

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 Portside Ballroom, Cobo Center,
Detroit, Michigan, on Thursday, September 28, 2017, at the
hour of 10:15 a.m.

AT HEADTABLE:

FRED K. HERRMANN, Chairperson

JOSEPH P. MCGILL, Vice-Chairperson

RICHARD L. CUNNINGHAM, Clerk

JANET WELCH, Executive Director

HON. JOHN CHMURA, Parliamentarian

1	CALENDAR ITEMS	PAGE
2	Call to order	3
3	Certification of quorum	3
4	Adoption of proposed calendar	4
5	Approval of 4-22-17 Summary of Proceedings	4
6	Chair's Report - Recognition to Assembly members	4
7	completing their terms of service and	
	Committee Chairs	
8	Filling of vacancies	6
9	Presentation of Unsung Hero Award	7
	to F. Martin Tieber	
10	Presentation of Michael Franck Award	19
11	to Mark L. Teicher	
12	Consideration of Proposed Amendment to MCR 3.993	26
13	Presentation on Dues by Janet K. Welch,	33
14	Executive Director, and Jim Horsch,	
	Director of Finance & Administration	
15	Presentation on Civil Discovery by	41
16	Daniel D. Quick	
17	Nomination and Election of Assembly Clerk	51
18	Introduction of Hon. Michael J. Riordan by	53
	Chair Fred K. Herrmann	
19	Swearing in of Joseph P. McGill as 2017-2018 Chair	54
20	Adjournment	58
21		
22		
23		
24		
25		

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Detroit, Michigan
Thursday, September 28, 2017
10:17 a.m.

R E C O R D

CHAIRPERSON HERRMANN: Good morning, everyone. Thanks for joining us. I would like to call the meeting to order at this time.

Mr. Cunningham, would you certify that a quorum is present, please.

CLERK CUNNINGHAM: Mr. Chairman, a quorum is present

CHAIRPERSON HERRMANN: Thank you. We have a quorum.

At this time we would like to adopt the proposed calendar. From the Rules and Calendar Committee, Mr. Antkoviak, will you proceed.

MR. ANTKOVIAK: Good morning. Matthew Antkoviak, 48th circuit, member of the Rules and Calendar Committee. At this time I would move for the adoption of the proposed calendar.

CHAIRPERSON HERRMANN: Do we have a second?

VOICE: Support.

CHAIRPERSON HERRMANN: Any discussion?

All in favor say aye.

Opposed.

1 Motion is approved.

2 At this time we would like to approve the
3 April 22nd, 2017 Summary of Proceedings of the
4 Representative Assembly. Ms. Kakish, are you present?

5 May I have a motion from the floor, please,
6 to approve the Summary of Proceedings from the
7 April 22nd meeting.

8 VOICE: So moved.

9 CHAIRPERSON HERRMANN: Second?

10 VOICE: Second.

11 CHAIRPERSON HERRMANN: All in favor say aye.

12 Any opposed.

13 Motion passes.

14 The chair's report today is brief. It's just
15 a thank you, a sincere thank you to everyone in this
16 room and everyone I have served with in the
17 Representative Assembly over the past ten years. It
18 has been a distinct personal and professional
19 privilege to be a member of this body and to see the
20 good work that has been done here and to be a part of
21 it. So thank you, all.

22 In particular, we would like to recognize our
23 members completing their terms of service at today's
24 meeting, and we are posting our members up here on the
25 powerpoint. We would love to thank you personally and

1 individually, but in the interest of time, we have
2 identified you here, and, in addition, those
3 completing their terms of service are identified today
4 by this jar of candy in front of them. We are doing
5 this at the outset, because in the past we have had
6 people leave at the end and never have the opportunity
7 to have fellow members thank them.

8 So please note your people with a candy jar.
9 Get a piece of candy and thank them for their service
10 in the RA. So thank you all. It was very much
11 appreciated.

12 (Applause.)

13 CHAIRPERSON HERRMANN: In addition, I would
14 like to thank our committee chairs this year. They
15 have also received tokens of appreciation from us and
16 bags on their table, so if you would take the time to
17 please see your committee chairs and thank them for
18 their service, and that extends to the members of
19 those committees who provided great service this year
20 to the Representative Assembly.

21 (Applause.)

22 CHAIRPERSON HERRMANN: The next thing I would
23 like to report is a note of success. Oftentimes we
24 deal with issues on the floor here at the Assembly
25 that don't necessarily move any further than the body,

1 but one in particular has, and that's limited scope
2 representation rules that we considered in a prior
3 meeting. They have been approved by the Supreme Court
4 essentially without amendments and minor tweaks. That
5 was really an heroic effort by the entire State Bar,
6 including this Assembly, to approve those rules.

7 We have advanced the ball into the future on
8 behalf of our members of the Bar, as well as the
9 public, with those rules, so you can be very proud of
10 your participation in that process. I just wanted to
11 let you know that happened as well.

12 (Applause.)

13 CHAIRPERSON HERRMANN: And at this time we
14 would like to fill our vacancies for this meeting.
15 Maureen VanHoven, would you please present on our
16 vacancies.

17 MS. VANHOVEN: At this time our new members
18 who are filling vacancies for us are identified on our
19 list, and I would like to move for their admission.

20 VOICE: So moved.

21 MS. VANHOVEN: All in favor say aye.

22 All opposed, same sign.

23 Thank you. I would like to just briefly note
24 that Rule 6, Section 6, and it is on the memorandum,
25 states that if we have any vacancies, the first

1 opportunity for nomination is to come from other
2 members of that circuit, so especially like Kent and
3 Oakland and our multi-seat circuits, you have some
4 vacancies, so if you would during the next few months
5 take the opportunity to reach out to some people to
6 see if they would like to join our body, it would be
7 greatly appreciated so we can get a few more people
8 involved. And, personally, you know, think outside
9 the box, maybe reach out to some of our newer members
10 of the Bar so that they can get their feet wet and
11 kind of see what we are all about here. Thank you.

12 CHAIRPERSON HERRMANN: The new members who
13 have been appointed for this session, if you haven't
14 yet, you can take your seats in your respective
15 circuits. Thank you for joining us.

16 At this time, we would like to begin our
17 Representative Assembly awards presentation, and we
18 will begin with the presentation of our Unsung Hero
19 Award to F. Martin Tieber. The presenter is Ms. Mary
20 Chartier-Mittendorf, and I would ask Mary to join us
21 at the podium at this time.

22 We are already slightly ahead of schedule, so
23 I beg your patience. Staff is assuming we have our
24 award presenters present, and we do.

25 If you are like me, you surely notice that

1 our meeting this year involves vast expanses of real
2 estate, so we will be patient as everyone arrives.

3 Mary Chartier-Mittendorf, would you please
4 join us.

5 MS. CHARTIER-MITTENDORF: Sure. Thank you.
6 Boy, I am out of breath from walking all this
7 distance, so give me a minute.

8 It's such an honor to present this award
9 today to Marty Tieber, so for those of you who don't
10 know Marty, I could talk about his accomplishments all
11 day long. He is a nationally-recognized appellate
12 lawyer. He helped start the Michigan Innocence
13 Project, and he was the Lansing director of the State
14 Appellate Defender's Office. All those things you can
15 read about, but today I want to tell you a little
16 story about Marty, and in order for you to really know
17 who Marty Tieber is, I need to tell you the story of
18 Dennis Tomasik.

19 In 2007, Dennis Tomasik was convicted of two
20 counts of criminal sexual conduct in the first degree.
21 For those of you who don't know, those are life
22 offenses in the state of Michigan.

23 Marty Tieber and his son, Chris Tieber, who
24 also is an amazing appellate lawyer, stepped in after
25 they were recruited by Dennis Tomasik's wife, Kim, to

1 handle Dennis' appeal. Now, Dennis' first lawyer as
2 it related to the appeal became a judge, so Marty and
3 Chris actually had to step in after the first brief
4 was filed.

5 They fought for nine years to get
6 Mr. Tomasik's convictions reversed. For those of you
7 who know anything about Michigan's appellate process,
8 you know that it is remarkable for the Michigan
9 Supreme Court to look at those convictions and say,
10 You deserve a new trial.

11 Now, I was part of the trial team who handled
12 the second trial, and so let me tell you a little bit
13 about what that second jury heard because of the work
14 of Marty and Chris Tieber that the first jury never
15 heard about. They heard that the allegation was made
16 by a troubled teenager who, days after he was kicked
17 out of school for stealing, who had been arrested for
18 a felony, who was being drug tested by his parents,
19 and who was on his ninth therapist, spoke to a
20 counselor who indirectly asked him if anything had
21 ever happened to him as a child which would cause the
22 way he was acting, and, remarkably, this teenager
23 said, I was molested as a child.

24 Now, he said he was molested by a neighbor
25 whose name he couldn't remember, but after the parents

1 and the therapist got involved, he subsequently
2 remembered the name of Dennis Tomasik, because he
3 said, I used to be best friends with his son. That
4 started the nightmare for Dennis that went on until
5 2017 of this year.

6 Through the course of the first trial, no one
7 ever interviewed dozens of witnesses who could have
8 exonerated Dennis. At the second trial, the jury
9 heard from 22 new witnesses who had never even been
10 interviewed the first time around by Dennis' retained
11 trial counsel. Many of these people had been tracked
12 down by Chris and Marty Tieber, and then a number of
13 them were tracked down by us as well. These were
14 people who worked with Dennis and said he couldn't
15 have been home after school molesting a neighbor boy,
16 because he was at work.

17 Work records were introduced at the second
18 trial and in the appellate process that were never
19 introduced in the first trial that definitively placed
20 him at his place of business 30 miles away.

21 The problem is that when you are fighting an
22 appeal, appellate courts say, well, this is the
23 record, right, this is what the first lawyer did.
24 Maybe it's strategy, maybe he made these reasonable
25 decisions. Marty and Chris Tieber were able to prove

1 that these weren't reasonable decisions. It's not
2 reasonable for a jury not to hear the man was at work
3 when he supposedly was at his home molesting a
4 neighbor boy.

5 The other thing that Marty and Chris Tieber
6 did is they tracked down counseling and school
7 records. We were able to call these counselors and
8 teachers at the second trial, and they told us some
9 very disturbing things. This teenager had a history
10 of lying, and when he would get in trouble, he liked
11 to lie to get another adult in trouble. Teachers said
12 repeatedly that he distorted reality, and they were so
13 concerned about him because he didn't seem to be able
14 to tell truth from fiction.

15 During the first trial and throughout the
16 appellate process until he got to the Michigan
17 Supreme Court, courts had said those records were not
18 relevant. Marty and Chris Tieber were able to show
19 they were indeed relevant when a man was fighting for
20 his life. Not only did the jury hear from co-workers,
21 supervisors, neighborhood children who said this young
22 man did not play at their household, they also were
23 able to see this young man's very inconsistent story
24 and the fabrications that he had made over the years
25 to try and get himself out of trouble.

1 I could talk to you ad nauseum about this
2 case, because we lived and breathed it for 12 months
3 to try and exonerate Mr. Tomasik, but none of this
4 would have been possible without the work of Chris and
5 Marty Tieber. I cannot tell you how much work they
6 put into this case.

7 Normally when I get a trial lawyer's file or
8 appellate lawyer's file, it's a mishmash of documents
9 skewed in every assorted way. Chris and Marty had
10 everything tabbed. They had witnesses we needed to
11 talk to. They had evidence we needed to introduce.
12 It was a litigator's dream. If only I could get a
13 file from two lawyers who were so well organized and
14 so dedicated to their clients all the time, honestly,
15 I could spend half my time on vacation.

16 Not only were they committed through the nine
17 years that they fought for the Tomasiks, the
18 predominant amount of that time they worked pro bono,
19 but when the second trial was going on, they were
20 accessible to us at the drop of a hat. One time Marty
21 was actually riding his bicycle when I called to ask
22 him a strategy question, and he stopped and he laid
23 his bicycle down under a bridge in Minnesota, and he
24 answered our questions.

25 This is a man I cannot even say enough

1 wonderful words about. I could talk about him all
2 afternoon until you actually pulled me off the stage
3 because, while this award is supposed to be for unsung
4 heros, I think that every criminal defense litigator
5 in the state of Michigan knows that Marty Tieber is a
6 hero, and I am so thrilled that you recognize that he
7 is a hero.

8 I want to acknowledge, not just is Marty
9 getting this award today, but his son, Chris Tieber,
10 is here as well, who was an amazing part of that
11 appellate victory, who actually argued the case in the
12 Michigan Supreme Court. There is the trial team who
13 is here from the second trial, but even more
14 importantly than that I think is Dennis Tomasik, who
15 is here with his wife, Kim. He is in the back with
16 Marty and Chris and the trial team. After having
17 spent nine years in prison, this man is out and is
18 with his family, and I think that deserves a round of
19 applause.

20 (Applause.)

21 MS. CHARTIER-MITTENDORF: I just want to say
22 just a few last words. Recognize that nine years in
23 prison is nine years away from your life, nine years
24 away from your family. When Dennis was released, he
25 didn't even recognize his own daughter, because he had

1 made the decision he didn't want his children to have
2 to go through the indignities of prison visits.

3 So think about that. He missed nine years of
4 his children's life. His son got married. They both
5 graduated from high school. They are amazing,
6 productive, wonderful children, and that is thanks to
7 the work of Dennis and Kim. He missed nine years with
8 his wife, who every single night while he was away
9 would go through the trial documents and police
10 reports and put together graphs and charts and notes,
11 because she knew that some day someone would listen
12 and would exonerate her husband.

13 It was nine years away from his job. It was
14 nine years away from his family and friends. It was
15 nine years away from his life. And think of where you
16 were nine years ago and imagine being locked in a cell
17 for crimes that you didn't do.

18 Throughout all of this, Dennis never
19 waived. He was innocent. He always said he was
20 innocent, and he never waived. He took the stand in
21 the second trial and unequivocally told that jury he
22 was innocent. The jury was out for 19 minutes before
23 they came back with a not guilty verdict, and the only
24 reason it took 19 minutes they said is because they
25 all had to go to the bathroom.

1 They were so convinced he was innocent that
2 during the closing arguments many of the jurors were
3 crying. I received e-mails that night from jurors,
4 many of them thanking us for the work that we did, and
5 I wanted to make sure that they knew that the only way
6 we could do our work was because of the work of the
7 Tiebers. But the jurors say they never would have
8 left that jury room with a guilty verdict. They
9 didn't have to fight with another juror though,
10 because all of them were so convinced in Dennis'
11 innocence.

12 I say all this because Marty Tieber is
13 getting the award today, and while Dennis' story is
14 tragic, it's not unique. As a criminal defense
15 lawyer, there are a lot more Dennis Tomasiks in our
16 prison system. What Dennis, Chris, and Marty had to
17 deal with through the appellate process, quite
18 frankly, was a court system that believed that Dennis
19 was guilty, not innocent, even during that first
20 trial. Comments made by the trial court, I mean no
21 disrespect to this, in my opinion showed a bias that
22 shouldn't exist. It's the same for the detectives and
23 same for the prosecutor's office. Both the Tiebers
24 and our trial team begged that prosecutor's office not
25 to retry Dennis when we were able to show that he was

1 innocent. They did so anyway because the comment was
2 how will it look if we don't retry him? Well, it's
3 going to look like you believe that this man is
4 innocent.

5 The reason I say all of this is because our
6 battle isn't over. Currently we filed under the
7 Wrongful Imprisonment Compensation Act for Dennis to
8 get the \$50,000 a year that the legislature has
9 indicated that he is entitled to. We are gearing up
10 for another fight in that regard. So today when we
11 honor Marty Tieber, I ask all of you, when you read
12 about someone in the newspaper or you hear about
13 someone that is accused of a crime, please take that
14 pause and recognize and remember this story, that for
15 nine years an innocent man sat in a cell because so
16 many people didn't believe in him, but I am thrilled
17 today we can honor a man who did believe in him, and
18 he is the only reason that Dennis Tomasik is free
19 today. Marty Tieber. Thank you.

20 (Standing applause.)

21 MR. TIEBER: This is really an amazing honor,
22 and Chris Tieber and I want to thank Mary and all of
23 you on the Representative Assembly for what you have
24 done here in terms of this type of recognition, but in
25 reality -- and I know Mary and I had ten minutes

1 together, and I think she only used up a couple,
2 right?

3 She said pretty much everything I was gong to
4 say, but the main thing I wanted to say -- and by the
5 way, thank you for doing my high school year book
6 photo. The main thing I wanted to say was echoing
7 what Mary has put forward, that the real unsung heros
8 in this matter are Kim and Dennis Tomasik. Imagine
9 being plucked out of your life as a hard working tool
10 and die engineer with two wonderful children and a
11 loving and devoted wife right by your side and being
12 thrown into prison for something that not only you
13 didn't do but that never, ever even happened at all,
14 and being in prison for nine years for something that
15 never, ever happened at all. And I think that the
16 message, and Mary did indicate this too, the message
17 is we all have to be vigilant.

18 So many people that I have met during my 47
19 years of doing criminal appellate defense work, you
20 really don't understand that you can go to prison for
21 all of your life or for long periods of time based on
22 the words coming out of someone's mouth, and that's
23 it, and if it's not for the vigilance of the Bar,
24 these kinds of wrongful convictions can happen more
25 and more often. We all have to be aware of this, and

1 we all have to be vigilant, and a criminal defense bar
2 has to be really, really entrusted with doing a very,
3 very strong and dedicated job and doing the work that
4 needs to be done.

5 And that work was done by Mary and her team.
6 Takura, her partner, and Kim and Lizzie and Tony, her
7 staff. The five of them are probably one of the most
8 amazing criminal defense trial groups I have ever seen
9 in the years I have been practicing, and they did at
10 that second trial what was not done at the first. The
11 first trial was a simple walk-through where nothing
12 was presented to that jury, and that's what we have to
13 be aware of. That can occur, and we have to guard
14 against it.

15 So I think, again, the unsung heroes are
16 Dennis and Kim, and it's so wonderful that they are
17 here today. I also want to, again, recognize the work
18 that was done by Mary, Takura, and her firm, and I
19 also want to thank Chris Tieber, who did an amazing
20 job when the Supreme Court finally at the end of this
21 eight-year direct appeal process, which is a record in
22 Michigan for sure, did the full briefing and the oral
23 argument in the Michigan Supreme Court that ultimately
24 resulted in the granting of a new trial that Mary
25 ended up taking home.

1 So, again, thank you all very much. It's so
2 much appreciated. Take care.

3 (Applause.)

4 CHAIRPERSON HERRMANN: Congratulations,
5 Marty. That is a phenomenal tale of justice. Thank
6 you, all.

7 At this time we would like to present the
8 Michael Franck Award, which will be received by
9 Mark L. Teicher, and presenting will be Ms. Julie Beth
10 Teicher, if I may call her to the podium at this time.

11 MS. TEICHER: Good morning. I am so pleased
12 to introduce the winner of this year's Michael Franck
13 Award, Mark Teicher. I nominated Mark for this award,
14 and yes, I am his wife, but I am also an attorney. We
15 have been practicing since 1982, but it's not because
16 of our relationship that I nominated Mark. Over the
17 years since Mark began practicing law, Mark has truly
18 committed himself to the improvement of the practice
19 of law in the state of Michigan.

20 Mark graduated from the University of Detroit
21 School of Law in 1982. In 1986 he was first elected
22 to the Representative Assembly. He has been a member
23 of the Representative Assembly for most of the 35
24 years he has been practicing. In addition, Mark has
25 served in different capacities on the Client

1 Protection Fund and the Attorney Discipline Board. He
2 has internalized the requirements that attorneys must
3 look out for the profession as a whole, and where an
4 attorney has done something wrong or does something
5 which damages the profession, appropriate action
6 should be taken and victims should have a remedy.

7 Mark brings equal passion to his law
8 practice. He represents his clients with knowledge,
9 integrity, and respect, but that is not all that Mark
10 is about. Mark has made a significant commitment to
11 the protection of Michigan land and waterways. About
12 13 years ago Mark joined the board of the Portage,
13 Base & Whitewood Property Owners Association, an
14 association of lake property owners on five lakes of
15 the Huron River chain in Washtenaw and Livingston
16 Counties. Mark's presence on the board was
17 instrumental in creating a sea change, signaling the
18 change of board members to people who were interested
19 in being good stewards of the lake, rivers, streams,
20 and watershed and working to protect them. Mark has
21 been president of the association for five years. As
22 I say, it's a volunteer job that he can't get rid of.

23 Under Mark's leadership, the association was
24 instrumental as a spearhead in getting Washtenaw
25 County to establish a special assessment district to

1 deal with invasive weeds in the lakes, rivers, and
2 streams. It's a unique special assessment district
3 which covers property in two counties and five
4 townships. This was accomplished because of Mark's
5 persistence, commitment, and his ability to build
6 relationships. As a compliment to his work locally,
7 Mark also shares his skills statewide as a board
8 member of the Michigan Lake and Stream Association.

9 Mark is also an amazing husband, father, and
10 grandfather. We are very fortunate to have two really
11 wonderful kids. Our son, Perry, is an attorney in
12 New York whose practice focuses on impact finance, and
13 our daughter, Sarah, is an artist and musician who
14 lives in Chicago with her husband and young son.

15 Mark is a person who makes relationships and
16 values those relationships. He likes to connect
17 people and to be connected to people. If there ever
18 were an embodiment of the phrase people person, I
19 think it's Mark. This can be seen in the many
20 connections he has made over the years, the variety of
21 organizations he has been involved in, and his success
22 in those organizations. These traits contribute to
23 why he is an excellent lawyer and a great person
24 overall.

25 I am always amazed at the energy Mark brings

1 to his work and his volunteer work and his continued
2 commitment to making sure that those who practice law
3 in the state of Michigan do so with the highest
4 ethical standards, integrity, knowledge, and respect
5 for the practice and their clients. It really was my
6 pleasure as a fellow member of the Bar to nominate
7 Mark for this award.

8 (Applause.)

9 MR. TEICHER: So first I need to thank my
10 wife, but you need to thank her also, because,
11 although I didn't read her speech, she read mine and
12 said, Cut it in half, it's too long. So I am going to
13 go back to law school and apply IRAP (sp), which we
14 all learned, and some of us use.

15 What's the issue? The issue is why did
16 Teicher get this award? The rule is, an attorney who
17 has made an outstanding contribution to the
18 improvement of the legal profession named in honor and
19 memory of Michael Franck. Luckily, since I have been
20 involved with the Representative Assembly so long, I
21 got to meet Michael Franck and had some early meetings
22 with him when I was on the Representative Assembly.

23 So how many years? About 31 years I have
24 been generally on the Representative Assembly of its
25 47 years. For those of you who don't think this

1 Assembly is important, let me do a little recap of
2 some of the issues I remember that I thought were
3 important before the Representative Assembly.

4 Representative Assembly voted opposition to
5 the U.S. Department of Justice's partial abrogation of
6 attorney-client privilege. Amendments to the Michigan
7 Rules of Professional Conduct, the Michigan Rules of
8 Civil Procedure, issues relative to the governor's
9 judicial appointment procedures, campaign finance,
10 federal judicial compensation, evidence rules,
11 indigent representation, discovery, changes in the
12 state of our demographics, appellate delay, legal aid.
13 Way back when, should e-filing be allowed? This
14 seemed to be a very terrible thing. That was a big
15 discussion topic. Unauthorized practice of law, taxes
16 on legal services, pro bono representation, issues of
17 jury instructions, trust account overdraft
18 notification, specialized dockets, provisions to the
19 Uniform Arbitration Act, Michigan Campaign Finance
20 Law, issues of consent judgment, subpoenas, solo
21 attorneys having to hire and appoint inventory
22 attorneys, expert testimony, solicitation of clients,
23 transcript issues, and increasing bar dues.

24 So the Representative Assembly has
25 historically done issues like that, so I would thank

1 everyone who is voluntarily here serving as a
2 Representative Assembly member. It's important.

3 Also being on the Representative Assembly so
4 long, it has been a pleasure to be able to listen and
5 meet wonderful speakers from Supreme Court justices to
6 presidents of the State Bar, back to George Roumell,
7 Ed Bradley, Wallace Riley, Julia Darlow, and then more
8 recent people.

9 Another thing that I have been involved in is
10 the Client Protection Fund Committee since 2006. So
11 what is that? That is the committee that holds
12 hearings and gives money back to clients where the
13 attorneys have stolen or, we will say politely,
14 misappropriated their money.

15 Since I have been involved with that fund in
16 2006, about \$4,700,000 has been reimbursed to clients
17 over about 525 claims. There was one former attorney
18 who misappropriated, thus far, \$1,147,286.80 from
19 innocent clients who he victimized. It is a very
20 important entity. From the Client Protection Fund
21 staff I want to thank the years that they put up with
22 me -- Danon Goodrum-Garland, Alecia Ruswinckel, Karen
23 Spohn, and Robin Lawnichak.

24 The other point that I have been involved in
25 over the years is being a hearing officer for the

1 Attorney Discipline Board being a panelist. This was
2 very eye opening, because as a panelist, there are
3 three attorneys on the panel to hear for our attorneys
4 who are being prosecuted by the Attorney Grievance
5 Commission. The terrible things that some of our
6 brother and sister lawyers do, it really opened my
7 eyes to what was happening.

8 When I became the chair panelist, it opened
9 my eyes because the panel does a trial, and as the
10 chairperson panelist, you would act as the trial
11 judge, so I got a new appreciation of trial court
12 judges, because not only do you really have to stay
13 sharply awake in hearings, but we have to rule on
14 evidence and have to rule on motions, and had to write
15 the opinions on generally taking attorney licenses
16 away or suspending them.

17 So the lessons that I would pass on to anyone
18 who is new here or anyone who is not a member but here
19 is, number one, don't steal money from your clients.
20 Number two is tell people just get involved in some
21 way, whether or not it's to sit on the Representative
22 Assembly, whether or not it's to sit on a committee,
23 whatever it the might be. In other words, thank you
24 to Julia and thank you to the Representative Assembly.

25 (Applause.)

1 CHAIRPERSON HERRMANN: This is truly
2 remarkable evidence of the good in our profession.
3 Please, would you all stand and join me in recognizing
4 our award recipients.

5 (Standing applause.)

6 CHAIRPERSON HERRMANN: At this time we will
7 move to consideration of a proposed amendment to
8 MCR 3.993. Our proponent and presenter is the
9 Honorable Angela Sherigan, and I would ask her to join
10 us at the podium at this time. Thank you.

11 MS. SHERIGAN: Good morning. I am Angela
12 Sherigan. I am here on behalf of the Indian Law
13 Committee.

14 First of all, thank you very much. If I am
15 talking too fast, I am all revved up on coffee, and I
16 am speaking a little quickly this morning.

17 What we are asking the Representative
18 Assembly to do this morning is to consider our
19 proposed change to Michigan Court Rule 3. -- see, I
20 told you I am all jittery this morning -- 3.993.
21 3.993 involves appeals to the Court of Appeals, direct
22 appeals.

23 As Indian practitioners, it has come to the
24 attention of the Indian Law Committee that Court of
25 Appeals cases as of right that are provided by the

1 Indian Child Welfare Act, which is a federal statute,
2 as well as the Michigan Indian Family Preservation
3 Act, are not being taken up by Court of Appeals as a
4 direct appeal. Oftentimes litigants have to put in an
5 appeal of request.

6 The Court Rule seems to be limited, and there
7 seems to be a misunderstanding within the Court of
8 Appeals and the Supreme Court that a lot of the cases
9 involving Indian children removals are not being
10 followed. Specifically, we would like to expand the
11 rule so that it clarifies the types of orders that are
12 appealable as of right under the Indian Child Welfare
13 Act and the Michigan Indian Family Preservation Act.
14 This would clarify to the Court of Appeals which ones
15 are appealable as a matter of right.

16 We did provide a bit of background in the
17 proposal that we are submitting to you in which the
18 Court of Appeals itself suggests that the
19 Supreme Court consider an adoption of an amendment to
20 this rule, specifically because what is happening is
21 by the time that it finally gets up to the Court of
22 Appeals so much has happened that the Indian child who
23 is supposed to be protected under these two statutes
24 is going back and forth in between foster care, and
25 the parents of this child are not getting to see their

1 child as required by law.

2 Specifically, that case was In Re: McCarrick
3 versus Lamoreaux, and they specifically stated, quote,
4 permitting a parent to appeal a removal order as a
5 matter of right may be one vehicle to minimize the
6 likelihood of this unfortunate circumstance.

7 This was a case where Indian children were
8 removed from their Indian mother, and she immediately
9 filed an appeal with the Court of Appeals. The Court
10 of Appeals denied the appeal initially, because they
11 said that this was not a dispositional order and under
12 Michigan Court Rule 3.993 they could not hear it.
13 That, in fact, was incorrect to some extent. To the
14 extent that the Court Rule is very limited, that was
15 correct, but to the extent that the Indian Child
16 Welfare Act and the Michigan Indian Family
17 Preservation Act allows for direct appeals, this
18 creates somewhat of a problem.

19 The biggest problem is, one, it doesn't
20 follow the law. The Court Rule is not consistent with
21 the law. Secondly, what the Indian Child Welfare Act
22 and the Michigan Indian Family Preservation Act
23 requires the violations of that is complete
24 invalidation, so what happens is once it finally does
25 get to the Court of Appeals, it's invalidated, you

1 start all over. It's not where you start just at that
2 point, you start the whole case over. What this does
3 is keep the children languishing in either foster care
4 or some other type of a placement, and it keeps the
5 parents away from their child, breaking that bond.

6 Because of this, we have proposed changes
7 that specifically state what is appealable as of
8 right, and it is consistent with ICWA and the Michigan
9 Indian Family Preservation Act.

10 We are asking you to support this and to put
11 forth a resolution calling for amendment to the
12 Michigan Court of Appeals to broaden and clarify the
13 scope of direct appeals and an order for violations of
14 those specific acts. The Indian Law Committee is
15 dedicated to this and will continue to move forward,
16 but we certainly would like your support. Thank you.

17 CHAIRPERSON HERRMANN: Before we move to
18 motion on this issue, I would like to remind everyone
19 that this will be an electronic vote using your
20 clickers, and just as a reminder for those of you who
21 haven't used them yet, one or A is yes, two or B is
22 no, and three or C is an abstain vote. Any questions?

23 When we move to voting on this, when we get
24 to that point, you simply press your button. We will
25 say that voting is open, then you can press your

1 appropriate buttons. We will give you a warning that
2 voting is about to close, please complete your voting.
3 We will close the voting, and our clerk will report
4 the results.

5 At this time, do I have a motion to approve
6 the amendment to MCR 3.993 as presented in your
7 materials?

8 VOICE: So moved.

9 CHAIRPERSON HERRMANN: Do I have a second?

10 VOICE: Second.

11 CHAIRPERSON HERRMANN: Any discussion? If
12 there is discussion, please move to the microphone,
13 identify yourself and the circuit you represent, and
14 then you may proceed.

15 MS. JOHNSON: Elizabeth Johnson, the 3rd
16 circuit. I have a point of clarification under
17 Subsection D. I believe in the second line it should
18 be the Michigan Indian Family Preservation Act, not
19 the Michigan Indian Child Preservation Act, and I
20 would ask that our motion be amended to have the
21 correct name of the act.

22 CHAIRPERSON HERRMANN: I am sorry, did you
23 mention Subsection D?

24 MS. JOHNSON: Yes, on page 39, Rule 3.993 (A)
25 Subsection -- I am sorry, 4. My apology.

1 CHAIRPERSON HERRMANN: 4. Thank you. Can we
2 accept that as a friendly amendment to the language?

3 JUDGE CHMURA: Yes, that's just an
4 administrative thing.

5 CHAIRPERSON HERRMANN: We will accept that as
6 an administrative correction.

7 Would you kindly repeat the language that you
8 would like inserted so we can ensure that we get it
9 accurately into our record.

10 MS. JOHNSON: On Subsection 4 in the second
11 line, I would like the word "child" changed to
12 "family" so that the name is the Michigan Indian
13 Family Preservation Act. The federal law is
14 different. The Michigan has family.

15 CHAIRPERSON HERRMANN: Thank you very much.
16 Any other discussion?

17 MR. ROMANO: Vince Romano, 3rd circuit.
18 These I am sure are just a couple typos. If you go
19 down here under 3.993(4), go down to (c), there is a
20 couple of's needed there. Removal "of" a child from a
21 home, or continuance "of" an out-of-home placement.
22 Again in (f), termination "of" parental. I mean,
23 there are just a couple of of's missing.

24 CHAIRPERSON HERRMANN: Thank you. If we can
25 take these one at a time.

1 MR. ROMANO: This is under (4)(c), the very
2 first line, removal "of" a child.

3 CHAIRPERSON HERRMANN: I believe that's (e),
4 is that correct, rather than (c)?

5 MR. ROMANO: That's correct, (b). (4)(b) --
6 (e). No, that's just (4). It's (4)(a), (b), (c),
7 (d).

8 CHAIRPERSON HERRMANN: It's (4)(e).

9 MR. ROMANO: There you go, removal "of" a
10 child, and in the next line, placement into foster
11 care or continuance "of" an out-of-home placement.
12 And then you have got (f) already, termination "of"
13 parental rights.

14 CHAIRPERSON HERRMANN: We will make those
15 administrative corrections. Thank you.

16 Any further discussion? All right.
17 Discussion is closed. At this point we will move to
18 our vote.

19 CLERK CUNNINGHAM: The voting is now open.

20 CHAIRPERSON HERRMANN: Voting is now open.
21 Again, all in favor press one, opposed press two,
22 abstentions press three.

23 VOICE: When they are blinking, are votes in?

24 CHAIRPERSON HERRMANN: Yes, once you press
25 the button. You can change your vote also before

1 voting is closed by pressing again. Hopefully you
2 won't need to do that, and I will give you a warning
3 before we close.

4 CLERK CUNNINGHAM: We will close voting in
5 ten seconds. Voting is now closed.

6 CHAIRPERSON HERRMANN: Report of the votes,
7 Mr. Clerk.

8 CLERK CUNNINGHAM: The ayes 67, the nays
9 three, the abstentions one.

10 CHAIRPERSON HERRMANN: The motion passes.
11 Thank you very much.

12 At this point we'll have a presentation on
13 dues. This is an informational session. It will be
14 provided by Janet Welch, Executive Director of the
15 State Bar, and James Horsch, Director of Finance and
16 Administration. Again, we are not seeking any
17 position from the Assembly today. It is informational
18 for you to digest and to report to your constituents
19 and to keep in mind as we move forward on the issue.

20 Janet.

21 EXECUTIVE DIRECTOR WELCH: Good morning,
22 everyone. My presentation on dues you have all been
23 waiting for.

24 I would like to, before I turn the microphone
25 over to Jim, who will run through the presentation,

1 this was precipitated, the presentation was
2 precipitated by the order of the Michigan
3 Supreme Court increasing the dues portion, the
4 discipline portion of your dues, but in a sense it's
5 always appropriate to, I think, speak to you about the
6 state of dues and the revenues that are coming in
7 through dues, because under your job description as RA
8 members, job one is dues on the Michigan Supreme Court
9 Rules concerning the State Bar of Michigan and the
10 role of the Representative Assembly.

11 So before I turn this over to Jim to describe
12 the effect of that change on the big picture of dues,
13 I would like to say that the Bar crossed an important
14 line into the future in this dues cycle by moving the
15 dues process out of the postal system online. We had
16 a very spectacularly successful beta launch, and then
17 we stumbled out of the gate a bit when we opened the
18 process for paying dues online last week.

19 So to any of you who tried to pay last week
20 and have encountered difficulties, you have my
21 apologies. For those of you who haven't yet paid, may
22 I recommend that you wait until Monday, because we are
23 trying to get all of the glitches out of the system
24 right now, and you might pass that on to your fellow
25 members.

1 The bulk of the members that we have talked
2 to who have encountered difficulties have been very
3 understanding, not a hundred percent, but the bulk of
4 them have, and we are devoting all kinds of resources
5 to making sure that the convenience that we are
6 attempting to put into the system for paying dues
7 works for everyone going forward.

8 That said, I think the important thing to
9 understand in the dues, going back, is that this body
10 makes exclusive, they have the exclusive authority to
11 make recommendations to the Supreme Court concerning
12 the State Bar portion of the dues. The Court, since
13 the early '90s, I am sure some people in this room
14 remember the early '90s, has taken over exclusively to
15 themselves the initiation of what the amount is for
16 the discipline portion of the dues. The members don't
17 really see a distinction between the discipline
18 portion and the Bar portion of the dues, so the Bar
19 and you are sort of blamed or get credit for whatever
20 the total amount is. So that's one reason why we
21 think this is a timely presentation to you, and I will
22 turn it over to Jim, who will show you all the ins and
23 outs quickly of the implications of the increase from
24 the Supreme Court.

25 MR. HORSCH: Thank you, Janet. We can go to

1 the next slide, Carrie. Thank you.

2 This pie chart shows what your dues will look
3 like on this billing year, which starts on
4 October 1st, 2017, for the next fiscal year. \$180 of
5 your dues payment of \$300 will go to the State Bar for
6 its programs and services. \$105 goes to the Attorney
7 Discipline System, and \$15 goes to help fund the
8 Client Protection Fund for some of the claims that you
9 just heard the previous speaker talk about.

10 As Janet just indicated, there is a \$15
11 increase this year, from \$285 a year to \$300 a year,
12 and in that order from the Supreme Court that Janet
13 spoke of, next year, fiscal year 18-19, there will be
14 another increase of \$15, restoring the dues to the
15 level that they had been previously to \$315.

16 The next slide shows the various categories
17 of the dues. You can be active, active with 50 years
18 of service. If you are in that category, you won't
19 pay the State Bar portion of the dues. If you are
20 inactive or emeritus, you do not practice law, and
21 there are certain requirements for each one of those
22 categories. We also have an active duty military
23 waiver, but we do not have any other dues discounts or
24 waivers available other than the ones here.

25 If you go to the next slide, this particular

1 slide goes back to 1970, and you can see back then
2 dues were only \$60 a year. Each maybe seven or
3 eight-year period the dues were raised, and you can
4 see the various increments up to a hundred then 150,
5 200, 260, and in 2003 the Supreme Court ordered for
6 the 2003-2004 year an increase for both the discipline
7 portion and the State Bar portion, and they also
8 instituted a Client Protection Fund fee that we have
9 today. So at that point it was \$315, and then since
10 then the Supreme Court lowered the discipline portion
11 of the fee by \$10 and then again by \$20 because they
12 were accumulating too large of a fund balance, and the
13 reason that they are restoring the dues for the
14 Attorney Discipline System back up to the amount it
15 was prior in two increments of \$15 each per year is
16 because their fund balance was getting to a point
17 where it would be deficit fund balance if they didn't
18 restore the dues.

19 Now, the next slide shows a picture since the
20 last dues increase in 2003, and so actually it stayed
21 at \$315, except for the years where the discipline
22 portion was decreased, and so over that time frame you
23 would have saved \$80 in dues payments over that time
24 as a result of that.

25 Now, one thing I want to point out, if we

1 would have escalated dues on the rate of inflation,
2 the dues this year would be \$420 rather than 300, and
3 the State Bar has been able to operate its programs
4 and services so that we have not only been able to
5 work within the rate of inflation but add programs as
6 well. So you can see the dues as compared to
7 inflation since the rate increase, since the last dues
8 increase. We are not planning in our financial models
9 the need to have another dues increase in the next
10 several years.

11 If you go to the next slide, this is a slide
12 that we showed you, I think, a couple of meetings ago
13 when Janet and I made this presentation. We have
14 updated it to show the \$300 level of the dues for the
15 State Bar, and so you can see when you compare it to
16 all mandatory Bars, all mandatory state Bars,
17 basically the State Bar is 23 percent lower than the
18 average, and 76 percent of the mandatory Bars have
19 higher required dues and fees than the State Bar, so
20 we feel pretty good there still.

21 This compares to all states who impose fees,
22 regulatory fees. These are all the required fees to
23 practice law in these states, and the State Bar still
24 fares fairly well, 14 percent lower than the average,
25 and 59 percent of the U.S. jurisdictions have higher

1 required dues and than the State Bar.

2 If we look at inactive membership, inactive
3 membership is a status that you can go to for up to
4 three years without having to be recertified by the
5 Board of Law Examiners and have your dues fees
6 \$202.50.

7 When we compare ourselves to the mandatory
8 Bars that have an inactive member category, we are
9 kind of on the higher side, and this hasn't changed
10 too much since the time that we showed you this, but
11 it has gone up the scale a little bit. Inactive dues
12 of the State Bar are about 45 percent higher than
13 average, and 77 percent of the mandatory Bars with
14 these fees are lower than the State Bar's.

15 Finally, if you go to the next slide, which
16 shows the inactive dues as a percentage of the active
17 dues, the State Bar is actually the highest at 68
18 percent. So our inactive dues as a percentage of the
19 active dues is actually at the top of the list when
20 you compare it to all other mandatory bars with the
21 inactive category.

22 So we wanted to just show you the position
23 hasn't changed quite a bit, but it has gotten a little
24 bit higher, especially on the inactive slide.

25 The last slide I do want to mention, Janet

1 alluded to it, is two issues. One is the State Bar
2 has formed a Board of Commissioner's work group, and
3 they met for the first time in August, and they are
4 meeting again on Monday of next week, and they are
5 actually reviewing the process for suspensions for
6 nonpayment of dues and late fees and will be making
7 recommendations as appropriate. We suspend for
8 nonpayment of dues about 500 members per year. A lot
9 of those come back, but we are trying to explore
10 what's going on with those folks that get suspended.
11 Some may get suspended more than once in their career,
12 and so the group is looking at that.

13 We also take in about \$220,000 in late fees,
14 people who wait until after November 30th to pay, and
15 they get charged a \$50 late fee. So, even though it
16 brings in revenue to the Bar, it's something that we
17 want to make sure that members are aware of that if
18 they want to save 50 bucks, they should pay it before
19 November 30th.

20 As Janet mentioned, we are transitioning from
21 paper dues invoices to electronic dues, and next year
22 we will be further automating the dues process to
23 capture as much as we can online, while still allowing
24 people to pay by check or online by credit card, or
25 hopefully next year by check as well. That concludes

1 what we were going to say.

2 CHAIRPERSON HERRMANN: Thank you very much,
3 Jim and Janet. It's always good to keep our dues
4 structure in context as we move forward.

5 At this time I would invite former Chair of
6 the Assembly, Dan Quick, to join us, and Dan will be
7 providing us with an update on the work his group is
8 undertaking regarding the amendments to the Civil
9 Discovery Rules. Dan.

10 MR. QUICK: Good morning, everybody.

11 VOICES: Good morning.

12 MR QUICK: Come on, we've got more coffee in
13 here than that.

14 It is my great honor to return to the
15 Representative Assembly. My comrade, Aaron Burrell,
16 is running for Clerk, and I had half a mind to throw
17 my hat in the ring, just to make things interesting,
18 but you will be in great hands with Aaron. I am very
19 glad for him and for you.

20 I am here today as chair of the Bar Special
21 Committee that was tasked with the job of looking at
22 the Court Rule that governs discovery in civil
23 litigation, and I want to give you an overview today
24 and an introduction, if you will. You each have
25 before you the long form version of the proposed rule

1 changes, as well as a draft of a report that
2 summarizes the history of our efforts and the approach
3 that we attempted to take. It is draft, and it will
4 remain draft for some time. I will walk you through
5 the plan from here until the April Representative
6 Assembly meeting.

7 As any litigator knows, and, frankly, as well
8 as nonlitigator knows, discovery is perhaps the most
9 universally loathed aspect of our civil litigation
10 prospect. Ask the parties, ask the judges, ask the
11 lawyers. It is not very popular, and it has been
12 identified for some time by the courts, by the
13 Supreme Court, by think tanks that deal with these
14 matters as a major problem that needs to be fixed.

15 The issues for civil discovery though in
16 Michigan and even in the federal system are not
17 necessarily purely a volume problem, by which I mean
18 it's not simply a function of having a bunch more
19 cases in the pipeline and, hence, a lot more
20 discovery. In fact, in the federal system, and
21 certainly in our state system, case filings are down.
22 The courts have done a very good job in terms of
23 reducing the time to disposition on an average basis.
24 E-discovery is bugaboo and does cause plenty of
25 problems in certain cases, but it's not the entirety

1 of the issue, and one might make take the position
2 that the existing Court Rules, whether it's under
3 protective order provisions or otherwise, already have
4 adequate means to deal with whatever the problems
5 might be.

6 Well, that's not really been the lesson that
7 we might take from both federal and state efforts in
8 this area. What they have focused upon is that civil
9 discovery tends to spiral out of control when two
10 things happen, when the court is not paying attention,
11 either through lack of resources or lack of
12 involvement, and in a disproportionately small number
13 of cases. In other words, you have a few monster
14 cases that end up mucking up the whole and taking up a
15 lot of motion time and a lot of judicial resources and
16 a lot of party resources, and so what are some of the
17 principles that have, or some of consequences of this
18 that have been noted?

19 First of all, it's really an access to
20 justice issue. The ante to bring a piece of civil
21 litigation now in our court system is so high because
22 of the potential costs of discovery that, frankly,
23 litigants are removing themselves from the court
24 system. We have seen this for many years in the trend
25 towards arbitration. Cost was certainly one of the

1 factors pushing cases into that pipeline, but it has
2 other undeniable effects, which includes the fact that
3 we see less and less trials in our system, which
4 really undermines the entire process, the jury system,
5 of course, being the bedrock of our civil justice
6 system.

7 So the first major body to take this on was
8 in the federal courts, and I just want to walk you
9 through this. There is more detail in your materials,
10 but you get a sense of the care that was taken and the
11 breadth of perspectives that were sought to be
12 attracted in order to try to improve the system.

13 They all started back in 2007 with a survey,
14 and you can read the results there on the screen or in
15 your materials, but it confirmed what everybody
16 already knew in the sense that discovery was a major
17 problem that needed to be fixed and simply leaving it
18 to the existing pool regime and the existing case
19 hands and tools was going to be inadequate.

20 This led to a very famous conference at
21 Duke University in 2010 wherein academia, judges,
22 lawyers came together to brainstorm over how to fix
23 the system. The basic principles established there
24 some five years later found themselves into the
25 revisions to the federal rules, and they are listed on

1 the screen.

2 Basically it's active and early case
3 management by courts where necessary. It's
4 introducing the concept in a more formal fashion of
5 proportionality into the scope of discovery. It's
6 insisting upon greater cooperation among counsel and
7 litigants in the discovery process, instead of it
8 being a free-for-all, and increase the rules in terms
9 of preservation/spoliation of electronic evidence to
10 try to bring some order to the chaos that is
11 e-discovery.

12 Other aspects of the federal rule changes you
13 can see here, and so some of these are minor tweaks in
14 terms -- well, it may be minor tweaks in isolation,
15 but eliminating boilerplate objections on discovery
16 responses, but taken as a whole the mission was to
17 make the process faster, better, and less expensive.

18 The impact of the changes has been pretty
19 dramatic, all things considered. Active case
20 management of the federal courts is more or less now
21 the norm. As a generalization, I think that the
22 attitude is that the mentality of civil discovery has
23 changed from its a free-for-all to beat the snot out
24 of one another into a regulated process, not only
25 simply because of more role by the judge, but a higher

1 emphasis on the fact that our professional obligation
2 requires us to bring a sense of proportionality to the
3 discovery process, and I will circle back to that in a
4 moment.

5 This had an immediate effect on the state
6 judicial systems. Even in Michigan, where we don't
7 have any rule revisions yet, you have seen the
8 business courts really eagerly take to these ideas,
9 and many of the business courts, including my own
10 Oakland County Circuit Court, have established default
11 protocols for business court cases that adopt many of
12 the principles of the federal rule changes, including
13 concept of proportionality, early case management,
14 presumptive limits on some of our most loved discovery
15 mechanisms, like interrogatories, document requests,
16 and depositions, and a number of other efforts to
17 streamline the process.

18 So that brings us to the state of Michigan.
19 As you all know, the 21st Century Practice Task Force
20 took in a broad number of issues in our state, but one
21 of them was to, in principle, was to look at civil
22 discovery and to see if we can't do better than we
23 have.

24 So if you want to revise state discovery
25 rules, you need to look not only at the federal courts

1 but what the other states have done. Those core
2 principles are on your screen and echo some of what I
3 have already touched upon.

4 I think it's worth noting here that Michigan
5 Court Rule 1.105, which was adopted from Federal Rule
6 Number 1, provides that the rules must be construed to
7 serve the just, speedy, and economical determination
8 of every action. That is a core principle. It's why
9 it's in Rule 1 of the Federal Rules and early in the
10 Michigan Court Rules, but it's not a principle that in
11 my experience has really actively guided either the
12 parties or the courts in terms of how they try to
13 shepherd cases through the system.

14 The federal rule changes, the state rule
15 changes that are taking place in a few handful of
16 states are making that principle key to the way we do
17 business and what's being demanded of the litigants.

18 Which brings us to the committee that I had
19 the honor of chairing and have the continued honor of
20 chairing. It's made up of a very broad swath of
21 lawyers and judges from throughout the state, from all
22 sizes of firms, all areas of geography, judges from
23 all levels of the court system. We made an effort
24 upfront to reach out to various stakeholder groups and
25 solicit volunteers, many of whom in turn came to serve

1 on subcommittees. The federal process took something
2 like eight years. We have taken a little bit less
3 time in generating our first draft, which you now have
4 before you.

5 I just want to touch on a few of the
6 principles in that draft, and these are outlined
7 starting at page five of the report, draft report that
8 you have in your materials.

9 The first one is for us to not fix things
10 that aren't broken, and by that I mean we are working
11 within the context of the existing Michigan Court
12 Rules. We are attempting to do as least amount of
13 violence as possible to the existing rules. We are
14 very much adopting party autonomy, meaning that if
15 parties agree on how to proceed with some aspect of
16 discovery, the rules are geared to allow that to
17 happen, of course subject to overall case management,
18 and then, of course, to smartly employ case
19 management. Not as a club, not as a bureaucratic
20 burden on how every case gets filed in the court
21 system, as a scalpel more than a sledge hammer, to
22 help steer cases through.

23 The second is that we have adopted a number
24 of proposed revisions. Some of these echo some of the
25 things we see in the federal courts, such as

1 introducing the concept of proportionality into the
2 definition of the scope of discovery. It also
3 includes some very, I don't think very onerous at all,
4 concept of initial mandatory disclosures, which are
5 then offset with some presumptive limits on your
6 discovery. So the theory there in part is get the
7 stuff out in the beginning that you know you are going
8 to have to get out anyway, and then let's not waste as
9 much time firing off a bunch of interrogatories in the
10 process, because you are already going to have that
11 together.

12 More tools for active case management. A
13 number of, and I don't mean this to minimize it, but
14 tweaks of various aspects of court rules, from
15 deposition rules to the subpoena rules to
16 attorney-client privilege governing communications
17 with experts, which is also barred from the federal
18 rules, adopted throughout the civil discovery process.
19 And then last, paying a lot of attention to how the
20 civil discovery rules regime affects discovery in
21 domestic relations actions, probate actions, and
22 juvenile actions, and making changes there as well.

23 So where do we go from here? This is a draft
24 report. The eagle eyes amongst you undoubtedly will
25 catch both typographical errors, cross reference

1 errors, which are the devil, I swear -- oh, those
2 cross references -- as well as, I am sure, we will
3 have some great ideas on some of the substance.

4 At this time you are the first, because you
5 will be the last to see this set of proposed rules,
6 but we are in the midsts right now of rolling it out
7 to various stakeholder groups, from the judge groups
8 to the Bar sections. We will have a public and Bar
9 comment period. We will take all of your comments.

10 There is an e-mail set up, and you will get
11 an e-mail on this. You don't have to write it down,
12 but if you would like to, it's
13 civildiscovery@michbar.org. It's going to be the
14 clearinghouse for all the comments from the public and
15 from the Bar. We will accept those till sometime
16 later this year, process all that information,
17 generate a final draft, and hopefully be back in front
18 of you seeking your approval as the ultimate final
19 policy-making body of the Bar at your April 2018
20 meeting. Notwithstanding the e-mail address I just
21 rattled off, of course if any of you have comments,
22 questions about this, feel free to reach out to me as
23 well.

24 Thank you very much for your time. It's an
25 honor to be here.

1 (Applause.)

2 CHAIRPERSON HERRMANN: Thank you, Dan Quick.
3 There is some exciting work to do in the future.
4 Appreciate it very much.

5 At this will time we will move to the
6 nomination of our next Assembly clerk to fill
7 Mr. Cunningham's very able shoes. Pursuant to our
8 rules, we have one packet of nomination materials
9 submitted on behalf of Mr. Aaron Burrell of the 6th
10 circuit. At this time, may I have a formal nomination
11 of Mr. Burrell.

12 MR. HEATH: Good morning, Mr. Chair,
13 James Heath from the 3rd circuit, member of the
14 Representative Assembly. It is my honor to nominate
15 my friend and colleague, a person whose reputation for
16 hard work in this Assembly, as well as throughout the
17 organized Bar, needs no introduction. Aaron Burrell
18 will make a wonderful clerk, and I move his
19 nomination.

20 CHAIRPERSON HERRMANN: Thank you, Mr. Heath.
21 Pursuant to our rules, I am also obligated to
22 elicit any nominations from the floor for clerk. Do I
23 have any floor nominations?

24 Hearing none, we will proceed to the election
25 of Mr. Burrell as the next Assembly Clerk. All in

1 favor, say aye.

2 Any opposed?

3 Mr. Burrell, you are the next Assembly clerk.
4 Congratulations.

5 (Applause.)

6 CHAIRPERSON HERRMANN: That is just fantastic
7 news for this body. Mr. Burrell has been a friend of
8 this Assembly and the Bar for many years, and his
9 contributions have been great, and it does warm my
10 heart to know the Assembly is going to be in very good
11 hands for the next few years. Congratulations.

12 Before I turn over the floor for the swearing
13 in of our next chair, Joe McGill, I would like to take
14 one moment to again thank everyone here for all of
15 your devotion to the Assembly and its work, and I
16 would like to thank our officers, Joe McGill and
17 Rick Cunningham, for their service this year, and,
18 most importantly, I would again like to thank the
19 State Bar staff. From the floor, honestly you don't
20 see one one-thousandth of the work that these folks do
21 behind the scenes to make this all possible for us,
22 and we are forever grateful to them for that effort.
23 In particular, I would like to thank Peter Cunningham,
24 Carrie Sharlow, Kay Hennessey for their specific work
25 on the Assembly this year. It's truly been an honor

1 and a blessing to work with all of them, so thank you.
2 Could I have a round of applause.

3 (Applause.)

4 CHAIRPERSON HERRMANN: And at this time I
5 would like to invite the Honorable Michael Riordan to
6 the podium who will do the honors for Mr. McGill's
7 swearing in.

8 MR. RIORDAN: I just want to say that this is
9 a great honor for me personally. I have known Joe for
10 30 years now. We walked into UD Law School together,
11 and I have come to know his family very well over the
12 years. If you are ever able to get an invite to the
13 McGill Christmas party, take it. It's a riot. And I
14 just want to say congratulations. I don't know if
15 your mother is here, but she is always very proud of
16 everything that Joe does. His wife, Lauren, who is an
17 attorney, I saw her and young William walking in, and
18 Joe, that is the center of Joe's life, his wife and
19 his family.

20 Joe comes from a large family. He is one of
21 11 children, and he is the youngest of that family.
22 It was an Irish Catholic family, so Joe has taken a
23 lot of beatings in his life. So anything you throw at
24 him, he will be able to withstand.

25 Joe is a leader in the profession. He has

1 been the president of every organization that I have
2 ever been a member of -- the Irish Lawyers, the
3 Catholic Lawyers, the Michigan Irish, American Chamber
4 of Commerce. He got an award from them. The RA. Joe
5 will bring his work ethic, his passion, his honor to
6 this very important and august body, so without
7 further ado, Joe, raise your right hand, please.
8 Repeat after me.

9 I do solemnly swear.

10 MR. MCGILL: I do solemnly swear.

11 JUDGE RIORDAN: That I will support the
12 Constitution of the United States.

13 MR. MCGILL: That I will support the
14 Constitution of the United States.

15 JUDGE RIORDAN: And the Constitution of the
16 State of Michigan.

17 MR. MCGILL: And the Constitution of the
18 State of Michigan.

19 JUDGE RIORDAN: And the Supreme Court Rules
20 concerning the State Bar of Michigan.

21 MR. MCGILL: And the Supreme Court Rules
22 concerning the State Bar of Michigan.

23 JUDGE RIORDAN: And that I will faithfully
24 discharge the duties of chair of the Representative
25 Assembly.

1 MR. MCGILL: And that I will faithfully
2 discharge the duties of chair of the Representative
3 Assembly.

4 JUDGE RIORDAN: That is what they call this.
5 Of the State Bar of Michigan.

6 MR. MCGILL: Of the State Bar of Michigan.

7 JUDGE RIORDAN: According to the best of my
8 ability.

9 MR. MCGILL: According to the best of my
10 ability.

11 JUDGE RIORDAN: Congratulations, Gil.
12 (Applause.)

13 CHAIRPERSON MCGILL: Just a few quick
14 comments before we break for lunch and your final
15 business. Thank you again to Judge Riordan, who I
16 have known since law school for 30 years.

17 I want to thank the membership for giving me
18 the opportunity to lead you over the next year through
19 what is going to be some pretty substantive issues
20 that we are going to attack. As Dan Quick did
21 indicate, that the April meeting is definitely going
22 to be a work session for sure. And I also want to
23 thank the membership for your commitment and service
24 to the State Bar of Michigan. It is vitally
25 important.

1 I want to also thank the staff of the
2 State Bar of Michigan and let you all know that they
3 are experts at what they do. They are exceptional,
4 and the State Bar of Michigan is looked at as a model
5 for other State Bars throughout the country, so you
6 are working with a very highly qualified set of
7 individuals. Also like to congratulate Mr. Burrell,
8 and I am looking forward to working with him as well.

9 On a personal note, I would like to thank my
10 family. As Mike indicated, there is a lot of people
11 to thank. I was going to have them all here and have
12 them bring all their family up as well, but in the
13 interest of time decided not to do that, but I would
14 also like to thank my wife, Lauren, who is also an
15 attorney, and she is here with my son William, who is
16 being very good this morning. That's not going to
17 last, I am sure.

18 Finally, I would like to thank Fred Herrmann,
19 who I am proud to call my friend, for his countless
20 hours leading the Representative Assembly and for
21 advocating for the Representative Assembly as a body,
22 not only before the Board of Commissioners, but in
23 other arenas. Yesterday I had the honor and the
24 privilege to draft, present a resolution recognizing
25 Fred's service on the Board of Commissioners, which I

1 won't repeat today, but it is my pleasure to
2 congratulate Fred again on behalf of the
3 Representative Assembly and thank you for your
4 service. And as a result of that, I would like you to
5 please accept this not-so-small plaque of
6 appreciation. Congratulations.

7 (Applause.)

8 CHAIRPERSON MCGILL: Fred has waived the
9 opportunity to give his reply argument, so we will
10 move to the final announcements for the meeting. I
11 have been asked to remind everyone to turn in their
12 reimbursement forms. Our fiscal year for the
13 State Bar of Michigan closes very quickly, and we like
14 you to have your reimbursement forms in by
15 October 2nd, which is coming up very quickly. You can
16 see Carrie or Marge or Jeanette if you need copies of
17 those forms.

18 Please don't forget to return your clickers.
19 That's very important. The inaugural luncheon will be
20 in Ballroom B, and there is an all member reception
21 starting at 4:00 in the Grand Ballroom A.

22 And also, if you have not filled out your
23 Assembly committee membership interest survey forms,
24 and you can get that online as well, please see
25 Carrie, and we encourage you to volunteer for service

1 in the various committees of the Representative
2 Assembly.

3 Our next meeting will be at the Lansing
4 Community College West Campus April 21st, 2018, and I
5 looked forward to seeing you all there and sharing
6 that meeting as well.

7 If there is no other new business, we will
8 accept a motion for adjournment from the floor.

9 VOICE: So moved.

10 CHAIRPERSON MCGILL: Is there a second?

11 VOICE: Second.

12 CHAIRPERSON MCGILL: All those in favor.

13 We are adjourned. Thank you very much, and
14 enjoy the rest of the annual meeting.

15 (Proceedings concluded at 11:40 a.m.)
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1 STATE OF MICHIGAN)
) ss
2 COUNTY OF CLINTON)

3 I certify that this transcript, consisting of
4 59 pages, is a complete, true, and correct record of the
5 Proceedings held by the Representative Assembly on
6 Thursday, September 28, 2017.

7 I also certify that I am not a relative or
8 employee of an attorney for a party or financially
9 interested in the action.

10 October 16, 2017

11
12 Connie S. Coon, CSR-2709
13 831 North Washington Avenue
14 Lansing, Michigan 48906
15 Notary Public
16 Clinton County, Michigan
17 My commission expires: 5-28-16.
18
19
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21
22
23
24
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