

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 Suburban Collection Showplace,
Onyx Room, Novi, Michigan, on Thursday, October 8, 2015, at
the hour of 9:00 a.m.

AT HEADTABLE:

VANESSA PETERSON WILLIAMS, Chairperson

DANIEL D. QUICK, Vice-Chairperson

FRED K. HERRMANN, Clerk

JANET WELCH, Executive Director

HON. JOHN CHMURA, Parliamentarian

CARRIE SHARLOW, Staff Member

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1 adopted.

2 At this time I would entertain a motion for
3 the approval of the summary of proceedings from
4 April 25th, 2015.

5 VOICE: So moved.

6 CHAIRPERSON WILLIAMS: There being a motion,
7 is there a second?

8 VOICE: Second.

9 CHAIRPERSON WILLIAMS: There being a motion
10 and a second for the approval of the summary of
11 proceedings from April 25th, 2015, is there any
12 discussion?

13 Hearing none, all those in favor, please
14 indicate by saying yes.

15 Is there any opposition? Having no
16 opposition, the motion passes, and the summary of
17 proceedings of April 25, '15 stands approved.

18 At this time I would invite a member from the
19 Nominating and Awards Committee. Shenique Moss, the
20 chair, has become ill, so Daniel Cherrin, a member of
21 the committee, will fill in this morning.

22 MR. CHERRIN: Thank you, Madam Chair. Again,
23 I'm Dan Cherrin, the 6th circuit. I am a member of
24 the Nominating and Awards Committee. Unfortunately
25 Shenique will not be here this morning, but she will

1 be here later today. We only have one vacancy to
2 fill, one appointment today. Before that, I just want
3 to thank on behalf of the chair, Shenique, members of
4 our committee. If you are here, please rise and be
5 recognized. Elizabeth Johnson, Erica Zimny, and
6 Lee Hornberger. Thank you very much for your service.

7 (Applause.)

8 MR. CHERRIN: Shenique has been a great
9 chair. And on behalf of Shenique, I would also like
10 to thank the staff, Anne Smith and Carrie Sharlow, for
11 all their hard work. We are very lucky to have them
12 and other members of the State Bar.

13 As I said, we have one vacancy to fill in the
14 12th judicial circuit, which includes Keweenaw, Baraga
15 and Houghton, all the way up in the U.P. Today we are
16 nominating Diana Langdon. At this point I move to
17 appoint Diana Langdon to fill the vacancy in the 12th
18 circuit.

19 VOICE: Second.

20 CHAIRPERSON WILLIAMS: Motion having been
21 made and a proper second to appoint Diana Langdon to
22 fill the vacancy, is there any discussion? Hearing
23 none, you are so appointed. Please take your seat.

24 MR. CHERRIN: Thank you.

25 (Applause.)

1 CHAIRPERSON WILLIAMS: Members, as we start
2 today, we really look to move efficiently through the
3 agenda, so I thank you in advance. We are looking to
4 have an expedient but robust discussion regarding our
5 issues.

6 The next item up this morning is a
7 presentation from the Special Issues Committee on the
8 subject of dues. In addition to our Special Issues
9 Committee, we'll have our executive director and our
10 treasurer, Jim Horsch, or financial officer, who will
11 come in and speak to this.

12 Just to give you some background as they make
13 their way to the front, when we were doing the task
14 force issues on last year, in addition to members
15 offering comments around whether or not we should be a
16 mandatory bar, there were a number of comments around
17 dues, and so we felt as an executive board it was only
18 prudent to take those comments, since there were quite
19 a few, and try to summarize the issues that were
20 presented for our consideration to look at the impact
21 on the Bar and the impact on the dues structure as it
22 stands today, so we tasked the Special Issues
23 Committee to go out to review all of those comments
24 that were submitted and then to also meet with the Bar
25 staff to make sure that any action that we would take

1 in the future or any inaction would be prudent based
2 on the facts as presented.

3 You will find that a number of the comments
4 came from members who reside out of state or those who
5 are close to retirement or in retirement who often
6 seek licensure just for sort of periods of time,
7 either looking to remain active members of the Bar
8 because they have been so for so long, or they are
9 looking to handle one or two matters, and so they seek
10 to continue their membership.

11 A number of issues were raised in terms of
12 should those members have to pay the same or be
13 treated the same in terms of dues and whether or not
14 they have a period of inactive status, what it takes
15 to be reinstated, and so we thought it best for the
16 Special Issues Committee to really go out, examine
17 those issues, and bring them back to the body.

18 In terms of dues for the State Bar, we are
19 the body who makes that decision, but we always want
20 to make sure that when we make a determination,
21 whether or not we raise dues or change the structure,
22 that we do it in a very informed manner, and so that's
23 what we seek here today. We don't look to take any
24 action on the dues issue, but we would like to bring
25 it to you for informational purposes.

1 MR. BURRELL: Good morning, everybody. My
2 name is Aaron Burrell, representative from the
3 3rd circuit and the chair of the Special Issues
4 Committee this year.

5 As you may recall, as Vanessa just said, in
6 2014 the Supreme Court entered an administrative order
7 establishing a task force on the role of the State Bar
8 of Michigan. The task force ultimately issued five
9 recommendations, one of which recommended that
10 membership dues for inactive State Bar members should
11 be reduced and inactive member reinstatement should be
12 more accessible and rationale.

13 Pursuant to that recommendation, at the
14 beginning of the year Representative Assembly Chair
15 Vanessa Williams and the Assembly officers asked the
16 Special Issues Committee to examine issues relative to
17 the current dues structure of the State Bar of
18 Michigan. In doing so, the committee examined public
19 comments relative to Senate Bill 783, which sought to
20 make the State Bar of Michigan a voluntary bar, and
21 had a robust discussion regarding ways to modify and
22 potentially enhance the dues structure of the State
23 Bar of Michigan.

24 Ultimately, the committee discussed a number
25 of potential options for modifying the current dues

1 structure, including graduated skills, lowering the
2 disciplinary fee for inactive and retired members,
3 removing the disciplinary fee for retired members
4 altogether, and removing a three-year limitation on
5 inactive status.

6 The committee brought these alternatives to
7 Executive Director Janet Welch and Chief Financial
8 Officer Jim Horsch, who have researched and considered
9 these options and have graciously agreed today, I
10 believe, to present information relative to the
11 proposed modifications. The information would provide
12 essentially a background and framework for future
13 recommendations to this body relative to the dues
14 structure.

15 CHAIRPERSON WILLIAMS: Apparently Executive
16 Director Welch got double booked. We will move to the
17 next item and then come back to this just so we don't
18 lose any time, because we have quite a bit to get
19 through today. So if I could have the Assembly Review
20 Committee to come very quickly to present, and we will
21 come back to the dues.

22 MS. BREITMEYER: Hi, everyone. I am
23 Kim Breitmeyer, chair of the Assembly Review
24 Committee, and our committee was charged with the task
25 of coming up with a communication strategy that we

1 could share with all of you for informational purposes
2 right now and explain what you can expect to see in
3 the coming months.

4 First, I would like to thank the members of
5 our leadership for providing their input in this
6 process -- Vanessa, Dan, and Fred -- and also I would
7 like to recognize at this point, and please stand when
8 I call your name, the members of the Assembly Review
9 Committee. Ken Morgan, Marty Hillard, Vince Romano,
10 and Rob LaBre. Thank you all for your input in this
11 process.

12 You should have before you a green sheet that
13 looks like this. It was also e-mailed to you before
14 the meeting, and it sets forth a very simple process
15 and timeline for two major goals. The overall purpose
16 of this communication strategy is to increase the
17 frequency and quality of engagement communication
18 between RA members and constituents and within the RA
19 between RA meeting dates.

20 The first goal of this process is to increase
21 communication and outreach between the RA and Bar
22 membership. As you can see, there are several bullet
23 points underneath that goal, starting with immediately
24 following this meeting the RA Chair will appoint
25 what's called an Outreach Publishing Special Committee

1 that will work consistent with the rules of procedure
2 and with RA leadership to implement this communication
3 strategy.

4 At least two weeks before the submission date
5 for our next RA meeting and all meetings thereafter,
6 this outreach and publishing committee will work with
7 RA leadership and facilitate communication between RA
8 members by each circuit and their constituents by
9 using an e-mail list compiled for the Board of
10 Commissioners to communicate with each district. And
11 the communication would be similar to the
12 communication with Bar leaders, summarizing the
13 substantive issues and the next RA agenda and then a
14 follow-up e-mail sent within 30 days of the meeting
15 that would summarize the actions taken at the prior
16 meeting. Those outreach committees would take turns
17 drafting the content of e-blasts for each circuit to
18 circulate to its constituents and personalize the
19 communication.

20 The RA Chair after this meeting will also
21 appoint section liaisons who will work towards
22 improving communication between the State Bar sections
23 and the RA by initiating interaction with the section
24 chairs and/or committees. While we have always had
25 these liaisons, I think we need to come, we thought we

1 needed to come up with a process to facilitate that
2 outreach and set some firm deadlines for doing so and
3 seeing who might bring substantive issues to the RA in
4 that manner.

5 By no later than December 1st of this year
6 State Bar staff will add a link on the main made for
7 members page on the State Bar of Michigan website
8 accessible directly from its front page to the RA
9 membership contact list so it will be easier for
10 State Bar members to see who their RA members are to
11 reach out and contact them.

12 By no later than November 6th of this year
13 our committee, the Assembly Review Committee, and
14 leadership will work with the State Bar staff to
15 create an RA logo consistent with State Bar standards
16 for use in all RA communications. They will help
17 distinguish those e-blasts from other e-blasts that
18 are received from other organizations within the
19 State Bar.

20 At this point I want to give a hat tip to
21 Dan Cherrin of the 6th circuit for assisting us with
22 some of his great PR expertise, and that was one of
23 the ideas that came from his recommendations.

24 At least two weeks before the next RA meeting
25 the outreach publishing committee will solicit and

1 gather written testimonials about the importance and
2 the goal of the RA from both past and present RA
3 members and leaders, and then we will use these
4 testimonials in a variety of the above communications
5 that I just discussed.

6 The second main goal of this communications
7 process is to increase communication within this body.
8 As I understand, the work of the Hearings Committee
9 has already begun. For circuits with more than two
10 members, the Hearings Committee is going to organize
11 smaller meetings within circuits and also with
12 neighboring circuits to discuss regional and other
13 substantive issues to bring before this full body in
14 between our meetings, and these committee meetings
15 will also include State Bar section and committee
16 members, local and affinity bar association leaders
17 who may be interested in the issues being discussed.

18 By no later than January 4th of 2016, RA
19 membership will designate one method of communication
20 so that we are not clogging up e-mails, we are not
21 using some other method of communicating but just one
22 way of communicating with members, whether it's an
23 e-blast, a social media page, a blog, or the
24 SBM Connect. This will avoid the possibility of
25 inconsistent content and access to content from RA

1 leadership and Bar leadership.

2 By no later than November 6th of this year
3 our committee, the Assembly Review Committee, will
4 take a poll of all of you to determine whether you
5 would like to be using the interactive platform with
6 SBM Connect, and this will be a tool. It is our hope
7 this will be a tool to increase the between and before
8 meeting communication of the RA.

9 At this point I would like to invite
10 questions, comments, concerns. Thank you, all, for
11 your attention, and thank you, committees members and
12 Bar leadership, for this opportunity.

13 (Applause.)

14 CHAIRPERSON WILLIAMS: Special thanks to the
15 Assembly Review Committee. We have tasked them quite
16 a bit this bar year with advancing our strategy, and,
17 as we discussed in April, we really, as an executive
18 team, look to develop a three-year strategy, if not
19 more, to advance the goals and gains of the RA, and
20 increasing communication and our visibility is one way
21 that we thought would be the best way to accomplish
22 that.

23 At this time, if members of the Hearings
24 Committee would stand, I would like to thank you for
25 your work that you have begun as well. Maybe they are

1 out working.

2 (Applause.)

3 CHAIRPERSON WILLIAMS: Because of the time,
4 we are going to proceed to our next agenda item, which
5 is actually an action item, so I would ask the
6 proponent, Karen Safran, to make her way to the stage.
7 I will ask our clerk if he would come and give us a
8 reminder of how the electronic voting system works.

9 CLERK HERRMANN: Good morning, everyone. You
10 should all have these clickers on your table. If
11 anyone does not have one of these clickers, please
12 raise your hand and we will get you one. We have one
13 gentleman in the back. Mark, if we could fetch one.
14 Thank you very much.

15 It's very simple. We are going to be using
16 the top row of this clicker, number 1, 2 and 3 and A,
17 B, and C, and you will see the items we will be voting
18 on today, with corresponding A's and B's. C would be
19 reserved for abstaining, if that is your vote.

20 It will only register your vote once, so once
21 you press the button, whatever you choose for your
22 vote indication will be registered up here on the
23 computer, and we will tally it up. If for some reason
24 you make a mistake or have an error, please let us
25 know, but that's how this will work. Any questions?

1 Thank you.

2 MS. SAFRAN: Good morning, I am Karen Safran.
3 I am the chair of the Civil -- starting off to a great
4 morning since I just blanked as to why I am here --
5 the Civil Procedures and Courts Committee, and it's my
6 first time presenting to the Representative Assembly,
7 so please excuse me for any stumbling.

8 I am here on behalf of the committee to seek
9 your support to a couple of Court Rule amendments.
10 The general purpose is to allow for the filing of
11 reply briefs on summary disposition motions and then
12 clarify that, absent the report, no other reply briefs
13 are allowed in any other motions.

14 Mechanically the way that this would be
15 achieved is to change the hearing schedule from filing
16 your dispositive motion in 2.116 to 28 days as opposed
17 to 21 days. The responding party has the same amount
18 of time to respond to the dispositive motion. The
19 moving party would then have the option of filing a
20 five-page reply brief. The rule tracks the appellate
21 rules in terms of what the reply brief -- it truly has
22 to be a reply brief, not a sabotage the moving
23 party -- with the nonmoving party being stuffed brief.
24 That would be filed seven days before the hearing,
25 which would allow the nonmoving party in the court the

1 opportunity to refute the reply brief. And then for
2 clarity, the rule would then clarify in 2.119 that no
3 other reply briefs are allowed, absent leave of the
4 court.

5 The reason for requesting this rule is that
6 there is some inconsistency that's been noted
7 throughout the state in terms of reply briefs, both in
8 general seven-day motions and on dispositive motions,
9 because the Court Rules currently don't say you can
10 file reply briefs, but they also really don't say you
11 can't. They are silent. Some courts are interpreting
12 that to mean that unless the rules say you can file
13 them, you can't file them. Other courts interpret
14 them to mean, the rules to mean, well, they don't stay
15 you can't file one, so you can file one, and there are
16 instances, I am sure we have all found them in our
17 practice, where it's the day before, the night before
18 a hearing and your opponent files a reply brief or
19 hand delivers a reply brief and you are now faced with
20 having to walk into court and deal with new issues for
21 the first time.

22 Often in those instances the judge would
23 delay his or her ruling because of the matters, you
24 may have briefing, so this would try to eliminate some
25 of that problem in litigation and just create some

1 clarity and uniformity across the state in how these
2 briefs are going to be handled.

3 We focused, the committee focused principally
4 on dispositive motions. Typically those motions,
5 since they are whether or not the case is going to
6 survive or an issue in the case is going to be decided
7 prior to trial, they often lead to appeals, so we
8 think it's in the party's best interest to have the
9 briefing at the trial court level be as complete as
10 possible so the record is complete as possible before
11 the matter goes up to the Court of Appeals.

12 Reply briefs on seven-day motions weren't
13 considered at the present time because there is just
14 such a wide variety of those. It's not yet clear
15 whether there is a need in all instances to allow for
16 a reply brief on your standard seven-day motion.
17 However, the rule doesn't impact the judge's
18 discretion to allow for reply briefs, so there is
19 really no change on the authority of the judge to say
20 that on the seven-day motion day that he or she will
21 allow such briefing to occur or to issue his or her
22 own briefing schedule. In certain circuits where the
23 courts issue their own briefing schedule for
24 dispositive motions, the rule change wouldn't have any
25 effect on courts practice that way. So with that, I

1 don't know what the procedure is to ask for a motion
2 or ask for questions.

3 CHAIRPERSON WILLIAMS: Ms. Safran is not a
4 member of our Assembly, but it is my understanding
5 that Vice Chair will bring a motion for this.

6 VICE CHAIR QUICK: Thank you. Daniel Quick,
7 6th circuit. I will move to support the proposed
8 amendment as set forth in the material.

9 VOICE: Second.

10 CHAIRPERSON WILLIAMS: Motion having been
11 made and properly second to support the amendments to
12 MCR 2.116 and 2.119 as presented in the materials. Is
13 there any discussion? The Chair recognizes the member
14 at the mike.

15 MR. FALKENSTEIN: Good morning.
16 Peter Falkenstein, 22nd circuit, Ann Arbor.

17 I understand the intent behind this proposed
18 change, and I do agree we need some uniformity in
19 motion practice. However, there is one component of
20 this rule that would compel me to vote against it, and
21 that is the default position that reply briefs will
22 not be permitted except on dispositive or summary
23 disposition motions.

24 In my practice over 30 years I have found
25 that reply briefs have been an essential and one of

1 the most important tools of pleading practice, mainly
2 because every argument that every respondent has ever
3 made to a motion I have filed has been completely
4 meritless, and there has to be a way for me to bring
5 that to the judge's attention, because sometimes they
6 rule on motions without hearings, and because of the
7 incredible meritlessness of most of the response
8 arguments, there is never enough time on oral argument
9 to fully analyze the issues.

10 Of course I am being facetious, but it seems
11 to me that the same thing can be accomplished but with
12 putting the default position that reply briefs are
13 permitted and that a judge still would have discretion
14 in his or her practice guidelines or chambers rules to
15 either limit the circumstances under which replies be
16 permitted, the page limits, or do it on an ad hoc
17 basis.

18 Another problem is where you have a default
19 against reply briefs, there is no mechanism here for
20 actually seeking leave to apply. In other words, do I
21 have to seek leave to reply at the same time that I
22 file my motion anticipating that the arguments that
23 are going to be made in response will require a reply?
24 If not, when would I seek that if the judge has not,
25 in fact, included in practice guidelines permission to

1 file reply briefs?

2 I understand the problem which we have all
3 been faced with of getting a reply brief the night
4 before. That should be prohibited and dealt with in a
5 different manner, and perhaps ultimately the one-week
6 rule for scheduling hearings is the problem, that
7 there should be adequate time to file a response and
8 then to file a reply so that there is a clear and
9 consistent time limit, but, just to summarize, because
10 of the importance to effective advocacy of reply
11 briefs, I think limiting them solely to summary
12 disposition motions is not the way to go. Thank you.

13 MS. SAFRAN: I think you raised some very
14 valid points. The issue, and I think it's a little
15 bit of a baby steps approach we are taking, because,
16 as I mentioned, there is such a wide variety of
17 potential seven-day motions. You are correct, and
18 perhaps the committee can take back to the Civil
19 Procedures and Courts Committee that maybe seven days
20 isn't enough for general motions absent some sort of
21 emergency situation and there should be a change to
22 the trial court rule to make it 14 days or 10 days,
23 because under the current seven-day rule the concern
24 that I would have is that there just isn't time for
25 filing, for getting the issue before the court, for

1 giving your opponent sufficient time to address a
2 reply brief. That's why we were focusing on
3 dispositive motions at this point, but your point is
4 very well taken.

5 MR. FALKENSTEIN: Prohibiting reply briefs on
6 other motions.

7 CHAIRPERSON WILLIAMS: Chair recognizes the
8 member at the mike.

9 MR. MOILANEN: Philip Moilanen, 4th circuit,
10 Jackson. I would support the comments that were made.
11 In addition, the last response brief that I received
12 was 20-some pages with a binder full of exhibits, and
13 five pages to reply to it was probably inappropriate
14 as well. So, while the judge certainly can impose his
15 own limitations if he wants about how long you can
16 reply, between the cover and the signature page you
17 only have four pages left to actually write anything,
18 so I would suggest that that limitation also be
19 removed. Probably the answer is to have all motions
20 given more than 90-day notice so that there is time to
21 do things the right way instead of getting them done
22 quickly.

23 CHAIRPERSON WILLIAMS: The Chair recognizes
24 the member at the mike.

25 MR. PAVLIK: Adam Pavlik, 54th circuit. I

1 don't necessarily mean to disagree with the remarks
2 made by the prior speakers, but their concerns just
3 aren't my concerns. I think, you know, in principle
4 this is a good idea. My concern is with respect to
5 sort of the drafting and wording of it. We are not
6 voting on the principle of whether we should
7 standardize reply briefs and add seven days. We are
8 voting on a specific proposal to ask the Supreme Court
9 to amend the Court Rule in a specific fashion, and I
10 think that what we send to the Supreme Court should be
11 ready for the Supreme Court, you know, thumbs up,
12 adopt it. And yet I look at this and it would say
13 under (G)(1)(a) unless a different period is set by
14 the court, (iv) no additional or supplemental briefs
15 may be filed without leave of the court. Of course
16 this has nothing to do with periodization.

17 Similarly, unless a different period is set
18 by the court, you know, the moving party or parties
19 may file a reply brief in support of the motion. That
20 again doesn't get to a periodization timeline
21 schedule. It gets to the substantive ability to file
22 a reply brief in the first instance.

23 Now, is this, you know, is the sky falling
24 because of this concern? No, I wouldn't necessarily
25 say that, but if this were sent to the Supreme Court,

1 they would have to clean it up before it would be
2 integrated into the Court Rule, I think, and I don't
3 think we should be sending a proposal to the
4 Supreme Court that they have to clean up. So I guess
5 that would be sort of my concern is that I think that
6 there is poor parallel structure in (G)(1)(a). (i)
7 and (ii) are certainly parallel to (a), but I don't
8 know that (iii) and (iv) are, notwithstanding the fact
9 that I think (iii) and (iv) are fine ideas.

10 CHAIRPERSON WILLIAMS: Chair recognizes the
11 member at the mike.

12 VICE CHAIR QUICK: Thank you. Daniel Quick,
13 6th circuit. I speak in support of the proposal, and,
14 in the interest of full disclosure, I am a member of
15 the Civil Procedure and Courts Committee as well, so I
16 saw how the sausage was being made on this.

17 The issue, as Ms. Safran states, is to take
18 the low-hanging fruit, an issue upon which everyone
19 can agree, and I think that justice is best served by
20 having a reply brief on a dispositive motion. The
21 difference in practice across the state is rather
22 startling. I will tell you that we know that a number
23 of judges, both trial court judges and the
24 Supreme Court, would oppose movement of the seven-day
25 motion deadline or timing. That's a whole different

1 discussion that we are not going to have today. And I
2 would further suggest to you that the intent here at
3 least is to not modify existing practice such that in
4 those circuits or even in those chambers where it's
5 regularly accepted that reply briefs are appropriate
6 on nondispositive motions, I ensure that that will
7 continue to be the case.

8 And, lastly, I would say I think this is,
9 advancement of this proposal, an excellent way to
10 advance the discussion because, of course, as you all
11 know, what happens if we vote in support of this is it
12 simply is a recommendation to the Supreme Court,
13 which, even if they take it up, will be put open for
14 public comment and consideration, and, as the Court
15 has often done in the past, perhaps even multiple
16 variations will be put up for discussion, and I think
17 this is an excellent way to advance the discussion on
18 a topic that reasonable minds could disagree on how to
19 fix it but it needs to be fixed. Thank you.

20 CHAIRPERSON WILLIAMS: Chair recognizes the
21 member at the mike.

22 MR. FALKENSTEIN: Peter Falkenstein, 22nd
23 circuit. Based on comments that I made and which have
24 been commented upon, I would propose a couple of
25 amendments. First, what I would propose would be to

1 change the five-page limit on summary disposition
2 replies to ten pages, so that's one amendment. Do you
3 seek a second for that now, or do you want me to give
4 you the second one as well?

5 CHAIRPERSON WILLIAMS: We will do them
6 separately. There is a motion to amend the language
7 of the proposal that's pending to change the limit
8 from five pages to ten pages. Is there a second?

9 VOICE: Second.

10 CHAIRPERSON WILLIAMS: Motion has been made
11 and properly seconded. Is there any discussion? All
12 of those in favor of amending the proposal to change
13 the limit from five pages to ten pages, please
14 indicate by saying yes.

15 Any opposed?

16 We need to do a -- chair can't distinguish by
17 the voice count. We will need to do a visible hand
18 count. Let me ask the clerk.

19 We don't have the questions prepared within
20 the system, so you can't use the electronic clickers.
21 Can I get three tellers? If I could get Kathy Kakish,
22 this gentleman here, the center, yes, please, and the
23 young lady over by the door, if you would help count
24 and serve as a teller today. Thank you.

25 All of those in favor of the amendment to

1 change the limit from five pages to ten pages, please
2 stand.

3 You may sit. All of those opposed, if you
4 would now stand.

5 The yeses have it.

6 You may be seated. We will get to test the
7 mathematical skills of our clerk.

8 CLERK HERRMANN: Madam Chair, we have 54 for
9 yes and 42 for no.

10 CHAIRPERSON WILLIAMS: The motion passes.
11 The amendment to the proposal passes.

12 MR. FALKENSTEIN: Thank you. And I have one
13 other amendment to propose, which is simply to delete
14 from proposed Rule 2.119(A)(2)(b), reading: Except as
15 permitted by the court or as otherwise provided in
16 these rules, no reply briefs, additional briefs, or
17 supplemental briefs may be filed. As I said before, I
18 believe the default position should be in favor of
19 reply briefs and may be limited as each particular
20 judge determines; therefore, I propose deletion of
21 that subsection.

22 CHAIRPERSON WILLIAMS: Amendments that have
23 not been provided to the body in writing are limited
24 to six words, so the deletion would be more than six
25 words and violate the rules.

1 MR. FALKENSTEIN: In that case what I would
2 do is simply delete the words "no reply briefs." Or
3 just delete "reply briefs." In other words, no
4 additional briefs, supplemental briefs may be filed,
5 which is fine. I would just say delete "reply
6 briefs." Thank you very much.

7 CHAIRPERSON WILLIAMS: Is there a second to
8 amend the proposal so that 2.119(A), I think it's
9 (A) (2) (b), would now read that except as permitted by
10 the court or as otherwise provided in these rules, no
11 additional briefs or supplemental briefs may be filed,
12 effectively deleting reply briefs. Is there a second?

13 MR. FALKENSTEIN: I think there is a
14 clarification there in that additional briefs might be
15 read to include reply briefs, so I would say, Except
16 as otherwise provided in these rules, other than reply
17 briefs, no additional briefs or supplemental briefs
18 may be filed.

19 UNIDENTIFIED SPEAKER: If I could make a
20 suggestion, delete B.

21 COURT REPORTER: Your name?

22 MR. FALKENSTEIN: No, you can't delete more,
23 change more than six words.

24 UNIDENTIFIED SPEAKER: We are only adding one
25 word, delete B. Two words, excuse me.

1 CHAIRPERSON WILLIAMS: The motion currently
2 stands that 2.119(A) (2) (b) would read, Except as
3 permitted by the court or as otherwise provided in
4 these rules, other than reply briefs, no additional
5 briefs or supplemental briefs may be filed. The
6 effect is to add "other than reply briefs." Is there
7 a second?

8 VOICE: Second.

9 CHAIRPERSON WILLIAMS: Motion being made and
10 a proper second, is there any discussion? All those
11 in favor, please stand. If I could have the tellers
12 please come and count. I guess I could have just done
13 a voice vote. Actually, instead I will take a voice
14 vote.

15 All those in favor, please indicate by saying
16 yes.

17 All those opposed?

18 The motion fails.

19 At this time, is there any further discussion
20 on the proposal as presented? We will move to the
21 question of the main proposal that is pending. You
22 are able to use your clickers at this time.

23 And so the question is, should the
24 Representative Assembly adopt the above resolution,
25 and it would be now as amended, to support amendments

1 to Rules 2.116 and 2.119 of the Michigan Court Rules
2 to adjust the timing of dispositive motions to allow
3 for reply briefs, and to clarify that reply briefs are
4 not allowed for any other motions unless leave is
5 given by the court? And this question actually
6 changes a bit with our amendment.

7 All those in favor of the motion as
8 presented, the proposal as amended, please indicate by
9 pressing A. Are there any more votes in support of
10 the proposal, as amended?

11 All those opposed, you can vote B. Sorry.
12 Are there any other votes? The voting is now closed.

13 Mr. Clerk, if you could, give us the results.

14 CLERK HERRMANN: Madam Chair, we have 77 for
15 yes and 20 for no.

16 CHAIRPERSON WILLIAMS: The motion passes.
17 Thank you, Ms. Safran, and to the committee for its
18 submissions.

19 (Applause.)

20 CHAIRPERSON WILLIAMS: At this time we are
21 going to go back to our dues presentation. Financial
22 Officer Jim -- actually we will defer to see if
23 Executive Director Welch can join us. We will go to
24 our next action item.

25 As they are making their way up,

1 consideration of amendments to MCR 3.605, 3.606,
2 3.928, 3.944, 3.956, 6.001, 6.425, 6.445, 6.610, and
3 6.933 regarding the fees, fines, and ability to pay.
4 The proponents, Mr. Robert Gillett and Valerie Newman.

5 MR. GILLETT: Good morning, everyone. I am
6 Bob Gillett from the Michigan Advocacy Program, which
7 is a civil legal ed. program, and with me is
8 Val Newman, who is from the State Appellate Defenders
9 Office, which is criminal representation for
10 indigents, and we are both here to speak to the
11 materials that include a recommendation from the
12 Committee on Justice Initiatives for a series of Court
13 Rule changes that make it clear that a court must
14 consider a respondent's ability to pay a fee, fine, or
15 cost before sentencing that respondent to jail or
16 prison for failure to pay.

17 This type of sentencing, which is known as
18 pay-or-stay sentencing, is very common throughout the
19 country and in many courts in Michigan. This practice
20 creates a very significant hardship for low income
21 families. Obviously, if someone is incarcerated
22 because of their poverty, that's a hardship, but, in
23 addition, this is really a way to squeeze money out of
24 other family members or friends who don't have an
25 obligation to pay, and so in a civil legal aid side,

1 we see this in eviction cases and foreclosure cases,
2 missed child support payments, and so it ripples out
3 through the low income community.

4 This is also, this practice also creates a
5 burden on the system. The cost of incarcerating these
6 respondents is often usually greater than their fines,
7 and so it's a net total expense to the system, not a
8 revenue gain to the system. This practice is pretty
9 clearly unconstitutional. The lead case is Bearden
10 versus Georgia, which is a 1983 U.S. Supreme Court
11 case.

12 This is an issue that was recognized kind of
13 simultaneously on the civil legal aid and the criminal
14 side several years ago. I would also note that most
15 of these incarcerations take place without defense
16 counsel for the person who is in prison. The typical
17 cases are traffic cases, civil infractions, and other
18 minor misdemeanors where there is not appointed
19 counsel.

20 This practice has existed for years. It has
21 risen to the public consciousness in the last year or
22 two. I am sure members of the Assembly are familiar
23 with the Department of Justice investigation of the
24 Ferguson, Missouri situation. There is federal
25 litigation in many areas of the country, and the

1 Department of Justice has expressed an interest in
2 that litigation. There has been about ten cases
3 primarily litigated by the ACLU in Michigan. So this
4 is a practice that is happening in Michigan every day.

5 I am assuming at least some of you in
6 southeastern Michigan are aware of the David
7 Stojcevski case, which has really been in the news the
8 last three or four weeks. Mr. Stojcevski was sentenced
9 to \$772 fines or 30 days in jail. There was no
10 hearing on the ability to pay. This arose as a
11 traffic violation. He was indigent. He died in jail
12 on day 17. There has been editorials about this in
13 the news.

14 About in June of 2014 the State Court
15 Administrative Office created a task force on this.
16 That task force was all court staff, except for
17 Valerie and myself, who were the citizen
18 representatives. That group issued a report in April
19 of 2015, and the language that we are proposing comes
20 from the SCAO report, so its language that's been
21 extensively vetted by SCAO staff, as well as judges
22 and court staff from across the state.

23 Starting about two years ago Val and I have
24 been part of a fairly small group that included some
25 judges and who believed that no judges would

1 intentionally violate the constitution like this, and
2 so we began an education effort to the judges
3 associations. No one in those outreach discussions
4 argued that this was a good practice or a
5 constitutional practice, and based on our feeling that
6 if judges knew about the constitutional issues they
7 would stop the practice. We have talked to a lot of
8 judges associations, and I am happy to report that the
9 Michigan District Judges Association has endorsed this
10 proposal, the Michigan Association of Treatment Court
11 Professionals has endorsed this, and we are on the
12 Michigan Judges Association agenda and believe they
13 will endorse this later this month.

14 This is an unanimous recommendation from the
15 Committee on Justice Initiatives, and so I will turn
16 it to Val to see if she wants to add anything. Again,
17 we are asking for you to support the recommendation
18 that's in the material. Thank you.

19 CHAIRPERSON WILLIAMS: Thank you to the
20 members of Justice Initiatives. Not being a member of
21 the Representative Assembly, I will now ask for a
22 motion from our vice chair.

23 VICE CHAIR QUICK: Move and support.

24 VOICE: Support.

25 CHAIRPERSON WILLIAMS: There has been a

1 motion and support for the proposal. Is there
2 discussion? The Chair recognizes the member at the
3 mike.

4 MR. POULSON: Barry Poulson, 1st circuit.
5 This practice, I think, permeates the state. I see it
6 continuously. We have FOC day where people are locked
7 up for owing money as a civil matter and then also
8 later charged with a felony to get more money out of
9 them by putting them in prison. It happens all over
10 the place. It's so unfortunate that David, and I hope
11 I don't say his name wrong, Stojcevski had to give his
12 life to bring this tragedy to the attention of the
13 system. Sometimes it's not a tragedy. Sometimes you
14 just take someone and lock them up because they owe
15 money. I've heard judges say, You look like a healthy
16 young man. You can work. We are locking you up
17 because you haven't paid.

18 In our county, because we are fixed-price
19 public defenders, although we are paid less per capita
20 than the state of Mississippi, there is no cost to the
21 system, so people are represented. We are simply
22 appointed to handle these collection systems. 1:15 on
23 Wednesday, whoever is on call, go in and you handle
24 these, and you lose every time.

25 On a monthly basis we get called in for

1 probation violations, FOC day, and anything else that
2 happens to be around. All failure to pay your
3 juvenile fee, they get representation, and I have yet
4 to win one, and I am not someone who backs away at the
5 microphone.

6 So I asked them, me, the representative of
7 the system -- maybe that's not the polite way to say
8 it here today, certainly as a representative of the
9 State Bar today -- to not only educate but to seek
10 some way of mandating that there be a finding. The
11 findings are perfunctory, if at all. People are
12 locked up, and the right term is debtor's prison. We
13 are here part of a debtor's prison process. Sure, the
14 counties need the money, but we get from those least
15 able to pay or those who can't pay it off, then we
16 lock them up.

17 CHAIRPERSON WILLIAMS: Thank you. Chair
18 recognizes the member at the mike.

19 MR. KOCHIS: Anthony Kochis, 6th circuit. I
20 have two friendly amendments that I believe are typos.
21 In Rule 3.606(F) there is a reference to MCL 6.425. I
22 think that should be MCR, and then there is a similar
23 item in Rule 6.610(F)(2), there is a reference to MCL.
24 I just believe it should be MCR.

25 CHAIRPERSON WILLIAMS: Is there any objection

1 to the request to take this on as a friendly
2 amendment?

3 VICE CHAIR QUICK: I accept the friendly
4 amendment, and it has the support of our speakers.

5 MR. KOCHIS: Thank you.

6 CHAIRPERSON WILLIAMS: Chair recognizes the
7 member at the mike.

8 MR. MASON: Thank you, and good morning,
9 Madam Chairman. My name is Jerry Mason from 31st
10 circuit. The practice that we see in St. Clair County
11 is that at sentencing, especially if a person is
12 sentenced from the bench, the matter is typically
13 scheduled for a review date, and that gives that
14 person the opportunity to gather monies together or
15 show the court that he is making a good faith effort,
16 or that he or she is, in terms of paying, so at least
17 our judges aren't sua sponte just locking people up,
18 and even at sentencing, if the person shows good faith
19 and they come to the table with some money, more than
20 likely they are going to be afforded a review date or
21 a hearing date.

22 When the gentleman from the 1st circuit
23 alluded to the ability to work, I have always felt and
24 always urged the courts when my clients were indigent
25 to give them the opportunity to do some sort of a

1 county work program. All of us can look around our
2 counties and see garbage that needs to be picked up,
3 things that need to be done, and if a person is
4 able-bodied, and by able-bodied I mean physical and
5 mental health, because sometimes we are dealing with
6 mental health issues more so than physical health or
7 even a criminal issue, that those people can work off,
8 if you will, through the county.

9 Now, it's work, and judges have busy dockets
10 with court administrators monitoring their dockets, so
11 you need to bear that in mind, but that's the practice
12 in St. Clair County.

13 The gentlemen from the 1st circuit also
14 alluded to incarcerating people on Friend of the Court
15 day and making felons out of them. That is a serious
16 problem that needs to be addressed, because, frankly,
17 the way they calculate child support and the way they
18 compute it is still based on the notion people get
19 married once and divorced once. It doesn't
20 contemplate blended families or people having children
21 with multiple relationships, so at the end of the day
22 you actually have decent people with child support
23 they simply cannot pay, and they do end up being
24 unnecessarily incarcerated or made a felon for some
25 sort of a political aggrandizement, I guess, to show

1 that you are tough on deadbeat dads where they just
2 simply don't have the money. Thank you.

3 CHAIRPERSON WILLIAMS: Chair recognizes the
4 member at the mike.

5 MR. RENNER: William Renner, 15th circuit. I
6 did have one, perhaps it's just one question. Does
7 the court make a determination as to whether or not a
8 particular defendant can make payment in full or can
9 make payments on? And the only reason I raise that as
10 a question is that I, as others have seen, well, you
11 didn't pay anything; you could have paid \$5 a month or
12 that you could have paid something and you didn't. So
13 does the court make a determination that, well, you
14 cannot pay the whole thousand dollars in fines and
15 costs. I am just a little bit unsure what the court
16 does, if the court makes a determination you may not
17 be able to pay in full but make payments, some
18 payments on it. That's kind of what my question is.

19 MR. GILLET: So the Court Rule is only one
20 part of the overall recommendations from the SCAO
21 Ability to Pay Task Force, and the general approach
22 that that task force took, and you can look at like a
23 180-page kind of set of worksheets, was to provide as
24 many tool kits and options to courts as possible, and
25 so community service is an option, time payments is an

1 option, forgiveness of part of a fee, fine, or cost is
2 an option. And so there is really -- the group tried
3 to look at the practices all across the state and to
4 at least identify courts that they have the options of
5 what seem to be effective practices in some
6 communities. Is that responsive?

7 CHAIRPERSON WILLIAMS: Chair recognizes the
8 member at the mike.

9 MR. PAVLIK: Adam Pavlik, 54th circuit. Kind
10 of just in the same vein as my earlier remarks, and I
11 would say we are not here to vote to sort of
12 symbolically support the work of the ability-to-pay
13 work group, we are here to endorse a particular
14 proposal to be sent to the Supreme Court, and in this
15 language right here, I think a lot of this is great,
16 3.928 forward, but I am a little fuzzy on the effect
17 of 3.605 and 3.606, and in particular, and maybe it's
18 because I don't work in my county's FOC and so that I
19 am not intimately familiar with the law that governs
20 this, but I am not clear what it means when it says,
21 The court shall not sentence a person to a term of
22 incarceration, et cetera, et cetera, notwithstanding
23 proceedings pursuant to the Child Support and
24 Parenting Time Enforcement Act.

25 I guess I don't understand what the

1 relationship then would be between the Court Rule and
2 the statute here when that says notwithstanding
3 proceedings pursuant to the Child Support and
4 Parenting Time Enforcement Act. I almost would love
5 to sever the consideration of the amendment to that
6 Court Rule or those two Court Rules from all the rest
7 as opposed to having to vote on it with one big
8 package.

9 MR. GILLET: I can respond to that. It's my
10 belief -- so there is a draft Court Rule that came out
11 of a subgroup of some of the Committee on Justice
12 Initiatives, and then as it went through the SCAO
13 process it was essentially accepted with some minor
14 language changes, and I think this was a language
15 change that was made by SCAO staff as opposed to the
16 original proposal, but the intent is that the
17 pay-or-stay sentencing and incarceration that is not
18 governed by Court Rule and where there is not any, you
19 know, effective court structure is all on the
20 misdemeanor cases, the civil cases that Mr. Poulson
21 spoke about. In contrast, the Friend of the Court
22 process is a very kind of complicated and regulated
23 process where we may disagree with the results in many
24 of the ability-to-pay determinations, but it's baked
25 into that process, and so the intent of this was to

1 not accidentally rewrite the Friend of the Court
2 process. It was to pull it out of the ability-to-pay
3 Court Rule.

4 CHAIRPERSON WILLIAMS: Seeing no other
5 members at the mike, we will move to the -- Chair
6 recognizes the member at the mike.

7 MR. WEINER: The first section there,
8 3.605 --

9 COURT REPORTER: Your name?

10 MR. WEINER: James T. Weiner from the 6th
11 circuit. The last sentence there, it says, The
12 application may not be granted without payment of the
13 costs and expenses incurred in the proceedings for the
14 collection of the penalty, unless waived by the court.

15 I have been sitting here reading that and
16 thinking that's almost an oxymoron. You are trying to
17 apply for remission of a penalty and then you are
18 going to have to pay the costs and expenses upfront,
19 and apparently you are applying for remission of a
20 penalty because you can't pay anything. I would like
21 to see that section reworded so that it would be the
22 granting of the application may be conditioned upon
23 payment of the costs and expenses. May be conditioned
24 upon the payment of costs. I think that that would
25 give more to the intent of what we are looking for

1 here, which is waiving of costs and expenses and
2 waiving of the collection of penalties and fines and
3 not putting people in jail based on their ability to
4 pay. If you want to call that a friendly amendment,
5 but that's what I would -- it just doesn't seem to be
6 right.

7 CHAIRPERSON WILLIAMS: We are over the six
8 words --

9 MR. WEINER: I apologize.

10 CHAIRPERSON WILLIAMS: -- so it violates the
11 rules. Do you have another means of proposing?

12 MR. WEINER: The granting of the application
13 may be conditioned upon payment of the costs. It's
14 just one of those things. I am sitting here looking
15 at that, and it just makes -- the way it was written
16 made me cringe.

17 CHAIRPERSON WILLIAMS: The issue is because
18 it's not written, it still violates the rules.

19 MR. WEINER: I understand, but that's up to
20 the proponents.

21 CHAIRPERSON WILLIAMS: Because it violates
22 the rules, we can't accept it as a friendly amendment.

23 MR. WEINER: Well, then I make a formal
24 amendment.

25 UNIDENTIFIED SPEAKER: I am looking at six

1 words.

2 CHAIRPERSON WILLIAMS: The amendment can't go
3 forward as presented, because it violates the rules.
4 It's an unwritten proposed amendment that exceeds six
5 words.

6 MR. WEINER: Then maybe I will submit it
7 later in writing.

8 UNIDENTIFIED SPEAKER: If there are six
9 words, how does that violate?

10 CHAIRPERSON WILLIAMS: Because that's what
11 the rules, the permanent rules of procedure for our
12 body is that unless written the amendment cannot
13 exceed six words, so it would have had to be submitted
14 in advance after receiving the booklet with the
15 proposals.

16 MR. WEINER: If you would switch and
17 capitalize the G and say "granting the application".
18 Thank you. I just think that would be more of an
19 intent of what we are trying to do here, if you agreed
20 to that as a friendly amendment.

21 CHAIRPERSON WILLIAMS: It still exceeds the
22 six word changes to the rules because of the striking
23 of "may not be granted without."

24 UNIDENTIFIED SPEAKER: It's a stupid rule.

25 MR. WEINER: Like I say, to me it just

1 seems -- I don't know if somebody wants to make an
2 amendment. Then how do I do that? Do I have to
3 submit it in writing, or how do I do that, because
4 this somehow doesn't seem right.

5 UNIDENTIFIED SPEAKER: Can I clarify an
6 amendment?

7 COURT REPORTER: Who is talking? I need you
8 to identify yourself, please.

9 MR. WEINER: Can I make a move to suspend
10 that portion of the rule or move to suspend that
11 portion of the rule for the purposes here?

12 VOICE: Support.

13 CHAIRPERSON WILLIAMS: Just a minute while I
14 consult with the parliamentarian. Thank you.

15 What we cannot do is to suspend the rules,
16 but my suggestion would be, if there is support for
17 this, that perhaps more than one person could
18 participate in the amendment. So if you wanted to
19 partially amend by striking, and we could vote on
20 that, and if someone else wanted to -- that's the only
21 way we can do it. We can't just suspend the permanent
22 rules of procedure.

23 VOICE: I will support it.

24 MR. WEINER: Then if you will take all of
25 those things away and then say, The application,

1 strike "not", and change "waive" to "unless ordered by
2 the court." So change "waive" to "unless ordered by
3 the court," and that will say the same thing. And
4 then it's a two-word change. Okay. Seems to make
5 more sense.

6 CHAIRPERSON WILLIAMS: There has been a
7 motion that we amend the rules as presented. All
8 those in favor of this amendment to the proposal,
9 please indicate by saying yes.

10 All opposed indicate by saying no.

11 The amendment passes.

12 Are you opposing? Chair recognizes the
13 member at the mike.

14 MR. KOROI: Mark Koroi from the 3rd circuit.
15 I would just like to make some points I think are
16 maybe relevant to this argument. Previous to this in
17 the misdemeanor district court system there had been
18 some due process that had been placed in the system
19 that the district court recognizes. Fellow support
20 officer once told me that this was a revenue-enhancing
21 mechanism, at least how they arrest people essentially
22 through just a guilty process. The judge would have
23 the clerks issue show cause orders for all people that
24 had open balance of the court, like hundreds of
25 people. They sent notice by ordinary mail, order to

1 show cause why they have not paid their fines, and
2 usually don't respond to these things, and when that
3 happened, they issue arrest warrants, hundreds at one
4 time. They take people off the streets, and they got
5 the money that way.

6 It seems to me there is a better way of doing
7 that, because when people get things in the mail, they
8 typically ignore them, especially when they are debts,
9 so I think this situation that we have here kind of
10 ameliorates a problem, because people who owe the
11 court money aren't going to say in court, well, it
12 seems to me I don't have the money. They're just
13 going to ignore, because if they show up in court,
14 they're afraid they are going to jail anyway.

15 So I think that this is a situation where
16 it's going to better the situation as far as not
17 necessarily due process, because the authorities, some
18 guilty process system, but it's going to be a better
19 manner. It's going to protect people's rights, such
20 as stopping people who are indigent going to jail or
21 be in jail.

22 In my practice this is quite common, and it's
23 an issue that happens not because people are
24 recalcitrant, not because they are lazy, they don't
25 want to pay the court. Usually people that owe the

1 court money, first thing they want to do is they want
2 to pay that court off, and the people that can't are
3 just very often people that are in a very bad way and
4 can't make payments. It's unfair to put these people
5 in jail. It's not cost effective. It's simply
6 ridiculous to do it, and I believe this is going to
7 help prevent the situation from the court saying let's
8 have a hearing and so forth, and if the person can't
9 pay, they can't pay.

10 On the other hand, on the flip side of that
11 is that where is the burden of proof on this going to
12 be at? What extent are we going to have hearings on
13 this? I mean, will an affidavit be enough to submit
14 to the court, I am indigent, or is it going to be a we
15 are going to have hearings on whether somebody is
16 going to have to prove I am indigent. I think it's an
17 issue we have to look at, who is going to have the
18 burden in these situations when this comes up. And I
19 think it's something that the courts, it's not
20 something built in the system, it's something that is
21 going to have to be decided on a court-by-court basis.

22 Second point I want to make deals with Friend
23 of the Court issues. I think one of the most serious
24 abuses are Friend of the Court type issues, because we
25 had a case recently in the City of Detroit, Wayne

1 County Circuit Court, Friend of the Court, where the
2 Friend of the Court actually had discontinued life
3 support based on a presigned order. It wasn't a
4 collections issue, but it was based on the practice
5 that that particular Friend of the Court had served
6 for having presigned orders and (inaudible) life
7 support, and somebody died as a result of that.

8 So there are these horror stories out there,
9 and I think what they do is the Friend of the Court,
10 the courts sometimes take procedure shortcuts to get
11 what they want, which is cash, and I think it's more
12 protection to have a system for the people that are
13 indigent. I think this would be the better. I think
14 it should be implemented in a way that is reasonably
15 detailed where the court tries to have guidance, say,
16 here, this is how we are going to implement it, and
17 this is what's going to be proven, whether by
18 affidavit or by hearing. I think it just has to be a
19 very detailed procedural system to protect the rights
20 of everybody, a three-month system, so these hearings
21 don't go -- everybody wants to have a hearing on this.
22 This affects the courts to a great extent. If we
23 could do it by affidavit or -- I'd just find the best
24 way of doing it so it improves the court, paycheck
25 stubs. I think that the process being streamlined yet

1 protects the interest of the debtor (inaudible) the
2 interests are balanced, so those are my points.

3 CHAIRPERSON WILLIAMS: Thank you. I will ask
4 the proponent if they would like to respond to the
5 issue about the burden of proof very briefly, please.

6 MR. GILLETT: So the SCAO work group
7 discussed in pretty great detail the issue of whether
8 to prescribe one process in order to determine ability
9 to pay or whether at least for some period of time to
10 let that develop on a court-by-court basis, and, as I
11 mentioned before, there is a tool kit, which is really
12 an extensive tool kit that collects practices from a
13 number of courts, and I have to say that the practices
14 really range from very detailed financial reviews of
15 the individuals to courts that just say informally,
16 Here is your fine, can you pay today? And if the
17 respondent says, No, I can't, they say, When can you
18 pay? It's really worked out very informally on a
19 case-by-case basis, and I think both of those can be
20 effective, and so the intent of the task force was
21 really to move from no process in many courts to an
22 obligation to have a process with the thought that
23 through MJI trainings and maybe some SCAO
24 clarifications we would move to a process where we had
25 more information.

1 CHAIRPERSON WILLIAMS: Thank you. At this
2 time, Chair recognizes the member at mike.

3 MR. BURRELL: Thank you. Aaron Vaughn
4 Burrell, 53rd circuit. In the interest of my
5 colleague from the 54th circuit indicating that we
6 should send something up that is in final, detailed
7 form, these are two very, very detailed points I
8 presume may be friendly amendments. Under Rule
9 6.001(B), where it says, the second line from the
10 bottom, subchapters 6.600 to 6, it should be point 800
11 rather than a comma.

12 CHAIRPERSON WILLIAMS: Accepted.

13 MR. BURRELL: Under Rule 6.425(3)(a), which
14 is the substantive provision that all the others refer
15 to, every other time in these amendments the phrase
16 "good-faith effort" is referred to it's stated
17 properly good, hyphen, faith effort, and in the last
18 sentence of subrule (a), there is no hyphen there.

19 CHAIRPERSON WILLIAMS: It's been accepted.
20 Thank you.

21 At this time we will move to the question.
22 All those in favor should the Representative Assembly
23 adopt the above resolution, as amended, to support the
24 proposed amendments to Rules 3.605, 3.606, 3.928,
25 3.944, 3.956, 6.100 -- I'm sorry, 6.001 -- 6.425,

1 6.445, 6.610 and 6.933 of the Michigan Court Rules?
2 At this time if you would vote either yes or no,
3 please do so.

4 MR. POULSON: Which button to we press?

5 CHAIRPERSON WILLIAMS: A is for yes and B is
6 for no.

7 Has everyone voted? Voting is now closed.
8 If the clerk will give us the results.

9 CLERK HERRMANN: Madam Chair, we have 92 yes,
10 10 no, and one abstention.

11 CHAIRPERSON WILLIAMS: The proposal passes.
12 (Applause.)

13 CHAIRPERSON WILLIAMS: At this time we are
14 going to invite John Mayer up to cover our next action
15 item regarding HJR S and SJR J regarding the age
16 limitation on judicial terms.

17 MR. MAYER: Good morning. We have the
18 materials for this item under tab 7 in your booklet
19 and also should be at each of your places, a light
20 gray or slightly off white paper, a table entitled
21 judges who left office the last year of their final
22 term. We have the State Court Administrative Office
23 to thank for this considerable research data.

24 I am John Mayer, member from the 3rd circuit.
25 Madam Chair, my opening remarks are going to be

1 relatively brief, and I ask that the balance of my
2 time, except for five minutes or something, be
3 allocated by yourself for the people to speak, because
4 I am confident there will be a number who will want to
5 speak.

6 Presently pending in the legislature are
7 Senate Joint Resolution J, which would delete entirely
8 any age limit on beginning judicial term, and House
9 Joint Resolution S, which would raise the age limit
10 from 70 to 75.

11 If both resolutions are passed by both of the
12 houses, if either or both of the resolutions are
13 passed by both houses of the legislature, it or they
14 would be submitted to a vote of the people in November
15 2016. The constitutional amendment contained in SJR J
16 would implement the recommendation of the Judicial
17 Selection Task Force made in April 2013 by deleting
18 the age 70 limit altogether.

19 The age 70 limit in Section 19 of Article VI,
20 is, I believe, the only age restriction in the
21 Michigan constitution. In this day and age of
22 reducing and eliminating discrimination wherever we
23 find it, especially in law and government, this
24 limitation should be deleted from Section 19 of
25 Article VI. The Assembly voted 59 to 41 back in April

1 of 2013 when the task force report came out in favor
2 of deleting the age limit altogether.

3 So what is new about this proposal before you
4 today? There are two things. First, it recommends
5 supporting specific joint resolutions pending in the
6 house. Back in 2013 we were really endorsing the
7 recommendation as it appeared in the judicial
8 selection task force report.

9 For those of you who oppose deleting the age
10 limit altogether, as provided in SJR J, the age limit,
11 age 75 alternative, is presented in HJR S.

12 Madam Chair, I will yield the balance of my
13 time, except for five minutes, to the speakers as you
14 recognize them.

15 CHAIRPERSON WILLIAMS: Prior to -- we will
16 need you to make a motion. So Prior to a motion on
17 the proposal, the body has to decide if this is a
18 permissible issue for us to consider under Keller, so
19 that will be our first vote. So, as you prepare, I
20 would ask all of those who are in favor of us taking
21 action on this, meaning that you will decide that this
22 proposal is permissible for a vote on the merit by the
23 Representative Assembly under Keller versus State Bar
24 of Michigan. Right now if you would cast your vote,
25 it would be A for yes and B for no, and that's as to

1 the permissibility of us to look at the substance of
2 the motion. The voting is now open.

3 If there are any other votes, please cast
4 them now.

5 Voting is closed.

6 Mr. Clerk, if you could give us the result.

7 CLERK HERRMANN: Madam Chair, we have 82 yes,
8 12 no, and four abstentions.

9 CHAIRPERSON WILLIAMS: So the vote passes.
10 We will move to the substance of the matter, and I
11 will now ask the speaker to make a motion.

12 MR. MAYER: Madam Chair, I move that the
13 proposal that's before the Assembly at this time be
14 approved, both parts, A, the removing the entire age
15 limitation, and also the second one to increase it
16 from 70 to 75, and if this seems contradictory, think
17 in terms of the representatives of the State Bar,
18 whether it be private members or staff appearing
19 before the legislature talking informally with
20 legislators. It's entirely possible that when the
21 time comes there will be a ground swell or opinion in
22 favor of increasing the limit and against deleting it
23 altogether, and we want whoever is speaking for the
24 Bar at that point to be equipped to do so.

25 CHAIRPERSON WILLIAMS: We will handle the

1 voting separately, but there is a motion to vote on
2 both parts. Is there a second?

3 VOICE: Support.

4 CHAIRPERSON WILLIAMS: The motion having been
5 made and been seconded, is there any discussion?

6 The Chair recognizes the member at the mike.

7 MR. MASON: Good morning again, Madam Chair.
8 Well, we are the only country in the world that
9 glorifies youth and inexperience and trivializes age
10 and wisdom. My wonderful Chinese wife reminds me of
11 that from time to time. Just when you get to a point
12 in your practice where you have got the wisdom, the
13 gravitas, and the experience, we want to force people
14 to retire, and it's just wrong, and so this, we should
15 support this vigorously, but the implications go
16 beyond the 70-year or 75-year mark, because then what
17 happens is if, let's say you are 55 or you are 60, you
18 are not going to get appointed to anything if you
19 apply for that, because you are going to say, well, he
20 or she couldn't run again in two years or three years.
21 So to the extent that it's discriminatory, it goes
22 well beyond that age realm, because they do start
23 looking around, well, you know. Your age affects you
24 before you hit that 70-year mark if you go based on
25 the potential for years of service, for lack of a

1 better of way of putting it.

2 The other thing is you see senior citizens
3 become healthier and healthier and active and exercise
4 and the reality is that people are working longer and
5 medical technology, 70 is really not that old, and I
6 really think that the Bar should support this. There
7 are a lot of very good judges out there, men and women
8 that shouldn't be forced to retire because of an
9 arbitrary age.

10 To the extent that it's considered political
11 under Keller, I don't know how it is, because this is
12 how we administer our courts, and these are the people
13 who appear in front of and practice in front of on a
14 daily basis. To my mind it's not a function of any
15 kind of political agenda. It's really how we run our
16 courts and the kind of justice system that we have
17 and, frankly, the experience of the people in front of
18 whom we appear.

19 COURT REPORTER: Your name, sir.

20 CHAIRPERSON WILLIAMS: Could you repeat your
21 name for the court reporter.

22 MR. MASON: My name is Jerry Mason. I am
23 from the 31st circuit, which is St. Clair County.
24 Thank you.

25 CHAIRPERSON WILLIAMS: I will just remind our

1 speakers, we have made a determination as to the
2 Keller permissibility. If you would just speak on the
3 merits of the proposals pending.

4 MR. FLORIP: Good morning, Madam Chair,
5 Daniel Florip. I am from the 26th circuit, Alpena and
6 Montmorency, for anyone who is doesn't know.

7 I am rising to oppose support of these two
8 legislative bills. I will paint of picture of what
9 happens in the rural circuits up north. Judges are
10 essentially elected for life, and I don't know exactly
11 how things work down here in the big cities, in the
12 bigger circuits, but we have very, very few contested
13 judicial elections up in Alpena. I know something of
14 the history of our elections up there. Since the
15 early 1960s there have been a total of four contested
16 circuit court elections in Alpena, and this was a
17 two-judge circuit until about 11 years ago. So that's
18 about 18 or 19 circuit court elections, four of them
19 were contested. Only one of those was a situation of
20 someone challenging a sitting incumbent. The other
21 three were contested elections triggered by a
22 mandatory retirement.

23 In a small, rural circuit like Alpena, we
24 have got maybe 25 practicing attorneys. The public
25 doesn't know generally whether these judges are good,

1 bad, capable, incapable. The people who really know
2 and can see the sausage being made are the attorneys.
3 Well, the attorneys in a small town like our circuit
4 can't come out and actively oppose an incumbent judge
5 running for reelection. It doesn't work that way. If
6 the judge ends up winning, well, then you have got a
7 problem.

8 Does this 70-year age limit cause some good
9 judges to have to retire prematurely? Yes. We just
10 lost a very good district court judge in Alpena to the
11 mandatory retirement age, but the last three circuit
12 judges forced to retire because of their age were well
13 past their prime and needed to go. It's a matter of
14 fact. You know, the attorneys in our circuit would
15 have told you that, but no one can come out and
16 challenge them. We have got the incumbency
17 designation. They are elected for life.

18 I think it's good to have this in our
19 constitution. You know, complain if you want about
20 turnover for the sake of turnover. Maybe that's good,
21 maybe that's bad, but, you know, without the 70-year
22 age limit, we would have had judges in our circuit
23 continue well past their prime when they shouldn't
24 have been there anymore.

25 CHAIRPERSON WILLIAMS: Thank you. Chair

1 recognizes the member at the mike.

2 MR. KOROI: Yes, Mark Koroi, 3rd circuit.
3 Just a couple of points I want to make. Firstly,
4 there was a lawsuit filed by judge to test the
5 constitutionality of the U.S. Constitution of our
6 Michigan stricture of 70 years. He was then 71,
7 wanted to run again, and the constitutionality of the
8 state constitutional provision was upheld by the
9 courts, the federal courts. So I believe it is
10 constitutional.

11 That said, age discrimination in our state
12 has been barred by state law. This is really the only
13 area in the state where we are for barring people from
14 sitting in public office. It doesn't exist anywhere
15 else. A person who is 80 years old can run for county
16 commissioner, they can run for congress. There are
17 quite a few in their eighties are sitting right now
18 from Michigan. The federal court system, I know of at
19 least one judge who is 90 still hearing cases. I have
20 several in their eighties, one bankruptcy case hearing
21 cases.

22 I think in this situation, I think the age
23 limitations contained in the constitution may be
24 constitutional, but it's not a good idea. I think, in
25 essence, what it's doing to the state is saying that,

1 well, if you are 70, you are no good anymore, and I
2 don't think it's a correct way of looking at things.
3 I stand with what the last speaker indicated, that in
4 certain areas of the state that once you are elected
5 you are in for life. That's probably true in metro
6 Detroit also.

7 Judges, the fact of the matter is, the public
8 doesn't know what judges do on the bench usually,
9 unless there is some scandal erupts. If they are
10 doing a good job or bad job, they look at a name and
11 vote for any kind of reason. It may be an Irish name,
12 whatever. They vote on reasons that we may see as
13 frivolous, but that's how people vote in these
14 elections throughout the country. But I think in this
15 particular case here, I don't think age is the issue
16 that's driving that type of argument. I think
17 basically the issue is a good judge or bad judge.
18 Yeah, this is a good judge in their seventies, so
19 arguing in essence against the limitation here.

20 I know judges out there that are in their
21 seventies, can't run again because of the age
22 limitation, but they are very good judges, would be
23 glad to have them. I mean, the Federal court system
24 in Detroit is the best example of that. The judges
25 are past 70, many of them are, most of them are doing

1 a great job, but I think the age of 70 is very, very
2 arbitrary. I think many people that reach 70 are
3 still at the prime of their careers and many still in
4 other fields, such as medicine, such as being in
5 academia are at the peak of their careers in their
6 seventies and even in their eighties. They practice
7 medicine. I don't think we should be different and
8 bar people because of age. It should be looked at on
9 a case-by-case basis by the public, and they should
10 have the right to vote people in who may be past
11 seventy. That's my statement.

12 CHAIRPERSON WILLIAMS: Thank you. Chair
13 recognizes the member at the mike.

14 MR. POULSON: Barry Poulson, 1st circuit. I
15 was going to attempt to be silent on this issue, but
16 my colleague spoke, and my other colleague, Mr. Abel,
17 kindly let me go first so I wouldn't keel over from
18 age before I got to the mike. But I think we should
19 change the Bar card and put on the birthday of the
20 person turning 70, and your Bar card should be revoked
21 at 70, and then maybe next year we can drop it back to
22 68 and give even more young people a chance for work.

23 I just think it's ludicrous to have to pick a
24 number and decide that the person has somehow
25 become -- what is the new term used? They passed

1 their prime. Passed their peak. I don't know what
2 that means. I am reading a book now, History of
3 Evolution. Author is 96. I studied under
4 Professor Bork (sp). He was older than I am and
5 certainly he was wiser, far wiser. I went to his
6 birthday party. I think he was 88. I think it's
7 horrifying that we have a big stamp that says we
8 endorse age discrimination of any kind. We shouldn't
9 do that.

10 CHAIRPERSON WILLIAMS: Thank you. Member at
11 the mike, you are recognized.

12 MR. ABEL: Good morning. Matthew Abel,
13 3rd circuit. I rise to oppose this proposal. I think
14 Michigan has a poor system for making people judges
15 and what we would do is perpetuate that poor system.
16 We ought to look to a merit-based appointment system.
17 As the gentleman from Alpena said, especially in
18 smaller circuits, it is nearly impossible to remove a
19 judge, and so some of us, while there are some great
20 judges who are 70 or so and we hate to lose them,
21 there are other judges who we celebrate their leaving
22 the bench. And so I think this is more about the
23 judicial selection process and that just changing the
24 age requirement is really not going to solve the
25 problem that we have. The voters I think are unlikely

1 to approve this, as they generally are opposed to
2 constitutional changes, and we really ought to look at
3 a different system for appointment and maintenance of
4 judges.

5 CHAIRPERSON WILLIAMS: Thank you.

6 MR. ABEL: Thank you.

7 CHAIRPERSON WILLIAMS: The Chair recognizes
8 the member at the mike.

9 MR. HILLARD: Martin Hillard from the 17th
10 circuit. I rise in support of the motion. Quickly,
11 the resolution completely eliminates the age rule
12 restriction. Merely raising it to 75, while an
13 improvement, still has the inherent defect that it's
14 discriminatory based upon age.

15 With respect to my earlier colleagues in
16 opposition, I found the list that the proponents
17 passed out of the judges that retired because of the
18 age limit interesting, and I think we can all look at
19 the list, and perhaps many of us did while waiting,
20 and we saw some names on there that we were glad
21 retired, also some names on there that we say, wow,
22 it's too bad they had to leave. But the issue isn't
23 about whether the rules get rid of good judges or help
24 us pass, what was the phrase, those past their prime
25 into retirement, the issue is it's ultimately

1 discriminatory.

2 This was written into the constitution 50
3 years ago when mandatory retirement was the norm
4 across, not just elected judges, but all industries.
5 And we as a society have become more enlightened in
6 the meantime and said, no, we won't put up with age
7 discrimination. This is a message of a bygone era.

8 Now, as to my friend, Mr. Abel, from the 3rd
9 circuit talking about the defects and how we select
10 judges, I may agree with him on that, but the point is
11 this doesn't address that problem. It's just, at
12 best, a patchwork on it. If we need to change how we
13 select judges, then we need to come forth with a
14 proposal to change how we select judges, but as long
15 as we as a society has determined we want an elected
16 judiciary, not an appointed judiciary, maybe an
17 appointment for life like the feds do is a better
18 system. I don't know. We can debate that, but that's
19 not the issue here. We have chosen to have an elected
20 judiciary. When you have elections in a democracy,
21 the answer to a bad office holder is to vote him out.
22 That is the ultimate term limit or age limit. If the
23 public fails in that, well, that's the cost of
24 democracy in whatever office we look at, whether it's
25 the judiciary, whether it's the state legislature,

1 whether it's executive officials. We can look at any
2 given election and look at the people who run and the
3 people who lost, and we may disagree with the outcome.
4 We may disagree over which ones we disagree on, but
5 that's democracy. We elect some good people, we elect
6 some not so good people, but that's what democracy is
7 about, and it's not about age discrimination, so I
8 rise in support of the proposal to get rid of the age
9 limit on judicial office. Thank you.

10 CHAIRPERSON WILLIAMS: Thank you. The Chair
11 recognizes member at the mike.

12 MR. LARKY: Sheldon Larky, 6th circuit. When
13 I was 30, I thought 50 was old. When I was 50, I
14 thought 70 was old. Now that I am 70 plus, I think 90
15 is old.

16 I rise in favor of this resolution for two
17 reasons. One, because I think we lose quality
18 jurists. Yes, we may lose bad jurists. We lose
19 quality jurists too. And the second reason is
20 Sam Bernstein, 1-800-CALLSAM, said, Shel, if this
21 passes, I will vote for you if you run for office, so
22 I am in favor of it.

23 CHAIRPERSON WILLIAMS: Chair recognizes the
24 member at the mike.

25 MR. HORNBERGER: My name is Lee Hornberger,

1 13th circuit from Traverse City. I rise to oppose
2 this. There has been an elusion to democracy, and the
3 complicating factor of the situation is the incumbency
4 designation. If it was not for the incumbency
5 designation, I might be in favor of this, but the
6 incumbency designation removes this from the arena of
7 a true democracy.

8 (Applause.)

9 CHAIRPERSON WILLIAMS: Thank you. Chair
10 recognizes the member at the mike.

11 MR. FALKENSTEIN: Peter Falkenstein. I'm
12 from the 22nd circuit. I have to support the comments
13 of the previous speaker, which is along the lines of
14 what I wanted to say, but just to level it a little
15 bit, I think when you talk about democracy as our
16 previous speaker did, it does ignore the fact that it
17 is almost impossible to remove an incumbent judge and
18 that there is an element of the black robe syndrome.
19 We have seen this in federal court, where I do most of
20 my practice, where we have, I believe, more senior
21 judges now than we have regular district judges. Many
22 of them are still very good, but many of them stay on
23 long after they are capable of doing a good job, and
24 the fact of the matter is, if we have no age
25 limitations, a judge likes to be a judge, and I think

1 that there would be the same proclivity in the state
2 courts as there is in the federal courts just to
3 simply stay on as long as you can because of the
4 position, the prestige, et cetera, et cetera.

5 So I oppose part A of this resolution, of
6 this proposal. However, I also agree that because of
7 medical advances and increasing longevity of our
8 population in general that 70 no longer is old, and I
9 think a good compromise would be to approve the second
10 part, expanding the limitation for appointment or
11 eligibility to 75 years, which means when you run when
12 you are 74 you are still going to be a judge till you
13 turn 80, and I believe that sort of compromises the
14 issues of allowing people who still are competent at a
15 fairly advanced age to do the job but also considers
16 the fact that it's almost impossible to remove the
17 incompetent judge, and I have to say there are
18 probably one or two in the state.

19 So that's where I fall. I support the second
20 half of this proposal.

21 CHAIRPERSON WILLIAMS: Thank you. Chair
22 recognizes the member at the mike

23 MR. OHANESIAN: Nicholas Ohanesian, 17th
24 judicial circuit. I rise in support of this proposal.
25 And in full disclosure, I am an administrative law

1 judge for the Social Security Administration, and I
2 think the age 70 rule or even the age 75 rule is a
3 blunt instrument to deal with a larger problem, and,
4 frankly, I dealt with a fair number of judges in my
5 prior practice who were under the age of 70 who I
6 wished would retire also. I don't think age is the
7 right measure here. If the issue is bad judges, then,
8 you know, either it's democracy or change the system
9 in which we select judges, but I think the age system
10 is or age rule is overinclusive and underinclusive of
11 the problems that need addressing. Thank you.

12 CHAIRPERSON WILLIAMS: Thank you.

13 MR. FOSTER: Ron Foster. The speaker
14 commented someone that's over the age of 60, this is
15 almost a discouragement for people in that age bracket
16 to run, because I think in the public image is old.
17 If we elect him now, he can't serve again, because he
18 will be past the age of 70, which to me is a negative
19 thing. When you consider running when you get closer
20 to that number, the public image is, well, you are not
21 going to be able to serve anyway, et cetera,
22 et cetera. To me that really makes it even more open
23 for people in their fifties and sixties to run for
24 office and add those years of service after all the
25 years of serving as attorneys, so I would support

1 removing the age limit entirely. Thank you.

2 CHAIRPERSON WILLIAMS: Thank you. Seeing no
3 one at the mike, I am going to invite Mr. Mayer for a
4 very, very, very brief closing.

5 MR. MAYER: There have been just three or
6 four comments made which tend to want to broaden the
7 scope of this discussion. Really very narrow. It has
8 to do with Section 19 of Article VI, 70 or 75 or zero.
9 It's not about the selection of judges. There is a
10 wonderful task force report on that that came out in
11 2013. Hasn't received the attention it deserves.
12 Whether or not we think voters will approve a
13 constitutional amendment is irrelevant. Voters
14 should, as two or three have said, be responsible for
15 voting at public officers, and I would also add here,
16 there is a role for the local bar associations. They
17 aren't playing very many places, but there are some
18 hopeful signs. There have been a few incumbent judges
19 defeated in the last six, eight, ten years, and I
20 would like to regard that as a trend.

21 Last comment. I put to you that there are
22 many more good and excellent judges on this list that
23 you have got than there are mediocre or bad judges.
24 Let your conscience be your guide.

25 CHAIRPERSON WILLIAMS: Thank you. At this

1 time we will move to the question. We will vote for
2 them separately. The first question is should the
3 State Bar of Michigan adopt the resolution to
4 Section 19 of Article VI of the Michigan Constitution
5 of 1963 that it be amended to remove the age
6 limitation from eligibility criteria for judicial
7 office. Please press A for yes and B for no. Voting
8 is open.

9 If there is anyone who needs to cast a vote,
10 please do so. Everyone appearing ready, the voting is
11 now closed.

12 Mr. Clerk, if you could give me the results.

13 CLERK HERRMANN: Madam Chair, we have 71 yes,
14 37 no, and two abstain.

15 CHAIRPERSON WILLIAMS: The proposal passes.
16 We will move to the second, and this is whether or not
17 the State Bar of Michigan should adopt the following
18 resolution calling for amendment to Section 19 of
19 Article VI of the Michigan Constitution so that it be
20 amended to increase the age limitation of eligibility
21 for judicial office terms from 70 to 75 years. You
22 may now cast your vote, pressing A for yes and B for
23 no. The voting is open.

24 Anyone wishing to vote, please vote. There
25 appears to be readiness of the body. The voting is

1 closed.

2 Mr. Clerk, if you could please provide us
3 with the result.

4 CLERK HERRMANN: Madam Chair, we have 57 yes,
5 49 no, and three abstain.

6 CHAIRPERSON WILLIAMS: We only needed a
7 simple majority, so the proposal passes. Thank you
8 very much for your attention to this matter.

9 (Applause.)

10 CHAIRPERSON WILLIAMS: We are running far
11 behind schedule, so we still will take a break, but it
12 will be five minutes, and five minutes exactly,
13 because we have guests here for our awards ceremony.
14 So we will take a five-minute break.

15 (Break taken 10:49 a.m. - 10:55 a.m.)

16 CHAIRPERSON WILLIAMS: We are going to get
17 started, and I will ask Angela Sherigan to come to the
18 front for the Unsung Hero Award presentation, as well
19 as the Honorable Allie Greenleaf Maldonado. The
20 meeting is back in session. If everyone will move to
21 your seat. If we could have the presenters for the
22 Unsung Hero Award and the Honorable Allie Greenleaf
23 Maldonado, please come to the stage.

24 As you are in your seats, if you could pass
25 your clickers to the right of the row, that would be

1 great. We will now turn the podium over to the
2 Honorable Angela K. Sherigan with the presentation of
3 the Unsung Hero Award.

4 HON. SHERIGAN: Good morning, everyone. I am
5 very honored to be here to introduce this year's
6 recipient of the Unsung Hero Award. She is a good
7 friend of mine and a great advocate and I know we are
8 running short on time, so I will try to keep it as
9 brief as possible if that is possible to talk about
10 this woman.

11 Judge Maldonado was nominated by someone
12 other than me who has now taken a position with the
13 Army, and he could not be here. I very happy to stand
14 in his place.

15 One of the things he said in his nomination
16 is that Judge Maldonado has the highest standards of
17 practice and commitment for the benefit of others, and
18 he could not be more correct in that. One of the ways
19 that she has exhibited this is her work through the
20 Waabshki Miigwan Drug Court, which is the
21 Little Traverse Bay Bands of Odawa Indians Drug Court.

22 Before Judge Maldonado had taken the bench as
23 chief judge at Little Traverse, they had a drug court.
24 However, once Judge Maldonado had taken the bench, she
25 looked and saw that the female participants were not

1 graduating from the program, so she commissioned a
2 study to find out why the female drug court clients
3 were dropping out. She talked with all of them and
4 found out that one of the biggest obstacles that they
5 had is that they were single mothers and did not have
6 a lot of time to commit to the drug court program,
7 which, as many of you know, is very intense.

8 One of the requirements for the Drug Court is
9 that they perform 30 hours of work, school, or
10 community service, in addition to fulfilling all of
11 the other programs, or all of the other requirements.
12 As a result of the findings, she had changed part of
13 the requirements that allowed for credits for caring
14 for their children. She also assisted them in
15 obtaining child care. While this doesn't seem like a
16 big deal, it really is when you have a community that
17 is affected by substance abuse and alcohol abuse, and
18 it's the women that are not getting the services that
19 they need. Through this, she has been able to
20 specifically address women's needs, and has been
21 successful in that endeavor.

22 In addition to one of the other problems that
23 the Drug Court was having is that the tribal court was
24 unable to restore driver's licenses. As many of you
25 know, state court drug courts are able to provide

1 driver's licenses to their participants, so
2 Judge Maldonado looked into this, contacted Secretary
3 of State. They came out to the Drug Court, observed
4 the Drug Court, observed the court personnel, observed
5 the laws and the policies and were satisfied. After
6 that, there was going to be a contract entered into
7 between the State Court Administrator's Office and the
8 Tribe. Big problem there. Tribes have tribal
9 immunity and are very reluctant to waive that
10 immunity. Through the advocacy from Judge Maldonado,
11 the tribe agreed to enter into that contract. Next
12 month they will be finalizing everything that they
13 need, the training and the contract, in order to have
14 their participants have the ability to have a driver's
15 license restored.

16 On a personal level what I think is more
17 important from that is her advocacy for Indian people
18 and the Indian Child Welfare Act. While Judge
19 Maldonado is general counsel for the Little Traverse
20 Bay Band, she was required to make sure that there was
21 compliance with ICWA and the state courts. The ICWA
22 is the Indian Child Welfare Act, which is federal
23 regulations regarding abuse and neglect cases of
24 Indian children.

25 There has been significant problems and

1 misunderstanding about ICWA in the state courts, which
2 leads to devastating results. As all of you are very
3 well aware, it has been significant for the last
4 several years throughout the country. One of the
5 problems we see is that there is just ignorance and
6 misunderstanding about why and how the law is
7 applicable. Judge Maldonado started training with the
8 assistance of the State Court Administrator's Office,
9 state court/tribal court judges, prosecutors,
10 Department of Human Services, and other people that
11 were involved in the Indian Child Welfare Act about
12 compliance and about why we have the law.

13 In addition to that, she worked on various
14 work groups and helped to draft the Michigan Indian
15 Family Preservation Act. That was the culmination of
16 three years of a work group, and it was finally
17 introduced into the legislature. The work group, as
18 well the Michigan Judges Association, the American
19 Indian Law Committee, and the American Indian Law
20 Section, and the work groups themselves decided that
21 our best spokesperson is Judge Maldonado, not only
22 because of her knowledge of the issue but because of
23 her personal experiences and her dedication to Indian
24 children.

25 Eventually the law was passed, and

1 Governor Snyder signed it. To this day
2 Judge Maldonado continues to train state court judges,
3 family services, Department of Health and Family
4 Services, and we are hoping that eventually she will
5 start training prosecutors.

6 Her work and her professional demeanor are
7 the highest standards that I have ever observed in
8 anyone. Prior to coming back to her tribe she worked
9 for the U.S. Department of Justice, Environment and
10 Natural Resources Division where she represented
11 tribes on issues dealing with endangered species,
12 Clean Air Act, and worked on various other zoning
13 issues, Indian arts and crafts, and she defended the
14 Bureau of Indian Affairs Environmental Assessment in
15 several cases.

16 I have also observed and heard throughout my
17 practice that Judge Maldonado, wherever she is within
18 the United States, traveling, doing her trainings and
19 her advocacy, that she is a great representative of
20 the Indian Nation and a great representative of tribal
21 courts.

22 Her work under ICWA and MICWA alone are
23 worthy of this award. Her work under the Drug Court
24 alone are worthy of this award. I think that it is
25 very telling of the people that came here to support

1 her today. Basically it says that, yes, we agree, she
2 is our unsung hero. I know that she is our unsung
3 hero in Indian country, but I know that Judge Connors
4 of Washtenaw County is here to see her.
5 Justice Cavanagh is here to see here. Justice Bridget
6 McCormack is here to see her. I am so proud to
7 introduce Judge Maldonado. Thank you.

8 (Applause.)

9 CHAIRPERSON WILLIAMS: On behalf of the
10 Representative Assembly, we are very honored to
11 present the Unsung Hero Award to Judge Maldonado.

12 (Applause.)

13 JUDGE MALDONADO: Thank you. Thank you so
14 much. I want to thank the State Bar of Michigan
15 Representative Assembly for this incredible honor. I
16 am humbled because much of the work I have done that I
17 am being honored for isn't my work alone. The
18 extraordinary achievements that have occurred in the
19 last eight years in the area of Indian Child Welfare
20 in Michigan were borne out of the foundation
21 painstakingly laid by Supreme Court Justice Cavanagh
22 and Tribal Court Judge Michael Petoskey more than 20
23 years ago. Their partnership, leadership, friendship
24 and innovation made the Tribal State Partnership, the
25 Tribal State Federal Judicial Forum, and the Michigan

1 Indian Family Preservation Act possible. This isn't
2 the work of one person. It's the work of many.
3 Justice McCormack, Justice Corrigan, Judge Connors,
4 Judge Sherigan, Judge Butts, Kate Fort,
5 Stacey Tadgerson, Annette Nickel, Cami Fraser,
6 Jim Keedy, Maribeth Preston, Angel Sorrells,
7 Bill Brooks, and Chairman Mandoka are just a few of
8 the unsung heroes deserving recognition.

9 As for my work transforming the tribe's
10 court, even that isn't mine alone. The generous
11 mentorship I received in my education and career have
12 shaped every step I have taken. For example,
13 Justice McCormack was my professor at the University
14 of Michigan Law School. She taught me there is a
15 place for compassion in our legal system, and I hope I
16 have made her proud. Judge Petoskey was the first
17 chief judge from my tribe, and he gave me my first
18 legal job as a law clerk, drafting my own tribe's
19 Child Welfare Code. It never occurred to me that
20 summer that one day I'd have to fill his immense
21 shoes, which was made exceedingly easier for me
22 because I had the foundation that he built to walk on.

23 I never would have even applied for the
24 position of chief judge for my tribe but for, not just
25 the encouragement, but the insistence of

1 Judge Connors. He pushes me forward, he believes in
2 me, and he cultivates my success even when I am not
3 looking. Once on the bench, Judge Sherigan, she
4 became my go-to for even the stupidest questions,
5 because she is a true friend who doesn't judge or
6 criticize, and she shares my passion for making
7 people's lives better.

8 And of course I couldn't have accomplished
9 anything in this short life without my wonderful
10 husband. Over 23 years you have supported me, taking
11 public interest jobs over law firm offers, taking pay
12 cuts to serve on the bench, and you have sacrificed
13 again and again, so that I could serve my community.
14 Without you, I am nothing, but together we are one
15 amazing person.

16 I am extremely honored to accept this award,
17 but I must accept it on behalf of the extraordinary
18 group of unsung heroes that I have the honor of working
19 with and who have all devoted their careers to
20 improving the lives of American Indian children.
21 Chi miigwech.

22 (Applause.)

23 CHAIRPERSON WILLIAMS: If we could have the
24 presenter, Mr. Bonner. Mr. Bonner will present the
25 Michael J. Franck Award to Vernon Korterling

1 posthumously. Thank you.

2 MR. BONNER: Vern's family, we have a request
3 that you join us at the front. While they are coming
4 up here, I have a favor to ask of this distinguished
5 Assembly, and that is could all those who were members
6 of the Representative Assembly six years ago in 2009,
7 could you please raise your hands. Wonderful.
8 Because in 2009 I stood before you as a recipient of
9 this prestigious award, and I would be remiss and I
10 would feel guilty driving all the way back to Muskegon
11 if I didn't take this opportunity to thank you again
12 for creating one of the most memorable days of my
13 life. So thank you for that.

14 (Applause.)

15 MR. BONNOR: By the way, you will share my
16 joy about two things. One, I have not yet been
17 disbarred, and, two, I did not receive the award
18 posthumously. But today I am honored and grateful to
19 be the presenter of the 2015 Michael Franck Award.
20 Sadly, however, the presentation of this award is
21 being made posthumously. This year's recipient is
22 Vernon Dale Kortering.

23 Vern was 80 years old when he died earlier
24 this year in January, and it's fitting that our Chief
25 Justice Robert Young, Jr., I understand there are some

1 other justices present in the room, that they are here
2 today, because Vern's first job when he graduated from
3 the University of Michigan Law School in 1962 was to
4 serve as a clerk to Justice Eugene Black of our
5 Michigan Supreme Court. Then Vern came to Muskegon to
6 practice law for over 50 years and then to build a
7 legend.

8 When I graduated from Wayne State's law
9 school in 1983, I had a dream and hope of becoming a
10 lawyer for the poor. At the same time I graduated, my
11 dream job opened up at Legal Aid of Western Michigan
12 in Muskegon, and I moved there to begin that calling.
13 But when I came to Muskegon I quickly learned some
14 things. One, I learned that there was already a
15 lawyer for the poor working there who had been working
16 there for over 20 years when I arrived. Another thing
17 I learned was he was not a Legal Aid lawyer. He was a
18 man who would remind me of Clarence Darrow. He was a
19 man who was the mirror image of Atticus Finch. Vern
20 seemed not to care whether people ever paid him for
21 the legal work he did for them. To borrow words that
22 are inscribed on the Michael Franck Award itself,
23 Vern's life was an outstanding contribution to the
24 improvement of the legal profession, that noble
25 profession which we all share. And most important to

1 me, Vernon Kortering became my role model, my mentor,
2 and my good friend.

3 Today your selection of Vern Kortering to
4 receive this prestigious award honors Vern's life of
5 service. I want to close with a sentence from each of
6 two tributes which poured over Vern's memory after his
7 death. The first is from a two-page resolution from
8 the Muskegon branch of the NAACP. Our local branch
9 was formed in 1919, only ten years after the national
10 organization was founded. It was a two-page
11 resolution, but I just want to share with you one
12 line. You are all grateful for that.

13 It says, Therefore Be It Resolved: That we,
14 the Executive Committee, Officers, and Members of the
15 Muskegon Branch of the NAACP will remember Vern's zest
16 for the rights of those underprivileged and the
17 downtrodden and his commitment to the cause of law and
18 civil rights.

19 The second tribute comes from a letter penned
20 by one of our wonderful circuit judges in the 14th
21 circuit in Muskegon, the Honorable Timothy Hicks, and
22 Judge Hicks wrote in a letter to Vern's wife, Lois,
23 and to his three children the following words. This
24 was near the close of his letter. Vern was the best
25 person at using the law for perhaps its highest

1 purposes -- to help provide justice to those less
2 fortunate and to move our society to better places.

3 With us here today are Lois Korterling, Vern's
4 wife of 55-and-a-half years; his son, David, who is
5 also a member of the Representative Assembly; and
6 David's wife, Kathy, and Vern's granddaughter, Kyla.
7 It is my high honor and my great pleasure to present
8 the 2015 Michael Franck Award to Lois, David, Kathy,
9 and Kyla to honor an exemplary man, your husband, your
10 father, your grandfather, and my friend --

11 MRS. KORTERLING: Are you sure he is not here
12 today?

13 MR. BONNOR: -- Vern Korterling.

14 (Applause.)

15 MR. KORTERLING: I finally remember presenting
16 that same Michael Franck Award to Dan Bonner six years
17 ago, and it seems that it has come full circle, and it
18 is very fitting to receive this award, this very
19 prestigious award, from Dan, who was a, as indicated
20 earlier, a colleague and dear friend of my father and
21 a close family friend of my family, so I would like to
22 thank him for making the trip all the way from
23 Muskegon this morning to be here on behalf of my
24 family, my mother Lois, my wife Kathy, and my niece
25 Kyla who are here today.

1 We would like to thank the Representative
2 Assembly, the Awards Committee for all their hard
3 work, as well as the entire State Bar. This award not
4 only mean a whole lot to my family, but it means a lot
5 to our tight-knit, small, legal community in Muskegon,
6 as well as Muskegon County in general. This is the
7 third time I have been able to speak on behalf of my
8 father this year -- at his funeral, at the Law Day
9 presentation we had in Muskegon earlier this year in
10 May, and now today -- and, as indicated in the
11 materials that show the award, he was truly a
12 maverick, and without his passion and selfless
13 dedication, I probably wouldn't have gone into law,
14 and there are thousands and thousands of clients that
15 have benefited from his hard work and his dedication.

16 So, again, I would like to thank you on
17 behalf of my family in Muskegon and Muskegon County.

18 (Applause.)

19 CHAIRPERSON WILLIAMS: At this time we are
20 very happy and honored to receive comments from our
21 Chief Justice, Robert P. Young. While he doesn't need
22 an introduction, I will say a few words about him.

23 CHIEF JUSTICE YOUNG: Please don't.

24 CHAIRPERSON WILLIAMS: Just a few. The one
25 thing that should be noted is that Justice Young pays

1 great attention to the fact that we need to have more
2 efficient and customer-focused courts, and so he has
3 worked very hard to implement best practices in
4 technology to accomplish that, to expand public
5 access, and to increase the efficiency of our courts,
6 and also to save taxpayer dollars.

7 As you may know, he is a Harvard grad and a
8 past member of Dickinson Wright, and just a member of
9 various charitable groups. He has two sons, and I
10 can't let him speak without indicating he has been
11 married to his wife, Dr. Linda Hotchkiss, for 40
12 years. Please join me in welcoming our Chief Justice,
13 Robert P. Young.

14 (Applause.)

15 CHIEF JUSTICE YOUNG: I asked her not to say
16 anything. She has given my speech. So I will try and
17 make it as short, therefore, as possible.

18 I do want to thank you for the opportunity to
19 talk to the Representative Assembly this morning, and
20 one of the things that we do on your annual meeting is
21 that we move our conference off campus and have the
22 conference, weekly conference, wherever you are, and I
23 am delighted to say that we had our conference here
24 this morning and with our newest colleague,
25 Joan Larsen. Would you stand up, Joan, so you can be

1 seen.

2 (Applause.)

3 CHIEF JUSTICE YOUNG: Joan is every bit as
4 scary bright as her resume might lead you to believe.
5 It was a thoughtful conference, which she made many
6 contributions, and, unfortunately, she is tied to her
7 evil twin, Justice McCormack, and I am very concerned
8 about that relationship, the corruption that would
9 occur there, but there is only so much I can do as
10 chief.

11 I think this is going to be an
12 extraordinarily productive term. The Court is
13 collegial. We like each other, and that's a good
14 thing, but today I want to talk about something
15 different.

16 I think we all know in an abstract way how
17 Byzantine and fractured our Michigan judiciary is. We
18 have a 19th century model with a lot of structural
19 decentralization. The constitution instructs us that
20 we are one court of justice, but the reality is that
21 we are very centralized, and that doesn't really hit
22 home until you come into position like mine and you
23 want to make the trains run on time, you want to make
24 changes that affect the entire judiciary, and you
25 realize that one court of justice is more theoretical

1 than real.

2 And just to help illustrate the point, you
3 had should have in front of you this little pamphlet,
4 and if you open it up and then flip to the back page
5 here, this is kind of an illustration, a pictorial
6 illustration, of just how many structural barriers
7 there are to our branch operating as a unit.

8 We have 560 local judges, 243 trial courts
9 tied to 163 different funding units, which that alone
10 is a structural barrier. Imagine trying to operate a
11 unified branch of government where you have 165
12 different units of government to which our local trial
13 courts are tied for financial support. That
14 complicates everything. Imagine trying to put in --
15 all of them are tied to not only their local funding
16 units for funding, they are also tied to them
17 technologically. So we have 20 different case
18 management systems, 150 different computer systems
19 across the state. Not only that, but in the circuit
20 courts, we own our court records, but they are managed
21 by 83 elected officials who don't report to us and who
22 don't necessarily have to abide what we want done with
23 those records.

24 So that's kind of the big picture. I knew
25 all these things before I became chief, but they

1 didn't resonate until we decided what we wanted to do
2 to make a significant reform, and our vision is very
3 simple. A lot of it is very much drawn from an
4 endeavor that this organization championed and
5 participated in, the Crossroads Report, and many of
6 the reforms that we have been able to accomplish in
7 the last four years are drawn from the recommendations
8 of that document.

9 Anybody in government telling you that we are
10 too big for the workload, that is exactly what we did
11 in the third branch. I believe that we should not
12 cost a penny more than is necessary to discharge our
13 mission of providing justice to the citizens of this
14 state, and, as a result of that simple commitment, we
15 proposed, and the legislature agreed, to reduce 40
16 judgeships. That's a significant undertaking, and
17 it's resulting in cost savings to the public. So far
18 we are doing this by attrition. We didn't sort of
19 take everybody out of their seats, but we are, by
20 right-sizing, we are saving \$175 million over time.

21 The more significant reform that we have
22 undertaken is our desire to measure how well we are
23 doing. People talk about measuring in government all
24 the time. You can't go to your local coffee shop
25 without them handing you or e-mailing you a customer

1 satisfaction survey about how quickly the service was
2 done, how satisfied you were with their product.
3 That's what's been going on in the private sector for
4 years, but in the government sector, we hope we are
5 doing a good job, but we have got no idea, except in
6 the third branch for four years we have been deciding,
7 you know, what our performance measures were, and we
8 are measuring, and not only that, we are telling you
9 how well we are doing. Every trial court now has a
10 dashboard. You can look it up. You can come to the
11 state Supreme Court's dashboard, and we have a
12 statewide iteration of our performance measures. Let
13 me just touch on a couple.

14 You might imagine that in a business where
15 you are likely to disappoint at least 50 percent of
16 the people who come before you, in my court the
17 percentage is higher, that surveying your customers is
18 kind of a perilous thing. It was not wildly embraced
19 by the trial judges, but we did it anyway, and guess
20 what we found. Ninety-three percent -- we have done
21 this two years running now. The last one we polled
22 surveyed 26,000 people across the state who came into
23 our trial courts. Ninety-three percent said they were
24 treated with courtesy and respect, 86 percent said
25 that they were able to get their business done in a

1 reasonable amount of time, and 82 percent thought they
2 had their cases handled fairly.

3 Now, that's a very good measure for us, and
4 we are going to keep doing this, and each court has
5 its own measures. Those are the rolled-up statewide
6 averages but allows us to start keeping track of
7 whether we are maintaining that level of satisfaction.

8 We have also embarked on a series of other
9 reforms to add accessibility for the courts. The most
10 notable, we just celebrated the, I think the second
11 anniversary of our language access rule, which is
12 designed to provide translators for those for whom
13 English is not their native tongue.

14 We have a wide array of specialty courts. I
15 was not an initial fan of specialty courts. I was at
16 least agnostic on whether these things were effective.
17 I didn't go to law school to become a therapist. My
18 wife is a therapist. She went to medical school and
19 did a lot of other things to become a psychiatrist,
20 none of which I did, so I was not sure that this was
21 an effective utilization of the judiciary. But I like
22 to be -- I like to hope that I am persuaded by data,
23 and the data are in, and our specialty courts -- drug,
24 sobriety, and veteran and mental health courts -- are
25 having a demonstrable impact on people's lives. We

1 have very much reduced recidivism rates in these
2 courts, and we are keeping them out of jail, which are
3 expensive, and, frankly, not terribly productive in
4 transforming lives, and we are treating the underlying
5 issues that cause people to come into contact with the
6 criminal justice system. So these are really
7 wonderful things. There is a specialty court
8 available now to 96 percent of our population in
9 Michigan.

10 So these are some of the tremendous reforms
11 that I think are transforming our judiciary and making
12 it a leading cutting edge judiciary. We are using a
13 lot of technology, mostly with spit and bailing wire,
14 because we don't have a lot of resources, but we have
15 now in every county virtual courtrooms. Those are
16 things that help others save money. We are saving the
17 Department of Corrections about \$3 million in the last
18 two years because they can telecommunicate rather than
19 physically bring prisoners. That's the same issue
20 happens with the local sheriffs so they don't have to
21 go from jails to the courtrooms. It promotes more
22 security in the courtrooms. We are putting these
23 things in place, but they help others.

24 Yesterday or day before we got the first step
25 ahead on our e-filing system. Again, imagine trying

1 to create an e-filing system where there are 150
2 different computer platforms, but we are getting
3 there. It's hard. There is a lot of working around.
4 My favorite saying is in Michigan's judiciary it's
5 always a workaround, but two days ago the Senate
6 Judiciary Committee passed our legislative proposal to
7 fund our e-filing.

8 So we have wonderful initiatives and
9 innovations, online ticket paying. Good Lord, it's
10 hard enough to get the ticket, but being able to avoid
11 going down to court in person is a good thing. So we
12 are testing everything. We are trying new things, and
13 most of it's working, and so I guess I am here to say
14 to you thank you for the insights and recommendations
15 that you provided in the Crossroads reports. There
16 have been such reports for decades, and what we needed
17 was the will and the perseverance to do something, and
18 we are doing it, and apparently well from the data.

19 So thank you very much, and now it is my duty
20 to swear in -- no? Oh. Well, I stand corrected.
21 Thank you very much. I will do that.

22 (Applause.)

23 CHAIRPERSON WILLIAMS: Justice Young was
24 going to remove me right before I was ready.

25 CHIEF JUSTICE YOUNG: I am so sorry.

1 CHAIRPERSON WILLIAMS: At this time we will
2 take -- we received one written nomination. If we
3 could get that nomination from the floor for clerk.
4 The Chair recognizes the member at the mike.

5 MR. CLARK: John Clark from the 3rd circuit.
6 I am here to nominate Joseph P. McGill for the role as
7 clerk, the next clerk of the Assembly. Joe is a
8 partner at Foley, Baron, Metzger & Juip. He is a
9 partner in their litigation group specializing in all
10 types of complex litigation -- environmental,
11 products, construction, and business torts. Joe is a
12 graduate from both U of D School of Law, as well as
13 Wayne State. He has his J.D. from the U of D and two
14 LLMs from Wayne State. In addition to Joe's practice,
15 he is involved in many aspects of service in the legal
16 community, as well as the broader community,
17 particularly he is currently the president of the
18 Irish American Lawyers. He is also past president of
19 the Catholic Lawyers, and he is also the immediate
20 past chairman of the Foundation for Madonna
21 University. I know Joe personally, and it's my
22 pleasure to nominate him as the next clerk, Joseph P.
23 McGill.

24 CHAIRPERSON WILLIAMS: Thank you for that
25 nomination. Are there any more nominations? Are

1 there any more nominations? Are there any more
2 nominations? Nominations are closed.

3 At this time we will move to the election of
4 clerk per the rules. Since there is only one
5 nomination, it does not require a written ballot.

6 So at this time, all of those in favor of
7 electing Joseph McGill as our next clerk, please
8 indicate by voice vote of saying yes.

9 All those opposed.

10 Hearing none, you are elected unanimously.

11 (Applause.)

12 CHAIRPERSON WILLIAMS: I would like to
13 quickly recognize members who are retiring from the
14 Representative Assembly. I would ask that you would
15 stand and our members hold the applause until the end.
16 You may also come at the end and collect your
17 certificates from this side of the room.

18 As I call your name, please stand. The
19 Honorable Donna B. Howard, Daniel J. Ferris, John P.
20 Mayer, Mwanaisa A. Sims, James H. Fisher, Samuel I.
21 Bernstein, Michael J. Blau, Lawrence P. Shulman,
22 Jade J. Edwards, Michael G. Walsh, Peter W. Peacock.
23 Jeffery S. Crampton. Richard E. Hillary, II,
24 Pamela S. Munderloh, Michael J. Marutiak, Janene
25 McIntyre, Joshua S. Smith, Rudolph F. Perhalla,

1 John A. Jarema, Susan L. Thorman, Dennis L. Brewer,
2 Anne B. McNamara, Tami W. Salens, Michael J. Ekdahl,
3 the Honorable Roy G. Mienk. We would like to thank
4 you for your service to the Representative Assembly,
5 to the Bar, and to justice for the public. Thank you.

6 (Applause.)

7 CHAIRPERSON WILLIAMS: Now, at this time
8 we'll have the swearing in of our new chair. You will
9 be in very capable hands, as you know, from electing
10 him as clerk, and I will turn it over now to
11 Justice Young.

12 CHIEF JUSTICE YOUNG: At long last. Would
13 you raise your right hand. Do you solemnly swear that
14 you will support the constitution of the United States
15 and the constitution of this state and the
16 Supreme Court Rules concerning the State Bar of
17 Michigan and that you will faithfully discharge the
18 duties as Chair of the Representative Assembly of the
19 State Bar of Michigan according to the best of your
20 ability?

21 MR. QUICK: I do.

22 CHIEF JUSTICE YOUNG: Congratulations.

23 CHAIRPERSON QUICK: Thank you.

24 Thank you very much. Thank you, Chief
25 Justice, other members of the judiciary present. I

1 should also take a moment to honor the members of the
2 Board of Commissioners who are present and incoming
3 president, Lori Buiteweg, also a veteran of our fine
4 Representative Assembly. I also believe we have
5 several of our past presidents present in the room.

6 As I think you saw in today's agenda, the
7 Representative Assembly as the ultimate public
8 policy-making body of this Bar is focused on handling
9 substantive issues and respecting your time and moving
10 efficiently through our agenda. There is much to be
11 done, whether the state of the law, the state of the
12 Bar or protection of the public, our agenda ought
13 always be full, and I will work hard to make sure that
14 it is.

15 We will, for example, take up at our next
16 meeting and continue our discussion on the dues item
17 that we started on today. I apologize for not being
18 able to treat that with the robustness of which we
19 intended, but you have the powerpoint, and we will
20 continue that discussion as it does lie within our
21 unique province to handle that issue.

22 And, finally, while I stand between us and
23 adjournment, I need to take a moment to respect the
24 fine work of Vanessa Peterson Williams as chair of the
25 Representative Assembly. Yesterday the Board of

1 Commissioners passed unanimously a resolution
2 commemorating her retirement from that body. I will
3 take just a moment to read you a portion of that so
4 you get a sense, as you all saw, but get a sense of
5 what the Board of Commissioners honored in her
6 service.

7 Vanessa has been a member of the
8 Representative Assembly since 2008. In 2014, Vanessa
9 faced perhaps her greatest challenge, service
10 simultaneously on the Board of Commissioners and on
11 the task force convened by the Michigan Supreme Court
12 to Bar operations and Keller issues. Vanessa, of
13 course, took her membership on the task force very
14 seriously and devoted long hours to the process. That
15 turned out to be the easy part. When the report was
16 issued, sometimes withering criticism and ad hominem
17 attacks upon its members, Vanessa stayed the course,
18 stayed true to her professionalism and her values.

19 She supported the Assembly then through a
20 lengthy deliberative process to first defend and then
21 improve itself in the weight of the task force report
22 and then worked deciduously in her year as chair to
23 move forward with improvements, many of which you saw
24 today, structurally, operationally, and logistically,
25 from which the Assembly will benefit for years to

1 come.

2 Vanessa's professional career is marked
3 through incredible accomplishment as an attorney, but
4 also through a dedicated sense of justice. In
5 addition to her service to this body and numerous
6 other law-related organizations and entities from the
7 ABA on down, Vanessa is committed in her community and
8 works with the past president of the Ypsilanti Chapter
9 of Jack and Jill of America, Inc., where she works in
10 the leadership, juvenile justice, healthcare and
11 education initiatives for youth in her community.

12 Vanessa has been a great friend these past
13 years to me personally on the Assembly and I would
14 submit has been a friend to all of you and to our
15 entity as well. Please rise and join me in thanking
16 Vanessa.

17 (Applause.)

18 PAST CHAIRPERSON WILLIAMS: Just briefly. I
19 would say three years ago when I was elected as clerk,
20 I had no idea that we would ever have a task force and
21 what my term of leadership would entail, but I will
22 tell you with every tough day and every good day that
23 I have grown as a person and I have grown as a leader,
24 and I am so appreciative of your confidence that you
25 placed in me on that day and your confidence every

1 time that we have met where I called you and asked you
2 to dedicate some time, and you have given that time.
3 We got a lot done today, we got a lot done this year,
4 and I am so appreciative of your patience and
5 cooperation.

6 We started, after a tumultuous year,
7 wondering where would we take the Representative
8 Assembly, and I think we have made it very clear that
9 we are the final policy-making body of the State Bar
10 and that we look to provide access to justice and to
11 protect the public.

12 Today we saw our new Keller rule go into
13 effect, and we'll have an opportunity for people to
14 write minority reports and do a lot of different
15 things that we weren't doing before. I want to thank
16 our executive team, who these two gentlemen have been
17 very supportive. We have been able to work
18 collectively to set forth a vision that will go beyond
19 my term here, so I am very appreciative of Dan and for
20 Fred, and thank you for all of your support, for all
21 of the meetings that we have had, the early morning
22 breakfasts, the calls in the afternoon to make sure
23 that this body was able to assemble for a good purpose
24 and that we made very good use of your time.

25 At this time I would also like to thank our

1 committee chairs of Drafting. Michael Thomsen, if you
2 would stand. Special Issues, Aaron Burrell; Assembly
3 Review, Kim Breitmeyer; Nominations and Awards,
4 Shenique Moss; Hearings, Michael Marutiak; and Rules
5 and Calendar, Matthew Antkoviak. They have been great
6 in making sure that we were able to follow the rules
7 and present what we had to do and to do it efficiently
8 and effectively.

9 Lastly, I would like to thank the staff who,
10 without the Bar staff, we would not be able to do
11 this. We are all volunteer members here, so we all
12 have day jobs that we have to accomplish so that we
13 can keep performing, but the State Bar staff, starting
14 with our Executive Director, Janet Welch, through
15 Carrie Sharlow, who has been helping us today work
16 through our revisions, Marge Bossenbery and Anne Smith
17 and Peter Cunningham, who gives us lots of direction.
18 It has really been a great year for us.

19 Also, thank you to Judge Chmura who, when you
20 are a presiding officer, you never really realize how
21 you come to depend on your parliamentarian. You saw
22 it today in action when I had to consult with him, but
23 that's not -- I mean, he consults prior to the meeting
24 always so that we are ready to move efficiently and
25 effectively and respect your time.

1 Although they aren't here, I also have to
2 thank my family. Most often when I am doing Bar
3 duties -- I have two children, a son, Reuben, 15, and
4 a daughter, McKenzie, 12, so my husband has to do a
5 lot of mommy and daddy duties in terms of running them
6 places, but they are all very supportive of me, and I
7 could not do what I do without a great life partner,
8 without the support of my kids.

9 Thank you to all of your past leaders in the
10 back. I had great mentors in the State Bar.
11 Reggie Turner and our past Bar President have really
12 pushed me to go far beyond what I ever thought that I
13 could accomplish in terms of Bar service. I am very
14 committed, and I always want to thank you for your
15 time and for your service and your trust and guidance
16 in what I can accomplish. So thank you very much for
17 this opportunity.

18 (Applause.)

19 CHAIRPERSON QUICK: Two announcements.
20 November 22, 2015 is the deadline for your submission
21 of reimbursement forms. April 30, 2016 is our next
22 Representative Assembly meeting, to be held in
23 Lansing.

24 With that, I will entertain a motion to
25 adjourn.

1 VOICE: So moved.

2 CHAIRPERSON QUICK: All in favor?

3 VOICES: Aye.

4 CHAIRPERSON QUICK: Thank you very much.

5 Have a wonderful day.

6 (Proceedings concluded at 11:48 a.m.)

7

8

9 STATE OF MICHIGAN)
)
10 COUNTY OF CLINTON)

11 I certify that this transcript, consisting
12 of 103 pages, is a complete, true, and correct transcript
13 of the proceedings and testimony taken in this case on
14 Thursday, October 8, 2015.

15
16 November 3, 2015

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

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<p style="text-align: center;">\$</p> <p>\$175 89:20 \$3 92:17 \$83 39:11 \$772 33:9</p>	<p style="text-align: center;">4</p> <p>4 2:5 4-25 2:5 40 [2] - 86:11, 89:15 41 53:25 42 27:9 48906 103:17 48th 3:16 49 72:5 4th [2] - 13:18, 22:9</p>	<p style="text-align: center;">A</p> <p>A's 15:18 A) (2) (b) 28:9 am [5] - 1:13, 3:3, 72:15, 72:15, 103:6 Aaron [3] - 8:2, 51:3, 101:2 ABA 99:7 Abel [5] - 62:16, 63:12, 63:12, 64:6, 65:8 abide 88:22 ability [11] - 2:12, 23:21, 31:3, 31:14, 33:10, 37:23, 39:21, 43:3, 50:8, 75:14, 89:20, 89:8 ability-to-pay [3] - 40:12, 41:24, 42:2 able [15] - 29:22, 36:15, 39:17, 69:21, 74:19, 74:25, 85:7, 89:6, 90:25, 93:10, 97:15, 100:17, 100:23, 101:6, 101:10 able-bodied [2] - 38:4, 38:4 absent [3] - 16:12, 69:9, 71:20 abstain [2] - 71:14, 72:5 abstaining 15:19 abstention 52:10 abstentions 55:8 abstract 87:16 abuse [3] - 74:17, 74:17, 75:23 abuses 48:24 academia 62:5 accept [4] - 37:3, 43:20, 80:16, 80:17 accepted [4] - 25:5, 41:13, 51:12, 51:19 access [4] - 13:25, 52:1 6.600 51:10 accessibility 91:9 accessible [2] - 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