

MICHIGAN SUPREME COURT

NOVEMBER 4, 1999 PUBLIC HEARING

GAYLORD, MICHIGAN

MR. PALAZZOLO: Hear ye, hear ye, hear ye. The Supreme Court of the State of Michigan is now in session.

JUSTICE WEAVER: Good morning. You may be seated. Good morning to all of you, and we would like to thank all the people here in Otsego County and Gaylord for the warm welcome we have received as we have come to bring our road show to the law country, which of course you know is my home country anyway. We are having these administrative hearings around the State. This is one of at least six. We've already been to, not only Lansing, of course, but to Grand Rapids. We've been over to Benton Harbor, St. Joe in Berrien County. Now we're here in Gaylord. And we have yet to get to Marquette and Flint and points of other places.

We have an agenda this morning. And so I believe our clerk, Mr. Davis, has given you a little background about what we're up to and what we're doing. And I believe the rules have been pointed out that we want to give people a chance to talk. So you have three minutes without any questions, and then if the Justices have any questions, they'll be happy to ask it.

All right. With that, we're going to start with the items that we have which is Item 95-20, the Lawyer Certification Issue. I believe Mr. Michael Cooper is here. I met him earlier. Mr. Cooper.

And please when you come, please identify yourself for the record and so we'll know. Thank you.

Item 2 95-20 Lawyer Certification

MR. COOPER: Thank you. My name is Mike Cooper. I am an attorney in Gaylord. I've been practicing here 20 years, and I'd like to welcome you to Gaylord.

My specialty is the area of family law. And I guess I do endorse the proposal of Number 95-20. It's both an opportunity for the public to see what attorneys do in their area of specialty, and perhaps more importantly, an opportunity, at least from my perspective, an opportunity for attorneys to indicate what areas that we generally work in.

We as attorneys know, amongst each other, what we work in, what you do, but the public doesn't know. I get so many calls from people saying, do you do, for instance, workers' compensation or something like that? I have to tell them, no, I don't. They ask

me people who do. And if I'm able to tell them from my firm I can do that. But as a general rule, it would be nice to have specific people that I could refer them to.

We recently merged with Plunkett and Cooney, so we're able to say we now have all those specialties there. But until a month and a half ago, we didn't have that. And I really think the attorney specialization is something that the Court should endorse and adopt.

And just briefly on the whole item of continuing legal education, the first 98-34, while I realized that wasn't what you specifically addressed, Your Honor, I think that is just something that the time has come, like everyone else, we need to be reeducated because our world is changing just like everything else in the area of technology, the law and teaching.

And so I would ask you to endorse and adopt both of those.

JUSTICE WEAVER: Okay. Any questions, Justices?

Thank you, Mr. Cooper, for coming.

John Felton, again, on the same issue, 95-20.

Is John Felton here? Does anyone else want to address the Lawyer Certification, 95-20?

Okay.

UNIDENTIFIED VOICE: Mr. Felton is here, Justice.

JUSTICE WEAVER: Is he? Is this Mr. Felton?

MR. FELTON: Yes.

JUSTICE WEAVER: Come on up forward there to the microphone, Mr. Felton, and you may start. If you identify -- I've identified you, but I'm asking people to identify themselves for the record, and you have three minutes.

MR. FELTON: My name is John Felton. And I'm an attorney practicing here in Gaylord, Michigan. Excuse me for arriving late. Apparently we're dealing with Lawyer Certification Proposal?

JUSTICE WEAVER: Right.

MR. FELTON: All right. I was going to address some comments with respect to a different proposal. I think it was on the record before the Court here today.

JUSTICE WEAVER: Well, what proposal do you want to address? When

we get to that, we'll bring you up.

MR. FELTON: There is a proposal later with respect to motions and requesting concurrence of counsel, as I understand it, prior to the filing of a motion.

JUSTICE WEAVER: Well, if you would check with Mr. Davis, our clerk, he'll get you in at that time that we're doing that.

MR. FELTON: Thank you very much.

JUSTICE WEAVER: And Mr. Davis will let me know wherever he is. Mr. Davis, are you in here?

Jack, would you get Mr. Davis? Okay. We have two Jacks. That Jack is leaving, and the other one is out in the hall. So all the Jacks are leaving.

Okay. All right. Anyone else for Item Number 2, which is 95-20?

All right.

Then we'll turn, I'm going to, what we're doing today, is first we're taking the items that we've had people who have contacted us ahead of time, that they have something to talk about. And we'll do those. Then we'll go back to the other matters issued or listed, and then we will go to any matters the people wish to address.

So we're going to go to Item 4 which is Canons 7 and 8. And we have the Honorable Kurt Hansen as present and ready to go, I gather.

Item 4 Canons 7 and 8

MR. HANSEN: My name is Kurt Hansen, and I'm the Circuit Judge for the 55th Judicial Circuit, which is Clare and Gladwin County. I know you are looking at the issue of Canon -- the proposed changes to Canons 7 and the Proposed Canon 8. Obviously, we are dealing with some very substantive matters. I counted eight major changes that are being proposed in Canon 7, and of course, Canon 8 is a brand new canon.

Fortunately, within our judicial system, we do, in fact, have a Committee that is designed to deal with these kinds of issues, called the Judicial Ethics Committee of the State Bar. And these people are obviously comprised of judges and attorneys. And they are the resources and expertise to deal with these types of substantive issues. And they certainly are in a situation where they could adequately and properly debate these particular issues.

Unfortunately, the Supreme Court has chosen not to go through that mechanism in order to determine whether or not we should be changing the Canons of Ethics of this State concerning judicial elections. And, frankly, I can't understand why we are not

doing that because the method that is being chosen to deal with these particular situations really concludes any kind of realistic debate. All that anybody is ever going to be able to do in this situation has come here for three minutes, strictly enforced, and then you can send in a letter as to what your feelings are about these particular changes. And frankly, I think that these matters should have been referred to that Committee so that we could know the pluses and minuses of every one of these things.

But when you look at the proposed changes that we're dealing with, essentially, there are two main types.

Number one, there is a clear intent to water down the ethics of the judiciary to make them less ethical and to replace them with political concerns.

And number two, there is a direct attempt to attempt to stifle the dissent involved. What do they really amount to is simply this? We have a situation where we're trying to expand the time periods for the collection of money. We're going to do it at the beginning of the time period. We're going to do it after the elections involved. And what's the purpose behind this? It certainly is not ethics. What it is is politics. We want to be able to get more money into the system. So let's set up an ethical system so we can get more money into the system. We have a situation where you want the judges now to be involved in campaign fundings, by being able to personally send out thank you's. Obviously, a contribution and a thank you are directly tied in to one another. And what's the purpose behind that? Is it ethics, or is it politics? Clearly, it's politics. Let's get more money into the system. And all of this is being done at a point in time when the Nation is trying to look just the other way and take the money out of politics. And why we are in a situation where we have proposals to create a situation where more money is coming into the system, I simply do not understand. You want to raise the amounts that the attorneys can be dunned for purposes of an election.

The purpose of this, is this ethics? No, obviously, it's politics again. We have a situation where we had a judicial organization endorse candidates. And so, for some reason, now we're going to be changing the Rules of Ethics concerning judicial organizations. And we had this proposal that indicates that what we want to do apparently is that any time that there is an endorsement by an organization that the names of all of the members of that organization have to be pronounced on any public pronouncement.

What's the purpose behind that? What is the ethical purpose behind that? It is, frankly, dumbfounding what it is.

What it really is is designed to stifle the dissent involved. The whole idea is that if you have an organization that does the endorsing involved, we don't want that to occur. We want it to be individuals. And we know historically what these lists are going to be used for because we know what happened last fall. We're going to be calling up individual judges and asking them to repeat what the organization has. There's going to be threats made that if they don't do certain things like that and bank back certain types

of candidates, that what is going to occur from that point on is that they are going to be threatened politically as far as what their futures are concerned because that's exactly what happened last fall.

And all this list does, is it makes it a lot easier for those people that want to be involved in that kind of unscrupulous type of politics to get a list of the people so that they can be contacted. What I think that you should definitely -- I'm sorry.

JUSTICE WEAVER: Your time is just about up, Judge Hansen.

MR. HANSEN: What we definitely should do in this particular situation, if these are really serious proposals, and if they really are designed to try to enhance the ethics of our judiciary, you should put it in this particular Committee. You should have this fully debated there, within the context of what all the rules of ethics are at this point in time, and a determination should be made as to whether or not our ethics are going to be better off in the future as opposed to be watered down.

JUSTICE CAVANAGH: Has the Committee expressed any formal view on these proposals?

MR. HANSEN: Judicial Ethics Committee?

JUSTICE CAVANAGH: Yes.

JUDGE HANSEN: Not to my knowledge, no. I don't think that it has ever been referred to them.

JUSTICE YOUNG: Are you unaware that the State Bar and the MJ are currently considering these proposals?

JUDGE HANSEN: Are they now considering them?

JUSTICE YOUNG: They have to. Al Butzbaugh in Grand Rapids and said they would.

JUDGE HANSEN: Are they reported?

JUSTICE YOUNG: No.

JUDGE HANSEN: Is there a time period for reporting?

JUSTICE TAYLOR: Yes.

JUDGE HANSEN: And when is that going to be?

JUSTICE TAYLOR: I think they're meeting this week, Judge Hansen.

JUDGE HANSEN: They are meeting this week?

JUSTICE TAYLOR: That's my understanding. They're meeting the 11th or the 10th, something like that. They're getting reports from attorneys Ellsworth and Hodge. And I think they're going to make a recommendation to Representative Sandler regarding these.

JUSTICE YOUNG: Perhaps you should contact the State Bar.

JUDGE HANSEN: Well, I would be more than happy to do that, obviously. I was not aware that you had referred this over to them.

JUSTICE YOUNG: Everyone can participate. That's what the whole purpose of this public hearing process is.

JUDGE HANSEN: Okay. You had not referred it over to them. They're just taking it up on their own?

JUSTICE WEAVER: Well, they appeared in front of us and asked to be able to have time to do it. And they have time, and they're doing it.

JUDGE HANSEN: All right. No. I was not aware of that at all. I don't believe it was published anyplace or anything else of that --

JUSTICE YOUNG: We had a public hearing in Grand Rapids.

JUSTICE WEAVER: And in Berrien County.

JUDGE HANSEN: Well, I understand you had public hearings there.

JUSTICE YOUNG: And the State Bar's President and others appeared and asked for additional time. They were granted it. And as far as I know, considering all of the issues that you are concerned about.

JUSTICE KELLY: I don't think there's been a referral to the Judicial Ethics Committee, though, Judge. Simply the State Bar is taking the matter up. Do you see particular merit in referring it to the Judicial Ethics Committee?

JUDGE HANSEN: Absolutely. I mean, I believe they have the jurisdiction over this type of thing. One of their duties is to make recommendations to the Supreme Court. It's specified right in the rules of the State Bar, that that's why they're there. It's comprised of people that had the expertise and had the resources. They have the actual decisions that had been made in the past and how these proposed changes would fit into context of what the overall ethics of the judiciary are all about.

JUSTICE CORRIGAN: Judge Hansen, you have made the statement that this is essentially political. I'd like to ask you, sir, if you're familiar with the current case in the United States Supreme Court that revisits Buckley versus Lalaison and what your view is of the first amendment implication of these judicial rules. Have you studied these?

JUDGE HANSEN: I have not studied that opinion. No, I have not. And frankly, I believe this is a public administrative hearing on this. I don't believe that this is a legal situation that we're talking about. I've never seen anything proposed or set forth that's saying, the reason why this is being done is because of a case that was decided down in Florida.

JUSTICE CORRIGAN: But you haven't obtained the transcripts of the previous public hearings before you came here today, have you, Judge Hansen?

JUDGE HANSEN: No, I have not.

JUSTICE CORRIGAN: To see what was discussed at those public hearings with regard to the first amendment implications of Michigan's Judicial Rules?

JUDGE HANSEN: No, I have not.

JUSTICE CORRIGAN: All right. Thank you, sir.

JUSTICE YOUNG: Are you familiar with the general rule of Buckley versus Lalaison?

JUDGE HANSEN: Just in general. I have not read the decision itself. Is the reason why we're doing this is because of that case down there?

JUSTICE YOUNG: Yes.

JUDGE HANSEN: It is?

JUSTICE YOUNG: There are constitutional underpinnings here. That's why I was interested in your discussion that these are all motivated by politics when there are constitutional issues. Other speakers who have come to public hearings have acknowledged the constitutional underpinning. I understand that the State Bar Council is now researching those constitutional questions.

JUDGE HANSEN: Well, see, I was not aware of that because when you read in the State Bar Journal where the matter is being proposed, all that it says is that this is being done, in part, because of a letter that was sent to the Supreme Court by an attorney. And then it sets forth what the proposed changes are. There is no indication as to why this is being done whatsoever in the proposal itself.

JUSTICE TAYLOR: Do you think it would be helpful -- and I think you raise an interesting point here -- do you think it would be helpful in the future when we send these out for publication, if we had some discussion as to why it might be at issue? In other words, so that a person like you is trying to be helpful, would, in fact, know that there is a constitutional issue here involved, and then you can think about that and so on? Maybe that would be a good idea.

JUDGE HANSEN: Absolutely, Justice Taylor. And I think any type of decision making process should be a definition of what the problem is and what the proposed solutions are and why this is going to be better for the judiciary.

JUSTICE TAYLOR: Yeah. Well, I mean, I think the big overarching thing is, we have a fiduciary responsibility to the State to try to keep our rules in compliance with contemporary understandings of the United States Constitution. So, maybe we should have put that in the notice of consideration.

JUSTICE WEAVER: And let me make it clear, and maybe this should have been said earlier, that because we put something out for comment doesn't mean that we either approve or disapprove of. It has come to our attention, and we feel it's important enough that it should be out there for public comment.

JUDGE HANSEN: I understand, Justice, that we always have that disclaimer on there.

JUSTICE TAYLOR: Well, we very infrequently will adopt, in total, what we put out for proposal. I can't think of any time we have.

JUSTICE WEAVER: And a lot of times we don't.

JUSTICE TAYLOR: But, you know, people like you contribute an awful lot to this process, and we really appreciate it.

JUSTICE WEAVER: Mr. Markman, Judge Justice Markman has a question.

JUSTICE MARKMAN: Judge Hansen, I have a question. I mean, you've also suggested that support for the idea that there be some kind of disclosure of the officials who belong to judicial associations was political. I guess I just would like to air this out with you for a moment because I don't quite understand that.

Let's say there's an organization that purports to consist of public officials who are Upper Peninsula Judges. And they call themselves the Upper Peninsula Judge's Association.

Now what is wrong with the requirement that prior to that organization which purports to be an association of public officials, participating in politics or taking other actions as a judicial association, that they disclose that their membership is two Upper Peninsula Judges or all the Upper Peninsula Judges? I mean, what's wrong with that? Why is that kind of sunshine or public disclosure political? I honestly don't understand that.

JUDGE HANSEN: The proposal is that in every public pronouncement that is made concerning the endorsement of the judicial candidate, that the list of all of the individuals of that particular organization has to be made at the same time. That's what the proposal is.

JUSTICE WEAVER: And why shouldn't the public know that? I mean, why? Why shouldn't the public know who, for instance -- weren't you the President of the Northern Michigan Trial Judges Association?

JUDGE HANSEN: Yes, I am.

JUSTICE WEAVER: And you still are. And, say a year ago, during the last campaign, who belonged to that? Did you have all the Northern Michigan Trial Judges? Did you have any probate judge's members.

JUDGE HANSEN: No, it was all circuit judges.

JUSTICE WEAVER: Did you have any district judges, members?

JUDGE HANSEN: No, they are all circuit.

JUSTICE WEAVER: Well, then, why didn't you call it the Northern Michigan Circuit Judges rather than the Northern Michigan Trial Judges? Don't you think the public should have known that?

JUDGE HANSEN: Why does the Michigan Judge's Association call themselves the Michigan Judge's Association when they do not represent all the judges of the State of Michigan?

JUSTICE WEAVER: I don't know.

JUDGE HANSEN: Don't you think the public should have to know about that?

JUSTICE WEAVER: Maybe they should.

JUDGE HANSEN: Pardon me?

JUSTICE YOUNG: They are involved in the political process.

JUDGE HANSEN: Do we have to have a requirement whereby this has to be published each time? And what's the purpose for this?

JUSTICE WEAVER: Now in the Northern Michigan Trial Judges, your Trial Judge's Association, is it all Northern Michigan Judges?

JUDGE HANSEN: Is it all? No.

JUSTICE WEAVER: Trial Judges, all Northern Michigan?

JUDGE HANSEN: No.

JUSTICE WEAVER: Do you have judges that belonged to it at that time that were not Northern Michigan Judges?

JUDGE HANSEN: No.

JUSTICE WEAVER: For instance, one from Detroit?

JUDGE HANSEN: No.

JUSTICE WEAVER: Saginaw?

JUDGE HANSEN: No. Saginaw was part of us, yes, part of the geographical area.

JUSTICE CAVANAGH: Anything north of Detroit.

JUSTICE WEAVER: What was -- north of the Detroit? Well, I believe --

JUDGE HANSEN: The geographical grounding was what the old top of Michigan situation was concerning the probate courts. That's the line that was being drawn.

JUSTICE WEAVER: And that went down into Saginaw? I don't believe they belonged to Saginaw when I was president on it.

JUDGE HANSEN: The top of Michigan?

JUSTICE WEAVER: Yeah. The top of Michigan Probate Judges.

JUDGE HANSEN: Okay.

JUSTICE WEAVER: So it's your contention that the public should not know who belongs to these organizations. And you're saying that there was nobody that belonged from Detroit at that time.

JUDGE HANSEN: That is not my contention whatsoever. And I can tell you, Justice, that when those endorsements were made, the first thing that the newspaper people asked me was, well, what is your membership comprised of?

JUSTICE WEAVER: And did you list all their names?

JUDGE HANSEN: Well, but I told them what it was comprised of.

JUSTICE WEAVER: Why shouldn't the public when they read -- you could have had two people or you could have had a hundred people. Why shouldn't the public know when you hold out that it's the Northern Michigan Trial Judge's Association, that it's just circuit judges, and it goes down to Saginaw or maybe Osceola County, or who knows where.

JUDGE HANSEN: Well, are you proposing, then, that we say this is just circuit judges? Why do you want the names out there?

JUSTICE WEAVER: Because I think the public should know who it is.

JUDGE HANSEN: But you want to know what titles are. Well, perhaps we should do that with the republican party and the democratic party and every union then that we should, in fact, have a situation where we're listing the names of everybody.

JUSTICE YOUNG: We're judges.

JUDGE HANSEN: These are, in fact, endorsements of an organization, and they are not necessarily --

JUSTICE WEAVER: Yes. But your organization's name --

JUDGE HANSEN: -- all of the people involved.

JUSTICE WEAVER: -- implied the trial judges of Northern Michigan. And you have just told me that you had not a district court judge and not a probate judge. So it wasn't the Trial Judges of Northern Michigan. It might have been circuit judges, but we still don't know how many. So it is deceiving to the public, and we do not believe that the public should be deceived by organizations.

JUDGE HANSEN: Why is this deceiving?

JUSTICE CAVANAGH: Let me ask you, what goes into forming an association? Maybe that would be a way of -- if there were some method by which there were a record, I mean, not the incorporator, just a group of individuals who get together and going to say, we're going to call ourselves --

JUDGE HANSEN: Well, in our association we have a charter. We have bylaws. We have who can be members of the organization.

JUSTICE CAVANAGH: Are those filed anywhere?

JUDGE HANSEN: They are not filed. Frankly, I wouldn't have any problem with the filing of them.

JUSTICE WEAVER: And when did you make those charter and bylaws? Before you came an organization? At what point did you make those?

JUDGE HANSEN: I believe the original ones were back in 1992.

JUSTICE WEAVER: And you think it's okay to call it the Trial Judge's Association when you had no members of the district or the probate judges?

JUDGE HANSEN: Justice, there was no intent whatsoever to deceive anybody anymore than there was any any attempt or has been any attempt by the Michigan Judge's Association to deceive anybody.

JUSTICE KELLY: Have you ever refused one when requested for information about the membership of the organization?

JUDGE HANSEN: I have never refused, no.

JUSTICE CORRIGAN: Let me ask you the number, Judge.

JUSTICE MARKMAN: Could I join if I wanted to?

JUDGE HANSEN: As an associate member, nonvoting. Just like the Wolverine situation or the Black Judge's Association.

JUSTICE CORRIGAN: Let me ask you an ethical question. The ethics as they stand right now preclude an individual judge from engaging in misleading or deceptive campaign behavior. And you have just made an argument for the existing ethics. Do you agree with those?

JUDGE HANSEN: Absolutely.

JUSTICE CORRIGAN: What is the objection in your mind of saying what an individual judge may not do, a group of judges banded together may not do?

JUDGE HANSEN: I don't have any problem with that whatsoever.

JUSTICE CORRIGAN: So, and is that not what is on the plate in front of us, the prescription of groups of judges not involved, being involved in misleading and deceptive behavior in the same fashion that an individual judge may not be involved in this leading and deceptive behavior?

JUDGE HANSEN: Put this on the table in that regard. I don't have any problem with it.

JUSTICE CORRIGAN: You don't have any objection with it except --

JUDGE HANSEN: No. Whatever binds the individual binds the group. I don't have any problem with that whatsoever.

JUSTICE CORRIGAN: So the issue is in terms of ethics, you concede that point. The question is, how do you get there? How do you say that a group shall not mislead and deceive, and is this method chosen too difficult? Maybe there's a better method to ensure that the public not be misled and deceived by an organization.

JUDGE HANSEN: It is the listing --

JUSTICE CORRIGAN: All right.

JUDGE HANSEN: The objection is the listing. That's the objection.

JUSTICE CORRIGAN: All right. I understand your point, Judge Hansen, and I thank you for your testimony here today.

JUSTICE MARKMAN: Judge Hansen.

JUSTICE TAYLOR: Judge Hansen.

JUSTICE MARKMAN: Oh, I'm sorry.

JUSTICE TAYLOR: Can I just clarify this? I mean, I agree with you that it would be very onerous and burdensome to require this kind of association repeatedly to disclose its membership in every one of its communication, but would you favor the requirement that an association that purports to be an association of public officials who are judges at some juncture has to identify whether it consists of two people who get together for the lark of it or it truly constitutes all the judges who fit within that definition,

whether it's Upper Peninsula Judges or Northern Michigan Judges? I mean, should the public have a right to know that when you call yourself, A, that you consist of all the members of A. Or shouldn't they?

JUDGE HANSEN: I don't have any problem with the public's right to know whatsoever. It may be as Justice Corrigan has indicated, how do we get to that point? And frankly, in our situation, we have a charter. We have bylaws. We have what the eligible membership is, what the organization is comprised of. And perhaps, if you, maybe the way to do that is to have that filed someplace.

JUSTICE TAYLOR: So you would support the idea that before you call yourself a certain kind of Judge's association, the membership has to be disclosed?

JUDGE HANSEN: I would support the fact that -- well, somehow or another, not necessarily the individual members of these organizations. I don't think that you should have to do that as an individual, that have yourself disclosed as being a member of that. I think that the public has a right to know, if you will, well, how many members do you have? To avoid, that, well, somebody says, we're the Upper Peninsula Trial Judges, and there's one member. There's two members.

JUSTICE TAYLOR: How would the public know that? How would you propose that the public know whether it's one or two members, or it's an organization that constitutes -- that consists of all the members of the Upper Peninsula Judges?

JUDGE HANSEN: Perhaps do a filing on them. One of the problems on this is that it's just like we're the Michigan Judge's Association. Not everybody pays their dues at any particular point in time. So we don't necessarily know whether there is, in fact, this many members or that many members. You can go to the Michigan Judge's Association right now, and every month they publish who hasn't paid. And it varies all of the time.

JUSTICE WEAVER: But didn't you have a membership list of your group?

JUDGE HANSEN: Do I have a membership list?

JUSTICE WEAVER: Yeah, didn't you have a membership list?

JUDGE HANSEN: I believe that we have one someplace.

JUSTICE WEAVER: So you must have known at some point who your

members were, or who your dues paying members were?

JUDGE HANSEN: Correct.

JUSTICE TAYLOR: Judge Hansen, you would agree, would you not, that once a Judge's group gets into electoral politics, they shouldn't be using public money?

JUDGE HANSEN: Public money?

JUSTICE TAYLOR: Right. In other words, the Judge's group forms, if they want to get into politics, they should probably fund it themselves as opposed to having it county funded, you would agree that, wouldn't you?

JUDGE HANSEN: I think that is the law.

JUSTICE TAYLOR: I assumed you would.

JUSTICE WEAVER: Who had a question of Judge Hansen?

JUSTICE KELLY: Yes, I have one.

JUSTICE WEAVER: Okay.

JUSTICE KELLY: When you were discussing earlier the limits for campaign contributions from members of the legal profession.

JUDGE HANSEN: Yes.

JUSTICE KELLY: And one of the things that has been brought out to us in prior testimony is that at the time that this Court adopted the rule that set a limited dollar limit for the amount a lawyer could be solicited to contribute to a judicial candidate, that the value of \$100.00 then was equivalent to less than the value of \$300.00 today, therefore, a change to 300 is not inappropriate and doesn't really raise the effective value of what can be solicited. What's your comment on that?

JUDGE HANSEN: Again, it comes down to the definition of what the problem is and what the proposed solution is. I suppose that an argument, frankly, can be made that if it was \$100.00 in 1974, and that now is \$300.00 at this point in time, then say that that's the reason why this is being proposed. And then that's what the issue is at that point in time. Is it actually an increase in money, or is it reflective, if you will, of

what the reality of what the money is at this point in time?

JUSTICE CORRIGAN: Would you support an amendment that would permit the hundred dollar amount to be tied to the rate of inflation?

JUDGE HANSEN: I think that's, too -- I think that's too difficult to do.

JUSTICE CORRIGAN: Well, we've delegated to the State Court Administrator's Office to do the math.

JUDGE HANSEN: But then how often do you want to do it? And there's always --

JUSTICE TAYLOR: What if every election, we have the elections every two years.

JUDGE HANSEN: Right. But this has also been tied to the criminal limits, of, you know, \$1,000.00, and it's a felony, and under that it's a misdemeanor, and that's --

JUSTICE TAYLOR: That's exactly the issue in the Nixon case in the Supreme Court of the United States right now, where they have these ancient limits. And it's a violation. It's argued that it's a first amendment violation to a right of an association. That if you cripple a candidate by making it impossible for him to raise enough money to run for office, that you really effectively made it impossible for him to run, and thus violated his associational rights under the first amendment. And that's kind of the animating concern we have here.

JUDGE HANSEN: I think the situation is that ethically that it has been determined that some limit has to be placed upon the amount that judges can dun through their campaign committees, if you will, the attorneys, because of all the appearances of impropriety and all those types of things. So then it if it comes down --.

JUSTICE TAYLOR: That's about, then you can do that.

JUDGE HANSEN: Then, if it comes down to strictly the amount involved, then I suppose you can come up with some reasonable and rational system, if you will, to determine what that amount should be. Obviously, we all know that they can contribute up to whatever the State Law allows them to contribute to. But the ethics are such as to how much you can directly solicit. And I think that that amount, frankly, should be relatively low, no matter what, so that you don't have these ethical problems of having

judges or justices seem as if they are dunning people and making them donate and that type of thing.

JUSTICE TAYLOR: Do you think if we did a rule like this that we should indicate that if a judge has the power of appointment over judges, over lawyers, in other words, criminal appointments and such, probate court appointments, that there should be some special rule there? I mean, really, I think the goal here is to, yes, make the public feel that there's not improper influence being gained by lawyers, but one and two, I mean, you want to protect lawyers who feel, gee, I get a lot of appointments from Judge X, I better give him what he wants. I mean, that's a bad situation. I think we'd agree. How would you deal with that?

JUDGE HANSEN: I think that's been a long-standing problem. Frankly, that's a problem that comes out of the city, and I don't see it occurring Up North. I hear all the horror stories down there.

JUSTICE TAYLOR: You guys don't have very many contested races up here. I mean, that's one of the things that's nice in your circumstance that there are a lot more in the cities.

JUDGE HANSEN: We do such a good job.

JUSTICE TAYLOR: That's probably it, yes. Do you think -- what would you think about a rule that said that if a Judge has the power to appoint lawyers, that there wouldn't be any indexing to that, or something, I mean, I don't know. I'm just thinking about it.

JUSTICE YOUNG: Let me just make a proposal, because, I, at a prior public hearing, I suggested this. Why shouldn't a Judge be concluded from appointing any attorney who makes a contribution to his political campaign?

JUDGE HANSEN: Probably has some ethical merit in it.

JUSTICE YOUNG: You would support that?

JUDGE HANSEN: Well, I don't know if I would or not. I mean, you're throwing it at me right now, and you're asking for -- my response is, I believe that, yes, that would have some ethical merit, and it would warrant some study. And that might be the direction you want to go.

JUSTICE CAVANAGH: Don't you think, Judge, that most knowledgeable lawyers are those that do involve themselves, political campaigns, are aware of the fact, that while they may not be able to be solicited for more than \$100.00, they are certainly able to give up to the campaign finance, individual contribution limit, which is 1,700.00? 3,400.00?

JUDGE HANSEN: I think that most knowledgeable people are in that category, yes. I know the last time I ran, I was under the impression all they could donate was \$100.00, and somebody wanted to give me more. And I said, no, you can't do that. So, they were smarter than I was at that time of the subject at that point.

JUSTICE WEAVER: But you talked to them about it.

JUSTICE CAVANAGH: But the point specifically, you left off, or accept.

JUDGE HANSEN: Pardon me?

JUSTICE CAVANAGH: The original proposal said that it cannot solicit or accept more than \$100.00, and the or accept was specifically left out of what was ultimately adopted. I mean, the thinking was, was that it couldn't run counter to the Campaign Finance Law which sets statutory maximums that an individual could contribute.

JUDGE HANSEN: I'm not sure I'm understanding. This was the original proposal?

JUSTICE TAYLOR: In '74.

JUSTICE CAVANAGH: Yeah. The original proposal said you couldn't accept more than \$100.00 either.

JUDGE HANSEN: Maybe that's why I was under the amount.

JUSTICE CAVANAGH: The Supreme Court did not include that.

JUDGE HANSEN: Okay.

JUSTICE TAYLOR: You know, it's interesting, the Bar, in '74, was adamantly opposed to the hundred dollar solicitation business, feeling that was a first amendment infringement. That, you eluded to a Florida case. That is the Florida case

where that kind of thing and all these limitations on when you can solicit and so on were all held by the Northern District of Florida, the first amendment violation.

JUDGE HANSEN: Here's the point on that, Justice Taylor.

JUSTICE TAYLOR: Yeah.

JUDGE HANSEN: We're talking about ethics, on the one hand, and that's why we had the limit. Now whether or not that's constitutional or not, that's a legal question.

JUSTICE TAYLOR: Yes.

JUSTICE YOUNG: That's what we have to figure out.

JUSTICE CAVANAGH: We have to have it constitutional, you agree with that.

JUDGE HANSEN: I understand that, okay? But also understand the operation in the dark, we have no idea whatsoever from anything that's been published or anything of that nature that a constitutional issue was the driving force behind any of this.

JUSTICE TAYLOR: That's a good point. Maybe we should, this is sort of -- we're new at this, the meetings business. Maybe we ought to put out more rational so that you would know about that. I think it's probably unrealistic to think that you're going to drag up the videotapes of the previous public hearings, and you're a very busy person, so maybe we ought to put out more rational. A lot of times we learn through the public hearings of issues that we haven't really thought of. For example, the associational rights, a lawyer appeared before us in Grand Rapids who said, you know, if I -- if I can only raise a hundred, I probably can't run successfully for judge in many districts. Probably true. And he says, I've violated my first amendment associational rights. I don't know that any of us had really thought of it in those terms. And then subsequent research on that indicated some cases in the United States where that's been held to be the case. So these meetings are helpful.

But I think the point you raised that we might want to give people a little bit more information about some of the things that we're thinking about, some of the cases that are troubling us, so that helpful people like you and the other people who appear before us can sort of know that. So thanks a lot.

JUSTICE WEAVER: I want to ask another question. Or go on, Justice Kelly, I'll finish.

JUSTICE KELLY: Getting back now to the effect of your Judge's Association of the rule that we've been discussing, if that rule were passed, what effect would it have on your Association's ability to endorse judicial candidates in the future elections?

JUDGE HANSEN: If our membership remained exclusively of judges, if that were the case, based upon what happened in the past, where once we did the endorsement, and there were phone calls made by public officials and by senators, representatives, State representatives, State senators, people from other branches of government, calling up judges and exposing them, if you will, what's the matter with you? How come you're doing this kind of thing? Aren't you a good loyal party member, et cetera? It probably would, in fact, keep the organization from being involved in any type of endorsement in the future.

JUSTICE KELLY: You realize that some of the concerns that have motivated the rule that's being considered are that there are -- there could have been some misrepresentation or misleading by the Association or doing a judicial endorsements which perhaps appeared broader than they were, can you offer the Court any suggestions on what alternate method might be used to prevent misleading but still make it possible for an organization like yours to endorse candidates?

JUDGE HANSEN: It very well may be to list just the number of members. If you would all -- and a filing someplace. Part of this is also politics, I think. You know, the other side has every opportunity to come up and say, well, don't listen to that endorsement or those people. It's comprised of two people.

JUSTICE WEAVER: But, Judge Hansen.

JUDGE HANSEN: That's part of the political problem. You know, or it's comprised of how many ever numbers there are. Or, you know, they say they're trial judges. Well, they don't include in other trial judges. And so that endorsement isn't worth anything. I think that's part of the political process, if you will.

JUSTICE WEAVER: Judge Hansen, let me make sure I really understand you. You had an organization called the Trial Judges of Northern Michigan, is that right? You made an endorsement.

JUDGE HANSEN: Northern Michigan Trial Judges.

JUSTICE WEAVER: Northern Michigan Trial Judges.

JUDGE HANSEN: Yes.

JUSTICE WEAVER: At the time you had not and perhaps even yet now, you have not a probate or a district judge belonging to that organization.

JUDGE HANSEN: Correct.

JUSTICE WEAVER: You don't propose that just because you call it that, that every trial judge of Northern Michigan automatically belongs, do you? It's people who join, right? You have some sort of application, and some sort of membership fee, is that correct?

JUDGE HANSEN: I don't think we have an application.

JUSTICE WEAVER: So the only people that belonged -- so you had no -- well, you charge a fee or something?

JUDGE HANSEN: There are dues.

JUSTICE WEAVER: Yeah. So you had no other trial judges other than circuit judges belonging. Do you realize or concede that maybe for the public they don't know the difference between a probate, a circuit or a district judge, and that it would stand out there to them that this was all the Northern Michigan Trial Judges belong to your organization, and do you not see that as deceptive to the public when you put out that the Northern Michigan Trial Judges, and you still don't see that as deceptive to the public?

JUDGE HANSEN: I don't believe it's deceptive at all. I don't think there's any intent to deceive whatsoever.

JUSTICE WEAVER: No, intent -- I didn't say intent.

JUDGE HANSEN: And frankly, I guess we could change the name to the Northern Michigan Circuit Judge's Association.

JUSTICE WEAVER: Okay. And that would be closer to accurate, right?

And select circuit judges.

JUDGE HANSEN: No, anybody in the geographical area can be a member.

JUSTICE WEAVER: Well, maybe there's only two belonging. Now, okay. So I understand that maybe you see that now.

Let me ask you one other thing. You just said that somebody offered to give you more than \$100.00, and you told them, no, is that right? You had that discussion with them?

JUDGE HANSEN: Yes. This was back, a few years back when I ran, right.

JUSTICE WEAVER: So, then, would you help me understand why it is that -- I think I heard you say, that a Judge shouldn't send a thank you note for a contribution received. Could you help me understand why you think that's so political and so terrible having received a contribution from somebody just acknowledge that they received it and say, thank you, when apparently -- would you tell me what you see is wrong with that?

JUDGE HANSEN: Yes.

JUSTICE WEAVER: Okay.

JUDGE HANSEN: I think the thrust of the ethical rule is to keep the judge entirely out of campaign funding, the receipt of the funds involved, the solicitation of the funds and everything else. The Judge should not be personally involved in this. And the reason why it's bad because of the thank you involved, I think that a thank you is intricately involved in the contribution process. I can tell what you an unscrupulous candidate would do if he was permitted to send out the thank you letter as is enabled by this particular rule. He would go to his campaign chairperson, and he would say to that person, go out and dun these people, and then tell them that you have a good accord that the Judge will be personally grateful, and that he will express this gratefulness to you in a personal way.

JUSTICE CAVANAGH: There's no prohibition against the committee sending out thank you notes.

JUDGE HANSEN: And that's the point, yes. Let the committee do it. The committee is the one that should be involved in the judicial fund-raising. They should be -- if they're the ones that are soliciting, the Committee should be thanking. The Judge

should not be involved in that process whatsoever on any kind of a personal level.

JUSTICE CORRIGAN: Given the Campaign Finance Laws, Judge Hansen, that require the candidate to review every single contribution and certify its receipt, which is enormous, isn't the same possibility present in that setting as well and the Judges necessarily involved in that under our Campaign Finance Laws?

JUSTICE KELLY: The same possibility exists.

JUDGE HANSEN: Except that the communication is not being made to the contributor.

JUSTICE WEAVER: But didn't you make a personal communication with the person who wanted to give you more than \$100.00?

JUDGE HANSEN: Yes, I told him he couldn't do it.

JUSTICE WEAVER: Well, you were personally involved and what was wrong --

JUDGE HANSEN: Because he came in and I said -- I agree.

JUSTICE WEAVER: Well, maybe you shouldn't have personally said it. Why didn't you have the campaign people tell him instead of you telling him?

JUDGE HANSEN: I was wrong on the rule to begin with.

JUSTICE TAYLOR: Judge, given the duty of the judge to be sure he's not taking money that would involve an ethical, his committee isn't taking money that would involve an ethical problem, how isn't it known to all contributors effectively that the Judge indeed will be reviewing this because he has to look it over?

JUDGE HANSEN: I guess my answer to this, how does that make us more ethical, to have the Judge personally involved?

JUSTICE TAYLOR: He's already got to review this stuff. I mean, obviously, if you're trying a case in your courtroom during the election, and one of the parties gives you money, you're probably aren't going to take it. But who else knows that? Certainly your committee wouldn't.

JUDGE HANSEN: Frankly, Justice, I'm aware of a situation down in Tennessee where there's a prohibition by law that the Judges are not even supposed to know who their contributors are. And if we really want to be talking about ethics, I think that's the direction that we should be going in as opposed to the other.

JUSTICE TAYLOR: How do they do that and have public filings?

JUDGE HANSEN: I don't know how they do it. Well, the Judge itself, everything is left up to the campaign committee.

JUSTICE CAVANAGH: I think all contributors know or assume that the judge ultimately is going to know they contributed to the campaign, and appreciate that.

JUSTICE KELLY: I don't think the thank you notes are going to make a difference.

JUDGE HANSEN: The problem that I have is that this is an enabling type of a thing now. You're setting force saying, you may do this, and the potential for abuse I think is really great.

JUSTICE WEAVER: Well, if the campaign committee is going to send the thank you, the same potential for abuse is there.

JUDGE HANSEN: But you don't have the personal involvement of the judge with the individual.

JUSTICE TAYLOR: Judge, most of these events are fund-raisers, where the judge is there. I mean, the people who paid the whatever to come to the event are there with the judge. I mean, he invariably would know, would he not, plus he has to review all the filings? I mean, any donor would have to know the judge will have to find out, would he not?

JUSTICE CAVANAGH: You don't go to your own fundraisers?

JUDGE HANSEN: I don't do fundraisers.

JUSTICE WEAVER: Well, how did you have this conversation? How did you have the conversation with the contributor? You admitted here you had a contributor wanting to give you more than \$100.00. Where did you have that conversation and under what circumstances?

JUDGE HANSEN: Where did I have it?

JUSTICE WEAVER: Yeah. And apparently, under your thought, you shouldn't have it, but you had it. So where did you have it and under what circumstances? Somebody wanted to give you money and you told him you can't give me more than \$100.00. You just told us that.

JUDGE HANSEN: I think the individual came up to me and --

JUSTICE WEAVER: So what's the difference between that and a thank you note?

JUDGE HANSEN: Pardon me?

JUSTICE WEAVER: Well, go on. Where did you have that conversation?

JUDGE HANSEN: I don't recall. It was four years ago.

JUSTICE WEAVER: You must have been raising money. Okay.

JUSTICE TAYLOR: Judge, do you think it's a better world where every two years the judiciary is bulking eyes into supporting groups which I suspect will inevitably turn out to be either judges with a republican background or judges with a democrat background? I mean, is this --

JUSTICE YOUNG: Is that a better and more ethical world?

JUSTICE TAYLOR: You said you've spoken --

JUSTICE YOUNG: Or a more political world?

JUSTICE TAYLOR: You've spoken today about the tenor of the times and the ethical constraints and moving our system in a good direction. Do you think that's moving us in a good direction that every fall, the Michigan Judiciary, all 600 plus of them line up and support the judges who are from the same political background? They are, with all sorts of claims and counterclaims in the last two weeks of October, and candidates being on television saying, don't listen to the North American Judge's Association, it's a bogus group. It's just a troubling kind of sector. I don't know that we can stop it under the constitution, but what do you think?

JUSTICE YOUNG: Have a better ethical world for judges.

JUDGE HANSEN: Is the question involved, should these organizations be involved ethically, from an ethical standpoint?

JUSTICE YOUNG: Is that a good thing for the judiciary?

JUDGE HANSEN: Is that a good thing for the judiciary? My personal feeling, okay. I don't necessarily like that type of endorsement even within our organization. I did not speak for endorsing people. I understand some of the pitfalls involved in being involved in that kind of thing.

On the other hand, who knows better who the justices and judges are and what do you do if you have a real bum out there? I mean, somebody who is really unethical and whatever, and we're the ones that know about it. Should we leave that up to individuals with all the potential cross that that may cost the individual, or should, in fact, under those types of circumstances, organizations be involved in it? I don't believe that organizations as a matter of course should be in the endorsing business.

JUSTICE YOUNG: And it's not an organization. These are organizations of public officials, moreover, these are not any public officials. These are judges.

JUDGE HANSEN: Correct.

JUSTICE YOUNG: You don't think those things, that difference, is significant, that, where as under the current rules, any judge may endorse another judicial candidate?

JUDGE HANSEN: Correct.

JUSTICE YOUNG: Is it a better world that we have judges banding together and associations, much as Justice Taylor has suggested, every two years, is that a more politicized world or a less politicized world in the judiciary?

JUDGE HANSEN: I think it is more politicized, absolutely.

JUSTICE YOUNG: You came here with a great deal of passion to speak about how to reduce the politicization of the judiciary.

JUDGE HANSEN: I did.

JUSTICE CAVANAGH: But Judge Hansen --

JUDGE HANSEN: So what are they asking? I told you, Justice Young, I said, I'm not necessarily personally in favor of this type of thing.

JUSTICE WEAVER: But you are president of the organization that did.

JUDGE HANSEN: But I'm president of the organization, exactly.

JUSTICE MARKMAN: Let me ask you, it was my understanding of your particular organization that it wasn't focusing on candidates, party affiliation, their philosophy as to whether they're concerned with moderate liberal, but focused on how your association viewed how they would deal with administrative matters, such as court reorganization, whether there ought to be a constitutional amendment, those types of things. Am I correct in that understanding?

JUDGE HANSEN: In general, that's correct. We are much more concerned about their status in terms of the judiciary, how they felt about the judiciary, how they felt about the independence of the judiciary, those types of things. It is very limited. And we didn't care if they were republican. We didn't care if they were democrat. We didn't care if they liberal. We didn't care if they were conservative or anything else of that nature.

JUSTICE TAYLOR: Certainly you would acknowledge, though, even as two follows one, we can anticipate the metastasizing of those groups into rank political groups.

JUDGE HANSEN: Could it happen? I suppose it could.

JUSTICE TAYLOR: Wouldn't you say it's highly likely?

JUDGE HANSEN: I don't think that it's highly likely. No, I do not.

JUSTICE WEAVER: Are there any further questions?
Judge Markman.

JUSTICE MARKMAN: I don't mean to harass you on this, Judge Hansen, or I don't mean to beat a dead horse, but I guess I really do have some concern about the

tenor of this discussion and the rhetoric. And I ask you this question again not to give you a hard time but because you are a serious jurist. You are a respected jurist. And I really am troubled by what you've said here. It's not the substance so much, but, as you know, we in the courts, one of the tools in our trade is language. We have to take words seriously. And I guess I understand your position about the disclosure of the membership of Judge's organizations. I'm not sure I agree. But it may well be a reasonable position that you take. Yet again you said on two occasions that the only justification for the view that the public is entitled to know the membership of these organizations is political. And I guess when you see that kind of characterization in a debate, and you know this better than I do, Judge Hansen, I mean that tends to stifle debate. That doesn't promote debate. That doesn't enhance it. It tends to stop it dead in its tracks because none of us on the Bench want to be characterized in that way. You don't want to be characterized in that way. I would guess not a person up here wants to be characterized in that way.

Can I ask you, do you have any second thoughts about the use of that language to describe the position that you disagree with here?

JUDGE HANSEN: This is the situation, Justice Markman, you have to understand the information that I have when I come here at a certain point in time. I don't have the benefit of what the alleged ethical situation is that we're called upon to change the rules to cure or anything else of that nature. I don't know that we're even involved in any constitutional discussion whatsoever about what's permissible under the constitution and that type of thing. You know, I look at this particular situation, and I simply say this, I say, what is this all about? Why are we expanding the rules to allow for more money to come into the situation? And my conclusion is, it's got to be political because it certainly isn't ethical. That's the problem involved.

JUSTICE MARKMAN: As one of my colleagues suggested, it may not be -- it may be constitutional.

JUDGE HANSEN: I agree. And that's now, that now comes to me at this particular point in time. And I may reevaluate what this is all about when it's all said and done.

JUSTICE MARKMAN: And we can all engage vigorously in our positions, and there are reasonable positions on both sides of these issues. But I'm simply suggesting that the kind of rhetoric that people who disagree with one are engaged necessarily in political discussion or serving political ends, doesn't promote the kind of debate that we as judges out to be engaged in.

JUDGE HANSEN: That may -- that very well may be, Justice Markman, but what if the purpose is political? We do get to say it then, don't we? And I'm not so sure that some of this is not just exactly that because I read the petition that was filed by Mr. Riley. And frankly, in reviewing through that, what he said was, we have political realities, and the ethics are keeping us from doing these political realities. So, I mean, we want to change the rules of ethics so we can do the political realities. I think it's a reasonable and logical conclusion that the purpose behind these proposed changes are to allow more politics.

JUSTICE WEAVER: Well, I assume you mean partisan politics because obviously politics -- the world political means like the elective process. And obviously the judges are an elective process. So by the very nature of they're involved in politics, they have to have people vote for them. You try -- does your use of the world political mean the elective process, or does it mean partisan politics?

JUDGE HANSEN: Probably a little of both. You know we have the ABA saying, let's cut down the time period for raising money. We had the ABA saying, let's get as much money out of the process as we can. That's their recommendations. And at the very time that that's their recommendations, then we're proposing changes that are going to expand the time periods and the amount of money coming into the process.

JUSTICE WEAVER: Well, I see Justice Markman --

JUSTICE MARKMAN: But then you would have to go to the Supreme Court.

JUDGE HANSEN: That may be. But we're talking about ethics strictly.

JUSTICE YOUNG: But you're the Judge, and you know that our ethics cannot be in conflict, too.

JUDGE HANSEN: That's true.

JUSTICE WEAVER: I think the ABA would think there should be an appointment process. But there isn't an appointment process now, and there is an elective process. I think Justice Markman was just trying to get to that, and that we have to be careful with the words we use. And as judges, I think it's important for us to follow the important, I don't expect the public to follow the constitutional law cases of the United States Supreme Court. It may be as justices and as judges that we might do that,

particularly when we want to get into the debate of it. So hopefully you will look at the constitutional cases that are out there on these issues.

JUSTICE KELLY: Well, do I understand you to say that whatever the motivation may be behind the rule we're discussing, the proposed rule change that we're discussing, that the effect of its adoption would be to enhance the politicization of the judiciary?

JUDGE HANSEN: I think without question that's really what we have.

JUSTICE YOUNG: Which rule would enhance the politicization?

JUDGE HANSEN: Anyone that allows for the -- for more money and more dunning their money to come into the entire process.

JUSTICE YOUNG: How about one that encourages associations of judges to get involved actively in the political process of electing judges?

JUDGE HANSEN: I'm not sure what rule that is that you're talking about.

JUSTICE YOUNG: Well, should we prohibit associations of judges out there from doing what your association is doing, if we could constitutionally do so?

JUDGE HANSEN: If you could constitutionally do so. What is the ethical purpose behind doing that?

JUSTICE YOUNG: To avoid the very thing that you -- at least acknowledge that it's possible that judges will become bulkinized and political in this process. More political than we have to be because we have to run for election.

JUDGE HANSEN: I think it's something that would certainly merit discussion.

JUSTICE WEAVER: Any further questions of Judge Hansen?
Judge Hansen, thanks for coming.

JUDGE HANSEN: Thank you.

JUSTICE YOUNG: You went more than three minutes.

JUSTICE WEAVER: Hopefully, I don't think you can feel badly about that.

The next person we have is Judge Swallow. His name is listed here.

JUDGE HANSEN: Judge Swallow called me and he said that he had an emergency, temporary restraining order he had to deal with.

JUSTICE WEAVER: Thank you. We have Judge Murphy.
Judge Murphy.

JUDGE MURPHY: Good morning, Justices. Thank you for the opportunity.

JUSTICE WEAVER: I'll just tell everybody, hopefully, that we'll have three minutes, if not an hour presenting. I guess you hope that, too.

JUDGE MURPHY: I sure do. I sure do.

My name is Dennis Murphy, and good morning. Thank you for the opportunity to speak, Justices.

I am one of the several trial court judges in this circuit, as you may know. And first of all, I want to say that I am not here to talk about the Northern Michigan Judge's

Association. But I am here to address the Canons. I have the highest respect for Judge Hansen who is not only a good person individually but an excellent judge.

I do support, with a couple exceptions, the proposed changes to Canons 7 and 8. I believe that there should clearly be a rule to prevent an association of judges from doing indirectly what an individual judge cannot do directly. And simply stated, Canon 8 does just that. I think it's a rule that makes sense.

An association of judges, for example, should not, obviously, be allowed to endorse partisan candidates just like an individual judge cannot endorse partisan candidates.

JUSTICE CAVANAGH: Well, wait, wait. How are they going to endorse, I guess, for Supreme Court, because of the weird nominations?

JUSTICE WEAVER: Wait, Justice, give him his three minutes.

JUSTICE CAVANAGH: Okay. I'm sorry.

JUSTICE WEAVER: Okay. All right. You have your three minutes.

JUDGE MURPHY: All right. And I'm speaking, Justice Cavanagh, to Canon 8 which simply applies the Rules of Ethics that do apply to individuals to associations in general. In other words, an association ought not be able to do what an individual judge cannot do themselves.

JUSTICE TAYLOR: In particular, with regard to Judicial Canon, what does that mean? I don't understand.

JUSTICE WEAVER: Justice, he needs his three minutes. Justice.

JUSTICE TAYLOR: Well, you were making that point, and we interrupted.

JUSTICE WEAVER: Justice Taylor, yeah, let him have his three minutes.

JUSTICE TAYLOR: All right.

JUSTICE WEAVER: Thank you.

JUDGE MURPHY: And, again, I must say, too, that as to Subsection 4 of Canon 7, those proposed changes, in addition to Canon 8, I think, are appropriate. I am not again referring to the Northern Michigan Judge's Association, but I'm concerned

about future loosely knit, self-declared groups with a large regional or statewide name in the future being allowed to issue endorsements by a literal handful of judges that have the appearance of speaking for a much larger group or for all 500 judges in this State.

Currently, there are no rules to prohibit, for example, an association or a group of judges. For example, three or four from Wayne County, a couple from Arenac County, and a Judge from Escanaba, to get together, form an association, call themselves the State Association of Judges or Trial Judges. And in an election year, issue what would appear to the public and media, a very damaging endorsement, when, in fact, it only is a view of a literal handful. That's why I think that Subsection 4 will bring needed accountability and responsibility to the endorsement process when made by an association of judges. And, again, I'm concerned about future activities.

I think Subsection 4 would prevent and reduce the opportunity for misleading endorsements.

Fundamental fairness does require that there be a rule such as that proposed in Subsection 4, C 7, Canon 7.

And I must say in conclusion that a couple objections I have to Canon 7 and Canon 8; number one, I think the extension of the fund-raising time period past the election date could ethically appear to be unseemly, allowing funds to pour in after a candidate has won.

Number one, they aren't of much value to a candidate other than to retire debt; but number two, have the appearance of people jumping on the winters band wagon. I don't think that's a good policy.

In conclusion, common sense dictates that associations of judges should be accountable and responsible for their political activities just like an individual judge must follow these ethical rules. Thank you.

JUSTICE WEAVER: Okay. Thank you. Now we have Justice Cavanagh wanted to ask a question, and then Justice Taylor, if they still do.

JUSTICE TAYLOR: No, that's fine.

JUSTICE WEAVER: All right. I thought I heard something over here.

JUSTICE CORRIGAN: I wanted to ask you, just following up on Judge Hansen's suggestion of a few minutes ago, would you see any merit to the notion that we change the mechanism for disclosure of who the membership is so as not to impede the advertising end, for example, radio advertising, but still permit the public to discover, through sunshine loss, who the membership is, of filing, in some public place so that people could know who the membership was?

JUDGE MURPHY: Right. I agree.

JUSTICE CORRIGAN: Do you think that's a healthy amendment to the proposal that's in front of us?

JUDGE MURPHY: Yes. I do. I agree with Judge Hansen on that point. For example, every election cycle, any association that might be formed in the future or that exists now could be required to disclose, at least and at a minimum, the number of judges that they purport to speak for. Because that is where the damage comes in. I think the damage comes in when a week before the election, on the eve of the critical vote, hundreds of media outlets receiving an endorsement from what truly is. And what concerns me is that these can be formed. I don't think it's beyond the realm that a literal small handful of judges in the future could form a small group, give themselves a large or broad title and mislead the public. That's what concerns me. And, yes, so therefore, if it's a group of nine judges and five vote to endorse, that ought to be disclosed somehow, someday. And I don't think that judges are reluctant, at least I'm not. And I don't think most judges are reluctant to step up front and state who they are endorsing.

JUSTICE CORRIGAN: Even if there were a cure or a solution to the aspects of this proposal that are objectionable, would the notion, in your mind, the notion that judges should be able to endorse, would that further politicize the judicial branch elections? Is it a good idea to allow judges and organizations to endorse?

JUDGE MURPHY: I think it is, and I'll tell you why. I think, and as pointed out by Judge Hansen insightfully, it is the judges, and of course lawyers, too, that best know the candidates. And to prohibit the public from having the benefit of the views and incites, information, that those who work with and know about the track record, personality or character of the candidates, I think that's helpful to the political process.

JUSTICE YOUNG: As associations?

JUDGE MURPHY: Well, see, I think she mentioned both as individuals and as associations.

JUSTICE KELLY: No. There's a current rule.

JUSTICE CORRIGAN: As associations I meant, but you said that you thought that was helpful to the process.

JUDGE MURPHY: If it's accurate, correct, accurate and honest.

JUSTICE YOUNG: Do you think it's a good idea for associations and judges to become energized around election sites?

JUDGE MURPHY: No. I don't. I didn't mean to say that.

JUSTICE YOUNG: I thought that's what you were saying. And I think even Judge Hansen acknowledged, at least some trepidation, and acknowledged, perhaps, it might be a good idea for us to think about whether it is a good idea at all where associations of judges as opposed to individual judges from making endorsement.

JUDGE MURPHY: All right. I may have misunderstood then.

Number one, I personally don't think it's a good idea at all for associations to endorse unless it's a hundred percent. That's never going to happen. You're going to have judges on both sides of that endorsement torpedo. Let's call it that because that's what it could be, particularly on the eve of an election. And it's going to upset many and maybe make some happy, but that's for that election cycle.

JUSTICE YOUNG: Why -- if I may.

JUDGE MURPHY: Yes.

JUSTICE YOUNG: Why is it, under our current rule, you or I or any other judge may endorse another judicial candidate. When we do so, we put the imprimatur of our personal reputations, our judicial reputations on the line and public.

JUDGE MURPHY: Right.

JUSTICE YOUNG: What is inconsistent with requiring, if we think it is appropriate to continue to allow associations of judges, what is different in kind about requiring each of the judges making the endorsement from being compelled to publically indicate that I am one of those judges who is making the endorsement, make it exactly parallel to what we have to do today. No one can use my name as an endorser without me allowing that to happen. Why shouldn't we make judges participating in an association function in the same way?

JUDGE MURPHY: Well, I think we should. Because, again, I think a judge who is not reluctant to endorse individually ought not to be afraid of putting his name up front in an association's endorsement either. And that's the problem that I see. I think

the individual endorsement, you know, whether, again, individually, but it's the misleading nature of an association endorsement that concerns me. It's the misleading nature and potential for abuse.

JUSTICE KELLY: Do you have a response to Judge Hansen's statement that the way the system works now and has been working for years is, if an organization takes the position favoring a judge or a judicial candidate, and someone feels that it was misleading, that that person has the right, the statement having been made in the spirit of freedom of speech after all, that someone who takes offense to it, has the right to inquire into its validity. The press can do it. The candidate can do it. And that there is an open give and take above the board and in public, then, about the reliability of the endorsement and how much weight it should be given by the public. What's wrong with that?

JUDGE MURPHY: Well, that's fine, as long as they're not 11th hour endorsements.

JUSTICE KELLY: Sure, but I mean --

JUDGE MURPHY: That's what concerns me.

JUSTICE KELLY: Sure. But I mean, we haven't been confronted, I don't think, with that situation here. We haven't been confronted with the situation where two judges or something, from a small group like that, has the financial ability to blitz the State with a last minute endorsement that is misleading.

JUDGE MURPHY: I don't think it costs much to rev up your fax machine and program in the 300 or so or whatever they are media outlets with a one-page press release.

JUSTICE KELLY: Well, I haven't seen the press pick those things up and publish them in my experience campaigning, Judge, statewide. Sure, you can get them out but that doesn't mean they are going to be picked up.

JUDGE MURPHY: Well, I thought there was an unwritten rule you are allowed one, and they ignore the other 99 you send. I don't know, Justice. I don't know the answer to that.

JUSTICE WEAVER: Well, you could have a group that call it. You could have two judges in Michigan say, that call themselves judges for Michigan for an honest judiciary. And they could endorse whoever they wanted, and then technically every

other judge in Michigan would supposedly have to investigate this, and then, say, no, I'm not a part of that.

JUDGE MURPHY: Right.

JUSTICE WEAVER: That is the problem, isn't it?

JUDGE MURPHY: I think it is. I think it's impractical to think that you can really diffuse the impact of such an endorsement. That, again, and what concerns me, again, I'm not speaking about the Northern Judge's group, but what concerns me is the spector, the real spector of future groups of judges, of like-minded judges, a handful of men and women who happen to be judges, getting together, labeling themselves with a name that imports more than is there and issuing what would then amount, because of their title, amount to be a misleading, inaccurate endorsement.

JUSTICE WEAVER: So what you're saying is if you want to endorse as a judge, then put your name out there. And if you want to do it in a group, then put your name out there.

JUDGE MURPHY: Right.

JUSTICE KELLY: Don't you think the Canons of Ethics would -- yeah, the Canons of Ethics as they presently exist would prevent, if there were unscrupulous judges who would do what you're suggesting, that would prevent them from doing it for fear that they're going to be called before the Judicial Tenure Commission to account for that kind of misleading behavior and removed office conceivably? Doesn't that work?

JUDGE MURPHY: I don't know how that would be done right now.

JUSTICE KELLY: It could be done. You're saying it couldn't be done necessarily before the election. The judge perpetrating the deception would still have to worry about answering for it and perhaps losing his or her job as a result. Wouldn't that deter the judge from doing that at any point during the election process?

JUDGE MURPHY: Well, it may, Justice. That's a good point. But, again, it's the concern that could be done, and that's not necessarily unethical. If two or three judges form a group, they state, well, we're open to all judges throughout Michigan. We don't charge dues. Everyone is invited. There's nothing unscrupulous I've done, Justice. Why am I being brought in for this press release, for example? I don't see any enforcement mechanism or rule to prevent it.

JUSTICE KELLY: There's the danger that the Tenure Commission wouldn't see it that way, right?

JUDGE MURPHY: Right, absolutely.

JUSTICE WEAVER: Okay. Any further questions of Judge Murphy? Judge Murphy.

JUDGE MURPHY: Thank you very much.

JUSTICE WEAVER: All right. Now, we're going to town. Is anyone here to -- we have no one else on this issue, I see.

Item 5. This concerns the Alternative Dispute Resolution Issues. And I have Maartje Nolan. Is she present?

MS. NOLAN: Yes.

JUSTICE WEAVER: Come right forward.

Item 5 99-02 ADR

MS. NOLAN: And I have a couple of things of business. I have a letter from Judge Mulhauser that he asked to have read, if I could do that.

JUSTICE WEAVER: Okay.

MS. NOLAN: And then I need to put -- let me.

JUSTICE WEAVER: Okay. If you could just identify yourself as Maartje Nolan and where you're from.

MS. NOLAN: I'm Maartje Nolan, and I'm the executive director of the Citizen's Dispute Resolution Service, which is a CDRP Mediation Center. And we cover Charlevoix and Emmet County.

JUSTICE WEAVER: Okay.

JUSTICE CAVANAGH: We're not going to be able to get anything you're saying on sound.

JUSTICE WEAVER: On sound. Maybe you can --

MS. NOLAN: I have to get this.

JUSTICE CAVANAGH: Okay. The People of the State of Michigan want to hear you.

JUSTICE WEAVER: Okay. Now let's start this time.

MS. NOLAN: As I say, this is letter from Judge Mulhauser.

Dear Chief Justice and Honorable Justices of the Supreme Court. Thank you for the opportunity to comment on Proposed Michigan Court Rules involving the ADR services. I've been fortunate to participate in a pilot project wherein nonattorney mediators are used in family court cases. My experience has been overwhelmingly positive, and my comments are intended to endorse the continued participation of nonattorney mediators in the mediation process.

While I have no objection to attorneys serving as mediators, I would strongly urge the Court to continue to include nonattorneys as mediators.

Nonattorney mediators reduce the adversarial nature of the process. Oftentimes it is difficult for lawyers to set-aside their advocacy role which is often of great use in negotiation.

I would like to suggest a distinction between negotiation and mediation. The former being a process which guides the result or the latter or true mediation being a process which allows the parties to reach their own result.

Further, it has been my experience that lawyers tend to be overly concerned with whether or not the mediated results will be legalistic enough. While it is important for our parties to reach a mediated agreement that can be coordinated with their specific legal issues, it may unnecessarily inhibit the potential agreement to be overly concerned with legalisms.

Many of the agreements that are reached in family cases contain elements that may not be susceptible of specific enforcement, but nonetheless, move the parties forward towards an ultimate resolution of their case.

In all of the mediated agreements that I have reviewed, I have found only one that contained an element which could not be accepted by the Court. That was a specific agreement to end jurisdiction upon a certain timetable. Because I felt the ending of jurisdiction was entirely within the Court's discretion, I eliminated this cause, much like a line item veto while the balance of the agreement survived. In the long run, over the course of the entire scope of all agreements, I believe the greater benefit is achieved by allowing the parties to make progress between themselves even if some agreements may

need to be modified later by the court.

Finally, the practical effect of eliminating nonattorney volunteer mediators would be to eliminate the pool of mediators who are available. Because the Court does not have the resources to pay mediators, we rely on volunteers. And those volunteers are by and large exclusively nonattorneys.

Accordingly, I urge you to continue to permit the use of nonattorney mediators, particularly in family court cases because they reduce the adversarial nature of the proceedings. They promote true conciliation within the lives of the participants over and above the accomplishment of the specific legal criteria, and they perform their services as volunteers which make them more available to the Court. Thank you for considering my remarks.

Frederick Mulhauser, Probate and Family Court Judge.

JUSTICE WEAVER: Would you mind leaving a copy of that with us?

MS. NOLAN: Yes. I will give the original to the clerk.

JUSTICE WEAVER: Okay.

MS. NOLAN: My remarks will address mediation and an overview so that I wanted to give you as much to comment on as possible.

Essential ingredients in mediation are the use of trained mediators, neutrals who do not advocate for either party nor do they advocate for their own perceived solution. A safe atmosphere for participants to voice their truth and to be heard. And to have all stakeholders at the table at the same time, to come to as complete a resolution as possible.

Agreement is desirable but not essential. When agreement is reached and crafted by the participants, it is more likely to be upheld because they have ownership of the agreement, because all the stakeholders are at the parties, so no one can be scapegoated, and finally, it reduces resentment of an authority figure.

Mediations without agreement, we consider those successful when the parties have been treated with respect, when they leave with a better understanding of their circumstances and the choices open to them which might include returning to the litigated process. Also we have had cases where having gone through mediation, although parties are not ready to commit to paper at that time, they return, spoke with their attorneys and chose to settle out of court.

The role of attorneys in mediation. Participants can have lawyers present. They are told this at intake. And if the lawyers cannot be present, they can make provisions such as to find the lawyer during the mediation, or to take the agreement from the room, have a lawyer review it before it is signed.

It is helpful to have attorneys present to clarify points of law and to clarify their

role in the dispute. However, to maintain the integrity of the mediation process, we ask that the attorneys are auxiliaries and not participants in the main discussions.

Having said this, we have had several cases referred by attorneys where the attorneys themselves have said, please, we think that you the disputants should go without us. We will be there if you want to ask us questions afterward, but we feel it's more important that you speak to one another face to face.

Finally, court referred or ordered mediations. We have only had one mediation where the participants came, sat at the table and had no intention of engaging in the process. They were simply going through the motions. In all other cases they at least tried the process and in most cases came to an agreement.

JUSTICE TAYLOR: Ma'am, what about the case where they have a legal question? I mean, they want to know whether or not, what the answer is to a legal issue is. Is that true then?

MS. NOLAN: Okay. A specific example.

JUSTICE TAYLOR: Whether or not alimony can be modified.

MS. NOLAN: Okay. In the sense -- that's a good example. We will not take a divorced case that is prejudgment because it involves --

JUSTICE TAYLOR: It's got to be postjudgment.

MS. NOLAN: I'm sorry. I'm not a lawyer.

JUSTICE TAYLOR: That's all right.

MS. NOLAN: So you'll have to help me, Justice Taylor.

JUSTICE TAYLOR: Let's suppose there is a judgment of divorce and it's got an alimony provision. The legal dispute is to whether or not the alimony is modifiable. They come back to court, the judge shoots it out to mediation, one of the parties says, look, I don't care what you think. I want to get an answer from the Supreme Court on this.

MS. NOLAN: In that instance, if the judge has sent it to mediation, we will schedule mediation if we feel it is appropriate. If it is a point of law concerning alimony, we would not accept the mediation.

JUSTICE TAYLOR: Okay.

MS. NOLAN: We recognize our professional limits.

JUSTICE YOUNG: What is your profession? You are a mediator?

MS. NOLAN: Yes, sir.

JUSTICE YOUNG: What is your professional view about mandating mediation? Do you take the position that psychotherapists take, you got to be there, you got to want to be there, or can you coerce therapeutic results and mediation results?

MS. NOLAN: Okay. You cannot ever coerce anyone is my feeling, in a sense. That, as I gave the example, the two people came to the table, and they chose not to engage in the process.

JUSTICE YOUNG: Why were they there if they didn't want to do it?

MS. NOLAN: Because the judge had referred them to mediation.

JUSTICE YOUNG: He compelled them to do that?

MS. NOLAN: Yes. And the irony is that the amount in dispute was \$100.00. So it was a point of principle. So it was something that if we'd been able to open their minds even a little bit, would have saved court time, et cetera, et cetera. The costs in dealing with that particular dispute far exceeded the amount that was in dispute.

JUSTICE YOUNG: Have you favored this rule that compels?

MS. NOLAN: My sense is, yes, partially because we're also dealing with educating people about mediation. So they don't know that it is an option that they have. You can lead a horse to water but you can't make them drink.

JUSTICE YOUNG: That's exactly my point. You can educate, but the rule says you may -- that the judge may require, after education and apparent repudiations, suppose we have the ineducable litigants. They say, I'm here, I understand I've got the right, but I want to go to war and I want a quick trial date.

Now why would we want to mandate that parties that have been appropriately educated and have repudiated the option of mediation, nonetheless go to mediation?

MS. NOLAN: Well, there's two points. One is that when the parties are able to sit at the table with all the stakeholders -- which doesn't happen in the court setting. In the court setting, it's set this way. So when the party is able to sit at a table and discuss with everyone who has a say in their outcome and to have a voice and ask questions of the other side, which doesn't happen in the litigation process, there is a transformation that takes place. They begin to take ownership of their outcome.

The second point is that within the court rules, if I feel very strongly that I have a case that should appear before yourselves, I can say that at mediation. I can say, you know, I know I've been referred here. I'm here to fill and sign this piece of paper to say that I came to you. But quite frankly, I feel I have a case that needs to go to court. So they can still opt out even though it's been mandated by the Bench.

JUSTICE TAYLOR: Ma'am, do you think there is a constitutional issue here? I know you're not a lawyer, but the constitution gives our citizens a right to due process. You can't take their property without due process. Is there some point at which the endless erection of hurdles between them and the courtroom rises to a constitutional level?

MS. NOLAN: If I may comment on the word hurdle; we can use mediation at any point within the litigation process. It has been used to actually clarify issues instead of taking up court time, to get at the most important and pertinent issues, and so it grows out.

JUSTICE TAYLOR: Let me ask you to deal with this in the context of the litigant who says, this judge doesn't like hearing divorce cases. And he's putting me into process after process after process after process to discourage me from going forward. And I think I'm being deprived of my constitutional right to a trial. What point do you reach? When is that point?

MS. NOLAN: That has, to my knowledge, not ever happened. We do remediate cases. But, again, it's the case of divorce which we don't handle that. There are private attorneys. And I had hoped to have one come today. She will be writing comments and addressing them to yourselves on that very issue. She is a lawyer, and she does divorce mediation.

JUSTICE TAYLOR: But divorce is contemplated by this rule?

MS. NOLAN: Yes. So that, I would prefer to have her answer those questions for you because I don't feel qualified to answer them.

JUSTICE CORRIGAN: How many times in your practice, though, would you remediate a case?

MS. NOLAN: Probably twice.

JUSTICE CORRIGAN: Twice.

MS. NOLAN: And then it's on a case to case basis. We're doing a lot of work with juveniles. And because it's their process of maturity and their world changes very quickly, so the issues change accordingly. We will remediate.

JUSTICE CORRIGAN: Just so I have a good understanding, what is the brunt of cases that you are doing in your center? Are they divorce cases?

MS. NOLAN: No. No.

JUSTICE CORRIGAN: What sorts of disputes are you mediating, the categories?

MS. NOLAN: We do family court which would involve guardianship of an elder or incapacitated family member. We will do small claims cases for presence every week for small claims.

(End of Tape 1.)

MS. NOLAN: This is for presence every week for small claims. Landlord tenant cases, property disputes, property line disputes. We had a program for special education where we worked with the school district, the parent, the providers of the special education. We had a program that Kathy Lane is going to explain to you which is permanency planning mediation.

JUSTICE CORRIGAN: But those would be termination of parental rights cases that you are doing right now?

MS. NOLAN: Yes.

JUSTICE CORRIGAN: And you accomplished a 75 to 85 percent settlement rate?

MS. NOLAN: Yes.

JUSTICE CORRIGAN: That's commendable. Thank you.

MS. NOLAN: Thank you.

JUSTICE WEAVER: And it says 94 percent of participation is satisfied or very satisfied with the process.

MS. NOLAN: Yes. With the process.

JUSTICE WEAVER: And 78 percent of those who did not reach agreement are satisfied or very satisfied.

MS. NOLAN: Were also very satisfied. Yes.

JUSTICE WEAVER: Okay.

MS. NOLAN: And we do this on funding, on base fundings from the \$2.00 filing fee. That provides our base funding. If you compare our center with another center, we have done the most mediations per 10,000 capita population.

JUSTICE WEAVER: You get 22 cases per 10,000?

MS. NOLAN: Per 10 now. The next center that's closest to us has done nine using that formula. And then also using that formula, our cases received the least amount of money per case. We only received \$56.00 per case. Larger, urban centers received in excess of a \$1,400.00 per case, according to the number of cases they are doing.

JUSTICE YOUNG: That helps drop the number of per capita there, 10,000.

MS. NOLAN: Yes.

JUSTICE YOUNG: Can I go back?

MS. NOLAN: Yes.

JUSTICE YOUNG: These hearings are really quite useful because you learn things that you can't by reading the rules. You said that you are mediating parental termination cases.

MS. NOLAN: Yes, sir.

JUSTICE YOUNG: Well, that strikes me, do you know certain the term binary, either zero or one?

MS. NOLAN: Okay.

JUSTICE YOUNG: There isn't a middle ground when you're talking about parental termination. How do you mediate a parental termination case? It's just a matter of my curiosity.

MS. NOLAN: Your curiosity. One of the key issues or one of the key elements of that case is that we have the parents, the prosecutor, FIA, the child or children's lawyer, lawyers for the parents and any other parties involved, the foster parents, all at the table at the same time to determine, has progress been made? Is there any hope of making progress? Has the person complied with their plans? And you may decide that there is no hope of change.

JUSTICE WEAVER: This is all happening before it goes before the judge, right?

MS. NOLAN: I will let -- I would prefer to let Kathy speak to that.

JUSTICE WEAVER: Okay.

MS. NOLAN: Because she can answer those questions more specifically.

JUSTICE WEAVER: But the judge hasn't made a decision? Has the judge made a decision?

MS. NOLAN: We'll let her answer that, because it varies case by case.

JUSTICE WEAVER: All right. Any further questions? We thank you very much. We have George Bearup here. We have him listed as here. I guess he's not here.

All right. Kathy Lame.

MS. LAME: Good morning.

JUSTICE WEAVER: Good morning.

MS. LAME: My name is Kathy Lame, and I'm a mediator and the special projects coordinator for Citizen Dispute Resolution Service which is the center that Maartje is the director of. And we represent Charlevoix and Emmet County. I would like to use my time today to describe an example of court-ordered facilitated mediation done by nonattorney mediators. It was my thought that the process could best be illustrated by putting it in the context of a real case. And maybe some of your questions will be answered if I do that.

In March of 1998, our center was accepted as a pilot site for the permanency Planning Mediation Program to use mediation in child abuse and neglect cases. The goal of this program is to reduce the adversarialness of child protected proceedings and to shorten the amount of time it takes to determine a safe, appropriate and permanent home for the abused and neglected child.

The case I would like to present involved a petition filed by the Family Independence Agency alleging abuse and neglect of the mother of two young children. Our family court judge called the center to refer the case because he believed that the mother would agree to some of the charges in the petition but not necessarily to all of them.

We were going to mediate the wording of the petition or so we thought. This particular case was scheduled to go to trial the following week. Present at the mediation were the mother, her attorney, the children's attorney -- they were not present. They were very young. The FIA case worker, the prosecuting attorney and two mediators. After an introduction by the mediators, they asked each of the parties at the table to state what the concerns of the issues were that they wanted to discuss or clarify or resolve.

As it turned out, the mother had no issue whatsoever with the petition itself or that the court was going to take jurisdiction over her children. She was more concerned about what was going to be expected of her by the court. She was already on probation in circuit court for drug offenses and was concerned about the time and expense involved in satisfying the requirements of both courts for drug testing, AA meetings, counseling and so on. The prosecuting attorney was very willing to discuss sharing drug screening results and waiving the fees required by family court in order to have jurisdiction over these two children.

The mother's questions were answered regarding case worker assignments and the possible length of time of jurisdiction. Everyone present had input into the plan that was finally put in writing, especially the mother. The mediator's role was to make sure that everyone was treated with dignity and respect, that everyone was heard and that everyone understood and agreed to the final product.

While mediators are given special training to do this kind of mediation, they do not have to be experts or attorneys because the expertise is already at the table. They are there to facilitate the process.

JUSTICE YOUNG: Can I --

MS. LAME: Can I just, I'd just like -- a final thought on voluntary versus mandatory mediation.

These participants were ordered to come to mediation, but they were not ordered to agree or come to a settlement. They were just asked to try. Because they did, a trial was avoided and the permanent plan for those two children was hastened. Thank you.

JUSTICE YOUNG: Just a question. You made a statement that the mediator doesn't have to be an expert because the expertise was at the table. In this case, who were the experts?

MS. LAME: The attorneys are there. FIA is there.

JUSTICE YOUNG: This woman's attorney?

MS. LAME: Absolutely. That's right.

JUSTICE YOUNG: So the negotiating, whether she admitted or not the allegations of the petition --

MS. LAME: It didn't happen.

JUSTICE YOUNG: -- she had the benefit of counsel there?

MS. LAME: That is correct.

JUSTICE TAYLOR: Is that -- is that case you're talking about, is she informed that she has consented to the first step to losing her children?

MS. LAME: She understands that.

JUSTICE KELLY: I'd like to ask you. I have two concerns about mandatory mediation. What is the length and time that it extends, conceivably extends the matter, if the mediation isn't successful and the matter has to go to trial? The matter is the expense to which it quits people, and frankly, the constitutional problem that was eluded to by one of the Justices earlier that could arise if people are forced to mediation against their will, should it be mandatory? Having said that then, the presence of

concern, I want to, if you will give me your reaction to a slightly different rule that might be promulgated by this plan. There would be that a circuit judge has the discretion, a judge at any level, has the discretion to order parties within a short number of days and with no expense to them, to attend a session at which they are fully informed by you, people like you, about the attributes and the availability of a mediation system. And then clearly, clearly informed that they have the option of refusing to take part in that if they so desire in going to trial instead. What would you think of that?

MS. LAME: Just having a few moments to contemplate it, I will say that the logistics of doing that may prove difficult to do that. The problem with many of these cases is the number of people involved. And in order to -- to do that would just be another logistical problem of getting everyone together again to explain that to them.

And I would like to, if I may, address some of the first questions that you had as far as timeliness. Mediation is much quicker than the court process.

JUSTICE KELLY: Assuming it works, of course. My effort was to where it doesn't work, would you put people through it? They end up not agreeing and then they go back to where they started.

MS. LAME: Generally, what happens, the mediation process is inserted into the court process. Generally we are aware that there is a hearing scheduled next week or in two weeks, and mediation is just inserted into that time frame. So it doesn't delay the court process whatsoever if it fails, even if it fails. It can go right on track. They are not giving up their rights to any other part of the process.

JUSTICE KELLY: That may be true in simple cases, but in more complex cases, it would be less true, don't you acknowledge, if a mediation were to require a week of work, for example?

MS. LAME: A mediation generally requires one or two sessions, and those are hours, so.

JUSTICE KELLY: But you're talking about matters that are relatively elementary, aren't you? You're talking about a complex piece of circuit court litigation that might involve hundreds of thousands of dollars.

MS. LAME: Perhaps, I guess, I cannot guarantee that it would not.

JUSTICE CORRIGAN: In the kinds of disputes that you handle, can you give us an average time that it takes once the case is pulled out from mediation, how long

it takes to get a result?

MS. LAME: The way we do it is that if it's preadjudication and they are on a pretrial hearing, for example, the judge, if someone, either the judge or one of the attorneys suggests or requests mediation, then they have -- we have set aside Thursday in our counties that we will be available to do this type of mediation. And they can do that from the Bench while all the parties are present, are you going to be there?

JUSTICE CORRIGAN: So they'll come over the next Thursday?

MS. LAME: That's exactly right.

JUSTICE CORRIGAN: And it will be yes or no, in most cases, the next Thursday?

MS. LAME: Yes.

JUSTICE CORRIGAN: And if it's a failure in those 15 percent of the cases, then it's back in the system?

MS. LAME: That's right.

JUSTICE CORRIGAN: So your average time is two weeks?

MS. LAME: That's right.

JUSTICE KELLY: You've never left the system.

MS. LAME: Pardon me?

JUSTICE KELLY: You're saying it never left the system.

MS. LAME: It never leaves the system.

JUSTICE KELLY: That's right.

MS. LAME: Mediation is a service and a resource that is available to everyone involved to be inserted into the system.

JUSTICE CORRIGAN: It's really a question of how lengthy is the delay

caused by your part of the process, and I apologize for not being precise. All right.

JUSTICE WEAVER: Any other questions of Ms. Lane? All right. We thank you very much.

Now we'll turn to the 46 circuit trial court. The Honorable Alton T. Davis.

46th Circuit Trial Court.

JUDGE DAVIS: Madam Chief Justice and Justice of the Court, and if the Court please, I never was able to argue a case in the Supreme Court, and I always wanted to say that to this Body, so this is my chance.

Before I start, I would like to acknowledge the presence of the high school students we have here today, too. We are very pleased to have them with us.

JUSTICE WEAVER: Now, would you identify who they are for us?

JUDGE DAVIS: Well, if I knew specifically, I'd be happy.

JUSTICE WEAVER: Not as individuals. I just mean the school.

JUDGE DAVIS: We have schools, as I understand it, from the Grayling High School system and from the Gaylord Public School System, and I believe from Gaylord St. Mary's.

JUSTICE WEAVER: Yeah. And when we finish this part of the testimony that people have asked to give, we are going to give the students an opportunity to ask us questions.

JUDGE DAVIS: Wonderful.

JUSTICE WEAVER: And then somebody requested pictures, and we'll give them a chance for that.

JUDGE DAVIS: I also understand that we have students here from Calgary Baptist which is in Crawford County.

JUSTICE WEAVER: Okay.

JUDGE DAVIS: I am Alton T. Davis, and I am the Chief Judge.

JUSTICE WEAVER: Now you can start his time.

JUDGE DAVIS: Thanks. And I'll start again. I am Alton T. Davis. I am the Chief Judge of the 46th Judicial Circuit of Michigan and of the Court Demonstration Project that was commissioned by this Court three years ago under the administration of then Chief Justice James Brickley.

The charge we were given, as I understood it at that time, was in the most general terms to explore new and innovative ways to deliver better trial court services to the people who come in contact with the courts in these three counties, that comprise this circuit. That constituency definition is very broad, from taxpayers to funding units, to jurors and litigants who are both local and from without this area and from without the State.

We were specifically requested to address issues of consolidation of court function, and where possible, court funding. I'd like to highlight our progress in a summary fashion in this forum as I have attempted to keep the Court informed of more detail periodically as we have proceeded.

I am pleased to report that, in my opinion, that we've made great progress in the intervening three years since we began. Some of the highlights, we have reduced a former 90-day jury term to 15 days without compromising our capacity for jury trials, and that has been very well received by our local residents. We have reduced disposition time in most felony cases from the former four to six months to about 45 days on average, by instituting a program for the taking of felony pleas and sentencing in our district court divisions. We have negotiated a three-county contract for providing indigent defense representation which provides us with necessary services at a stable and reasonable cost, and that is a two-year contract.

Using a running total, we have accomplished a net reduction in expenditures for court operations in excess of \$400,000 after factoring in regular wage increases for court personnel and periodic increases in the cost of unnecessary overhead. By applying new techniques, revenues to the counties from court operations have been increased dramatically and time spent on collection activities has been significantly reduced. Thanks to some initial start-up funds that were provided by the Supreme Court, this Court is now very technologically advanced, and our people are well trained in the use of that equipment. Today's technology has revolutionized the way that we do business and has increased our productivity and reduced our cost many times over. We find new applications nearly every month. As a result of our work in this area, we are now receiving attractive offers for joint participation from other agencies, the State Police come to mind, which will further enhance our capacities. And I think that's a very important thing for the other courts in the State because if they were without this equipment technology, they need to have it. They will have great results simply because

they do. Progress has been made, in large part, because the Court now has one centralized administrative agenda. We have been free to be innovative and to determine and act on what works best in this area.

Centralization of administration has also worked to improve communications between the court and its funding units and all other agencies and the public. This year we consolidated court functions into a two tier system in Crawford County which Judge Hunter will review with you momentarily. And we've presented a truly consolidated court budget for circuit, district and probate court functions in that same county. I believe we're on the verge of a breakthrough that will allow for totally consolidated budget for the entire circuit by the next funding cycle. I further believe that we'll have agreement for binding joint management counsel between the court and the respective counties of the circuit by this year's end which I am hopeful over time will prove to be very helpful and important.

There's much yet to do, great breakthroughs that we can yet achieve. We are still waiting on legislation that we need to allow us to develop to our full potential. We could use some temporary assistance and support of the Bench which we don't have at the present time which I've mentioned to the Chief Justice at our meeting in Traverse City and to her staff. And in the interim, we'll continue to do what we can to improve the things that are in our control in the best interest of the public that we're here to serve.

JUSTICE WEAVER: Thank you, Judge Davis. Any questions?

JUSTICE CORRIGAN: I'd just like to make a comment. Personally, I have really enjoyed reading your newsletter. It is very well done, very vibrant and congratulate you as well on the tremendous work you have done on the improvement in the collection of criminal finds. That's been a magnificent product on your part, and one that I hope personally we can share with the entire State of Michigan.

JUDGE DAVIS: Thank you very much, and we have the new addition of our newsletter hot off the press. We want to make sure you get one before you go.

JUSTICE WEAVER: Judge Davis, would you mind telling us a little bit about the fact that you have a web site?

JUDGE DAVIS: We do.

JUSTICE KELLY: I want to add that I've been most impressed with your use of modern technology, especially computers in the courtroom in your administration.

JUDGE DAVIS: Thank you. We are very fortunate in that the administrator

for the Court, Rudy Adle, is someone who is very adept at not only only deciphering how you use all that stuff, but putting it in place for our use and then managing to getting those of us who are inept, trained so that we can make use of it.

But it truly has been revolutionary in this business that we are working on with the State Police. They are now working on networks for exchanges of information throughout the entire system. One thing by way of just example, we are working on a project which has not fully come to fruition yet as well as we'd like, where we can get laptops in patrol cars for police officers. The information that they take down in the course of their first contact for what may later be a case in court, then goes right through the system without ever having to be entered again by the court. And that's just one example of what we're able to do, which is a tremendous time savings and financial savings.

Now to the web site. We do have a web page that we put up, I think, earlier on this summer. It provides a tremendous amount of information to the public about the court operations, about court personnel, about court procedures, about cases that are pending. All of that was very carefully done so that information that ought not to be published is screened out. There are various levels of use depending upon the agencies and people who dial in so they can get a little more or less information. But that's helped us a great deal because now people don't need to come to the courthouse to get that information. They don't need to call. So the people who are involved in that process before are now free to do other things. In addition to that --

JUSTICE WEAVER: So that saves time for the parties?

JUDGE DAVIS: Saves time for them.

JUSTICE WEAVER: For the attorneys.

JUDGE DAVIS: You know, you're talking about up here, distance is a big factor. Weather is frequently a very big factor. So for people who can do those things from their desk top or living room, it's helpful. It also facilitates and is another avenue by which people can pay fines, get information about what they owe, information about the progress of their cases from the living room. So it's been --

JUSTICE WEAVER: Now, you were able to get this update technology through our demonstration projects, is that correct?

JUDGE DAVIS: Yes. I mean, when the Court started with the project, the first thing we did, that we were asked for coming from our wish list was to ask for the equipment. Because it was equipment that the counties probably would have had

difficulty paying for under the circumstances. So the Court did that for us initially, and we have been able to put it to great use. And since then, the counties having seen the use and having more of a maintenance function than an initial acquisition function have been able to keep up with it and happy to keep up with it.

JUSTICE WEAVER: Any other questions for Judge Davis?

Thank you, Judge. We appreciate it very much. And I appreciate all the efforts that have been done by all the people here in these three counties to include the services for the public, judicial system. We now have Lynnette Corlew, Otsego County Commission. I think she's the Chair.

MS. CORLEW: Madam Chief Justice and other Justices of the Supreme Court. I do not want to correct you, but I am from Crawford County.

JUSTICE WEAVER: Oh, I'm sorry.

MS. CORLEW: Not Otsego County.

My name is Lynnette Corlew, and I have been asked to address court reform from a county commissioner point of view.

As you know, our local court system is one of the demonstration projects addressing court reorganization. Our court system encompasses Crawford, Kalkaska and Otsego Counties. However, we also have two overlapping district courts. I will not be addressing case loads, but I will share with you the changes my county has experienced in matters of communication and finance.

Prior to court reform, every effort was repeated three times. With the ongoing demonstration project, there has been a concerted effort to streamline the administrative function of the court. This is helpful both in consistency of policy and communication. It has had the court speak with one voice with one message. The court tends to move in the same direction in all three counties on a given issue, but this in the only lead to all counties hearing the same message. It also allows all three counties to discuss the common issues and concerns so that a resolution can be achieved.

In an attempt to advance this process, Crawford County has joined with Otsego County in passing a resolution declaring its willingness to enter into a binding management council with the 46th Circuit per your administrative order. If this is formed, it will allow the courts to discuss all their concerns and proposals with all the counties at the same time. It also creates the environment for the county to discuss their concerns as a group in order to achieve a common goal.

Communication is the most important aspect of this or any other project. All parties involved must communicate and listen in order for this project to evolve and reach its potential.

There has been some progress made in the areas of budget. Information is coming more freely which leads to a stronger trust. However, this information is at times hard to disseminate due to the different fiscal years the counties are operating under. Crawford County is the only county in the Circuit that operates under an October 1 fiscal year as the State of Michigan. When trying to analyze total court finances within the entire circuit, this makes it difficult. It also dictates if Crawford County is the first budget the Court has to submit. It would seem to be more efficient if the Court could sit down with all three counties at the same time to discuss the upcoming budget cycle.

This fiscal year Crawford County became the first of the three to develop and implement a unified judicial budget. This will help in evaluating the courts as a whole and place the responsibility of assigning accountability to the courts themselves. It will also give the courts the flexibility to offset shortfalls in one area within the same budget.

When I discuss court reform with other county elected officials, I realize that we have experienced a great deal of positive changes. The treasury now receives daily deposits from the circuit and district divisions of the court instead of weekly or biweekly. This creates an opportunity for the treasurer to invest funds more rapidly and provides a stabilizing effect to the daily cash flow of the county.

The county clerk stated that the changes implemented by Judge Davis have led to a dramatic reduction in jury days from 90 days to 15. This reduction allows the spreading of this responsibility among many citizens. The caseload -- the increase in caseload is offset by the reduction of complaints by projected prospective jurors. The Chair I have has expressed his appreciation for a more efficient and timely adjudication process. Nevertheless, there is still opportunities to advance and improve. We must not forget the legislation needed to dissolve of the 83rd District Court that covers Roscommon in Crawford County. This process must be completed. We no longer share the operating cost for a court recorder or a probation officer, but we still handle the pass through funds. We also need to provide at least one bailiff to the courts.

Crawford County has experienced severe financial difficulties in recent years to the reduction of many services including a major reduction in road patrol. When the Sheriff's Department provides an officer to function as a bailiff, we have one less officer on the road and sometimes contend with severe overtime expenses. We need to find a way to secure funding for a bailiff position. The never ending issue of disparity between the wages of court employees and county employees must also be addressed. Simply put, two employees, similar work, similar community, perhaps even neighbors, but a significantly different wage scale from the same funding source. This issue is not unique to Crawford County, although it is an issue that causes conflict when budgets are tight. This will also be one of the most challenging issues to resolve in the future.

Overall, the demonstration project has been a success. Change is a slow process. But we are comfortable with the people involved and confident in their ability. We are convinced that the changes so far have been positive, and in some instances,

dramatic, and we look forward to the unlimited potential this project promises.

As I close, I would like to thank you for this opportunity to address these issues and to assure you that Crawford County fully supports court reform and our own demonstration project. Thank you again and welcome to Northern Michigan.

JUSTICE WEAVER: Thank you. And you are the Chair of the Crawford County?

MS. CORLEW: Yes, I am.

JUSTICE WEAVER: All right. Excuse me for that. Any questions? All right.

MS. CORLEW: Thank you.

JUSTICE WEAVER: Thank you so much. William Carey.

MR. CAREY: Good morning, Justices. Unlike my former partner and Chief Judge Davis, I have had the opportunity to address you more formally, and I would like to say that it's a far less anxious experience to talk to you here on our home turf than it was to address you in Lansing.

JUSTICE WEAVER: So you are an attorney from Gaylord?

MR. CAREY: I'm from Grayling.

JUSTICE WEAVER: From Grayling.

MR. CAREY: I have a general practice firm there with a partner, and we have a total of five attorneys in our firm. I too am here to speak regarding court reform. My own personal involvement in that court reform, I believe you heard Judge Davis make reference to the fact that the circuit operates a circuit wide defense contract for indigent appointments, and I serve as the circuit's contracted administrator. So I'll speak on that just very briefly and tell you that in the past before we went to account, for a circuit wide contract, in effect, each court and each judge was responsible for securing counsel to represent indigent parties in their respective courts under the current circumstances that we have here. There is one contract with the circuit and that contract is with my office. My office is then responsible for supplying the attorneys to serve as indigent counsel for each one of the courts within the three county circuit.

The compensation for that is by contract a set fee over a two-year period of

time, and we are, I believe, on our second or third renewal of that two-year contract. So that the attorneys participating in the contract, the benefit to them, is that then what their role will be, they'll know what court they'll be performing their services in, and they understand in advance exactly what their compensation will be. There is no give and take or negotiations that occur between counsel and the courts directly. The advantage to the courts is that they no longer have to pick and choose on sometimes a daily, weekly or at least monthly basis as to who will be available to represent those parties that need representation in their courts.

Judge Davis did accurately comment on the cost savings that has benefitted the three county area from the defense contract. And speaking for the attorneys that participate in the contract, I can tell you that they are more, much more satisfied with the current arrangements than the rather ad hoc appointments that were typically employed to the implementation of the contract.

In addition to that, I would also comment that it appears, my own personal contact with the court primarily is at the circuit court level and the reform that has been implemented through the pilot project certainly has allowed lawyers to come into court, to get their business handled by the court with far less delay than had been the case in the past. And we're also pleased to have that experience as well.

JUSTICE WEAVER: Okay. Any questions? Mr. Carey, we really appreciate you coming.

MR. CAREY: Thank you.

JUSTICE WEAVER: And Judge Hunter, the Honorable John Hunter.

MR. HUNTER: Good morning, Chief Justice, Associate Justices of the Michigan Supreme Court. I'm John Hunter. I'm a trial court judge, and a probate judge by election, a family court judge by inclination. I service the people in Crawford County.

I was elected Probate Judge 12 years ago. Three years ago I was made a Family Court Judge and about eight months ago I was made District Judge in Crawford County. Judge Davis eluded very briefly to the combined system that we have. And I'm going to take just a few minutes to explain that to you.

I sit as Family Court Judge on all cases involving children in Crawford County. That includes the divorce cases. That includes anything dealing with children that was traditional probate jurisdiction as well as current circuit jurisdiction. I still perform the traditional probate functions. And as indicated, the last eight months, I have become a district judge. Judge Davis has given you a brief overview on what some measurable empirical savings and benefits are to our counties, to our citizens by having a demonstration project.

I suggest to you that there are a number of areas that are not measurable that are

incredibly important that our people benefit from this demo project. I want to start off by suggesting to you that first thing. We have a Judicial Council, and that's part of the project, has been a part of the project, and nearly all of our judges are here today that are part of the Judicial Council. Probably before any of you were members of the Supreme Court, you never understood the collegiality that can occur even with different points of view. I certainly didn't before we had a Judicial Council. We had probate judges, we had district judges, we had circuit judges, and sometimes never the train did meet.

But now, we're all judges. We're trial court judges. We don't have that strict identification process. We don't have problems in our circuit with big brother, little sister or anything like that. We're all judges, and we're trial court judges. The one exception, of course, is the Chief Judge. The Judicial Council does most of our work. Our strong Chief Judge allows that to be so. And it's your Chief Judge rule, in particular, for our project that allows us to function as we do. It beats to have a strong individual, forward looking individual. We certainly have had that and do have that in Judge Davis.

Technology has been incredibly important. We've got computer bridges now where all of our court systems, whether it be district court, probate court, circuit court in any of the three counties are able to access all the files and records of the other courts.

For instance, I sit, as I said, in Crawford County, and I'm cross assigned to act on all three benches. That means if a PPO comes in, somebody from my office area, in the traditional probate and family area, is able to access our circuit files on a PPO, and even if it's a PPO and say a pending case in Kankaska County, we have automatic access because of our computer bridges.

Let me suggest to you, this is no small feat because the different systems, and I don't recall all the acronyms, there is JIS and some others, each of our courts have gone off with different computer systems. We have all these linked with bridges, and that is a tremendous opportunity. Also something as simple -- thank you. Let me just say, paying traffic tickets, one of our citizens gets a traffic ticket in Otsego County, can pay it in Crawford County or can pay it over the Internet now, actually, through our web site, or can pay it in Kankaska County, Friend of the Court payments. The support is from the top down. We found that with our employees.

We appreciate the support that you've given us. The one size doesn't fit all monitor certainly applies here. We have demonstrated -- we will continue to demonstrate the idea of a county court judge is workable. There is a lot of work load that is involved for me because of the very nature of the cases, but it is workable. It's a process that you should consider for application in other areas of the State. Thank you very much.

JUSTICE KELLY: I have a question now. You were elected as a district court judge?

MR. HUNTER: Probate judge, ma'am.

JUSTICE KELLY: Probate judge. Are you paid as a probate judge?

MR. HUNTER: I am -- yes and no. I am paid by the County of Crawford as a probate judge, and I have a county salary established. And the Supreme Court supplements my salary to that of a circuit court judge. However, the difference is that the supplementation does not include any type of retirement benefits. So, yes and no.

JUSTICE WEAVER: This is part of the demonstration project.

JUSTICE KELLY: All right. I understand it is. I simply didn't know those details.

Now when you were referring to your approval of the system and how you judges work together regardless of the role you were elected by the people to fill, do you include in that this disparity of pay?

MR. HUNTER: All of this as part of the project are equalized in pay and it's a supplementation.

JUSTICE KELLY: Not with respect to -- remuneration then would be put, you're not with respect to pension, correct?

MR. HUNTER: Correct.

JUSTICE KELLY: So you're not getting really what you would get if you were all being remunerated at the same time?

MR. HUNTER: That's correct. And I hope to have that accomplished legislatively.

JUSTICE KELLY: That's going to cost the people more money, though, isn't it?

MR. HUNTER: Well, there is no question that there is a cost involved. I think the real issue is going to be the benefit that we've demonstrated not only to the populous but to the court system itself. The populous is really the chief area of benefit, and that is the processing of the cases, the availability of the judge in every one of our counties every day to be cross assigned.

And let me give you something by way of an anecdotal example of how

important it is for one judge to be able to handle all these cases.

As a district judge, I have a magistrate that issues warrants. I had a magistrate that was on vacation last summer, and she was not available so the state police officers came to me for a warrant. And I took the testimony and listened to the case, and I found out that it was an alleged CSC case concerning a minor child, an 11-year-old. Because I'm a family court judge, the first question I asked the trooper is whether or not this has been referred to FIA, the Family Independence Agency. The trooper said he didn't know.

That allowed me, because of my position as a multijurisdictional judge in having all these responsibilities in a small county to immediately contact the FIA. And from a judicial perspective and prerogative, to initiate some protective proceedings in investigation which did result in removal of those other children because the perpetrator was still in the home, and there were other young girls in the home. That's just one small anecdote about how there are so many overlaps in our system.

Now there are areas in the district court that have no application whatsoever to a family court. A building trades case, perhaps small claims jurisdiction, there are other areas that are tremendously important in terms of their overlap. Spouse abuse and domestic violence, the impact it has on children. The impact that results in juvenile delinquency as far as, and abuse and neglect, and the impact that results in custody cases and divorce. All those things are inner related. We now have the opportunity to demonstrate one judge can function in all of those various areas, hear those cases, track as the legislature directed us to do several years ago with one judge per family. We live that.

JUSTICE WEAVER: Any other questions of Judge Hunter? Judge, we thank you for coming.

MR. HUNTER: Thank you kindly.

JUSTICE WEAVER: Now, is Mr. Felton still here?

MR. FELTON: I am.

JUSTICE WEAVER: Mr. Felton, your item, that I think you want to talk about is not on the agenda. It is something new that was just published. And I have an understanding that you'd like to talk about that. So why don't you tell us what you want to talk about?

MCR 2.116

MR. FELTON: Thank you. Again, my name is John Felton. I'm an

attorney practicing here in Gaylord, across the street in a small office.

And the Court recently published for comment on proposed amendment to rule, I believe it's MCR 2.116, and suggested adding the paragraph 1 E which would require that when a motion is filed, that is part of the process of part of filing a motion, that the moving party include a certification that they had made efforts to contact the opposing party and seek concurrence in the motion prior to filing that.

Just from a standpoint of a practitioner, it occurred to me, I think of a case where frequently the client comes, drops a lawsuit on your desk. It's usually about the 21st day after they've been served. This happens quite frequently. And certain motions need to be filed as part of a responsive pleading. And I would suggest to the Court that if someone comes in to you on a Friday afternoon and brings you a motion, that the Court might want to consider the fact that it would be unduly burdensome to require that a party go ahead and try to track down the other side when they haven't even got their own appearance in the file and the other side doesn't know who they are from Adam.

The client comes in with a case. I see that perhaps there is a venue problem. I call the other attorney. The other attorney doesn't know me from Adam. I need to file that in terms of a responsive pleading. And I would suggest to the Court that perhaps in looking at that rule, that the Court exempt any motions that are filed as a result of a responsive pleading because the attorney representing the litigant, the moving party doesn't really control the timing of those motions. Those motions would be controlled by the timing of when that suit was actually served and when the matter was brought to the party.

JUSTICE TAYLOR: Couldn't you put in on that default situation that you're talking about, couldn't you just simply indicate, I attempted to reach the other attorney, was unable to do so?

MR. FELTON: Sure. But you get the call at 1:00 o'clock. You call the other attorney's office, you sit around waiting for a call to come back.

JUSTICE TAYLOR: Wait. You call them, on an emergency like that, you'd call them, he's not in. Wouldn't you just put that in?

MR. FELTON: I think you could if the Court made it clear that that was satisfactory, or do you take your chances in terms of, well, the Court will say, I'm not sure you made diligent efforts? You made a call to the other attorney, and they say, gee, they never got that message. So, do you wait around and try to do everything you can to make sure you've made diligent efforts, or do you go ahead and take the risk of filing that?

So I think if the Court gave a bright line, that would assist in that regard.

The other thing I would just quickly say, is that with respect to a motion, up

here in a rural area where a lot of attorneys are in different towns, that is going to add some time frame to, right now, you can file a motion with nine days advance, seven days if you have personal service. If this requires some personal contact, that may lengthen the nine days realistically to 10 or 11 days.

Quite often in circuit you have one motion day a month. And if that results in missing the time frames because of the efforts to obtain consent or contact from the other party, you're basically going to put over the case for another month, possibly two months, depending on that circuit court. So I would just offer that to the Court to just to make you all aware of that from my perspective.

One other comment, if I might, with respect to thank you notes. Having donated to campaigns, and I know I have talked to other lawyers that donate to campaigns, I just can't conceive of how the good manners our mother taught us would lead to bad ethics. So I think it's perfectly appropriate, and I don't think as a lawyer I would draw any adverse inference from a judge thanking a lawyer for a contribution. Thanks.

JUSTICE WEAVER: Questions?

JUSTICE YOUNG: This proposed rule happens to be patterned on a local rule that exists in Wayne County, 15, 20 years. What do you think of the motivation for having --

MR. FELTON: I would assume the motivation for the rule is to try to bring the parties together to discuss motions.

JUSTICE YOUNG: At least their lawyer.

MR. FELTON: Pardon?

JUSTICE YOUNG: At least their lawyers.

MR. FELTON: At least their lawyers.

JUSTICE YOUNG: Do you think that's a good idea?

MR. FELTON: Pardon? I think that's a laudable goal. On the other hand, I would indicate that there are quite a few motions that I don't think that there is any chance that there is going to be a concurrence. And up here where a lot of clients are working pretty hard at \$8.00 an hour to pay the lawyer off, you're adding maybe a half hour attorney time to the cost of filing a motion. And I would urge the Court to be aware of

that also.

JUSTICE YOUNG: Do you think that the additional time of having to contact opposing counsel to see whether they will concur in the relief of your motion is too burdensome to require that?

MR. FELTON: I think that's certainly a factor to consider, that there's time involved in doing that. Recently I sent --

JUSTICE YOUNG: I understand. I'm asking, do you think the burden of calling opposing counsel to seek concurrence is too great, such as the Court shouldn't require counsel to do that?

MR. FELTON: I do. I use my own judgment. And I recently, I sent a stipulation over to another attorney asking to concur some discovery, and I got a stipulation back. And I think civility in practice allows us to do those things for each other.

On the other hand, there are cases where I can spend my client's time and mandate to do the same thing that I know \$10.00 would be well bet if I said this is going to be rejected, and in fact it is. I've just essentially taxed my client by requiring my client to pay some extra funds to go through something which I know in advance is a meaningless gesture. It might be that if the Court would consider some sanction on an attorney who refuses a reasonable request, that gives them an incentive to perhaps bring the parties together, so that if a motion for 30 days discovery in a district court case is rejected by the other side and the judge thinks, geez, maybe you weren't real reasonable on that, perhaps that, that would bring the parties together if there was some incentive for the other side to agree.

JUSTICE WEAVER: Mr. Felton, would you mind sending some of those ideas in writing to us?

MR. FELTON: I'd be happy to.

JUSTICE WEAVER: Especially, since that last idea, particularly, that would probably be helpful. Not that we haven't recorded it, but it might be, particularly to address this, we've asked for comment on this.

MR. FELTON: All right.

JUSTICE WEAVER: We appreciate you talking to us about it, but maybe

particularly just the last thing you said, too.

MR. FELTON: Okay. Thank you for inviting me.

JUSTICE WEAVER: All right. Any further questions for Mr. Felton?
Okay.

I've completed all the people who have requested to speak, and we have passed our time for hearing.

I do want to acknowledge, I see that a Court of Appeals Judge has showed up in the back row. Judge O'Connell is there. And I can't see past the podium, but I know the county clerk for Otsego County was here. I don't know if she's still here or not because I can't see back there. We appreciate her being there.

And then I see in the second row, the Honorable Probate Judge Richard Liedel and Dick Liedel is here. And many of you know that Judge Liedel will be retiring before long. And I want to express publicly the appreciation of the Supreme Court for his devoted timely and long service actually to the people of Otsego County and to the people of this State. And I know now he's turning -- he's turning a little redder.

But in any case, I think I haven't missed any of the judges or officials here unless -- oh, I see Judge Buday from Kalkaska County, a relatively new probate judge, who is here and serving well, too.

Anybody else? Judge Morris. I can't see you, and you can't see me, Judge. A district judge for both Otsego and Antrim, Otsego and Antrim and Kalkaska, Judge Morris. No. Yes, that's correct. And she's been a district court judge for quite a while doing a wonderful job also.

We appreciate all the good judges up here. And have I missed anybody else?

There goes our State Court Administrative Regional person sneaking out. Jack Crandall.

MR. CRANDALL: I was just coming back to open the door, Chief.

JUSTICE WEAVER: So anyway, we do appreciate all the hospitality that has been shown us as we've come up here, and it certainly has been a value to all. And I think I can speak on behalf of the Justices, it's a value to us that we've had this hearing here. And we hope it has been of value to you. And now we're going to open it. We're going to kind of officially close the hearing part.

(Off the record.)

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

I, Leslie Fox-Thelen, Certified Shorthand Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing scheduled proceedings were taken before me at the time and place hereinbefore set forth.

I further certify that the proceedings were reported by me stenographically, and subsequently transcribed with computer-aided transcription, under my direction and supervision; and that the foregoing is a full, true and correct transcript of my original shorthand notes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal at Haslett, Ingham County, Michigan, this 24th day of November, 1999.

Leslie Fox-Thelen (CSR-3850)
NOTARY PUBLIC in and for the
County of Ingham,
State of Michigan.
My Commission Expires:
July 24, 1999.