

STATE OF MICHIGAN
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE
ASSEMBLY of the STATE BAR OF
MICHIGAN

Proceedings had by the Representative Assembly of
the State Bar of Michigan at Lansing Community College,
West Campus, 5708 Cornerstone, Lansing, Michigan, on
Saturday, March 27, 2010, at the hour of 9:30 a.m.

AT HEADTABLE:

ELIZABETH M. JOHNSON, Chairperson
VICTORIA A. RADKE, Vice-Chairperson
STEPHEN J. GOBBO, Clerk
JANET WELCH, Executive Director
HON. JOHN M. CHMURA, Parliamentarian
ANNE SMITH, Staff Member

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Lansing, Michigan
Saturday, March 27, 2010
9:30 a.m.

R E C O R D

CHAIRPERSON JOHNSON: Will you please take your seats so we may begin.

Good morning, members of the Representative Assembly. My name is Elizabeth Johnson, and I am chairperson of the Representative Assembly of the State Bar of Michigan, the final policy-making body of the State Bar of Michigan. At this time I would like to call this meeting to order.

At this time I will call and recognize our clerk, Stephen Gobbo, to indicate whether or not we have a quorum. Mr. Gobbo.

CLERK GOBBO: Madam chair, we have a quorum.

CHAIRPERSON JOHNSON: Thank you very much, Mr. Gobbo. Next I would like to call and recognize Mr. Michael Blau, chairman of the Rules and Calendar Committee. Mr. Blau.

MR. BLAU: Good morning, Madam Chair, Michael Blau, 6th judicial circuit. I move that the proposed calendar be adopted.

VOICE: Support.

CHAIRPERSON JOHNSON: Thank you, Mr. Blau,

1 and I hear support.

2 VOICE: Support.

3 CHAIRPERSON JOHNSON: Support, thank you.

4 There has been a motion and support for approval of
5 the calendar. Any discussion?

6 Hearing none, all those in favor of approving
7 the calendar as presented, please signify by saying
8 aye.

9 All those opposed say no.

10 Any abstentions.

11 Thank you. The calendar for the meeting as
12 presented stands. Thank you, Mr. Blau.

13 Next I would entertain a motion for approval
14 of the summary of proceedings from the September 17th,
15 2009 meeting.

16 VOICE: So moved.

17 CHAIRPERSON JOHNSON: Thank you. Is there a
18 support?

19 VOICE: Support.

20 CHAIRPERSON JOHNSON: Thank you. There has
21 been a motion and a second to approve the summary of
22 proceedings of our September 17th, 2009 meeting. All
23 those in favor please signify by saying aye.

24 All those opposed say no.

25 Any abstentions.

1 The motion to approve the summary of
2 proceedings of September 17th, 2009 is approved.

3 At this time it gives me great pleasure to
4 introduce to you our keynote speaker today, Chief
5 Justice Marilyn J. Kelly, Chief Justice of the
6 Michigan Supreme Court.

7 Justice Kelly has a long and distinguished
8 career serving the public and the legal community in
9 the state of Michigan. Justice Kelly attended Wayne
10 State University and graduated there with honors.
11 Before taking the bench, Justice Kelly was a
12 practicing attorney for 17 years. In 1988 she was
13 elected to the Michigan Court of Appeals and reelected
14 in 1994. She was elected to the Michigan
15 Supreme Court in 1996 and again reelected in 2004.

16 She is a member of the Oakland County Bar
17 Association, and she has been active on the Family Law
18 Committee and co-chair of the President's Council and
19 Tax Force on Approved Dispute Resolution.

20 Chief Justice Kelly is a fellow of the
21 Michigan State Bar Foundation. She has served as
22 president of the Women's Bar and as president of the
23 Women Lawyer's Association of the State of Michigan.

24 Justice Kelly, we are so very proud to be
25 able to call you one of our own. Chief Justice Kelly

1 served on this Representative Assembly, and in 2003
2 this Assembly awarded her the Michael Franck Award for
3 her distinguished work in the legal profession. It
4 gives me great honor at this time, and I ask that you
5 join me in welcoming Chief Justice of the Michigan
6 Supreme Court, Marilyn J. Kelly.

7 (Applause.)

8 CHIEF JUSTICE KELLY: Thank you. Thank you.
9 Thank you, Ms. Johnson.

10 Good morning. I appreciate your inviting me
11 today. It's a pleasure to see you all. Some of my
12 fondest memories are of my membership on the
13 Representative Assembly. And in some ways I feel as
14 if I never left it. Some of the most committed and
15 principled and thoughtful members of our profession
16 have been and are part of this body, and I am very
17 proud to have served on it.

18 Because I have been involved in state and
19 local Bar activities for many years, I continue to
20 believe that the organized Bar, particularly the
21 mandatory Bar, is essential to maintaining the
22 integrity and the strength of our profession.

23 When the headlines and broadcasts are full of
24 one disaster after another, you take your good news
25 where you can find it. This past week I was reading

1 the Detroit News business section when this headline
2 caught my eye, Michigan's jobless rate decline
3 reflects stabilization. This is, I thought, cause for
4 a modest celebration, until I read the rest of the
5 article. It turned out that our state's unemployment
6 rate in February decreased by a whopping two-tenths of
7 one percent since January for an unemployment rate of
8 14.1 percent, according to the Michigan Department of
9 Energy, Labor, and Economic Growth. Moreover,
10 according to the article, payroll jobs had been
11 relatively flat since January. So much for the good
12 news.

13 A few days earlier I saw this headline,
14 Michigan pays big for underfunded indigent defense.
15 The gist of the article was that Michigan has, and I
16 quote, one of the nation's stingiest and most
17 fragmented systems for representing the 80 percent of
18 defendants in criminal cases who can't afford a
19 lawyer.

20 Those two headlines, it seems to me, point
21 out the problem that we have in Michigan with regard
22 to legal services. In a cruel but logical irony, the
23 economy has created an ever widening pool of people
24 who can't afford a lawyer while constricting resources
25 for adding to the workload of already overburdened and

1 the underfunded legal aid system. This is because, as
2 most people lose their jobs and incomes, there is a
3 sharp increase in demand for low cost and free legal
4 services.

5 Consider this sobering statistic. According
6 to the Department of Energy, Labor and Economic
7 Growth, as of the end of the third quarter of 2009 ten
8 percent of the mortgages in Michigan were either
9 seriously delinquent, defined as 90 days or more
10 without payment, or within the process of foreclosure.
11 One in ten mortgages in Michigan are currently poised
12 for foreclosure, to say nothing of the homes and
13 businesses that have already been foreclosed.

14 In metro Detroit alone the faltering economy
15 has increased the number of income eligible clients
16 for civil legal services from 400,000 to 500,000.
17 About one in three people in Michigan qualifies for
18 free legal aid. 3.1 million, 31.8 percent of
19 Michigan's 10 million residents, have annual income
20 below 200 percent of the federal poverty level.
21 That's \$29,140 for a family of two. More than 40
22 percent of Michigan's children, more than 40 percent,
23 under the age of 18 live in households with an income
24 below 200 percent of the federal poverty limit. Many
25 of their parents have limited education and poor

1 English proficiency, making it even more difficult for
2 them to navigate the court system on their own. They
3 face foreclosures, job losses, homelessness, utility
4 shut-offs, unpaid medical bills. Others need help
5 obtaining public benefits defending against insurance
6 fraud allegations or finding services for their
7 families. For example, treatment for addiction or
8 mental health issues.

9 The trial courts are reporting that they are
10 seeing more cases and more severe cases of mental
11 illness and addiction with a corresponding increase in
12 family problems such as domestic violence. One judge
13 who handles juvenile matters recently told me that she
14 has seen more cases of young girls cutting themselves
15 with knives than she has ever seen in her years in
16 practice.

17 Judges also report a rise in vulnerable low
18 income families and seniors attempting to handle their
19 own serious legal matters. Some courts now have self
20 help centers, and they are a great resource, but these
21 centers provide limited services. There are many
22 individuals who need a lawyer who can help provide
23 them in debt assistance.

24 What about legal aid? Well, the legal aid
25 agencies do a valiant job, but they are being

1 inundated. In Michigan there are approximately 180
2 legal aid attorneys out of a total of more than 32,545
3 attorneys. That makes a ratio of 17,666 eligible low
4 income clients per legal aid attorney. In contrast
5 there is one private lawyer for every 305 persons in
6 Michigan.

7 Legal aid agencies must turn away about half
8 of all eligible prospective clients who request
9 assistance each year due to inadequate resources to
10 serve them. The half who do get assistance do not
11 necessarily receive the level of assistance that they
12 want and need, and many who need more get only brief
13 advice and counsel.

14 National and state statistics have estimated
15 that no more than 20 percent of the civil legal needs
16 of the poor are being met. At the same time the
17 economy has had a dire impact on IOLTA funding, long a
18 stable source of income for legal aid. According to
19 an article in the December 7, 2009 Washington Post, on
20 the national level IOLTA interest plummeted from
21 \$371 million in 2007 to about \$93 million in 2009.

22 Well, what, if any, good news is there in all
23 of this. Well, that's up to you and me and all the
24 members of the profession. If there is to be any good
25 news, you and I must make it, and we do that by

1 encouraging, supporting, and doing pro bono work.

2 I am very proud to see the Representative
3 Assembly is leading by example. From today's food
4 drive to the proposed revision of MRPC 6.1 on your
5 agenda today, you have clearly committed to helping
6 those in need. Obviously I can't comment on the
7 proposed version of MRPC 6.1 other than to say I
8 appreciate your work on this very much, showing as it
9 does your commitment to service.

10 We are members of a generous profession, and
11 now, probably more than any other time since the great
12 depression, there is a terrible need for that
13 generosity, and there is also an opportunity here for
14 which we should be grateful to do some real good in
15 ways that go beyond the individual we help. By
16 helping the domestic violence victim, we may not only
17 prevent serious injuries to that victim and save
18 lives, but also to prevent costly county medical
19 expenses and reduce the burden on courts and law
20 enforcement agencies. By making it possible for
21 family members to stay in their homes, we reduce
22 homelessness and demand on shelters and other
23 charitable and governmental services.

24 When we help keep a child in school, we are
25 also fighting truancy and juvenile crime. When we

1 prevent workers from wrongfully losing their jobs, we
2 are putting food on family tables and roofs over
3 children's heads. When we help seniors remain in
4 their homes with supportive care, we are saving the
5 much higher cost associated with nursing home care.
6 By helping a grandparent become the guardian of his or
7 her grandchild in foster care, we keep one more child
8 from growing up in the foster care system.

9 Here are some real life examples of
10 differences that a Michigan lawyer can make in someone
11 else's life. A low income grandmother died before she
12 was able to pay taxes on her long-time home where her
13 daughter and grandchild lived. The daughter and her
14 child were in danger of becoming homeless after the
15 home was sold for back taxes, but a legal aid program
16 referred this case to a pro bono lawyer who secured
17 title in the daughter's name so she could secure
18 financing, and, as a result, she was able to pay the
19 property taxes and remain in the family home with her
20 child.

21 An 87-year-old woman hired a contractor to
22 enclose her porch. The contractor disappeared along
23 with her money without completing the project, and she
24 lacked the funds to hire someone else to do the job.
25 After trying to locate and sue the elusive contractor,

1 two pro bono lawyers who took the elderly woman's case
2 literally took the matter into their own hands. They
3 rolled up their sleeves and finished the project
4 themselves. Now, these lawyers went above and beyond
5 their legal roles, but they were very gratified to see
6 the elderly client happy and enjoying her porch.

7 A 70-year-old indigent veteran suffered from
8 colon cancer. He applied for government help, but the
9 Veterans Administration sought repayment after the man
10 had been incorrectly sent both VA and Social Security
11 benefits. A pro bono lawyer helped him get a waiver
12 of the debt. Because the veteran's medical debt had
13 been nearly equal to his overpayment, he would not
14 have had enough money to live on if he had had to
15 repay the VA. The pro bono lawyer also helped the
16 veteran arrange a manageable payment plan for his
17 ongoing medical expenses, and now this older veteran
18 is able to survive and obtain medical care that he
19 needs.

20 Obviously pro bono services is a lawyer's
21 duty. As MRPC 6.1 makes clear, each of us has a
22 responsibility for supporting public interest legal
23 service, but it is also a privilege, the very great
24 privilege of having an impact for good, and it's a
25 tremendous satisfaction to know that you have made

1 someone else's life better.

2 It's also good business. Not only does
3 pro bono work raise the profile of the legal
4 profession in a positive way, it also helps the
5 attorney hone skills and network with fellow lawyers
6 and others in the community and catch the eye of
7 potential clients.

8 And there are so many ways to participate.
9 The State Bar's voluntary pro bono standard recommends
10 that each year each lawyer accept three cases or
11 provide 30 hours of free legal help for low income
12 persons or make a \$300 donation for a nonprofit legal
13 aid program.

14 In addition, the State Bar's pro bono
15 initiative has developed a pro bono menu of ways to
16 contribute to an open, accessible justice system.
17 There are literally opportunities for everyone, from
18 the brand new lawyer to the experienced counsel. Do
19 you lack experience? Pro bono providers often offer
20 training for volunteers at little or no cost, as well
21 as mentoring and malpractice coverage.

22 Not enough time in the day? How about
23 staffing a legal aid hotline for a few hours each
24 month or making a financial donation to the Access to
25 Justice campaign. What's important is not the choice

1 of how to participate, it's the participation that
2 counts.

3 The core principles of our legal system --
4 due process, equal protection of the laws,
5 assessability, fairness -- have little meaning if
6 those who can't afford a lawyer are shut out of the
7 justice system. As Chief Justice Taft wrote in 1926,
8 the real practical blessing of our bill of rights is
9 its provision for fixed procedure securing a hearing
10 by independent courts to each individual, but if the
11 individual in seeking to protect himself is without
12 money to avail himself of such procedure, the
13 constitution and the procedure made viable by it do
14 not practically work for the equal benefit of all.
15 As members of the Bar, we must see to it that the
16 constitution does, indeed, work for the equal benefit
17 of all.

18 Tip O'Neil, the long-time speaker of the
19 House, once famously declared that all politics is
20 local. Well, we might also say that all legal aid is
21 local. Michigan has people worried about being thrown
22 out by a landlord or losing their homes to
23 foreclosure. They are defendants in debt collection
24 cases. They are victims of domestic violence. They
25 are once secure families who now depend on their local

1 food bank for their next meal. They are our family,
2 friends, neighbors, co-workers. For them justice for
3 all may be only a pipe dream until you step in.

4 I thank you for all you have done and will do
5 to make the ideal of equality under the law a reality,
6 and I am so very proud of this Assembly and the
7 Michigan Bar it represents for its services to those
8 in need. Thank you.

9 (Applause.)

10 CHAIRPERSON JOHNSON: Chief Justice Kelly,
11 thank you so much. On behalf of the Representative
12 Assembly of the State Bar of Michigan, we would like
13 to extend our sincere thanks for you being here today.
14 We look forward to your return many, many times in the
15 future. Thank you so much.

16 At this time I would like to take a moment to
17 thank the MGTV, the Michigan Government Television,
18 for recording this program. In order to facilitate
19 their camera crew, I would like to take a five-minute
20 recess. Without objection, I would ask that this body
21 take a five-minute recess, and we will reconvene at
22 10:00. Thank you all very much.

23 (Break taken from 9:54 - 10:00 a.m.)

24 CHAIRPERSON JOHNSON: Will you please take
25 your seats. Thank you very much. We are now back in

1 session. The next item is number four, filling
2 vacancies. I would like to call Mr. Jeffrey Nellis,
3 the chairperson of the Nominations and Awards
4 Committee, to the podium to make his presentation.
5 Mr. Nellis.

6 MR. NELLIS: Good morning again. That's a
7 tough act to follow. I am Jeff Nellis from the 51st
8 circuit up in Ludington, and our goal every year is to
9 try and obtain 100 percent participation in this body.
10 It's very important. It gives us some added
11 legitimacy. It also allows us to ensure that we get
12 input and voices from all over the state of Michigan.

13 Obtaining that 100 percent participation is
14 not always an easy feat, trust me. We spent the
15 better part of this winter getting to the point of
16 where we are today. I am very proud to announce
17 though that, once again, I don't know how many years
18 running now, but once again we do have 100 percent
19 participation, and before I list the names of the
20 proposed new members, I want to recognize the members
21 on my committee, because, like I said, we not only
22 dealt with this but some other issues. We put in a
23 lot of time, and these folks were unbelievable in
24 helping us reach this goal.

25 So if I could have my committee members stand

1 when I read your name. Rick Paul from the 6th
2 circuit. Eilisia Schwarz from the 28th circuit.
3 Bruce Barton from the 4th circuit. Anne McNamara from
4 47th circuit, and John Mills from the 6th circuit. If
5 you could give them a round of applause.

6 (Applause.)

7 MR. NELLIS: I also want to thank -- we got
8 some additional help as well. Obviously Elizabeth
9 Johnson was a huge benefit to us, Steve Gobbo,
10 Victoria Radke, and also I got some special outside
11 help from Rob Buchanan and Bruce Courtade in Kent
12 County. They were a big help as well, so if you could
13 recognize them as well.

14 (Applause.)

15 MR. NELLIS: So now I would like to read off
16 the names of the proposed individuals who will be
17 filling vacancies, and if you could, again I think
18 most of you are in the back, if you could stand when I
19 read your name, I would appreciate it.

20 For the 1st judicial circuit, Barry Poulson,
21 he is from Hillsdale; 2nd judicial circuit, Donna
22 Howard from St. Joseph; 3rd judicial circuit, Vincent
23 Romano from Grosse Pointe Park; 5th judicial circuit,
24 Tom Evans from Hastings; 6th judicial circuit, Scott
25 Wolfson from Troy; 6th judicial circuit, Kenneth

1 Morgan from Birmingham. We have a lot.

2 From the 9th circuit, Pamela Enslin, she is
3 from Kalamazoo; the 16th circuit, Carl Chioini from
4 Mt. Clemens; 17th judicial circuit, Tom TerMaat; 17th
5 judicial circuit, Victoria Vuletich, she is from Grand
6 Rapids, as is Tom; 19 judicial circuit, Mark Quinn
7 from Manistee. I don't believe he is here today.

8 24th judicial circuit, Ryan Edberg from
9 Sandusky; 30th judicial circuit, Monique Field from
10 Lansing; 30th judicial circuit, Christopher Smith from
11 Lansing; 34th judicial circuit, Dawn LaCasse from
12 Houghton Lake; 43rd judicial circuit, Heidi Behnke
13 from Dowagiac; 46th judicial circuit, Toan Chung from
14 Grayling; 50th judicial circuit, James Riggle from
15 Sault Sainte Marie; and 53rd judicial circuit, Mike
16 Ekdahl from Cheboygan.

17 Now, at this time I would make the formal
18 motion that these individuals be approved and seated
19 as members of the Representative Assembly for their
20 respective circuits based upon the recommendations of
21 our committee. Do I have a second?

22 VOICE: Support.

23 CHAIRPERSON JOHNSON: Thank you very much.
24 There is a motion and support to fill the vacancies as
25 presented. Is there any discussion? Hearing none,

1 all those in favor of the motion to approve the
2 vacancies as presented, please signify by saying aye.

3 All those opposed say no.

4 Any abstentions.

5 Hearing none, the motion to fill the
6 vacancies as presented is approved. Welcome to the
7 Assembly, and congratulations to our new members.

8 (Applause.)

9 CHAIRPERSON JOHNSON: The new members may now
10 be seated in their circuit. At this time please go to
11 your assigned circuits.

12 And I would also like to extend my thanks to
13 Jeff and his committee. They have done a tremendous
14 job this time filling all these vacancies, and I am so
15 pleased that we are at 100 percent again.

16 The next item on the calendar is number five,
17 and that is remarks from the chair.

18 As I look out over this room and this
19 Assembly, I see so many incredibly talented and
20 dedicated lawyers and judges, people who are willing
21 to give up their time and talents to enhance the
22 profession, says so much about who we are as an
23 Assembly and as a State Bar. It makes me so proud to
24 be part of this great legal profession and this
25 Representative Assembly.

1 I would like now to recognize the individuals
2 seated in front of you who give so much of their time
3 to this Assembly. First to my left, your right, is
4 our vice chairperson, from the 47th circuit,
5 Victoria Radke.

6 (Applause.)

7 CHAIRPERSON JOHNSON: The clerk of the
8 Assembly from the 30th circuit, Stephen Gobbo.

9 (Applause.)

10 CHAIRPERSON JOHNSON: I know that this
11 Assembly is in good hands with their very capable
12 leadership. Thank you, both.

13 Next to my right, your left, is this
14 Assembly's parliamentarian, Chief Judge of the
15 37th District Court, John Chmura.

16 (Applause.)

17 CHAIRPERSON JOHNSON: Judge, we are so very,
18 very grateful for your dedicated service to this
19 Assembly. Thank you.

20 Next to Judge Chmura is our executive
21 director, Janet Welch. Most of you know Janet. She
22 is an incredible woman, and you will hear from her
23 later, but please let's give a round of applause for
24 Janet.

25 (Applause.)

1 CHAIRPERSON JOHNSON: Next to Janet is
2 Anne Smith. She probably doesn't even need an
3 introduction, because most of you know her already.
4 She is an administrative assistant at the State Bar
5 and does so much for our Representative Assembly. She
6 is hard working and dedicated, and we couldn't do this
7 without you, Anne, so thank you very much.

8 (Applause.)

9 CHAIRPERSON JOHNSON: Seated at the table to
10 the far right is Nancy Brown, and she is director of
11 communications at the State Bar, and she is the one
12 that keeps us organized with our computer and our
13 Power Point, so thank you very much, Nancy.

14 (Applause.)

15 CHAIRPERSON JOHNSON: To my left, your right,
16 is our court reporter, Connie Coon, and Connie has
17 been our court reporter for many years, and we really
18 are very grateful for her very proficient, excellent
19 service to the Assembly. Thank you, Connie.

20 (Applause.)

21 CHAIRPERSON JOHNSON: Two other people who
22 are not up here but I want to give some special
23 recognition to, Marge Bossenbery, who probably many of
24 you met as you came in to this Assembly. Marge has
25 worked very closely with Anne on so many things, and

1 she also is our go-to person for the Board of
2 Commissioners. So thank you to Marge Bossenbery.

3 (Applause.)

4 CHAIRPERSON JOHNSON: And then there is
5 another person that's in this room that I would like
6 to give some special recognition to. Dawn Evans last
7 fall stepped in and did some incredible work doing
8 much more than her job title, and she assisted the
9 Assembly in so many ways, and I would like to give a
10 very special recognition to Dawn Evans, who is seated
11 in the back. Thank you, Dawn.

12 A special thank you to our past
13 Representative Assembly chairpersons. They have made
14 themselves available to me in so many ways, with
15 ideas, suggestions, encouragement. Their
16 institutional knowledge and memory have been
17 invaluable. At this time I would like to ask all the
18 former chairpersons who are present to stand and be
19 recognized for their service to the Bar and to this
20 Assembly. I know that you are here. Julie Fershtman,
21 Tom Rombach, Ed Haroutunian, Carl Chioini. Thank you
22 very much.

23 (Applause.)

24 CHAIRPERSON JOHNSON: Today we also have with
25 us many members from the Board of Commissioners who

1 many serve here with us on the Representative
2 Assembly, but I would like them to stand and be
3 recognized for their hard work that they do for our
4 State Bar, and I believe our officers are here, and if
5 all the Board of Commissioners members would please
6 stand and be recognized.

7 (Applause.)

8 CHAIRPERSON JOHNSON: And I see in the
9 audience there are many of our very talented and hard
10 working State Bar staff present, and I would ask that
11 each one of you, and I know how much you have helped
12 me and the Assembly this year, I would ask that you
13 stand. I know I see a lot of you. Candace Crowley,
14 who was a tremendous help on the Upper Peninsula tour.
15 If you would all please stand.

16 (Applause.)

17 CHAIRPERSON JOHNSON: Thank you very much.
18 Those are hard working, dedicated people that are
19 doing so many great things for the Bar and for our
20 profession.

21 You will hear today about many matters of a
22 policy nature that affect our Bar and that will be of
23 importance in this coming year. The sales tax on
24 legal services, the Judicial Crossroads Task Force,
25 the Justice Initiatives report, reapportionment,

1 budget matters relating to the economy, Access to
2 Justice.

3 I urge all of you to take the ideas and
4 concepts that you hear today back to your
5 constituents, back to your local Bar associations. It
6 is you as members of the Assembly that are truly the
7 leaders of our Bar. You are that vital link, and I
8 thank you so much for your service.

9 One of the areas of the State Bar that has
10 been continuing to be worked on this year is civic
11 legal education. As I speak, the Michigan high school
12 mock trial competition finals are taking place in
13 Lansing in the Hall of Justice. The State Bar is a
14 proud co-sponsor of that event.

15 Many lawyers and judges give of their time to
16 make sure that high school students in our state learn
17 about the law in a meaningful way. With cutbacks in
18 state school budgets, the need for such programs is
19 even greater. I thank the State Bar and all of the
20 lawyers and judges that assist in civic legal
21 education programs, such as the mock trial program,
22 programs for Constitution Day, programs for Law Day.
23 I urge you and you are fellow attorneys to continue to
24 support these programs even more now than ever.

25 Professionalism and civility are very

1 important matters to the State Bar and the legal
2 profession as a whole. Programs on professionalism
3 and civility that were instituted by former State Bar
4 President Ed Pappas and that have been continued by
5 State Bar President Charles Toy are bringing the
6 concept of professionalism to the state's law schools
7 early in a law student's career. We as lawyers must
8 set the tone for professionalism and civility in the
9 practice of law. We no longer can just give lip
10 service to these important fundamentals of the legal
11 profession. Professionalism and civility must start
12 now. An attorney can still represent his or her
13 client with vigor and be civil. We can do this
14 together, and we must do this together for the sake of
15 our profession.

16 The issues facing the citizens of Michigan in
17 these tough economic times are many. Lack of food,
18 housing, employment, health care, and legal services
19 are just some of the issues for many people in our
20 state. As Edmund Burke, the great British statesman
21 once wrote, the only way for evil to triumph is for
22 good men to do nothing.

23 Well, today the good men and women of the
24 Representative Assembly have shown that lack of food
25 and lack of legal services are not evils that they

1 will stand for without taking action. Today you have
2 stepped up individually and as an Assembly to provide
3 food for the Greater Lansing Food Bank and financial
4 contributions for the Access to Justice endowment
5 fund, to provide long-term access to legal services
6 for the citizens of this great state. I am humbled by
7 your generosity and by your service to our profession.
8 I thank you for making a difference. Together we can
9 make a difference. Thank you very much.

10 (Applause.)

11 CHAIRPERSON JOHNSON: Moving on, the next
12 item on the calendar, remarks from the president,
13 Charles Toy. As you know, Charles is the 75th
14 president of the State Bar of Michigan. Quite a feat.

15 Charles Toy graduated from Cooley Law School
16 in 1981. He began his career as clerk to
17 Judge Holbrook in the Michigan Court of Appeals. He
18 then took a position with Ingham County Prosecutor's
19 Office, where he remained until he began his career at
20 Farhat and Story, the law firm in Lansing.

21 Charles practiced law for 24 years at Farhat
22 and Story where he practiced in environmental,
23 property, and oil and gas law areas.

24 During that time he also served as a contract
25 administrative law judge with the Michigan Department

1 of Natural Resources and with the Michigan Department
2 of Environmental Quality. He now serves as an
3 associate dean at Career and Professional Development
4 at Cooley Law School in Lansing.

5 Charles has served the State Bar in many
6 capacities, including having served on the
7 Representative Assembly and again now as a
8 commissioner Assembly member.

9 During the Upper Peninsula tour I had the
10 opportunity to get to know Charles and his wife,
11 Mary Ellen. Charles works extremely hard for the
12 profession, promoting professionalism and civility.
13 He cares very deeply about his work and his
14 responsibilities as president of this Bar association,
15 and Charles has been a great supporter of this
16 Representative Assembly.

17 Please join me in welcoming the 75th
18 president of the State Bar of Michigan, Mr. Charles R.
19 Toy.

20 (Applause.)

21 PRESIDENT TOY: Thank you very much,
22 Elizabeth, and good morning.

23 You are all esteemed, dedicated, and
24 cherished colleagues. I mean that sincerely. I count
25 it a privilege to have been a member of the

1 Representative Assembly. In fact, my circuit is right
2 there, and many times it seemed like we were right up
3 here for some reason. You know, the 17th circuit
4 feels like that today, don't you? You notice the 18th
5 isn't even here. I mean, they feel it, but anyway, it
6 was a great honor being on this board. And why is it
7 a great honor? Just because of the relevant and the
8 important things that we are doing together, and we
9 are truly combined, the State Bar and the
10 Representative Assembly, in what we are doing in our
11 work.

12 But I did not want to give you this morning a
13 broad shotgun approach to what is happening at the
14 State Bar. In fact, incrementally you are getting
15 that through all the different agenda items and
16 through the speakers. But instead I want to report on
17 two distinctively different yet interrelated upcoming
18 events.

19 The first event is the first annual -- don't
20 you love the first annual -- but first annual Justice
21 Initiative Summit, which will be on April 12th. The
22 Committee on Justice Initiatives is an umbrella for
23 four initiatives -- criminal issues, equal access, pro
24 bono, and justice policy initiatives.

25 As you can see from the chart that was in

1 last year's annual report, and that chart is coming up
2 here momentarily, there are many active projects, and
3 these are all undertaken to assure quality legal
4 services for all Michigan citizens. All the work is
5 important, but it is also a little bit amorphous and
6 diffused. Justice Initiatives promised many things to
7 many people resulting in many open programs, as you
8 can see.

9 The summit will gather public policy decision
10 makers and leaders in justice initiative core areas to
11 focus on giving needed direction and priorities. It
12 is part of the restructure of this area of the
13 State Bar and that will fuel the budget process for
14 justice initiatives.

15 Now, you are going to hear more about this, I
16 am sure, during the update that is scheduled for
17 immediately after lunch. But, as you know, the agenda
18 goes in such a way that sometimes it may be before
19 lunch. But that will be presented by co-chairs of
20 that committee, Judge Cynthia Stephens and Terri
21 Stangl.

22 The interrelated second event is a series of
23 three diversity colloquia, and those will be on
24 June 22nd, 23rd and 28th at law schools in Detroit,
25 which happens to be Wayne State, Grand Rapids Cooley,

1 and East Lansing MSU. These symposia will focus on
2 improving the diversity in our profession.

3 Diversity in the profession is also an
4 amorphous and diffused concept, meaning different
5 things to different people. Through the symposia and
6 the leadership of Gregory Conyers -- and I should
7 introduce him. Go ahead and stand, Gregory.

8 Through his leadership and also the
9 symposia -- and Greg, by the way, is the State Bar of
10 Michigan's director of diversity, which is a newly
11 created position during this Bar year -- but through
12 his leadership in the symposia there will be a common
13 understanding among stakeholders of what is a diverse
14 Bar, and there will be a resultant statement in
15 support of importance of diversity to the profession,
16 a statement that hopefully will be signed by other
17 members profession-wide.

18 The statement will be based on concepts that
19 are similar to those voiced in my President's Page in
20 the March issue of the Michigan Bar Journal titled,
21 Diversity and Inclusion. If you haven't read that
22 yet, I will urge you to, and if you haven't read
23 February's, read that, and January's, and go all the
24 way back.

25 You know, I am very thankful this is the

1 month that I am off, because you are not going to see
2 a President's Page in the April Bar Journal, and you
3 know why, don't you? It's that very important issue
4 called the directory issue.

5 Diversity signifies the concept of inclusion
6 that welcomes as equal contributors those with
7 differences which enhances the excellence, the
8 enrichment, the effectiveness and the success of our
9 profession.

10 I stated that these events are interrelated.
11 They are in some of their historical roots, which are
12 traced back over two decades to a 1986 Michigan
13 Supreme Court citizens commission report that reached
14 the very disturbing conclusion that over one third of
15 Michigan citizens believed that the Michigan court
16 system discriminated against individuals on the basis
17 of gender, race, or ethnic origin. Through various
18 task forces and the work of the Open Justice
19 Commission, and now Justice Initiatives, work
20 continues on increasing the pipeline of diverse talent
21 into the profession.

22 This history is on the State Bar of Michigan
23 website and is contained in the 2009 annual report of
24 the Equal Access Initiative of the Committee on
25 Justice Initiatives.

1 I want to maybe say one aside, and I am kind
2 of reluctant, because it's probably a sore wound, but
3 I am going to say it anyway. I am more interested
4 that as a result of task forces, et cetera. Well, one
5 of these task forces gave recommendations in 1989, and
6 there were two of them. There was a task force on
7 racial/ethnic issues and a task force on gender
8 issues. These were created through the Supreme Court
9 under the leadership of Chief Justice Dorothy Comstock
10 Riley.

11 As a result of the recommendations, they
12 asked for amendments to the Code of Judicial Conduct,
13 the Michigan Court Rules, and the Michigan Rules of
14 Professional Conduct. And specifically the
15 recommendations were to prohibit invidious
16 discrimination and sexual harassment by judges and
17 lawyers.

18 This body adopted the recommendations, and
19 the sticking point is those have never been enacted by
20 the Michigan Supreme Court, and I know that that is
21 something that your leadership continues to see as a
22 kind of a thorn in the side. That is, the work that
23 is done here, we keep a list of what hasn't been
24 adopted by the Supreme Court, and one of the pushes is
25 to make sure that those things that are discussed

1 here, adopted here, are hopefully, eventually adopted
2 by or at least in Court Rules or Rules of Professional
3 Ethics and that kind of thing.

4 So we understand that this is an evolutionary
5 process. Much has happened, but much more must be
6 done to promote activities that instigate improvements
7 in the diversity of our profession so that we can
8 serve a more diverse public. In fact, you are going
9 to see that also in the report that will be given by
10 Anne Vrooman on demographics of our Bar association.

11 By the way, this work is continuing also on
12 the Judicial Crossroads Task Force, because there is a
13 committee on Access to Justice, and I am sure you are
14 going to hear more about that in the future.

15 So similar to Justice Kelly, I want to thank
16 you for what you do in your day-to-day jobs. I know,
17 because I was a private practitioner for 27 years,
18 that when you are in the trenches, when you are on the
19 ground level, sometimes you don't see those more
20 altruistic values and principles that we all adhere to
21 that you might see at the 52,000 foot level if you are
22 out in space or maybe even the mile high, 5,200 foot
23 level, and those are principles and ideas that we as
24 attorneys are guarding freedom, we are guarding access
25 to justice, we are guarding equality. We need an

1 open, strong, and fair administration of justice, and
2 that's what we are doing as attorneys, and that's
3 maybe what we lose sight of in our day-to-day
4 activities. So I want to remind you of that, and you
5 especially see it when you participate in pro bono
6 activities, because many of those altruistic things
7 come back to you and you see them.

8 And from my view in meeting many of you
9 during the year, many lawyers, I see that view. In
10 fact, you are going to see it today just in your own
11 awards committee report, because there you are
12 recognizing someone that you are not fighting at the
13 trench level but you see them from a higher elevation.

14 This was really brought home, by the way, the
15 importance of this at the ABA midyear meeting, which
16 was just last month. And that is that we heard
17 reports from the incoming chair of the president of
18 the ABA, who is a Cuban American, and also the past
19 president two years ago of the Florida Bar who is also
20 a Cuban American. In fact, he came here when he was
21 11 years old, no visa, no nothing. Put on a boat by
22 his parents to get away from Cuba, and they reminded
23 us as attorneys that the constitution in Cuba was very
24 similar to the constitution that we have here. Look
25 at the difference between those two countries and look

1 at the difference you make as attorneys in guarding
2 the values in our constitution.

3 Also, I know throughout the year in meeting
4 attorneys that you all help in other ways. You help
5 not only in your day-to-day activities but your work
6 on commissions, on boards, your work at schools, your
7 work in your neighborhoods. You work in a variety of
8 different ways because you are seen as a person of
9 influence because you are an attorney. And we are
10 championing that through our Lawyers Help program. If
11 you haven't looked at that web page on the State Bar
12 website, please do so. You will be proud of what
13 attorneys are doing in this state.

14 In closing I want to say that I am very proud
15 to be an attorney. I am very proud that you are doing
16 what you are doing day-to-day and also in the
17 extra-curricular things as attorneys, and I think we
18 should all be proud of our profession for what we are
19 doing, the help that we are providing to others in all
20 different ways, as Justice Kelly just enumerated, and
21 also you should be proud of what you are doing as
22 Representative members. What you are doing here
23 again, as I said, is very important and it's very
24 timely for the issues of our day.

25 So thank you very much, and just let me

1 encourage you to continue to do the work that you are
2 doing. Thank you.

3 (Applause.)

4 CHAIRPERSON JOHNSON: Thank you very much,
5 Charles. The next item on our calendar is number
6 seven, remarks from our executive director, Janet K.
7 Welch.

8 As many of you know, Janet's career in State
9 government is very diverse and very extensive. She
10 started as a legislative assistant for the Michigan
11 House of Representatives. She was chosen to create a
12 nonpartisan legislative analysis office for the
13 Michigan Senate, and she served as its director for
14 many years before she decided to attend law school at
15 the University of Michigan.

16 After a clerkship with the Michigan Supreme
17 Court, Justice Robert Griffen, Janet Welch became an
18 executive analyst in the office of the Chief Justice
19 of the Michigan Supreme Court. She then served as the
20 Supreme Court's legal counsel.

21 In the year 2000 she left the Supreme Court,
22 and to the State Bar's benefit she came to work at the
23 State Bar as legal counsel. She has now been working
24 with us as our executive director. Her work with the
25 Representative Assembly, the Board of Commissioners,

1 and her incredible staff have been a great service to
2 the legal profession in the state of Michigan.

3 I am sure that the entire Representative
4 Assembly will join me in welcoming back our executive
5 director, Janet Welch.

6 (Applause.)

7 MS. WELCH: Thank you very much, Elizabeth,
8 and all of you. By my count, this is the seventh time
9 I have addressed you as executive director of the
10 State Bar of Michigan, and for six times in my
11 capacity as reporting to you on the health of the
12 State Bar I have been able to say the fiscal situation
13 of the State Bar of Michigan is very sound. We are
14 meeting all of the obligations given to us by statute
15 and by the Michigan Supreme Court, not only I think in
16 an exemplary way, but even in some cases in an award
17 winning way, and, in addition to that, for six times I
18 have been able to tell you that we are meeting the
19 goals that were set out in the strategic plan by the
20 Representative Assembly and the Board of Commissioners
21 in a way that has been adapted every year to the needs
22 of the profession.

23 I am happy to say, although it's monotonous,
24 that my message is the same again this time and that I
25 hope to be able to be equally monotonous for as long

1 as all of you are here in the Representative Assembly.
2 We have a very well managed Bar, thanks to our staff,
3 but I think that the foundation of our success and the
4 success that needs to be, it needs to be underscored,
5 is occurring without dues increases and in the face of
6 an economic environment that does not allow us the
7 luxury of floating on investment income.

8 The success really rests on the broad and
9 deep base that we have of lawyers who are willing to
10 do what you are doing here today, which is to give
11 generously of their time for the betterment of the
12 profession, and that is what makes our Bar really
13 remarkable, and it is what allows me to come before
14 you repeatedly, perhaps monotonously, and say that we
15 are in great shape as a Bar.

16 I won't reiterate the very depressing kinds
17 of news that the Chief Justice described to us about
18 the state of the economy and in particular in
19 Michigan, because you are all living it, as we are.
20 And so I just want to note that the fact that the Bar
21 is doing well in an environment where the citizens of
22 the state of Michigan are not doing well and the state
23 government is struggling is a challenge that we are
24 conscious of every day.

25 What our membership needs more than anything

1 right now is something that the State Bar of Michigan
2 can't give them, which is more paid work for the
3 underemployed and the unemployed lawyers of this
4 state. But what we can do is continue to provide
5 accessible and valuable tools to our members who are
6 practicing law to help them practice more cost
7 effectively and to do what has been underscored here
8 already, to mobilize our resources to help in pro bono
9 and access to justice, and we are doing that with
10 increased dedication as the environment in which we
11 are working deteriorates. Hopefully it's stabilizing,
12 but obviously it's a huge struggle.

13 We are also doubling and redoubling our
14 efforts always to look to member benefits that we can
15 bring to you, and I am happy to say that the Board of
16 Commissioners approved three new member benefits
17 yesterday that will be rolled out in the next month or
18 so that speak to services that practicing members use
19 that we hope will help them practice more cost
20 effectively. That is a supplement to Casemaker, which
21 is the free legal research tool that we announced last
22 September, and we have gotten positive reviews from
23 many members who say that it's helping them to do
24 their legal research in a more cost effective manner
25 and helping their bottom line.

1 In addition to that, in this environment we
2 are doing something this year that I think is required
3 of a Bar that cares about the future and cares about
4 the citizens of this state, and that is the Judicial
5 Crossroads Task Force that the Chief Justice
6 mentioned. The task force began its work last
7 October, and it just met for the second time this
8 month.

9 The challenge of the task force is huge.
10 It's to figure out, given the likely demographics of
11 this state and the projections in terms of the
12 economy, what changes should be made to the system, to
13 the way we go about delivering justice, that will
14 allow us not only to maintain the level of service
15 that we have now but to be able to fix the problems
16 that we have identified that need to be fixed, in
17 particular our very inadequate public defense system,
18 as well as the rising tide of pro se litigants and
19 indigents who cannot get the services that they need
20 to have justice in the system today.

21 It's a huge undertaking. There are over a
22 hundred distinguished members of the Bar and the bench
23 and some distinguished lay persons who have agreed to
24 serve who have been working for months. I can't tell
25 you what the results of the task force are going to

1 be. You don't ask the people that we ask to serve and
2 tell them what the answers are going to be. You have
3 to put them together and see what happens. But I can
4 say that if in September the task force only
5 recommends the safe and obvious answers, if they only
6 go for the low hanging fruit, we will have lost a
7 major opportunity to do something really valuable for
8 the state.

9 So I am hoping that what they come up with is
10 provocative and challenging, and I hope you are all
11 looking forward to what they have to say with as much
12 anticipation as I am, because we are the ones that are
13 going to be dealing with what they are recommending.

14 I began with a monotonous message, but I
15 would like to end in a different way than I ever have
16 before. Elizabeth alluded to extraordinary efforts
17 that Dawn Evans made last fall, and I want to
18 elaborate on that a little bit, even though it's a
19 little bit personal.

20 Two days after I addressed you last year I
21 walked out into a beautiful September sunshine day,
22 and four hours later I was being transported by
23 helicopter to Beaumont Hospital where I spent seven
24 weeks, and it was in that period while I was on life
25 support that Dawn assumed the mantle of acting

1 director of the State Bar, and I want to recognize her
2 in front of you for the extraordinary efforts that she
3 undertook, as well as the extraordinary efforts of the
4 whole staff that kept the Bar going in the face of
5 some funky times for a couple weeks. Not that I am
6 indispensable, but it's always unnerving to have
7 something that unanticipated happen. So I take that
8 smooth, unruffled operation of the Bar in the face of
9 my accident as evidence of what a strong Bar you have
10 before you.

11 The experience that I went through really had
12 the effect of increasing my appreciation of
13 everything, and it has inspired the story I want to
14 end with.

15 In my capacity as executive director of the
16 State Bar I get to serve in the House of Delegates of
17 the ABA, and it's a role that's very similar to the
18 role that you are playing today, except that instead
19 of 150 members, there are 550-some members and it
20 lasts a day and a half instead of a day. There is a
21 lot more folderol, but essentially the role that the
22 members of the House of Delegates play is very similar
23 to the role that you play in that we are grappling in
24 the House of Delegates with issues of cutting edge
25 issues for the profession, ethical issues, making

1 recommendations that really have an impact on the way
2 in which the legal profession conducts its business
3 and will conduct its business and the way in which it
4 delivers services to the public and upholds the values
5 of the justice system.

6 But being a member of a 550-member body can
7 make you feel a little inconsequential and the day
8 gets long, but I want to tell you about what happened
9 a year ago at the midwinter meeting. The hot issue on
10 the agenda at that meeting was the ethical issue of
11 whether and to what extent to screen lateral hires in
12 a way that can allow the law firm that the new hire
13 has hired into to take on issues that would otherwise,
14 or cases that would otherwise pose conflict.

15 There had been a huge amount of e-mail
16 traffic about the issue prior to the meeting, and it
17 was a recommendation that had come before the body
18 several times and had been tabled. The Ethics
19 Committee, Ethics 2000, had recommended liberalizing
20 the lateral hire rules, and the House of Delegates had
21 always turned it back, and it was before the House of
22 Delegates again.

23 Interestingly, Michigan has had in place the
24 rule that was before the House of Delegates a year ago
25 since 1988. We were one of the first states to adopt

1 it, so, as you can imagine, Michigan delegation was
2 pretty cool with the resolution, but the 24 states, 26
3 states that had not adopted a similar resolution were
4 very apprehensive about it and very vocal in either
5 being skeptical about it or in some cases suggesting
6 that were the model rules to be changed to liberalize
7 that rule that would sort of signal the end of the
8 legal civilization as we know it.

9 The debate had gone on for quite a while. It
10 was toward the end of the second day, and a motion was
11 made to table the resolution, which is the way it had
12 died in the past several times. The people in
13 support -- there was a voice vote. Couldn't tell, too
14 close. Asked the people in support of the resolution
15 to stand. It took 15 minutes to count, because it was
16 a very big body. They sat down. Another 15 minutes
17 to count the people opposing the motion to table, and
18 then, you know, another ten minutes, so very
19 suspenseful. The vote was 218 votes to table, 219
20 votes not to table. And I have to confess that the
21 first thought that went through my mind was thank
22 goodness I wasn't in the bathroom.

23 But my second thought was what a privilege to
24 be here to make a difference, and the way I typically
25 end, the way I have ended every six times that I have

1 spoken to you is thank you very much for the service
2 that you have, but I want to end it slightly
3 differently and say how lucky you are to be here. I
4 hope you appreciate the difference that you can make
5 for the profession.

6 It is a wonderful privilege to be here and to
7 serve and to grapple with the questions that you are
8 grappling with. And also, thank you very much.

9 (Applause.)

10 CHAIRPERSON JOHNSON: Thank you very much,
11 Janet. We are so glad that you are here to relate
12 that story to us. We really appreciate your being
13 here and reminding us of how important it is to be
14 here.

15 At this time, pursuant to our calendar, we
16 are right on schedule. We will take a 15-minute
17 break. We will resume at five minutes after 11, on
18 the dot. We are in recess.

19 (Break was taken.)

20 CHAIRPERSON JOHNSON: We are now back in
21 session. The next item is number eight, approval of
22 the award recipients for the Michael Franck Award and
23 the Unsung Hero Award.

24 At this time I would like to call to the
25 podium Mr. Jeffrey Nellis, chairperson of the

1 Nomination and Awards Committee for his presentation.
2 Mr. Nellis.

3 MR. NELLIS: Good morning again. Before I
4 get started, I neglected to thank and recognize one
5 other person which should not go unrecognized, and
6 that's Anne Smith.

7 When I first got appointed to this position a
8 year and a half ago, Anne started sending me e-mails,
9 and I had no idea who this person was. I am in
10 Ludington, so we are kind of out of it a lot of times.
11 But Anne has been an incredible help to me and my
12 committee, especially again with me being a couple
13 hundred miles away. She has just been huge in helping
14 us. You can tell we were involved, especially this
15 year, in a lot of different things, and her ability to
16 organize, you know, we had a couple of issues here
17 just last minute in dealing with vacancies, and she
18 just steps right up to the plate and does what has to
19 be done. She is incredibly pleasant to deal with,
20 which is a change for me. Anne, I can't thank you
21 enough for all your help, so if we can recognize her.

22 (Applause.)

23 MR. NELLIS: Now, of all the things we did,
24 and I said this last year, this is my favorite part of
25 being the chairman of this committee. We get a chance

1 to not only examine lots of applications and see what
2 people are doing out there, attorneys are doing out
3 there. We just think usually in our day-to-day lives
4 who we are going up against and judges, and it's so
5 nice to be able to take a step back and see, you know,
6 not only sort of pay tribute to people, what they have
7 accomplished over their career, but also to really
8 look at and recognize some of the really fantastic and
9 unusual things that people get involved in, that
10 lawyers get involved in. These are the people and the
11 attorneys who, quite frankly, give our profession a
12 good name, which is something that we could always use
13 help with.

14 So I am going to start with the Michael
15 Franck Award. This award is given to an attorney who
16 has made an outstanding contribution to the
17 improvement of the legal profession.

18 Now, this year our decision by our committee
19 was unanimous in the selection, but this year we
20 decided to pick two people, and, quite frankly, the
21 reason why we picked two people is because it was one
22 of those, like trying to choose between an apple and
23 an orange. They were both incredibly deserving
24 individuals, and it was really impossible to pick one
25 over the other.

1 We have the materials in your packet.
2 Obviously my little discussion won't even come close
3 to doing justice to what these folks have
4 accomplished, but the first individual, first
5 attorney, is Sheldon Stark. He is not only, sort of
6 in a prior life, one of the preeminent employment
7 attorney litigators in the state of Michigan, but he
8 has also served as ICLE education director, and I am
9 sure everybody in this room at one time or another
10 probably, perhaps several times a year, are
11 beneficiaries of his work at the ICLE.

12 We as a committee felt after our own
13 experiences and also the numerous letters of reference
14 that we received that this individual has really
15 established a lifelong record of achievements which
16 have contributed to the improvement of our profession.

17 The second recipient is Attorney John
18 VanBolt. He is the executive director and general
19 counsel of the State of Michigan Attorney Discipline
20 Board. I also note that he has served as a member of
21 the Ypsilanti City Council and the Ypsilanti Housing
22 Commission, among other things.

23 He has made a career long dedication to
24 working in the area of lawyer ethics, which, again, is
25 a very noble and admirable cause, and we feel that his

1 lifelong body of work was certainly something that
2 needed to be recognized.

3 So, again, our decision from our committee
4 was unanimous, and so at this time it gives me great
5 pleasure to make the motion to honor both Sheldon
6 Stark and John VanBolt as recipients of this year's
7 Michael Franck Award.

8 CHAIRPERSON JOHNSON: Thank you very much,
9 Mr. Nellis. Is there support for that motion?

10 VOICE: Support

11 There has been a motion and support to
12 approve Sheldon Stark and John VanBolt for the Michael
13 Franck Award. Is there any discussion?

14 Hearing none, all those in favor of approving
15 Sheldon Stark and John VanBolt for the Michael Franck
16 Award, please signify by saying aye.

17 Those opposed say no.

18 Abstentions.

19 Hearing none, the motion to approve
20 Sheldon Stark and John VanBolt for this year's
21 Michael Franck Award is approved.

22 And now for the Unsung Hero Award.

23 MR. NELLIS: Okay. The Unsung Hero Award is
24 presented to a lawyer who has exhibited the highest
25 standards of practice and commitment for the benefit

1 of others. And, again, what's neat about this award
2 is we kind of look outside the box and not just look
3 at achievements in the area of law but what other
4 types of things are these people doing to help the
5 community. You know, we as a Bar are really trying to
6 put an emphasis on our community leadership and
7 community service and those types of things, and this
8 award allows us to do this publicly and by recognizing
9 somebody who has really made an outside-of-the-box
10 kind of a commitment to our community.

11 This year's nomination is a posthumous one,
12 Lansing Attorney Kevin Moody. He was a shareholder at
13 Miller Canfield, and he was instrumental in developing
14 their pro bono program. In reading the materials, it
15 appears that his efforts have resulted in more than
16 80,000 pro bono hours being billed by the firm alone.

17 He has also served on the board of directors
18 for Gateway Community Services, which works with
19 youth, and there is, in fact, now a youth home, I
20 believe in Lansing, that's been named in his honor.
21 In his attorney practice it's my understanding that
22 his practice focused on the area of Native American
23 law.

24 Again, we had several really excellent
25 submissions this year, but the agreement of the

1 committee was unanimous, and so at this time it is
2 again my honor to make a motion to award this year's
3 Unsung Hero Award to Kevin Moody.

4 CHAIRPERSON JOHNSON: Thank you, Mr. Nellis.
5 There is a motion. Do I have support?

6 VOICE: Support.

7 CHAIRPERSON JOHNSON: Thank you. There is a
8 motion and support to approve posthumously Kevin J.
9 Moody for the Unsung Hero Award. Is there any
10 discussion?

11 Hearing none, all those in favor of the
12 motion to approve posthumously the award to Kevin J.
13 Moody for the Unsung Hero Award, please signify by
14 saying aye.

15 Those opposed say no.

16 Abstentions.

17 The motion approving posthumously Kevin J.
18 Moody for Unsung Hero Award is approved.

19 I would like to thank Jeff and his committee
20 for this work, and I would also like to thank all the
21 many people who submitted nominations and for the fine
22 work that all of them are doing here in the state of
23 Michigan.

24 Moving on to the next item, number nine, the
25 Representative Assembly reapportionment. And a little

1 background on this.

2 The Supreme Court, Rule 6, Section 3,
3 mandates that the Representative Assembly shall
4 reapportion its circuits every six years based on
5 February 1st attorney geographic location. This year,
6 2010, happens to be the sixth year.

7 Jeff Nellis' committee and I have been
8 working since last fall with Jim Horsch of the
9 State Bar getting preliminary reapportionment numbers,
10 working with Cliff Flood, the State Bar's counsel.
11 Then the February 1st numbers were presented to the
12 Nominations and Awards Committee for their approval.
13 A copy of the Court Rule and the reapportion numbers
14 were included in your materials. I now would like to
15 call again to the podium Jeff Nellis, chairperson of
16 the Nominations and Awards Committee with his motion
17 on the reapportionment. Mr. Nellis.

18 MR. NELLIS: Thank you, and again you have
19 had the opportunity, I hope, to review the numbers in
20 your packet. This is an accountant's dream, I guess.
21 And basically, without getting into a lot of
22 specifics, you know, things related to the economy
23 obviously result in movement of attorneys from, you
24 know, one county to another. Attorneys retire, we get
25 new attorneys, and so that's why our bylaws require us

1 to sort of do a re-analysis every year to make sure
2 that we have the appropriate representation.

3 So our committee again took a look at this.
4 We certainly had input and talked in great detail with
5 Jim Horsch, and I also spoke with Cliff Flood, and
6 after analyzing all of the data, our committee was
7 again unanimous in our approval. And so at this time
8 and on behalf of the Nominations and Awards Committee,
9 I am making the motion for the approval of the
10 reapportionment consistent with the data that we
11 provided in the packet today.

12 CHAIRPERSON JOHNSON: Thank you very much,
13 Mr. Nellis. There is a motion. Is there support?

14 VOICE: Support.

15 CHAIRPERSON JOHNSON: There is a motion and
16 support to approve the reapportionment numbers as
17 presented by the Nominations and Awards Committee. Is
18 there any discussion?

19 Hearing none, all those in favor of the
20 reapportionment numbers as presented by the
21 Nominations and Awards Committee, please signify by
22 saying aye.

23 All those opposed say no.

24 Any abstentions?

25 The motion to approve the reapportioned

1 numbers as presented by the Nominations and Awards
2 Committee passes and is approved.

3 Thank you, Mr. Nellis, and to your committee.
4 I know that they worked very hard on these numbers,
5 and a special thanks to Cliff Flood, the State Bar's
6 legal counsel, and to Jim Horsch, who has just done an
7 incredible job since last September in working with me
8 on getting these numbers together. So thank you, Jim,
9 for your hard work.

10 (Applause.)

11 CHAIRPERSON JOHNSON: Next item under tab
12 number 10 is Anne Vrooman, who is the director of
13 Research and Development. In light of the mandatory
14 reapportionment for the Assembly this year, Anne will
15 be making a presentation highlighting some of the
16 changes in the demographics facing our legal
17 profession in the state of Michigan this year. It's a
18 great privilege that I present to you Anne Vrooman,
19 director of Research and Development for the State Bar
20 of Michigan. Anne.

21 (Applause.)

22 MS. VROOMAN: Thank you, Elizabeth, and thank
23 you for allowing me this time to share this
24 information.

25 I always find this information fun and

1 interesting. I am not sure that that's always shared
2 when people start looking at statistics, but I hope
3 that you will see as we go through some of this
4 information how it really plays into a lot of what you
5 do.

6 Right now what is happening is Anne and some
7 of the other staff are providing an additional piece
8 of information that wasn't on your desk when you first
9 arrived, and we are going to talk about that as well.

10 Let me first give you a little bit of
11 background about sort of how this information, how we
12 get this information and then how it's sort of
13 different than the reapportionment type information
14 and how it is analyzed.

15 This information is taken, really once a year
16 we pull all of the information that we have in the
17 membership database and do the analysis. So it really
18 is just a once-a-year snapshot, and it doesn't take
19 into account, like reapportionment does, sort of the
20 share, the proportion in each county. It's really the
21 bigger overview picture, and I think you will see that
22 both in the first part of this that we will go over,
23 which is really sort of the statewide picture, and
24 then even when we get to the county picture, which I
25 will explain as we move along.

1 We gather this information from two main
2 sources. One is when you do your membership
3 application. There are things in that that are, you
4 know, sort of static type of pieces of information.
5 That's where we capture gender and race and ethnicity.
6 Both of those are voluntary pieces of information, so
7 the information that I am going to show you and that
8 you have in the material is based on the information
9 that we know that we have.

10 The way that we treat -- and we get about, on
11 the gender I think we get about 96 or 97 percent of
12 that supplied in that membership application. On the
13 race/ethnicity, we get about 75 percent; 74, 75
14 percent.

15 What we do for the piece that's missing is
16 just take that out and assume that there is probably
17 what would be a typical distribution of that, so we
18 don't skew the numbers then by having that piece in
19 there as none, just so you are aware of that.

20 The others piece of information or the other
21 data source that we have each year that gets updated
22 is the dues statement, so when you do the dues
23 statement, that's where we collect the information
24 about what people are doing, so the occupational area
25 that you are in, the firm size if you are in private

1 practice, any of those pieces. So all of that goes
2 into our membership database, and, like I said, once a
3 year then we pull all of that together and do the
4 analysis.

5 So with that, let me get started then. We
6 are going to work from this handout that was at your
7 place when you first began.

8 The first slide here is really the big
9 picture. The way that our membership database works
10 is sort of once you are in it you are always in it.
11 You are in it in some form or another, even if your
12 status changes. So this is really the big picture
13 view, and you will see, obviously, that that
14 significant blue portion is the active members, and
15 that's really what we focus on when we do this
16 analysis. You will see the pretty big slice there
17 that is the deceased, and, obviously, as time goes on
18 and more members pass away, you know, that slice
19 certainly grows.

20 The next slide, that's the proportion of, the
21 percentage of nonresident active members to then
22 resident members, and you can see that it's a pretty
23 significant number, and actually, as we have been
24 doing this for now the last three years, that number
25 has increased, and it may be related to the economy.

1 So more members perhaps have taken jobs out of state,
2 and certainly that's a number that we will continue to
3 watch as we go along.

4 The next piece is just to show you that there
5 is a small slice that we have foreign members, and as,
6 you know, globalization occurs, I would certainly
7 expect that this number will change.

8 This number is useful. Actually Janet and
9 Charles went on a mission for the State Bar to Israel
10 a couple years ago, and we were able to use this
11 information to locate people in Israel that they were
12 able to contact and, you know, do work abroad as well.

13 The next slide, this is -- let me just say
14 that, you know, every year I try to do something a
15 little bit different or build upon what we have. And,
16 as you have heard Charles talk about, with the bigger
17 focus going forward about diversity, I think it's
18 really important that, you know, we sort of dive as
19 deep as we can into the information that we have.
20 With Greg's new role, wanting then to look at sort of
21 gender, race, and ethnicity in as many ways as we can,
22 so you will see that really in what I am presenting to
23 you today.

24 So this is the big picture then overall about
25 gender, and overall of our membership the split is

1 about 69/31. We have actually seen it shift from
2 about 70/30 just in the last couple years. When you
3 consider the large membership, that's actually pretty
4 significant, and I think you will see why.

5 The next slide is a picture of that, because
6 this is a picture then of those members that joined in
7 2008, what the gender split is, and you can see how
8 different that looks than the overall split.

9 The next slide is a view of the generational
10 split with boomers and traditionalists still comprising a
11 very significant number. Just so that you can sort of
12 do the ages as -- we often talk about, you know, the
13 generations. So traditionalists right now are over
14 the age of 66. Boomers are in that 51 to 66 age
15 category, gen-Xers are in that 30 to 50 age category,
16 and then millennials are 29 years and under. And we
17 have got more information about age as we move along.

18 The next slide -- so by this generational
19 view it shows the gender, and you can see how that has
20 changed, you know, within each generation.

21 The next slide. This is the overall picture
22 of race and ethnicity. Again sort of the general
23 active Michigan residents. And just so that you have
24 some point of reference, when you look at the big
25 slice of, according to the 2008 U.S. Census estimate,

1 the European or white population in Michigan was 81.2
2 percent, so you can see that we sort of have some
3 overrepresentation in terms of those numbers, and then
4 the African origin population, according to those
5 census is 14.2 percent, so you can see that there is
6 significant underrepresentation in that area.

7 The next slide, this really adds gender to
8 the race and ethnic piece. A lot of these I would
9 encourage you to sort of go back and look at and think
10 about more thoroughly. I just want to really sort of
11 point out and explain what you have here, but I think
12 that this information is useful as you think about
13 policy decisions and things that you consider.

14 The next piece, this gives the dimensional
15 look of gender, generational, and race/ethnicity, so
16 you can see how changes have occurred through the
17 generations in all of these pieces.

18 Next slide, this is what our members do, and
19 when I first started doing this analysis, this was
20 actually the most interesting slide to me, this
21 picture. I think most people think about the legal
22 profession in terms of, you know, sort of straight-up
23 legal practice work, private practice work, and when
24 you look at our membership, about 50 percent are in
25 private practice, but the other 50 percent of our

1 members are something else.

2 And, as an overall goal and mission of my
3 position in research, it really has tried to focus on
4 who are our members, all of our members, and what are
5 the things the Bar can do to serve them. So this is
6 one way in doing this analysis that first we learn who
7 they are and what they do, and then we will be taking
8 steps to learn, you know, how we can serve all of
9 those particularly nontraditional type members.

10 The next slide, this is just to show you --
11 you know, again we talked about that we have a pretty
12 good slice of non-Michigan members, but how this
13 occupational slide looks a little bit different for
14 that group, and you can see that there is a
15 significant number of corp counsel. So when you think
16 about what people who are members of the Michigan Bar
17 do in other states, that seems to be -- that's
18 actually a much bigger slice than what we see in terms
19 of the instate population, so it tracks outside of
20 that distribution, as well as government.

21 For those that are in private practice --
22 now, again, just being clear about what we are looking
23 at, so we have sort of that 50 percent slice. The
24 whole universe then of the pie that you are seeing is
25 that 50 percent slice and looks at, for those in

1 private practice, what is their firm size, and for
2 that you can see that a very significant number are
3 solo practitioners or solo and smaller, and when you
4 add those pieces together, of those in private
5 practice, about 72 percent are in either small or solo
6 practice.

7 The next piece here, this is a glimpse inside
8 the private practice area by firm size and gender, and
9 you can see some of the differences. Sort of a quick
10 way when you are looking at these things that look at
11 gender, again, thinking back to the overall big
12 picture that we are a little less than 70/30, so
13 69/31, when you look at numbers that sort of track
14 outside of that, I mean, that's where you start to see
15 differences and how that plays.

16 The next slide here puts together the race,
17 ethnicity, and generational piece, and, again, you can
18 see inside those generational cohorts, what the
19 differences are and what the trends are in that
20 direction, all of this giving you a picture of, you
21 know, if you think down the road what the Bar
22 membership will look at in 10 years, in 15 years, in
23 20 years, as you sort of take these numbers out.

24 The next piece is a snapshot in five-year
25 increments, and I want to explain this so that it's

1 not confusing. What this really does is -- so going
2 back over like the last 28 years but taking, so
3 saying, you know, just a snapshot of those members
4 that joined in each of the years that you have
5 represented here, this was the race/ethnic composition
6 of those years. Again, just so that you can see what
7 the trend has been and how it has moved along over a
8 period of time.

9 This is a picture that really shows just the
10 law school affiliation overall of our membership, and
11 I think it's just an interesting thing when we think
12 about, you know, you can think about the law school
13 that you went to and find kind of what the percentage
14 is. Wayne State has the largest number of members,
15 followed by those that have others, and then you go
16 back to the instate.

17 The next is just, again, continuing on the
18 law school but by gender, and you can look at sort of
19 how that tracks.

20 The next, this is just a trend line, and you
21 can see, it's just a real clear picture going back,
22 you know, through the years, and you can see how much
23 closer together that line is coming, and that's
24 reflecting certainly what you saw in the 2008 number
25 that I showed you where it's really much closer to,

1 getting much closer to the 50/50 split, and you can
2 see that actually happen.

3 And, again, this is just by gender and age
4 group. So inside, taking a little bit smaller slice
5 into the age groups, again, you can see what the
6 difference is just in the gender split that way.

7 What I want to move to now is what was handed
8 out to you, this booklet, and what I thought might be
9 interesting for you is because you are a body that
10 really comprises all of the state, and I know that you
11 are aligned according to circuits, and most circuits
12 are cut along counties, a way then for us to do this
13 data is to look at it by calendar. And so what we did
14 was just on, again, some of these diversity cuts do it
15 by county so that you had a sense of what this is.
16 But I want to, just if I could, there are sort of five
17 key tables in this, and I want to just briefly touch
18 on what you have in case there are any questions about
19 what the data, how the data is displayed, just so that
20 we are clear about it.

21 So the first table that you have are current
22 members by join year and the county location. Now,
23 again, remember that we do this pull once a year, so
24 this is the number in each of these counties as of
25 June 2009. People move, you know, so next year the

1 numbers could look different.

2 But what we try to do then is go back through
3 this nine-year period and say of those that joined in
4 this year then these are the numbers in the county.
5 And so, again, this is not total membership in this.
6 This is just looking back of people who joined in
7 these Bar years, these are the counties then that they
8 located in. So that's like newer lawyers in each of
9 these counties.

10 The next slide or the next table is gender by
11 county, so, again, it's the gender split. So, again,
12 sort of a quick way to look at it is looking at kind
13 of that overall split, 70/30, 69/31, and, you know, as
14 you go down you can see places where there are
15 significant differences there.

16 The next table that you have is
17 race/ethnicity by county, and, again, it's taking sort
18 of a deeper look in each county what the race and
19 ethnicity split is, and you can go back to sort of
20 that earlier data in your other handout that shows you
21 the overall proportion to that and see what the
22 differences are in each of the counties.

23 And then the final piece here is private
24 practitioner -- well, not final piece, next to the
25 final piece -- private practitioners by county. So

1 this, again, thinking about the big pie chart, and
2 this is the 50 percent slice or thereabout of those
3 that are in private practice, so for that universe the
4 number of private practitioners then in each county,
5 and then you have people in that other group, so sort
6 of that 50/50. So you can certainly see in counties,
7 you know, the weight of those that are in private
8 practice versus other things.

9 And then the final is age groups by county.
10 And, again, I think that this is important or
11 interesting information, particularly in those smaller
12 counties where you have the work traditionally, you
13 know, being done by people who are beginning to age
14 out, and so, you know, it's perhaps an opportunity to
15 look at areas where maybe there won't be, you know,
16 the legal resources that have existed in the past by
17 county.

18 I don't know if you have questions now. I
19 think we are pretty much on tab, but I am happy to
20 either address a question now. I will also be around.
21 I hope that you not only find this interesting but
22 useful in your policy discussions, and let me just say
23 two quick things about sort of, as I said, our efforts
24 to understand better who our members are and what they
25 need. Two key pieces of information we will gather

1 this year, one is the law practice economic survey,
2 which is something that the Bar has done every three
3 years for more than the last 30 years, and in 2010 we
4 will collect that data again.

5 We had an extensive work group series that
6 looked at the survey. We are revamping it for this
7 year. One of the things that we know is that it gets
8 used by attorneys, and in order for it to be useful we
9 really, really do need more significant participation
10 than we have had in the past, and I hope that you will
11 help us in those efforts to gain that participation.

12 The other piece is something that we have not
13 done in many years, in more than ten years, and that
14 is that we are going to conduct just a membership
15 survey. We are aiming to have that done at the same
16 time that the dues notice goes on and hoping, again,
17 for a great number of participation. We are putting
18 together that work group that will begin working in
19 April to talk about the areas and the questions that
20 will be on it. It's an opportunity for us to learn
21 more about the profession, more about how we can help
22 our members, and, you know, we will certainly be back
23 to the Assembly to share that information. Thank you
24 very much for letting me be here today.

25 (Applause.)

1 CHAIRPERSON JOHNSON: Thank you very much,
2 Anne. Lots of interesting information for all of us
3 to take home and digest.

4 The next item on the calendar is under tab
5 number 11, our public policy update. Our next speaker
6 is Elizabeth Lyon. She is the director of
7 Governmental Relations for the State Bar of Michigan.
8 Elizabeth is the person who keeps us up to date and
9 informed on all the goings on here in the state of
10 Michigan and, quite frankly, throughout the country.
11 She has been an invaluable resource for the State Bar,
12 and I would like for you to welcome Elizabeth Lyon.

13 MS. LYON: Thank you, and good morning, and
14 good almost afternoon. It's a pleasure to be before
15 this body again today to update you on a couple of
16 things that are ongoing in our public policy advocacy
17 program. It's sort of a pleasure to highlight two
18 things for you this morning that I think actually
19 dovetail really well to all of the comments you heard
20 this morning about what the needs are in our state and
21 how lawyers can address that, and I think our priority
22 public policy goals right now, lobbying against tax on
23 legal services and reforming the public defense
24 system, really hit very well with what the
25 Chief Justice said to you this morning, what our

1 president said, what Janet said, and others.

2 Our public policy program and what we
3 advocate on is actually very broad, but those two
4 issues seem to be those that take the most of our time
5 lately, so I will try to spend time updating you on
6 that, the first being a tax proposed on legal
7 services.

8 We first saw this introduced in 2007 and was
9 something that the Bar very strongly came out and
10 advocated against because of a very serious concern
11 that it would impact the ability to access legal
12 services, and those who were in difficult times making
13 a decision about whether or not to retain an attorney
14 to protect some very important rights might be
15 discouraged to do so if extra money was required from
16 a tax structure. That proposal was not adopted in
17 2007, and yet we see ourselves advocating against it
18 once again here in 2010.

19 We first saw it introduced in the fall by
20 Representative Mark Meadows, who is from East Lansing,
21 a democrat, a lawyer who chairs the House Judiciary
22 Committee. We then saw it again demonstrated in a
23 proposal that was pretty comprehensive from the
24 Michigan business leaders. We saw our governor,
25 Governor Granholm, propose it in February of this year

1 as part of her budget proposal for fiscal year 2011.
2 We have also seen another colleague elected member who
3 is also a democratic gubernatorial candidate,
4 Representative Alma Wheeler Smith, introduce a plan
5 that included a sales tax on legal services.

6 As you might imagine, the State Bar of
7 Michigan yet once again is actively partnering with
8 local and specialty Bar associations, sections, and
9 you all to really demonstrate and educate what an
10 impact a tax on legal services would be in our state.

11 We know, and I think all of you who follow
12 what happens in Lansing, or what somebody might say
13 what doesn't happen in Lansing, knows that right now
14 the appropriations budgets have begun to move as the
15 legislature is now in a two-week indistrict period.
16 So we saw the House and the Senate both this week vote
17 out budgets that originated in those chambers.

18 At this time those budgets are not connected
19 to the revenue proposal from the governor for a sales
20 tax on service plan, but, quite frankly, we know
21 anything can and often does happen, so that's why the
22 State Bar is working on this issue as a vote on it
23 could take place, maybe not tomorrow, because tomorrow
24 is Sunday, but whenever the legislature might be in
25 session. So we are working very hard on that.

1 A few things that I would like for you all to
2 keep in mind, because what we want to do is get our
3 points across early and consistently, so if this issue
4 comes up in lame duck, which is that funny period
5 after the general election in November and before the
6 members adjourn in December of this year for end of
7 session, sort of that crazy time when anything can
8 happen, especially with so many members of the House
9 and the Senate and the Executive Branch not returning
10 due to term limits.

11 Also now being talked about, a potential for
12 a ballot proposal either for the August primary or the
13 November general, so it's important that our
14 information gets out there, and I want to share with
15 you all the three main talking points that the Bar has
16 been using that really seems to resonate, and you can
17 find this information at your places this morning. We
18 have given you both the State Bar's general statement
19 against a tax on legal services and another piece that
20 really we think sort of goes through and details more
21 extensively what a tax on legal services is and
22 defines it better so people understand what it is they
23 are doing.

24 Also on your desk is, if you don't like
25 reading the talking points and statistics and that

1 sort of information, we provided a couple of excerpts
2 from the new State Bar of Michigan blog of which Janet
3 is the author, and it's sort of a more fun vernacular
4 to read and conveys the same concerns that I will talk
5 with you about this morning.

6 Our three main talking points, and please
7 remember these and have conversations if you are
8 elected with legislators. Filing statistics, we see
9 very clearly our circuit court filings, 65 percent are
10 family related matters. So the people who are
11 accessing legal services there are single parents
12 seeking child support payments, seeking changes to
13 custody arrangements. We see victims of domestic
14 violence seeking personal protection orders, and other
15 family related matters that are very serious.

16 The second biggest chunk is criminal cases,
17 so those who either are appointed a public defense
18 attorney or whose families are looking to help muster
19 their defense services by putting together monies for
20 investigators and other things, we see that chunk
21 there, and then downward. And we know about other
22 reasons why people are seeking legal services right
23 now. Bankruptcy, trying to protect their homes from
24 foreclosure and not becoming homeless like the example
25 we heard from the Chief Justice this morning, and

1 those type of services which are so important today in
2 helping us to protect those services.

3 The other talking point that resonates really
4 well with legislators who are looking to not reinvent
5 the wheel, so to speak, but looking to other states
6 who do rely on revenue from the sales tax structure.
7 States who tax services do not tax legal services, and
8 for good reason. There are three states who do tax
9 legal services, and that's in that three-page and part
10 of that handout that's there. They are small states,
11 two of which, both New Mexico and Hawaii, have such a
12 broad base that they include medical services.

13 This reinforces another important argument
14 that we make, that legal, like medical services, are
15 not discretionary services. People are not choosing
16 to procure these services, just like they are not
17 choosing to be in the unfortunate circumstances that
18 they are in that requires them to seek the assistance
19 of an attorney. So, again, hand-in-hand medical and
20 legal.

21 The third state, which is South Dakota, that
22 taxes legal services. I have actually had some really
23 interesting conversations with their executive
24 director of their Bar association, who says that the
25 tax is actually collected like a gross receipts tax,

1 because it's been so incredibly difficult to
2 implement, administer, and remit back to the state, so
3 essentially it acts like a gross receipts tax, which
4 you all know from your practices. Lawyers in the
5 state of Michigan pay the Michigan business tax and
6 the Michigan business tax surcharge, many of you do,
7 unless you qualify for exemption. And then part of
8 the tax is indeed a gross receipts tax, so we are
9 already doing that here in our state, so that
10 resonates very well with folks as well.

11 The third and what I think is somewhat a
12 unique argument for the legal profession, all of the
13 proposals that I talked about have been introduced
14 have various exemptions within them. What seems to be
15 a common exemption in all of them is a
16 business-to-business exemption. So services provided
17 to a business from a business, so services provided
18 from law firms to businesses would be exempt under
19 this plan, so it's purely a tax on consumer legal
20 services, individual legal services.

21 So, and I think this might resonate well in
22 today's world, this sets up an example where a family
23 sues Toyota for a wrongful death. That family has to
24 pay a tax on their legal services, and Toyota does
25 not. And for a lot of people that just sort of

1 instinctually says, you know what, that's not fair,
2 that's not right. That family has to pay a tax and
3 Toyota doesn't? So that seems to resonate very well
4 with folks too.

5 So I arm you with those talking points. I
6 suggest highly that you contact your elected senators
7 and representatives and convey to them your concern
8 about the impact this will have on your clients and
9 how this is not something that Michigan should do.

10 The other -- I am happy to take a question,
11 sure.

12 VOICE: At this time?

13 MS. LYON: Or we can wait until the end.
14 Okay, I am going to move on then, and we will take
15 questions at the end.

16 I have to say that it's a pleasure that every
17 time I come before you I can report significant
18 progress in public defense reform, so I am able to do
19 that again this morning.

20 Two things that I want to highlight in terms
21 of events before we go into the legislation that's
22 been introduced. In February of this year the
23 State Bar of Michigan was asked to pull together a
24 panel for the American Bar Association's Standing
25 Committee on Legal Aid and Indigent Defense. They

1 have an annual summit in conjunction with the ABA
2 meeting, and this year they really wanted to highlight
3 a collaborative effort for public defense services.

4 So I started in the State Bar of Michigan in
5 August of 2003, just a few short months after this
6 body adopted the 11 principles of an effective public
7 defense system in April of 2002. So I have always
8 known as part of my professional work here that the
9 State Bar of Michigan is a leader and strong advocate
10 of public defense reform. So when I look in the
11 national context and see that there are many state
12 Bars who are not stepping up to the plate to advocate
13 for reform and advocate for a strong public defense
14 system, it makes me very proud to be a part of this
15 State Bar, to be able to advocate on a position that
16 you all adopted and, indeed, made Michigan the first
17 state to adopt those ABA principles, and so I thank
18 you for that.

19 So it was in that vein that the State Bar of
20 Michigan was asked to pull together a panel of the ABA
21 to talk about why state Bars should be involved in
22 these reform efforts. And I was very honored to be on
23 a panel that was moderated by Dennis Archer, that had
24 our Chief Justice on the panel, Representative
25 Mark Meadows, James Neuhard from the State Appellate

1 Defender's Office, and also a professor from Illinois
2 to talk about the collective effort of those to move
3 for a public defense reform.

4 The other thing that I want to highlight is a
5 commitment from the federal level that I first talked
6 about in September from our U.S. Attorney General,
7 Eric Holder. He pulled together a symposium back in
8 March that had representatives from every single state
9 in the nation, plus all of the territories were
10 represented in a three-day symposium to talk about
11 public defense and how states and the federal
12 government could partner together to move forward
13 reform. I am pleased to be a part of the very large
14 and strong delegation from Michigan that participated
15 in that event.

16 So now on to the state level, which I know
17 you all are very interested in. In December of last
18 year we saw House Bill 5676 introduced by
19 Representative Mark Meadows and Representative Justin
20 Amash, so a very strong bipartisan effort to introduce
21 a bill so you can all finally see language about how
22 it is we are proposing to reform the public defense
23 system in Michigan.

24 This bill has now been the subject of two
25 hearings, and there is third hearing planned. So we

1 had a hearing back in December, we had a hearing in
2 March, and the next hearing is scheduled for, I
3 believe it's April 27 at noon, but look for that to be
4 publicly noticed soon.

5 So we are starting to hear from individuals
6 about what they like about the bill, what they don't
7 like about the bill, and sort of a somewhat famous
8 saying, let the games begin, if they have not already
9 begun, about how we are going to partner together to
10 move forward reform.

11 We are seeing very active participation by
12 the Michigan District Judges Association, the Michigan
13 Judges Association, Michigan Association of Counties,
14 prosecuting attorneys, criminal defense attorneys, and
15 it's really a pleasure to see so many people coming to
16 the table and saying we support the concept of public
17 defense reform. We want to help move this forward,
18 and this is how we think we can do it well, so it's a
19 pleasure to be working on that.

20 The bill, which I would strongly urge all of
21 you to go online, and from the Michigan Legislature's
22 website you can plug in 5676. There is the bill,
23 which is actually a 28-page bill, so a little bit
24 longer than some of the bills we deal with, but there
25 is both analysis online and there is fiscal analysis

1 online for you to refer to.

2 I will say that there are conversations
3 underway currently which would call for a phase-in
4 approach of the system, so a four-year approach which
5 would help to sort of -- with the cost of the system,
6 so phasing in the function, and also phasing in the
7 cost of it, which is going to be helpful for us,
8 because we know it's going to be a difficult thing
9 coming up with that price tag.

10 The other thing that I would want to make you
11 all aware of as part of this collective effort, why
12 the State Bar is not involved in the current
13 litigation against the State. I did want you all to
14 know that on April 14 the Supreme Court will be
15 hearing oral argument the Duncan case, on motion that
16 the State has appealed from the Court of Appeals
17 ruling that came out last June, talks about
18 governmental immunity of defendant's standing on the
19 case, and so that will be up for oral argument on the
20 14th.

21 So I know that I have pretty much exhausted
22 my time so I can answer questions at lunch or now,
23 whatever is the --

24 CHAIRPERSON JOHNSON: Why don't we take one
25 question now from the woman there, and then Elizabeth

1 will be available at lunchtime. If you will please
2 give your name and circuit when you are at the
3 microphone.

4 MS. SADOWSKI: Elizabeth Sadowski from the
5 6th circuit. I was at a meeting just this last week
6 with Alma Wheeler Smith, and she told us and our
7 entire group that she was no longer supporting a tax
8 on legal services.

9 MS. LYON: Yes, absolutely, Elizabeth, and we
10 are very grateful to the representative. She did
11 indicate to us, and publicly, that if her bills were
12 to move, that they would be substituted out, so a
13 small victory in our big fight, yeah.

14 CHAIRPERSON JOHNSON: If you have any further
15 questions, you can meet with Elizabeth Lyon during
16 lunchtime or certainly contact her any time at the
17 State Bar. Thank you very much, Elizabeth, for your
18 hard work for the State Bar.

19 (Applause.)

20 CHAIRPERSON JOHNSON: Moving on. The next
21 item is number 12, a report from the ABA House of
22 Delegates.

23 At this time I would like to ask
24 Vanessa Peterson Williams, member of the
25 Representative Assembly from the 6th circuit, to come

1 to the podium.

2 She is also a member of the Michigan
3 delegation to the ABA House of Delegates and will give
4 a brief report on the ABA midwinter meeting.

5 MS. WILLIAMS: Thank you. First I would like
6 to just say thanks. It is a honor for me to
7 represent the State Bar in the ABA House of Delegates.
8 I do echo Janet's sentiments about how important it
9 feels when you are there and making a difference.

10 We met for the midyear meeting from
11 February 8th and 9th of 2010. Just to give you a
12 brief overview, there were about 14 categories of
13 issues that we discussed, ranging from dues structure,
14 there was criminal justice, domestic violence, ethics
15 and professional responsibility, homelessness,
16 poverty, immigration, intellectual property,
17 international law, judiciary legal education, pay
18 discrimination. There were some tort issues, uniform
19 law issues, and then youth at risk issues. And I am
20 just going to touch on some that I think may be of
21 importance to you.

22 The dues issues, which I think impacts a
23 number of different Bar associations and is also
24 relevant on a national level, the ABA has a new dues
25 structure based on what they called willingness to

1 pay, and so immediately you will see a reduction in
2 dues for members who are age 60 plus, and I think it's
3 one half of the regular dues rate. For those over the
4 age of 75, the dues will be waived. After that there
5 is going to be, I guess, every year a new dues
6 structure, and the next group of people who will be
7 impacted will be new Bar members, so new lawyers will
8 see a dues decrease. And then regular members, there
9 will be additional fee structures based on willingness
10 to pay.

11 In addition to that, we looked at juvenile
12 justice issues under the criminal justice topic.
13 Those issues were to address some of the collateral
14 consequences that young people face when they are in
15 the juvenile justice system, and it's just to urge
16 congress and government to provide more resources and
17 opportunities to those youth, and then also to provide
18 simplified Miranda warnings. That was an additional
19 resolution, so that they actually understand what's
20 going on when they are faced with those situations of
21 arrest.

22 We looked at also reviewing fines for
23 misdemeanor crimes, not for juveniles, but for all
24 criminal defendants, and then also looking at urging
25 congress and other governmental bodies to try to

1 lessen collateral consequences for criminal defendants
2 in terms of parental rights, and the issue was that
3 there were so many criminal defendants losing parental
4 rights and they needed some additional assistance.

5 In terms of youth at risk and homelessness,
6 there were resolutions regarding veterans and trying
7 to increase programs to help with the homelessness and
8 poverty faced by our veterans and also for increasing
9 funding for homeless and runaway youth.

10 For legal education, the resolution adopted
11 was to urge congress to enact some debt relief for new
12 lawyers, and it wasn't where they would be without the
13 responsibility to repay educational loans but because
14 of the economic state of the country to provide them
15 with additional deferment during a time that they are
16 unemployed. So I know that there are deferrals right
17 now that law students have for government loans, but
18 due to the number of private loans that a number of
19 law students take to join the profession, there was a
20 resolution to try to provide some debt relief in those
21 areas.

22 The ethics issue that we looked at was
23 regarding rankings for law firms and for law schools.
24 That became one of the big issues. The ultimate
25 resolution that was passed was that the ABA would

1 examine efforts to publish national, state,
2 territorial and local rankings of law firms and law
3 schools.

4 The last thing I will bring up is a
5 resolution that was actually withdrawn, but I bring it
6 to your attention only because I did have some
7 constituents to contact me prior to the meeting to ask
8 that the Michigan delegation vote in favor of it, and
9 it was the uniform law regarding the Uniform
10 Collaborative Law Act, and that was withdrawn at that
11 time. We did not discuss it. It was going to be
12 taken back by the group that proposed it to do some
13 additional research.

14 That's a brief overview of kind of what we
15 did. You see my contact information. If there is
16 ever anything that you want to know about the House of
17 Delegates or you see an issue, either in the press or
18 somewhere else, and you would like me and the Michigan
19 delegation to address that, please let me know. Other
20 than our State Bar delegate members, we also have
21 other members of our State Bar who represent other ABA
22 entities who sit in our delegation, and we always look
23 to serve our state well. So just let me know. Thank
24 you.

25 (Applause.)

1 CHAIRPERSON JOHNSON: Thank you very much,
2 Vanessa, for that report. We so much appreciate
3 having a member of our Representative Assembly on the
4 ABA House of Delegates, and thank you for your hard
5 work, Vanessa.

6 At this time, according to our calendar, we
7 will break for lunch. For your information, lunch
8 will be served upstairs. Follow the stairs out here
9 up to the second floor.

10 We will now be in recess until 1 p.m.

11 (Lunch break taken 12:00 - 1:02 p.m.)

12 CHAIRPERSON JOHNSON: Thank you, everybody.
13 It's now 1:00. We are back in session.

14 The next item is tab number 14 in your
15 calendar, the Justice Initiatives update. In your
16 program you have listed two presenters. I understand
17 that, unfortunately, Judge Stephens is not able to be
18 with us today, but we do have the other presenter here
19 with us, and the presenter is Terri Stangl.

20 By way of introduction, most of you probably
21 know Terri. She is a former member of the
22 Representative Assembly, and she is director of the
23 Center for Civil Justice in Saginaw. And, Ms. Stangl,
24 at this time if you would like to come to the podium
25 and make your presentation.

1 MS. STANGL: Good afternoon, everybody. I
2 welcome the chance to be back with you for this
3 occasion and to talk to you about something that's
4 near and dear to my heart for many years, which is the
5 Justice Initiatives. And I think many of us when we
6 thought about going into law had some kind of a vision
7 of justice and fairness that we hoped that we would be
8 a part of. And it is easy in the day-to-day work of
9 billing and clients and motions and rules and all the
10 logistics to lose sight of that kind of bigger
11 picture.

12 One of the fascinating things about thinking
13 about law and justice is that we treat those things as
14 real, even though we can't see them, like trees and
15 mountains, and they become something that guide what
16 we do in our work everyday, and the way that those
17 things become real is through many, many, many
18 agreements between people over a lot of centuries,
19 that that's how we really made these concepts a
20 living, breathing, evolving thing in the work that we
21 do. So it's only fitting that we within the Bar have
22 entities and organizations that continue that
23 discussion about what is it we are aspiring to about
24 things like justice and fairness in this decade at
25 this time in our life. And there have been many

1 models that we have done that within the State Bar,
2 and one of the homes for that right now is the Justice
3 Initiatives.

4 And I think you saw a structure earlier this
5 morning that shows it kind of involves a cast of
6 thousands, lots of volunteers of all different kinds.
7 It can be kind of confusing looking at it from the
8 outside in, but what's really unique and wonderful
9 about it is that it is a place where a lot of
10 different voices come together -- civil, criminal,
11 judges and attorneys and community. They come
12 together to wrestle with these kind of questions and
13 to think about what are we going to make real now, to
14 ask hard questions about what actually is going on in
15 our system, where do we hope to go, and what is it
16 going to take on a practical level to get there?
17 Because I think that's one of the really fascinating
18 things about what we say with justice is that we look
19 at that big picture, but justice is all about how do
20 we resolve problems now, in the here and now. And I
21 think the work of the Justice Initiatives looks at
22 both those big pictures and those day-to-day practical
23 solutions that make a difference in the courtroom, in
24 the lawyer's office, and for the families and the
25 individuals that go before the systems.

1 Many of you also, I think, in your role on
2 the Assembly and in local and specialty Bars wrestle
3 with some of these same issues in your local courts on
4 how do things work, how do people get before the
5 court, what do we do with unrepresented folks in these
6 systems? And it's my hope and the hope of those of us
7 on Justice Initiatives that some our work is things
8 you can take back and use in your local communities
9 and courts and also that we will hear from you about
10 the challenges you face in your communities, because
11 we know they are out there, and, in fact, I talked to
12 several people over lunch who were telling me about
13 challenges that they face due to limited resources in
14 their communities. So in the last few years a number
15 of the projects have been aimed at looking at some at
16 the big picture and some at the local solutions.

17 On the big picture we have been looking at
18 things like indigent defense system and updating
19 what's really going on in Michigan. We have been
20 looking at what's been happening in terms of these
21 collateral consequences of criminal convictions, what
22 is happening within our criminal system, how is that
23 affecting people civilly in their days when they try
24 to get jobs and go back into the community, and is
25 there a way to revisit what we thought was a good idea

1 and make it work better for everyone.

2 On a practical level we come up with many
3 different kinds of tools and kits and training. There
4 is, for example, a questionnaire that lawyers can use
5 when counseling criminal defendants to identify some
6 of the collateral consequences. Like a checklist that
7 could be used right in the courthouse or when
8 counseling clients.

9 We have tool kits for judges and Bar
10 associations on how to talk about and how to enhance
11 pro bono. We have done trainings on domestic
12 violence, foreclosure, and veterans rights to help
13 train people that want to do pro bono, for those
14 populations have the information and tools that they
15 need.

16 There has also been a wonderful disability
17 rights newsletter that I know has been used not only
18 by community groups but by lawyers and courts to
19 better be responsive to the needs and challenges of
20 folks with disabilities. There is also resources for
21 the public on juvenile justice and for ex-offenders.

22 A lot of these tools and information are up
23 on the Justice Initiatives page on the State Bar
24 website, and I know you all have tons of time, but I
25 hope you will just file that away when you are

1 thinking about what might be useful in your local
2 community or you can refer someone, because it is up
3 there, and it is certainly ready and able for your
4 use.

5 The other thing that JI has been involved
6 with over the years is in policy recommendations. We
7 try to be the voice within the Bar that when court
8 rules and legislation come before us we are asking
9 questions like how does this affect low income people,
10 how does this affect unrepresented people, how does
11 that affect special populations, and that's not a
12 question we always want to answer by ourselves. We
13 would like to hear what other people think about that
14 too.

15 So if you are on committees and sections and
16 have those concerns, I hope you will touch base with
17 us or let Elizabeth Lyon know that you are thinking
18 about it so we can have a conversation and maybe learn
19 from each other about what our concerns are and what
20 the solution might be before it comes to the Board of
21 Commissioners or this body.

22 This year the Justice Initiatives is trying
23 something new. In the past we have been very project
24 focused, and this year, next month, we are going to be
25 looking ahead to a gathering, a kind of summit, to

1 look at one of those big picture questions related to
2 unrepresented folks in the court system and what are
3 some options and choices, because it's a growing
4 challenge. We all see it in the courthouse, and it's
5 a challenge for the courts, as well as for attorneys
6 and the community.

7 And it will not just be the usual people who
8 live and breathe Access to Justice. It will be a
9 broader group to talk about this, bring in some
10 experts and talk about what can we do in the
11 foreseeable future to make a difference, then try to
12 align some of the resources at the Bar and the
13 volunteers to work toward that goal so it will not be
14 just a piecemeal type of project but a little more
15 collaborative and coordinated approach to a very real
16 and current problem.

17 So I look forward to hearing from some of
18 you, as do I know my colleagues on the committee, and
19 I definitely want to hear about the issues that
20 concern you and in your communities so that we can as
21 a Bar begin to pick the agreements we can make as to
22 what's real in our court system and for justice in
23 Michigan.

24 I am going to go on to the second thing, but
25 I don't know whether anybody has any questions about

1 the work.

2 CHAIRPERSON JOHNSON: This leads us into our
3 next item, which is number 15 on your calendar, and I
4 am going to ask for Terri to remain at the podium.
5 She is representing the Justice Initiatives Committee
6 on the proposal for pro bono, the voluntary pro bono
7 standard. Terri.

8 MS. STANGL: Thanks, Elizabeth. This is in
9 tab 15. It is a proposal for a recommendation to
10 modify the Michigan Rule of Professional Conduct 6.1
11 on pro bono service. What this change does is that it
12 incorporates and updates the voluntary pro bono
13 standard that has been in place in Michigan for 20
14 years, since 1990, and it puts it in to Rule 6.1 so
15 that the entire sort of range of what we do in
16 pro bono in Michigan is in one place, and it clarifies
17 what counts.

18 In 1990 we came up with the first standard
19 that was adopted in Michigan, and Michigan and local
20 Bars have certainly distinguished themselves with
21 their pro bono work over the years, many have won
22 awards here, and in Michigan the State Bar and the Bar
23 Foundation have established the Access to Justice
24 fund, which allows attorneys who give through one of
25 the community foundations methods to receive

1 substantial tax benefits for their donations as well.

2 The proposal today actually was already
3 brought before this body back in 2003 as part of the
4 big package of ethics rules, which some of you may
5 remember those debates and discussion, and at that
6 time it was approved and went forward on to the
7 Supreme Court, along with a whole slew of other
8 recommendations.

9 Subsequently in 2006 this body agreed that we
10 should not cap the donation at \$300 per year as the
11 voluntary donation but should allow for a higher
12 amount for those who were able to pay. Twenty years
13 have passed, and \$300 had not been increased in that
14 time.

15 So this is really kind of a reaffirmation of
16 what the Representative Assembly has done
17 historically, but in the original ethics proposal and
18 in the subsequent modification, and it not only
19 incorporates the standard that we have had before, it
20 reaffirms an aspirational goal, what we are looking
21 for, and it also allows a more flexible standard for
22 pro bono service that recognize that some people
23 because of their job or circumstances might not be
24 able to do traditional one-on-one representation and
25 allows that to be counted toward pro bono, although it

1 makes it also clear that the core of what we are
2 aiming for is for civil legal representation for
3 indigents whenever possible.

4 So on behalf of Justice Initiatives, we hope
5 you will do what you have done before and vote to
6 codify this in 6.1, or recommend it be codified.

7 CHAIRPERSON JOHNSON: Thank you very much,
8 Terri. At this time I would entertain a motion from
9 the floor concerning the proposal.

10 MS. BLANKENSHIP: So moved.

11 CHAIRPERSON JOHNSON: So moved. Would you
12 please go to the microphone and state your name and
13 circuit, please.

14 MS. BLANKENSHIP: Shayla Blankenship from the
15 7th circuit.

16 CHAIRPERSON JOHNSON: Thank you. Is there
17 support?

18 VOICE: Support.

19 CHAIRPERSON JOHNSON: There has been a motion
20 and support to approve the proposed revision of the
21 Michigan Rules of Professional Conduct 6.1, voluntary
22 pro bono service. Is there any discussion?

23 Hearing none, all those in favor of the
24 motion to approve the proposed revision of Michigan
25 Rules of Professional Conduct 6.1, the voluntary

1 pro bono service, please indicate by saying aye.

2 Those opposed say no.

3 Abstentions.

4 The motion in favor of the proposed revision
5 of the Michigan Rules of Professional Conduct 6.1,
6 voluntary pro bono service, passes and is approved.

7 Thank you, Terri Stangl and to Judge Stephens
8 and your committee for your work on this matter.

9 (Applause.)

10 The next item is number 16, consideration of
11 a proposal concerning attorney solicitation. At this
12 time would the proponent, Ms. Elizabeth Sadowski from
13 the 6th circuit, please come forward, and I understand
14 there are also two other presenters, Mr. Carlo Martina
15 and Mr. Jim Harrington, if you would also like to come
16 forward.

17 MS. SADOWSKI: Good afternoon. My name is
18 Elizabeth Sadowski. I represent the 6th circuit. I
19 am also a past chair of the Family Law Section of the
20 State Bar.

21 As you are by now aware, our section has
22 become quite alarmed at the incidence of attorneys who
23 have sent unsolicited letters to clients who are going
24 through domestic relations cases before the defendants
25 in these actions have had the opportunity to be

1 personally served with the action for divorce or
2 custody or support and before they have been able to
3 receive the injunctive orders that courts typically
4 enter under our Court Rules.

5 Now, I understand from some of you that there
6 are concerns that this is merely hypothetical. I can
7 assure it is not merely hypothetical. Domestic
8 violence and removal of children from the jurisdiction
9 of the state to another state, or worse yet to a
10 foreign state, especially a country that is not part
11 of the Hague convention can have disastrous,
12 disastrous effects.

13 I want to tell you about an incident that
14 happened just within the last 90 days in just one of
15 my cases. In this particular case the husband had
16 retained me but had not yet given me his retainer
17 check. He had borrowed it from his mother. He had it
18 in his pocket. This was a volatile divorce situation
19 to begin with. The wife pulled it out of his pocket,
20 said what's this, became absolutely enraged and
21 started grabbing the children, putting them in the
22 car, telling them to get their clothes and packing, we
23 are leaving for New Hampshire now.

24 In a fortunate turn of events, she then
25 became so enraged at my client that she began to hit

1 him and strike him, and he called the police. She was
2 arrested. And during the time she was arrested, I was
3 able to file that case and get an immediate ex parte
4 order restraining her from taking those children.

5 Now, whether she had found that check or
6 found a letter in the mailbox would have made all the
7 difference in the world, because if she had gotten to
8 that mailbox and gotten notice of a filing that I had
9 done before she could be served, that woman and those
10 children would have been long gone. It was only
11 because I was fortunate enough to have a judge who was
12 able to give me an ex parte order, sign that order
13 within a day or two and fortunate enough to have a
14 defendant to happen to be cooling her heels in jail
15 overnight that I was able to stop this event.

16 Now we are engaged in an ongoing custody
17 case, custody trial in Oakland County Circuit Court,
18 but for this fortunate chain of events I don't know
19 where those kids would be, but I know they wouldn't be
20 here. They would be gone.

21 We are asking you to approve a motion that
22 our Family Law Section takes as very, very serious.
23 We are asking you to adopt a resolution that our
24 Family Law Council has unanimously approved. We are
25 asking that the State Bar of Michigan support an

1 amendment to either the Michigan Rules of Professional
2 Conduct or the Michigan Court Rules regarding
3 solicitation of potential family law clients by
4 attorneys.

5 Further resolved that the State Bar of
6 Michigan proposes either an amendment to the Michigan
7 Rules of Professional Conduct adding a new section or
8 an addition to the Michigan Court Rules,
9 Administrative Rules of Court as follows:

10 In any matter involving a family law case in
11 a Michigan trial court a lawyer may not contact or
12 solicit a party for purposes of establishing a
13 client/lawyer relationship where the party and lawyer
14 had no preexisting family or client lawyer
15 relationship until the first to occur of the
16 following: Service of process upon the party or 14
17 days has elapsed from the date of filing of the
18 particular case.

19 I am going to ask two of our preeminent
20 members of our Family Law Section to address you next.
21 Mr. Carlo Martina, like I am, is a former chair of the
22 Family Law Section. Mr. Jim Harrington is on our
23 executive board. Both of these individuals are going
24 to talk to you about the seriousness of our situation,
25 and we hope you will give them your attention, because

1 we do believe this matter is of utmost importance to
2 the families of the state of Michigan and their
3 children. Thank you.

4 MR. MARTINA: Madam Chair and distinguished
5 members of this Representative Assembly. We are here
6 because of a genuine concern that Michigan families
7 are going to suffer irreparable harm if we don't at
8 least to some degree slightly restrict our conduct in
9 the way that potential clients are contacted in
10 domestic relations matters.

11 Our proposal is not about prohibiting
12 attorneys from providing direct, truthful,
13 nondeceptive information, as has been suggested. It's
14 about ensuring that the very reasons for issuing an
15 ex parte order, the prevention of irreparable harm, is
16 not abrogated because someone drops a form letter on a
17 defendant telling them they have been served.

18 Now, I know that there has been concern that
19 we have left two categories out. One has to do with
20 if there is a family member. The other has to do if
21 it's a former lawyer. First, the fact that we left
22 that in this parallels the very language that this
23 august body and the Supreme Court has already approved
24 in the very first sentence of MCR 7.3, that those are
25 exemptions in terms of solicitation.

1 Someone who is family member, by virtue of
2 that relationship, and is a lawyer may feel compelled
3 to tell them. We can't prohibit that, they are family
4 and a lawyer, but we wouldn't be wanting to prevent a
5 lawyer from contacting, nor would we want to prevent a
6 lawyer from contacting a former client after they have
7 learned that their client has had an action against
8 them. In that particular instance the attorney may be
9 in some better position to be able to give them some
10 perspective.

11 What we are looking at is a situation where a
12 lawyer who has no idea what the case is about, no idea
13 whether or not a restraining order has been issued and
14 no idea that a circuit court judge has been elected by
15 our citizens who has passed judgment based upon the
16 rules of ex parte orders that there has been a showing
17 that not only is there a risk of irreparable harm but
18 also that notice itself will precipitate adverse
19 action before an order can be issued.

20 This has been the law of the land forever.
21 What does this mean? This means that we have accepted
22 as lawyers and as jurists that there are instances
23 where irreparable harm can be caused by mere notice.
24 There is a reason why this is here. There is a reason
25 why it's in the PPO statute. This has been well

1 thought out. There are many instances in which giving
2 somebody notice of that harm is going to precipitate
3 it.

4 Now, yes, there is always going to be people
5 who no matter what an order says, they are going to do
6 it. We can't stop that. But the Supreme Court and
7 the U.S. Supreme Court has made it incumbent upon us
8 to regulate our actions so we don't make the situation
9 worse.

10 There are situations like Liz talked about in
11 terms of taking a child where an ex parte order may
12 make a substantial difference. There are situations
13 where threats are made, that if you file for divorce I
14 will clean out the bank accounts, I will change the
15 beneficiary of the health insurance. You won't be
16 able to get health insurance. I will change
17 beneficiaries on the pension. Oftentimes these can't
18 be undone. Harm happens. There is no insurance
19 coverage.

20 The other interesting thing about this is,
21 besides the fact that Mr. Harrington will talk to you
22 about several U.S. Supreme Court cases that involve
23 very similar rules, realistically speaking, 14 days is
24 a very short period of time. It's less than the time
25 to answer. And, additionally, if the defendant is

1 served in two or three days, an attorney can solicit
2 them all they want. The problem with it is that so
3 often in domestic relations matters there is a lapse
4 between the time that the action is filed, whether
5 it's a personal protection order, custody matter,
6 divorce matter, or separate maintenance, and it's
7 served.

8 And there is also one other issue in terms of
9 just basic privacy. I mean, this time right
10 afterwards is very difficult. Most of us,
11 particularly, for example, in domestic violence cases,
12 we want our -- I mean, I have been doing domestic
13 violence work for 25 years. Nancy Diehl and I had the
14 good fortune of getting a lifetime achievement award
15 on the 25th anniversary of the Wayne County Coalition
16 Against Family Violence. We know something about
17 this. We need to be able to give our clients plans on
18 what to do once that person is served, because we know
19 statistically the chance they will be injured or
20 killed in those first several days are through the
21 roof.

22 And, you know, it's been suggested that the
23 Family Law Section is doing this because we don't want
24 those trollers to take cases from us. Believe me,
25 most of us, just like you, spend enough time doing

1 this that that's the least of our worries. We are
2 contributing our time towards this Bar. That's not
3 why we are doing this. It's because this problem,
4 which has just started and which we can nip in the bud
5 with a very simple rule, is going to pick up momentum,
6 and sooner or later there are going to be tragic
7 events. People are going to do outrageous things, and
8 then the public is going to ask, This was foreseeable.
9 As lawyers we know we have to take action if we know
10 there is a reasonable risk of foreseeable harm. Why
11 didn't you do anything? I think this is our
12 opportunity, and I believe that we need to do
13 something.

14 Mr. Harrington will give you a little bit of
15 background on the Supreme Court issues that Mr. Dunn
16 had addressed.

17 MR. HARRINGTON: Thank you, Carlo. Attached
18 to your materials is an article that I wrote and was
19 published in the March Family Law Journal which I
20 entitled, The Constitutional Case for Controlling
21 Trolling, which is what this petition and motion
22 before you this afternoon is all about. But I would
23 like to briefly give you a little evolution on how we
24 got to where we are today.

25 Three years ago this matter came up when I

1 was on a council, and my initial reaction when someone
2 said they wanted to control attorney solicitation was
3 don't we have enough controls already? Why do we need
4 another rule regulating our behavior? And
5 Judge Hammond spoke at that initial meeting, and
6 Judge Hammond said, from Berrien County, a wise
7 gentleman beyond his years, he said, One dead body is
8 one dead body too many. We need to do something here,
9 not after that dead body gets walked into this room or
10 we have to respond to why we didn't do something when
11 we had opportunity to do something today.

12 The original proposals that we talked about,
13 and we have had a lot of communication back and forth
14 with the Representative Assembly, originally was in
15 all cases you may not solicit direct mail solicitation
16 for a period of 21 days. Then we heard, oh no, that's
17 way too broad. We have to go back and let's just have
18 it in family law case codes, which is what you have
19 here today. And then we heard 21 days is too long.
20 What's the minimum that can possibly be invoked in
21 order to affect this behavior?

22 What you see before you is the narrowest
23 conceivable proposal which will, we believe, help
24 impact a potentially lethal problem. Will a PPO stop
25 a bullet? No. Have PPO's been an instrumental weapon

1 to try and preserve health and safety? Absolutely.

2 I then received feedback, and I am the chair
3 of the Court Rules and Ethics, so feedback comes to
4 me, and my committee, consisting of judges, referees,
5 family law practitioners, nearly all of whom have 20,
6 25 years of experience, began to hear about the
7 constitutional issues. We have a rule in my office.
8 It's called Rule 11, enough research supports your
9 conclusions. I had concluded that I thought this was
10 constitutional, but I read about the Shapero case,
11 which is actually in our MRPC.

12 The Shapero case does not say that you can't
13 pass this proposal. The Shapero case by the United
14 States Supreme Court said you cannot ban all direct
15 mail solicitation, which is the opposite of what we
16 are doing here. We are talking about a minimal 14-day
17 or proof of service, whichever comes first. Shapero
18 also opened the door to state regulation, and it's in
19 the body of the case, state regulation. The Shapero
20 case, and it's in your materials, was followed by
21 Central Hudson holding you can regulate nonmisleading
22 commercial speech where a substantial government
23 interest is at stake.

24 I was asked a question by one of my friends
25 out here who I haven't seen in a while, and said,

1 Well, Jim, do you any empirical studies to present to
2 us today like they had in the Went For It case. Well,
3 the empirical studies that the United States Supreme
4 Court relied on in the Florida situation were letters,
5 mass mailings that were sent out, and in one part of
6 the response 50 percent of the people felt
7 uncomfortable with direct mail solicitation. These
8 weren't even family law cases. These were ambulance
9 chasers.

10 Justice Souter in the Went For It opinion
11 says you don't have to have empirical studies.
12 Sometimes you can just rely on good old-fashioned
13 common sense. Common sense says that when a judge has
14 issued an ex parte restraining order or a personal
15 protection order, common sense says that the best way
16 to preserve the intention of those orders is that it
17 be served by a process server, that notice not be
18 given by a direct mail solicitation.

19 The support for this is not Oakland County
20 support, it's not Wayne County support. We have had
21 unanimous support for this proposal, every single
22 member that has been on the Family Law Council
23 representing 2,200 members of the section for the last
24 three years. That's our empirical study.

25 Since we have made this proposal, our

1 committee has not received a single negative response
2 to it representing the Family Law Section, and I can
3 also tell you that I have had 13 of my clients, the
4 other side of which have received these targetted
5 solicitations, and the universal reaction has been
6 offense that my divorce, why am I getting a letter
7 from some lawyer that I never even heard about? And
8 that percentage is 100 percent.

9 I think we have the opportunity to do the
10 right thing today. Carlo and I and Liz are urging you
11 to do the right thing today. In my materials I have
12 cited federal statutes where they have a 45-day delay
13 from soliciting representation where there has been
14 mass accidents, 45-day delays where you have got
15 Amtrak or other accidents.

16 The Arizona Bar has passed a 45-day
17 suppression, and some people have suggested, well, why
18 don't we just suppress the files? I submit that that
19 is not a cost effective solution. I submit that we
20 are seeing E-filing in our family law cases in Oakland
21 County. Anything that is going to increase county or
22 state taxes one dollar will be universally opposed,
23 and the message we send out to Lansing with this
24 proposal is we don't want to spend any more dollars.
25 It won't cost any more dollars.

1 The other thing I want to mention to you is
2 the reason we have put this in the form of either a
3 proposed MRPC or in the form of a Court Rule is we
4 just want it fixed. We don't want to tie ourselves in
5 to whether the Supreme Court will get around it an
6 MRPC two or three years from now or they might get
7 into a Court Rule quicker.

8 The relief that we are asking you to give us
9 today to send us on with your blessing to Lansing is
10 either/or, whatever works. It's a very serious
11 problem, and I submit there is a constitutional
12 solution to it. Thank you.

13 CHAIRPERSON JOHNSON: Thank you very much,
14 Mr. Martina and Mr. Harrington. Ms. Sadowski, I would
15 call you again to the podium. At this time I would
16 entertain a motion concerning your presentation.

17 MS. SADOWSKI: I move the materials as
18 recited in the materials be adopted.

19 MS. FIELDMAN: Excuse me. I am here on
20 behalf of the State Bar Professional Ethics Committee.
21 I have been told I have an opportunity --

22 CHAIRPERSON JOHNSON: You are part of the
23 discussion.

24 MS. FIELDMAN: I am sorry.

25 CHAIRPERSON JOHNSON: Not a problem.

1 There is a motion on the floor. Is there a
2 second?

3 VOICE: Support.

4 CHAIRPERSON JOHNSON: There is a motion and
5 support.

6 I do understand Mr. Bill Dunn, who has
7 written you a letter that was in your materials, is
8 not available today. I do understand that a
9 Ms. Elaine Fieldman is here today, and in accordance,
10 pursuant to Rule 3 of our permanent Rules of
11 Procedure, a committee chair is allowed to have a
12 microphone privilege, and in speaking with our
13 parliamentarian, in Mr. Dunn's stead you may come and
14 present at the podium. No objection.

15 MS. FIELDMAN: Good afternoon. Thank you so
16 much. My name is Elaine Fieldman. I am here
17 representing the State Bar Professional Ethics
18 Committee in opposition to the proposal in front of
19 you this afternoon.

20 The proposed rule restrains certain, not all,
21 lawyers from soliciting prospective clients who are
22 named parties in family law cases, all family law
23 cases, not family law cases where it is alleged that
24 there is a possibility for domestic violence or a
25 possibility that children will be removed from the

1 home, all domestic violence cases for 14 days or until
2 the lawsuit has been served.

3 Listening to the proponents of this rule, it
4 sounds like every family matter case involves children
5 being abducted or violence being committed. The
6 solicitation at issue or the solicitation complained
7 about typically involve a letter being sent to a named
8 defendant saying do you know there has been a case
9 filed against you. I am a divorce lawyer. You can
10 call me.

11 Proponents concede that this very information
12 of the information that there has been a case filed is
13 readily available, public record, in newspapers, on
14 the internet, matters of public record. People can
15 find out about these things. These clients, the
16 prospective clients, these defendants can hear about
17 them from other people, from the newspaper, from the
18 media, from friends, from their ministers, from
19 others. The rule does not prohibit lawyers who have
20 had relationships with these people in the past from
21 telling them about it.

22 So, for example, under the proposed rule a
23 lawyer who learns that an 80-year-old man who has
24 filed a divorce case against his 80-year-old wife who
25 is in a wheelchair can't hear about that divorce case

1 from a lawyer who is trolling, but a 30-year-old man
2 who was previously represented by a lawyer when he
3 beat up his wife can hear about that divorce case
4 being filed from the lawyer who represented him five
5 years ago on that assault case.

6 That's because the proposed rule is aimed at
7 solicitation and not at the threat of domestic
8 violence. There is no requirement that in preventing
9 the solicitation that there be any allegation of a
10 threat or a reasonable suspicion that there is going
11 to be domestic violence, nothing like that. All you
12 have to do is have the suffix, the prefix, whatever,
13 on your complaint that matches a domestic -- a family
14 matter case, and automatically for 14 days or until
15 proof of service is filed you can't send your trolling
16 letter.

17 Now, we have heard that, well, it really is a
18 short period of time, and it's probably less than 14
19 days, because often within two or three days of the
20 proof of service service is made, but there is no
21 requirement that you file a proof of service in two or
22 three days. How does anybody know that service has
23 been made? So for all intents and purposes it's going
24 to be a 14-day period.

25 The cases that were cited to you involving

1 the stay periods -- 45 days, 30 days, 20 days -- in
2 ambulance chasing cases simply don't apply. Those
3 involve, as was stated, ambulance chasing. That's for
4 purposes of starting a lawsuit, where you are looking
5 for plaintiffs.

6 If we are going to analogize it to our
7 situation here, if you saw an article in the paper
8 about a woman in a hospital who was beat up and her
9 husband was under suspicion, he was a person of
10 interest being interviewed by the police, and there
11 was a court rule or there was a statute that said you
12 can't call the wife, the woman sitting in the
13 hospital, and say, you know, you don't have to take
14 this kind of abuse. We are very experienced in
15 handling divorce cases for abused spouses, why don't
16 you let us start a divorce action for you? Then it
17 would be analogous to the ambulance chasing cases.
18 But here we have a case that's already been filed.
19 The solicitation goes to a party, not to a prospective
20 plaintiff.

21 If we want to analogize to the ambulance
22 chasing cases on the other side, you have already had
23 your complaint filed, you had your plane crash, you
24 are representing the family, somebody is representing
25 the family. Would anybody say you can't write a

1 letter to United Airlines and say did you know a
2 complaint has been filed against you? Would you have
3 to wait 14 days to send a letter to United Airlines?
4 That's how they are trying to analogize it in this
5 situation. The cases simply do not apply.

6 I think we all agree that commercial speech
7 is protected. You can have restrictions. They just
8 have to be very narrowly drawn. Here they are not
9 narrowly drawn. While 14 days may be considered
10 narrow, it's not narrow here, because it applies to
11 every family matter case, not just cases where there
12 is some reasonable chance that you have a problem, and
13 it applies to lawyers in certain situations and not
14 other situations. There is no showing here that there
15 is a bigger danger if you find out from a lawyer who
16 doesn't know the plaintiff -- know the defendant
17 versus if you find out about the case from the
18 newspaper, from a different lawyer, from a family
19 member, from another source, from the internet.

20 In the example that was given, the very
21 personal example that you heard about where the wife
22 found the check in the pocket, she found out that way
23 about a potential divorce case. She didn't find out
24 about it because a lawyer wrote a letter. So there is
25 no showing that this is going to prevent any harm, and

1 it's very, very, very overbroad. The Ethics Committee
2 urges you not to adopt the proposed rule, and I thank
3 you very much for your time.

4 CHAIRPERSON JOHNSON: Thank you. Is there
5 any further discussion on the motion? Hearing none,
6 there is -- I am sorry. If you would please go to the
7 microphone and indicate -- excuse me, we'll have
8 order. If you will please go to the microphone and
9 give your name and your circuit, please.

10 MS. HAROUTUNIAN: Madam Chair, Ed Haroutunian
11 from the 6th circuit. I have two questions for the
12 proponents. One, what other states have such a rule
13 with regard to the family law area, and, secondly, if
14 a client finds out about a divorce but has not been
15 served, can the attorney ethically deal with that
16 client? Those are the two questions that I have,
17 Madam Chair, and I would hope that someone from the
18 proponent's side would respond.

19 CHAIRPERSON JOHNSON: Mr. Martina, if you can
20 respond to that.

21 MR. MARTINA: I have to say, just like
22 Arizona and Florida and other states who have taken, I
23 think, very responsible moves towards dealing with
24 issues like this, I don't know of other states that
25 have done this. I don't know though if in other

1 states there are people out there who are contacting
2 individuals on family law matters before they are even
3 served. The reality of it is that we know this is a
4 problem for those of us that do family law. You know,
5 a substantial number of cases that get filed do
6 require some sort of ex parte relief, and so what we
7 are trying to do is deal with the problem before it
8 develops a lot of momentum.

9 I really didn't understand the second
10 question. I apologize.

11 MS. HAROUTUNIAN: May I?

12 CHAIRPERSON JOHNSON: Without objection, you
13 may restate.

14 MS. HAROUTUNIAN: For clarification, here is
15 the question. If a client finds out about a divorce
16 but he has not been served with that divorce, can he
17 go to an attorney and speak to the attorney without
18 having been served?

19 MR. MARTINA: Oh, absolutely. First we have
20 to remember, just because an ex parte order is
21 effective when entered, it's not enforceable till
22 served, but the bottom line is that if a person finds
23 out that, absolutely, and they can look at an
24 advertisement to take them to that lawyer or they
25 could have maybe gotten a general solicitation by mail

1 from that lawyer previously, thought, you know, they
2 look competent, they are in the area, I can go to
3 them, or they could have seen them on radio or
4 television or any number of reasons. Absolutely
5 nothing would prevent that whatsoever. The lawyer
6 would be doing nothing wrong.

7 MS. HAROUTUNIAN: In follow up.

8 JUDGE CHMURA: If he wants to finish making a
9 statement.

10 CHAIRPERSON JOHNSON: Sure, and please
11 remember each speaker may only speak once and speak
12 for no more than three minutes.

13 If you want to follow up on your question,
14 yes, you may do that, Mr. Haroutunian.

15 MS. HAROUTUNIAN: The follow-up is, from the
16 attorney's point of view, will the lawyer be somehow
17 ethically, have an ethical problem by speaking to a
18 client who has not been served but who knows that a
19 divorce is coming, and my concern is what does that do
20 to the lawyer, because you are now potentially putting
21 that lawyer on the spot, and in my judgment there are
22 enough things in this world where lawyers are put on
23 the spot.

24 MR. MARTINA: This would not prohibit that at
25 all. If a person --

1 CHAIRPERSON JOHNSON: Mr. Martina, I am
2 sorry. You can't answer that at this point. Thank
3 you.

4 Yes, sir.

5 MR. MCCLORY: Mike McClory from the 3rd
6 circuit. I am a former chair of the Probate Estate
7 Planning Section, so I have enough knowledge to be
8 dangerous about court rules. We dealt with a new
9 probate code. We have a new trust code that takes
10 effect April 1st. I doubt my wisdom in this area,
11 because I don't do anything in it, but I just want to
12 throw out some general things that I think we should
13 consider as we are deliberating this.

14 The first is I was struck by, you know, not
15 really having a valid example of it, like something
16 that actually occurred as a result of solicitation
17 that did cause this harm.

18 The other thing that I am, you know, struck
19 by is that this is how we work with both trust code,
20 probate code, other probate legislation, other court
21 rules. If you don't have a consensus from these
22 different groups and you try to get that, we would not
23 usually go forward. What I am saying is that they
24 have chosen, the Family Law Section, for their own
25 tactical reasons when they had this consensus 18

1 months ago to come to the Bar section to try to get
2 our endorsement to somehow maybe grease the skids.

3 Now, I have never dealt with something along
4 this nature. Why they haven't and why they still
5 don't, and they are free to do so as far as I know,
6 unless this is one of those administration of justice
7 issues, just submit this to the Supreme Court
8 themselves, just to go ahead and do that and then have
9 the comment process go through. I think what we have
10 to be careful with as an organization, however we
11 decide, and I am just really not quite sure what I am
12 going to do myself, is that why they haven't chosen to
13 do that 18 months ago when they had this consensus.

14 The other thing that strikes me is the
15 question Ed asked about no other states having done
16 something similar. For instance, when we were
17 adopting Michigan Trust Code, which takes place
18 April 1st, there are 22 states that have different
19 versions of the Uniform Trust Code, which we drew out
20 significant parts. So that shows we are kind of like
21 in a trend line. We are going along in terms of doing
22 that.

23 I am not saying that there can't be a problem
24 here, but these are all issues from a policy
25 standpoint that we have to consider in terms of doing

1 that, in terms of letting this go ahead on our own if
2 there is this dispute between the two different
3 sections or whether we are so sure that it's
4 overridingly important to go ahead and give this huge
5 endorsement. That's all I have to say.

6 CHAIRPERSON JOHNSON: Thank you, Mr. McClory.

7 MR. KRIEGER: Madam Chair, Nick Krieger from
8 the 3rd circuit. I have a couple questions.
9 Constitutional issues aside, I think it could be more
10 precisely tailored, but that's neither here nor there.
11 I suppose it is, but my real question is what teeth
12 are there here? I mean, would this just be a general
13 grievable offense, and, if so, isn't it already
14 covered by MRPC 7.3(A)? 7.3(A), of course, is very
15 broad, but if you read the official comments, the
16 Supreme Court has stated that it is to be interpreted,
17 you know, in accordance with Shapero. It needs to be
18 read in a limited fashion so as not to violate
19 Shapero. Well, neither would this maybe, at least the
20 proponents say that it wouldn't.

21 So I think it might be a duplication of
22 7.3(A), which, of course, is broader and doesn't just
23 apply to family law cases, but it says that you can't
24 go out and solicit somebody if you are looking for
25 your own pecuniary gain. Well, of course, attorneys

1 always solicit people for their own pecuniary gain,
2 but maybe it's already covered.

3 And the last thing is, if it's in the
4 Professional Rules of Conduct or the Court Rules, I
5 don't think it's anything more than a sanctionable
6 offense, and I want to know if I am wrong about that
7 and if someone who does this could be sanctioned by a
8 trial court. I find no parallel provisions to 7219 or
9 7319 for trial courts, which would allow a trial court
10 to award general sanction for gross violation of the
11 Court Rules or the Michigan Rules of Professional
12 Conduct, whereas the Court of Appeals and the
13 Supreme Court can. So maybe somebody could address
14 that. Thank you.

15 CHAIRPERSON JOHNSON: Thank you, Mr. Krieger.
16 Woman at the microphone here.

17 MS. OEMKE: Kathleen Oemke, 44th circuit. I
18 am speaking in favor of the proposal. The idea that
19 domestic violence is predictable is ridiculous. One
20 never knows when anything is going to erupt. The
21 calmest families can have emotional breakdowns and
22 breakdowns in temperament so that people can be put in
23 danger at a moment's notice.

24 People can find out about their situation in
25 public record if they are looking for it; however, as

1 we all know, people don't go looking for that
2 information unless they have suspicions regarding
3 that.

4 I believe that the previous attorneys or the
5 family members that are attorneys that have contact
6 with the person would have an established method of
7 trust and would be able to assist the people in a
8 domestic arena and perhaps prevent further damage.
9 Thank you.

10 CHAIRPERSON JOHNSON: Thank you, Ms. Oemke.
11 Gentleman here at this microphone.

12 MR. LINDEN: Jeff Linden, 6th circuit. I am
13 not necessarily in favor or against the concept of
14 protecting the perceived harm. I tend to want to
15 protect the perceived harm from occurring. My concern
16 is in line with Mr. Haroutunian's comment that I don't
17 think this proposal gets us there in the following
18 way: It reads in the second clause, A lawyer may not
19 contact or solicit a party for purposes of
20 establishing a client/lawyer relationship.

21 In Mr. Haroutunian's example where a family
22 law defendant becomes aware of the case that has not
23 been either served with the case and the 14 days has
24 not expired and seeks to contact a lawyer, as this is
25 written, that lawyer that is contacted, let's say a

1 voicemail message was left, could not call that person
2 back without violating this proposal. And I don't
3 think that in this circumstance, as written, that the
4 risks to the professional who is not doing the
5 trolling that the people are trying to prohibit stands
6 at risk of having ethical or professional discipline,
7 which I don't believe was intended, and I understand
8 the proponents have argued that that isn't what it
9 says and that's not what's intended, but the language
10 used does appear to be contact, and calling somebody
11 back would be contact for purposes of establishing a
12 special relationship, and if you are not a relative
13 and you don't have prior business with that person,
14 you would violate this proposal, and to that extent I
15 think as written this is overbroad.

16 CHAIRPERSON JOHNSON: Thank you, Mr. Linden.
17 The woman at the microphone over here.

18 MS. WASHINGTON: Good afternoon,
19 Erane Washington, 22nd circuit, and I am neither in
20 favor or opposed. I don't know where I am yet, but I
21 do have some concerns with the way it's currently
22 written as well, and this goes to the issue of
23 predicting. I think that it's not in every case you
24 can predict whether there is going to be domestic
25 violence, but there are indicators. Having done

1 criminal law and some family law, I know that there
2 are indicators and there is a series of standards that
3 are used to determine whether or not someone is going
4 to be a batterer in a domestic situation, and there
5 are indicators with respect to children and whether
6 there is a risk of harm or them being taken out of the
7 city.

8 So my concern is in addressing that I have
9 the overly broad issue with family law in every family
10 law case this particular statute would apply, and I
11 would ask the committee whether or not they would
12 consider imposing some type of a duty on the family
13 law practitioner who is filing the case to provide an
14 affidavit indicating that there is some type of
15 domestic situation going on. In that event it would
16 be narrowly tailored to situations in which there were
17 domestic violence, and then you impose an ethical duty
18 upon the practitioner to actually take a look at that
19 and see whether there is an indicator.

20 And then, secondly, my next concern is that
21 in this particular situation where this rule would
22 apply it seems to go further in basically sending to
23 the public that whole rule that the first to file
24 actually ends up with the right to the children and
25 all those other issues. So I think you have to look

1 at it and deal with the overly broad way that it's
2 written right now.

3 CHAIRPERSON JOHNSON: Thank you. Gentleman
4 over here.

5 MR. WEINER: James C. Weiner from the 6th
6 circuit. Two things. One, I listened to this, and I
7 have feelings both ways, but I would like to say that
8 I think this is simple enough, 14 days and up, it's a
9 bright line rule, and it's actually probably very easy
10 even ethically for us to take a look at.

11 Now, I would like to also propose a friendly
12 amendment to say, A lawyer may not initiate contact or
13 solicit a party. So that gets us around returning
14 phone calls from somebody that's contacted them. That
15 gets us around talking to somebody that they had
16 solicited an attorney.

17 CHAIRPERSON JOHNSON: Mr. Weiner, will you
18 repeat your friendly amendment, then I will ask the
19 proponent if she is in favor of that.

20 MR. WEINER: I would like to add the word
21 "initiate" immediately prior to "contact" on the
22 second line.

23 MS. SADOWSKI: The proponent accepts the
24 friendly amendment.

25 CHAIRPERSON JOHNSON: Thank you,

1 Ms. Sadowski.

2 Is there any further discussion?

3 MR. MIENK: Roy Mienk from the 55th circuit.
4 I think to me the problem is that, as stated, it's a
5 simple rule, and it was originally targetted at a
6 specific problem of trolling. The rule should
7 actually be specific to the problem. I mean, you can
8 analogize this to all kinds of cases. Some of the
9 worst cases I have seen are real estate property line
10 cases, and the neighbors get notice of it, and then
11 they are fighting.

12 So if you are looking to do all cases, then
13 do all cases, but just to limit it to family law, if
14 you are going to do this for trolling, make it
15 specific for trolling. Define trolling and put it in
16 the resolution, because it's just a general rule which
17 to me anybody that did direct mailing would be in
18 violation of, and so now we have got somebody who does
19 a direct mailing in violation of the rule, and he
20 could be brought up on ethical charges, and I think
21 that's where I see the Ethics Committee is coming,
22 that people that are not targetted by the rule would
23 be in trouble.

24 CHAIRPERSON JOHNSON: Thank you very much.
25 Any further discussion?

1 MS. SADOWSKI: Is response from the proponent
2 allowable?

3 CHAIRPERSON JOHNSON: From the floor, if you
4 want to move to close debate.

5 MR. WEINER: Point of order, shouldn't we
6 vote on the friendly amendment first before we vote
7 on --

8 CHAIRPERSON JOHNSON: No.

9 MR. WEINER: Oh, it's a friendly amendment.

10 CHAIRPERSON JOHNSON: It was accepted.

11 You are the proponent. If you wish to make a
12 final statement, you may.

13 MR. REISER: May I just briefly be heard? If
14 not, I will sit down and we will vote.

15 CHAIRPERSON JOHNSON: She has not come to the
16 podium yet. I will allow it.

17 MR. REISER: John Reiser, 22nd circuit. I
18 don't think this is to address trolling. I think this
19 is to address the extra judicial things that go on
20 prior. It's not the receipt of the letter or the
21 sending of the letter. It's what gets done once they
22 get notice and don't hire the lawyer. It's that which
23 is done prior to the defendant coming in to court,
24 alienating the assets.

25 As an assistant prosecuting attorney in

1 Ann Arbor, I have the luxury of law enforcement
2 policies which strongly favor arrests in domestic
3 violence cases, which means that the defendant is
4 hauled before the court and the conditions are gone
5 over with that defendant. Why I am supporting this is
6 because over the last three years the Family Law
7 Council has unanimously been in favor of it, and I
8 understand that the Family Law Council is attorneys
9 who represent both plaintiffs and defendants, both the
10 wives and the husbands, and if we are nothing, we are
11 an organization which regulates ourself, and those
12 people who know best about this stuff are saying we
13 got to do this to protect people, to protect families,
14 and that's why I would urge our members to support
15 this. Thank you.

16 CHAIRPERSON JOHNSON: Thank you very much,
17 Mr. Reiser.

18 If there is no further discussion, the
19 proponent may make a final statement, and I will call
20 you to the podium, please.

21 MS. SADOWSKI: As Mr. Reiser stated, this is
22 not an anti-trolling statute. This is a proposal to
23 stop prior notice in order to prevent irreparable
24 injury, loss, other damage resulting from the delay
25 required to effect notice or that notice will

1 precipitate adverse action before an order is issued.
2 That's what this is about. It is the problem with the
3 notice requirement that would violate an ex parte
4 order, the spirit of an ex parte order already in our
5 statutes.

6 Our special proceedings section of our Court
7 Rules, the 3.200, is inclusive of all family law
8 matters. Thank you.

9 CHAIRPERSON JOHNSON: Thank you very much.
10 There is now a motion on the floor, and the debate has
11 been closed with the final proponent. There is a
12 motion and a second on the floor to move the proposal
13 as presented with the one word "initiate" inserted.

14 Hearing no further discussion, all those in
15 favor of the proposal for attorney solicitation as
16 proposed with the insertion please signify by saying
17 aye.

18 All those opposed say no.

19 Any abstentions?

20 VOICE: Division.

21 CHAIRPERSON JOHNSON: At this point I have
22 heard a call for division. There is no debate. I
23 would ask -- I am going to repeat the request again,
24 and I am going to ask you to stand. Will the clerk
25 and the vice chairperson please count the votes.

1 Those in favor of the proposal for the
2 attorney solicitation with the one word "initiate"
3 inserted, please stand now.

4 (Votes being counted.)

5 CHAIRPERSON JOHNSON: Thank you. Those
6 members may be seated. All those opposed please stand
7 now.

8 (Votes being counted.)

9 CHAIRPERSON JOHNSON: Thank you. You may all
10 be seated. The tellers have counted. The votes were
11 68 aye, 43 no. The motion carries. Thank you to all
12 who participated in this, the Family Law Section, the
13 Civil Procedure Committee. We appreciate very much
14 your involvement in this issue.

15 The next and final item on our calendar is
16 number 17, which is an informational update from the
17 Special Issues Committee considering the revised
18 Uniform Arbitration Act, and at this time I would like
19 to call to the podium the chairperson of the Special
20 Issues Committee, Ms. Krista Licata Haroutunian for
21 her report of the Special Issues Committee.

22 MS. HAROUTUNIAN: Good afternoon. My name is
23 Krista Licata Haroutunian. I am chair of the Special
24 Issues Committee. I am from the 6th circuit.

25 I wanted to, number one, thank the officers,

1 Liz and Victoria and Steve, for all their assistance
2 to the committee, because it was great. And I also
3 wanted to thank the members, Ron Foster, Christian
4 Horkey, Judge Kent, Mike McClory, Jeff Crampton, and
5 Dana Warnez. Some of them were able to be here today
6 and some of them are not able to be here today, but,
7 regardless, I thank them anyway.

8 The Special Issues Committee, we held quite a
9 few phone conferences with regard to the revised
10 Uniform Arbitration Act and this issue that has come
11 before the Assembly before. It got resurrected upon
12 the writing of a white paper by Mary Bedikian, which
13 is included in your documentation.

14 What you have under the tab is the initial
15 revised Uniform Arbitration Act issued as presented
16 originally to the Representative Assembly. The
17 updated -- the only thing that got changed was, with
18 the assistance of the Drafting Committee, some words
19 got changed in the opposition paragraph, because the
20 Consumer Law Section did draft a response, which you
21 will also find in your materials, and the Family Law
22 Section also submitted information with regard to the
23 Domestic Relations Arbitration Act. In general they
24 were in favor of the RUAA, but in any way that it
25 conflicted with the Domestic Relations Arbitration Act

1 they disagreed, so that's important to know.

2 And you will also have the white paper, like
3 I said, by Mary Bedikian, which gives you kind of a
4 summary of the ADR's position, the section's position
5 as to what this would mean to Michigan.

6 Following that item you have the Consumer Law
7 Section's opposition to that, as well as the actual
8 one-page paper from the Family Law Section.

9 There were a couple other items that came to
10 Special Issues. One was from Labor and Employment,
11 whose chair is Jeffrey Donahue. He had sent a letter
12 expressing the idea that the Labor and Employment
13 could not take a position on this issue based on the
14 very nature of their section, but they did send us --
15 they sent us that in writing to make sure that we knew
16 that they had at least looked at it and wanted to
17 address it but could not based on the split in their
18 membership.

19 The committee unanimously voted at our last
20 conference meeting to continue to collect items that
21 we are receiving from other sections and Bar
22 associations to bring to your attention. We do not
23 feel, as the Special Issues Committee we did not feel
24 that we had collected enough information to
25 sufficiently give you a good report, so we are

1 continuing to collect information, and people have now
2 gotten it on their radar and have said, yes, we want
3 to submit things to you.

4 So we wanted to give you the update. You
5 have the printed materials, so please review them. Go
6 back to your sections or special issues, or I mean
7 specialty Bars or other Bars that you are interested
8 in, and discuss this issue with them, and with that,
9 Madam Chair, our report to you then is that we are
10 going to come back to you at the next meeting.

11 CHAIRPERSON JOHNSON: Thank you very much,
12 Krista. We appreciate your committee's fine work and
13 the report to us.

14 At this time I have a few announcements. The
15 next meeting of the Representative Assembly will be
16 held on September 30th, 2010, at the Amway Grand in
17 Grand Rapids so that you can all plan ahead and get
18 your calendars in order.

19 Petitions for elections must be filled out
20 and submitted to Anne Smith. Information about the
21 elections can be found in the March issue of the Bar
22 Journal. If you have any questions, please talk to
23 Anne.

24 And a special note for those in the 3rd
25 circuit, due to a recent vacancy in the 3rd circuit

1 for a term that expires in 2012, there will be an
2 election for an additional spot for the 3rd circuit
3 for one seat in addition to the regular four seats
4 that are up, so that word can get out to the members
5 of the 3rd circuit.

6 Attendance sheets must be completed and
7 returned today for your attendance to be counted.
8 Please review the rules of conduct -- may I have
9 order, please. Please review the rules of conduct in
10 terms of your attendance here. If you are going to be
11 absent, you must get an excused absence, and there are
12 requirements for you to attend a certain number of
13 meetings. Please review that.

14 I would like to say for a moment a special
15 thanks for your support of the Representative Assembly
16 food drive and the Access to Justice fund. I am sure
17 you saw the huge amount of food that was collected out
18 there in the barrels, which is a wonderful
19 contribution, and I have been given the information
20 from the Access to Justice fund. We raised \$565
21 today, and that doesn't include mileage reimbursements
22 that people may submit, so that's a wonderful
23 contribution in one day from the Assembly. I really
24 thank all of you, and I urge you to continue your
25 support financially to the Access to Justice.

1 I would like to thank the Lansing Area Food
2 Bank and the State Bar Foundation, Linda Rexer and
3 Celia Martin. If Celia is here, we appreciate your
4 help very much. And a special thanks to the State Bar
5 staff. When they heard that the Representative
6 Assembly was doing a fundraiser, they also joined in
7 and did a fundraiser, so thank you to the staff on
8 their own initiative for doing that.

9 Since there is no further business to come
10 before this body, we are adjourned.

11 (Proceedings concluded at 2:18 p.m.)

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1 STATE OF MICHIGAN)
)
2 COUNTY OF CLINTON)

3 I certify that this transcript, consisting
4 of 135 pages, is a complete, true, and correct transcript
5 of the proceedings and testimony taken in this case on
6 Saturday, March 27, 2010.

7
8 April 19, 2010

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

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