr. Webster, Judge Webster.

12 MR. MCCLELLAN: Thank you. Let's take a
13 couple of minutes. I am not going to go through the
14 material in your book, but I want to give you a little
15 more background. There are two institutions in the
16 structure of State Government that really provide

17 lawyers direct input into the legislative process, and
18 that involves the Legislative Council. The
19 Legislative Council is a constitutionally established
20 body and composed of the leadership of both the House
21 and Senate. Within the Legislative Council are
22 several agencies, one of which is the Legislative
23 Service Bureau that drafts all the legislation. Two
24 of the others are the ones that I want to talk about
25 today. One is the Michigan Commission on Uniform

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1 State Laws, and the second is the Michigan Law
2 Revision Commission.

3 I am the chairman of the Michigan Law
4 Revision Commission, and one of our statutory duties
5 is to review the recommendations of the National
6 Conference of Commissioners on Uniform State Laws.
7 And so we get their reports from the National
8 Conference of Commissioners and then make
9 recommendations to the Legislature as to whether we
10 think one of these uniform laws should be taken up.

11 The National Conference is composed of
12 commissions from all the states, and Michigan has such
13 a commission. Judge Webster is a member of it. The
14 reason I wanted to come today is to talk about sort of
15 the background.

16 Michigan no longer pays dues to the National
17 Conference of Commissioners on Uniform State Laws, and
18 that limits our ability to participate, even though we
19 continue to have the commission. So before you is a
20 recommendation that we recommend to the State that
21 they again begin paying dues to the commission.

22 A little bit of background. As you know,
23 Michigan as a state government has had some financial
24 challenges, and one of the things is that this is an
25 entity that was just part of the funding of the

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1 Legislative Council when they had to cut back, and
2 rather than cut back the number of drafters in the
3 Legislative Service Bureau, they decided, well, let's
4 not pay dues to a number of these organizations. But
5 it has a significant impact, I think, in the long run
6 on the state of our legislative process.

7 Partly because with term limits in the
8 legislature, much more rapid turnover of legislators,
9 you don't have the institutional knowledge. You used
10 to have a chairman of a judiciary committee in the
11 House that may have been in the Legislature 10 or 15
12 years. You now have a chairman of a committee like
13 that that has been in the Legislature two years. So
14 there is really a lack of institutional knowledge, and
15 it's one of those hidden impacts that's occurring that
16 you can't really measure easily, the decline in sort
17 of quality bill drafting and attention to some of
18 these legislative issues that may be important to the
19 people but that aren't important politically.

20 There is no lobbyist working on a lot of the
21 issues that the National Conference comes up with. We
22 do pretty mundane and boring subjects, but they are
23 pretty important, Uniform Commercial Code, some of the
24 uniform laws dealing with children and interstate
25 issues dealing with children. So there is a lot of,

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1 there are a lot of important subjects.

2 The recommendations before you are two. One,
3 to support the involvement of the State Bar in
4 participating, attending the meeting of the National
5 Conference of Commissioners on Uniform State Laws and,
6 secondly, to support restoring the participation and
7 funding of Michigan's role again.

8 As I am not on the national -- I am not on
9 the Michigan Commission on Uniform Laws, but we
10 benefit greatly by having Michigan participate in that
11 so that we can do our job when we get the reports at
12 the National Conference. With that, I will turn it
13 over to Judge Webster.

14 JUDGE WEBSTER: I am very glad to be here to
15 speak to a subject that's near and dear to my heart.
16 The National Commission is composed of the commissions
17 from each state. In other words, we have our own
18 Michigan commission and we participate with everybody
19 else as a part of the National Commission.

20 It's been, since 2004, it's been kind of an
21 embarrassment to go down to the national meeting
22 because Michigan's dues have not been paid by the
23 Legislature. They chopped that off. This year the
24 assessment to Michigan is \$50,000. In the past it's
25 been somewhere in the range of 40 to 50. That's

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1 designed to pay for the functions of the commission
2 during the year.

3 what we do is assign members of the
4 commission to drafting committees, and those drafting
5 committees meet usually two or three times during the
6 year for a weekend, three days. Then when they have
7 finished their work, the work product comes to the
8 national meeting, and that's a wonder to behold.

9 It's a seven-day meeting. Each bill that is
10 referred or uniform law that's referred in is read
11 line by line and debated line by line before all of
12 the commissioners. Many changes are actually made at
13 that point in time. The finished work product is
14 something that a Legislature can look at, maybe make a
15 few adjustments, but they have got a law in their laps
16 that a tremendous amount of legal talent has gone into
17 that could not be replicated in the state. It just
18 can't.

19 You are talking about the Uniform Commercial
20 Code, Uniform Partnership Act, Uniform Condemnation
21 Act, I believe, just there is a lineup of bills as
22 long as my arm, and Michigan's participation in
23 enactment has been a little behind too, and we, I
24 think last year there was one bill introduced, and it
25 didn't pass, but we do have a number that have.

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1 we would like and espouse one part of the
2 motions that are before a liaison from the State Bar
3 to attend the national meetings, and in order to
4 encourage that person to go we would appreciate the
5 State Bar considering paying for their expenses. That

6 person can report back and can guide bills into the
7 Law Revision Commission and into the various
8 committees of the State Bar for consideration, and so
9 that when they hit the Legislature there is support
10 for them.

11 we don't have an adequate structure to do
12 that at this time, and we are working very hard to get
13 it done.

14 I don't know what else I can say. Oh, the
15 individual, the individual commissioners have not had
16 their expenses paid for some time, and it's quite a
17 burden. I think it indicates in the material that you
18 have that it's something like \$2500 for an individual
19 commissioner to attend, participate for seven days,
20 and some that are not -- they are not great spas, but
21 wherever we go, it does cost money. I pay for it out
22 of my own pocket, but that's just my expression of
23 appreciation for everything that's being done.

24 Michigan Commissioners, we have had some real
25 stars. Charlie Joyner was one. Mike Franck for most

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1 of his legal life. J.J. White is the chair of our
2 commission right now, Michigan commission, and just
3 luminaries like that.

4 The State Representatives, they have got a
5 couple of new reps that are very interested, and
6 that's Representative David Law and Representative
7 Condino. So we are getting a little more vital.
8 There is a guy named Tom Buiteweg too that's part of
9 the commission.

10 So I think that's about the best I can do for

11 you.

12 MR. MCCLELLAN: Thank you, Judge. At this
13 time I would like to move the adoption of the
14 resolution as printed in your book regarding should
15 the state of Michigan pay the assessments and the
16 costs necessary to permit Michigan to participate in
17 the NCCUSL annual meeting. So moved.

18 VOICE: Support.

19 CHAIRPERSON BUIREWEG: Is there a second?

20 VOICE: Support.

21 CHAIRPERSON BUIREWEG: And is there any
22 discussion? Mr. Barton.

23 MR. BARTON: I have two questions. Bruce
24 Barton, 4th circuit. Two questions basically. Who
25 decided to stop paying the dues, and what was the

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1 reason? What was the purpose or the reason for
2 stopping dues and expenses?

3 MR. MCCLELLAN: The Appropriations Committee
4 of the Legislature, the subcommittees that handle the
5 general government bill, when they began to really
6 have serious cutbacks, it was not included in the
7 annual appropriation bill for the legislative branch.
8 That's who decided it, and they decided it because
9 they were cutting a lot of programs and they
10 claimed -- they had to make choices, and they didn't
11 make a choice to support this.

12 CHAIRPERSON BUIREWEG: Mr. Miller.

13 MR. MILLER: Randall Miller, 6th circuit.
14 The problem that I have is that there has been word on
15 the street for several years of a political agenda

16 with the organization, that the uniform laws that are
17 being sought have an agenda and there are people
18 pushing behind it, and I thought the point of this
19 whole body was nonpartisan. I have a problem with
20 supporting that if that is actually true. I can't say
21 for a fact that it is. I have never been to a
22 meeting, but if there is a certain thrust of what is
23 taking place at this meeting, I have a serious
24 objection to supporting this proposal.

25 MR. MCCLELLAN: You know, I only get the

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1 reports, and each issue, each recommendation, some
2 obviously there may be points, but usually the issues
3 that come from the National Conference of
4 Commissioners are not partisan usually, so I don't
5 know of any. I have never seen one that gets into
6 that area, but that doesn't mean there aren't
7 differences of opinion. But usually they have a broad
8 base of support within the Bar, because there is a
9 need for uniformity in the way you treat that.

10 You would have to -- there may be one or
11 another. On the other hand, they come to the state
12 and then they go through the legislative screen here.
13 I mean, it's up to each legislature to decide to adopt
14 it. The National Conference of Commissioners has no
15 ability to impose their proposal. They only recommend
16 them.

17 JUDGE WEBSTER: In the years I have been
18 there and participated in the adoption of uniform laws
19 I have never seen a partisan bent to it. There have
20 been, there have been questions that come from the

21 private sector that have raised debate, vigorous
22 debate, but I have never seen anything that was
23 dictated by a party or had a taint of partisan
24 politics to it. I really have not. Frankly, I am
25 surprised. If that's the word on the street, I have

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1 never heard it, and it surprises me.

2 MR. GARRISON: Scott Garrison, 6th circuit.
3 We are asking the State, telling the State of Michigan
4 that they have to pay the \$50,000? Is that what we
5 are doing?

6 JUDGE WEBSTER: Begging.

7 MR. GARRISON: Because to me that goes back
8 to the whole discussion we had on the very first topic
9 this morning, which was we can't tell the State what
10 to do nor should we try, and then I am afraid that if
11 we pass this and the State says, no, we are not paying
12 it, that they will then turn to the State Bar and say,
13 well, you pay it.

14 MR. MCCLELLAN: No, you don't have to worry
15 about that. This is simply to sort of add some weight
16 to the discussions that will go on in the
17 Appropriations Committee, what groups do we pay dues
18 to. The State pays dues to a lot of groups, and I
19 think that it helps in that discussion, because I can
20 tell you the one person that doesn't want it is the
21 head of the Legislative Service Bureau who is on the
22 commission, because it means that he may have to make
23 -- he may not get some money he would like for his
24 programs.

25 But it's simply to say we think this is a

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1 useful program, and they will either fund it or they
2 won't fund.

3 MR. GARRISON: And would they have to pay the
4 total 146,000 in arrears as well in addition to the 50
5 for next year?

6 MR. MCCLELLAN: I have no idea. My only
7 interest is having the state begin to participate as a
8 dues paying member.

9 MR. GARRISON: One last question. My
10 understanding is that we are still attending meetings
11 and that we are still participating, correct?

12 JUDGE WEBSTER: We are participating. There
13 was a point in time, I know with me, where I was the
14 only delegate or the only member at the Michigan
15 table. That I believe occurred last year also, and so
16 we are participating, but not in a really heavy way
17 because of the lack of funding.

18 MR. GARRISON: So they may lump the
19 arrearage. How many commissioners do we have? It
20 says to allow, to permit the Uniform Law
21 Commissioners, i.e., more than one at \$2500 a pop, and
22 then I am assuming that we are also going to be paying
23 for their weekend meetings in addition to the annual
24 meetings.

25 JUDGE WEBSTER: No, they are paid for by the

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1 commission.

2 MR. GARRISON: Those are paid for by the
3 commission.

4 JUDGE WEBSTER: That comes out of the dues.
5 We have been getting support. I mean, I have been on
6 a committee and have traveled with, I was supported
7 and paid for that, but while my state didn't pay the
8 dues.

9 MR. GARRISON: Thank you.

10 JUDGE KENT: Wally Kent, 54th circuit. I
11 rise in favor of the motion and would say that this is
12 a benefit not only to the profession but to our
13 clients and all of them. Sitting on the bench, as I
14 do, I see so many situations which involve interstate
15 activities which, frankly, are almost insoluble
16 because there is no coordination of laws between the
17 states on many issues. I see it, for instance, in
18 guardianships where people are moving from state to
19 state. How do we transfer the authority of a guardian
20 from one state to another? That's only one example,
21 and that's only one area of the law in the probate.

22 Our society being as mobile as it is now,
23 even though I sincerely believe in state's rights,
24 nevertheless we still have to work together as states
25 to benefit our entire populous, and this is the way it

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1 can be accomplished. Michigan needs to participate
2 fully, and Michigan needs to subsidize the cost of
3 doing this for the benefit of its citizenry.

4 CHAIRPERSON BUITEWEG: Other questions or

5 comments? All right. It has been moved and seconded
6 that the State Bar of Michigan take the policy
7 position that the State of Michigan should pay the
8 assessments it owes to the National Conference of
9 Commissioners on Uniform State Laws and pay the costs
10 necessary to permit Michigan's uniform law
11 commissioners to attend NCCUSL's annual meeting.

12 All those in favor please say aye.

13 All those opposed say no.

14 Motion carries.

15 Next motion.

16 MR. MCCLELLAN: The second motion in the book
17 is a motion that I would like to make to have the
18 State Bar of Michigan's Board of Commissioners appoint
19 and pay the expenses of a liaison to attend the NCCUSL
20 annual meeting and report back to the chairperson of
21 the Public Policy and Image Committee and chairperson
22 of the Representative Assembly regarding events of the
23 meetings for further dissemination to State Bar and
24 committee chairpersons. So moved.

25 VOICE: Support.

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1 CHAIRPERSON BUITEWEG: Is there any
2 discussion?

3 MS. FERSHTMAN: Julie Fershtman, 6th circuit.
4 I have heard what this NCCUSL does, it's described as
5 boring and mundane. I have heard it described as
6 nonpartisan, but what seems to be the crux of what it
7 does is it deals with laws that could very well have
8 an ideological component to them, and that's
9 wonderful, except that we are a mandatory bar. We are

10 not a voluntary bar that can take stands on matters
11 that are considered ideological in nature.

12 So to the extent that this ever passes, we
13 put ourselves in a very difficult position. How do we
14 finance -- how do we pay for people to attend when
15 they may be taking stands on matters that are purely
16 ideological in nature. Some may not be. Do we allow
17 rebates? Do we require them to pay back a portion?
18 Do we let the State Bar staff, which as I understand
19 and as I actually know, is already overwhelmed with
20 looking at various proposals in the Legislature and
21 Court Rule proposals, do we put it before the State
22 Bar to vet these matters?

23 I view it as a very difficult issue because I
24 think that what generally this group does is a very
25 commendable thing, but the difficulty is we cannot

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1 support a proposal that puts us into the field of
2 ideological work, and that's why I would stand in
3 opposition to it.

4 CHAIRPERSON BUIREWEG: Are there any other
5 comments or questions?

6 JUDGE WEBSTER: I would comment on that.

7 CHAIRPERSON BUIREWEG: I was going to say the
8 proponents have the right to close the debate, so feel
9 free, Judge.

10 JUDGE WEBSTER: I just would comment on the
11 proposal for a liaison. That person would not be a
12 voting member of the commission and would not be
13 taking positions with regard to the passage of uniform
14 laws but would be in a position to report back to the

15 state on those laws that had been passed, and if they
16 have an inappropriate ideological bent to them, why of
17 course the State Bar can't do anything about them, but
18 it would be a great assistance to have a liaison
19 between the commission and the State Bar, but there
20 would be no taking of positions by that person.

21 MR. MCCLELLAN: I would just say that I think
22 that's a legitimate concern. We have to be sensitive
23 to the Keller rules, but my perspective is that it's
24 valuable to have a representative of the Bar
25 participate in these and report back to the Bar.

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1 For example, the commission may come up with
2 something that's very important to the Family Law
3 Section, and it would be useful to have the State Bar
4 report to that section. It doesn't mean that we are
5 involving the State Bar at that time in participating
6 in that.

7 So I agree there is a sensitivity there, and
8 I think we have to think through it, but my view was
9 that this would be valuable. For example, we invite
10 the State Bar to come to the Law Revision Commission
11 meetings, and just because it's helpful. In fact,
12 they used to always have the meetings at the State
13 Bar, to have somebody there from the Bar to just be
14 aware of what we are looking at, as part of the State
15 Bar's sort of obligations to keep its member apprised
16 of public policy developments, which I think is
17 different from getting involved, and I am on your side
18 on whether we would be involved in an ideological
19 matter, taking a position in the State Bar, because,

20 you know, that's a pretty important restriction. I do
21 not see this as affecting that, but I think your
22 raising the issue is appropriate, that we need to be
23 careful about that.

24 JUDGE KENT: Wally Kent, 54th circuit. Is
25 there any reason why we couldn't rely upon Judge

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1 webster and others of equal competence as a courtesy
2 to convey and communicate the information to the Bar
3 without having to get involved in this?

4 JUDGE WEBSTER: I am totally unreliable,
5 Wally.

6 JUDGE KENT: Thanks, Bob.

7 MR. MCCLELLAN: The people are all lawyers
8 and it's a matter of whether it's an institution that
9 the Bar wants to try to be involved in the way
10 suggested by this resolution.

11 MS. STANGL: Terri Stangl, 10th circuit. I
12 sort of have a related question. I am curious whether
13 this Bar liaison was seen as an internal arrangement
14 until hopefully the State may fund it, or whether it
15 was seen as something to continue if the commission
16 was fully staffed.

17 JUDGE WEBSTER: With the mechanism of an --
18 and I think I should make it clear that the
19 contemplation is that the liaison would be a senior
20 person who is staffed at the State Bar so that they
21 can come back and work on this stuff, Keller
22 permissive, but I think that it would go on until it
23 was found to be useless. We need this structure.
24 Other states have it also. We have the ABA also with

25 their nonvoting delegates that come in and work with

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1 us on particular bills. But I do think as a matter of
2 structure it would be --

3 MS. STANGL: One final thing. Previously
4 when the commission was fully staffed and funded by
5 the State how, if at all, were those communications
6 handled with the State Bar, or was there really not a
7 structure previously?

8 JUDGE WEBSTER: There was no structure, and I
9 think it was more a matter of direct lobbying into the
10 Legislature, the Law Revision Commission and
11 individual legislators who were members of the
12 commission. There are three right now who are, and
13 they introduce bills, but a lot of the bills just fall
14 by the wayside because they are not individually
15 interested in them.

16 MR. MCCLELLAN: Let me tell you, I know in
17 the earlier years when I first was appointed to the
18 Law Revision Commission two things went on. We had
19 our meetings at the State Bar and Mike Franck always
20 attended. We have been trying to restore that in our
21 revision.

22 Secondly, Tom Downs was chairman of the Law
23 Revision Commission. He was also a commissioner and,
24 as you have noticed, he is a life member of the
25 National Conference. So there was more of an

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1 institutional relationship that the word was
2 transmitted, albeit informally, because Tom would be
3 at the national meeting and then he would come back
4 and chair the meetings with the Law Revision
5 Commission. Mike Franck was there and was, you know,
6 he was able to communicate to those parts of the Bar
7 that needed to know what was going on. So we have
8 lost some of that as things have changed in the last
9 few years.

10 JUDGE WEBSTER: We also had William Pierce
11 who was executive director of the National Commission
12 and worked here in the state also, Professor Pierce.

13 CHAIRPERSON BUIREWEG: Mr. Barton.

14 MR. BARTON: Bruce Barton, 4th circuit. I
15 had the privilege as chairperson of this Assembly to
16 serve on the Board of Commissioners with Judge
17 Webster, and I am going to say this with complete
18 confidence. If he is going to be the liaison we are
19 talking about, there is not going to be a problem with
20 partisan politics, and on the other hand we are going
21 to be very well represented.

22 CHAIRPERSON BUIREWEG: Any other comments or
23 questions?

24 It has been moved and seconded that the State
25 Bar of Michigan Board of Commissioners appoint and pay

1 the expenses of a liaison to attend NCCUSL's annual
2 meetings and report back to the Public Policy and
3 Image Committee and the Chairperson of the

4 Representative Assembly regarding the events of the
5 meeting for further dissemination to the Stare Bar
6 section and committee chairpersons.

7 All those in favor of the motion please say
8 aye.

9 All opposed.

10 Motion carries. Thank you.

11 JUDGE WEBSTER: I want to express my
12 appreciation for your attention to this.

13 CHAIRPERSON BUI TEWEG: Next on the agenda is
14 a proposal regarding the Domestic Relations Court
15 Rules, and here today to present that proposal is John
16 Mills, the immediate past chair of the Family Law
17 Section.

18 Take it away, John.

19 MR. MILLS: Thanks, Lori. Good afternoon. I
20 am torn between listening to Andy Doctoroff and
21 speaking very slowly and deliberately and getting
22 everything said within the two and a half minutes
23 Mr. Larky gave me to present this.

24 This is a proposal on behalf of the Family
25 Law Section to facilitate the entry of the judgment of

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1 divorce where a settlement has been reached prior to
2 the commencement of litigation. Materials are under
3 tab 11 in your packet if you want to take a look at
4 those, or hopefully you already have.

5 Family law cases these days are more often
6 settled than they are tried. Less than one percent of
7 cases on a statewide basis ever actually go to trial.
8 Most of them are settled. In the larger counties,

9 Oakland being one of them, I am told that less than
10 half of one percent go to trial.

11 That means they are being settled, they are
12 being mediated, they are being arbitrated. There is
13 some other alternate dispute mechanism that's being
14 used to get these cases resolved.

15 So ADR is becoming more and more useful in
16 these, and there has been a new movement in ADR called
17 collaborative law, collaborative mediation, where
18 people actually get together well before the case is
19 even filed, sit down, resolve all their issues, come
20 up with a settlement agreement, and they simply need
21 to get into court, get it through the system and get
22 it entered.

23 Right now there is no real mechanism for that
24 in the Court Rules. While ADR has become more popular
25 and more progressive, the Court Rules still anticipate

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1 that someone is going to file as a plaintiff, someone
2 is going to respond as the defendant, they will slug
3 it out for 60 days or 180 days or a year or a year and
4 a half and eventually get divorced.

5 The proposal, therefore, is to recommend
6 amending Court Rule 3.201 to include what we are
7 calling prefiling settlements and then to recommend
8 the adoption of a new court rule, MCR 3.222, to
9 facilitate getting a divorce entered with a minimal
10 amount of court contact and administrative
11 requirements.

12 The key points in the new proposed rule are
13 that it eliminates adversarial language in the

14 pleadings. There is a requirement that a settlement
15 be reached before the case is filed, and the
16 settlement has to be filed with the initial petition
17 for divorce, and a requirement that both parties
18 through the settlement procedure be represented by
19 counsel, and both counsel have to sign off on the
20 settlement and on the petition for divorce. No pro
21 per representation, not under this scenario.

22 Let me tell you what the proposal does not
23 do. It doesn't make divorces easier to obtain. Much
24 of the work required in any divorce is going to take
25 place either after the case is filed or before the

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1 case is filed. More often than not -- well, I
2 shouldn't say more often than not, but in a lot of
3 occasions now a lot of the discovery and a lot of the
4 negotiation and a lot of the actual settlement is
5 taking place before the case is ever filed.

6 If you have seen the new divorce or the new
7 Supreme Court guidelines for resolving divorce cases,
8 DO cases, cases without minor children have to be
9 through the system in 90 days. You don't have to
10 serve the summons until 91 days. Cases involving
11 minor children have to be resolved within 270 days.

12 So you are either going to settle a divorce
13 case on the court's guidelines and deadlines or you
14 are going to settle it on the parties' deadlines,
15 which might allow for perhaps, let's slow things down,
16 see if we can reconcile, let's get this appraisal done
17 right or that valuation done properly so that we can
18 have everything on the table and know what we are

19 doing.

20 Another thing this proposal does not do is it
21 does not eliminate judicial discretion to accept or
22 reject a settlement or make findings in the best
23 interest of the children. Judge still retains all of
24 that ability.

25 Another thing, it does not shorten the time

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1 required to obtain a divorce. The 60-day requirement
2 from date of filing to date of judgment, the earliest
3 date of judgment is jurisdictional. You can't waive
4 that without a statutory change. This does not waive
5 that. There is also a provision for minor children
6 divorces that says you have to wait 180 days. In my
7 experience, and I think it's more the rule than the
8 exception, in the larger counties anyway, that that
9 180 days is routinely waived upon a proper showing
10 down to at least 60 days.

11 The proposal was presented and debated and
12 kind of tweaked by the Family Law Council, the Family
13 Law Section, and they have endorsed it and sent it on
14 to you for consideration. With that as the
15 background, I move for the adoption of the proposed
16 amendment to MCR 3.201 and the adoption of proposed
17 rule MCR 3.222.

18 CHAIRPERSON BUITEWEG: Is there a second?

19 VOICE: Support.

20 CHAIRPERSON BUITEWEG: Discussion?

21 Ms. Radke.

22 MS. RADKE: Victoria Radke from the 47th
23 circuit. John, I just have a question. Why is this

24 only going to be applicable to divorce and separate
25 maintenance agreements? Why didn't the Family Law

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1 Section want to make this applicable to other family
2 law issues like paternities and family supports which
3 could use this procedure as well?

4 MR. MILLS: Well, what we looked at was
5 trying to facilitate a mechanism to eliminate a lot of
6 the administrative problems, specifically where you
7 had pre-filing settlements. Unless it's a brand new
8 support case. I mean, is that what you are talking
9 about?

10 MR. RADKE: Yes.

11 MR. MILLS: A DS case?

12 MR. RADKE: Or a DP.

13 MR. MILLS: I suppose it could apply to that
14 too. We just didn't consider it out that far. We
15 considered it strictly for separate maintenance and
16 divorce actions.

17 MR. RADKE: Might it be better if they
18 included paternities and family supports which fairly
19 often parties who split don't want a divorce or get a
20 separate maintenance and want to support these kids or
21 haven't been married and they want to come to an
22 agreement without having to go through court and they
23 don't want to be labeled as a defendant in a support
24 case.

25 MR. MILLS: We haven't looked at that. I am

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1 told you can bring that proposal in September if you
2 like.

3 MR. RADKE: I guess we are going to have to
4 do that. Thank you.

5 CHAIRPERSON BUIREWEG: Ms. Johnson.

6 MS. JOHNSON: Sheila Johnson, 22nd circuit.
7 I raise in favor of this proposal. I think it's very
8 consistent with the change in culture over the years,
9 that we are encouraging people to reorganize their
10 families on their own without interference from the
11 court, and I think that the way we do it now is an
12 interference. It does cause -- it always causes an
13 edge. As a mediator I know that, you know, if one
14 person files you are already behind zero when you
15 start to mediate that case. When we mediate, we start
16 talking about how you tell the kids until you get to
17 the very end when you need a lawyer to review this,
18 and all through the case we do encourage people to
19 consult lawyers.

20 The one thing I heard from Mr. Mills that
21 does concern me is that you would file the settlement
22 agreement at the time you filed the petition. That
23 would be confidential normally and I am very concerned
24 about that.

25 MR. MILLS: It wouldn't be the settlement

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1 agreement. It would be the judgment.

2 MS. JOHNSON: Right, I would think the

3 judgment of divorce with the petition, is that what
4 you file?

5 MR. MILLS: Yes.

6 MS. JOHNSON: And then the settlement
7 agreement remains confidential.

8 MR. MILLS: Yeah, assuming you have a
9 bifurcated settlement agreement.

10 MS. JOHNSON: And there is Veronique Liem, I
11 also have authority to speak for her as well, another
12 representative from our circuit. She also would rise
13 in favor of this.

14 CHAIRPERSON BUITEWEG: Mr. Miller.

15 MR. MILLER: Randall Miller, 6th circuit.
16 while I am not proud to say that I have now officially
17 been divorced for five weeks, I will say my former
18 spouse and I kind of lived something substantially
19 similar to this. We got together with our attorneys.
20 we had a number of meetings beforehand. We avoided
21 depositions. We avoided court. And the cooperation
22 that went through the process has really carried over
23 into helping raise our kids and to stay in touch that
24 way.

25 I can't say the same is true for everybody

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1 else I know that has been in my situation. So it's a
2 shame this really wasn't before us long before,
3 because I think that this program would be
4 outstanding, and I support it wholly. Thank you.

5 MR. WEINER: Jim Weiner, 6th circuit. While
6 I generally support collaborative law, I don't support
7 this particular reason of it. I have a couple of

8 problems. One, I thought I heard you say that the
9 statutory waiting periods of 60 days and 6 months for
10 children are not waived. In fact, your proposal C --
11 okay, entry of the judgment of divorce waives the 6
12 months for minor children. It does do, so what you
13 said, at least what I thought I heard you say, was in
14 error.

15 I do support collaborative law and I do
16 support and I want to see something workable. I just
17 don't think this one proposal is workable, and so I
18 would like to see some more work on it before it's
19 actually enacted, but, like I said, I generally
20 support collaborative law and I generally support the
21 concept of ADR and communication. I would like to see
22 something like the judgment sets up as a, if there is
23 a judgment in place and it's done, it's set up as a
24 temporary restraining order through a TRO or something
25 -- not a TRO but a temporary order to keep the status

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1 in place during the period, the 60 days or the 90
2 days, and then it's automatically entered if it is not
3 challenged or something like that.

4 I just think that's a better way. That's
5 just me. But, like I say, I do generally support
6 collaborative law and the whole ADR process.

7 MR. MILLS: On the jurisdictional guidelines,
8 I think I said that the 60-day period is still in
9 place, you can't waive that. That's statutory. I
10 think the 180 days is statutory also, and if you go to
11 the middle of that section, we are talking about
12 section H in the proposed 3.222, in the middle of that

13 it says, Cases involving minor children, the court
14 shall find, pursuant to statute, et cetera. May want
15 to change that word "shall" to "may," because I think
16 the court then has the jurisdiction to waive 180 down
17 to 60. Can't waive it below 60.

18 MR. WEINER: I think the issue for me is I
19 would like to see for at least some of my clients that
20 a position with child support and maintenance and
21 being put in place be in place for six months before
22 the divorce is filed, divorce is -- even in areas of
23 collaborative law where parties are getting along,
24 just because I think it might be right for -- I am
25 looking the opposite way where somebody enters into

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1 something and then decides to renig on it.

2 CHAIRPERSON BUITEWEG: As a point of order,
3 we can speak once on a proposal.

4 MR WEINER: Sorry.

5 CHAIRPERSON BUITEWEG: It's okay.

6 Yes, sir.

7 MR. KORTERING: David Kortering from the 14th
8 circuit. Mr. Mills, I have a question about how has
9 this been viewed by the Friend of the Courts in all
10 the counties in Michigan, in other words family court
11 services, when there is children? If you are doing
12 this you are basically bypassing, opting out of the
13 Friend of the Court. Now I know in Muskegon County,
14 even though you want to opt out, you can't do it
15 without a conciliation conference. So how are they
16 going to be receptive of this, doing this before
17 filing? with the uniform orders of support and

18 spousal support orders that are now coming through, I
19 know it's a new time for them --

20 MR. MILLS: Well, we haven't spoken to all
21 the Friends of the Court around the state, but there
22 are Friend of the Court representatives on the Family
23 Law Council who reviewed this, and basically they
24 don't have a problem with it, at least not that was
25 raised in council debate.

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1 what you are doing is you are opting out of
2 all of the administrative stuff because basically you
3 have settled the case. They don't need to get
4 involved if you have settled the case, the supports
5 are within guidelines, all of the other provisions
6 appear to be, you know, in order.

7 MR. KORTERING: So in effect if they were to
8 look at your proposed judgment, and if everything
9 meets the statutory language and their approval, they
10 sign it and then you have no more dealings with them?

11 MR. MILLS: It doesn't require people to opt
12 out of Friend of the Court if that's where you are
13 going with it. They could still stay within the
14 Friend of the Court system. They would still have to
15 move the court to opt out of the system, similar to
16 what they have to do now.

17 MR. KORTERING: Thank you.

18 CHAIRPERSON BUIREWEG: Are there other
19 questions or comments. It has been moved -- I am
20 sorry, yes, sir.

21 MR. LABRE: Bill LaBre, 44rd circuit. I
22 would like to amend the motion to go from "shall" to

23 "may" in the 180-day rule.
24 CHAIRPERSON BUIREWEG: Do you accept the
25 friendly amendment?

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1 MR. MILLS: Yes.

2 CHAIRPERSON BUIREWEG: Is there any
3 discussion on the friendly amendment?

4 VOICE: Second.

5 CHAIRPERSON BUIREWEG: You don't need a
6 second on a friendly amendment. I read the Roberts
7 Rule.

8 It has been moved and seconded to adopt the
9 language in the packet regarding MCR 3.222(B) and --
10 strike that.

11 It has been moved and seconded that
12 MCR 3.222(B) should be added to provide for
13 non-litigious terminology in filings involving
14 pre-settled divorce and separate maintenance cases
15 pursuant to the language set forth in your packet of
16 materials with the exception that the word "shall"
17 under 3.222(B)(8) on the sixth line be changed to
18 "may."

19 All those in favor of the proposal or the
20 motion say aye.

21 All opposed.

22 Motion carries.

23 we are on our last proposal, and this one
24 pertains to real estate, and we have here today to
25 present this proposal regarding the gap between --

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1 MR. MILLS: I am told we didn't do 3.201.

2 CHAIRPERSON BUIREWEG: I am sorry. Thank
3 you. There are actually three motions. My apologies.

4 There are actually three proposals before
5 you. One is pertaining to 3.201. The one we just
6 voted upon is 3.222(B). The third one is 3.222(C-K).

7 So, John, if I could have you make your
8 motion on 3.201, we will vote on that.

9 MR. MILLS: I move that 3.201 should be
10 amended to include procedures that apply specifically
11 to attorney-approved divorce and separate maintenance
12 agreements that are signed before the divorce or
13 separate maintenance case is filed.

14 VOICE: Second.

15 CHAIRPERSON BUIREWEG: Any discussion?

16 All those in favor say aye.

17 All those opposed say no.

18 Motion carries.

19 And now we will go to 3.222(C) through (K).

20 MR. MILLS: I move that MCR 3.222 Sections C
21 through K should be added to provide for an
22 applicable, streamlined approach to entry of judgments
23 in filings involving pre-settled divorces and separate
24 maintenance cases.

25 CHAIRPERSON BUIREWEG: Second?

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1 VOICE: Support.

2 CHAIRPERSON BUIREWEG: Is there any
3 discussion?
4 MR. RADKE: I believe that the language
5 that's in this section should also be changed "shall"
6 to "may," the court may waive the waiting period.
7 CHAIRPERSON BUIREWEG: And the proponent has
8 stated that you are correct on that. Any other
9 questions or discussions?
10 with that amendment from "shall" to "may,"
11 all those in favor of the motion say aye.
12 All those opposed.
13 Motion carries.
14 Now I will plow right along and thank you all
15 for bringing that to my attention.
16 Our next proposal is regarding real estate,
17 and David Charron, the chairperson of the Real
18 Property Law Section, I believe is here, Mr. Charron,
19 to present this proposal, or not. Well, it's quite
20 possible that Mr. Charron didn't get notice of the
21 revised calendar, because of the timing of it, and he
22 may be expecting this matter to be on the agenda later
23 today.
24 VOICE: It's only five minutes away.
25 CHAIRPERSON BUIREWEG: The revised had it at

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1 2:05. The original agenda had it at 3:05, so he is
2 probably planning on being here by 3.

3 If there are no objections, we will move
4 forward to the presentation of Diane Akers regarding
5 the compelled waiver of attorney-client privilege in
6 criminal investigation and proceedings. Diane,

7 welcome.

8 MS. AKERS: Thank you. Good afternoon,
9 everybody, and thank you for giving me a few minutes
10 to make a presentation to you today.

11 You have a written informational report in
12 your materials, and I will be back here in September,
13 and at that point I will be asking this group to
14 perhaps take some action based on recommendations that
15 we may make.

16 I am here today to say a few words about what
17 is the hottest topic that everybody is talking about
18 that's actually been around for a number of years, and
19 very few people seem to have been talking about it or
20 at least it was sort of isolated in a few particular
21 areas.

22 The compelled or coerced waiver of
23 attorney-client privilege, some people phrase it that
24 way. Federal governmental officers often object to
25 phrasing it that way. Here is what it really means

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1 when you hear about compelled or coerced waiver.

2 Beginning actually as far back as 1999, but
3 in particular 2003, Larry D. Thompson, then Deputy
4 Attorney General, issued a memo to all U.S.
5 prosecutors on the issue of cooperation of businesses
6 in an investigation. List a number of factors, and a
7 few of those factors are whether the business agrees
8 in advance to waive its attorney-client privilege,
9 turn over to the government whatever information it
10 has that would otherwise be privileged.

11 Another aspect of cooperation is when the

12 corporation has a policy of providing legal
13 representation to its senior executives in an
14 investigation. The Department of Justice began
15 wanting the corporations to refuse to pay the legal
16 representation.

17 The penalty for not agreeing to waive the
18 privilege is you are more likely to be charged with a
19 crime and you may be charged with a more serious crime
20 than if you had not waived your privilege.

21 This has led to what some people call a
22 culture of waiver, and right now the requests for
23 demands for waivers are going on beyond federal
24 criminal investigations. The SEC is also requesting
25 waivers. The IRS has begun to take the position when

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1 it's auditing a business you must waive your privilege
2 in order to be considered cooperating with the IRS.
3 HUD has recently issued a policy that local public
4 housing authorities that are supposed to be
5 independent of HUD and are creatures of state law,
6 when they retain counsel for the authority, HUD has
7 taken the position they must also waive their
8 attorney-client privilege as a condition of being one
9 of these public housing authorities.

10 Now, for the last several years there has
11 been national debate over the subject, but as near as
12 I can tell, first of all, I am a commercial litigator,
13 I wasn't aware of it. Many people that I work with
14 weren't aware of it, and, in fact, it seems that the
15 debate mostly took place among criminal defense
16 lawyers who were obviously concerned. They are

17 representing the businesses in the criminal
18 proceedings. Also federal prosecutors and judges.

19 In 2004 the ABA got involved in this issue
20 and created a task force which has been very active,
21 taken a number of positions, done a number of papers,
22 and in late 2005 John Allen, who is the co-chair of
23 the task force with me -- and by the way, John extends
24 his regrets. I am sure many of you know John. His
25 daughter is graduating from college today, and so, you

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1 know, go figure. He decided to go to his daughter's
2 graduation.

3 At any rate, in late 2005 John Allen, who is
4 a liaison to the ABA task force, sent some information
5 about this to the State Bar, who immediately turned it
6 around and sent it to the Business Law Section. I am
7 an officer of the Business Law Section, and so this
8 came to me to take a look at, did I know anything
9 about this, and when I read what was going on with
10 businesses and compelled waivers, I have to admit I
11 was quite taken aback. One, that I didn't know this
12 and, two, that it had been going on so long and how
13 did I miss it. Had I been asleep or exactly what?

14 The Business Law Section, Chairman Eric Clark
15 and I, sent a letter to our president, Tom Cranmer,
16 who was already certainly aware are of these issues,
17 given his background, and we asked Tom whether
18 Michigan would create a task force to address these
19 issues, and I have to say I am so grateful to Tom, he
20 responded literally within a matter of an hour or two,
21 creating the task force, and since that time we have

22 been very busy putting the task force together.
23 we do have some representatives here today.
24 Sam Damren has come in for the meeting solely to be
25 able to answer questions you may have. Dawn Evans is

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1 here I know and has been involved in the task force.
2 we have a number of others, and we have been doing
3 quite a bit of work in quite a short time.

4 The task force has several purposes listed in
5 your materials. In part our goal is to inform members
6 of the Bar and businesses to the extent that they may
7 not already be aware of these developments in the law.

8 we are also going to gather information. we
9 are going to coordinate with other entities doing
10 something similar, and we are going to be back to make
11 a report to you in September, and our intent is to
12 make a proposal and request that you take a position.

13 I do want to take just a couple of minutes to
14 address the issue of what's the big deal? Some of the
15 federal prosecutors say, oh, you lawyers, chicken
16 little's, big deal. Nothing that's going on is
17 nothing more than criminal investigations, and
18 besides, you people are just trying to protect a bunch
19 of criminals, and, therefore, who cares.

20 well, two fold, one, I think we all care
21 about the rights of everyone confronting the legal
22 system, but let me also tell you what makes me care so
23 much about this in my own private practice.

24 I am entirely a commercial litigator. I am
25 with Bodwin, which means I do a lot of litigation with

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1 banks. what I am going to tell you is true. I have
2 condensed, and I am not going to give you identities.
3 This is not all one incident, but the features of it
4 all are true.

5 Bank groups sometimes affiliate and make
6 large loans to businesses, and there is one where
7 multi businesses were doing a food type product and
8 they borrowed many millions of dollars from the bank
9 group. They were planning to expand into many
10 different states, and so they needed a lot of
11 financing, and in this particular case the financing
12 was asset based, meaning it's basically secured by
13 accounts receivable. It's not secured by real
14 property or guarantees or other things that banks feel
15 much more comfortable with.

16 And things with the loan, there were some
17 bumps along the way, just like there always are when a
18 business is trying to expand, you know. They should
19 have gotten their collateral report in on Friday, but
20 they didn't, so they got it in on Tuesday instead.
21 These things happen, and banks don't call the loan the
22 first time a report doesn't show up when it's due.

23 But over time things were looking funny with
24 this. They weren't going right and they weren't
25 getting the right information, so the bank did exactly

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1 what we want a business to do, particularly in these
2 post-Enron days, which is the bank retained counsel
3 and said, Tell us what's going on here, get to the
4 bottom of this. Maybe it's okay, but things are kind
5 of smelly.

6 And so the law firm did the thing it should
7 do, which is it hired forensic accountants, and the
8 charge was you do a thorough and searching and brutal
9 evaluation of what's going on here at this bank, and,
10 if you find that there are weaknesses in our controls,
11 tell that to us so that we can make amends, and that's
12 exactly what happened is there was a thorough and
13 brutal report prepared that detailed every time a form
14 wasn't filed on time and every single solitary time
15 something in the manual wasn't done exactly the way it
16 was supposed to have been done. I mean, you can
17 envision what a report would look like on any
18 business. All businesses have bumps and so on.

19 well, ultimately this did turn out to be
20 massive criminal fraud. There have now been criminal
21 convictions of people, and they bilked millions and
22 millions of dollars out of these banks and out of
23 others as well, and when the feds began investigating
24 the crime, crimes, they contacted me, as did SEC
25 lawyers, because they wanted to know what information

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1 my bank had about these loan transactions and what was
2 really going on, and what I did is said to them, well,
3 I will give you the nonprivileged information. I do
4 have information that is within the scope of the
5 subpoena; however, it's privileged, and I am pleased

6 to say that in those instances the prosecutors that I
7 dealt with said in each case, Okay, don't give me your
8 privileged report for now, just give me your
9 unprivileged material, and if I need to I am going to
10 come back to you later. And I will say that they
11 never did come back to me, and so I never had to
12 actually get into a battle.

13 Now, here is what is really the big deal to
14 me, a commercial litigator, especially here in the 6th
15 circuit. If you give privileged information to the
16 government in an investigation, that is deemed to be a
17 waiver of the privilege as to all parties and for all
18 purposes. Therefore, if I had turned that report over
19 to the feds, it would no longer be privileged, and
20 that's pretty clearly established. The circuits are
21 somewhat different, but in the 6th circuit that is
22 well established.

23 Here is the next thing that happened. My
24 client, the bank, made a claim on its insurance
25 policy, and the underwriters wanted to know whether my

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1 bank followed all of its various procedures or
2 basically screwed this loan up and shouldn't, for that
3 reason, be able to collect on the insurance policy,
4 plus the insured, as you well know, has a duty to
5 cooperate with the insurer when the insurer is
6 conducting an investigation related to a claim.

7 Now, I said to the insurance company, I have
8 a report and it's privileged, and given that you keep
9 telling me ever other day you are reserving your
10 rights, we are adverse enough, that I am not going to

11 turn that privileged report over to you, but I can
12 tell you right now, if I had given it to the
13 government, even if the government had agreed in
14 writing that this was confidential, I only turned it
15 over for the purpose of cooperating with an
16 investigation, and the prosecutor even agrees this
17 can't be used for any other purpose, unenforceable
18 agreement. Therefore, I would have had to give it to
19 the insurance company.

20 Now, I guess you could say, well, if it's the
21 truth it's the truth and shouldn't the insurer see it?
22 well, as a litigator I know what can be done with long
23 lists of things that maybe each individual item isn't
24 particularly important, but all together they create a
25 picture, and I guarantee we would have had no end to

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1 fighting and probably litigation with the insurance
2 company if I had to turn the report over.

3 Now, the next thing that happens is the other
4 banks in that group who have also lost millions of
5 dollars want to know, Hey, agent bank, just exactly
6 how carefully were you keeping track of what reports
7 were being submitted and whether dollar figures were
8 matching up? And should there -- there wasn't.
9 Should there have been litigation? Bank group versus
10 my client, the agent bank, and I have a report of
11 every single solitary thing, people who have inside
12 knowledge and who were look looking for trouble came
13 up with. what would have happened in litigation? And
14 I could go on generating and add an employee who was
15 named in the investigation in the attorney's notes

16 then gets fired and sues, and now that employee wants
17 to know what did my boss say about me everywhere.

18 There is no end to the hypotheticals that I
19 could come up with, and the point here is my client
20 was not being criminally investigated. I am sure
21 prosecutors keep an open mind about these things, but
22 my client was the victim. My client was not the
23 criminal, so to speak, that people say, well, you are
24 just trying to protect criminals.

25 No, my client was eager to cooperate with the

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1 officials. My client wanted to recover what money
2 could be recovered.

3 Plus they were taken for a ride. They wanted
4 these people convicted, and so it's people like my
5 client who, number one, as a responsible business
6 undertook an investigation that was very thorough and
7 was very expensive and that was designed to lead to
8 what problems are there, just what we want the client
9 to do, and look at the number of ways that that could
10 have come back against my client and I suppose, if I
11 had waived it, still could.

12 That's the problem that gets me excited is
13 not just protecting people in a criminal investigation
14 but also protecting everyone who is involved in an
15 investigation.

16 Now, there is a lot going on right now. You
17 may be reading about things in the news. Here is just
18 a brief summary of what you will be seeing if you
19 haven't noticed it already. There is a trial going on
20 right now in New York. You may have read about it in

21 the New York Times, Wall Street Journal. These issues
22 are getting coverage in publications of general
23 interest.

24 There is a trial right now. KPMG is on trial
25 in New York on allegations that some of its

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1 representatives created illegal tax shelters, and the
2 prosecution in the investigation strongly urged KPMG
3 not to follow its policy of providing representation
4 for its executives who were implicated, and so that's
5 what it did, partly presumably to avoid indictment
6 itself. And right now there is briefing going on.
7 There will be a hearing on May 8th, and what the judge
8 will decide is whether the Thompson memo when it
9 encourages people, encourages businesses to cut off
10 your executives, whether that is unconstitutional,
11 improperly interfering with their right to counsel.

12 The briefs are being submitted this coming
13 week. Argument is on May the 8th.

14 Other states are forming coalitions, and the
15 Michigan group has been particularly active, and I
16 would like to invite all of you, if you haven't gotten
17 the invitation yet, we are having a program on May the
18 10th, and this will be a panel discussion, and,
19 believe me, I think this is going to be extremely
20 interesting. This is being located in Livonia,
21 Michigan. We put it someplace that if you are coming
22 from the center of the state, west side of the state,
23 wherever, you have got easy access to expressways.

24 This will partly be presentations, and we
25 have a federal judge. We have a representative of

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1 both the United States Attorney's Office, in fact the
2 United States Attorney, Steve Murphy, is on the panel,
3 and he is also bringing in someone from Maine justice
4 from the Department of Justice in Washington, and of
5 course we know what their policy is. They will be
6 talking about their policy. Judge Borman, federal
7 district court in Detroit, will be talking about the
8 view from the bench.

9 we are also bringing in Stephanie Martz from
10 Washington, D.C. Stephanie works for the National
11 Association of Criminal Defense Lawyers. She is very
12 outspoken and very active. And, Sam and Dawn, you
13 have seen some of the e-mail chains that have been
14 going around as our group has been discussing the
15 topic. This is going to be a very lively, interesting
16 discussion, and we do have some other inhouse counsel,
17 for example, on the panel and other representatives.

18 I believe that if you haven't seen it yet,
19 the invitation will be posted on the State Bar's
20 website on Monday. We have capacity for a lot of
21 people, but I have to tell you I am absolutely shocked
22 at the amount of interest that there is out there in
23 the community, and so I don't know this group, many of
24 you may well have already been tuned into this all
25 along. Maybe some of you it's new too, and so Sam and

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1 I are both here happy to answer any questions that you
2 might have in anticipation of our coming back in a few
3 months and asking you for something.

4 Does anybody have any questions, things you
5 would like me to address? Thanks very much for your
6 time, and thanks all of you to for listening to this;
7 Tom, for helping us out so much; State Bar staff,
8 Lori, everybody for helping us out. We really care a
9 lot and we think this is important. Thanks very much
10 (Applause.)

11 CHAIRPERSON BUI TEWEG: We look forward to
12 seeing you back in September.

13 We will return now to item number 14 on the
14 agenda, which is the consideration of the proposed
15 resolution regarding the gap between filing and
16 recording of deeds. David Charron is here. There he
17 is. Dave, chair of the Real Property Law Section, is
18 going to present this proposal.

19 Take it away, Dave.

20 MR. CHARRON: Thank you. Greetings. My name
21 is Dave Charron. I am here on behalf of the 3400
22 member Real Property Law Section of the State Bar. We
23 are asking your assistance with a problem matter we
24 are experiencing all across the state of Michigan
25 involving what's commonly referred to as the gap

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1 period. It's also referred to as the missing books of
2 entry.

3 Basically when either you or I go to record a
4 document with our local register of deeds, a deed or a

5 mortgage, you go to the counter, you pay a fee, you
6 present the document, and you hand the document over
7 to the register of deed's clerk who is present. Under
8 a 1846 statute, that document is supposed to be
9 reviewed and then logged into something called a
10 reception book or a book of entry temporarily until it
11 can be permanently indexed and assigned a libre and
12 page number at a later time.

13 The reality in the state of Michigan is that
14 most of the counties are not keeping books of entry.
15 So what that means is the document which is delivered
16 to the register of deeds's office is in the possession
17 of the register of deeds for hours, days, if you are
18 in Wayne County months, before it is searchable,
19 before it's of record with the county.

20 So when we speak about a gap, we are talking
21 about the moment in time from the date and time that
22 document is delivered, a fee is paid to record it
23 until the time someone can search it and it's in a
24 record that's searchable, it's logged in, it's
25 assigned a date, a time, that it's recorded.

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1 what we are finding all across the state, and
2 unfortunately if you are in Wayne County you have the
3 worst situation, bad things are happening in the gap
4 period. we have people selling the same piece of
5 property several times. we have people borrowing and
6 pledging mortgages on the same piece of property on
7 the same day or at any time during that gap period.
8 Title companies can't search. we have had instances
9 with troubles with construction liens knowing whether

10 or not a document was actually recorded. We have had
11 some direction from the Supreme Court with respect to
12 construction liens. We have a holding that says
13 basically the 90-day period that applies to a
14 construction lien is satisfied when you drop the
15 document off to the register of deeds and pay the fee.

16 We don't have a similar holding with respect
17 to all the other type of documents that are involved
18 in the state of Michigan that are processed through
19 the register of deeds office.

20 Another problem we are experiencing is that,
21 quite frankly, these bags of documents or boxes of
22 documents that are sitting around are getting
23 reshuffled during the gap period, either intentionally
24 or by unscrupulous employees shifting priorities of
25 these documents. Erase notice dates. The register of

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1 deeds is supposed to be keeping track of who wins the
2 race. That is being distorted because there is no one
3 keeping this book of entry that's a 150 year old law
4 is being ignored, and bad things are happening.

5 At the present time, as of last Tuesday, we
6 have 96 bankruptcy cases in the state of Michigan
7 which are being certified to the Michigan Supreme
8 Court on the question if a register of deeds never
9 keeps a book of entry is the document -- is the
10 mortgage considered recorded? If you look at our
11 statutes, the act of recording occurs when the
12 register logs in that document the day you bring it
13 in, the day you pay your fee. If they don't do that
14 per the statute, is that document ever recorded?

15 Bankruptcy trustees, bankruptcy attorneys are
16 swarming all over this, and they are seeking, quite
17 frankly, to set aside those mortgages which never got
18 put into that book of entry which was never kept.

19 So bottom line is we have some issues. We
20 have been working -- I met last week with the Michigan
21 Association of Register of Deeds about the problem.
22 It's a well-known problem, that the Michigan Supreme
23 Court was taking Wayne County under its wing for about
24 two years monitoring on a quarterly basis their
25 progress in getting up to speed. I am pleased to

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1 report that there is no longer a 6 month or a 90 day
2 gap in Wayne County. They are down to 60 days, but 60
3 days is still too long. Michigan law does not allow
4 any gap.

5 So we are here today to seek your support in
6 helping us basically enforce a 150 year old law.
7 Until the law is changed, and we are working on a
8 change that will incorporate the latest technology,
9 but until then we have to live with what we know, and
10 the old law works. I guess that's the bottom line.
11 If they would just follow it, we would have someone
12 keeping track of who won the race, we would have a
13 searchable index so there wouldn't be fraud or
14 employee misconduct, and then eventually the document
15 will be permanently indexed and all will be well.
16 That's why I am here today. If you have any
17 questions, I would like to handle them.

18 CHAIRPERSON BUIREWEG: Do you want to go
19 ahead and make a motion, Dave?

20 MR. CHARRON: For this reason the Real
21 Property Law Section is requesting that the State Bar
22 of Michigan should support enforcement of the
23 statutory requirement that county registers of deed
24 maintain entry books pursuant to MCL 565.24.
25 CHAIRPERSON BUIREWEG: Is there a second?

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1 VOICE: Second.
2 CHAIRPERSON BUIREWEG: Any discussion?
3 Mr. Larky.
4 MR. LARKY: Madam Chairman, Sheldon Larky,
5 6th circuit.
6 We have a two-page letter from Lori Wilson,
7 president of the Michigan Association of Register of
8 Deeds. If there was ever a time that we could do good
9 PR work, this might be the time. My suggestion is
10 that we vote down the motion or table it, because this
11 woman and the association is reaching out to us for
12 our assistance, and rather than for us to shove it
13 down their throat a statute that's been on the books
14 and all of us have lived with, albeit unhappily, this
15 may be the time for good PR for our association.
16 So my suggestion is that we vote no on this
17 proposal and take the advantage of meeting with the
18 association.
19 CHAIRPERSON BUIREWEG: Mr. Gear
20 MR. GEAR: John Gear, 30th circuit. I just
21 have two questions. How does this differ from asking
22 for injunction to follow the law, which I always
23 thought would never issue, and if I show up and I try
24 to record one of these and I say, Okay, are you going

25 to enter this now, and they say, well, it's in the

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1 pile, am I entitled to a bring an action for mandamus
2 and say, No, the law says clerical function, you know
3 you have to put a date and time of entry on this right
4 now or not? You know, can I get a mandamus to make
5 the court do their job?

6 MR. CHARRON: You should be able to get a
7 mandamus to make the clerk do their job, that's
8 correct.

9 MR. GEAR: So what do I need this for?

10 MS. LARSEN: Suzanne Larsen, 25th circuit.
11 I have a question regarding these entry books. would
12 this proposal support computerized entry books?

13 MR. CHARRON: At the present time entry books
14 may be computerized. They are just not existing in
15 many areas, computerized or written.

16 MS. LARSEN: Do you have any idea across the
17 state how many of the counties are currently complying
18 with the law, whether it's computerized or paper entry
19 books, versus how many aren't?

20 MR. CHARRON: We have estimates from the
21 title companies that most counties are not. They are
22 just going directly to the permanent index. When you
23 come into the register of deeds office you leave your
24 document. It's just sitting there waiting to go into
25 the permanent index. There is no temporary index that

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1 makes it searchable or that logs in the time, date,
 2 minute it's received.

3 MS. LARSEN: I guess I just want to make sure
 4 I understand this, but if a document is received,
 5 it's, for example, immediately scanned or immediately
 6 time date stamped with a document number, scanned into
 7 the system but just not indexed, is that complying
 8 with the entry book, or only if there is a separate
 9 index?

10 MR. CHARRON: It could comply with the entry
 11 book requirement.

12 MS. LARSEN: Thank you.

13 CHAIRPERSON BUITEWEG: Judge Kent.

14 JUDGE KENT: Wally Kent, 54th circuit.
 15 Mr. Charron describes what is definitely a problem
 16 statewide. I have no quarrel with that. However,
 17 this is not a fight for the State Bar to enter into, I
 18 don't believe. The Bar, as such, is not an aggrieved
 19 party, should not take a position in the matter. We
 20 are not an interested party. In fact this is a
 21 potential Keller issue, I think. I am not that
 22 familiar with the Keller requirements, but I suspect
 23 that it at least could be argued.

24 The parties in interest are the banks, the
 25 title companies, the property owners. They should

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1 pursue their remedies in the courts and in the
 2 Legislature, but the Bar should not take a position.
 3 we don't have a dog in the fight. we should stay out

4 of the fight.

5 CHAIRPERSON BUIREWEG: Are there any other
6 comments or questions from the membership?

7 MR. GOBBO: Steve Gobbo from the 30th
8 circuit. Following the judge's comments, I would
9 equally kind of just echo some of those comments in
10 the sense that we as lawyers took an oath to uphold
11 the laws, constitution of this state and the United
12 States, and I find it kind of ironic that we are
13 sitting here taking on a policy basis basically that
14 premise that we are going to try to uphold the laws.

15 I don't know if it would be appropriate for
16 this body to take a policy position on something that
17 I think we all agree that the laws of the state should
18 be enforced. So I would argue that there may be other
19 methods of trying to work through this and that might
20 be trying to work with this association to see if
21 there was some potential for law revisions or the like
22 that would better address the situation.

23 CHAIRPERSON BUIREWEG: Other comments or
24 questions? Yes, sir.

25 MR. MORGAN: Don Morgan, 3rd circuit.

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1 For many years, perhaps that's why I have
2 some of my white hair, the workings of the register of
3 deeds at Wayne County have been a joke. I find it
4 amazing that a statute 140, 150, 160 years old for the
5 State Bar to say, not that they are going to file for
6 a writ of mandamus, superintending control or anything
7 else, they are going to seek the enforcement of that
8 statute that somehow that's a Keller issue and somehow

9 we have no dog in the fight when it's individuals who
10 own pieces of property, it's individuals who give us
11 their deeds to record, trusting that we are going to
12 make sure they get good title.

13 I find that if there is an issue that the
14 State Bar of Michigan needs to be involved in and not
15 leave it to the title companies and not leave it to
16 the register of deeds, some of whom are obviously
17 incompetent, it's this issue.

18 As I understand your request, it isn't for
19 you to be the white knight; it is only for you to have
20 the authority of the State Bar to see that a statute
21 is enforced for the rights of the public. I intend to
22 vote yes. Thank you.

23 CHAIRPERSON BUITEWEG: Ms. Valentine.

24 MS. VALENTINE: Victoria Valentine, 6th
25 circuit.

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1 My question is how does your proposal address
2 the issue in this letter from Lori Wilson with regard
3 to the mail problem? I think the concern is if things
4 come in the mail how do you determine the priority of
5 what is entered first? What's on the top, what's on
6 the counter first, what the postmark date is, and how
7 does this address this issue?

8 MR. CHARRON: This does not address that
9 issue. The current statute does not address the
10 issue. Hopefully proposed legislation will deal with
11 how do you treat mail and how do you treat Fed Ex
12 packages, all of those other forms of delivery to the
13 office.

14 Right now we have individual register of
15 deeds making decisions on a county by county basis as
16 to what priority they give things received in the mail
17 or hand deliver or Fed Ex, and there is absolutely no
18 guidance in the statute.

19 MS. VALENTINE: Do with we need further
20 legislation on this perhaps?

21 MR. CHARRON: Yes, and that is what is going
22 to occur. It's working right now. We have a
23 five-person group at the Real Property Law Section
24 that's begun the process of addressing this issue.

25 MS. VALENTINE: Thank you.

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1 CHAIRPERSON BUITEWEG: Mr. Miller.

2 MR. MILLER: Randall Miller, 6th circuit. As
3 one who owns a title company, I can assure you that as
4 of Thursday they are not two months behind, they are
5 four months behind. That's 121 days. Second of all,
6 and with all due respect to the judge, because I
7 certainly agree, and I thought about it, we are only
8 saying that the law should be enforced. We are not
9 taking a position beforehand. It's simply a letter
10 basically saying, Hey, this is out there, somebody
11 should do something about it.

12 I completely agree with Don and what he said,
13 and I fully support this as one who has to deal with
14 this all the time. This is a major problem in our
15 state. Thank you.

16 CHAIRPERSON BUITEWEG: Are there other
17 comments or questions from the membership?
18 Mr. Barton.

19 MR. BARTON: Bruce Barton, 4th circuit. I
20 agree, one, that we should not take on the register of
21 deeds. In view of that letter, we ought to give it
22 some consideration at least. I agree, however, that
23 we should not adopt something that could be
24 interpreted to say that we should not support
25 enforcement of laws. For that reason I move that we

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1 table and go home.

2 VOICE: Support.

3 CHAIRPERSON BUITEWEG: Also no debate on the
4 motion to table.

5 And so all those in favor of the motion to
6 table say yes.

7 All those opposed say no.

8 Okay. The motion to table carries. And we
9 will table this matter.

10 The last item on our agenda pertains to
11 something which I know that, I know that Tom Cranmer
12 gets asked a lot of questions about it as he goes
13 around the state talking to local bars, because I have
14 been there a few times with him when it's been asked
15 about electronic filing in the state of Michigan.

16 Many of our constituents and we ourselves
17 want to know what's the state of this process at this
18 point in Michigan? Are we going to have it? Is it
19 going to be mandatory? What is coming down the pike
20 so that we can be ready, and here to tell us what the
21 state of e-filing is Janet Welch, general counsel for
22 the State Bar, and Hannah Watkins from the Michigan
23 Court of Appeals. Welcome, Janet and Hannah.

24 MS. WELCH: Thank you, Lori. I am Janet
25 Welch, and I am pleased to be here with Hannah Watson,

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1 who is right at the center of the activity in the
2 Court of Appeals on e-filing, and I think you will all
3 be pleased to hear that we spoke with her earlier in
4 the week and we looked at the time we had and we
5 decided to cut it in half, and then when I heard the
6 motion this morning, I said, well, we can cut it in
7 half again. So I think that's what we are going to
8 do.

9 I am going to tell you a little bit about
10 developments which are both interesting and I think
11 good news in terms of what the Representative Assembly
12 has told the Supreme Court about what they want in
13 terms of e-filing.

14 The interesting news is that the Supreme
15 Court for many years has been supporting, through
16 technology and budget, e-filing projects throughout
17 the state. And that is compatible with what the State
18 Bar has been asking them to do. We have been saying
19 lawyers want this, we want the ability to have the
20 convenience and the cost savings of e-filing.

21 In March of this year the court through its
22 budget indicated that they are no longer going to
23 provide funding support for e-filing projects. There
24 are two reasons. The first reason, which is
25 interesting for us and it's a challenge for us, is

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1 that in the jurisdictions where there were e-filing
2 projects -- I am talking about Ottawa County,
3 Eastpoint, to some extent Washtenaw County, and the
4 new project in Oakland County -- the response of the
5 lawyers in those jurisdictions was really
6 underwhelming, sort of like they were building it and
7 we didn't come, which puts us in a little bit of an
8 awkward situation. It's sort of like, you know, the
9 tenants go to the landlord and say build an elevator
10 because we are tired of taking the stairs, and the
11 elevator gets opened and people keep taking the
12 stairs.

13 So I guess my message for you is, as this
14 progresses, use it and encourage people to use it. We
15 have told them we want it, and we have to prove it.

16 The reason this isn't bad news is that as the
17 court has been doing these e-filing projects over the
18 years, at the same time commercial vendors have begun
19 to offer the service of e-filing, and we now have
20 states in this country who have e-filing in pretty
21 extensively throughout their court system through
22 commercial vendors, and there are enough commercial
23 vendors right now that are competing with a product
24 that it looks like it will be a cost effective way for
25 e-filing to be available to courts and to lawyers

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1 through commercial vendors, and that's the direction
2 that we are going in. It looks like a paradigm shift.

3 The court is looking to the State Bar and to
4 partner with the Supreme Court and the judicial branch
5 to put together sort of an informal consortium of
6 folks who are interested in e-filing, and the
7 consortium will serve as a clearinghouse of proposals
8 of present information, and right now we are putting
9 together language that will describe that consortium.
10 So we are at the center of activity. It's not dead.
11 It's actually moving forward. That's a positive
12 development.

13 The Supreme Court also has a technology
14 advisory group, one of whose task is to come up with
15 e-filing court rules, and that project has just come
16 out of the subcommittee of the tag group and is before
17 the bigger group. So there is a draft out there.

18 The good news is that it has within it the
19 proposal that this Assembly adopted last September to
20 provide for voluntary service, e-service between
21 lawyers by e-mail, and there was enthusiasm on
22 everybody's part about that proposal.

23 Even better news is that there is an internal
24 agreement not to hold that particular piece of the
25 e-filing court rules hostage. It looks like that's

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1 going to move ahead, so I have good news to report on
2 that front.

3 Obviously this is an area that changes every
4 month, but we think it's moving in the right
5 direction, and your guidance last September has really
6 helped that along.

7 I am going to turn this over to Hannah now,

8 because she has more of the hands-on story about
9 what's happening in the Court of Appeals, and I think
10 that's good news too.

11 MS. WATKINS: Hello. Thank you for inviting
12 me.

13 I am Hannah Watson. I am the manager of the
14 Lansing district clerk's office. The Court of Appeals
15 has participated in the Supreme Court pilot project.
16 We began doing e-filing through that venue in June of
17 2005, so we have just under a year's worth of
18 experience.

19 We started with just MPSC cases for a number
20 of reasons. One is MPSC has e-filing, and so we were
21 going to work with a bunch of attorneys and their
22 staffs who have experienced e-filing already, and it's
23 a small group of people and very concentrated in the
24 Lansing area, and even though, as Janet mentioned, the
25 response was pretty underwhelming across the state and

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1 in all of the courts, actually in the Court of Appeals
2 it was pretty successful. We had 440 documents filed
3 in 35 cases in these ten months or so.

4 MPSC would probably have only about 20 cases
5 open at any one time. So when you say 440 documents
6 were filed, we had pretty good luck.

7 However, the Supreme Court is going to
8 discontinue it in September 2006.

9 I have a few additional reasons of why they
10 are going to do that. I thought that that e-filing
11 system was pretty clunky. It was a complicated look,
12 complicated to navigate. The portal size was too

13 small. It was only five megabytes. MPSC has large
14 briefs, lots of appendices, and they would have to
15 break up their briefs into sometimes three and four
16 transmissions in order to get it through. There was
17 no e-service. So those were some other reasons why,
18 even though the MPSC has been great, the attorneys
19 have been great in cooperating with us, they are not
20 sorry to see it go.

21 what I want you to know is that the Court of
22 Appeals is very, very committed to e-filing and
23 e-service, and we are going ahead on our own. We have
24 had several vendor presentations in which State Bar
25 representatives have been present, Mr. Horsch,

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1 Mr. Cranmer I believe, Joe Firestone and some other
2 attorneys have been a part of it. They will continue
3 to be a part of it.

4 I believe we are very close to approaching a
5 vendor to try to work out a contract or an agreement
6 to begin e-filing again. Chief Judge Whitbeck is
7 committed to having e-filing up and running in our
8 court by the end of the year. I personally believe
9 that it will be before that.

10 when I say we are committed, I mean everyone
11 from the chief judge to the chief clerk to our IT
12 staff to even folks like me. We are also committed to
13 try to find a system that will be hopefully easier and
14 more helpful for you all to use and your staffs to use
15 and that we can be available as a resource for other
16 courts.

17 I would just like to note that I think

18 evidence of our commitment to e-filing and going
19 forward with it is evidenced in a lot of the things
20 that we do already online. We have our website .
21 Internally we have, for example, our guilty plea
22 cases. We have our transcripts scanned and attached
23 to our docket events so that the judges don't get
24 paper transcripts anymore. Our research reports
25 internally are being downloaded to the judges

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1 electronically, no paper anymore.

2 Hopefully you have seen that opinions and
3 orders are available to you that can be e-filed to you
4 if you like. We have case inquiries optioned out on
5 the website, case call schedule, interactive forms,
6 all of these -- I brought some brochures with me today
7 in case you are not familiar with what we are doing,
8 and I will lay them on the table out there for you if
9 you want to pick one up.

10 I guess what I am saying is that the Court of
11 Appeals has always been committed to using its limited
12 resources to do as much as we can technologically, and
13 we will be doing that with e-filing, and we are going
14 to go ahead with it and have it up and running just as
15 soon as we can. Thank you.

16 (Applause.)

17 CHAIRPERSON BUITEWEG: A couple of
18 announcements and housekeeping issues. Petitions for
19 membership on the Representative Assembly are due on
20 Monday. If your term expires in the September of 2006
21 meeting, please make sure that you fax or get your
22 petition to Anne unless you are term limited, by

23 Monday. If you are term limited as of the September
24 meeting, we would very much appreciate you talking
25 around to people in your area to see who might be

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1 interested in filling your seat and asking them to
2 submit their petition by Monday.

3 Also the position for the clerk of the
4 Assembly, those petitions are due by July, I believe,
5 I think it's July 15th. So I just, since we don't
6 have a meeting between now and then, I just wanted to
7 remind you that if you are interested in the position
8 of clerk of the Assembly to just let one of the
9 officers know and we will direct you to a petition so
10 you can file that.

11 And also the blue attendance sheet should be
12 at your desk. Do not forget to turn those in. If you
13 don't turn it in, you won't be here.

14 And I would just like to say that I am very,
15 very proud of the members today in the Assembly and
16 the quality of the debate that we had. It's evident
17 to me that everybody read the materials ahead of time,
18 was well prepared and had thoughtful comments and
19 questions, and our transcript is going to look very
20 good, so I am proud of that. Thank you all for
21 coming, and I look forward to seeing you in September.

22 (Applause.)

23 (Meeting adjourned at 2:49 p.m.)

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1 STATE OF MICHIGAN)
2 COUNTY OF CLINTON)

3 I certify that this transcript, consisting
4 of 143 pages, is a complete, true, and correct transcript
5 of the proceedings and testimony taken in this case on
6 Saturday, April 29 2006.

7
8 May 12, 2006

Connie S. Coon, CSR-2709
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